

IN PARLIAMENT  
HOUSE OF COMMONS  
SESSION 2013–14

Transport For London Bill [HL]

Against – on merits – Praying to be heard by Counsel, &c.

To the Honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled.

The humble petition of **RICHARD ANTHONY SIMON OSBAND**

SHEWETH as follows:-

1. A Bill (hereinafter referred to as “the Bill”) has been introduced and is now pending in your honourable House intituled “A bill to confer further powers upon Transport for London; and for related purposes.”

2. The Bill is promoted by Transport for London.

The Preamble to the Bill recites inter alia that -

(1) It is expedient that the powers of Transport for London should be extended and amended as provided in this Act:

(3) It is expedient that Transport for London should have powers as regards forming, promoting and assisting and investing in limited partnerships:

*Relevant Clauses of The Bill*

3.

Richard Anthony Simon Osband objects to the inclusion of Clause 5 “Power for TfL to form and invest in limited partnerships” and wishes it to be removed in its entirety from the Bill.

*Your petitioner*

4.

Your Petitioner is resident at and the freehold owner of a house, 15 Aisgill Avenue, London, W14 9NF close by the freehold land owned by Transport For London, this TfL land being the freehold land of the Earls Court Exhibition Centre and and the Lillie Bridge Depot, for the avoidance of doubt shown on plans presented as Appendices to a paper presented to the TfL Board at a Board meeting on the 5 February 2014. The Petitioner, by virtue of his ownership of 15 Aisgill Avenue, along with TfL and the London Borough of Hammersmith and Fulham (LBHF) is a freehold land owner in the Earls Comprehensive Scheme, where both TfL and LBHF have sought to enter in to agreements, without a tendering process, with undertakings owned or

controlled by Capital and Counties Properties PLC (Capco). These Capco undertakings are Limited Partnerships. The LBHF and a Limited Partnership presently owned by Capco, EC Properties LP, have already, against the wishes of the Petitioner, entered in to a Conditional Land Sale Agreement (CLSA), under the terms of which EC Properties LP can require the LBHF to buy the Petitioner's freehold home, using CPO powers, and require the LBHF to transfer the same freehold home to itself for demolition. The Petitioner's freehold land, at 15 Aisgill Avenue, as a freehold within the Earls Court Comprehensive scheme, is subject to the Earls Court Comprehensive Scheme completed Section 106 Agreement, which TfL, but not the Petitioner, has signed.

The first building work on the Earls Court Comprehensive Scheme, very close to 15 Aisgill Avenue, is the two year demolition programme to demolish the Earls Court 1 (EC1) and Earls Court 2 (EC2) Exhibition Centres, the freehold of both EC1 and EC2 being owned by TfL, with a small part of the freehold being owned by Network Rail.

The Petitioner and his property will be affected by demolition noise, dust (including asbestos if not efficiently removed), construction traffic and air pollution from the construction traffic.

The Petitioner and his property is at enhanced risk, if a Limited Partnership controlled by a Non Public Body General Partner, has executive control of the EC1 and EC2 demolition, enabled by the inclusion of Clause 5 in the bill, this not being a hypothetical possibility but likely if this petition is not successful in removing Clause 5 from the bill.

5.

#### *Your Petitioner's concerns*

Richard Anthony Simon Osband specifically objects to Clause 5 of the Bill. He objects to this provision because, were it to be enacted:-

(5.1) The TfL Board has agreed commercial terms for entry in to a Joint Venture with Capco. Clause 5 was included in the bill to enable TfL to enter in to a Joint Venture with Capco by means of TfL becoming a Limited Partner in a new Limited Partnership (New LP), set up for the purpose, with TfL and Capco both being Limited Partners. The commercial terms for the Joint Venture are in the paper presented to the 5 February 2014 TfL Board and are as follows:

#### **"5 Commercial Terms**

5.1 The proposed joint venture arrangement with Capco will see a new entity established, with Capco on inception owning 63 per cent and a controlling share, and TfL owning the remaining 37 per cent. The proposed shareholdings have been negotiated and agreed between the parties with reference to the relative values of TfL's and Capco's pre-existing interests in EC1&2 together with other factors pertinent to value, such as Capco's funding of the planning to

date and the value of third party land and interests to be transferred by Capco.

5.2 The commercial terms of the agreement are set out in the supplemental paper on Part 2 of the agenda, however the following points are highlighted:

- (a) upon certain conditions being met, the Capco's leases for EC1&2 will be surrendered simultaneously with the grant to the joint venture of new 999 year leases (the length of term Tfl has been advised is required by the market) which will contain suitable development rights;
- (b) the joint venture will appoint a wholly owned undertaking of Capco, as development manager, to take forward the development on behalf of the joint venture;
- (c) Tfl, through LU, will retain its freehold interest, subject to these new leases;
- (d) Tfl will hold its shareholding in the new joint venture entity via a separate dedicated subsidiary company, under Transport Trading Limited (TTL);  
and
- (e) the joint venture will be responsible for complying with the obligations within the s106 agreement which apply to its land holdings."

(5.2) The arrangement, subject to inclusion of Clause 5, will be a Capco subsidiary owning 63 per cent of the New LP Limited Partner capital and the Tfl subsidiary owning 37 per cent of the Limited Partner capital.

(5.3) It is clear from the statement in the Tfl Board paper, "the joint venture will appoint a wholly owned undertaking of Capco, as development manager, to take forward the development on behalf of the joint venture" that the development manager undertaking, wholly owned by Capco, is intended to be the General Partner of New LP, if clause 5 is included in the bill.

(5.4) Tfl and Tfl subsidiaries are Public Bodies by National and European law, which applies to Public Bodies, including Tfl and Tfl subsidiary companies. The following comments about Public Bodies and Limited Partnerships apply to Tfl and Tfl subsidiary companies. For Public Body read Tfl or a Tfl Subsidiary Company in what follows.

(5.5) There are two circumstances under which a Public Body might become a Limited Partner (LP) of a Limited Partnership with a Non Public Body. One is where the Public Body is an LP only and the other is where the Public Body is an LP and a GP.

(5.6) A feature of a Limited Partnership is that control vests in the GP (there can be more than one), which has unlimited liability for the debts of the Limited Partnership, while the LP can enjoy full equity participation in the financial results of the LP, in proportion to the capital contributed, with liability for the debts of the partnership only up to the limit of the capital the LP has invested.

(5.7) Should a Public Body, such as a Tfl subsidiary, become a GP and if there are LP

members of the Limited Partnership which are Non Public Bodies then the Public Body will be State aiding the non public body, by absolving the Non Public Bodies from all risk, contravening European law.

(5.8) If a Public Body is an LP only and does not take on the unlimited liability of being a GP, then the Public Body will be State aiding the GP by allowing the GP to make investment decisions, that could be of no benefit to the Public Body but only of benefit to the Non Public Body GP, again contravening European law.

(5.9) In the first case the Public Body is State aiding the Non Public Body by eliminating risk for the Non Public Body and in the second case the Public Body is State aiding the Non Public Body by passing full control of State money to the Non Public Body GP.

(5.10) State aiding is unlawful under European law and Parliament would be acting in contravention to European law if it allows a Public Body, such as TfL to become an LP or GP in a Limited Partnership with a Non Public Body.

(5.11) Because the London Borough of Hammersmith and Fulham did not become an LP or GP of EC Properties LP but has sold its land in phases, subject to conditions being met, to EC Properties LP by means of a CLSA, it did not take on the risk that TfL takes on if, subject to Clause 5 being included, TfL becomes a Limited Partner in a New LP with the Non Public Body, Capco.

(5.12) The above points demonstrate that a Limited Partnership, which is not a Body Corporate, is not a suitable vehicle for a Public Body to invest in by becoming an LP. The right vehicle would be a Body Corporate such as a Limited Company. I would have no objections if TfL invested in 37 per cent of a new Limited Company (New Co), with Capco owning the 63 per cent, with suitable memorandum and articles of association, and preemption rights, to enable TfL to take its profit out.

(5.13) Further considerations are that a Limited Partnership, not being a Body Corporate, has no retained profits or covenant strength of its own. Its covenant strength depends on the covenant strength of its GP. The Limited Partnership can change its GP according to procedures in its Partnership agreement. The Partnership Agreement would be unlikely to be made public and its terms would not be publicly scrutinised. If Clause 5 is included in the Bill, TfL indeed could be taken for a ride.

(5.14) The rules determining the duration of a Limited Partnership are substantially the same as those applying to Ordinary Partnerships. Unless it is for a fixed term, a Limited Partnership will be At Will. A Limited Partnership At Will may be dissolved on notice by a General Partner, but (unless the agreement provides otherwise) not by a Limited Partner. The winding up is conducted by the General Partner or General Partners, unless a court otherwise directs.

(5.15) A body corporate is a legal person and can be sued. A Limited Partnership is not a legal person and can not be sued, as if a legal person, but the General Partner of a Limited Partnership can be sued. Since the General Partner can be a £1 Limited Company with little or no covenant strength, and a General Partner can be replaced by an alternative company, which can take on the General Partner appointment, at the will of the partners, under procedures laid down in a secret partnership agreement, a Limited Partnership would not provide the same legal comfort, if a party to a contract, as a body corporate with self sufficient covenant strength. Yet a Limited Partnership can enter in to a contract and can profit from a contract without the potential pain of having to pay up if something goes wrong.

(5.16) The Petitioner also notes that TfL has announced it wishes to enter more Joint Ventures on the Earls Court model for many of its other freehold land holdings and, Clause 5, if it were enacted, would become a precedent for allowing Limited Partnerships for similar Joint Ventures to that anticipated with Capco, causing lack of transparency due to the existence of secret partnership agreements and lack of financial accountability due to the fact that Limited Partnerships do not file accounts at Companies House and have governance arrangements, and partnership rights and obligations, determined by partnership agreements and not company law.

YOUR PETITIONERS therefore humbly pray your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.

RICHARD ANTHONY SIMON OSBAND  
14 March 2014

IN PARLIAMENT HOUSE OF COMMONS SESSION 2013–14

Transport For London Bill [HL]

PETITION OF RICHARD, ANTHONY, SIMON, OSBAND  
AGAINST, By Counsel, &c.

Richard Anthony Simon Osband