

Communication to the Aarhus Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the planning of the Crossrail project (ACCC/C/2011/61) The thirty seventh meeting of the Aarhus Compliance Committee in Geneva

NOTE OF THE ORAL PRESENTATION
by James Maurici to the Committee on
26 June 2012 on behalf of
THE GOVERNMENT OF THE UNITED KINGDOM

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Introduction

1. This communication concerns Crossrail. Crossrail, which is currently under construction, will be a new high-frequency railway for London and the South-East from Maidenhead and Heathrow in the west, through central London to Shenfield and Abbey Wood in the east. Crossrail was authorised by way of an Act of Parliament – the Crossrail Act 2008 (“the Crossrail Act”) following a three-year Hybrid Bill process before the House of Commons and House of Lords (the two Houses together constitute the legislature for the UK).
2. The Communicant’s complaint is not about Corssrail generally rather it is local and specific, relating to demolition of certain buildings at the junction of Charing Cross Road and Oxford Street and also the Astoria building to make way for one of the new stations for the Crossrail line. The Crossrail Act amongst a number of other things gave deemed planning permission for the matters about which the Communicant complains.
3. The Communicant argues:
 - 1) That the Hybrid Bill process which resulted in the Crossrail Act and which granted deemed planning permission for the matters complained of prevented sufficient public participation contrary to Articles 3.1, 3.9 and 6.7 of the Aarhus Convention;
 - 2) That the Crossrail Act could not be challenged before the Courts in breach of the requirements of Article 9 for access to a review procedure.
4. The UK refers the Committee to DEFRA’s letter of 16 March 2012 which sets out in more detail its case in response.
5. The purpose of these submissions is to highlight the key points.

(i) Public participation

6. The UK’s principal contention is that the Hybrid Bill process which led to the Crossrail Act gave extensive opportunities for public participation to satisfy the Aarhus Convention.

7. There is though a preliminary matter which arises and which is also discussed in DEFRA's letter of 16 March 2012. The definition of "public authority" in Article 2 of the Aarhus Convention excludes bodies acting in a "legislative capacity". The exclusion is explained in the Implementation Guide and quoted from in the DEFRA letter. The Guide says that the exclusion "is due to the fundamentally different character of decision making ... in a legislative capacity, where elected representatives are more directly accountable to the public through the election process". The Committee will be aware that there is a similar exclusion contained in the Environmental Impact Assessment ("EIA") Directive (Article 1(5) of Directive 85/337; Article 1(4) of the new consolidated Directive 2011/92/EU). This provides that the EIA Directive "shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process". In the recent case of *Boxus v Region Wallonne* (C-128/09) [2012] C.E.C. 414; [2012] Env. L.R. 14 the Grand Chamber of the European Court of Justice considered this exclusion in the context of both the EIA Directive and the Aarhus Convention saying:

"37 The provision lays down two conditions for the exclusion of a project from the scope of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see *World Wildlife Fund (WWF) v Autonome Provinz Bozen* (C-435/97) [1999] E.C.R. I-5613; [2000] Env. L.R. D14 at [57]).

...

50 It follows from art.2(2) of the Aarhus Convention, read together with arts 6 and 9 thereof, and from art.1(5) of Directive 85/337 that neither the Convention nor the directive applies to projects adopted by a legislative act satisfying the conditions set out in [37] of the present judgment."

8. It is submitted that the two conditions are clearly met in respect of the Crossrail Act and accordingly, the legislative process complained about is outwith the Convention.
9. Moreover, it is submitted, that the Hybrid Bill procedures provided for extensive public participation and the supply of information to the public such as to satisfy the requirements of the Aarhus Convention in any event. These matters are considered below and in Defra's letter of 16 March 2012.
10. The communication relates to the deemed planning consent provided under section 10 of the Crossrail Act, and which replaced the usual process for the grant of planning

permission under the Town and Country Planning Act 1990 and/or conservation area consent under the Planning (Listed Buildings & Conservation Areas) Act 1990. In particular, the Communicant complains that as a result of the deemed planning consent under the Crossrail Act, he was denied the ordinarily available opportunities in the planning system for public participation in the decision to demolish certain buildings near the junction of Charing Cross Road and Oxford Street to make way for one of the new stations for the Crossrail line.

11. The premise of the communication is this: if the usual processes of obtaining planning permission and/or conservation area consent were followed there would have been the opportunity for public participation under the statutory decision-making processes. That is accepted. There is no question but that in England & Wales planning (and similar) decisions are only made after public consultation procedures set down in statute have been followed which give the public opportunities to voice objections. That is a matter of agreement between the parties. The Communicant though says in contrast the Hybrid Bill procedure contained no opportunities for such participation. This premise is wrong.

12. The UK would draw attention to the following matters:

- 1) Prior to the Bill even being introduced to Parliament there were a number of consultations with specific parties with a particular interest in the project and with the public more generally. This allowed the public to raise objections and for these to be considered before the Bill was introduced. An aggregated Consultation Report was published following these processes. The Committee will find at <http://www.crossrail.co.uk/assets/download/4397> an account of the extensive range of pre-introduction of the Bill consultations undertaken and the results of these.
- 2) The House of Commons Standing Orders relating to private business were applied to the Crossrail Bill because it was a Hybrid Bill. The Standing Orders include Standing Order 27A which provides for the deposit of an Environmental Statement at the time the Bill is deposited at the Private Bill Office. The Standing Orders require (see Standing Order 27A(6)) that the Environmental Statement be made available for inspection. In relation to Crossrail the Environmental Statement was deposited with the Bill and made available in paper and electronic

copies and on the internet by the time of the First Reading in the House of Commons. A period of over 3 months (c. 108 days) was given to the public for responses to it (responses to the Environmental Statement could also be given as part of the petitioning process – see below). The Environmental Statement was publicised via Ministerial Statements, Department of Transport (“DfT”) press releases, on the DfT website and via newspaper notices as well as by letters to Members of Parliament (“MPs”). Updating bulletins on Crossrail were also regularly published. Similar publicity and opportunities for consultation responses were made in respect of the supplementary Environmental Statements later produced. A report collating these responses was made available to Parliament for its consideration before the Bill was passed.

- 3) The Bill having been introduced to Parliament the Hybrid Bill procedure allowed for those “directly and specially affected by the bill” to submit to Parliament in writing a petition in which they set out their objections to the bill against the Bill. A very large number of petitions were made in respect of the Crossrail Bill. Mr Ewing, so far as can be determined, at no point sought to submit a petition in respect of the matters about which he now complains, namely the demolition of certain buildings at the junction of Charing Cross Road and Oxford Street and also the Astoria building.
- 4) Where petitions were made the Select Committees of the House of Commons and House of Lords were *obliged* to hear those petitions unless they were withdrawn or the petitioner chose not to appear before the Committees. Many of the objections made were dealt with by assurances or undertakings given by the DfT and withdrawn without being heard. Nonetheless the House of Commons Select Committee sat for 84 days and heard 205 petitions and the House of Lords Select Committee sat for 29 days and heard 45 petitions. The petitions resulted in a number of amendments to the Bill as well a very large number of assurances and undertakings being given by the DfT to the petitioners in order to deal with their concerns.
- 5) There were for instance three petitions which related directly to the Astoria theatre (one of the buildings that the Communicant is apparently concerned with): Whitefox Properties and others who were the freehold owners of the land on which the Astoria was built; Rangepost Limited and others who were underlessees and sub-underlessees of the building and subsidiaries of Meanfiddler Holding

Limited which owns various music venues and Jeremy Joseph, who was the promoter and organiser of G-A-Y which was run from the Astoria. None of these three petitions were heard by the Select Committees. It is explained in the House of Commons Select Committee First Special Report of Session 2006 – 2007, vol. 1 para. 12 p. 9 that “[t]he Committee heard from, but not all, of the Petitioners during its hearings. Some Petitioners chose not to appear and some withdrew their petitions after negotiating a satisfactory undertaking with the Promoter of the Bill. All hearings took place in public and were transcribed and webcast”.

- 6) The potential impact (demolition) on the buildings of concern to the Communicant was clear to Parliament and there was an opportunity to raise concerns in relation to it before the Committee. Indeed attached are extracts of minutes of the evidence to the Select Committee showing that there was specific discussion of the Astoria. This is because there was a petition by SAVE Britain’s Heritage who appeared before the Committee via a Mr Adam Wilkinson and who raised the issue of the demolition of the Astoria.
- 7) As is explained in DEFRA’s letter following the first reading in the House of Lords in December 2007 there was a second petitioning period. This resulted in 29 further days of petitions being heard by the House of Lords Select Committee.
- 8) The relevant Committees who heard the petitions reported to Parliament on its hearings so these matters could be taken into account.
- 9) There was also throughout the process various Parliamentary debates on the Bill in the House of Commons and the House of Lords. Members of the public were able to communicate their views to their constituency MPs who were then able to represent their constituents at the debates which covered the principle of the Bill as well as the details.

13. It is thus the UK’s submission that the Hybrid Bill process, explained in the UK’s written submission to the Secretariat dated 16th March 2012 and amplified above provided ample opportunity for public participation in the decision making process.

14. Finally, in this regard it should be noted the Select Committee had reported to it detailed information on the extent to which public participation in the Hybrid Bill process had been facilitated and thus ensured compliance with the Aarhus Convention. Extracts showing examples of this are attached.

(ii) Access to justice

15. The question of access to justice is dealt with in the UK's written submission of 16th March 2012 (on pages 5 and 6).

16. The complaint made by the Communicant is this: if the buildings he was concerned with including the Astoria had not been subject of deemed planning permission under the Crossrail Act they would have required planning permission and/or conservation area consent before they could be demolished and redeveloped. Any such permission and/or consent could then have been challenged by way of judicial review proceedings in the normal way. In contrast he says that there "wouldn't appear to be any current domestic remedies for alleged breaches as an Act of Parliament cannot be challenged in the courts" (see the Communication at p. 12, section V1 para 2. The complaint is that there is a breach of Article 9(2) and (3).

17. The UK submits that the provisions of Article 9(2) and (3) are inapplicable to the Crossrail Act:

1) Article 9(2) concerns challenges to the legality of decision subject to the provisions of Article 6. Article 6 itself concerns decisions by "public authorities (see e.g. Article 6(2)(c)) as defined by the Convention. The Crossrail Act was passed by Parliament, an exclusively legislative body. Bodies acting in a legislative capacity are not "public authorities" for the purposes of the Convention: see Article 2(2). See in this regard what is said about the reasons for the exclusion in the Implementation Guide and in the *Boxus* case considered above.

2) Article 9(3) also relates to challenges to the acts of private persons or public authorities. Parliament is clearly not a private person and as already noted the definition of public authority excludes bodies acting in a legislative capacity.

Accordingly, Article 9 is not applicable.

Conclusion

18. For all these reasons it is contended that the Committee should reject the allegations made of breach of the Convention.

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Select Committee on Crossrail Bill Minutes of Evidence

Examination of Witnesses (Questions 16060 - 16079)

16060. **Mr Taylor:** Sir, I am not going to cross-examine Mr Taylor if only to avoid the problem of Mr Taylor cross-examining Mr Taylor! With the greatest respect, I will move straight to the closing submissions if that is satisfactory.

16061. **Chairman:** Before you do, Mr Taylor, thank you for your evidence.

The witness withdrew

16062. **Mr Taylor:** In large part the concerns raised by Mendip Rail have already been addressed before the Committee so I will make this as brief as possible. Firstly, there is a request that when Mendip Rail is involved in forthcoming work on timetabling, the promoter has explained that the consideration of timetabling will be taken forward as part of the access option process and that process involves necessarily consultation with those interested in the rail industry. The way in which the timetabling incapacity issues are going to be taken forward has been set out and provided to the Committee in the "Crossrail timetable working group and access option processes next steps". So far as capacity and timetabling issues are concerned generally the position was explained by Ms Lieven on Day 51, paragraph 15097. In relation to the railway clauses, the same arguments have been raised by Mendip Rail which were raised by EWS and Mr Elvin explained the position with regard to the railway clauses in the Bill on Day 48, paragraph 13676-13678.

16063. The request that there is a guarantee of capacity enhancements will come forward. That has been addressed by Ms Lieven on Day 51, paragraph 15098. The position is, in a nutshell, we are not prepared to commit at this stage to build all the structure enhancements identified. Mr Elvin has given an undertaking in a

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slightly different form, Day 58, paragraph 13681.

16064. So far as the position regarding the yard at Plumstead is concerned, the petitioners require that not to be lost as a freight site. Mr Berryman explained the position with regard to the Plumstead Yard on Day 51, paragraph 15055 and he explained that Crossrail is going to look at the position of the yard again although he did express doubts that it could be retained as a freight site.

16065. So far as compensation is concerned, Mr Elvin gave an undertaking on Day 48, paragraph 13928 in three parts. Firstly, that industry mechanisms will apply whether the access options used to gain the necessary rights for Crossrail to run or, whether the Bill can be used. Secondly, where an industry mechanism exists it will be used and in my submission that addresses the concerns which Mendip Rail have raised, particularly in relation to additional journey times. The works being done at the moment on the railway give rise to journey times and I am instructed that there are mechanisms that address the compensation in respect of that. Thirdly, where there is no industry mechanism and a new mechanism has to be developed one will be drawn up applying the principle of no net benefit and no net loss. That, in my submission, covers the points being raised by Mendip Rail unless there is anything else that I can assist you with.

16066. **Mr George:** Sir, I can be very brief in closing. When I opened the case for Mendip Rail I explained that many of the matters were those raised by EWS on Day 51 but I want to make four points, if I may, in closing. The first is that Mendip Rail, like EWS, are vitally affected by proposed additional provision three and their concerns at West Drayton and Acton would need to be further articulated but for the fact that additional provision is forthcoming. Of course, at the present time the promoters have the advantage that on the one hand, "Do not worry about your concerns because there is going to be additional provision three", and then we seek to discuss additional provision three we are told that it is not yet before the Committee and therefore it cannot be discussed. I simply lay down a marker that we are encouraged by what we have so far heard about additional provision three but we will want to review it and consider our position, particularly at West Drayton and Acton in the light of the contents of that provision.

16067. The second matter is compensation and you have seen on the screen what it is we are seeking. That is a matter which, despite what Mr Reuben Taylor said, is quite unaffected by the undertakings that Mr Elvin has given. The position is that Mendip Rail are in a unique position of being a railway company operating a frequent freight service but doing so through a licenced freight operator, at the time being EWS. The industry compensation provisions will, to an extent, compensate EWS for its losses although you may recall that EWS sought additional compensation provisions. Those industry provisions will provide no compensation at all to Mendip Rail in their unique situation and this morning Mr Taylor has explained two circumstances in which he envisages it as virtually inevitable that he will have to invest in further wagons and further trains to deal with the very particular circumstances that are going to arise during the six to seven year construction period. I do not repeat his evidence but if that is accepted and there is no cross-examination of it it seems to be accepted then what we say is, "Why should there be special provision so that they are compensated for those extra costs during the construction period in the way we have set out in MRL3".

16068. The third matter is the question of the freight enhancements. The Committee will recall that the Bill includes a number of freight enhancements that all the timetabling work and modelling has been based on those enhancements and you have heard some further evidence from Mr Taylor about the key importance of the freight works at West Drayton. Those are the works which are 3(9) series and 3(10) series in the Bill. The key importance of the Acton dive under and the key importance of the additional matter we seek is the relief line at Acton and our submission is that all those works ought to be incorporated. The Committee has heard no evidence from anyone to suggest that those works are not necessary. The Committee may recall that Mr Watson of the timetabling group said that the Acton loop was essential when he appeared on Day 48 appearing for the promoters. When Mr Berryman appeared on Day 51 he readily accepted that there was a strong case for the Acton relief line because otherwise freight cannot go east of the Acton yard without going into the Acton yard for the very simple matter that the freight can not go under the dive under. Those are essential matters which Crossrail should be giving undertakings in respect of. The last matter is the question of freight capacity and timetabling. I remind the Committee that Mendip Rail services used all three lines with which the Committee has been dealing in connection with freight. That is the Great Western line itself, the Great Eastern going out to East Anglia and the Barking line going to Thameside.

16069. The last two have been very much affected by the famous pinch point between Stratford and Gospel Oak. If I could ask Mr Fry to put up EWS15, and if you could zoom in a little bit, this was one of the EWS exhibits.[2] If I could ask the Committee to concentrate on the right hand side of the column because that deals with the key position 2015 freight timetable with Crossrail and freight growth and so far as the Great Western mainline there is a question mark in every box.

16070. If one then goes to the Great Eastern mainline it plainly does not have adequate capacity for freight and there are question marks in all the other boxes. That is the concern of Mendip Rail that there is so much uncertainty in respect of both lines. Mr Reuben Taylor has referred the Committee to a paper which I do not suppose the Committee would have had time yet to read. It has not even got a number. It is called "Crossrail Timetable Working Group and Access Option Process Next Steps". As I say, Mr Taylor referred to it so I assume that the Committee have it. We received it courtesy of your clerk yesterday afternoon and we are very grateful. Can I simply say that we regard this as a disingenuous document. At a first reading, and indeed a second and third reading, you would assume that there were no question marks in the right hand column. You would assume that the working group as a whole was satisfied that there had been full completion of its task and that performance modelling had been done on the 2015 with-growth position. None of that is the position and the Committee who were here last week on Day 51 may recall that Mr Berryman accepted that there had been no modernising of any freight trains going into or out of any of the goods yards from the Great Western line in that

right hand column.

16071. I simply ask the Committee to read this new document carefully—which I am sure the Committee always does—but also with a heavy pinch of salt. That brings me to my last words which are that this report says that a new group is being established. Apparently, the new group is called the Crossrail reference group and apparently it is to take over the timetabling and modelling work. It is very surprising that there was not a single reference last week or the week before to that group but if it is to be set up then that is a step forward. If it is, and the document says it is going to include EWS and Freightliner, that again is a step forward. Why does the document say it is not going to start its work until the end of the summer. One would have thought that it should be starting its work now and be carrying out much of its work during the summer. We shall be responding to that document, it goes to the heart of Mendip Rail's concerns. Sir, having said that, I simply commend their petition to you and I am grateful to you for hearing this morning.

16072. **Chairman:** Thank you very much. That concludes Mendip Rail's petition. We now move onto the next petition which is petition 289, "Save Britain's heritage" and the representative is Adam Wilkinson. Would the Promoters like to set out counsel's view?

The Petition of Save Britain's Heritage.

Mr Adam Wilkinson appeared on behalf of the Petitioner.

16073. **Mr Taylor:** Thank you, Sir. This petitioner raises concerns regarding buildings that have been demolished as a result of the Crossrail project in three broad locations so far as we have been able to ascertain from the exhibits provided. Firstly, they are buildings at the Farringdon East and Smithfield side. Secondly, buildings on the block on the south west quadrant at the junction of Tottenham Court Road and Oxford Street including the Astoria Theatre and lastly buildings at the Hayne Street area associated with the western ticket hall. I am going to take a little time in opening just to introduce the Committee to those buildings if that is satisfactory and just to explain the position briefly in relation to why those buildings are required. Starting firstly with the buildings at Farringdon East and Smithfield, they are to be demolished to make way for the eastern ticket hall of Farringdon station as proposed. The site has also to be used to accommodate ventilation from the Crossrail platforms, MIP access lifts, fire brigade access stairs and an interchange with the London underground platform at the Barbican. If I can ask Mr Fry to assist me with taking the Committee to some exhibits briefly to show you what the buildings look like. Can we go to 28904A, page one, please. [3]

16074. Here, on the left-hand side of the slide we can see marked the particular buildings at 5 Lindsey Street and 56-64 Charterhouse Street, and photographs of the building on the corner. The top one being "decorated" is probably the right phrase—the bottom half decoration. If we turn to the next one, please, slide 2, we can see we are looking at the building on the other corner of Lindsey Street, 23 Long Lane. [4] Again, the photo at the top of the right-hand side is a picture of the building before it was redecorated, and you can see what it looks like at the present time from the photograph below. It has to be noted that the Art Deco features are not original and date from the refurbishment in recent years. The witness Mr Mason will speak to that.

16075. If we turn to the next slide, slide 3, here we are looking at the corner building in Long Lane—20-21 Long Lane. [5] The Committee will remember that is next-door to the premises that are occupied by another Petitioner Mintel. If we go to the next slide, we go down into Hayne Street and we can see the properties at 8-9 Hayne Street. [6] On the next slide, 5, here we are looking at a property known as 33-37 Charterhouse Square. [2] You can see the location of that from the plan on the left. That, as you can see, is what one can describe as a triangular building, the corner piece being at the junction between Hayne Street and Charterhouse Square. None of the buildings you have just seen are within the conservation area in this location, except for the last one in front of you, 33-37 Charterhouse Square. In respect of the loss of that building, an undertaking has been given to the local authority that an appropriate solution for the loss of that building will be provided in consultation with the developers and that there are a range of solutions which may well include the provision of a replica facade. None of the buildings that you have seen in this location are listed.

16076. If I can take you to what is proposed in terms of the Crossrail in this location, on exhibit 28904-006, we can see the ticket hall that is proposed and the escalators here. [8] There is a lift certainly on the westbound London Underground platform and Crossrail platforms there and the works that specifically affect the building we were just looking at, 33-37 Charterhouse Square, are here. You can see that they are marked as a lift serving the eastbound platform which is there. Mr Berryman will explain why those works are necessary and why it is that that particular building has to be demolished.

16077. Moving away from Farringdon and the Smithfield buildings and on to the south-west quadrant at the

junction of Tottenham Court Road and Oxford Street, if we can go to exhibit 28904A-006, please, the Committee, I am sure, is familiar with this particular block of buildings.[9] The first set of buildings are the buildings that turn the corner, as it were, 1-7 Oxford Street. You can see that those buildings comprise retail units at the ground floor level and I believe that the concerns raised by the Petitioner will relate to the upper storeys. Similarly, the next slide, slide 7, is going round the corner into Oxford Street.[10] You can see 9-15 Oxford Street there and you can see the Clarks shop in the photograph and the entrance to the underground just next door.

16078. Slide 8, please.[11] Here we have a photograph of the Astoria Theatre, and its location is indicated on the plan. You will hear evidence that the Astoria is a converted warehouse that was remodelled for its present use in 1968. If we turn to slide 9, the Petitioner raises concerns relating to the loss of the pool and fountains by Centre Point.[12] We will explain the pool and fountains cannot be retained as this area is needed to enable the construction of the large ticket hall and to form new ticket hall entrances. The relocation of the pool will take up available space in the plaza to construct pedestrian routes. We will suggest that it is obvious that Crossrail should provide a station in the Tottenham Court Road location and provide an interchange with the Central Line and the Northern Line. To do that requires substantial works in the location in close proximity to the existing tube lines. In other words, works on the south side of Oxford Street, improvements to the entrances and, of course, the provision of a substantial worksite.

16079. There are two quadrants of land on the south side of Oxford Street: Centre Point, which is listed, and the south-west quadrant, which is not. So we would be presenting the case explaining that that leaves, in essence, only one quadrant that can effectively be used. Even then the worksite is very tight. If I can have exhibit 28904A-007 put up, here is a plan of the typical site layout during the station tunnelling excavation.[13] Unfortunately it is on its side and north is to the right of the plan, so one has to turn oneself around slightly I am always very bad at east/west; I prefer left and right myself.

2 Committee Ref: A145, Industry Timetable Working Group Progress (LINEWD-190605-054) [Back](#)

3 Crossrail Ref: P115, Smithfield House-5 Lindsey Street Photo and 56-64 Charterhouse Street (LINEWD-28904A-001). [Back](#)

4 Crossrail Ref: P115, 23 Long Lane (LINEWD-28904A-002). [Back](#)

5 Crossrail Ref: P115, 20-21 Long Lane (LINEWD-28904A-003). [Back](#)

6 Crossrail Ref: P115, 8-9 Hayne Street (LINEWD-28904A-004). [Back](#)

7 Crossrail Ref: P115, 33-37 Charterhouse Square (LINEWD-28904A-005). [Back](#)

8 Crossrail Ref: P115, 33-37 Charterhouse Square, Proposed Conceptual Plan (LINEWD-28904-006). [Back](#)

9 Crossrail Ref: P115, 1-7 Oxford Street (LINEWD-28904A-006). [Back](#)

10 Crossrail Ref: P115, 9-15 Oxford Street (LINEWD-28904A-007). [Back](#)

11 Crossrail Ref: P115, Astoria Theatre, 157-165 Charing Cross Road (LINEWD-28904A-008). [Back](#)

12 Crossrail Ref: P115, Fountains and Pool, Centre Point (LINEWD-28904A-009). [Back](#)

13 Crossrail Ref: P115, Tottenham Court Road, Astoria and Goslett Yard-Typical site layout during station tunnel excavation (LINEWD-28904-007). [Back](#)

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Select Committee on Crossrail Bill Minutes of Evidence

Examination of Witnesses (Questions 16080 - 16099)

16080. As you can see, the worksite spans Sutton Row and contains a large number of stalls and workshops and will require access into the site for lorries and vehicles as well as space to move around within the site itself. So far as the buildings on the corner, buildings 1-7 Oxford Street and 9-15 Oxford Street are concerned, if we can go to exhibit 009, here we are the other way round; north is to the left.[14] We can see outlined in red the existing buildings and underneath that in grey what is proposed. It can be seen immediately that right on the corner there is to be constructed a deep station box. That, as Mr Berryman will explain, will mean the corner buildings cannot be retained.

16081. Moving away from that particular quadrant and on to the buildings in the Dean Street area, there are two sites in Dean Street. The first can be seen in exhibit 28904A-016.[15] There you can see on the plan, on the left-hand side of the page, the site bounded by Oxford Street, Great Chapel Street, Fareham Street and Dean Street, which is to be demolished in order to provide the western ticket hall. If we go to the previous slide, 15, we see the additional site that is to be used to the south side of Fareham Street for the provision of ventilation shaft/emergency escape stairs, lifts and escalators.[16]

16082. The works involve the demolition of a listed building, 94 Dean Street, and there has been considerable discussion with Westminster City Council and English Heritage regarding that particular building, including a detailed review conducted looking at retention of the building. You will hear evidence explaining that the conclusion of that review was that Westminster City Council and English Heritage and the Promoters agreed that 94 Dean Street could not be retained because of the proximity of the large shaft. If we go to slide 13 you can

see the circular shaft to the right of the worksite location.[17] I should also point out—and, indeed, again, Mr Mason, who will be called to address this, will explain—that the interior of 94 Dean Street has been completely stripped out.

16083. That is a brief overview of the three sites, and I hope that has been of assistance. Just briefly, before we turn to hear from the Petitioner, we would suggest the Committee needs to bear in mind when considering this Petition that there has been close consultation with the relevant local authorities and English Heritage regarding the impact of the Crossrail project on heritage buildings, and in relation to the buildings to be addressed by the Petitioner no objection has been raised by the local authorities or English Heritage to their demolition.

16084. As I have explained, Crossrail will be calling two witnesses after we have heard from the Petitioner: Mr Berryman, who will explain to the Committee why it is the buildings have to be demolished, and Mr John Mason, who is a heritage expert, who will address matters relating to the heritage value of the buildings that are proposed to be demolished. Thank you very much

16085. **Chairman:** Thank you. For the record, the references referred to there will be A182.

16086. **Mr Wilkinson:** Firstly, thank you for the opportunity to address the Committee. We are extremely grateful to be able to put forward our side of the argument—when I say "our side" I am talking about the historical environment, not just the group's arguments.

16087. I intend to make a statement and call no witnesses, firstly, on the loss to the historical townscape (it is not just individual buildings you are losing here, it is areas and areas of buildings, and areas of character) and, secondly, looking at the necessity of these buildings lost and, thirdly, consider briefly some alternatives, and then let Crossrail take it from there.

16088. If I can start by reading a list of the losses, and then we will look at some of the buildings more closely, because the slides Crossrail put up did not really do justice to these buildings. To start off, the Great Western Main Line's parcel office at Farringdon will go. Bond Street, 65 Davies Street; around Tottenham Court Road, 94 Dean Street, 135a to 167 Charing Cross Road; 2, 3, 4, 6 and 7 Fareham Street; Goslett Yard; 12 Sutton Row; 3 and 9 Diadem Court; 1a-12 Great Chapel Street; 1-15 Oxford Street. Around Farringdon, 3, 8, 9 and 10 Hayne Street; 2a, 3, 4, 5 Lindsey Street; 20-23 Long Lane; 33, 35, 36, 37 Charterhouse Square. It is not a particularly short list and we hold it can be made even shorter.

16089. If we can possibly look at some of the pictures and start at Farringdon. First, a picture of the Astoria. [18] You saw earlier a slightly larger and more colourful picture. The Astoria is not listed. However, it is a local landmark; it is a building which people know about and care about and feel strongly for. It has been reported in the press that this building is to be lost to Crossrail. It will be lost for a worksite. What will replace it we do not know; whether it will have a similar quality to the townscape we do not know.

16090. Moving on to the next slide, we have got very mixed up here. We are looking at the western area. This is on the corner of Dean Street.[19] It is a pub, a lovely pub, it could be in your local village, it could be in your local town, and has a lovely atmosphere. This, too, would go as part of the scheme.

16091. If we go on to the next slide, there is another picture of this pub showing how it fits into the area with Victorian buildings next-door to it.[20] Around the corner, on the left-hand side, you have Diadem Court on Dean Street. This block would go. Again, it is a coherent piece of townscape. They are not ugly buildings; they are handsome buildings; they are very much a part of the local scene.

16092. If we go on to the next slide, we have suddenly gone back to behind the Astoria, and you can see Centre Point rising up behind there.[21] The building you have there is a Victorian warehouse; a powerful building in shade and unseen, largely, by the public. A decent building, nonetheless, and economically viable in its own right. This would go.

16093. If we go on to the next slide, we have more of the street scene around Charing Cross Road.[22] Again, correct me if I am wrong, but I believe these ones are in the area for clearance. Here you have something which is low-rise, well-balanced and a good composition. It is clearly lively; it is used by Sainsbury's at the lower levels and is part of the life of the street and the life of the area.

16094. If we flip over to the next slide, the building at the end of this will come off.[23] It is a nicely detailed building with a handsome, French-style roof, you might say, sticking up high and sharply and performs a very interesting contrast with Centre Point behind. This will be sliced off for the works.

16095. If we move over you see it again in a slightly wider perspective with the townscape around it.[24] It may look a bit dirty right now but given a clean it would look splendid and contribute handsomely to the area.

16096. Moving on, we have seen this once before but we see it here from the side.[25] It addresses both streets. It has a careful composition and is generally a handsome building.

16097. Moving on to the next slide, these are the fountains at Centre Point.[26] The fountains themselves are shaped echoing Seifert's work on Centre Point with the pre-cast concrete ribs. These would be lost. At present it is very awkward for pedestrians but we still struggle over there and enjoy the coolness and freshness the water gives, particularly at this time of year. There is no reason why something could not be put back resembling these fountains, at least with the fountain units themselves which are mentioned in the listing as well.

16098. Moving over, we have a slightly more savoury shot of them here.[27] What this does show is the height. It shows a number of things. It shows the church of St Giles behind—a very handsome church. It shows, off to the right, large advertising hoardings which hide the scarred building. Crossrail has an opportunity to do something positive for the townscape rather than taking down old buildings; it can look at areas which could be taken down with less effect on the historic environment and generally create an opportunity to repair the historic environment and stitch back the fabric.

16099. Moving on, we have a prime example of where it could do this. This is over at Farringdon, on Charterhouse Square.[28] Charterhouse Square is a very pleasant square indeed; it is well-planted and surrounded by handsome buildings. The red brick building you see to the right of the picture is a hotel. Next to that is the Charterhouse itself, which is of medieval origins; around the corner University Quadrangle, to the side of that a handsome 1930s building that has been acquired and then, behind me photographing this picture, is a building to be destroyed. However, this ugly brute in front of us, the dark building dating from the 1950s, would survive Crossrail. This would stand there proudly still besmirching the square which it looms over.

14 Crossrail Ref: P115, Tottenham Court Road, Proposed plaza level showing outline of existing Oxford Street entrance (LINEWD-28904-009). [Back](#)

15 Crossrail Ref: P115, Tottenham Court Road Western Ticket Hall-Buildings bounded by Dean Street, Oxford Street, Great Chapel Street and Fareham Street (LINEWD-28904A-016). [Back](#)

16 Crossrail Ref: P115, Tottenham Court Road Western Ticket Hall-Buildings bounded by Dean Street, Fareham Street, Great Chapel Street and Diadem Court (LINEWD-28904A-015). [Back](#)

17 Crossrail Ref: P115, Tottenham Court Road worksite layout-station box construction (LINEWD-28904-013). [Back](#)

18 Committee Ref: A182, View of Astoria Theatre (LINEWD-28905-001). [Back](#)

19 Committee Ref: A182, View of The Bath House, Dean Street (LINEWD-28905-002). [Back](#)

20 Committee Ref: A182, Alternative View of The Bath House, Dean Street (LINEWD-28905-003). [Back](#)

21 Committee Ref: A182, View of Sutton Row (LINEWD-28905-004). [Back](#)

22 Committee Ref: A182, View of Charing Cross Road (LINEWD-28905-005). [Back](#)

23 Committee Ref: A182, View of Eastern side of Charing Cross Road (LINEWD-28905-006). [Back](#)

24 Committee Ref: A182, Alternative view of Eastern side of Charing Cross Road (LINEWD-28905-007). [Back](#)

25 Committee Ref: A182, View of Charing Cross Road and Goslett Yard (LINEWD-28905-008). [Back](#)

26 Committee Ref: A182, View of the fountains at Centre Point (LINEWD-28905-009). [Back](#)

27 Committee Ref: A182, Alternative view of the fountains at Centre Point (LINEWD-28905-010). [Back](#)

28 Committee Ref: A182, View of Charterhouse Square (LINEWD-28905-011). [Back](#)

[Previous](#)

[Contents](#)

[Next](#)

[Commons](#)

[Parliament](#)

[Lords](#)

[Search](#)

[Enquiries](#)

[Index](#)

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- [A-Z index](#)
- [Glossary](#)
- [Contact us](#)
- [Freedom of Information](#)
- [Jobs](#)
- [Using this website](#)
- [Copyright](#)

- [Accessibility](#)
- [Email alerts](#)
- [RSS feeds](#)
- [Contact us](#)

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- [MPs, Lords & offices](#)
- [About Parliament](#)
- [Get involved](#)
- [Visiting](#)
- [Education](#)
- [House of Commons](#)
- [House of Lords](#)
- [What's on](#)
- [Bills & legislation](#)
- [Committees](#)
- [Publications & records](#)
- [Parliament TV](#)
- [News](#)
- [Topics](#)

You are here: [Parliament home page](#) > [Parliamentary business](#) > [Publications and Records](#) > [Committee Publications](#) > [All Select Committee Publications](#) > [Commons Select Committees](#) > [Crossrail Bill](#) > Crossrail Bill

Select Committee on Crossrail Bill [Minutes of Evidence](#)

Examination of Witnesses (Questions 16160 - 16179)

16160. Thank you. Can you explain what consultation has been undertaken on the demolition of listed buildings and buildings in conservation areas, please?

(**Mr Berryman**) Yes, where we have been talking about the demolition of listed buildings and buildings in conservation areas, we have discussed this with a number of planning authorities and English Heritage. We have explained the reasons for doing demolition and English Heritage have expressed themselves content that these matters will be raised in the Committee. We have had a number of issues particularly with the London Borough of Islington, which you know about, Oxford Street, 38 Charterhouse Square and we have now agreed to retain this building but other local authorities have been content with the demolition. I think it is worth saying here, as was raised a few moments ago, that the designs of the over-site development have not been done. This has been our policy from the beginning. The application for planning consent for those over-site developments will be made through the local authority in the normal way. There are a number of reasons for this. I think it is worth pointing out that if this Committee was to hear what would amount to planning applications on every one of the buildings we have constructed over the sites, we would be here for quite a long time. It is a more efficient and more appropriate way for the local authorities to deal with those issues. In several of the cases that have been mentioned, particularly the Tottenham Court Road and Dean Street site, Westminster City Council has prepared planning routes which quite obviously require impacts on townscapes and something that has to be addressed in the designs of the new buildings that replace those we demolish.

16161. While we are dealing with over-station development, I think it might be helpful, Mr Berryman, if you could take the Committee through one aspect of Information Paper D18.

(**Mr Berryman**) If I can remember!

16162. Page three. It will come up on the screen and I am sure it will come back to you just as it has done to

me when the page was passed to me by Mr Mould.[58] We can see at the bottom of this page, paragraph 3.4, a draft undertaking on OSD has been prepared by the Secretary of State and published on the DfT website. It proposes a number of factors and a number of steps. Firstly, consultation with local planning authorities prior to a submission of planning application for OSD on a number of matters, those are set out on the next page?

(Mr Berryman) Yes.

16163. Secondly, we see OSDs in or adjacent to conservation areas will be designed in accordance with local, regional and national and spatial local planning policies and in consultation with English Heritage.

16164. Thirdly, in assessing the contribution OSDs will make to the character or enhancement of conservation areas, the quality of buildings that existed prior to demolition will be given material consideration. We can see at the bottom of this page four a heading "Townscape". Paragraph 5.1 explains the demolition buildings, the demolition of buildings and the development of new stations, shafts as a replacement to development will result in changes to the townscape along the Crossrail route impacts on designated conservation areas are set out in section 3, though much of the route is undesignated, the works do affect areas of high quality townscape particularly in central London. In 5.2 we see what is proposed to address that. In exercising their functions to preserve the townscape a local authority would be able to approve the detail of the design and external appearance of the Crossrail buildings as set out in Schedule 7 to the Bill". We have already seen the arrangements for OSD.

(Mr Berryman) Yes, I do recall it and in fact, if my recollection is correct, Mr Elvin referred to this at some length in his opening address when the proceedings started.

16165. Your memory is better than mine, Mr Berryman. Now let us turn away then from the general matters and on to the specifics. Can we start with the examination of the Dean Street and the western ticket hall at Tottenham Court Road?

(Mr Berryman) Yes, could we have exhibit 012, please.[59] This site is bounded by Oxford Street, Great Chapel Street, Fareham Street and Dean Street. The intention is to acquire it and demolish it for the western ticket hall for Crossrail's Tottenham Court Road Station. Members who were on the visit for the British Film Board classification may remember this lot, we went and stood on Oxford Street outside the block. Can we zoom in on that. There will be a ticket hall on this site. Can I have a pointer, Mr Mould, as you are normally accused of stealing it! Oxford Street is directly above the Central Line just here and escalators come down from that Oxford Street entrance into a ticket hall which is at basement level and, from that basement, escalators go down to the Crossrail passages down here and down to the Central Line passages down here. Those are the works which will be built there. At the back of that site there is a shaft which provides ventilation, lifts, emergency escape stairs from the west end of the platforms and so on. In addition, there is a shallow escalator shaft which passes underneath part of that site and that is why we need to demolish the stuff at the back of the site, the Fareham Street site. It would be impossible to keep that with the current state of design. The Petitioner has mentioned this should be moved to a building across the road which is currently occupied by, I think, a Tesco's store which is a rather unprepossessing building. I do not think anyone would argue with that. The problem with that is that building alone is of insufficient size to provide the facilities which we need. Members of the Committee, who are familiar with the Jubilee Line, will know the scale of the works and the modern Underground railway facility, how large things have to be and that is to fit in with a modern space, so our structures are large and, in this case, the site occupied by Tesco's alone will be insufficiently large to provide and we would need to demolish the next-door buildings and possibly buildings fronting onto Soho Square as well. Even if it is possible, and I very much doubt if it is possible, because it is too far to the east.

16166. On that last point, if we can go to 28904, page 8, we can see the western ticket hall marked on that particular drawing.[60] If we imagine that ticket hall being moved to the east of the opposite side of Dean Street, can you just explain what the difficulties would be with the ticket hall in that location?

(Mr Berryman) Yes. We would still need a facility of about the same size. The first point to make is that because the building will be moved further to the east, it will be too far from the escape shafts and ventilation shafts to effectively serve them. We cannot move the whole station east, because it is obstructed by the northern line which runs here and we pass directly over that. So we are pretty much fixed as to where the station platforms can go. If we went into the site here, even if it was possible, and I am pretty confident it is not, but even if it was we would have to be working into Soho Square, which is also conservation area, we would need to be taking the building on the corner here which is also a building of some merit, but we would be immediately adjacent to the French protestant church which, I think, is in this site here and would also present some difficulties, so it is really not a very easy thing to do.

16167. Thank you very much. So far as 94 Dean Street is concerned, why cannot that be retained?

(Mr Berryman) 94 Dean Street is around here, just there and there is a 90 millimetre diameter shaft immediately adjacent to it, that is the shaft I just referred to which carries the ventilation structures and all that sort of thing immediately next to it and the escalator shaft was just underneath it, so it makes it impossible to retain it. Moreover, I understand that the elements which led to the list of this building have been substantially removed by the previous owner.

16168. Thank you. Whilst we have got this plan on the screen, shall we just deal with this point about the post office in Rathbone Place and the sorting office?

(Mr Berryman) Yes, the post office is this building, so right at the north of Oxford Street. I mean there is an old saying about railways that you always have the station near the lines, and that is just too far from the railway lines to provide an effective connection to the Crossrail platforms, that is not a realistic suggestion.

16169. It may be suggested that that means you have to move the lines, Mr Berryman; what would you say about that suggestion?

(Mr Berryman) The route for Crossrail, as I think we have given evidence on before, is selected very carefully to avoid deep foundations and other underground obstructions such as other underground lines, deep sewers and the like, to move the whole thing would be a major undertaking and would really be back to square one.

16170. If the whole thing were moved north of Oxford Street and the only site you had was the post office site itself to build the entire Crossrail station with two ticket halls as is presently set out, what is the practicability of that sort of suggestion?

(Mr Berryman) I mean you could not do that. First of all, the site, as you say, would only be one end of the station. You would need to take another site somewhere else and this building is the YMCA, which was one of my very early projects so I know quite a bit about that building, you would have to knock that down, which would be a certain signature to my career, that is the only advantage.

16171. Let us move on to address the eastern ticket hall and in particular dealing with the corner building, 1-7 Oxford Street and 9-15 Oxford Street please, can you explain what construction is necessary and why those buildings have to be demolished?

(Mr Berryman) Yes. Can we have 009 up, please? [61] I think Mr Taylor has already shown you this slide. This shows the staircase which exists at the moment giving access to the Tottenham Court Road station. Obviously we need to keep Tottenham Court Road station as is running whilst Crossrail is built, because it is one of the busiest stations on the underground network and we certainly would not want to close it. We are proposing to build a new escalator from street level to take people down into the ticket hall that would be on that corner and the point about that is that the entrance structure here is constrained on all four sides, we will be putting small diameter piles along the back edge of the structure and we would need to take a huge hole in the facade, there would be hardly any of it left if we were to do this and that would be very, very difficult. In addition, the local authority are very anxious about the layout of the footpaths in this area and retaining those facades would be difficult to give a wider path as we are proposing and I do not think that that would be acceptable to the local authority.

16172. Thank you very much indeed. There was also a suggestion that we should simply use the existing station entrances?

(Mr Berryman) I do not know if the Petitioner has ever been to Tottenham Court Road court on a busy evening, it is absolutely dreadful, the entrances are grossly overcrowded to the point of being dangerous. The station is frequently closed, often because of the underground capacity issue very often because of people on the congestion on the staircases and entrances, it would be inconceivable to keep the existing entrance. [62]

16173. And what will Crossrail do to the number of passengers arriving and departing?

(Mr Berryman) Very significantly increase it, otherwise we would not be building it.

16174. Let us turn to deal briefly with 148 Charing Cross Road.

(Mr Berryman) Have you got picture 11? In order to build the station we need to provide a temporary closure of part of Charing Cross Road and a diversion around the back of Centre Point. In order to do that we will need to demolish 148 Charing Cross Road which is the building on the corner. It is worth pointing out that parliament has already actually once approved demolition of this building in connection with a safety measures scheme some time ago. That was not taken through by London Underground, I understand, due to lack of funding, but parliament consent has already been given to that demolition.

16175. Thank you. Let us have a look now at the Astoria Theatre, why do we need to take the Astoria Theatre site?

(Mr Berryman) The primary reason for our demolition of this site is as a work site to support the station tunnelling activities which take place from the next door site. We have, and you showed in your introduction slide showing the site layout, it is quite a difficult site, it is very congested, as you can see the location in central London is not helpful and it is partly to serve the Goslett Yard site, which is immediately to the south, and the Goslett Yard site is virtually completely occupied by a very deep large shaft which contains the escalators and all the other paraphernalia that go with it and in order to build that we need some working space. We do not think that it would be possible to construct from the Goslett Yard site alone and that is why we required the Astoria site as well. Just for reference, the Goslett Yard and the Astoria work sites taken together have a combined of 3,400 square metres which is much smaller than any of the other work sites we have got, such as Hanbury Square and Finsbury Circus which are slightly bigger than that and they are two of the more difficult sites as well. It is worth pointing out that some of the works notably up here may be done slightly earlier than Crossrail hopes because Amey Rail will be doing those works themselves.

16176. Thank you. It may be suggested that perhaps the façade of the Astoria Theatre should be retained; what would you say about that suggestion?

(Mr Berryman) Well it would be very, very difficult indeed. The traffic arrangements in the area would require so many holes in the front of them there would hardly be anything left and it is not straightforward to do this kind of work with a propped-up façade in that way, it can be done of course and it is done all the time, but like everything it adds to costs and adds to the timetable and would ultimately add to the environmental disruption which is caused in terms of traffic because of that extension of time.

16177. Thank you. In terms of what would be involved with the facade retention, what physically would have to be done?

(Mr Berryman) It would require a big hole of two storeys high to be created in the facade, that would

take about 40% of the length of the fa[cced]ade. The remainder of it would have to be supported with lorries running around, a very high risk of impact causing collapse to the works, it is just not a straightforward and easy thing to do.

16178. Thank you. Let us deal then with the forecourt of Centre Point; what is to be constructed there?

(**Mr Berryman**) In the front part of Centre Point there are two entrances to be constructed to the Crossrail station, including lift access for MIP persons and basically the area around that will be landscaped to provide pedestrian facilities, the ticket hall extends underneath that part and those are works to be done there.

16179. Is it possible to retain or reinstate the fountains?

(**Mr Berryman**) It is not possible to reinstate the pool in its current location as it would clash with the location of the new station entrances. The station entrances and where you can put them is very limited because of the things that are underneath, underground. Re-location of the pool would be possible, but it would take up space on the plaza and would obstruct a new pedestrian route which the local authority wants to create down from Oxford Street to Covent Garden.

58 Crossrail Information Paper D18-Listed Buildings and Conservation Areas, billdocuments.crossrail.co.uk [Back](#)

59 Committee Ref: P115, Tottenham Court Road Station-3D Axonometric View, Dean Street Ticket Hall (LINEWD-29804-012). [Back](#)

60 Committee Ref: P115, Tottenham Court Road Station-Crossrail Proposals (LINEWD-28904-008). [Back](#)

61 Crossrail Ref: P115, Tottenham Court Road, Proposed plaza level showing outline of existing Oxford Street entrance (LINEWD-28904-009). [Back](#)

62 Crossrail Ref: P115, Tottenham Court Road East, Traffic Management Stage E Outline Map C5(xl) (LINEWD-28904-009). [Back](#)

[Previous](#)[Contents](#)[Next](#)[Commons](#)[Parliament](#)[Lords](#)[Search](#)[Enquiries](#)[Index](#)

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Prepared 14 November 2007

- [A-Z index](#)
- [Glossary](#)
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- [Education](#)

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- [House of Lords](#)
- [What's on](#)
- [Bills & legislation](#)
- [Committees](#)
- [Publications & records](#)
- [Parliament TV](#)
- [News](#)
- [Topics](#)

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Select Committee on Crossrail First Special Report

13 Annex B: Committee Visits

During the inquiry the Committee made seven visits to inspect a variety of sites on the proposed Crossrail Route. The Committee welcomed the participation of Petitioners, relevant experts and Crossrail representatives. At each location we were given an overview of the particular issues that had been raised by Petitioners, together with construction methodology.

A recurrent issue from many Petitioners was the question of noise levels in relation to the construction and the running of a railway, insofar as what levels of noise would be acceptable or not, together with what could be achieved, and what could not. Therefore, in addition to these visits, the Committee attended a noise tutorial organised by Mr Rupert Thornely-Taylor at the London Underground offices at 55 Broadway, London. The Committee experienced the sorts of noise and noise attenuation that would be expected on construction sites today.

Liverpool Street to Farringdon

19 January 2006

Mr Alan Meale

Kelvin Hopkins

Mr Brian Binley

Mrs Siân C. James

(16)

Ms Katy Clark

Mr Ian Liddell-Grainger

Mr Phillip Hollobone

Sir Peter Soulsby

The visit to Liverpool Street was timed to coincide with the 0845-0900 period to allow the Committee to understand the level of congestion at the busiest time. The visit enabled the Committee to have an overview of the proposed works at Liverpool Street Station and Moorgate Station and the potential effects on the current mainline and underground stations, including an indication of siting of the proposed western ticket hall. The Committee were shown how the surrounding surface vicinity would be affected by the proposed works.

We then visited Farringdon to understand the impact of a station on the surrounding area, including Charterhouse Street, Hayne Street, Long Lane and Lindsey Street to the East of Smithfield market and the site of Cardinal House at the junction of Farringdon Road and Cowcross Street to the West.

Tottenham Court Road to Hyde Park

14 February 2006

Mr Alan Meale

Mrs Siân C. James

Mr Brian Binley

Mr Ian Liddell-Grainger

Ms Katy Clark

Mrs Linda Riordan

Mr Phillip Hollobone

Sir Peter Soulsby

Kelvin Hopkins

⇒ The Committee were shown the proposed site of an emergency ventilation and intervention site at Fisher Street, WC1. They were then taken to the Astoria Site, bounded by Oxford Street, Charing Cross Road, Sutton Row and Falconberg Court, where the eastern ticket hall of proposed Tottenham Court Road Station would be located. Following this the Committee visited the premises of the British Board of Film Classification, a Petitioner against the Bill, before viewing the site of the Fareham Street ventilation shaft together with the western ticket hall site.

The Committee were then taken to the proposed site of Bond Street Station which would lie approximately 100 metres south of Oxford Street. We were shown the site of 18/19 Hanover Square which would accommodate the eastern ticket hall of Bond Street Station and the ventilation and emergency escape on Tenterden Street. We were then shown the location of the proposed western ticket hall which would occupy the block bounded by Davies Street, St. Anselm's Place, Gilbert Street and Weighhouse Street (the entrance being on the corner of Davies Street and Weighhouse Street).

We were then driven to two further locations at Park Lane and to Bayswater Road at Lancaster Gate, to enable the Committee to have an overview of the ventilation and emergency shafts proposed in the central reservation of Park Lane and at Hyde Park.

Whitechapel and Hanbury Street

23 May 2006

Mr Alan Meale

Mrs Linda Riordan

Kelvin Hopkins

Sir Peter Soulsby

Mr Ian Liddell-Grainger

The Committee went on a site visit to Whitechapel. The Committee were given a tour of the London Underground station and were shown how Crossrail would interchange with the current District and East London Lines. We were shown the locations of the proposed eastern and western ticket halls, at Cambridge Heath Road and Fulbourne Street respectively. The Committee went to Durward Street to see where the proposed ventilation and escape shaft would be and visited Swanlea School and Kempton Court, the premises of two of the Petitioners within the area to witness how they would be affected by the proposals.

The Committee were then taken to the proposed site of the Hanbury Street Shaft where emergency access and ventilation would be provided. We were shown the area bounded by Princelet Street, Spielman Street, Greatorex Street and Hanbury Street and the proposed route of lorries travelling east of the site which would remove the excavated material.

Paddington**20 June 2006**

Ms Katy Clark

Mrs Siân C. James

Mr Philip Hollobone

Mr Ian Liddell-Grainger

Kelvin Hopkins

John Pugh

The Committee's visit to Paddington Station included a tour of various features of the station that would be affected by the Crossrail Bill, including The Lawn, the Clock and Horse Arches, and Platforms 1 and 12. We were shown where the Crossrail Station would be constructed beneath Eastbourne Terrace. The Committee were shown potential impact of works in respect of Praed Street, London Street, Bishop's Bridge Road, the Triangle and Canalside and Westbourne Terrace.

The Committee then visited the proposed site of the Royal Oak Portal, where Crossrail's tunnels would surface and join with the existing tracks before the service continued west. The Committee toured the Royal Oak worksite and portal site and were shown the location of the permanent turnback facility at Westbourne Park in relation to the external bus parking facility, the concrete batching plant, Paddington New Yard, the Alfred Road Academy site and the connecting footbridge where it crossed the Great Western Main Line.

Woolwich**19 October 2006**

Mr Alan Meale

Mr Ian Liddell-Grainger

Ms Katy Clark

John Pugh

Kelvin Hopkins

Mrs Linda Riordan

Mrs Siân C. James

Sir Peter Soulsby

The Committee were first shown Warren Lane Shaft, a ventilation and intervention shaft, just south of the River Thames. We were then taken to the proposed Crossrail station at the former Royal Arsenal West site where we were shown the ventilation shafts and possible station entrances on the north and south sides of Plumstead Road. The Committee were then shown the proximity of the proposed Docklands Light Railway station and the town centre to the proposed site.

Bond Street, Paddington and Old Oak Common**22 February 2007**

Mr Alan Meale

Mrs Siân C. James

Kelvin Hopkins

The Committee visited Bond Street during the 0845-0900 period to understand the level of congestion together with the passenger flow currently experienced between the Bakerloo, Central and Jubilee lines. We were shown the premises of GE Pensions Ltd at 354 to 358 Oxford Street and 1 Marylebone Lane which Crossrail had proposed for compulsory acquisition for the construction of a new London Underground ticket hall and to assist in the congestion relief of Bond Street Station.

The Committee then visited the residential block at Brewers Court at Paddington to note its proximity to the potential noise impact of works at 4-18 Bishop's Bridge Road which would be demolished and where a service deck would be constructed.

We then visited Old Oak Common in west London where it was proposed to locate the main Crossrail depot, instead of at Romford as originally stated in the Bill provisions. The Committee were also shown the North Pole depot where it was proposed that English Welsh and Scottish Railway Limited could be relocated from the Old Oak Common depot.

Isle of Dogs**8 March 2007**

Mr Alan Meale

Mrs Linda Riordan

Kelvin Hopkins

The Committee visited Poplar Dock which would be affected by the impact of works at the Isle of Dogs. We shown around the Poplar Dock, home to the Poplar Dock Boat Owners Association who petitioned the Bill.

The Committee were then taken to see the site of the proposed Isle of Dogs Station and were shown the locations of the eastern and western ticket halls.

We were then taken to the Canary Wharf Group Ltd marketing suite at 1 Canada Square to view the surrounding area to understand the impact of the works at the Isle of Dogs.

[Previous](#)[Contents](#)[Next](#)[Commons](#)[Parliament](#)[Lords](#)[Search](#)[Enquiries](#)[Index](#)

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- [A-Z index](#)
- [Glossary](#)
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- [Copyright](#)

Closing submissions of the Promoter following completion of hearings into Petitions against the Bill and three sets of additional provisions

21416. Chairman: That is helpful.

21417. Mr Elvin: So, sir, running as quickly as I can then through the main headings, the first one is "Crossrail: the need for it and its benefits". The position is set out in the main Environmental Statement Chapter 4. Taking you back 14 months, to the first day, Crossrail is a major new cross-London rail link project to serve London and the south-east of England. It will support and maintain the status of London as a World City by providing a world-class transport system. It will be a significant and essential addition to London's transport infrastructure and the south-east of England and will deliver a number of important benefits: firstly, a fast, efficient and convenient rail access to the West End and the City by linking the existing routes from Shenfield and Abbey Wood in the east with Maidenhead and Heathrow in the west.

21418. Secondly, improved services for rail users through the relief of overcrowding, faster journeys and the provision of a range of new direct journey opportunities. Wider social and economic benefits not only for London, including the regeneration of areas such as Docklands and Thames Gateway, and also for the south east of the UK as a whole. The key objectives are, therefore: to support the development of London as a World City and its role as a financial centre of Europe and the United Kingdom; secondly, to support the economic growth of London and its regeneration areas by tackling congestion and the lack of capacity on the existing rail network, and, thirdly, to improve rail access into and within London.

21419. It will achieve these objectives by addressing problems of inadequate capacity on the national rail and London Underground networks, by improving accessibility to regeneration areas, and by providing transport capacity for the growth expected for London. This is not at the expense of regional services, such as to the south-west and to Wales. Crossrail services will use only the slow lines, as you may recall, during normal operation, not the fast lines into Paddington and to Liverpool Station that regional services use.

21420. These objectives have been forcibly underlined by some of those petitioning—for example, the cases made by the Corporation of London and Canary Wharf with regards to the needs of the business community and by the London Borough of Greenwich with regard to regeneration needs, particularly in the Woolwich area.

21421. I turn then to Environmental Minimum Requirements. I just remind the Committee, of course, that I gave an undertaking in this respect on Day 1, in paragraph 112 of the transcript. The EMRs set out controls for the design and construction of Crossrail relating to environmental and planning issues, and they include the Construction Code, the Planning and Heritage

Memorandum and the Environmental Memorandum. The first draft of the EMRs was published in September 2005 and circulated to local authorities affected by Crossrail and other bodies. A revised version, following discussion, was published in November 2006 and it remains the subject of ongoing discussions and will be finalised through the final stage of the Bill's progress through Parliament.

21422. The Secretary of State will contractually require the nominated undertaker to comply with the controls set out in the EMR and take such opportunities as may be reasonably practicable to reduce significant adverse impacts. These contractual requirements, with the undertakings and assurances given by the Secretary of State, will ensure that impacts of the exercise of the Bill powers which have been assessed in the Crossrail Environmental Statement will not be exceeded so as to depart from the various assumptions in the Environmental Statements, unless that situation results from a change in circumstances which was not likely at the time of the Environmental Statement, or would not be likely to have significant environmental effects (meaning significant adverse effects where the change is a modification to the current project) or where they would be subject to their own consent process and to further environmental assessment if required.

21423. Turning then to the third point which is Environmental Impact Assessments about which you have heard a number of submissions from time to time and, as I have said, there are detailed submissions set out in writing in the annex. Two issues have arisen before the Committee frequently in the context of environmental assessment and the Petitioners have frequently made claims concerning either, first, the inadequacy generally of the environmental assessment process for the Bill and the Environmental Statements produced for Crossrail and, secondly, the failure to consider alternatives. You have heard an example of that both today and last week in the context of Mayfair and Spitalfields. It has been said by a number of Petitioners that Crossrail simply has not considered the alternatives. A detailed note on these topics is set out in the annex, as I have said, and they repeat to a large extent what was set out in the letter I wrote to you, sir, on 1 March this year in response to the Woodseer and Hanbury Residents Association and Spitalfields Small Business Association. What is in the annex you will have seen to some extent already, but the points, of course, are of wider application. Putting the matter in summary form, our response is this: environmental assessment is intended to assist not hinder the process of decision-making, in this case, of course, decision-making by Parliament. Secondly, the adequacy of the Environmental Statement is a matter for the reasonable judgment of Parliament. The courts have frequently pointed out that merely because a party making representations about development proposals does not agree with the approach or the contents of an Environmental

Closing submissions of the Promoter following completion of hearings into Petitions against the Bill and three sets of additional provisions

and other steps to be taken via undertakings and assurances. Deliberations and decisions made by Parliament with regard to Crossrail are made publicly available through a number of media, including Hansard, the internet and the Committee's own website. Committee proceedings are published on the website and can be listened to via the weblink or for a period of months as part of the internet archive of recordings. There is ample opportunity to hear and understand what is happening. The provision of information on the Bill has been extensive and widespread. In addition to depositing documents in public libraries and with local authorities and by responding to individual requests for additional information generally under the Freedom of Information Act provisions significant amounts of information have been made available electronically via the internet by, for example, both the CLRL and DfT website.

21428. Therefore, in conclusion on this, there is no proper basis for saying the procedure related to bringing forward, deliberating on and justifying the Bill proposals has not accorded with the substance of the Convention or the requirements of the public participation directive on access to environmental decision-making. We say the process has been more than ample to cater for those requirements.

21429. We turn then to another issue which we raised on a number of occasions, human rights. The issues which have arisen in committee hearings largely concern three particular convention provisions, Article 8, the right to respect for the home, private and family life; Article 1 of the First Protocol, the right to the undisturbed enjoyment of possessions which includes, of course, property rights to be acquired under the Bill; and Article 6, the right to a fair trial. As far as Article 8 and Article 1 of the First Protocol are concerned and any other substantive rights, you will recall the Minister has certified compliance with the Human Rights Act in the Bill and in any event those rights are not absolute and can be displaced if, for legitimate reasons, the homes or the properties and activities of those affected are to be disturbed in the public interest. In the language of Strasbourg, sir, the interference must be necessary in a democratic society, in other words proportionate or strike a fair balance between the private rights being affected and the public interest which justifies the interference. What it all means simply is the public interest in proceeding with Crossrail outweighs the impact on individual lives and properties having regard to the powers sought and the effects which they are likely to have. It is plain that the public interest in proceeding with Crossrail is, we say, sufficiently important to outweigh the individual rights of those likely to be affected by the Bill proposals and that the petitioning and the select committee process here allows the claims of Petitioners to be considered in detail by your Committee, sir. In a number of cases your Committee has required the balance between the project and the parties concerned to be adjusted,

thus adjusting the balance of proportionality, as it has seemed appropriate to your Committee in the light of evidence and representations you have received. There is, therefore, built into the hybrid bill process a means of adjusting proportionality in individual cases where your Committee, sir, has thought it necessary. So far as Article 6, that is concerned with the fair trial rights of persons, where there is a determination of civil rights and obligations. Article 6, in our view, sir, does not apply to hybrid bills or to any other parliamentary procedures other than the judicial functions exercised by the House of Lords. This is because section 6 of the Human Rights Act, which subjects public authorities, including the courts, to a general duty not to act incompatibly with convention rights, specifically does not apply to either House of Parliament or a person exercising functions in connection to proceedings in Parliament. Sir, the proceedings in Parliament are specifically excluded from the duties under section 6 of the Human Rights Act. Apart from section 6 of the Human Rights Act Article 6 would not have applied here in any event to your committee procedures since you are not concerned with the content of the law with Article 6, only its procedural protection. Secondly, there must be a genuine dispute over a civil right or an obligation which can be said fairly to be recognised under UK law and the Bill process and you, in particular, sir, are not determining a dispute over the civil rights which exist under the law but what the Bill should be if the Bill is passed by Parliament. In any event the procedure adopted for the committee proceedings embodies a fair procedure. It allows Petitioners a reasonable opportunity to present their cases, call evidence and cross-examine the witnesses called for the Promoter. The case the Petitioners have to meet is known to them, it is set out in the various Bill documents and supporting documents and in the petition response documents which have been sent out explaining the Promoter's response to individual petitions in the vast majority of cases. Sir, I would observe that the Committee has been very fair, indeed, giving Petitioners considerable leeway to present the cases they have wanted to present to the Committee and the Committee has allowed them to make those cases even though on occasions issues as to relevance and materiality to the Bill proposals have occurred. The Committee has not been ready to cut people off and has been extremely fair, in our submission. Although some have complained at being cut short by the Committee from time to time even if Article 6 applied to the passage of a hybrid bill, which it does not, Article 6 does not require an oral hearing and you can satisfy it by consideration of documents including petitions, it does not permit those being heard to be repetitious or irrelevant in their presentation to you and it does not restrict the body conducting the hearing, in the case of these proceedings this Committee, from exercising reasonable control over its procedures, for example where it determines that matters run contrary to the principle of the Bill or do not arise out of an additional provision. That is all I say, sir, about human rights.

Closing submissions of the Promoter following completion of hearings into Petitions against the Bill and three sets of additional provisions

Statement does not mean that document ceases to be a proper Environmental Statement or one that is not fit for its purpose. In fact, part of the process of the environmental assessments involves consulting the public on the Environmental Statement to enable those who have views on the project, as analysed in the statement, to express their own views, so it does not follow that because Petitioners can identify parts of the Environmental Statement which they disagree with that it is not a valid Environmental Statement. Thirdly, what has been produced in the Environmental Statement meets the legal requirements of providing an outline of the main alternatives studied by the developer and an indication of the main reasons for this choice taking into account the environmental effects. There is no requirement, contrary to the views expressed by some, to set out full information on alternatives only to present an outline of the main alternatives to the project as a whole. The requirements of the Directive, therefore, have been met. The main alternative study was summarised in chapter six of the main Environmental Statement deposited in February 2005. Specific issues of alternatives have also been addressed, for example the alternative depot proposals as a result of AP3 and the alternative alignments in the Spitalfields area, which I addressed in my letter to you, sir, on 1 March. By the appropriate touchstone of reasonableness, the environmental assessment process adopted for the Bill complies with the environmental assessments directive and is based upon a thorough Environmental Statement which has been updated and amended as the Bill has proceeded. The fact that, in documentation concerning this huge product there may be some flaws, or some might disagree with elements of it, does not render it or the process as a whole flawed or non-compliant with the Directive. The Committee can be satisfied, we say, that the project should proceed taking account of the information provided in the Environmental Statements together with that obtained from the public through the consultation process on the Environmental Statements which together form the part of information to be taken into account by Parliament. The Committee is entitled to conclude, we say, and report to the House of Commons that the Environmental Impact Assessment process has been conducted in a suitable and reasonable manner and has met the relevant requirement of the Directive under European law. That is all dealt with in more detail in the annex but those are the headline points.

21424. I turn now to the fourth heading, Århus and the public participation directive. The Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters and the public participation directive produced by the European Union which resulted from it seeks to establish greater dissemination of information and public participation in environmental decision-making. A detailed note on the topic is also set out in the annex

to these submissions. The public participation directive only has implications for the Bill process to the extent that it modifies the environmental assessment directive from 25 June 2005 to improve the requirements for dissemination of information, publicity and public participation. Publicity requirements of the Directive are amended and include the duty now to make available certain information whether by public notices or other appropriate means, such as electronic media, where available. This has been done, including the use of electronic media, as the Committee is well aware. Although the Promoter considers that the Directive does not apply to the Bill process simply because the Bill process started some months before the Directive came into force that does not need to trouble the Committee since the process that the Bill has followed has met the requirements in any event, and I simply give you again the headline points.

21425. Sir, I set out in my opening in paragraphs 32 to 40 an overview of the consultation process on the project as a whole. The Committee will recall those extensive pre-Bill consultations on the proposals for the public awareness campaign in 2003 and the establishment of information centres, the second awareness campaign in 2004 followed by a second round of public information centres. There were 103 days of information centres at 55 locations across the Crossrail route attracting over 15,000 visitors. The consultation responses were evaluated and considered in the design of the project and mitigation measures associated with it. In 2005, before the Bill was deposited, an information round was implemented in information centres explaining the proposals for which powers are now sought in the Bill and an aggregated consultation report in September 2005 is available which summarises the consultation process. Secondly, additional notice of the likely proposals was given in the CLRL business case in July 2003 and in the Montague Report in July 2004. The Bill and the Environmental Statement give ample information on the proposals together with other information available from CLRL and DfT, both in electronic and paper format. Sir, you will note behind the Environmental Statement there sit a number of very detailed technical reports which have been brought out from time to time. They are all available on the Crossrail website along with the Environmental Statement.

21426. Fourthly, subsequent information, of course, through the APs and SESs and by other means have been made widely available as APs have come forward and as the committee process has continued.

21427. Fifthly, the right to petition Parliament in respect of which we said at the outset we would not generally take locus points has allowed those wishing to raise issues with regard to the Bill to raise them before this Committee, to call evidence and to question witnesses for the Promoter, and the Committee has been able to request amendments

②

THE CROSSRAIL BILL
HOUSE OF COMMONS SELECT COMMITTEE

28 March 2007

**CLOSING SUBMISSIONS OF THE PROMOTER FOLLOWING THE
COMPLETION OF HEARINGS INTO PETITIONS AGAINST THE
BILL AND THREE SETS OF ADDITIONAL PROVISIONS**

Introduction

1. The purpose of these submissions following the completion of hearings into the petitions against the Crossrail (XR) Bill and the three sets of Additional Provisions (APs) is to cover certain general points and themes which have occurred in respect of a number of the petitions presented, although this is not the conclusion of the Committee hearings. It is not the intention of the Promoter to repeat submissions and evidence made on the specifics of individual petitions which have been dealt with at the time of the hearing of the individual petitions. The Committee is referred back to those submissions and to the general opening made by the Promoter on Day 1, 17 January 2006.

2. During the course of the XR Bill three sets of APs have been deposited with the Private Bill Office together with AP ESs and fall to be considered in accordance with the Instructions of the House:

(1) AP1 deposited 18 January 2006;

(2) AP2 deposited 9 May 2006; and

(3) AP3 deposited 7 November 2006

The amendments introduced by the APs were the subject of submissions on 18 January 2007, : Day 66 §§18003-18030.

3. Since the issue of a station at Woolwich remains to be dealt with, following last week's statement by the Secretary of State, it is not proposed to make the formal presentation of the filled bill now but to leave that until the final conclusion of the Committee hearing.

(2) Crossrail, the need for it and its benefits

4. The position is set out in the Main ES, Volume 1, Chapter 4.

5. XR is a major new cross-London rail link project to serve London and SE England. XR will support and maintain the status of London as a World City by providing a world class transport system.
6. XR will be a significant and essential addition to London's transport infrastructure & the SE England. It will deliver
 - (1) A fast, efficient and convenient rail access to the West End and the City by linking existing routes from Shenfield and Abbey Wood in the east with Maidenhead and Heathrow in the west.
 - (2) Improved services for rail users through the relief of crowding, faster journeys and the provision of a range of new direct journey opportunities.
 - (3) Wider social and economic benefits not only for London, including the regeneration of areas such as Docklands and Thames Gateway, but for the SE and the UK as a whole.
7. XR's key objectives are:
 - (1) to support the development of London as a World City, and its role as the financial centre of Europe and the UK;
 - (2) to support the economic growth of London and its regeneration areas by tackling congestion and the lack of capacity on the existing rail network; and
 - (3) to improve rail access into and within London.
8. XR will achieve these objectives by addressing problems of inadequate capacity on the national rail and London Underground networks, by improving accessibility to regeneration areas, and by providing transport capacity for the growth expected for London. This is not at the expense of regional services, such as to the SW and to Wales. XR services will use only the slow lines during normal operation, not the fast lines into Paddington and to Liverpool Street that regional services use.
9. These objectives have been forcibly underlined by some of those petitioning, e.g. the case made by the Corporation of London and Canary Wharf with regards to the needs of the business community and by the London Borough of Greenwich with regard to regeneration needs.

(2) Environmental minimum requirements (EMRs)

10. The Committee will recall I gave an undertaking with regard to the EMRs in opening on Day 1 §112¹.
11. The EMRs set out controls for the design and construction of XR relating to environmental and planning issues. The EMRs include:

¹ "... [I]n accordance with paragraph 2.5 of information paper D2 on the control of environmental impacts, on behalf of the Secretary of State I now give an undertaking to Parliament in these terms: insofar as the environmental minimum requirements are not directly enforceable against any person appointed as a nominated undertaker or to whom the powers of the Bill are devolved under clause 53 of the Bill, he will take such steps as he considers are reasonable and necessary to secure compliance with those requirements."

- (1) the Construction Code, which sets out a series of objectives and measures to protect the environment and limit disturbance during the construction period as far as reasonably practicable;
 - (2) the Planning and Heritage Memorandum, which sets out measures with respect to the handling of planning and heritage matters for the works; and
 - (3) the Environmental Memorandum, which relates to the environmental aspects of the works.
12. The first draft of the EMR was published in September 2005 and circulated to local authorities affected by XR and other relevant bodies. Following discussion, a revised version of the EMRs was published in November 2006. This is the subject of ongoing discussion and will be finalised through the final stages of the Bill through Parliament.
13. The Secretary of State will contractually require the nominated undertaker to comply with the controls set out in the EMR and take such opportunities as may be reasonably practicable to reduce significant adverse impacts. These contractual requirements, together with the undertakings and assurances given by the Secretary of State, will ensure that impacts of the exercise of the Bill powers which have been assessed in the XR Environmental Statement (ES) will not be exceeded so as to depart from the ES assumptions unless this²:
- (1) results from a change in circumstances which was not likely at the time of the ES; or
 - (2) would not be likely to have significant environmental effects (meaning significant adverse effects where the change is a modification to the current project); or
 - (3) would be subject to a separate consent process (and therefore further EIA if required).

(3) Environmental impact assessment (EIA)

14. Two issues have arisen frequently in the context of EIA and petitioners have variously made claims concerning:
- (1) The inadequacy generally of the EIA process for the Bill and of the ESs produced for XR in particular;
 - (2) The failure to consider alternatives properly in the ES.
15. A detailed note on these topics is set out in the Annex to these submissions. See also our letter to the Chairman dated 1 March 2007 in response to correspondence from the Woodseer and Hanbury Residents Association (Guy Carpenter) and the Spitalfields Small Business Association (Jil Cove). However, the points are of wider application.
16. Our response in summary is:
- (1) EIA is intended to assist, not hinder, the process of decision-making;

² See IP D2 §§2.1-2.3.

- (2) The adequacy of the ES³ is a matter for the reasonable judgment of Parliament. The Courts have frequently pointed out that merely because a party making representations about development proposals does not agree with the approach or contents of an ES does not mean that the document ceases to be a proper ES or one which is not fit for its purpose. Indeed, part of the purpose of consulting the public on the ES is to enable those who have views on the project as analysed in the ES to express their own views. Therefore, it does not follow that because petitioners can identify aspects of the ES with which they disagree it makes it any the less a valid ES.
- (3) What has been produced in the ES meets the legal requirement of providing an "outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects". There is no requirement to set out "full information" on alternatives, only to present an outline of the main alternatives for the project as a whole.
- (4) The requirements of the Directive have been met. The main alternatives studied were summarised in Chapter 6 of the Main ES deposited with the Bill in February 2005. Specific issues of alternatives have also been addressed e.g. the alternative depot proposals as a result of AP3 and the alternative alignments in the Spitalfields area (addressed in our letter to the Chairman dated 1 March 2007).
- (5) By the appropriate touchstone of reasonableness, the EIA process adopted for the Bill complies with the Directive and is based upon a thorough ES, which has been updated and amended as the Bill has proceeded. The fact that, over documentation concerning this huge project there may be some flaws, or that some might disagree with elements of the ES, does not render the ES or the EIA process as a whole flawed or non-compliant with the EIA Directive.
- (6) The Committee can be satisfied that the project should proceed taking account of the information provided in the ES and that obtained from the public through the consultation process on those ES, which together form part of the information to be taken into account by Parliament. The Committee is entitled to conclude, and report to the House of Commons, that the EIA process has been conducted in a suitable and reasonable manner, and has met the relevant requirements of the Directive.

(4) Aarhus and the Public Participation Directive (PPD)

17. The Aarhus Convention *on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1998) and the Public Participation Directive (Directive 2003/35/EC) ("PPD") which resulted from it, seeks to establish greater dissemination of information and public participation in environmental decision-making.
18. A detailed note on this topic is set out in the Annex to these submissions.
19. The PPD only has implications for the Bill process to the extent that it modifies the EIA Directive from 25 June 2005 to improve the requirements for dissemination of information, publicity and public participation. The publicity requirements of the EIA Directive are amended

³ We use "ES" to refer to the composite series of documents which include the non-technical summaries, addenda, AP ES documents and SES documents. The composite whole is the ES for the XR Bill.

and include the duty now to make available certain information "whether by public notices or other appropriate means such as electronic media where available". This has been done including the use of electronic media.

20. Although the Promoter considers that the PPD does not apply to this Bill process⁴, this does not matter since the requirements have been met with by the process in any event:

- (1) See Day 1 §§32-40 which deals with the consultation process. The Committee will recall that there was extensive pre-Bill consultation on the XR proposals with the public awareness campaign in 2003, with the establishment of information centres, with a second awareness campaign in 2004 followed by a second round of Public Information Centres. Overall, there were 103 days of Information Centres at 55 locations across the XR route, attracting over 15,000 visitors. The consultation responses received were evaluated and were considered in the design of the project and mitigation measures associated with it. In 2005, an information round was implemented at Information Centres explaining the proposals for which powers are now sought in the Bill. An "Aggregated Consultation Report - September 2005" is available which summarises the consultation process prior to Bill deposit;
- (2) Additional notice of the likely proposals was given in the CLRL Business Case [July 2003] and in the Montague Report on that business case [July 2004];
- (3) The Bill and ES published with it gave ample information on the proposals, together with other information available from CLRL and DfT both in paper and electronic format. This included the specialist more detailed technical reports which comprise work which fed into the ESs. These can all be seen on and downloaded from CLRL's website at no charge;
- (4) Subsequent information through AP ESs and SESs and by other means has also been made widely available as APs have come forward;
- (5) The right to petition Parliament, in respect of which the Promoter stated at the outset that it would not generally take locus points, has allowed those wishing to raise issues with regard to the Bill to raise them before the Committee, to call evidence and question witnesses for the Promoter, and for the Committee to request amendments and other steps to be taken via undertakings and assurances;
- (6) Deliberations and decisions made by Parliament with regard to XR are made publicly available through a number of media, including Hansard, the internet and the Committee's own site on the Parliamentary website. Committee proceedings are published on the website and can be listened to live via weblink or for a period of months as part of the internet archive of proceedings.
- (7) The provision of information on the Bill has been extensive and widespread. In addition to depositing documents in public libraries and with local authorities, and by responding to individual requests for additional information both generally and under Freedom of Information Act, significant amounts of information have been available electronically via the internet e.g. the CLRL and DfT websites.

⁴ This is because the PPD only came into force on 25 June 2005 after the XR Bill and ES were deposited and the procedure was underway. It could not therefore have influenced consultation on the proposals and the main ES. In fact, it came into force shortly before the Bill received its Second Reading on 19 July.

21. There is therefore no proper basis for saying that the procedure relating to the bringing forward, deliberation and justification for the Bill proposals has not accorded with the substance of the Convention or PPD requirements for participation or access to environmental decision-making.

(5) Human Rights

22. The issue of Human Rights has arisen from time to time during the Committee hearings⁵. Human Rights arises mainly in the following respects in the context of the Bill:

- (1) Article 8, the right to respect for the home and private and family life;
- (2) Article 1 of the First Protocol, the right to the undisturbed enjoyment of "possessions" which includes property rights to be acquired under the Bill;
- (3) Article 6, the right to a fair trial.

23. So far as Article 8 and Article 1 of the First Protocol are concerned (and other substantive rights), the Minister has certified compliance with the Human Rights Act 1998. In any event:

- (1) Those rights are not absolute and may be displaced if, for legitimate reasons, the homes, other properties, and activities of those affected are to be disturbed in the public interest⁶. In the language of Strasbourg, the interference must be "necessary in a democratic society", i.e. proportionate (or strike a "fair balance" in the case of Article 1 of the First Protocol). What this means is simply that the public interest in proceeding with XR outweighs the impact on individual lives and properties having regard to the powers sought and the effects likely to be generated by them.
- (2) It is plain that the public interest in proceeding with XR is sufficiently important to outweigh the individual rights of those likely to be affected by the Bill proposals.
- (3) The petitioning and Select Committee process allows the claims of petitioners to be considered in detail and in a number of cases the Committee has required the balance between the project and the parties concerned to be adjusted, thus adjusting the balance of proportionality as it has seemed appropriate to the Committee in the light of the evidence and representations made. There is therefore built in to the hybrid bill process a means of adjusting proportionality in individual cases where necessary.

24. Article 6 is concerned with the fair trial rights of a person where there is a "determination of his civil rights and obligations". Article 6, however, does not apply to hybrid bills or any other Parliamentary procedures (other than judicial functions). This is because s. 6(1) of the Human Rights Act 1998 (HRA), which subjects "public authorities" (including the courts) to a general duty not "to act in a way which is incompatible with a Convention right", does not apply to "*either House of Parliament*" or *a person exercising functions in connection with proceedings in Parliament*" (s. 6(3)).

25. Apart from s. 6 of the HRA, Article 6 would not have applied to the Committee procedure since:

- (1) Article 6 is not concerned with the content of the law but only with procedural protections;

⁵ E.g. Article 6 was raised by Mr McCracken for Residents' Society of Mayfair and St James on Day 74 §20209.

⁶ See e.g. *James v. UK* (1986) 8 EHRR 123, *Buckley v. UK* (1996) 23 EHRR 101 and *Chapman v. UK* (2001) 33 EHRR 18.

⁷ Excluding the House of Lords acting in a judicial capacity from the exception: s. 6(4).

- (2) There must be a genuine dispute over a "civil right" or obligation which can be said fairly to be recognised under domestic law; and
 - (3) The bill process, and the Committee in particular, is not determining a dispute over civil rights but determining what the law should be if the bill were to receive Royal Assent.
26. In any event, the procedure adopted for the Committee proceedings embodies a fair procedure which allows petitioners a reasonable opportunity to present their cases, call evidence and cross-examine the Promoter's witnesses. The case the petitioners have to meet is known to them, set out in the various Bill documents and supporting documents and in the petition response documents which have been sent out explaining the Promoter's response to individual petitions.
27. Although some have complained at being cut short by the committee from time to time, even if Article 6 applied to the passage of a hybrid bill, it does not
- (1) Actually require an oral hearing, and often a consideration of papers may be sufficient⁸;
 - (2) Permit those being heard to be repetitious or irrelevant; or
 - (3) Restrict the body conducting the hearing from exercising reasonable control over its proceedings e.g. where issues are raised which do not arise out of the AP against which a petition has been presented, or which run contrary to the principle of the Bill.

(6) Noise

28. The Promoter's schemes for the control of noise during construction and during operation have been fully set out in IPD9 and D10 and the draft IP in relation to fixed-sources that was produced during the petition submitted on behalf of the London Borough of Havering. These in the course of being updated in order to reflect undertakings given and further negotiations that have occurred since they were initially published. Mr. Thornley-Taylor has spoken to these documents on a number of occasions. He is, of course, pre-eminent in his field and we would respectfully suggest that his views should be given considerable weight in your deliberations.
29. In relation to groundborne noise, the Promoter has put in place design criteria which will ensure that during the construction and operation of the railway there will be no unacceptable impact upon the occupiers of property above the railway. In particular, the criterion adopted for the protection of residential properties of 40 dbA, LA max is appropriate. There is no justification for the application of a lower criterion than this and, in the context of a project that is attempting to drive costs down so as to be affordable, there is no justification for the provision of floating slab track across the whole of the central section. FST will be used but only where necessary.
30. Where there has been a need to identify additional mitigation due to the particularly sensitive nature of a petitioner's property to groundborne noise, the Promoter has offered undertakings to provide that additional mitigation so that no unacceptable impact is likely (e.g. Barbican Hall, British Board of Film Censors and Grand Central Sound Studios). An appropriate undertaking regarding the regime of maintenance to be applied to the track and wheels based on the

⁸ See as an example *Zumtobel v. Austria* (1993) 17 EHRR 116, *R (Adlard) v Secretary of State* [2002] 1 WLR 2515 and *Begum v. London Borough of Tower Hamlets* [2003] 2 A.C. 430.

undertaking sought by the London Borough of Camden has been incorporated in the latest draft of the relevant IPs.

31. In relation to the control of airborne noise during construction, the consent procedure under section 61 of the Control of Pollution Act 1974 will apply. This requires a construction contractor to use the best practicable means to control noise arising from his operations. Thus, the Committee can rest assured that an appropriate level of mitigation will be provided.
32. Where, notwithstanding the use of best practicable means, the construction noise impacts are forecast to exceed the criteria in IPD9, residential occupiers will be offered noise insulation for their properties or temporary re-housing as appropriate. These criteria have not been the subject of challenge in any petition that has been heard by the Committee which is, of itself, an indication that the criteria are appropriate.
33. So far as noise from fixed sources is concerned, this was raised by the London Borough of Havering who had concerns regarding the appropriate criteria to apply⁹. You have the evidence on that¹⁰. Needless to say, the Promoter relies upon the submissions it made in relation to that aspect of the London Borough of Havering's petition¹¹. There is no scientific basis for adopting the criteria proposed by the London Borough of Havering.
34. In short, the Promoter contends that the mechanisms it has put in place in the Bill and in the undertakings provided will ensure that noise from the construction and operation of the railway is appropriately controlled.

(7) Settlement

35. The position with regard to settlement has been amply explained:
 - (1) By Professor Robert Mair on Day 8, §§2368-2425.
 - (2) In IP D12 *Ground Settlement*
 - (3) In ES Vol. 6a, Appendix B1 Section 10 (pp. 39-40) and Appendix B2 (listed buildings)
 - (4) In Technical Reports
36. A three stage assessment process is used in order to identify the buildings that are likely to be at risk of damage from the construction of the scheme. This assessment process establishes whether there is a requirement for any protective works to mitigate against the risk of damage arising. If such works are required the assessment process assists in the design and implementation of such works.
37. That assessment process is conducted on a very conservative basis and has been based on long engineering experience of projects such as CTRL, the DLR and the Jubilee Line extension (Members may recall the discussion of the grout shaft close to Big Ben). There is considerable experience of how the ground behaves when tunnels are constructed and how to minimize settlement affecting buildings above.

⁹ The Promoter contends L90 +5 dB, LB Havering contends L90 – 5 db.

¹⁰ See Days 25 and 26.

¹¹ Day 26 paras 7429-7447.

38. None of the petitions has thrown up cause for concern on settlement issues and the Committee is reminded that the whole approach is based on the following
- (1) The primary form of mitigation is the use of good tunnelling practice which avoids the need for such protective works.
 - (2) It is only where the assessment forecasts that good practice is likely to be insufficient to mitigate the risk of damage to buildings that intrusive mitigation measures will be considered. These mitigation measures have been tried and tested on other major projects involving a similar scale and complexity of tunnelling and excavation.
 - (3) Ground settlement will be monitored during construction with particular attention being paid to buildings where the assessment work has identified them to be at risk of moderate damage. This will enable further action to be taken to mitigate the risk of harm arising from settlement should the need arise.
 - (4) Subject to certain conditions, the Secretary of State will require the nominated undertaker to reimburse property owners for the reasonable cost they incur in remedying material physical damage arising from ground settlement caused by the authorised works
 - (5) A Settlement Deed¹² has been produced which the owner of a building may request. This is a formal legal undertaking concerning settlement, giving effect to the assurances set out in the IP. The qualifying criteria for the deed are attached as Appendix A to the IP, which is essentially a requirement to be the legal owner of property within 30m on plan of the tunnels, retained cuttings, shafts and boxes forming part of the works authorised to be carried out under the Bill as finally designed by the nominated undertaker. NB it is not necessary to enter into the deed in order to benefit from the protections set out in IP D12.
39. However, contrary to the view expressed by some¹³, it would not be right or fair for the Promoter to offer a complete indemnity as to any damage occurring during the works, without it being shown that the damage results from settlement caused by the XR works. It is not the role of the public purse to act as insurer for damage, however caused, and it is only reasonable that it should only compensate (as it will do) when it is shown that damage has been caused by the XR works.
40. Such other issues as have arisen before the Committee have largely concerned the provision of information about individual property assessments, e.g. at Spitalfields, and they have been dealt with by the giving of undertakings.

(8) Compensation

41. With few exceptions, identified by the Committee in its interim decisions, the general approach of the Promoter is to ensure a level playing field with other public works projects and to apply the national compensation code as set out in IP C2 and as explained on a number of occasions in submissions (see e.g. Day 14, §§4041-4050 and Day 74 §§ 19979-19985).
42. Mitigation has been offered in many cases which should obviate the need for further concern. In any event, the law which applies to all development projects in this country is found in the

¹² The Deed itself is attached as Appendix B to IP D12. NB the deed is to be amended.

case I have referred to previously, *Andreae v Selfridge*¹⁴, supported by the House of Lords in the *Wildtree Hotels* case¹⁵. This recognizes that there has to be give and take in modern society. XR is a project overwhelmingly in the public interest running through one of the busiest cities in the world, where development and building works are a constant fact of life. What the court said in *Andreae v Selfridge* I have quoted before and it is worth repeating (given it has received the endorsement of the House of Lords):

"When one is dealing with temporary operations, such as demolition and rebuilding, everyone has to put up with a certain amount of discomfort because operations of that kind cannot be carried out at all without a certain amount of noise and a certain amount of dust, therefore the rule with regard to interference must be read subject to this qualification and if they are reasonably carried on and all proper and reasonable steps are taken to ensure no undue inconvenience is caused to the neighbours, whether from noise, dust or other means, the neighbours must put up with it".

43. Apart from the wholly exceptional case of Smithfield, we maintain that those seeking special treatment are

- (1) going against the will of Parliament which has been to apply the current code on a consistent basis for many years,
- (2) seeking an advantage not provided to most affected by such projects and
- (3) in some cases effectively seeking that XR should underwrite losses which were avoidable e.g. those who purchased properties in the knowledge they were within the safeguarding area for the project, or simply providing an insurance policy.

This has not been the general policy of Parliament nor is there any good reason why those claiming it should be singled out for special treatment from the majority of the population, particularly given the benefits which XR will deliver to the population both business and residential.

(9) Petitioners' costs

44. A number of petitioners have requested that the Promoter should pay their costs of petitioning Parliament. The Promoter submits

- (1) There is no power to award costs. S. 1 of the Parliamentary Costs Act 1865 (to be replaced by s. 10 of the Parliamentary Costs Act 2006 from 1.4.07) applies only to private bills (as does the new provision) not to hybrid bills which are public bills, introduced by Government ministers rather than by private bill procedure. The XR Bill was, of course, introduced by the Secretary of State for Transport;
- (2) Costs should not be awarded in any event as a matter of course since they may only be awarded where two further requirements are both satisfied:
 - (a) the provisions of the Bill have been altered to include provisions for the protection of the petitioner. This has not been done at least to date in the interim decisions;
and

¹³ See e.g. Day 68 §§18508-18536, Ms P Jones, with the Promoter's response at §§18538-18542 & 18553-18559.

¹⁴ *Andreae v. Selfridge & Co Ltd* [1938] Ch 1.

¹⁵ *Wildtree Hotels Ltd v. Harrow LBC* [2001] 2 AC 1.

- (b) the petitioner has been *"unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the Bill"*. That is a high test to meet and the Promoter submits it has not been met here.

(10) Update on the Access Option

45. The Committee said in their interim decisions that they wish to be updated on the Access Option.
46. The Access Option would provide security that XR trains can have sufficient access to Network Rail's network needed for XR to work as a project and to ensure that its benefits can be realised.
47. You will recall that there was unhappiness in the rail industry about using railway powers in the Bill to secure access to Network Rail's network. There was widespread support for using an Access Option instead, which is an existing industry mechanism under the Railways Act 1993. The Promoter therefore decided to negotiate an Access Option with Network Rail, which will then be subject to the approval of the Office of Rail Regulation (ORR).
48. The Promoter consulted widely on the policy document describing the planned Access Option, which was finalised and published in March 2006. You will recall that the cross industry Timetabling Working Group, under an independent chairman, oversaw work to demonstrate the feasibility of the XR timetable and look at growth issues. The Committee then heard evidence on this at some length last July.
49. Later that month the Promoter started to discuss heads of terms of the Access Option with Network Rail. Also at that time, Network Rail assumed the lead in further timetabling and other modelling work. This work is detailed in a note by Keith Berryman to the Committee of 17 July 2006.
50. As that paper described, the modelling work needed to support the Access Option application is very extensive. There has been consultation with interested parties through regular meetings of the Reference Group, chaired by Network Rail, that replaced the Timetabling Working Group. The results of the modelling work are emerging and the Reference Group is being consulted on them.
51. Preparing the Access Option is by its nature a contractual negotiation with Network Rail. It is built on a great deal of technical detail on operational and other issues. The work required has been particularly extensive because the use of access options has not been highly developed by the industry and each one is to a significant extent bespoke. The legal drafting will be in excess of 100 pages long.
52. Happily I can report that the Promoter and Network Rail are currently dealing with a handful of remaining issues, with the joint aim of formally agreeing the text within the next month. The Promoter and Network Rail are currently undertaking pre-application consultation with the ORR.
53. Once the Access Option is submitted to the ORR, together with the supporting timetabling modelling work results, the ORR will publish it and undertake industry consultation in the usual way. That process may include the holding of a hearing. The ORR's decision will be then be

taken in accordance with its statutory duties under the Railways Act that apply to all applications.

54. Assuming that the ORR's process follows a typical timetable for such applications, the decision would be in time to inform the Lords Select Committee and railway petitioners before they are heard. I know that some petitioners hoped that a much faster timetable could be achieved, but the Promoter has consistently said that this is not practicable. The Promoter and Network Rail have worked very hard to reach the current stage and the aim is to make a formal submission of the Access Option to the ORR within the next month.

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28 March 2007

ANNEX – DETAILED NOTES

A. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

1. Two issues have arisen frequently in the context of EIA and petitioners have variously made claims concerning:
 - (1) The inadequacy of the EIA process for the Bill and of the ESs produced for XR in particular;
 - (2) The failure to consider alternatives properly in the ES.
2. Much of what is set out here has already been explained in our letter to the Chairman dated 1 March 2007 in response to correspondence from the Woodseer and Hanbury Residents Association (Guy Carpenter) and the Spitalfields Small Business Association (Jil Cove). However, the points are of wider application.

(a) The legal framework

3. The Town and County Planning (Environment Impact Assessment) (England and Wales) Regulations 1999 do not apply directly to the passage of legislation through Parliament but to ordinary planning applications. However, they are applied in part by Standing Order 27A with regard to the production of an environmental statement ("ES"). Moreover, the Environmental Impact Assessments Directive ("the Directive")¹⁶ contains provisions relating to the consent for projects granted by national legislation in Article 1(5) which have also been followed here:

"This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process."
4. This has been interpreted by the European Court of Justice ("ECJ")¹⁷ as meaning that the legislative procedure should comply with the objectives of the Directive with regard to carrying out environmental impact assessment ("EIA"). The ECJ held in the *Linster* case as follows:

"54. Thus, it is only where the legislature has available to it information equivalent to that which would be submitted to the competent authority in an ordinary procedure for authorising a project that the objectives of the Directive may be regarded as having been achieved through the legislative process..."

56. As regards the degree of precision required of the legislative act, Article 1(5) of the Directive requires it to be a specific act adopting the details of the project. Its very wording must demonstrate that the objectives of the Directive have been achieved with regard to the project in question."
5. These principles have guided the production of the various environmental statements and the procedure adopted by the Promoter in the XR Bill process. Indeed, this was made clear in the first chapter of the main ES which was deposited with the Bill in February 2005:

¹⁶ Directive 85/337/EEC amended by Directives 97/11/EC and 2003/35/EC.

¹⁷ See e.g. *World Wildlife Fund v. Autonome Provinz Bozen* Case C-435/97 [2000] 2 P.L.R. 1 at paras 57-59 and *Grand Duchy of Luxembourg v. Linster* Case C-287/98 [2000] E.C.R. I-6917 at paras. 54-59.

"The Role of the Environmental Statement

1.2.5 The parliamentary procedures for the submission of hybrid Bills are contained in the Standing Orders of each House of Parliament relating to private business. In order to obtain exemption from carrying out EIA at a later stage, Article 1(5) of the EIA Directive (85/337/EEC)¹ requires that the objectives of the Directive, including that of supplying information, are achieved through the legislative process. Standing Order 27A accordingly requires that when a Bill which authorises the carrying out of works is submitted for approval through the parliamentary process, it shall be accompanied by an ES containing the information referred to in Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No. 293) and so much of the information referred to in Part I of the Schedule as is reasonably required to assess the environmental effect of the works and as the promoters can reasonably be expected to compile.

1.2.6 This ES has therefore been prepared for the XR project, in accordance with the requirements of Standing Order 27A and the EIA Regulations.

1.2.7 This ES describes the findings of the assessment of the likely significant environmental effects (both negative and positive) which has been undertaken for the XR project on behalf of the Secretary of State. The aim of the assessment has been to:

- identify the potential environmental impacts associated with the construction and operation of XR;
- identify measures to mitigate adverse significant impacts; and
- predict the magnitude and significance of any impacts which will remain.

1.2.8 The ES is a document provided for the purpose of enabling decision makers to make an assessment of the likely impacts on the environment arising from the project. The ES also provides stakeholders and the public with a basis on which to make representations to the decision makers, as appropriate, on the environmental impacts of the project. Further information on the assessment process, which led to the production of this ES, is given in Chapter 3."

(b) Judgment as to the adequacy of an environmental statement

6. The adequacy of the ES is a matter for the reasonable judgment of the decision maker, in this case Parliament. The Courts have frequently pointed out that merely because a party making representations about development proposals does not agree with the approach or contents of an ES does not mean that the document ceases to be a proper ES or one which is not fit for its purpose. Indeed, part of the purpose of consulting the public on the ES is to enable those who have views on the project as analysed in the ES to express their own views. Therefore, it does not follow that because petitioners can identify aspects of the ES with which they disagree it makes it any the less a valid ES.
7. As the High Court held¹⁸ in the proceedings which challenged the decision to proceed with the new Arsenal FC stadium (which had been controversial amongst local people at the time) the claims made about the ES there did not establish that the EIA process had been flawed (emphasis added):

"199. The Environmental Statement, therefore, is not just a document to which the developer refers as an Environmental Statement; it is that document plus the other information which the local planning authority thinks that it should have in order for the document to be an Environmental Statement. Accordingly, it is the local planning authority which judges whether

¹⁸ *R (Bedford & Clare) v. Islington LBC & Arsenal FC* [2002] EWHC 2044 Admin., Ouseley J.

the documents together provide what Schedule 4 [of the 1999 Regulations] requires by way of a description or analysis of the likely significant effects..."

"203. Whilst one should not be over-impressed by the volume or weight of documents -- and even very lengthy documents can omit significant factors -- I confess to approaching Mr McCracken's submissions with a degree of doubt as to whether the deficiencies to which he drew attention could be such as to mean that Islington could not reasonably regard the material as constituting an Environmental Statement. It is inevitable that those who are opposed to the development will disagree with, and criticise, the appraisal, and find topics which matter to them or which can be said to matter, which have been omitted or to some minds inadequately dealt with. Some or all of the criticism may have force on the planning merits. But that does not come close to showing that there is an error of law on the local planning authority's part in treating the document as an Environmental Statement or that there was a breach of duty in Regulation 3(2) on the local authority's part in granting planning permission on the basis of that Environmental Statement."

8. Further, in the Court of Appeal¹⁹, Carnwath L.J. issued a timely reminder that EIA was meant to assist, not hinder, the process of decision making:

"... the EIA process is intended to be an aid to efficient and inclusive decision-making in special cases, not an obstacle-race."

9. The Promoter submits that by any touchstone of reasonableness, the EIA process adopted for the Bill complies with the Directive and has shown a thorough and adequate series of ESs. The fact that there may be some flaws, or that some might disagree with elements of the ESs, does not render the ESs or the EIA process as a whole flawed.
10. We submit that the Committee can proceed on the basis, and so report to the House of Commons, that the EIA process has been conducted in a suitable and reasonable manner, that the information provided has met the relevant requirements of the Directive.
11. The Committee can be satisfied that the project should proceed taking account of the information provided in the ESs and that obtained from the public through the consultation process on those ESs, all of which together forms part of the information to be taken into account by Parliament.

(c) The requirement to consider alternatives in the ES

12. The obligation in the Directive with regard to alternatives is a limited one and does not require as a matter of European Law that alternatives should actually be considered. It also does not require that the ES should set out a full description of all the alternatives which have been considered.
13. What the Directive actually requires is that, if alternatives have been considered, that the main ones should be summarised in outline in the environmental statement with an indication of the main reasons for the choice made taking account of the environmental effects. The provision is found in Annex IV to the Directive in these terms:

"2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects."

¹⁹ *R. (Jones) v Mansfield DC* [2004] Env. L.R. 21, para. 58.

14. The sense of the Directive limiting the obligation is clear. An ES which had to set out in full all the details of all alternatives studied would be a massive document, unwieldy and would lead to confusion in consultation with the public being presented with a vast amount of detail not only relating to the scheme being progressed but all the alternatives to it. It therefore limits the obligation to an outline consideration of alternatives.
15. The repeated claim that there is an obligation to fully assess alternatives in the ES, put in different forms by different petitioners, is wrong:
 - (1) There is a no requirement to set out "full information" on alternatives, only to present an outline of the main alternatives for the project as a whole. Since the obligation clearly applies to the project as a whole and it would be wrong to focus on one part of the project in areas of specific concern to individual petitioners since the obligation applies to the project taken as a whole.
 - (2) There is clear evidence that the requirements of the Directive have been met.
 - (3) In terms of the requirements of the Directive and EIA, the main alternatives studied were summarised in Chapter 6 of the Main ES deposited with the Bill in February 2005. Specific issues of alternatives have also been addressed e.g. the alternative depot proposals as a result of AP3 and the alternative alignments in the Spitalfields area (addressed in our site-specific submissions and our letter to the Chairman dated 1 March 2007).
 - (4) If the level of detail required by some petitioners were produced in a project the size of XR, for the whole route, the ES would have been enormous, unwieldy and defeated the mechanism of public consultation because it would have been so large and would have been so difficult for members of the public to absorb and comment upon.
 - (5) What has been produced in the ES meets the legal requirement of providing an "outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects".

B. ÅARHUS AND THE PUBLIC PARTICIPATION DIRECTIVE (PPD)

1. The Åarhus Convention *on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1998) and the Public Participation Directive (Directive 2003/35/EC) ("PPD") which resulted from it, seeks to establish greater dissemination of information and public participation in environmental decision-making.
2. The Convention is not part of UK law except insofar as its provisions have been translated into legislation, either by the UK or through EU legislation. See e.g. The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006 S.I. 3295 (which are not applicable to Parliamentary proceedings).
3. It is important to note that the PPD only has implications for the Bill process to the extent that it modifies the EIA Directive to improve the requirements for dissemination of information, publicity and public participation. The amendments to the EIA Directive took effect on 25 June 2005. Of particular interest are the publicity requirements of the amended Article 6 of the EIA Directive which includes the duty to make available certain information "whether by public notices or other appropriate means such as electronic media where available".
4. The law therefore permits the dissemination of the relevant information by electronic means as well as through other media.
5. The requirements of Article 6 as amended by the PPD/ Åarhus provide:

"1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places where and means by which the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (1), information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article."

6. The PPD came into force after the deposit of the Bill and the commencement of the Bill process and so it is arguable that it does not apply to existing projects already underway. However, this does not matter since the requirements have been met with by the Bill process in any event:

- (1) There was extensive pre-Bill consultation on the XR proposals with the public awareness campaign in 2003, with the establishment of information centres, with a second awareness campaign in 2004 followed by a second round of Public Information Centres. Overall, there were 103 days of Information Centres at 55 locations across the XR route, attracting over 15,000 visitors. The consultation responses received were evaluated and were considered in the design of the project and mitigation measures associated with it. In 2005, an information round was implemented at Information Centres explaining the proposals for which powers are now sought in the Bill. See Day 1 §§32-40
- (2) Additional notice of the likely proposals was given in the CLRL Business Case [2003] and in the Montague Report [2004];
- (3) An "Aggregated Consultation Report - September 2005" is available which summarises the consultation process prior to Bill deposit (see CLRL website at www.crossrail.co.uk/pages/previousrounds.html);
- (4) The Bill and ES published with it gave ample information on the proposals, together with other information available from CLRL and DfT both in paper and electronic format;
- (5) Subsequent information through AP ESs and SESs and by other means has also been made widely available as APs have come forward;
- (6) The right to petition Parliament, in respect of which the Promoter stated at the outset that it would not generally take locus points, has allowed those wishing to raise issues with regard to the Bill to raise them before the Committee, to call evidence and question

witnesses for the Promoter, and for the Committee to request amendments and other steps to be taken via undertakings and assurances;

- (7) Deliberations and decisions made by Parliament with regard to XR are made publicly available through a number of media, including Hansard, the internet and Parliament's website. Committee proceedings are published on the website and can be listened to live via weblink or for a period of months as part of the internet archive of proceedings. [2 months?]
7. The provision of information on the Bill has been extensive and widespread. In addition to depositing documents in public libraries and with local authorities, and by responding to individual requests for additional information both generally and under Freedom of Information Act, significant amounts of information have been available electronically via the internet.
 - (1) Environmental statements for the Bill, and addendum, the APs and 3 supplementary ESs (SESs) (with an addendum for SES3) together with specialist more detailed technical reports which comprise work which fed into the ESs. These can all be seen on and downloaded from CLRL's website at no charge.
 - (2) The CLRL website is an important source of information (with a link from the Committee's own website) containing not only the Bill supporting documents (ESs, technical reports, plans, IPs) (<http://billdocuments.crossrail.co.uk/>) which can be accessed directly from the CLRL homepage but also, for example:
 - o consultation information (www.crossrail.co.uk/pages/roundone91.html)
 - o sheets/panels made available during consultation
www.crossrail.co.uk/80256B090053AF4C/Pages/A1BB30270FF459038025706D00496A26),
 - o information sheets
www.crossrail.co.uk/80256B090053AF4C/*view*/562B4262A4A7638F802570A50038AB53),
 - o EqlA (www.crossrail.co.uk/pages/crossrailequalityimpactassessment.html) and
 - o Health Impact Asst. (www.crossrail.co.uk/pages/healthimpactassessment.html).
 - (3) The DfT has maintained a Bill Site which also has a link from the Committee's own website:
www.dft.gov.uk/stellent/groups/dft_railways/documents/divisionhomepage/035435.hcsp.
8. There is therefore no fair or proper basis on which it can be shown that the procedure relating to the bringing forward, deliberation and justification for the Bill proposals has not accorded with the substance of the Convention or PPD requirements for participation or access to environmental decision-making.

