



# Government Overview of the Case for Crossrail and its Environmental Impacts



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Presented to Parliament by the  
Secretary of State for Transport  
by Command of Her Majesty  
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## Introduction

1. At Third Reading of the Crossrail Bill, the House of Commons will be asked to approve the Bill and, in so doing, give their approval to the building of Crossrail. Under the Environmental Impact Assessment (EIA) Directive, decision-making bodies are required to consider the environmental effects of projects when deciding whether or not they should be allowed to proceed.
2. 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)<sup>1</sup> 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 Environmental Statement containing specified information. Accordingly, the Government has produced an Environmental Statement for the Crossrail project in accordance with the requirements of Standing Order 27A and the EIA Regulations (as amended).
3. Unless the context otherwise requires, the term ‘Environmental Statement’ (‘ES’) in this paper refers to the entire suite of documents listed in the table in Appendix B, together comprising the Crossrail Environmental Statement. The term ‘the Main ES’ is used in cases to refer specifically to the Environmental Statement as originally produced (with its non-technical summary) when the Bill was introduced in February 2005.
4. The Government has made various documents<sup>2</sup> available to enable Members to consider environmental issues before deciding whether or not to approve the passing of the Crossrail Bill at Third Reading. The Government will also arrange for additional time to be allocated for Third Reading to facilitate debate of environmental issues. To approve the Bill at Third Reading, Members will need to be satisfied:
  - As to the adequacy of the Environmental Statement prepared by the Promoter of the Bill; and
  - That the Promoter has given sufficient consideration to alternatives to the Bill proposals.
5. To help inform the debate, this paper summarises the work that has already been done to assess, control and mitigate the environmental impacts of Crossrail, and explains why the Government continues to take the view that the Crossrail project is worthy of its support.

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<sup>1</sup> As amended by Directive 97/11/EC and, as from 25 June 2005, by Directive 2003/35/EC.

<sup>2</sup> See Appendix B for a list of these and other documents that may be relevant.

6. This report is not intended to be or take the place of the non-technical summary of the Crossrail Environmental Statement or, indeed, the Environmental Statement itself. The Government therefore advises Members to consult the Main ES produced on the introduction of the Bill and the supplementary statements produced following changes to the project requiring an Amendment of Provisions ('the APESs') or changes which, although not themselves requiring changes to the Bill powers, altered the significant environmental impacts and thus led to the publication of a Supplementary Environmental Statement ('the SESs'). Details of the official title of each document and the date deposited in the Private Bill Office in each House of Parliament is given in the table in Appendix B. Each was accompanied by a non-technical summary ('NTS') deposited on the same date.
7. In addition to considering the Environmental Statement, Members should also consider the views expressed:
  - In response to the Government's consultation on the Main ES, SESs and APESs. These were published in Command Papers 6603 (July 2005) and Command Paper 7249 (November 2007). Copies have been placed in the House Libraries; and
  - In the First Special Report of the Crossrail Bill Committee, Session 2006-07, on the Crossrail Bill, HC 235-I, published on 23 October 2007, with particular reference to Chapter 10 of that document.
8. Members may also wish to examine the various Information Papers ('IPs') that have been produced to address some of the more frequently raised concerns in relation to the Crossrail project, including its environmental impacts. A list of these IPs is contained in Appendix B along with other documents and sources of information that we consider may be relevant.

#### The Environmental Statement

9. When the Crossrail Bill was first introduced to Parliament, a lengthy Environmental Statement was produced to describe the likely significant environmental impacts of the Crossrail project. Since that time, further documents have been produced in the light of the assessment of changes to the project or where additional information became available after the production of the original statement - see the table in Appendix B for further details. It is not the purpose of this paper to reproduce or summarise those documents. However, it may be helpful to discuss in very broad terms the sorts of environmental issues raised by large scale construction such as is required for Crossrail.
10. It should be noted that although the ES consists of a large number of volumes, it should be considered as a single document which includes the nine volumes of the Main ES, the addendum to the Main ES, all four SESs, the four separate APESs, the SES errata and the nine NTSs' that were produced for each of the APESs, SESs and the Main ES. The totality of these documents forms the overall ES for the Crossrail project.

11. The ES describes the findings of the assessment of the likely significant environmental effects (both negative and positive) which has been undertaken for the Crossrail 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 Crossrail;
  - Identify measures to mitigate adverse significant impacts; and
  - Predict the magnitude and significance of any impacts which will remain.
12. 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 is given in Chapter 3 of the Main ES.
13. Whilst Crossrail would deliver significant socio-economic benefits (discussed in the latter sections of this paper) it is not possible to build a large public transport infrastructure project in a densely populated area such as London without some adverse impacts on people living and working on or near the intended route. When considering that route it was therefore necessary to balance a number of different considerations, attempting to maximise the benefits whilst minimising the adverse impacts and having due regard to other relevant factors such as implications for safety and affordability.
14. Constructing Crossrail would require temporary construction worksites, and the creation of new stations and associated infrastructure (e.g. ventilation shafts). Open space tends to be comparatively rare in central London and such large open spaces as exist tend to be highly valued (e.g. parks). Demolishing existing buildings to make space for construction worksites, on the other hand, can be a noisy and disruptive process and the buildings themselves may be particularly valued for economic, heritage or social reasons.
15. Even in locations where space is available (or a building can be demolished) that is not of significant value in itself, construction work can give rise to significant adverse environmental impacts. In particular, construction work can be noisy and involve the closure of roads and (in a case like this where work is being done on the railways) disruption to rail services.
16. Generally speaking, the Crossrail route does not go through areas of high ecological value. However, there are a small number of specific locations where Crossrail could have significant local impacts on ecology and a route wide significant adverse impact on ecology as a result of cumulative loss of habitat along the railway corridor.
17. A number of parties that are opposed to the proposals for Crossrail have challenged the adequacy of the ES, most frequently in relation to the absence

of detailed consideration of alternatives. Representative samples of correspondence with parties raising such environmental assessment issues are attached at Appendix D for information. Under the EIA Directive, the duty to assess alternatives relates to the scheme as a whole and is only a limited duty. The requirement (in para. 2 of Annex IV of the Directive) is to give (emphases added):

“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”.

18. 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. The obligation is therefore limited to an outline consideration of alternatives<sup>3</sup>.
19. The main alternatives to Crossrail (including whole route alternatives and alternative options for the central route and the eastern and western corridors) are outlined in Chapter 6 of the Main ES<sup>4</sup>. The Government is satisfied that it has fully met the requirements of the EIA Directive and made submissions to this effect to the Select Committee<sup>5</sup>.

#### Role of the Select Committee

20. Before introducing the Crossrail Bill to Parliament, the Government had already looked for ways to limit the likely environmental impact of Crossrail and to mitigate the adverse impacts that might be expected to arise (control and mitigation strategies are discussed further in the next section). However, this is an ongoing process. The Select Committee process (outlined below) has been particularly important in bringing to light environmental issues and considering whether more should or can be done to address specific points of concern.
21. The Crossrail Bill is a hybrid Bill and, as such, subject to a petitioning process. In total, 466 petitions were lodged against the Bill and its Additional Provisions and a Select Committee (chaired by Alan Meale MP) was established to consider those petitions. In many cases, the Government was able to satisfy petitioners without the need for a hearing before the Committee. In some cases this involved making changes to the project, in other cases petitioners asked for commitments about the way in which the project would be taken forward (see also paragraph 31 below) or were reassured by policies already put in place to meet their concerns. Those petitioners not satisfied with

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<sup>3</sup> The Government’s position on the consideration of alternatives is more fully set out in the letters contained in Appendix D and in the transcripts of evidence given in Committee on 20 March 2007 paras. 21025-21027 and 21144-21147; and 28 March 2007 para. 21423.

<sup>4</sup> In response to a specific point raised by petitioners, Chapter 6 of SES1 and Section 3.5 of SES3 also provided further information on alternatives to the Hanbury Street shaft.

<sup>5</sup> See the transcripts for Day 79 (20 March 2007) paras. 21025-21027 and 21144-21147; and Day 81 (28 March 2007) para. 21423.

the Government's response were able to raise their concerns directly before the Select Committee who then reached a view on whether the Government's approach was reasonable in the particular circumstances of that case. Of course, not all the concerns raised during the petitioning process were environmental in nature, but the majority of petitions did include at least some environmental concerns (e.g. the general impact of construction, and specific matters such as noise, dust and settlement were frequently mentioned).

22. The Select Committee process resulted in a number of changes to the project many of which, in whole or part, were aimed at reducing environmental impacts. Examples include:

- i) A revised depot strategy that would reduce the overall environmental impacts of the Crossrail project by removing the need for the construction of new facilities at Romford.
- ii) A revised tunnelling strategy that removed the need for an intermediate Tunnel Boring Machine (TBM) launch site at Hanbury Street and so eliminated the need for a temporary construction adit to Pedley Street and conveyer from there to Mile End Park, as well as allowing a reduction in the proposed size of the ventilation and intervention shaft at Hanbury Street.
- iii) A revised access route to the Gidea Park sidings works resulting in fewer properties experiencing significant noise impacts.
- iv) Revised proposals to enable the retention of certain built structures that were considered to have value from a heritage perspective, most notably four Brunel Bridges on the Great Western Main Line.
- v) Proposals to maintain navigational access to Poplar Dock and the Blackwall Basin, which eliminated a significant impact on ecology and significant impacts on Traffic and Transport and Community.
- vi) The decision not to pursue the proposed crossover in the area of the Barbican. A crossover is a track arrangement enabling trains to change tracks onto the opposite direction and thus be reversed. A review of the case for the crossover concluded that the benefits of the crossover would be outweighed by the cost and construction risk of building the crossover cavern. This has resulted in removal of the related construction worksites and avoidance of the impacts of those works.

23. There were also cases where petitioners raised environmental issues that fell outside of the Select Committee's remit. In such cases, the House instructed the Committee to report, without comment, on the issue raised so that the House itself could consider the matter (a copy of the instruction is in

Appendix C). They have since done so and this is contained in their Special Report<sup>6</sup>, copies of which are available from the Vote Office.

#### General Approach to the Control and Mitigation of Environmental Impacts

24. There will be a number of mechanisms in place to control the environmental impacts of Crossrail. Some of these are contained within the Crossrail Bill itself. For example, whilst the Bill effectively grants planning permission for the Crossrail project, this is subject to various requirements to obtain approvals of detailed matters. In particular, Schedule 7 to the Bill sets out the detailed approvals required from local planning authorities (and the grounds on which planning authorities may refuse approval and the sorts of conditions that they can set). Also of note is Schedule 16, which contains provisions setting out protections for various bodies likely to be affected by the works (for example, Part 3 of Schedule 16 requires the project to obtain the approval of the Environment Agency before carrying out certain works).
25. The Government has also developed various control and mitigation strategies which fall outside of the Bill, most notably the Environmental Minimum Requirements (EMR)<sup>7</sup>. The EMR will consist of a Construction Code, a Planning and Heritage Memorandum, an Environmental Memorandum and the undertakings and assurances given to Parliament and to petitioners during the passage of the Bill.
26. The Environmental Memorandum covers how the nominated undertaker<sup>8</sup> will address environmental issues such as ecology and nature conservation, landscape and water resources and looks at the wider strategy for addressing those issues rather than merely the construction process itself (as the latter is covered by the Construction Code). The Planning and Heritage Memorandum is primarily aimed at setting out an understanding between the Government and local authorities relating to the treatment of applications for detailed planning approvals under the Crossrail Bill but does also cover the strategy for dealing with heritage issues. The Construction Code deals with how the nominated undertaker will address a broad range of environmental issues including noise, vibration and air quality.
27. The EMR is being developed in consultation with local authorities and other key stakeholders and will be finalised by the time of Royal Assent. The third draft was published in November 2007<sup>9</sup>.
28. The controls contained in the EMR are a key element of the Government's overall strategy for ensuring that impacts which have been assessed in the Crossrail ES are not exceeded unless this:

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<sup>6</sup> The First Special Report of the Crossrail Bill Committee, Session 2006-07, on the **Crossrail Bill**, HC 235-I, published on **Tuesday 23 October 2007**

<sup>7</sup> See in particular Information Papers D1 'Crossrail Construction Code' and D2 'Control of Environmental Impacts'

<sup>8</sup> The nominated undertaker is the person who may construct and maintain the Crossrail works: that person's appointment would be in accordance with clause 46 of the Crossrail Bill.

<sup>9</sup> See <http://billdocuments.crossrail.co.uk/>

- Results from a change in circumstances which was not likely at the time of the ES; or
  - Would not be likely to have significant environmental impacts (meaning significant adverse impacts where the change is a modification to the current project); or
  - Would be subject to a separate consent process (and therefore further EIA if required).
29. In addition, the EMRs include a general requirement for any nominated undertaker to use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts caused by Crossrail, insofar as these mitigation measures do not add unreasonable costs to the project or unreasonable delays to the construction programme.
30. The Government has provided important undertakings to Parliament in relation to the enforcement of the EMR. On the first day of the Select Committee (17 January 2006)<sup>10</sup> the Government gave an undertaking in the following terms:

*“Chairman, in 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.”*

On Day 82 (10 July 2007)<sup>11</sup> the Government gave a further undertaking in the light of an amendment to the Bill as follows:

*‘in any case where a statutory undertaker is carrying out development for or in connection with the Crossrail project in reliance on the planning permission enjoyed in consequence of the provision of the Bill, of which the marginal note is extension of permitted development rights. The Secretary of State undertakes to take such steps as he considers are reasonable and necessary to secure compliance with such of the Environmental Minimum Requirements as he considers relate to that development and are not directly enforceable against that undertaking.’*

31. Many of the other undertakings and assurances that have been given during the Parliamentary process also relate to the control and mitigation of environmental impacts. Some of these are route wide but many deal with very specific, local concerns. For example, undertakings and assurances have been given to:

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<sup>10</sup> Day 1, paragraph 112 (Mr D Elvin QC).

<sup>11</sup> Day 82, paragraph 21686 (Mr T Mould QC).

- i) The Select Committee itself, such as the commitment to install floating slab track where the tunnels are within a defined distance of residential buildings and, more generally, in the Soho area (see the ‘Promoter’s Response to the Select Committee’s Interim Decisions’ at [www.dft.gov.uk/pgr/rail/pi/crossrail/crossrailresp](http://www.dft.gov.uk/pgr/rail/pi/crossrail/crossrailresp) for further details) to reduce the level of groundborne noise produced by the operation of the railway.
  - ii) Swanlea School, in relation to a range of issues of particular concern to the school, including potential noise and dust.
  - iii) The Corporation of London, in relation to the Barbican Concert Hall, where assurances have been given in relation to concerns relating to potential groundborne noise impacts on that particularly sensitive location.
  - iv) The Smithfield Market tenants, where assurances have been given in relation to their concerns, which primarily relate to maintaining access and controlling noise and dust.
  - v) Brentwood Borough Council, to provide planting (e.g. trees) to a particular group of householders, if they want them, that will reduce the visual impact of Crossrail on those houses.
  - vi) The London Borough of Hillingdon, to use all reasonable endeavours to agree possible alternative sites for the creation of permanent new ponds and associated wetland habitats to compensate for the impact of the Crossrail works on the Carp Ponds and Broad Dock Site of Metropolitan Importance.
32. A draft register of all undertakings and assurances given thus far in the process (excluding those that have either been carried out already or which will be carried out during the passage of the Bill) has been produced, published and sent to all petitioners twice, once in December 2006 and again in November 2007<sup>12</sup>. The register will continue to be updated as the Bill process continues, to include any further undertakings and assurances given. It will then be finalised after Royal Assent and the nominated undertaker will be required to comply with the undertakings and assurances thus recorded.
33. As noted in paragraph 30 the Secretary of State has given an undertaking to the Select Committee concerning the enforcement of the EMR, which includes all undertakings or assurances recorded in the register of undertakings and assurances.
34. Finally, in addition to the arrangements put in place specifically for Crossrail, there are general legislative controls that will apply to Crossrail in the normal

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<sup>12</sup> This can be accessed from <http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/ofundertakingsandassurances>

way, such as the existing requirements for waste management licences and discharge consents.

35. More information on control and mitigation strategies as they apply to different types of potential impact is provided in the next section. In addition, a range of information papers have been produced to address some of the more frequently raised concerns in relation to the Crossrail project, including its environmental impacts. A list of all Information Papers can be found at Appendix B, but see in particular Information Papers D1 ‘Crossrail Construction Code’ and D2 ‘Control of Environmental Impacts’.

#### Post-mitigation impacts

36. This section looks at the extent to which the Government expects to be able to prevent or compensate for significant adverse environmental impacts considering each category of impact in turn. It very briefly indicates the key measures that would be used and indicates whether significant impacts would arise despite mitigation.

#### **Noise and Vibration**

37. There are a number of strands to the strategy for controlling and mitigating noise and vibration impacts including proper consideration of design, the timing of work and use of noise barriers.
38. The Government has established surface construction noise trigger levels which, where the relevant triggers would be exceeded, would allow qualifying residents to apply for noise insulation, temporary relocation or both (see Information Paper D9 ‘Noise and Vibration Mitigation Scheme’). Similarly, the Noise Insulation (Railways and other Guided Transport Systems) Regulations 1996 as amended, set out a requirement to carry out or make a grant toward the provision of insulation works in eligible buildings, where noise levels from new surface railway, or additional tracks that will be located next to an existing surface railway, exceed certain thresholds and triggers set out in the Regulations. Despite these measures, there would be some noise impacts which would be considered significant for the purposes of environmental assessment. Moreover, it should be noted that these forms of mitigation can be inconvenient in themselves. Indeed, where ten or more residential properties within a community would qualify for temporary re-housing it has been assumed that there will be a significant community impact.
39. For more information on this subject, see Information Papers D9 ‘Noise and Vibration Mitigation Scheme’, D10 ‘Groundborne Noise and Vibration’, D25 ‘Noise from Fixed Installations’ and D26 ‘Surface Railway Noise and Vibration’.

## **Impacts on Townscape, Landscape, Visual Amenity, Heritage and Archaeology**

40. The Crossrail Construction Code sets out the provisions for controlling visual impacts during construction. For example during site set up consideration will be given to the location of fixed plant and machinery and temporary site accommodation in order to minimise environmental effects (including visual effects) as far as reasonably practicable within the constraints of the site. Any site lighting will be directed to minimise intrusion into occupied adjoining properties and site hoardings will be used for visual screening where appropriate. These measures represent appropriate industry practice but it is recognised that for buildings with close views, or from which sites can be overlooked, views of construction activities may not be able to be avoided. For this reason these properties have been identified in the Crossrail Environmental Statement as likely to experience significant visual impacts during construction.
41. New permanent structures can also have an impact on townscape and visual amenity. Buildings authorised by the Crossrail Bill are subject to a detailed approvals process that would enable local authorities to refuse or condition permission for the construction of the building if it reasonably concludes that the design or external appearance can and should be modified to preserve the local environment or amenity. This is explained further in Information Paper B5 ‘Main Provisions of the Planning Regime’.
42. Impacts on townscape and visual amenity resulting from the demolition of buildings, can be mitigated by replacement buildings (known as “over-site development” – “OSD”) providing they are suitably designed. Any building not authorised by the Bill (including OSD) would be subject to normal planning procedures and separate environmental assessment where appropriate. However, concerns were raised by stakeholders regarding townscape impacts from the demolition of buildings in or adjacent to a conservation area and, as a result, the Government has given undertakings to Parliament regarding the bringing forward of planning applications for OSD in such cases. See Crossrail Information Paper D18 ‘Listed Buildings and Conservation Areas’ for further information. With regard to concerns relating to settlement, see paragraph 50 below.
43. In designing Crossrail, the Government has sought to avoid adverse impacts on listed buildings wherever practicable but this has not been possible at some locations. The construction of Crossrail would result in the demolition of three listed buildings and the modification of a further eighteen. Mitigation for these sites is site specific and is the subject of ongoing discussions with the relevant local authorities and English Heritage.
44. Despite control and mitigation measures some significant adverse impacts would arise in relation to townscape, landscape, visual amenity and heritage.
45. There is potential for finding archaeological remains at many sites across the Crossrail route. Although excavations and other construction works have the

potential to damage these archaeological resources, the process of detailed assessment, evaluation and consultation will ensure that appropriate control measures will be implemented to mitigate these impacts, for example through the recording of remains prior to construction. In addition, a policy has been developed to deal with the discovery of unexpected remains (see Information Paper D22 ‘Archaeology’).

## **Traffic and Transport**

46. Although Crossrail would have significant net benefits for traffic and transport overall, construction work would inevitably give rise to adverse impacts (e.g. disruption to rail services, road and footpath closures and increased lorry traffic). A few areas will experience permanent adverse impacts (e.g. loss of parking as a result of new permanent Crossrail structures).
47. The Crossrail Bill provides for local authorities to approve the routes for lorries. Under the terms of the Construction Code, the nominated undertaker will also be required to maintain, as far as reasonably practicable, existing public access routes and rights of way during construction. Lorry Management Plans and Traffic Management Plans will be produced in consultation with highway and traffic authorities and the emergency services. This should help to reduce the inconvenience caused, but it is not possible to avoid creating significant adverse impacts altogether.
48. Further information on this subject can be found in Information Papers D6 ‘Construction Traffic’, D19 ‘Highways and Traffic During Construction — Legislative Provisions’ and D20 ‘Traffic Management During Construction’.

## **Community and Socio-Economic Impacts**

49. Whilst Crossrail would have obvious socio-economic benefits and provide many communities with increased access to important facilities, there will also be some adverse impacts in particular areas. These would arise from a variety of sources including the relocation of residents who qualify for temporary rehousing under the noise mitigation policy (as temporary rehousing can cause permanent disruption to a community) and from the closure of businesses located on sites needed for the construction of Crossrail. Some of these impacts can be mitigated through methods discussed elsewhere in this section (for example, methods for mitigating traffic and transport impacts that also impact on access to important community facilities are discussed above). For others, potential for mitigation has to be considered on a site by site basis. Despite mitigation, significant adverse community and socio-economic impacts will arise in certain locations.

## **Settlement**

50. The best way to mitigate against settlement is through the use of good tunnelling practice, including continuous working, erecting linings immediately after excavation and providing tight control of the tunnelling process. Where these are considered insufficient to mitigate the risk of damage

to buildings, intrusive mitigation measures will be considered. These may include direct works on the building, although in most cases will be limited to ground treatment around and beneath the building. Ground movement over the area affected by settlement will be monitored to ensure that it is within predictions (and to alert the project to the need to take additional precautions if necessary). These mitigation measures are sufficient to avoid any significant adverse impacts arising in practice. See Information Paper D12 ‘Ground Settlement’ for further information. The approach taken to assessing risk of damage from settlement is based on considerable previous experience (e.g. from the Jubilee Line) and is based on very robust, conservative assumptions<sup>13</sup>.

51. The Government will also make provision to reimburse property owners for the reasonable costs they incur in remedying any material physical damage arising from ground settlement caused by the authorised works, subject to certain conditions. A settlement deed has been developed, which the owner of a building meeting various qualification criteria can request that the nominated undertaker enters into. This is a formal legal undertaking concerning settlement, setting out specific requirements in relation to matters such as assessment of the risk of settlement, monitoring, protective works (where relevant) and compensation for any damage caused. It is not necessary to enter into the deed in order to benefit from the settlement policy. See Appendix B to Crossrail Information Paper D12 ‘Ground Settlement’ for further information.

## **Ecology**

52. The Crossrail proposals will not affect any statutorily designated ecological sites, such as Sites of Special Scientific Interest. It is predicted that 21 non-statutorily designated ecological sites will be directly affected. Significant cumulative impacts are predicted for habitat loss along the north-east and south-east surface railway corridors. Fortunately, railway habitats tend to regenerate with relative ease so a permanent impact is unlikely.
53. Land which is temporarily required in connection with the project will normally be restored to its former nature conservation value. Where a site identified as being of importance to nature conservation is permanently destroyed, reduced or fragmented, the Government will seek to replace the habitat lost. Similarly, protected species will be moved to safety and habitat provision will be made for them. Given these measures, no significant impact on protected species is predicted. See Information Papers D17 ‘Ecological Impacts’ for further information.

## **Dust**

54. A wide range of measures will be put in place to control dust to mitigate adverse impacts on air quality. These include ensuring that vehicles carrying potentially dusty materials are fully sheeted and providing wheel-wash facilities near site exits and ensuring their use. Sites with a high risk of

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<sup>13</sup> And the evidence of Professor Robert Mair on Day 8 (1 February 2006) at para. 2390.

generating dust will be subject to higher standards of dust control. See Chapter 6 of the Construction Code (appended to Information Paper D1 ‘Crossrail Construction Code’) for further details. These mitigation measures are sufficient to avoid any significant adverse impacts in practice.

### **Water Resources, Contaminated Land and Electromagnetic Fields**

55. The assessment presented in the ES shows that changes to the electromagnetic environment will not have any impact on human health. A management strategy has been developed in consultation with the local authorities to manage the risks associated with contaminated land which includes carrying out risk assessments and identifying and implementing potential remediation techniques to remove or reduce the amount of the contaminant in the soil. The legislative provisions relating to contaminated land will apply to Crossrail in the same way as to other projects. See Information Paper D4 ‘Treatment of Contaminated Land’ for further details.
56. Similarly, measures will be put in place to prevent pollution of controlled water sources. Indeed, the Environment Agency will need to give its approval for works that are likely to affect water resources and may set site specific conditions to prevent pollution and to protect the water resources in question.
57. Consequently, the project does not expect significant adverse impacts to arise in any of the above categories.

### Need for and Benefits of Crossrail

58. Since the mid-1980s, both the population of London and the number of people working there have increased. These changes have taken place, and continue to take place, alongside a substantial growth in travel as a whole, including increases in journey lengths and a spreading of peak flows across longer periods of the day from the traditional ‘rush hour’. As a result of these pressures, rail has become more popular as a means of travelling to, from and within London. These factors mean that London’s transport networks experience high levels of overcrowding on a daily basis.
59. This overcrowding is exacerbated by long-term shortcomings of the rail network, which have become more serious as the network has become busier. The key characteristics of rail services in central London that have implications for the accessibility of the area are as follows:
  - Since the National Rail termini are on the edge of the central area, the majority of passengers need to interchange onto the Underground, buses or taxis to reach their final destinations. This results in significant congestion at the London termini;
  - Many people need to walk at interchanges between services and most complete their journey to their final destination on foot; and
  - The capacity for additional National Rail services into London is constrained by the physical and financial constraints of expanding the

London termini and the capacity of the routes on the approach to London.

60. Future growth will only increase the existing over-crowding and congestion unless steps are taken to improve capacity. Crossrail is a key element of the strategy to respond to the challenge facing London and the south east.

61. Crossrail would:

- Generate GDP benefits of at least £20bn over 60 years by freeing transport constraints on employment growth in the UK's most productive areas.
- Generate significant tax revenues for the Government.
- Generate journey time benefits and congestion relief benefits to London Underground and National rail services worth £16bn over 60 years.
- Provide significant regeneration benefits to the Thames Gateway, Lea Valley and the "Western Wedge" in west London.
- Improve accessibility to key London town centres, hospitals, places of education, and social and cultural amenities, thus increasing social inclusion.
- Attract passengers from private cars, reduce the number of road accidents and generate new public transport revenue worth at least £6bn.
- Create 14,000 new jobs during construction, and 1,000 when fully operational.
- Improve international links by connecting Heathrow airport with the West End, the City and the Isle of Dogs, serving Stratford station (for interchange with the Channel Tunnel Rail Link), and enabling more services to Stansted Airport by releasing rail capacity at Liverpool Street.
- Improve transport opportunities for people with reduced mobility through new step-free Crossrail stations.

62. In particular, Crossrail would have three key strategic benefits. Firstly, it would support the development of London as a world city and in its role as the financial centre of Europe and the United Kingdom; secondly, it would 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, it would improve rail access into and within London. For more information on the need for, and benefits of, Crossrail see the Montague Report<sup>14</sup> and Chapter 4 of the Main ES.

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<sup>14</sup> This document was published in July 2004 under the title 'Review of the Crossrail Business Case'. It reports the findings of a review led by Adrian Montague.

## Human Rights

63. The Secretary of State has considered the implications of the Crossrail Bill for the human rights of those affected by the proposals. The Bill was duly certified as compliant with the European Convention on Human Rights and it is considered that this remains the position.
64. With regard to fair trial rights under Article 6, which have been raised by some petitioners, it is not considered that these are engaged by the passage of legislation through Parliament but, in any event, the petitioning process and hearings before the Select Committee have ensured that those affected have had a proper and fair opportunity to present their concerns to Parliament. If Article 6 did apply, it would have been amply met by the petitioning process.
65. With regard to rights under Article 8 (right to respect for the home, family and private life) and Article 1 of the First Protocol (right to the peaceful enjoyment of possessions), it is considered that the interference with those rights that Crossrail may cause is justified by the considerable public benefits which Crossrail will bring. As mentioned elsewhere in this paper, it is impossible to bring forward a project such as this, through the centre of a great city, without causing some adverse impact to those living and working there. However, the interference will be proportionate when considered in the context of those considerable benefits together with the availability of compensation under the national Compensation Code, the many undertakings and assurances given by the Department and the adjustments made in the case of individual petitioners required by the Select Committee. Under national policy relating to the compulsory purchase of land, a compelling case in the public interest must be shown to exist before compulsion can be justified. This requirement is amply met given the public benefits which Crossrail will bring.

## Summary and Conclusion

66. The Government brought forward the Crossrail Bill because, after considerable investigation into the costs and benefits, it concluded that the Crossrail project was in the wider public interest. See in particular the Montague Report<sup>15</sup> and Chapter 4 of the Main ES for further information on the work done to assess the case for Crossrail prior to the introduction of the Bill.
67. Taken as a whole, Crossrail would have considerable benefits not only for transport, but also for the communities that it would serve and for the economy of both those areas and the UK as a whole. Although it is inevitable that a major construction project of this type would also have significant adverse impacts, as outlined in this paper and set out in greater detail in the Environmental Statement, the Government has put in place a variety of control and mitigation strategies and the project as a whole will continue to look for ways to reduce the overall adverse impacts. The work already done by both

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<sup>15</sup> This document was published in July 2004 under the title ‘Review of the Crossrail Business Case’. It reports the findings of a review led by Adrian Montague.

the project itself and the Select Committee has further improved the balance of benefits to disbenefits and the Government is, therefore, more than satisfied that this project remains worthy of its continuing support.

68. A summary of the reasons for Government's proposal to endorse Crossrail has been provided at Appendix A. The Government urges the House to endorse its view and to give their approval for this important strategic project.

## **Appendix A: Summary of reasons for Government's proposal to endorse Crossrail**

The following is a summary of the main factors taken into account, the main mitigation measures and the main benefits of Crossrail on which the Government has formed the view that Crossrail remains in the public interest notwithstanding the unavoidable environmental impacts of such a project. The Government is content that it has fully met the requirements of the EIA Directive.

### **Main documents considered:**

- The Environmental Statements (as amended and supplemented)
- Consultation responses (both through select committee (see Select Committee Reports) and direct to Government (see Consultation Command Papers 6603 of July 2005 and 7249 of November 2007.))
- Main alternatives studied by developer

### **Main factors taken into account:**

- Noise, vibration
- Townscape, landscape, visual amenity, heritage and archaeology
- Traffic and Transport
- Community and Socio-Economic Impacts
- Settlement
- Ecology
- Dust
- Water Resources, Contaminated Land and Electromagnetic Fields

### **Main mitigation measures:**

- Project changes which address specific concerns, for example:
  - Revised tunnelling strategy
  - Revised depot strategy
- Enforceable undertakings and assurances
- Bill provisions, including:
  - Make planning permission subject to detailed approvals
  - Requirements for certain approvals from bodies with relevant statutory duties
- Environmental Minimum Requirements made in consultation with local authorities and other key stakeholders containing strategies to control/mitigate adverse effects (and enforceable by a Government undertaking to Parliament), including:
  - Noise and Vibration Mitigation Scheme
  - Worksite hoardings
  - Traffic Management Plans (made in consultation with relevant bodies)
  - Use of good tunnelling practice and monitoring of ground movement
  - Provision to reimburse property owners reasonable costs for remedying material physical damage from ground settlement
  - Restoration of land to former nature conservation value

- Replacement of lost habitats
- Removal of protected species to safety (and new habitat provision)
- Dust control measures
- Management strategy with local authorities for contaminated land
- Measures to prevent pollution of controlled water resources

Main benefits:

- Supporting development of London as a world city
- Supporting economic growth of London
- Improving rail network by:
  - Tackling congestion and lack of capacity
  - Improving rail access into and within London
- Creation of new jobs both during and after construction
- Supporting significant growth in UK exports
- Improving international links and travel
- Improving transport opportunities for people with reduced mobility
- Improving sustainability of environment by promoting public transport
- Regeneration

## **Appendix B: List of Information Papers and Other Sources of Information**

This appendix lists various sources of information that the Department considers may be relevant to the consideration of the environmental effects of the Crossrail proposals, including websites from which further information can be obtained.

### **1. Environmental Statement**

Note that non-technical summaries (NTSs) were produced for each of the documents below (except for the SES errata), on the same date as the actual ES, APES or SES.

<b>Document</b>	<b>Date Deposited</b>
Environmental Statement (together with an addendum) and accompanying NTS	22 February 2005
Supplementary Environmental Statement (SES1) and accompanying NTS	26 May 2005
Supplementary Environmental Statement 2 (SES2) and accompanying NTS	18 January 2006
Amendment of Provisions Environmental Statement (APES 1) and accompanying NTS	18 January 06
Amendment of Provisions Environmental Statement 2 (APES 2) and accompanying NTS	9 May 2006
Amendment of Provisions Environmental Statement 3 (APES 3) and accompanying NTS	7 November 2006
Supplementary Environmental Statement 3 (SES3) and accompanying NTS	7 November 2006
An SES3 errata	25 January 2007
Supplementary Environmental Statement 4 (SES4) and accompanying NTS	16 May 2007
Amendment of Provisions Environmental Statement 4 (APES 4) and accompanying NTS	16 May 2007

### **2. Information Papers**

Electronic copies of these documents are available from the internet at <http://billdocuments.crossrail.co.uk>. Please note that these are in the process of being updated following the conclusion of the House of Commons Select Committee process and that more recent versions may be available on-line.

- A1 Development of the Crossrail Route
- A2 Service Pattern
- A3 Capacity on the Great Western Main Line
- A4 Ventilation and Intervention Shafts
- A5 Abbey Wood to Ebbsfleet
- A6 Selection of Western Termini
- A7 Selection of the North Eastern terminus

B1 Disapplication of Legislation  
B2 Limits of Deviation  
B3 Compliance with Undertakings and Assurances  
B4 Acquisition of Land Outside the Limits of Deviation  
B5 Main Provisions of the Planning Regime  
B6 Time Limits

C1 Information for Property Owners  
C2 Operation of the National Compensation Code  
C3 Advance Claims Under Part 1 of the Land Compensation Act 1973  
C4 Small Claims Scheme  
C5 Additional Safeguarding  
C6 Recovery of Costs by Property Owners  
C7 Access to Residential and Commercial Property During Construction  
C8 Purchase of Property in Cases of Hardship  
C9 Land Acquisition Policy  
C10 Land Disposal Policy  
C11 Claims for Compensation for Intensification of Use

D1 Crossrail Construction Code  
D2 Control of Environmental Impacts  
D3 Excavated Material and Waste Management Strategy  
D4 Treatment of Contaminated Land  
D5 Site Reinstatement  
D6 Construction Traffic  
D7 Maintenance of Public Utilities  
D8 Tunnel Construction Methodology  
D9 Noise and Vibration Mitigation Scheme  
D10 Groundborne Noise and Vibration  
D11 24-Hour Working  
D12 Ground Settlement  
D13 Restitution of Open Space  
D14 Worksite Security  
D15 Implementation and Staging  
D16 Use of Local Labour  
D17 Ecological Impacts  
D18 Listed Buildings and Conservation Areas  
D19 Highways and Traffic during Construction — Legislative Provisions  
D20 Traffic Management During Construction  
D21 Access for People with Restricted Mobility During Construction  
D22 Archaeology  
D23 Sprayed Concrete Lining  
D24 Tunnelling Duration and Construction Strategy  
D25 Noise from Fixed Installations  
D26 Surface Railway Noise and Vibration

E1 Passenger Car Parking  
E2 Cycle Carriage and Cycle Parking  
E3 Retail Space  
E4 Public Safety, Security and Crime Prevention

E5 Provisions for People with Reduced Mobility  
E6 Freight Operations

F1 Inclusivity  
F2 Pre-Bill Consultation Process  
F3 Community Relations  
F4 High Level Forum  
F5 Complaints Commissioner

G1 Romford Depot — Facilities and Construction  
G2 Heathrow Access and Stockley Flyover  
G3 Location of Hanbury Street Shaft  
G4 Tottenham Court Road — 94 Dean Street  
G5 Revised Depot and Stabling Strategy  
G6 London 2012 Olympic Games and Crossrail

H1 Timetabling & Growth  
H2 Railway Compensation  
H3 Crossrail Access Option  
H4 Railway Powers in the Crossrail Bill

Electronic copies of these documents are available from the internet at:  
<http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/informationpapers>

### **3. Other Documents that may be of particular interest**

‘The Environmental Minimum Requirements’ - note that this document has yet to be finalised but the latest draft is available from:  
[http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/\(includingdraftconstructioncode\)](http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/(includingdraftconstructioncode))

‘Responses to the Government’s Consultation on the Crossrail Bill Environmental Statement’ (Command Paper 6603 published in July 2005). This is available from the House Library.

‘Further Responses to the Government’s Consultation on the Crossrail Bill Environmental Statement’ (Command Paper 7249 published in November 2007). This is available from the House Library.

First Special Report of the Crossrail Bill Committee, Session 2006-07, on the Crossrail Bill, HC 235-I, published on 23 October 2007. See  
<http://www.publications.parliament.uk/pa/cm/cmcross.htm#reports>.

‘Review of the Crossrail Business Case’ published in July 2004. It reports on the findings of a review led by Adrian Montague. See  
<http://www.dft.gov.uk/pgr/rail/pi/crossrail/archive/reviewofthecrossrailbusinesscase>

The Crossrail Bill and its accompanying Explanatory Notes. See  
<http://www.publications.parliament.uk/pa/cm200506/cmbills/001/2006001.htm>

Register of Undertakings and Assurances (the second draft of November 2007 is available from the CLRL website at <http://billdocuments.crossrail.co.uk/80256FA10055060F/pages/ofundertakingsandassurances>)

The Government's responses to the Select Committee's Interim Decisions of 25 July 2006 and 12 July 2007 (both available from the DfT's website as below)

#### **4. Websites**

Crossrail website: **[www.crossrail.co.uk/](http://www.crossrail.co.uk/)**

The Crossrail Select Committee website:

**[www.parliament.uk/parliamentary\\_committees/crossrail.cfm](http://www.parliament.uk/parliamentary_committees/crossrail.cfm)**

DfT website (Crossrail section): **[www.dft.gov.uk/pgr/rail/pi/crossrail/](http://www.dft.gov.uk/pgr/rail/pi/crossrail/)**

DCLG website (EIA section):

**[www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/](http://www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/)**

## **Appendix C: Extract from record of Votes and Proceedings: 19 July 2005**

**19 Crossrail Bill [Instruction].—A Motion was made, and the Question being put forthwith, pursuant to Order [this day], That it be an Instruction to the Select Committee to which the Crossrail Bill is committed—**

(a) that the Select Committee, without comment, report to the House for its consideration any issue relating to the environmental impact of the railway transport system for which the Bill provides that is raised in a Petition against the Bill, but which the Select Committee is prevented from considering by the practice of the House; and

(b) that, in applying the practice of the House, the Select Committee treat the principle of the Bill as including—

- (i) the termini of the railway transport system for which the Bill provides, and
- (ii) the provision of intermediate stations at Paddington, Bond Street, Tottenham Court Road, Farringdon, Liverpool Street, Whitechapel, the Isle of Dogs and Custom House—*(Mr Vernon Coaker)*.

The House divided.

Tellers for the Ayes, Tony Cunningham, Mr Ian Cawsey: 311.

Tellers for the Noes, Andrew Selous, Mr Henry Bellingham: 114.

So the Question was agreed to.

**Appendix D: Examples of correspondence on consideration of alternatives**

<b>DATE</b>	<b>CORRESPONDENT</b>
29/04/05	Woodseer and Hanbury Residents Association to DfT
27/06/05	Woodseer and Hanbury Residents Association to DfT
08/07/05	Woodseer and Hanbury Residents Association to DfT
10/08/05	DfT to Woodseer and Hanbury Residents Association
14/02/07	Woodseer and Hanbury Residents Association to Chair of Crossrail Select Committee
01/03/07	Landmark Chambers to Chair of Crossrail Select Committee
04/04/07	Woodseer and Hanbury Residents Association to Chair of Crossrail Select Committee
04/05/07	Landmark Chambers to Chair of Crossrail Select Committee
07/06/07	Woodseer and Hanbury Residents Association to Landmark Chambers
05/07/07	DfT to Woodseer and Hanbury Residents Association
25/04/07	Residents Society of Mayfair and St James to DfT
09/05/07	Residents Society of Mayfair and St James to DfT
25/05/07	DfT to Residents Society of Mayfair and St James
02/06/05	Bindman and Partners to DfT
15/07/05	DfT to Bindman and Partners
10/08/05	DfT to Bindman and Partners

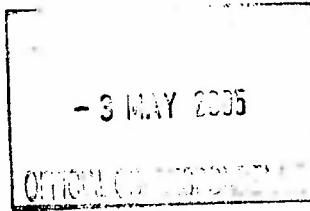
F0001465  
WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

Very Urgent

Alistair Darling  
Department of Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

April 29, 2005



Dear Mr Darling

**Re: Crossrail Proposals under the Benchmark Scheme in Spitalfields**

Please find the attached letter, in which we state our general concerns and request proper notification to comment on the Environmental Statement, the determination of the benchmark route, the consideration of alternatives and the Crossrail Bill itself, which is to be carried over to the next Parliament.

WHRA followed your recommendation to await the publication of the Environmental Statement (alongside the deposit of the bill on February 22, 2004) in which, you informed us that proper consideration of alternatives would be elaborated. Having seen the Environmental Statement, there does not, however, appear to be any proper consideration of the alternatives. The new benchmark route a is substantially different to the old-1991-safeguarded route in the Spitalfields are because of the 'significant detrimental effects' on this densely populated residential community. Accordingly we hope the Secretary of State is fully aware that the safeguarding of the new benchmark scheme legally requires the consideration of reasonable alternatives. Having given the Montague report and Crossrail's Environmental Statement our due attention on this point, we are very concerned that you have allowed the Crossrail Hybrid Bill to be deposited without fulfillment of the duty to consider alternatives.

CLRLL (Cross London Rail Links Ltd) have failed to provide information to support their justification for the Hanbury Street tunnelling site or indeed any other worksite in Spitalfields and we therefore now seek this information in accordance with the Freedom of Information Act.

We are aware that CLRLL is a joint venture between the Department for Transport (DfT) and Transport for London (TfL). We believe that information has recently been denied to other groups owing to the formal structure of CLRLL, which has been suggested may fall outside the Freedom of Information Act. We understand that you have supplied information in the spirit of the act to some parties but not others and therefore urge you to provide all relevant information to adversely affected parties in a non-discriminatory manner. We are now in the position of again requesting information, which we were told would be contained in the Bill.

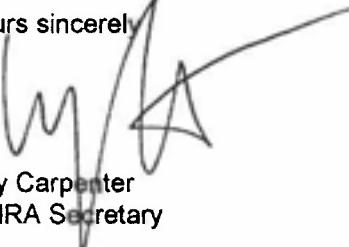
We now request that your department and you as the Secretary of State now supply the following information:

1. CLRLL still have not provided information to justify placing a tunnelling worksite in the densely populated areas of Hanbury Street or elsewhere in Spitalfields. CLRLL previously claimed the site was justified on the basis of a legal requirement was wholly misleading. The legal requirement to which CLRLL and the Mayor refer applies to a ventilation shaft only but not to a tunnelling site and access shaft.
2. CLRLL still have not substantiated claims of money and cost savings with documented evidence. We again request the costings and time estimates for tunneling with or without tunneling construction access.
3. It would appear that that Spitalfields residents are being discriminated against as no intermediate tunnelling shafts of the size proposed in the densely populated Spitalfields, have been sited in the West End or indeed the City, which is the primary beneficiary of the Crossrail scheme. Would DfT comment on this?
4. CLRLL have failed to provide a report on the consideration of alternatives.
5. CLRLL engineers admitted in a public meeting organised by Labour MP Oona King, who described the consultation process as "woeful", that time-savings attributed to an intermediate tunneling shaft in Spitalfields had been exaggerated. WHRA requested analysis from CLRLL engineer Keith Berryman for tunnelling from the ends rather than the Hanbury Street Shaft but this information is still outstanding.
6. We again request a cost benefit analysis of the Shenfield branch, the ventilation shaft both with or without a tunnel construction site and Whitechapel station in order to be able to present this information to City analysts for their consideration.
7. We understand CLRLL has produced a NATA study and we therefore request a copy.
8. We request that you properly comment on the flawed consultation process to-date given that there has been no remedy for the exclusion and provision of misleading information prior to the safeguarding and determination of the route. Can your department confirm which department is responsible for the safeguarding?
9. Why did your department approve safeguarding of the new benchmark route even though the major changes in the Spitalfields area required the consideration of viable alternatives given the likely harm from the Crossrail proposals?
10. We request you comment on the inaccurate Racial Impact Assessment as you are aware of the discrimination during the CLRLL consultation, which included the failure to provide information in the languages of the local area, Bengali Sylheti and Somali and the inadequacy of the ostensibly independent CLRLL Referee.
11. You will no doubt be aware of the need to be consistent and fair without discriminating against groups on the route. We wish to ask if the Secretary of State is satisfied that groups in Spitalfields have been treated the same as those in Richmond?
12. Local Spitalfields groups have recently become aware that viable alternatives such as the 'Southern River Route', which has been put forward by alternative promoter Superlink, was abandoned without proper consideration. What steps has the Secretary of State taken to ensure the 'Southern River Route', which would cause less harm to communities and comply with the duty to mitigate any harm, is given reasonable consideration?
13. What steps has the Secretary of State taken to ensure the lawfulness of the Crossrail Bill given CLRLL's failure to publish or provide adequate evidence of considering all reasonable alternatives to the Spitalfields community?
14. What steps will the Secretary of State take to rectify the poor quality of

- information provided in the Environmental Statement produced by CLRLL when compared to the failed previous scheme?
15. Why has Crossrail not produced full reasons for dismissing reasonable alternatives if, indeed, they were ever properly considered?
16. Why has the Secretary of State failed to instigate a contingency for Crossrail's failure to provide such information? Do you believe this amounts to a derogation of power?

We finally, ask that you respond within fourteen days due to the urgency of the issues and look forward to hearing from you.

Yours sincerely,



Guy Carpenter  
WHRA Secretary

Please confirm receipt of email

cc Donald Stark, Timothy Neate, Norman Haste

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

## VERY URGENT

Alistair Darling  
Department of Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR  
Email cc: [alistair.darling@dft.gsi.gov.uk](mailto:alistair.darling@dft.gsi.gov.uk), [Timothy.Neate@dft.gsi.gov.uk](mailto:Timothy.Neate@dft.gsi.gov.uk),  
[donald.stark@dft.gsi.gov.uk](mailto:donald.stark@dft.gsi.gov.uk)

April 29, 2005

Dear Mr Darling,

**Re: Procedure of Crossrail Bill**

WHRA (Woodseer and Hanbury Residents Association) is concerned about serious procedural flaws in the present Crossrail Hybrid Bill following legal advice.

We have since received advice that the process for the present Crossrail Hybrid Bill is inadequate because it denies the public an opportunity to comment on the Crossrail proposals, the poor quality of the Environmental Statement and the determination of the benchmark scheme. We are advised that the published Environmental Statement and deposit of the Crossrail Bill on February 22, 2005, should have been accompanied with proper notification for the public to comment. Furthermore, any comments would need to be made prior to the second reading in order to be given due consideration or influence the principle of the Bill.

However, we are not aware of the Department for Transport (DfT) or Cross London Rail Links Ltd (CLRLL) making any statement or giving any notification to the public about the need to comment on the Crossrail proposals and the Environmental Statement at any stage. We certainly have not received any notification or published information of the form, timing and nature of comments on the Crossrail Bill or the Environmental Statement either as residents or in our capacity as a residents' association. Indeed, the Government guidance produced suggests that the public will not need to comment on the Crossrail proposals until the petitioning stage, which is after the second reading.

We are also advised that evidence about how the Crossrail benchmark scheme proposals in the Spitalfields area were determined using two years of "flawed" consultation, which despite excluding a large part of the community, will not be given due consideration by Parliament or the Select Committee under the current process. We would therefore request the public and Select Committee are given an adequate remit to consider the conduct of CLRLL in selecting the benchmark scheme. We believe the Select Committee are entitled to consider the practical application of the Code of Practice on the Dissemination of Information during Major Infrastructure Projects.

We therefore request the Department for Transport provide full information on the following points in accordance with the Freedom of Information Act:

1. It is understood there is a legal requirement to give the public a proper opportunity to comment on the Crossrail Bill. However, it is now evident that further comment from the public was required after the Bill was deposited but significantly, prior to determining the principle of the Crossrail Bill and the second reading but this information has been denied to the public. Indeed, this information would not have been available to WHRA had its members not sought legal advice. To this end, we request an explanation and proper information with timely notification for responding to the Crossrail Bill so as to ensure the lawfulness of the process and proper consideration of any public comments.
2. The DfT need to issue guidance given the failure to notify the public about the need and time limits as this would have reduced the ability of the public to comment on flawed aspects of the Crossrail proposals, the benchmark scheme or influence the principle of the Crossrail Bill. This would effectively prejudice the interests of our members as we understand that once a Hybrid Bill is presented, it would be difficult to argue against the established “principle” of the Crossrail Bill.
3. The DfT must provide full information to ensure the public is not denied a right to comment on the Crossrail proposals. A request for information from the DfT, about what, how and when the principle of the Crossrail Bill be formulated and how will it be subsequently determined, is still outstanding. We have also asked your department to confirm if the principle of the Bill will include tunnel alignments or any major changes such as rejecting the tunnelling access in the Spitalfields area if CLRLL continue to deny information for its justification.
4. The procedures and the scope of the Crossrail Hybrid Bill and the information made available by CLRLL does not give the public, Parliament or the Select Committee enough information to consider the adequacy of the benchmark scheme or to determine the principle of the Bill.
5. The remit of the Select Committee has not been made available denying the public information prior to commenting. Furthermore, any limitation to amend a remit that is too narrow denies the public fair comment.
6. The Crossrail Bill requires a proper mechanism to ensure the public right to comment is not impaired as stated above otherwise a Transport and Works Act may better serve this purpose.
7. The DfT does not appear to have issued proper guidance to Parliament or the public about the rights of affected parties who do not have locus standi. Those outside the compulsory purchase zone will not have locus standi even though they will be affected by traffic, noise, vibration, dust, dirt, pollution and disruption to the quality of their life from Crossrail, which has been described as “Europe’s largest infrastructure project”. This would lead to unlawful discrimination.

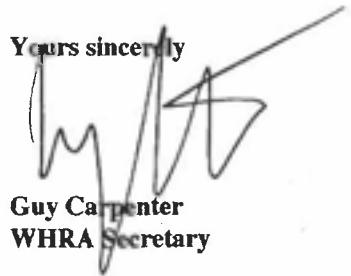
You will be aware that the “flawed” public consultation conducted by CLRLL leaves stakeholders and affected members of the public with little confidence in the current process and the Bill in its present form. There is an onus to provide timely information in order to give the public an opportunity to comment on the proposals. We anticipate the

failure, to give proper and timely notification about the need to comment on the Crossrail Bill and the Environmental Statement, will be rectified without any further delay.

You may also be aware we have reason to believe the present Crossrail Bill violates the Human Rights Act.

We ask you to give your urgent consideration to the points raised above and the attached letter and anticipate a speedy response.

Yours sincerely

A handwritten signature in black ink, appearing to read "GC".

Guy Carpenter  
WHRA Secretary

End

A hard copy is in the post, please confirm receipt of email

cc Donald Stark, Timothy Neate

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

Very Urgent

27 June 2005

Derek Twigg

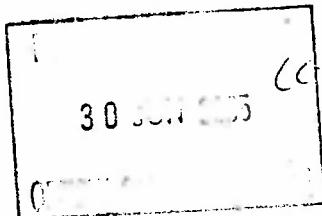
T.O.

- Anthony Ferguson

2/08

report to PS/DT

GMH



We are writing collectively as the Woodseer and Hanbury Street Residents Association, which is based in the Spitalfields area of London. We as part of a coalition of groups in Tower Hamlets and London wish to ask for your help in relation to the Crossrail Hybrid Bill, which if passed in its present form, will cause unnecessary harm to London's communities.

Crossrail propose two major work sites in Spitalfields, which will be the only densely populated neighbourhood along the so-called preferred (and now safeguarded route). The Hanbury Street Shaft and the Pedley Street site will involve the following. Crossrail plan to dig a 50' wide 50' deep shaft to launch 3 massive tunnelling machines into the ground. The spoil from the shaft will involve the construction of a conveyor belt prior to which it will be removed by 10 ton lorries (at least four per hour) through narrow roads near homes and schools. Indeed the route of the lorries will reopen Buxton Street between two schools. A Street that was closed when two children were killed.

In the case of the Channel Tunnel Rail Link, the Select Committee insisted works should follow existing rail lines situated on main roads to mitigate environmental harm and human health hazards. However, Crossrail have chosen to situate two major worksites in the heart of a densely populated area claiming that their preferred method including a work site in Spitalfields is the only feasible way to dig the tunnels. Crossrail made misleading claims that there was a legal requirement but this applies to a ventilation intervention shaft not a harmful tunnel access shaft and worksite. Despite using £154 million of taxpayers money, Crossrail have not produced a cost benefit analysis or information on alternatives such as tunnelling from the ends (as for the channel tunnel rail link), using existing rail lines or the Thames River for removal of spoil by barge. Crossrail have produced a poor Environmental Statement and did not carry out any environmental or health impact study prior to selecting the site contrary to best practice multi-modal approaches as originally demanded by the Minister of State.

The former Minister of Transport for London, Tony McNulty said the consultation has been flawed and the London Borough of Tower Hamlets has said the consultation is inadequate. However, the Government are intent on pushing the bill through its first and second readings in the New Year. This will set the principle of the scheme in its present form in stone, which will include the preferred route and methods of tunnelling and only allow mitigation during the petitioning phase. However, Crossrail have failed to provide the justification for locating the worksites in the Spitalfields area and we believe that the local council Tower Hamlets plans show the real reason for siting two major worksites in a densely populated area is to exploit land for development purposes leading to the displacement of ethnic populations in area that was the first portal of every immigrant community in the UK.

Crossrail is a project that will never pay for itself. It will cost much more than the 2002 estimate of £15 Billion and may cost as much as £20 Billion (the cost of 40 new hospitals or more than 400 new schools). London will be subsidising this suburban railway forever. The residents and small businesses of Spitalfields will be paying the greatest price for a service designed to connect Canary Wharf to Heathrow and make the commutes from Shenfield and Maidenhead even easier. Crossrail is a 5-day commuter service primarily benefiting the City while causing harm to London's communities and its Environmental Statement does not even produce a cost benefit analysis against alternative strategic and metro rail schemes Crossrail Northern Interchange Route (CNIR) and the Superlink Southern River Route, both of which would involve less harm to London's communities and are equally viable but seem to have been rejected without proper justification. Londoner's and taxpayers across the country deserve value for money. We understand the Mayor and the Government may leave the public underwriting the cost for the present Crossrail Bill. We believe if London will be paying for this railway forever (sacrificing other potential projects) it should have the highest Environmental and Health standards and should not openly violate human rights. The current Crossrail plan did not take these factors into account. The proposed bill has therefore not taken in to account these issues that comprise the multi-modal approach demanded by the Minister of State. We ask you to consider this flawed and inadequate Bill, which violates human rights, otherwise it runs a real risk of being rushed irrevocably through Parliament and the Lords.

Yours sincerely  
**Guy Carpenter**  
**Secretary of the WHRA**

Residents met with Mayor Ken Livingstone to discuss alternatives to Crossrail proposals in the Spitalfields area on June 21. They informed the Mayor that evidence of experts advising residents was recently corroborated by Tower Hamlets Council engineers Arups, who state that the route alignment in Spitalfields has the worst curvature on the line. It is unsuitable for tunnelling, the large proposed shaft and spoil removal sites because of the infrastructure and geology. All of this is likely to cause harm, which is unnecessary. As a summary, we attach a list of outstanding questions, a 6-point summary of the harm and the unsuitability of the worksites and the full Arups report. Due to the likely devastation, concerned residents had found a compromise solution after meeting with experts. The alternative requires tunnelling from the ends but eliminates harm across Tower Hamlets and allows the Mayor to have a Whitechapel Station, for which there is no economic or environmental case. The Mayor rejected the proposal and even claimed it would give the "poor opportunities". It is difficult to understand how risking the lives and properties of people in one of the poorest boroughs in London will achieve this aim.

Spitalfields residents were particularly concerned about the Mayor's claims that "Crossrail could not have done more to mitigate harm to people". Engineers dispute claims about the cost implications of tunnelling from the ends, environmental mitigation and consideration of reasonable alternatives are without foundation. Neither the Mayor nor Crossrail have provided evidence justifying the above claims. This may account for why the Mayor opened the meeting saying everything he said was, "without prejudice". Residents were further surprised, in a previous meeting, when acting chief executive of Crossrail laughed when asked if he knew about his legal obligations.

The Crossrail Bill in its present form:

1. Prevents some resident and tenants living less than 20m from the site from having locus standi (legal standing) during the petitioning phase
2. Does not properly assess or consider the harm to a host of London's communities (Bow, Brentwood, Mayfair, Mile End, Spitalfields, Romford)
3. Does not show a proper assessment of alternatives despite repeated requests
4. Does not address significant outstanding issues and details of the proposals even though the Bill has been deposited and £154million use of public monies
5. Violates human rights and does not fulfil EIA requirements
6. Does not show taxpayers liabilities or how the scheme is to be financed

Residents have been forced to seek legal advice because of intransigence and the Crossrail Bill has been presented despite a flawed process. A letter drafted by barrister Richard Harwood of 39 Essex Street, has been sent to the Department for Transport highlighting the catalogue of failures. We believe the Government should not go forward with the Crossrail scheme until these serious issues have been resolved.

Cross London Rail Links Ltd, hereafter referred to as 'Crossrail', are legally required to consider alternatives, supply information requested by the public and allow them an opportunity to comment in order to ensure compliance with the Environmental Impact Assessment Directive and human rights provisions. We have been concerned about failures to comply as it leaves Crossrail open to a legal challenge incurring significant delays to the project.

To this end, please can we have answers to the following questions:

1. We understand Channel Tunnel Rail Link engineers comprehensively considered alignment alternatives for each section and produced an audit trail justifying their choice of the preferred route. Is there any evidence that Crossrail has produced systematic comparisons of alternatives? If not, why not?
2. Has Crossrail considered any alternative route alignments between Liverpool Street to Canary Wharf?
3. Has Crossrail considered any options without Whitechapel Station?
4. We understand from evidence that the six sites in Spitalfields were considered without environmental data and without proper consultation contrary to Article 1(5). Crossrail have failed to justify interference with the property rights of residents or showed any proper consideration of alternative alignments, contrary to human rights provisions. As the benchmark route and location of worksites in Spitalfields, is likely to cause significant harm, how will Crossrail remedy this error?
5. Why were alternatives such as tunneling from the ends not produced until after the deposit of the Bill and the production of the Environmental Statement?
6. Why did Crossrail engineers not produce any analysis to consider any alternatives to sites in Spitalfields prior to settling on the benchmark route?
7. The possibility of tunneling from the ends instead of going through Spitalfields was produced after the Environmental Statement after it was requested by residents, who are not engineers. Why and what are the reasons for not considering and comparing alternatives before choosing alignments?

- 8. Crossrail have not produced any evidence to show compliance with NATA, the Government's New Approach to Transport Appraisal, which assesses five criteria; economy, safety, accessibility, integration and environment. Please note that Crossrail has placed the Summary Transport case on their website. Can Crossrail provide a detailed Transport Case or any other underlying reports?**
- 9. Why will homeowners not be provided with guarantees or full compensation with consequential losses akin to those provided in Rome and Barcelona given the decision to tunnel under historic and residential properties and evidence showing the likelihood of harm?**
- 10. Keith Berryman stated worksites in Spitalfields were a political decision and that the Whitechapel Station, was requested by the Mayor. To assist the Spitalfields community in understanding the reasons for this decision, could we have reports and copies of the minutes of meetings and discussion between the Mayor and Crossrail on the matter of Whitechapel Station and worksites in Spitalfields?**
- 11. What are the economic, social, environmental and engineering reasons for the construction of the Whitechapel Station? When will Crossrail provide a cost benefit analysis?**
- 12. Crossrail state a cost benefit analysis was not produced for Whitechapel Station or other stations. However, we have evidence that a Crossrail station in Woolwich was rejected on the basis of cost in relation to benefit. What is the reason why Crossrail has not produced a cost benefit analysis for Whitechapel Station and comparative analysis of having and not having worksites in Spitalfields?**
- 13. If the extra cost of tunneling from the end is expected to result in a considerable increase in overall cost, economist argue that this suggests the project is borderline, what would happen if there were any severe overruns?**
- 14. Crossrail state they intend to build and use conveyor belt technology to remove spoil in Spitalfields due to problems associated with transporting spoil by road in the narrow and densely populated area of Spitalfields. However at the meeting, Mr Berryman stated that "it was too early to give details about the conveyor belt technology as it has to go out to tender". He compared the conveyor belt technology to a place called Gerrards Cross but went on to admit significant differences as it was being used in a car park, the area had different infrastructure and there was no need for sound attenuation. We would therefore request full details of the conveyor belt technology.**

- 15. In evidence given to the Transport Committee on July 22, 2004, Crossrail stated they would consider all alternatives before making a decision about worksites in Spitalfields. In light of the Environmental Statement, it is clear that Crossrail only considered six worksites in Spitalfields and have produced a reason why tunneling from the ends is not possible. Why have Crossrail not considered reasonable alternatives to Spitalfields after giving assurances to the Mayor and the Transport Committee?**

### **Conclusion**

**We believe the evidence suggests that the Crossrail Bill in its present form fails to justify interfering with property rights contrary to human rights provisions and does not fulfil the requirements of the Environmental Impact Assessment Directive. We call on the Mayor to work with the Spitalfields community and remedy these errors.**

**We request the above information to be supplied as Supplementary Evidence to the Environmental Statement. We would request that Crossrail provide reasons why important information about the Crossrail proposals in the Spitalfields area is being produced after the Bill was deposited on February 22, 2005.**

**We request all the above information under the Environmental Information Regulations and the Freedom of Information Act. We are grateful for the input of all those who attended the meeting of June 13<sup>th</sup> and hope to discuss the issues raised in these questions at the meeting with the Mayor on June 21, 2005.**

**Please submit any responses, which are produced in advance:**

**By email: whrauk@yahoo.co.uk FAO Secretary Guy Carpenter  
Hardcopy: Guy Carpenter, WHRA Secretary, 55 Hanbury Street, London E1 5JP**

## **WHRA      Harm from Crossrail Proposals in the Spitalfields area**

1. **Benchmark route alignment through Spitalfields** "The resulting railway alignment is described as favourable yet elsewhere it is noted that it necessitates the worst substandard curvature on the line." (See A41)
2. **Launching three tunneling machines** "the decision to split the tunnel drives into a number of shorter drives was programme based. The reasoning behind this is not adequately explained. The decision appears questionable given the slow tunnelling rates assumed (as discussed above), the additional complexity and therefore additional risk involved in launching drives from Spitalfields and the inevitably greater impact on third parties in the Spitalfields area."(See A66)
3. **An Emergency Intervention Point (EIP)**. The EIP in Spitalfields is the size of a tunneling site but need only be the size of a small London house. "It is understood that shaft sinking, tunnelling and related works have the potential to have an adverse environmental impact on adjacent areas and facilities. In the LBTH area, impacts may include noise and vibration, dust, ground settlement, traffic disruption and discharges to drains or watercourses." (See 3.1)
4. **Likelihood of harm to lives and properties** "There is much precedent experience of difficult to control water bearing sands occurring at this horizon in east London and such conditions could be extremely hazardous to such a shield and by extension to overlying property if control of the tunnel face stability was lost."(See 3.12) Experts say impact could be up to a quarter of a mile radius.
5. **Spoil site** The suitability of the Great Eastern Lines for spoil disposal is not fully explained. Can Crossrail confirm that adequate train paths and capacity are available to ensure that the decision to remove spoil by rail will not impact construction works progress ...? (See A41)
6. **Increase traffic, noise (up to 85dbA) and excessive pollution** Tower Hamlets is one of the most polluted boroughs in the country, in 2003 it exceeded acceptable levels of air pollution in all three of the borough's monitoring stations. COMEAP, the Committee on the Medical Effects of Air Pollution, state in their QUARK Study that the "quantification of the effects of air pollution in the UK show that deaths occur earlier and that hospital admissions for respiratory disease are probably both caused de novo and advanced by exposure to air pollution." A study commissioned by the Austrian Ministry of Health in March 2001 states: "it was found the noisier the neighbourhood, the higher the children's blood pressure, heart rate and level of stress hormones... The children were grouped into those who lived in areas with noise levels of less than 50 decibels and those who lived in a place, which had noise levels higher than 60 decibels. It was found background noise had a "significant effect" on stress."

**In short, our experts and now Arups for Tower Hamlets Council confirm, the case for the worksites in Spitalfields is not proven and Crossrail proposals in the Spitalfields area will lead to unnecessary social, economic and environmental harm. Crossrail need to undertake extensive further work prior to seeking any permissions or settling on any scheme in Spitalfields.**

**21 June 2005**

## **WHRA      Harm from Crossrail Proposals in the Spitalfields area**

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**In short, our experts and now Arups for Tower Hamlets Council confirm, the case for the worksites in Spitalfields is not proven and Crossrail proposals in the Spitalfields area will lead to unnecessary social, economic and environmental harm. Crossrail need to undertake extensive further work prior to seeking any permissions or settling on any scheme in Spitalfields.**

**21 June 2005**

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

## Very Urgent

Alistair Darling  
Department of Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

Email cc: Alistair.darling@dft.gsi.gov.uk, derek.twigg@dft.gsi.gov.uk,  
edmund.cullen@dft.gsi.gov.uk, timothy.neate@dft.gsi.gov.uk,  
keithberryman@crossrail.co.uk

July 8, 2005

Dear Sirs,

### **Re: Comments on Crossrail Bill**

The comments outlined in this letter express the outstanding concerns of the Woodseer and Hanbury Residents Association (WHRA) about the impact of Crossrail proposals in the Spitalfields area.

You are no doubt aware that Dr Keith Bowers of Arup's has produced a report on the Crossrail proposals for the London Borough of Tower Hamlets. We believe the community has been severely prejudiced by the delay because Tower Hamlets Council only commissioned Arup's six weeks prior to the deposit of the bill. However, pro bono experts advising the WHRA arrived at similar conclusions without having access to an allocated initial budget of £100,000. The Arup's report considers the merits and likely impact of the Crossrail proposals in the Spitalfields area and confirms the views of pro bono experts on the flaws of the Crossrail proposals in the Spitalfields area as well as the inadequacy of the Environmental Statement (ES) and the subsequent Supplementary Environmental Statement (SES) as produced by Cross London Rail Links (CLRL).

In previous correspondence, the Department for Transport stated, that our requests for information or responses had not been clear. We hope your department and CLRL will note, that all requests are made under the Freedom of Information Act and are highlighted in **bold**.

We request that Parliament and the Select Committee are made fully aware and that you duly note the following, as part of our comments, on the Supplementary Environmental Statement. The Secretary of State for Transport has moved the Crossrail Bill to its second reading on July 18, 2005 despite serious concerns about the petitioning process, locus standi, the bill violating human rights, the public being effectively prevented from commenting on the proposals because information has still not been made available, experts raising serious concerns about the risk of harm and a failure to consider viable alternatives that prevent unnecessary harm across the borough of Tower Hamlets.

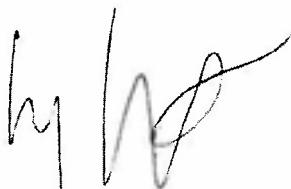
We also attach questions, sent to CLRL, Mayor Ken Livingstone and hand-delivered to Derek Twigg MP, Minister of State for Transport, on June 10 2005 and June 27 2005, respectively. We request the answers to all of the outstanding questions. We are advised that CLRL must provide the details of the outstanding information in relation to Crossrail works in the Spitalfields area prior to seeking any permission in that area. As the information is still outstanding, we reserve the right to ask further questions prior and after the second reading of the Crossrail Bill and would under Article 6 request that the burden of proof is placed on CLRL for failing to provide details of the scheme.

We will seek to challenge the Crossrail Bill on human rights grounds and call on the Secretary of State to allow a new Joint Committee of Human Rights to comment on our previous and revised human rights submission. If not, we would seek the reasons for rejecting this request?

The available evidence shows that the Crossrail proposals as negotiated by Tower Hamlets Council were ill-conceived and that the Bill process in its present form, does not comply with EIA requirements, violates human rights and prejudices third party rights. The public are presently being given information about the Crossrail proposals piecemeal, and this prevents the public from commenting.

The concerns outlined in this letter are not exhaustive and any comments are made without prejudice and the WHRA reserves the right to add further comments at any time. We consider the second reading to be premature and believe the Crossrail Bill is likely to lead to a legal action incurring significant delays.

Yours sincerely



Guy Carpenter  
WHRA Secretary  
Enc

**WHRA Comments on Crossrail Bill**

55 Hanbury Street

London E1 5JP

Tel: 020 7247 6192

Email: [whrauk@yahoo.co.uk](mailto:whrauk@yahoo.co.uk)

**July 8, 2005**

Please consider the following comments on the Environmental Statement (ES) and Supplementary Environmental Statement (SES) of the Woodseer Hanbury Residents Association on the Crossrail Bill presently before Parliament.

- 1. The Arup's report casts serious doubt on the merits and justification for the Hanbury Street Shaft, the Pedley Street spoil site and the route alignment through Spitalfields. What action will the Secretary of State give that pro bono experts agree with Arup's that information produced by CLRL on proposals in the Spitalfields, is insufficient, and what has been produced, does not stand up to scrutiny?**
- 2. Benchmark route alignment through Spitalfields "The resulting railway alignment is described as favourable yet elsewhere it is noted that it necessitates the worst substandard curvature on the line." (See A41) What is the justification of a substandard curvature?**
- 3. Launching three tunneling machines "the decision to split the tunnel drives into a number of shorter drives was programme based. The reasoning behind this is not adequately explained. The decision appears questionable given the slow tunnelling rates assumed (as discussed above), the additional complexity and therefore additional risk involved in launching drives from Spitalfields and the inevitably greater impact on third parties in the Spitalfields area."(See A66) Why are the estimates produced by CLRL slow? Why are CLRL using overly complex methods, what are the costs of these methods and what risks do they carry?**
- 4. An Emergency Intervention Point (EIP). The EIP in Spitalfields is the size of a tunneling site but need only be the size of a small**

London house. "It is understood that shaft sinking, tunnelling and related works have the potential to have an adverse environmental impact on adjacent areas and facilities. In the LBTH area, impacts may include noise and vibration, dust, ground settlement, traffic disruption and discharges to drains or watercourses." (See 3.1) **Why is the EIP so large and why has a smaller EIP not been considered in a densely populated residential area?**

5. **Likelihood of harm to lives and properties** "There is much precedent experience of difficult to control water bearing sands occurring at this horizon in east London and such conditions could be extremely hazardous to such a shield and by extension to overlying property if control of the tunnel face stability was lost."(See 3.12) Our surveying experts say structural impact could affect properties up to a quarter of a mile radius. **Will the Government ensure that CLRL guarantees that structural harm will not occur to residential properties in or outside the compulsory purchase zone area? As CLRL and the Government are proposing works in a residential area where structural harm is likely, will the Government and Crossrail provide full compensation including consequential losses in line with the good practice methods adopted in Rome and Barcelona?**
6. **Spoil site** The suitability of the Great Eastern Lines for spoil disposal is not fully explained. **Can Crossrail confirm that adequate train paths and capacity are available to ensure that the decision to remove spoil by rail will not impact construction works progress?** (See A41)
7. **Increase traffic, noise (up to 85dbA) and excessive pollution** Tower Hamlets is one of the most polluted boroughs in the country, in 2003 it exceeded acceptable levels of air pollution in all three of the borough's monitoring stations. COMEAP, the Committee on the Medical Effects of Air Pollution, state in their QUARK Study that the "quantification of the effects of air pollution in the UK show that deaths occur earlier and that hospital admissions for respiratory disease are probably both caused de novo and advanced by exposure to air pollution." A study commissioned

by the Austrian Ministry of Health in March 2001 states: "it was found the noisier the neighbourhood, the higher the children's blood pressure, heart rate and level of stress hormones... The children were grouped into those who lived in areas with noise levels of less than 50 decibels and those who lived in a place, which had noise levels higher than 60 decibels. It was found background noise had a "significant effect" on stress." **What are the reasons for subjecting a large residential population to harmful noise pollution?**

8. It is clear that there is doubt about the merits, justification and risk assessment of the Crossrail proposals in the Spitalfields area. CLRLL must carry out further work as the extent of the information provided on the Hanbury Street and Pedley Street site is insufficient for the purposes of seeking lawful permission and an exemption under Article 1 (5) of the Environmental Impact Assessment Directive. **What efforts has the Secretary of State undertaken to ensure that the proposals fulfil EIA requirements and do not contravene human rights?**
9. **Insufficient information for tunnelling site and shaft location:** "there were a number of aspects of the base case which were not fully explained or justified solely by the evidence in the reports. These included a number of highly significant factors such as the choice of shaft location in Spitalfields and the need to use the Spitalfields shaft as a launch location for tunnel drives." (see 2.2) "Alternative plausible strategies have been identified which would not require tunnel drives to start in Spitalfields to meet the project objectives. CLRL has not, as yet, clearly demonstrated that these alternatives could not be successfully employed. This raises the possibility that all the proposed surface works between Pedley Street and Mile End Park together with much of the activity at Hanbury Street might not be necessary." (see 3.5) It would appear even experts doubt CLRL's claim of needing to locate the shaft site in Spitalfields. The harm in the borough of Tower Hamlets may be entirely unnecessary and yet CLRLL and Tower Hamlets Council negotiated the Crossrail proposals. **What other reasonable alternatives to Spitalfields were considered by CLRLL?**

- 10. Impacts and Problems** "It is understood that shaft sinking, tunnelling and related works have the potential to have an adverse environmental impact on adjacent areas and facilities. In the LBTH area, impacts may include noise and vibration, dust, ground settlement, traffic disruption and discharges to drains or watercourses." (see 3.1) **When will CLRL provide sufficient information on the likely harm from drains and watercourses?**
- 11.** "Simple and cheap open face tunnelling shield for the drives between Hanbury Street and Whitechapel Station. In this area the limited geological information presented by CLRL ... There is much precedent experience of difficult to control water bearing sands occurring at this horizon in east London and such conditions could be extremely hazardous to such a shield and by extension to overlying property if control of the tunnel face stability was lost." (see 3.12) "incomplete ground investigation" (see 2.5) If this part of London has extremely hazardous conditions. **What is the basis of the Secretary of State allowing the Crossrail Bill proposals in Spitalfields to have a second reading if there is a likelihood of causing harm to the lives and homes of people in Spitalfields and Whitechapel?**
- 12.** A41 The resulting railway alignment is described as favourable yet elsewhere it is noted that it necessitates the worst substandard curvature on the line. **What are the implications of a substandard curvature?**
- 13.** The suitability of the Great Eastern Lines for spoil disposal is not fully explained. **Can Crossrail confirm that adequate train paths and capacity are available to ensure that the decision to remove spoil by rail will not impact construction works progress given the likely advance rate of the TBMs?** The base scheme will not minimise the potential impact on existing buildings and other infrastructure in the area. A scheme, which deleted the adit to Pedley Street and the various headings around the shaft would clearly have less potential impact. During the initial so-called awareness phase,

CLRL did not even tell people about the Pedley Street site. **Since, why has CLRL not produced information on the suitability and likely harm from the Pedley Street site? Why has a scheme without the adit on Pedley Street not been considered?**

14. **Further information and potential solutions** "At the present time, the insufficiency of the information received from CLRL means that definitive conclusions cannot yet be reached on all the questions that have been raised. As a result it is currently concluded that the merits of CLRL's base case design are not proven. Specifically, the merits of the Hanbury Street shaft site and the launch of tunnelling machines are not proven. Plausible alternatives to the base case for these works exist and cannot be ruled out as better solutions at this time." (see 6.1) **We understand CLRL have produced a draft report on alternatives but has not been made available to the public, please can the Secretary of State confirm the reasons for this?**
15. "This must be demonstrated to be the variant which best balances the need to minimise the impacts listed above with the need to deliver the Crossrail scheme with the appropriate budgetary, quality, programme and safety targets." (see 3.3) CLRL have not produced enough information to evaluate risks properly. **When will proper risk analysis information be produced?**
16. "In the event that the tunnelling strategy was changed and Spitalfields was no longer the launching area for the tunnel drives a shaft location would still be needed between Liverpool Street and Whitechapel, primarily to meet LFCDA requirements. However, many of the constraints on the location of the shaft would be removed and a range of sites may be possible". (see 3.9) **What if, any alternatives to tunnelling in Spitalfields, have been considered? Where is the evidence of this consideration? If none, why not?**
17. "It might also no longer be necessary to have the shaft arranged directly over the tunnels." (see 3.9) **Why has the**

**possibility of not having a shaft over the tunnels been considered?**

18. "Under questioning CLRL have acknowledged that their geological information in this area is incomplete and that further investigations are needed...this issue will not be resolved until better site investigation information is available which may not be until after the Parliamentary process is complete." (see 3.13) **Why is the Secretary of State allowing CLRL to present proposals in Spitalfields when geological information is outstanding and tunnelling in the Spitalfields area is likely to prove hazardous?**
19. "If an end to end tunnelling strategy were to be adopted the tunnels in this area would necessarily be driven with a closed face tunnelling machine which would largely mitigate the concern about controlling the ground conditions." (see 3.14) CLRL now admit that end to end tunnelling is possible despite originally claiming that this would not be possible or it would cost too much. Keith Berryman claimed this is a political decision. **Was the Secretary of State part of the political decision for tunnelling from Spitalfields? Did the Secretary of State want a Whitechapel Station? If so, please can you provide all material that led up to this decision-making process?**
20. "There may be alternative plausible approaches to the tunnel construction of Crossrail which may give rise to reduced impacts within the LBTH area. These include solutions which do not require tunnel drives to be launched and serviced within the borough and solutions involving different shaft arrangements between Liverpool Street and Whitechapel" (see 4.2) **Where is the evidence showing proper consideration of alternatives that do not require tunnel drives to be launched and serviced in the borough before CLRL accepted the base scheme?**
21. "The argument for the base case should be considered not proven at this stage" (see 4.3) **What are the arguments for**

**the base scheme when compared to reasonable alternatives as outlined by Arup's and other experts?**

22. The failure to even legitimise the base case shows the Crossrail proposals in the Spitalfields area do not stand up to scrutiny. **What action will the Secretary of State now take to ensure the case for the base scheme is proven?**
23. "The particular issue of the tunnelling machine type to be used between Hanbury Street and Whitechapel and the associated geological risks should also be kept open until the risks can be shown to be adequately mitigated." (see 5.5) **Does the Secretary accept that the failure to show proper risk assessment is unacceptable for a project seeking an exemption? Will the Secretary of State confirm his support for introducing a scheme carrying such a risk?**
24. During a meeting with Mayoral advisor, CLRL's acting chief executive Keith Berryman laughed when questioned if they had considered the legal implications of not having properly considered alternatives when deciding to launch tunnel boring machines and tunnel through the densely populated residential area of Spitalfields. The failure to provide geological information is significant as tunnelling activity is not risk free as recently experienced when a tunnel at Gerrards Cross collapsed. It has since been reported that approximately 30m of the 320m concrete tunnel had collapsed onto the track around 80m south from the south entrance and several thousand tonnes of spoil, up to six metres deep fell on the railway. **What are the reasons for siting works in the densely populated Spitalfields area when alternatives were not considered prior to safeguarding and settling on the benchmark scheme? What financial, environmental and health guarantees will the Secretary of State provide to all residents and tenants that there will be no harm as a result of a decision to tunnel through the Spitalfields area?**
25. If the constraints of launching tunnel drives in this area were removed then this fundamental objection to option D (or any other southerly route) is removed. (see A45) A southern

route option has always been possible according to all experts other than those working for Crossrail. **Why has CLRL not produced a proper analysis of southern route options?**

26. "The river potentially offers an environmentally attractive means of spoil removal and could be exploited to a greater degree if more of the works were serviced from a site in the docks or riverside area". (see A23) **Why has this possibility not been properly considered given that experts at Superlink also agree on this option?**
27. "It is noted that all the alignment options presented appear to assume fixity of the shaft location at the west end of Whitechapel Station" (see A38) **Why have CLRL not considered moving the location of Whitechapel Station to avoid tunnelling through Spitalfields?**
28. "Firstly, some of the information is incomplete, making definitive conclusions impossible. Secondly, some of the proposals (and the implicit assumptions behind them) have not been accepted by this reviewer as reasonable without further substantiation." (see 4.4) **When will CLRL substantiate details of proposals in the Spitalfields area?**
29. **Best Practice** "The documentation that has been reviewed to date lacks any comprehensive guidance or commitments on the procedures to be adopted to manage and mitigate risks related to settlement and tunnelling control." (see 3.11) The Council dealings with Crossrail – "A degree of systematic prioritisation is required to ensure reasonable progress". (see 5.1)
30. "It would be reasonable to argue that CLRL should commit formally to at least industry standard methods of damage risk assessment and control. Similarly it would be reasonable to seek a commitment that any damage caused by the works should be put right at no cost to the property owners affected or to LBTH" see (5.4) The Secretary of State, the Mayor of London and Tower Hamlets Council have failed to ensure that CLRL are even following industry standards questioning the feasibility, safety, risk assessment and the

viability of the project. **Will the Government agree that independent experts need to oversee any proposals put forward by CLRL to ensure public safety and proper risk assessment?**

31. We have reason to doubt the evidence, competency and integrity of the Crossrail team. Indeed, the Spitalfields community have been given misleading and factually incorrect information. The conduct of CLRL has given cause for concern including the provision of misleading information and experts doubting CLRL expertise on a number of issues. **Will the Secretary of State ensure the onus is on Crossrail to provide proof of the baseline scheme, the worksites in Spitalfields and Whitechapel Station? What steps will the Secretary of State make to ensure that sufficient evidence on the Crossrail proposals is produced so it does not contravene Article 6 ECHR?**
32. The extent of the information provided by CLRL so far is clearly insufficient and we therefore require proper detail as otherwise the permission is clearly open to a legal challenge. **What steps has the Secretary of State taken to ensure the provision of full information?**
33. We would like Parliament and the Select Committee to be made fully aware and noted in our comments that the Secretary of State has moved the Crossrail Bill to its second reading despite considerable concerns as outlined in the covering letter.
34. WHRA attended an open All Parliamentary Rail Group meeting in the Wilson Room at Portcullis House on July 27, 2005. Derek Twigg MP, Minister of State for Transport was made aware that any attempt to gain any exemption from the EIA Directive is likely to be declared unlawful as CLRL have not provided adequate information on Crossrail proposals in the Spitalfields area. The questions were previously sent to Mayor Ken Livingstone and an email copy sent to acting chief executive of Crossrail Keith Berryman on June 10. **WHRA requests a response to any of the questions and again, attaches the questions for your information.**

35. The House should be given an instruction by the Secretary of State that the onus of proving the expediency of the Bill cannot be removed from Crossrail as this is likely to prevent a fair hearing. The Secretary of State is no doubt aware that "only legislative acts which provide the same safeguards as those which would have been required under the Directive fall outside the scope of the [EIA] Directive. We are very concerned that the information provided by CLRL is insufficient for the purposes of seeking an exemption. **Will the Secretary of State confirm compliance with Article 6 and does he agree CLRL will need to seek development consent if they provide insufficient information?**
36. We believe the Crossrail Bill violates human rights. We will therefore challenge the reasonableness of arranging the second reading on July 18, 2005 prior to the Joint Committee on Human Rights being able to consider the implications of this bill. Barrister Richard Harwood states: "The Crossrail Bill, if enacted, will interfere with the Article 1, First Protocol and Article 8 rights of many people under the European Convention on Human Rights. Those rights are qualified and, in broad terms, interference with those rights can be justified if it is necessary for the construction of major public infrastructure. Whether the Crossrail project justifies such interference either generally or in particular instances must be fully and fairly considered by Parliament. The general and specific issues must be addressed by the Select Committee. The restrictive rules on *locus standi* prevent some persons whose 'civil rights' are affected from being heard by the Select Committee. The inconsistencies in these rules will also breach Article 14 of the Convention. A wider view on standing, as well as a written representations procedure, will need to be introduced to meet the UK's Convention obligations. Please confirm that the government will encourage Parliament to adopt procedures which give a fair hearing to all persons whose civil rights are affected by the Bill and that the Government/Crossrail advocates and agents will support the right of any persons whose civil rights are affected by the scheme to be heard by the Select Committees."

Any unattributed comments in quotation marks are taken from the Arup's report. Please also note the attached questions sent to the Mayor and CLRL on June 10 and hand-delivered to MP Derek Twigg, Minister for Transport on June 27, 2005.

In the conclusion, Arup's state: "the merits of the Hanbury Street site and the launch of tunnelling machines from Spitalfields are not proven. Plausible alternatives to the base case for these works exist and cannot be ruled out as better solutions at this time." Later on they state: "it would be prudent to identify specifically the concerns and unresolved matters in any Parliamentary petition related to the works. (see 6.2) In the Appendix, Arup's go much further: "the use of the Hanbury Street shaft in Spitalfields is not necessarily essential to the successful development of the scheme." (see A14) In practical terms it appears highly unfavourable for construction operations (see A21) Specifically it may lead to an unnecessary decision to launch four drives from Hanbury Shaft" (see A27).

We believe that the CLRL proposals for the Spitalfields area cannot form part of the Crossrail Bill in its present form for the above reasons.

Please submit any response by email and hardcopy for the attention of  
**Secretary Guy Carpenter**  
**Woodseer and Hanbury Residents Association**  
**55 Hanbury Street, London E1 5JP**  
**Tel: 020 7247 6192**  
**Email: whrauk@yahoo.co.uk**

The following questions, the answers to, which are all outstanding, were presented to Derek Twigg MP, Minister for Transport by hand on June 27, 2005.

## **WHRa Crossrail Questions**

Cross London Rail Links Ltd, hereafter referred to as 'Crossrail', are legally required to consider alternatives, supply information requested by the public and allow them an opportunity to comment in order to ensure compliance with the Environmental Impact Assessment Directive and human rights provisions. We have been concerned about failures to comply as it leaves Crossrail open to a legal challenge incurring significant delays to the project.

To this end, please can we have answers to the following questions:

- 1. We understand Channel Tunnel Rail Link engineers comprehensively considered alignment alternatives for each section and produced an audit trail justifying their choice of the preferred route. Is there any evidence that Crossrail has produced systematic comparisons of alternatives? If not, why not?**
- 2. Has Crossrail considered any alternative route alignments between Liverpool Street to Canary Wharf?**
- 3. Has Crossrail considered any options without Whitechapel Station?**
- 4. We understand from evidence that the six sites in Spitalfields were considered without environmental data and without proper consultation contrary to Article 1(5). Crossrail have failed to justify interference with the property rights of residents or showed any proper consideration of alternative alignments, contrary to human rights provisions. As the benchmark route and location of worksites in Spitalfields, is likely to cause significant harm, how will Crossrail remedy this error?**

- 5. Why were alternatives such as tunneling from the ends not produced until after the deposit of the Bill and the production of the Environmental Statement?**
- 6. Why did Crossrail engineers not produce any analysis to consider any alternatives to sites in Spitalfields prior to settling on the benchmark route?**
- 7. The possibility of tunneling from the ends instead of going through Spitalfields was produced after the Environmental Statement after it was requested by residents, who are not engineers. Why and what are the reasons for not considering and comparing alternatives before choosing alignments?**
- 8. Crossrail have not produced any evidence to show compliance with NATA, the Government's New Approach to Transport Appraisal, which assesses five criteria; economy, safety, accessibility, integration and environment. Please note that Crossrail has placed the Summary Transport case on their website. Can Crossrail provide a detailed Transport Case or any other underlying reports?**
- 9. Why will homeowners not be provided with guarantees or full compensation with consequential losses akin to those provided in Rome and Barcelona given the decision to tunnel under historic and residential properties and evidence showing the likelihood of harm?**
- 10. Keith Berryman stated worksites in Spitalfields were a political decision and that the Whitechapel Station, was requested by the Mayor. To assist the Spitalfields community in understanding the reasons for this decision, could we have reports and copies of the minutes of meetings and discussion between the Mayor and Crossrail on the matter of Whitechapel Station and worksites in Spitalfields?**

11. What are the economic, social, environmental and engineering reasons for the construction of the Whitechapel Station? When will Crossrail provide a cost benefit analysis?
12. Crossrail state a cost benefit analysis was not produced for Whitechapel Station or other stations. However, we have evidence that a Crossrail station in Woolwich was rejected on the basis of cost in relation to benefit. What is the reason why Crossrail has not produced a cost benefit analysis for Whitechapel Station and comparative analysis of having and not having worksites in Spitalfields?
13. If the extra cost of tunneling from the end is expected to result in a considerable increase in overall cost, economist argue that this suggests the project is borderline, what would happen if there were any severe overruns?
14. Crossrail state they intend to build and use conveyor belt technology to remove spoil in Spitalfields due to problems associated with transporting spoil by road in the narrow and densely populated area of Spitalfields. However at the meeting, Mr Berryman stated that "it was too early to give details about the conveyor belt technology as it has to go out to tender". He compared the conveyor belt technology to a place called Gerrards Cross but went on to admit significant differences as it was being used in a car park, the area had different infrastructure and there was no need for sound attenuation. We would therefore request full details of the conveyor belt technology.
15. In evidence given to the Transport Committee on July 22, 2004, Crossrail stated they would consider all alternatives before making a decision about worksites in Spitalfields. In light of the Environmental Statement, it is clear that Crossrail only considered six worksites in Spitalfields and have produced a reason why tunneling from the ends is not possible. Why have Crossrail not

**considered reasonable alternatives to Spitalfields after giving assurances to the Mayor and the Transport Committee?**

### **Conclusion**

**We believe the evidence suggests that the Crossrail Bill in its present form fails to justify interfering with property rights contrary to human rights provisions and does not fulfill the requirements of the Environmental Impact Assessment Directive. We call on the Mayor to work with the Spitalfields community and remedy these errors.**

**We request the above information to be supplied as Supplementary Evidence to the Environmental Statement. We would request that Crossrail provide reasons why important information about the Crossrail proposals in the Spitalfields area is being produced after the Bill was deposited on February 22, 2005.**

**We request all the above information under the Environmental Information Regulations and the Freedom of Information Act. We are grateful for the input of all those who attended the meeting of June 13<sup>th</sup> and hope to discuss the issues raised in these questions at the meeting with the Mayor on June 21, 2005.**

**Please submit any responses, which are produced in advance:**

**By email: whrauk@yahoo.co.uk Secretary Guy Carpenter**

**Hardcopy: Guy Carpenter, WHRA Secretary, 55 Hanbury Street, London E1 5JP**

Tim Neate  
Policy Adviser  
Crossrail Bill Team  
2/08 Great Minster House  
76 Marsham Street  
London  
SW1P 4DR

Guy Carpenter  
Secretary  
Woodseer and Hanbury Residents Association  
55 Hanbury Street  
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Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)  
Our Ref: F0001525 - 2/5/3p 2  
10 August 2005

Dear Mr Carpenter,

**Crossrail**

Thank you for your letters of 8 July and 27 June to Alistair Darling MP and Derek Twigg MP respectively. In your letters you express concerns about the impact of Crossrail on your area and request information relating to tunnel, shaft and spoil removal alternatives in the Spitalfields area. Cross London Rail Links Ltd (CLRL) has now completed its search for all information related to these issues in the Spitalfields area and I apologise for the delay in them doing so. Although CLRL are not covered by the Freedom of Information Act 2000, they are acting in the spirit of the Act.

Hard copies of all unpublished reports into tunnel, shaft and spoil removal alternatives in the Spitalfields area are enclosed. These reports will also now be made available in the Freedom of Information section of the Department for Transport website - [www.dft.gov.uk](http://www.dft.gov.uk). Further reports exist in draft form, however these are to be published in due course and are therefore exempt under section 22 of the Act.

The following 15 Reports are enclosed:

1. Tunnel Alignments East of Liverpool Street Feasibility Study Report, Volume 1 Bow Triangle and Pudding Mill Lane and Volume 2 Whitechapel Station (Weston Williamson).
2. Alignment East of Liverpool Street, Alignment Strategy.
3. Location of Hanbury Street – Cash & Carry Site.
4. Alignment East of Liverpool Street, Bishops Square Development.
5. Alignment Options Liverpool Street to Whitechapel – Truman's Brewery Site.
6. Construction Planning; Pedley Street & Mile End Sidings.
7. Pedley Street to Mile End Park Conveyor Proposals.
8. Programme Impact without Hanbury St Shaft as a TBM Launch Site.
9. Hanbury Street Removal of Excavated Materials.
10. Summary of ventilation shaft noise levels for shafts east of Hanbury Street.
11. Review of Woodseer St as an Alternative to the Hanbury St Shaft Site.
12. Alignment East of Liverpool Street Hanbury Street Shaft.
13. Crossrail Central Tunnels Hanbury Street Shaft, Hybrid Bill Design Report.
14. Hybrid Bill Process Hanbury Street Over Site Development Outline Proposals.
15. Crossrail Round 2 Consultation; Spitalfields Information Exchange Hanbury Street.

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If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain by writing to me at the above address. Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications. I have also sent copies of all 15 documents to Bindman & Partners.

Yours sincerely,



TIM NEATE

### **Your right to complain to DfT and the Information Commissioner**

You have the right to complain about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

Date 14 February 2007

Petition No 305

Dear Chair

As requested, your Petitioners are addressing the issues outlined during the Woodseer and Hanbury Residents Association (WHRA) suspended Petition Hearing on January 31, 2007. We respectfully request that you accept the following submission on behalf of the WHRA but without prejudice to our right to have our Petition being heard in public.

This submission relates only to the concern expressed by the Chair in relation to allegations of non-disclosure by the Promoter. Accordingly, it does not deal with the balance of the issues raised in our petition. We do not propose to provide written submissions in relation to the substantive Petition Hearing and we request a further re-convened open hearing of the Petition.

## 1 Request for Information by the Chair

The Chair raised a request for information at the following paragraphs:

*"18857 We have listened to the accusations in the statement you made earlier and we are giving you the opportunity to go away from here and write to the Committee with those accusations in a statement, with evidence which you may have, which the Committee will then review and, if necessary, call a further meeting with you and your witness and hear that evidence.*

*18858 We view this matter very, very seriously but we have to point out to you that so far the case that you have been making in relation to your second witness seems not to be relevant at all to the AP3. It is up to you to make that case in the evidence which you gather and if you so present it to the Committee."*

The evidence we were intending to put before the Committee was in support of your Petitioner's further concerns set out at paragraphs 5 – 29 of the Petition. However, in this submission we intend only to deal with the particular concerns set out above. We wish to set out our full position in the usual way in an open session.

Please note we request full disclosure by the Promoter in order to counter any suggestions that any allegations we are accused of, cannot be substantiated. However, we shall deal with each of the points as you have requested us to do so, but we will require the same opportunity to present our petition in public as given to all other petitioners.

## 2 Statement made by Mr Guy Carpenter

Now we shall deal with the following statement made by Mr Guy Carpenter, to which you refer.

Mr Carpenter says: *"My second concern is that the Promoter only made certain information available about alternative tunnel alignments recently. After the existence of these documents*

*was discovered we requested them, once we worked out their significance, as they showed the Promoter making contradictory and unsubstantiated claims about the southern route, which we feel cannot be relied upon."*

This was the only argument put forward by Guy Carpenter before the petition hearing was suspended. We shall therefore respond to this directly.

At paragraph 18829, Guy Carpenter refers to newly discovered documents obtained from the promoter. In particular, the London Underground Report for Crossrail 'Eastern Portal Bow Triangle Option' dated March 2001. The aforementioned document was sent to Guy Carpenter by the Promoter on January 24, 2007.

We understand that the Spitalfields Small Business Association (SSBA) also obtained a copy of the aforementioned documents and presented them at their petition hearing on January 30, 2007. The document presented by Mr Carpenter was not new to the Promoter or counsel for the Promoter. We understand this particular document has been seen and considered by the Promoter and counsel in some detail with Ms Kay Jordan of the SSBA the previous day. The document was also shown to the Select Committee. We were therefore surprised by the response of counsel.

However, we believe that the promoter has not presented the above document as published documents as part of the Bill, or provided copies to the Committee, Parliament and your petitioners until a formal request was made by the WHRA on 23 January 2007. The document, to which Mr Carpenter refers to, in his evidence, has a direct bearing on the Promoter's consideration of alternative routes. Furthermore, we believe these newly acquired documents have implications in relation to the Bill.

The legal opinion produced by counsel Richard Harwood on behalf of the WHRA refers to this report. It says: "*Alignment A passes through Spitalfields close to the presently proposed alignment (drawing A/004 Rev A) Alignments B and C pass considerably to the south.*"

It then goes on to say: "*The EIA Directive requires the developer to provide 'an outline of the main alternatives studied by the developer and an indication for the main reasons for this choice, taking into account the environmental effects (Annex IV, para 2). The Environmental Statement and the Supplementary ES fail to address the original alignment B which appears to have been a 'main alternative'.*"

We now refer you to paragraph 7 of the legal opinion, which says: "*I have also seen a letter from Crossrail to the residents association dated 14<sup>th</sup> June 2006 which says that a southern alignment was rejected because alignment standards would be compromised and the tunnels would need to be deeper and longer to avoid foundations. Concern was expressed at settlement to 'significant and valuable office or residential buildings'. The letter also referred to dewatering during works and disruption during the construction period, which appear to assume that construction will take place from a shaft on that alignment, as was then proposed at Hanbury Street. The letter's explanation does not sit comfortably with the Mott MacDonald report, which gave a single and different reason for not pursuing a southern alignment, or the latter Third Supplementary Environmental Statement. The letter is not in any event part of the Environmental Statement and cannot discharge the obligations on the promoter under the Environmental Impact Assessment Directive.'*"

Mr Carpenter's opening comments relate to the contradictions between the 2001 report and the Mott MacDonald reports produced on alternative southern alignments options on June 21, 2004 as well as the promoter's consideration of southern alignments in SES3.

Mr Carpenter refers to the above matters when he says, the "*Promoter making contradictory and unsubstantiated claims about the southern route, which we feel cannot be relied upon.*" We have seen no evidence to substantiate the claims made by the Promoter in rejecting southern routes.

We believe the presentation of this new information to be entirely relevant and a very serious concern for all your petitioners. Full disclosure should be given by the Promoter to the Committee and made available to the various petitioners of all correspondence relating to the decision to settle upon the proposed route, considerations of cost and disturbance and how these factors were reassessed in light of the amendments.

Your Petitioners wish to have the opportunity of presenting their evidence fully in relation to these issues.

### 3      **Allegations made against expert witness Michael Schabas**

The third matter relates to a statement made about Mr Keith Berryman of Cross London Rail Links Limited by Mr Schabas when giving his evidence.

Mr Schabas has prepared a separate response which we enclose with this submission. To some extent Mr Schabas is a witness of fact in relation to the communications between Mr Berryman and himself, and his dealings with the SRA. Your Petitioner believes that Mr Schabas' comments raise important issues which should be investigated by the Committee. We understand these comments were made previously to the Committee as highlighted in Mr Schabas' attached submission.

### 4      **Procedures and the Select Committee**

We hope you will appreciate that we were unaware of protocol for producing expert witnesses. As stated, we apologise for any error on our part as we are lay people and do not have experience in this regard. Our experience has been that we simply present and we are then faced with the response of a whole team of barristers.

However, we are grateful for your clarification in relation to the protocol with experts. At paragraph 18833, you say: "*It is normal practice to exchange, discover and reveal papers that you are going to bring up in the course of a hearing*".

As stated previously, The London Underground report for Crossrail 'Eastern Portal Bow Triangle Option' dated 28<sup>th</sup> March 2001 to which, the chair refers, was not new and so we do not understand the Promoter's concern in relation to its presentation. The document in question has already been brought up by Kay Jordan of the SSBA.

The only difference is, that when Ms Jordan showed these documents during her petition presentation, they were not accompanied by an expert and a legal opinion as in the case of the WHRA.

We also thank you for clarifying that the process of petition hearings is akin to that of a court of law. We were not aware of this because in response to our petition, the Promoter says "*The Crossrail Bill does not engage the petitioners rights under Article 6 of the ECHR since the Bill process concerns the passage of legislation and not the determination of civil rights.*" We believe that Article 6 of the European Convention of Human Rights (ECHR) refers to the right to a fair hearing. We understand all hearings in a court of law are based on the principle of a fair hearing.

We apologise if we did not follow procedure but we are lay people and therefore cannot be expected to know the intricacies of Parliamentary procedure. At paragraph 18790, Mr Carpenter explains that we revised our presentation so we did not repeat matters as has been requested by the Committee and counsel for the Promoter on numerous occasions. We believed that we were following the Select Committee's directions. This was also one of the main reasons why the Promoter did not receive the documents well in advance. We apologise for any delay in providing

<sup>3</sup>  
KNM/692032 1

a copy of the written submission, the legal opinion, a list of undertakings to be requested by the WHRA followed by all undertakings requested by other petitioners in Spitalfields and a best practice report on construction practices in relation to dust and pollution. However, at paragraph 18794, Mr Carpenter specifies that he was unable to access photocopying machines in the Spitalfields area on the morning of the petition. We are grateful to the clerks for their assistance throughout including photocopying the documents on the day. We apologise for not requesting copies for counsel. We also take note of Mr Brian Binley's remarks about the documents being numbered. To this end, we attach references to all the documents, to which we refer below.

As lay people, we hope you will appreciate that we simply want the right to present our Petition as afforded to all other petitioners.

## 5 Additional considerations

We now refer to other points following the receipt of advice. We respectfully request your comments on all of these points for our own clarification. As we wish to share this information with all other Spitalfields petitioners and to seek further advice if necessary. To this end, we hope these matters can be clarified in writing.

We note that Counsel for the promoter, Mr Elvin says "*The House has approved the limits of deviation at Second Reading; arguments (?) along the lines that seem to be suggesting the issue of the southern alignment is completely outside the principle*" at paragraph 18837. Mr Elvin also raises a question about locus at paragraph 18874.

However, your petitioners are advised of the following:

- 1) It is for the Select Committee to determine if alternative route alignments have been properly considered based on the evidence presented.
- 2) The Instruction to the Committee identified certain stations, but not the limits of deviation. It would be unnecessary for the Committee to have instructions if the limits of deviation were automatically part of the principle of the Bill.
- 3) The Select Committee has only made an interim decision on the Hanbury Street site. This has not been reported to the House, and it is not, therefore bound by its decision. The Select Committee need only adjudicate on this matter when reporting to the House.
- 4) It is for the Select Committee to determine whether the promoter has unjustifiably interfered with property rights under Article 1 of the First Protocol of the European Convention on Human Rights.
- 5) The issues of locus are not applicable in this case.

As set out above, this written submission does not comprise the entirety of what we intend to say at the re-convened open session of the Committee in response to AP3. We hope this clarifies matters and that you will now give the WHRA an opportunity to present its case like all the other Spitalfields petitioners.

We thank you and the Committee for their time and patience on this matter.

Yours sincerely

Guy Carpenter  
WHRA Secretary  
Enc

We ask the promoter to now make the following copies available to the Committee:

- Exhibit A - A London Underground report for Crossrail 'Eastern Portal Bow Triangle Option' dated 28<sup>th</sup> March 2001
- Exhibit B - Cross London Rail Links Limited Alignment Options Liverpool Street to Whitechapel Station – Truman's Brewery Site June 21, 2004
- Exhibit C - Environmental Statement (ES)
- Exhibit D - Supplementary Environmental Statement (SES)
- Exhibit E - Crossrail Bill
- Exhibit F - The promoter's response to the WHRA petition

The Committee already has the following documents:

- Exhibit G - The London Borough of Tower Hamlets document petition
- Exhibit H - Legal Opinion produced for the WHRA by counsel Richard Harwood (as provided at the petition hearing of Wednesday January 31, 2007)
- Exhibit I – WHRA written submission (as provided at the petition hearing of Wednesday January 31, 2007)
- Exhibit J – List of WHRA undertakings accompanies by all undertakings requested by Spitalfields petitioners (as provided at the petition hearing of Wednesday January 31, 2007)
- Exhibit K – The control of dust and emissions from construction and demolition best practice guidance report (as provided at the petition hearing of Wednesday January 31, 2007)
- Exhibit L - WHRA response to Promoter's submission on the Community Liaison Panel (submitted on January 29, 2007)

We attach the following:

- Exhibit M - Correspondence sent by promoter to the WHRA dated June 14, 2006



## David Elvin Q.C.

Mr Alan Meale MP,  
Chairman of the Crossrail Select Committee,  
House of Commons,  
London SW1A 0AA

1 March 2007

Dear Chairman,

### **Petition AP3 No 7 - Woodseer and Hanbury Residents Association**

I have been asked to respond on behalf of the Promoter to the letter from Mr Guy Carpenter on behalf of Woodseer and Hanbury Residents Association (“WHRA”) following the appearance of WHRA on 31 January 2007. That letter has included a number of representations concerning the petition and a statement from Mr Michael Schabas, who sought to present evidence to the Committee on 31 January. Since that letter and enclosures was received we have also been copied a letter dated 26 February from Kay Jordan on behalf of the Spitalfields Small Business Association Limited (“SSBA”). This letter also responds to points raised by SSBA.

The petition of WHRA is intended to relate to AP3 and, indeed, could only relate to AP3 to be valid and for the petitioners to have locus since other petitions had already been presented on the main Bill provisions last year.

WHRA’s petition against the main bill (No 305), including the issue of the location of the shaft in Hanbury Street, and the question of alternative alignments was presented and argued as part of the Spitalfields hearings on Days 39 to 42 with submissions on Day 43 (paras 11676-11743) in June 2006. Tower Hamlets LBC raised issues regarding the shaft location on Day 38. Mr Carpenter presented his own petition on Day 42 (paras. 11404-11467) at which time he raised issues concerning alignments and the shaft location. WHRA appeared with the assistance of Counsel following Mr Carpenter on Day 42 (see paras. 11469-11522).

In short, our submissions to the Committee are as follows:

- 1) The issues raised by WHRA and their witnesses (including Mr Schabas) lack locus for their petition under AP3, since they raise no issues which result from AP3 which affect them. They have used the AP3 petitioning process simply to repeat their case which failed to satisfy the Committee when it was originally presented that the shaft should not be located in Hanbury Street. WHRA's letter of 14 February expressly makes this clear at Section 5 **Additional Considerations** point 3) when they seek to argue that the interim decision is not binding.
- 2) The general alignment of the tunnels and the stations are part of the principle of the Bill, approved by Parliament at Second Reading, and it is not open to the petitioners to seek to persuade the Committee to consider a completely different alignment or, indeed, to seek an alignment which could omit Whitechapel Station.

The issues raised by Mr Schabas (he alleges that Mr Berryman said he had not considered alignments i.e. had effectively misled the committee when he told the Committee that alternative alignments had been considered) do not need to be considered further by the Committee and should simply be rejected since they:

- 1) arise in the context of a lack of locus to challenge AP3;
- 2) go against the principle of the Bill approved on Second Reading; and
- 3) in any event repeat representations already made to and considered by the Committee in 2006 following the hearings on Days 39 to 42.

Even if the Committee thought it necessary to consider Mr Schabas' serious allegations against Mr Berryman it is relevant to note that they are not only unsupported by other evidence but:

- 1) They are contradicted by
  - a) The documentary evidence produced by Kay Jordan on Day 68 paras 18672-18722 which includes extracts from some of the many reports (including one in March 2001) produced considering various alternative alignments including those referred to as A, B and C. See submissions at paras. 18710-18715.

- b) The Crossrail Business Case in July 2003 and the Montague Report itself in July 2004 also considered alternatives along the Crossrail route,
- c) The main alternatives studied were summarised (as required by the process of environmental impact assessment) in Chapter 6 of the Main ES deposited with the Bill in February 2006 and the specific issues of shaft alternatives and alignments also considered at SES1, paras. 6.2.7-6.2.9 and SES3 paras. 3.5.9-3.5.12.
- d) Mr Berryman gave specific evidence of the consideration of the alignments in the Spitalfields area on Day 38, paras. 9500-9521 and Day 39, paras. 9795-9803.

Mr Schabas' assertion that there was no consideration of alternatives simply has no credibility whatsoever in the context of the WHRA concerns.

- 2) Mr Schabas' specific allegation against Mr Berryman has in any event been raised in evidence and rejected. Mr Schabas made allegations regarding the lack of consideration of alternatives in the context of the petition by the Residents of Mayfair (Day 24, 18 April 2006) as referred to in Mr Schabas' letter (see para 6655 of Day 24). The Committee Members clearly were aware what Mr Schabas was suggesting – see Members' interventions at e.g. paras. 6699, 6700, 6675. Although Mr Schabas was not cross examined, Mr Berryman was called to rebut the allegation and made it quite clear that he rejected Mr Schabas' claim and that alternatives were considered: see paras. 6749-6750 and the submissions at paras. 6851-6855. The point clearly arose and the following exchange took place between the Chairman and Mr Berryman (6749-6750) during his evidence on alternatives:

"6749. **CHAIRMAN:** What you are saying is that there has been examination of a number of different options?  
**(Mr Berryman)** Oh yes.

6750. Which is contrary to what we heard a little earlier.  
**(Mr Berryman)** Yes. I can tell you that there has been a lot of examination of options."

It follows that the Committee has already heard Mr Berryman's evidence and rejected Mr Schabas' assertion.

The suggestion by WHRA that they lack legal support needs to be treated with caution

since they appeared by Counsel (Ms Thornton) on Day 42 (and presumably had her advice as to the legal issues and as to the procedures in Parliament) and one of the Spitalfields residents who has been active in Committee hearings is Miss Patricia Jones who is a solicitor and partner at a firm of London Solicitors, S J Berwin, who are well known for their specialisation in development work (although she omitted to tell the Committee this on Day 68 para 18585 ff)<sup>1</sup>. WHRA also refers to the fact that the residents have not had the benefit of counsel's opinion. We suggest that the letter of 14 February was plainly written with some legal assistance. Moreover, Miss Sian Jones, the Clerk to the Committee, wrote to petitioners on 17 February explaining the procedure at the Committee hearings. It is also clear that the SSBA has received legal advice, though the source is not disclosed.

In the light of the matters set out above, and given the extensive representations on the main bill petition raising the same points in June 2006, and the lack of connection between the issues now raised and AP3, it would not be unfair for the Committee to refuse to hear these matters further. For the record, we do not accept that the right to a fair hearing under Article 6 of the European Convention on Human Rights applies to the passage of legislation. However, this issue does not arise and should not concern the Committee since there is no unfairness in any event for the reasons set out above.

The procedure to be followed is a matter for the House and the Committee. The duty to act fairly does not require a committee, tribunal or even court to hear repetitious evidence or irrelevant material. The issues raised by WHRA are both repetitious of the evidence presented last year and irrelevant to AP3. If, however, there are any issues raised by WHRA in its AP3 which genuinely raise matters concerning AP3 then, of course, we would have no objection to their being heard on those issues.

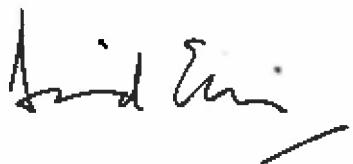
With regard to the issues raised by SSBA they are partly addressed above but, for clarity, we attach a note dealing more comprehensively with the environmental impact assessment issues. They are misconceived for the reasons set out in the note and, indeed, as Kay Jordan's own evidence demonstrated.

So far as the Freedom of Information Act and information request is concerned, this is

<sup>1</sup> The S J Berwin website [http://www.sjberwin.com/people/atoz/j/pat\\_jones.html](http://www.sjberwin.com/people/atoz/j/pat_jones.html) sets out the details and includes this – “She was a partner at Dechert and became a partner at SJ Berwin in 2003. She has also run her own property development company. Throughout her career she has specialised in complex development financing and joint venture structures, acting for a wide range of clients across the property industry.”

a matter for the Department not the Committee and the request should have been made directly to the Department. It will be the subject of a separate response which will be copied to the Committee. However, the Promoter believes that the relevant documentation has already been disclosed (see the list at the end of the attached note).

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Elvin". A short horizontal line is drawn below the signature.

**David Elvin QC**  
Counsel for the Promoter

**NOTE IN RESPONSE TO SSBA SUBMISSION OF 26 FEBRUARY 2007**

1. The requirements for environmental impact assessment under European law and under Standing Orders have been complied with by the Crossrail Bill process.

**(A) The legal framework**

2. The 1999 Regulations referred to by the SSBA 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”)<sup>2</sup> 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.”

3. This has been interpreted by the European Court of Justice (“ECJ”)<sup>3</sup> 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.”

4. These principles have guided the production of the various environmental statements and procedure adopted by the Promoter in the Crossrail Bill process. Indeed, this was made clear in the first chapter of the main ES which was deposited with the Bill in February 2005:

**“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)<sup>1</sup> requires that the

<sup>2</sup> Directive 85/337/EEC amended by Directives 97/11/EC and 2003/35/EC.

<sup>3</sup> 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.

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 Crossrail 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 Crossrail 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 Crossrail;
- 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**

5. The adequacy of the ES is a matter for the reasonable judgment of the decision maker<sup>4</sup>, 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 makes it any the less a valid ES.
6. As the High Court held<sup>5</sup> 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 the documents together provide

<sup>4</sup> See *R v. Rochdale BC, ex parte Milne* [2000] Env. L.R. 22 at paras. 106-11 and *R. (Jones) v Mansfield DC* [2004] Env. L.R. 21, paras 14-18 and 52.

<sup>5</sup> *R (Bedford & Clare) v. Islington LBC & Arsenal FC* [2002] EWHC 2044 Admin., Ouseley J.

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."~~

7. Further, in the Court of Appeal<sup>6</sup>, 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."

#### **(C) The requirement to consider alternatives in the ES**

8. 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.
9. 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."

10. The sense of the Directive limiting 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.

#### **(D) Response to SSBA's contentions**

11. The SSBA's submission falls into the error of making claims which are wrong in law.

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<sup>6</sup> *R. (Jones) v Mansfield DC* [2004] Env. L.R. 21, para. 58.

They are wrong in the following main respects:

- (1) There is no requirement to “contain full information on alternative alignments and their consequences”, only to present an outline of the main alternatives for the project as a whole;
  - (2) The reports listed in para 3 (I) to (III) are not part of the ES or the EIA process and are not required to comply with it. There has been confusion by SSBA previously, at their appearance in 2006, between the legal requirements for EIA and what was done before the Bill and the ES were deposited;
  - (3) Michael Schabas’ statement is incorrect for the reasons set out in the main letter to which this is attached;
  - (4) There is clear evidence that the requirements of the Directive have been met.
12. The main letter sets out the Promoter’s view, with references to the evidence, that shows that despite the constant assertions of WHRA, SSBA and others of like interest, alternatives to the current alignment and shaft location have been considered over a long period of time. The reports which Kay Jordan has seen plainly demonstrate that they have. It is difficult to understand why SSBA does not appreciate that those reports are part of the process of consideration of alternatives leading eventually to the alignment selected for the Bill.
  13. We include below, for easy reference, a list of the reports and information which has been provided to date in respect of the alignments to the petitioners.
  14. In terms of the requirements of the Directive and EIA, the main alternatives studied were summarised (as required by the process of environmental impact assessment) in Chapter 6 of the Main ES deposited with the Bill in February 2006 and the specific issues of shaft alternatives and alignments also considered at SES1; paras. 6.2.7-6.2.9 and SES3 paras. 3.5.9-3.5.12.
  15. If the level of detail required by SSBA and WHRA (“full information on alternative alignments and their consequences”) were produced in a project the size of Crossrail, having regard that this approach would have had to be applied to the whole route and not simply the Spitalfields area, 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.
  16. Further, the question of the obligation to give an outline of the main alternatives clearly applies to the project as a whole and it would be wrong to focus on one part of the

project at Spitalfields since the obligation applies to the project taken as a whole.

17. However, 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”.

#### **(E) Conclusions**

18. In conclusion, therefore:

- (1) The Crossrail Bill and its amendments have been environmentally assessed having regard to Standing Orders and the judgments of the ECJ in respect of Article 1(5) of the Directive; and
- (2) the claims made by WHRA, SSBA and others with regard to the alleged failure to comply with the legal requirements relating to the assessment of alternatives are wrong as a matter of national and European law and can be rejected by the Committee.

**List of Documents Provided on Alternative Alignments**

**Issued to WHRA and Bindman and Partners (who passed the documents on to their client, the Spitalfields Community Association) by the Department for Transport (August 2005)**

- Tunnel Alignments East of Liverpool Street Feasibility Study Report, Volume 1 Bow Triangle and Pudding Mill Lane (February 2002) and Volume 2 Whitechapel Station (November/December 2001)
- Alignment East of Liverpool Street, Alignment Strategy (November 2002)
- Location of Hanbury Street - Cash & Carry Site (June 2004)
- Alignment East of Liverpool Street, Bishops Square Development (November 2002)
- Alignment Options Liverpool Street to Whitechapel - Truman's Brewery Site (June 2004)
- Construction Planning; Pedley Street & Mile End Sidings (September 2004)
- Pedley Street to Mile End Park Conveyer Proposals (January 2005)
- Programme Impact without Hanbury Street Shaft as a TBM Launch Site (April 2005)
- Hanbury Street Removal of Excavated Materials (September 2004)
- Summary of ventilation shaft noise levels for shafts east of Hanbury Street (April 2004)
- Review of Woodseer St as an Alternative to the Hanbury Street Shaft Site (November 2004)
- Alignment East of Liverpool Street Hanbury Street Shaft (February 2003)
- Crossrail Central Tunnels Hanbury Street Shaft, Hybrid Bill Design Report (January 2005)
- Hybrid Bill Process Hanbury Street Over Site Development Outline Proposals (September 2004)
- Crossrail Round 2 Consultation; Spitalfields Information Exchange Hanbury Street (August 2004)

**Issued to WHRA and SSBA by CLRL (January 2007)**

- Crossrail, Eastern Portal, Bow Triangle Option (March 2001)
- Crossrail, Review of Previously Considered Eastern Portal Options for Crossrail (March 2001)
- Crossrail, Summary of Eastern Portal Options for Crossrail and Review of Stratford Station (March 2001)

*Copies of the letters sent with the above documents are enclosed.*

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

cc: Secretary of State Douglas Alexander  
Department for Transport Tim Neate  
Cross London Rail Links – counsel David Elvin

April 4, 2007

Dear Chair

## **Re: WHRA AP3 Response to letter of Promoter's counsel Mr Elvin**

Please find our response to the letter submitted by counsel for the Promoter Mr Elvin to the Select Committee dated March 1, 2007 (hereafter referred to as 'the letter').

We object to the Promoter using the letter to argue that your petitioners do not have locus without supplying a copy until the hearing of March 20, 2007 in circumstances where counsel Mr Elvin sought to rely on the letter at the hearing. Counsel Mr Elvin at para 21031, says: "*the position as I understand it from Mr Walker is it is a letter to you and we left it to the Committee to decide whether or not the Committee thought it appropriate to copy it. I can certainly let Mr Whale have a copy.*" We have now read the letter. We believe the Promoter fails to substantiate the claim that the WHRA does not have locus. Indeed, if the Promoter believed the WHRA did not have locus, we would question why this issue was not raised at the start of the hearing on January 31, 2007.

The letter fails to respond to the issues raised in our submission or the submission of expert witness Michael Schabas including the legal opinion by Richard Harwood of 39 Essex Street Chambers, which contends the Bill does not comply with the EC Directive 35/337/EC (the EIA Directive as amended). We also note the letter attaches the Promoter response to a submission by separate petitioner, the SSBA instead of the legal opinion submitted by the WHRA. The letter also does not respond to issues relating to the Promoter providing contradictory information and failing to disclose information. Furthermore, it does not explain why the Promoter objected to the statement made by Mr Schabas about Mr Berryman at the suspended petition hearing of the WHRA on January 31, 2007 but did not do so, upon hearing the same statement, at the hearing of the Mayfair residents on April 18, 2006.

The letter raises irrelevant matters about third parties including the Spitalfields Small Business Association (SSBA), Patricia Jones and the Residents of Mayfair (RAM). The Committee will appreciate that the Woodseer and Hanbury Residents Association (WHRA) can only be expected to answer to matters concerning or raised by us. We therefore only respond to the Promoter's comments when they seek to rely on the evidence presented by other petitioners to support their case.

**Four issues arise from the letter, they are as follows:**

1. **Lawfulness of the Bill**
2. **Expert witness evidence**
3. **Locus**
4. **Procedures relating to the Bill**

## **1 Lawfulness**

We believe the information provided by the promoter to date on the requirement to provide an outline of alternative route alignments in the Crossrail Environmental Statement (ES) and Supplementary Environment Statement (SES) is insufficient to fulfill the requirements of EC Directive 35/337/EC (the EIA Directive as amended) for the reasons confirmed in counsel Richard Harwood of 39 Essex Street Chambers' opinion (which has been presented before the Committee in evidence). For your ease of reference, please consider paragraphs 9 and 10.

9. **The EIA Directive requires the developer to provide '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' (Annex IV, para 2).** The Environmental Statement and the Supplementary ES 3 fail to address the original alignment B which appears to have been a 'main alternative'. The assessment of the SES3 alternative does not lead to a conclusion on deep foundations and does not provide the data or analysis to show why the shaft site at Hanbury Street was considered preferable to the options considered on the southern alignment.
10. **The Environmental Statement and its supplements are therefore deficient in failing to explain the main alternatives considered and providing insufficient comparison of the Crossrail proposal with the alternative they describe to understand what their reasoning is and to evaluate its correctness.**

We cannot see any evidence of information on the main alternative, Option B with an indication of the main reasons for the Promoter's choice taking into account the environmental effects in the Bill documents. We ask the Promoter to remedy this deficiency and respond in full to the legal opinion of counsel Richard Harwood.

In the letter, Mr Elvin argues Mr Berryman rightly argues alternative alignments have been considered in the central section not alternative route alignments. Mr Elvin relies upon the following paragraphs to support his assertion. All appear to show the Promoter has followed one route on the central section. We have read the transcripts and the evidence relied upon by Mr Elvin but we can find no evidence that the Promoter has properly considered alternative route alignments in the safeguarded central section. This is of particular relevance in the context of the WHRA as it relates to the consideration of alternative routes in Spitalfields. Mr Elvin says Mr Schabas' evidence is contradicted at paragraphs a-d on pages 2 and 3 but we refute this for the reasons outlined below:

- a. *The documentary evidence presented by Kay Jordan at paras 18672-18722 and submissions at paras 18710-18715. Since the petition hearing and receipt of the letter, we examined the evidence presented by Kay Jordan and in particular a map produced by the SSBA at their hearing. We have now examined Kay Jordan's map. Ms Kay Jordan uses a map sent by the Promoter reference S C/SRU/P/SS/A/022 Revision A in the 2001 report and transposes southern route Option B. The route shown on the map has been produced by the SSBA not the Promoter. The documentary evidence presented by Ms Jordan shows the Promoter has not produced an outline of Options B or C and is, therefore not contradictory, for the reasons outlined in the legal opinion presented by the WHRA.*
- b. *The Crossrail Business Case in July 2003 and the Montague report itself in July 2004 also considered alternatives along the Crossrail route. We can see no evidence for this. Indeed, all of the alternatives considered in the review appear to select the present alignment. Indeed, at para 249, Mr Montague says: "alternatives assessed are restricted to the routes and extent of the outer branches in the CLRL benchmark scheme. The central section alignment is well established and would be difficult to change, and much of it is already safeguarded".*
- c. *The main alternative studies were summarised in Chapter 6 of the Main Environmental Statement deposited with the Bill in February 2006, SES1 paras 6.2.7-6.2.9 and SES3 paras 3.5.9-3.5.12. The references do not contain evidence to show consideration of the main alternative route alignment Option B or C in Spitalfields. None of Mr Elvin's references mention the main alternative Options B. The Committee has heard expert witness Mr Schabas reject the assertion that the Promoter has considered Option B properly or indeed other southern routes. To this end, we again, refer the Committee to the following passage in the legal opinion:*

**The Environmental Statement does not, as far as I have been able to tell, consider alternative alignments in the Spitalfields area. The Supplementary Environmental Statement 3 considers such alignments briefly at paragraphs 3.5.9 to 3.5.12 (page 43) (as amended in the SES3 Erratum). The statement identifies an alignment which would comply with the minimum radius of curvature required for the project. It says that such an alignment would be beneath relatively modern buildings with deep foundations and that alternative shaft sites compared less favourably than the Hanbury Street site. The alternative considered (shown at RTS C8(iv)) has a different alignment to that in the 2001/2002 reports, and seems to be under more piled buildings and nearer sensitive sites than the earlier southern alignment.**

- d. *Mr Berryman gave specific evidence on Day 38 9500-9521 and Day 39 paras 9795-9803. Paragraph 9500-9521. The only reference to any southern routes is at paras 9799-9800. At paras 9799-9800 Mr Berryman refers to maps showing four alignments, three go to the south of Cutler's Gardens and the fourth does not. All are different to Option B in the newly disclosed 2001 and 2002 reports and therefore fail to address the issue in the legal opinion.*

Indeed, experts reject the Promoter's reasons for dismissing the revised southern option, which as stated in the legal opinion "seems to be under more piled buildings and nearer sensitive sites than the earlier southern alignment". Roy Adams quotes expert Dr Vaziri from Whitby Bird at paragraph 9779 when he says: "*based upon the attached drawing and the Optioneering Report, there is not enough information to dismiss the southern route option on the basis of the presence of deep piles along or near the route. I recommend that a study be commissioned in order to assess the feasibility of a vertical alignment for the southerly option.*" The Promoter's reason for dismissing alternative southern routes on the basis of pile depths at Cutler's Gardens should be treated with caution. An email from Mr Mantey of CLRL, which has been submitted in evidence by the WHRA, confirms the Promoter's information on pile depths of Cutler's Gardens is based on estimates. At para 9799 Mr Berryman says: "*A statement was made this morning...*" of June 13, 2006 when rejecting alternative southern routes. You will appreciate a statement and assumptions are not evidential proof and therefore cannot be relied upon. It is clear the Promoter is reluctant to produce any studies on alternative southern routes and the Committee can draw its own conclusions on this. Furthermore, as stated by Roy Adams at para 9777 "*the route in the 1990s scheme went under some of the tallest buildings in the brewery. So if then, why not now?*" Some of the evidence to which Mr Elvin refers, relate to oversite development and a comparison of a minor variation to the benchmark scheme known as the Woodseer Street and Hanbury Street alignment. The Committee has heard how the Promoter's assumptions have been proven to be incorrect when subject to proper scrutiny. We refer to the information on the Woodseer Street and Hanbury Street alignment, which was requested by the Spitalfields Society to show much of the Promoter's information on alternative alignments was unsubstantiated and flawed. You will note the Promoter has since conceded some of those flaws in SES3 Errata. Proven experts continue to argue that the case for dismissing a southern route is unproven. At para 18630 Mr Elvin says: "*Mr Berryman said there have been many many hours over five to six years refining the alignments.*" Mr Berryman goes on to say: "*Well, for the short section between Liverpool Street and Whitechapel about 25 per cent of the total resource spent on alignment design has been spent on that short section. It is over 20,000 man hours for Mott MacDonald, our principal consulting engineers, at least an equivalent amount for our other consultants who do subsidiary work to that and probably half as much again for our own staff, so it has been a very considerable number of nine years which has been spent on looking at the alignments in this particular area.*" It would appear that Mr Elvin suggests that 25 per cent of the resource on alignment design and the rest on refining alignments. However, neither counsel nor Mr Berryman say exactly how much has been spent on considering alternative route alignments, in particular, the southern route. We therefore formally request a breakdown of how much money and man hours have been spent considering alternative route alignments in the central section and southern routes respectively under the Freedom of Information Act. We believe this information is in the public interest. The Committee has heard proven rail expert Michael Schabas, who worked on CTRL, dispute the Promoter's evidence comparing Crossrail with CTRL. The view of proven rail expert Michael Schabas at the WHRA petition hearing of the WHRA is that the work produced by the Promoter on alternative route alignments is wholly inadequate. Indeed, the Committee will note that Mr Schabas says: "*The analysis is so inadequate for a scheme of this size. Maybe if you are doing a garden shed, yes, but you are not supposed to do it this way.*"

### **Flawed evidence:**

The evidence produced by the Promoter to date does not support the assertion that a less environmentally harmful southerly route is not viable. A report entitled *Tunnel Alignments East of Liverpool Street Station Vol 1 February 2002 [Mott MacDonald]* (hereafter referred to 'the 2002 report') says a viable southern route is dismissed because of a 50-storey tower. On January 24, 2007, the Promoter disclosed a report entitled *Crossrail Review of Previously Considered Eastern Portal Options for Crossrail [London Underground]*, (hereafter referred to as 'the 2001 report'). This report contains a map showing three alignments A, B and C. The latter two are southerly alignments. The Promoter does not include any information about the 2001 and 2002 reports in subsequent reports or the Bill documents. The information detailed on the map in the 2001 report mentioned above was not disclosed to the WHRA until January 24, 2007, days before the suspended petition hearing of January 31, 2007.

At the petition hearing of March 20, counsel Mr Elvin at para 21145 says: "*You will recall Mr Schabas was telling you that for alignment B no reasons were given, but Mr Harwood actually sets out the reason why Option B was rejected in paragraph five of his opinion. The Heron Tower was the reason Option B was rejected.*" For your ease of reference, Mr Elvin is referring to the following paragraph:

#### **5. Several questions therefore arise:**

- (i) which scheme is referred to – those instructing me believe it is the Heron Tower;

The legal opinion refers to your petitioners believing the 50-storey tower mentioned in the 2002 report possibly being the Heron Tower in the absence of evidence from the Promoter. At the petition hearing, we were unable to comment on whether there is, or was a conflict between the Heron Tower and the southern route referred to as Option B because the Promoter has not produced an outline of the main alternative route Option B. Following the letter from Mr Elvin, we have examined the evidence submitted by Ms Kay Jordan, who uses the Promoter's map to transpose Option B. It appears Mr Elvin is relying upon Ms Jordan's drawing but contrary to Mr Elvin's assertions, Ms Jordan's map shows that Option B is not affected by the Heron Tower development. Furthermore, the 2001 and 2002 reports were produced when the Heron Tower was a speculative commercial development. Permission was not granted until July 2002 and the development is yet to be built. We believe any conflict with the Heron Tower is overstated in the absence of evidential proofs.

Mr Elvin argues the Heron Tower is the Promoter's reason for rejecting the southerly route but we reject this for the following reasons:

1. We do not believe the Heron Tower affects Option B. In any case, the building has not been built and indeed, even if it were, the Promoter does not produce evidence to preclude such an alignment.
2. Mr Elvin does not call Mr Berryman who was present at the hearing of March 20, 2007 to comment on why the Heron Tower is a problem for Option B. We are advised that had the Promoter called Mr Berryman, *the petitioner has a right to reply*. Such a reply would have benefited the Committee as they could have called upon proven rail expert Michael Schabas to examine the Promoter's reasons for dismissing Option B because of the Heron Tower.

3. There are no studies showing comparisons between Options A, B and C.
4. The Promoter gives no reason why the 2001 and 2002 reports are not presented in the published Bill papers.

Mr Elvin says that the Heron Tower was the primary reason for dismissing option B in 2001. We can find no evidence supporting this assertion other than two references by counsel Mr Elvin at the hearing of the SSBA and again at the hearing of the WHRA on March 20, 2007. Proven rail expert Michael Schabas says: “*Alternative B also connects with Whitechapel Station very correctly. Alternative B clearly is a better alignment in railway operational terms. It may or may not be more difficult and more expensive in terms of construction and environmental impacts. This drawing was withheld, I believe, and has only now been released and I do not see any supporting analysis of any detail.*” Mr Elvin does not cross examine Mr Schabas or call Mr Berryman to give expert evidence on why Option B has been dismissed. We do not believe Mr Elvin can comment on Option B as an expert. We formally request the information on this matter from experts. We reserve the right to respond to the presentation of any evidence with our own experts.

The Committee is no doubt aware that the Spitalfields community has asked the Promoter to consider less harmful alternative southern route alignments. In 2004, the Promoter presented a report entitled *Mott MacDonald, Alignment Options Liverpool Street to Whitechapel July 2004* (hereafter referred to as ‘the 2004 report’). The Promoter told petitioners there were only a few variations on the southern route, known as Option D. We now know this not to be true as all four southern alignments presented by the Promoter are different to Options B and C found in the 2001 report. The WHRA received a copy of the 2002 report in August 2005 from the Department for Transport but was unaware it referred to southerly routes. The Promoter supplied the 2001 report on January 24, 2007 following a formal request by your petitioners. Experts then examined the 2001 report. There are no references to Option B and C other than in the 2001 and 2002 reports. The Promoter’s reasons for dismissing different southern alignments to that of Option B and C are also rejected by proven experts at Ove Arup, Whitby Bird and Michael Schabas, who argue the Promoter’s reasons are based on unproven assumptions, which cannot dismiss the option of a viable southern route, which is less harmful environmentally.

The Promoter produces what Michael Schabas describes as “*biased*” information to support assertions that a southerly route is not possible. Indeed, it is a reference to the consideration of southern alignments to which Mr Carpenter refers, at the suspended hearing of January 31, 2007. He says: “*My second concern is that the Promoter only made certain information available about alternative tunnel alignments recently. After the existence of these documents was discovered we requested them, once we worked out their significance, as they showed the Promoter making contradictory [statements], we feel, cannot be relied upon.*”

The Committee will appreciate that the Spitalfields community were excluded from Round One consultations on alternative route alignments in 2003. The Promoter presented no alternative routes to the community other than the benchmark scheme (now referred to as the Bill alignment) throughout the consultation period leading up to the presentation of the Bill. The Committee has heard evidence of how the community was told by the Promoter that the route alignment through Spitalfields could not be changed. Indeed, the Promoter has adopted a similar approach in Committee. The consultation process carried out in Spitalfields has been described as flawed and this is well documented. The 2002 report suggests the present route was chosen for the purposes of protecting speculative commercial development. The WHRA has argued that the Promoter has followed a predetermined route in

Spitalfields and the Promoter's own evidence, the opinion of proven experts and the newly disclosed documents continue to support this assertion.

## 2 Expert witness

Mr Elvin refers to paras 6749-6750 as evidence for the consideration of alternatives. The paragraphs refer to Superlink and the Crossrail Northern Interchange Route (CNIR), which are alternative schemes presented by others not alternative route alignments on the Crossrail scheme.

We have now read the evidence of the Mayfair residents on April 18, 2006 and the following points are to be noted. Mr Pugh-Smith cross-examines Mr Berryman (now acting chief executive) of CLRL on April 18, 2006. Mr Berryman accepts that no other alternatives have been examined other than those presented by Superlink and the Crossrail Northern Interchange Route (CNIR). In particular, at paragraph 6775, Mr Pugh Smith asks: *"As far as alternatives are concerned, am I right in assuming that the Promoters of this project have simply responded to suggestions put forward by others as to alternatives? Would that be right?"* Mr Berryman replies: *"As far as the central section is concerned, no, that is not correct."* However, the evidence of Mr Schabas and the evidence presented by the WHRA contradict the assertion that alternative route alignments have been considered on the central section.

Mr Elvin says: *"Mr Schabas made allegations regarding the lack of consideration of alternatives in the context of the petition by the Residents of Mayfair"*. We would ask the Committee to consider the following points:

1. Mr Elvin does not refer to the examination of alternative route alignments in the context of the petition by the WHRA, to whom he is responding. Instead, Mr Elvin refers to alternatives in the context of the petition by the Residents of Mayfair, which is irrelevant to the WHRA.
2. Mr Elvin again refers to alternatives not alternative route alignments.
3. We understand Mr Schabas is not saying the Promoter has not considered alternatives but that the Promoter has not considered alternative route alignments on the central section but instead sought to follow the safeguarded route and dismiss alternatives without proper justification.
4. We cannot see the main reasons for dismissing Option B as a main alternative in Spitalfields, which falls under the central section. Newly disclosed documents state the Promoter has dismissed southern route alignments for development reasons. This corroborates the evidence presented by Michael Schabas.
5. The Promoter does not show the consideration of alternative route alignments for Crossrail but simply presents the schemes of others.

You will appreciate that the petition hearing of the WHRA was suspended on January 31 2007 after the Committee heard Mr Schabas say the following:

*"In 2001 I met Mr Berryman and said, "You need to look at alternatives" and he said, "No, we are going to build the safeguarded scheme because the politicians want us to start building within two years and there is not time to look at alternatives. He told me that. He can correct me if he wants."*

The Chair's gives the following reasons for preventing Mr Schabas from giving any further evidence on, or being questioned about the above comment at the WHRA petition hearing of March 20, 2007.

The reasons are outlined at paras 21064 and 21067. “Can I deal with Mr Schabas? I wrote to Mr Schabas and asked him to elaborate on the matters and he did not do that. He just referred to the transcripts and came back to us in respect of that, and that was not what we were asking for. So there was another opportunity there and he did not actually take it up. What I want to avoid is a situation where this Committee is used as a battle of ideas between individuals. Mr Schabas has not appeared in front of this Committee once, he has appeared in front of this Committee more than once, and made accusations in that visit also. There was nothing new in what he was saying but it was a repeat of last time, and we were not really interested in taking that forward without any fuller evidence to the fact. That is why I wrote and said: “Look, will you elaborate?” I do not want to be either misused or abused as a Committee; we cannot proceed like that. Just to put on record one fact, whilst Members are protected in this place members of the public are not, and whatever they are saying is up for challenge in the normal way, so we are trying to protect the individuals.”

We understand the following:

1. The Chair says he wrote to Mr Schabas. Mr Schabas has not received any written request from the Chair. Neither has the WHRA or Charles Russell.
2. Mr Schabas has not sought to present a battle of ideas but his considerable expertise as a proven railway expert who has delivered successful rail projects such as CTRL and the Jubilee Line.
3. Mr Schabas does not seek to misuse or abuse the Committee and is indeed, trying to ensure the Committee arrives at a decision after having the benefit of full information and a proven rail expert examine the assertions made by the Promoter.
4. The Promoter’s assertions have also been challenged by other experts.
5. Mr Schabas is a professional, who is not seeking such protection from giving evidence on oath and is in reality, a witness in fact.

Note at the WHRA hearing of January 31, 2007, Mr Schabas invites Mr Berryman to respond to the above statement but both counsel and Mr Berryman decline the invitation. No one including the Promoter, Mr Berryman or the Committee objected to the same statement made by Mr Schabas at that hearing of the Mayfair residents. However, at both petition hearings of the WHRA, Mr Schabas was prevented from giving further evidence on the matter. The Promoter does not call Mr Berryman to give evidence refuting the statement made by Mr Schabas. Neither the Promoter nor Mr Berryman offer, or are asked by the Committee to produce evidence showing the consideration of alternative route alignments in Spitalfields or on the central section. We also note that at the suspended hearing of January 31, 2007, The Chair says your petitioners should have notified the Promoter about the presence of expert Michael Schabas so as to give the Promoter an opportunity to address any points with their own experts. Mr Berryman, the Promoter’s expert was present at the hearing of January 31, 2007 but is not called to give evidence.

The Promoter does not call Mr Berryman or any other experts despite advance notification of expert witness Michael Schabas attending the subsequent WHRA hearing on March 20, 2007. Mr Elvin chooses not to cross-examine Mr Schabas at the hearing on 20 March 2007 when Mr Schabas says: “I can go into more detail – shows a clear bias to trying to always justify the route that they have previously picked. The alternatives analysis has been done after the fact to justify their choice.” As Mr Whale states: “I would have thought if insinuations are going to be made about Mr Schabas in closing submissions, my learned friend might at least have put to Mr Schabas in cross-examination some of the matters on which he now relies”

We understand the Committee may not have questioned Mr Schabas on his statement for the reasons outlined by the Chair. We believe Mr Schabas simply wants the opportunity to present his evidence in public and is prepared to be cross-examined. We believe it is vital to hear the evidence of Mr Schabas given the wider implications that can be drawn from the newly disclosed documents. Indeed, the evidence presented by other petitioners including the SSBA, Patricia Jones and Roy Adams contends that the Promoter did not look at alternative southern routes. We believe the evidence of Michael Schabas, is in the public interest as it concerns a Hybrid Bill and therefore should be given in public not in private. On this basis, we can see no reason why this evidence should be heard in private.

### 3 Locus

The Promoter says the evidence of the WHRA is not relevant to the AP3 at paragraph 18858 and again at 21025. Indeed, a substantial amount of time is spent on this matter at the hearing of March 20, 2007. The WHRA is advised the AP3 is relevant because clause 10 of the Environmental Statement (ES) introduces the Third Supplementary Environmental Statement. In addition, the legal opinion submitted by the WHRA states the existing material produced by the Promoter is inadequate to comply with Article 1(5), which gives an exemption from the Environmental Impact Assessment Directive. This is a basis for petitioning against AP3 contrary to the claims put forward by the Promoter.

We refer the Committee to the following reference to southern alignments at paragraphs 3.5.9/3.5.10/3.5.11 in SES3 and the Map RTS C8 (iv) as referred to in the legal opinion, which has been submitted. At paragraph 3.5.9, the Promoter says: *"During the hearings at the House of Commons Select Committee on Crossrail the promoter undertook to look again at the relative merits of a tunnel alignment (and associated shaft sites) south of Hanbury Street site/Bill alignment. In particular, an alignment that maximized the potential to run beneath existing major roads such as Houndsditch, Bevis Marks/Dukes Place and Whitechapel High Street was examined."*

The Promoter has sought to prevent the WHRA from raising the issue of southern routes even though proven experts argue the Promoter has failed to substantiate the reasons for dismissing a southern option. It would appear the Promoter has given an undertaking to consider alternative southern route alignments to avoid proper scrutiny at the WHRA petition hearing of June 21, 2006. Furthermore, the Promoter has not presented evidence to show Option B has been considered or addressed the points raised in the legal opinion at both any of the WHRA petition hearings. Newly disclosed documents question the Promoter's assertions that a less environmentally harmful southerly route is not viable. We would therefore request what evidence the Select Committee has relied upon to decide against the southerly route alignment in favour of the Bill alignment in its interim decision.

We also sought to raise the issue of the consideration of alternative means of shaft as mentioned in paragraph 3.5.11 of the SES3. In the letter, Mr Elvin says that the Committee were not convinced by the case presented by the WHRA that a shaft should not be located in Hanbury Street. Mr Elvin omits to mention that in line with experts, we argued that following the removal of the Pedley Street spoil site the shaft need not be located in Spitalfields at all. Indeed, the Promoter has previously claimed that the location of the shaft site was constrained by the spoil site.

We cannot comment on whether the Select Committee is, or is not convinced about the need to remove a shaft but the Promoter is so convinced that it has ostensibly been investigating a methodology to remove the need for an intervention shaft. We refer the Committee to paragraph 21 of the London Borough of Tower Hamlet's petition. It says: "*The promoter has undertaken, as a result of discussions with your Petitioners, to investigate the feasibility of a construction methodology which would eliminate the need for an intervention shaft at Hanbury Street. Your Petitioners respectfully submit that the Promoter should be required to actively and urgently continue that investigation.*" However, in response to the WHRA petition, the Promoter says: "*providing an alternative means of emergency intervention to satisfy both themselves and the emergency services would be extremely challenging.*" You will appreciate that a statement describing something as being "*extremely challenging*" is not evidence or indeed, grounds to dismiss an alternative means of shaft. However, no evidence has been presented on this matter during AP3. If the Committee has accepted the need for a shaft, we would request the evidence on which the Committee has relied upon to accept the need for a shaft in Spitalfields.

Mr Elvin also argues that the WHRA does not have locus on the following. He says: "*The general alignment of the tunnels and the stations are part of the principle of the Bill approved by Parliament at the second reading.*" The directions to the House say: "*This motion sets up the special Select Committee that will consider the Crossrail Bill. The remit of the Committee is to consider the petitions against the Bill and to report to the House recommendations as to compromise or amelioration.*"

We believe a compromise to the present alignment and amelioration in terms of removing a shaft in Spitalfields is within the Committee's remit. We believe the Committee's understanding of the directions on the consideration of alternative route alignments as suggested by counsel for the Promoter appears to be wrong.

We understand the Committee is to hear evidence on Woolwich Station at AP4 even though it is not part of the principle of the Bill. We understand the Committee believes it has discretion. We are asking the Committee to exercise that discretion on the basis of the likely harm to a sensitive historic area with a large proportion of vulnerable people. To this end, we refer you to comments made by Brian Binley, MP, who says: *I examined our debate on Second Reading on 19 July 2005. I want to quote the words of the then Secretary of State, the right hon. Member for Edinburgh, South-West (Mr. Darling). He said that "the House knows that the Select Committees that we set up have a fair amount of latitude... I do not think that the Government or the House can tell the Committee, 'Thou shalt not consider anything else'—for example, matters relating to any one of the stations along the route. It is open to the Committee to say that a station is in the wrong place, or that there ought to be a station somewhere else... I repeat... that if someone came along and said that the stations or the termini should be different, the Select Committee may well want to consider that. It would be up to the Committee."* He left the Committee in no doubt about its autonomy. He said of Select Committees: *"Indeed, successive Governments have got into awful trouble by being over-prescriptive".*—[ Official Report, 19 July 2005; Vol. 436, c. 1125-6.]

The Department for Transport produced a note explaining the Crossrail Hybrid Process in a letter sent to the WHRA on June 8, 2005. Para 11 says: "*as a last resort a Select Committee can ask the Government to consider whether there are viable alternative works even if these require additional works and land take.*" We cannot rely on counsel for the Promoter to interpret instructions. We therefore refer the Committee and the Department for Transport to the wording of the letter from Bindman's solicitors reference 46451.1 JHL, which was excluded from the second

reading. On Page 7, it says: “*The limitation on who can make representations when the principle of the scheme is determined are the most serious failures. Environmental Impact Assessment is not simply the production and consideration by a decision-maker of an Environmental Statement. It requires public participation and consideration of the public’s views.*”

We believe the issues raised in the letter have serious consequences given that Parliament was asked to agree the principle of the Crossrail Bill including Whitechapel Station without having sight of the newly disclosed documents and a legal letter drafted by counsel Richard Harwood with Bindman’s, which was excluded from the published Bill papers prior to the second reading. The Committee will also note that at the second reading, only the existence of a Whitechapel Station has been agreed, the exact location has not and neither has the route alignment. As petitioners, we have evidence to show the case for the Bill alignment, the Hanbury Street Shaft and Whitechapel Station is unproven and we believe the evidence of the Promoter requires proper examination.

#### **4 Committee Procedures**

We agree with Mr Elvin’s statement “*the procedure to be followed is a matter for the House and the Committee*”. However, this does not preclude consideration of the lawfulness of the Bill or the evidence presented by the Promoter. We are advised that the procedure cannot override the obligations under the Directive, which takes precedent. It is for a national court to determine whether a project can rely on Article 1(5) not Parliament.

We understand an exemption can only be granted under Article 1(5) because the legislature provides for the impact assessment, public information, consultation and environmental protection objectives laid out in the Directive. In Luxembourg v Linster, Advocate-General Leger outlines the requirement, he says: “*only legislative acts which provide the same safeguards as those that would have been required under the Directive fall outside the scope of the Directive.*”

We have considered Erskine May page 645 and How to Petition and understand the following: “*Counsel for petitioner may call witnesses. Proofs of evidence are not produced. The witnesses and advocates may use a ‘question and answer’ script. Documents may be placed before the Select Committee to illustrate the case. Those witnesses can be cross-examined by the promoters, re-examined and questioned by the committee. Counsel for the petitioner may then make a closing speech. If the committee determines that there is a case to answer, the promoter’s will then reply and may call evidence. If they do call evidence, the petitioner has a right to reply.*”

We note from the transcripts that the Committee allow other petitioners in Spitalfields to raise the matter of alternative southern route alignments and the shaft in relation to the AP3 in evidence. However, we note only the WHRA had the benefit of a legal opinion and an expert rail witness in attendance, to comment on the newly disclosed documents relating to the Promoter’s consideration of southern routes.

The Promoter says: “*we do not accept that the right to a fair hearing under Article 6 of the European Convention on Human Rights applies to the passage of legislation.*” We understand this statement has implications. To this end, we formally request the Committee to issue a statement on their intention to deny or allow petitioners to exercise their right to a fair hearing under Article 6.

The Promoter also says the duty to act fairly does not require the committee “*to hear repetitious evidence or irrelevant material.*” We have not asked the Committee to hear repetitious or irrelevant material unless this means preventing the presentation of evidence challenging the efficacy of the material produced by the Promoter. We believe it both necessary and relevant to raise the matter of the Promoter’s failure to properly consider the southern route in relation to the newly disclosed documents. As stated, the Promoter gave an undertaking to consider southern routes. We do not believe it is repetitious to challenge the Promoter’s continued reliance on unproven assumptions for dismissing a southern option as proven experts reject the reasons in the absence of proofs. It is, the Promoter, not your petitioners, who is giving repetitious and contradictory evidence to dismiss the southern route despite the undertaking given to your petitioners and the Committee. However, it is clear the Promoter is not prepared to cross-examine proven rail expert Mr Schabas or choose to call Mr Berryman on this matter in the presence of Mr Schabas.

The Committee will appreciate that the intention of the Crossrail Hybrid Bill is to authorise a particular scheme on a particular route. Article 6(2) provides “*Member states shall ensure that any request for development consent and any information gathered pursuant to Article 5 [the Environmental Statement] are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.*”

We understand from the Chair that the Committee are not open to reviewing their interim decision on Spitalfields even though it has not been reported to the House. However, we hope it is noted that the Promoter did not disclose relevant information about Option B or C at the first WHRA petition hearing on June 21, 2006 or prior to the Committee’s interim decision. No doubt, the Committee is also aware the principle of the Bill can be examined at the third reading and so it is vital to hear evidence, which is in the public interest. We believe there is a reasonable expectation that the newly disclosed documents and the additional provisions are circumstances in which we would request the Committee to ask Government for directions to consider alternatives. Indeed, the Department for Transport should consider a course of action following receipt of this letter.

We note that the Promoter, not having presented the newly disclosed documents as part of the Bill or to petitioners previously, is now attempting to argue that the Committee and your petitioners should ignore the implications of the newly disclosed documents. Instead, the Promoter wants your petitioners and the Committee to accept an alignment, which experts argue is substandard and a shaft site, which is viewed as unnecessary without proper examination of their assertions. We believe there is a duty on the promoter to provide evidence not assumptions relating to the need for the shaft, and in turn, the present route alignment going through the sensitive and densely populated area of Spitalfields. To this end, we believe it is necessary for the Department for Transport to make an express provision for petitioners to be heard in full on the Promoter’s consideration of Option B and C and the failure to disclose these documents as part of any further process. We therefore ask for the Committee to be given an instruction on these matters.

We do not believe the WHRA has been given the opportunity to fully express an opinion and challenge the efficacy of the evidence produced by the promoter to date as can be seen at paras 21047-21096. This decision has effectively hindered the ability of the WHRA to comment on the benchmark scheme proposals in Spitalfields.

## **Conclusion**

We have considered the evidence and the transcripts and we can find no evidence that the Promoter has properly considered the main alternative, in particular Option B, in Spitalfields. We therefore ask the Committee to ensure the Promoter produces an outline showing the consideration of main alternative route alignments Options B and C as shown on the map in the 2001 reports and show the main reasons for dismissing them taking into account the environmental effects. We understand the evidence of expert witness Michael Schabas questions the Promoter's consideration of alternatives on the whole of the safeguarded central section.

The newly disclosed documents show the Promoter has identified viable southern routes but dismissed them without justification. Proven rail experts dispute the Promoter's assertions. The Committee will appreciate an opposed private bill requires the promoters to prove their case in stark contrast to a hybrid bill. This is clearly not the approach being taken on this Hybrid Bill and therefore this may not be the forum to allow proper scrutiny and examination of the evidence presented by the Promoter to date.

Mr Elvin told the Committee that Crossrail is the biggest rail project for 150 years and it is for this reason that the WHRA would urge the Committee to fully consider and satisfy itself that the Promoter has properly assessed alternative route alignments and complied with the legal requirements. Your Petitioners case is that the Promoter has not (for the reasons already advanced by experts and set out above in our submission).

We also attach a submission from rail expert Michael Schabas and a detailed letter, signed by Dr John Prideaux, CBE, former Chairman of Union Railways Limited who was responsible for the development of the CTRL scheme, commenting on the Promoter's flawed consideration of alternatives.

We hope the Committee will carefully review the evidence presented before arriving at any conclusions and review this matter fully at AP4. We end with counsel Stephen Whale's at para 21138. He says: "*I would like to reiterate again the terms of the written advice which was alluded to and which was in your bundle from Mr Harwood on which the Committee might feel it wants to seek another opinion to see if that opinion is shared by other learned counsel. So I commend that to you.*"

We look forward to receipt of a response from all the addressees to all the matters raised in this letter.

Yours sincerely

Guy Carpenter  
WHRA Secretary  
Enc

David Elvin Q.C.

Mr Alan Meale M.P.,  
Chairman of Crossrail Select Committee,  
House of Commons,  
London SW1A 0AA

4 May 2007

Dear Chairman,

**Petition AP3 No 7 - Woodseer and Hanbury Residents Association**

**Response to WHRA Letters of 4 April 2007**

Further to my letter to you dated 1 March 2007 and, following the further appearance of WHRA before the Committee on 20 March 2007, I have been asked to respond on behalf of the Promoter to the further letters from Mr Guy Carpenter and Mr Michael Schabas both dated 4 April 2007.

I do not propose to respond at great length since we have already set out the substance of our position to you in our letter of 1 March and in Committee. Although the WHRA may not think so, that letter did respond to the substance of the legal opinion referred to by WHRA although our letter also covered points being made by SSBA as well since it was convenient to address them together.

(1) **Lawfulness.** This is dealt with comprehensively in the earlier letter. The duty to assess alternatives relates to the scheme as a whole and is only a limited duty as we have explained i.e. the duty is to give "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". Option B was one early alternative to one limb of the overall scheme and was not a "main alternative". The fact that option B was discarded (as were others) at an early stage and did not reach the stage of consideration by Montague merely demonstrates that it cannot be regarded as a "main alternative" even with regard to that part of the scheme to which it relates. We do emphasise that if the EIA duty to consider alternatives was as onerous as WHRA suggests, the ES would be a massive and impractical undertaking, since long-discarded alternatives to all other aspects of the scheme would have to be considered in similar detail. In any event, the Committee has been supplied through the Committee process with information giving more information about the alignments considered and discarded at an early stage and an outline of the reasons why that was done.

On the issue of the Heron Tower, I understand from Mr Berryman that further investigations have confirmed that option B would have had to run under the piled foundations of that part of the site where the tallest construction, and deepest piles, would have been required. I attach a plan which shows this. Planning permission was granted in July 2002 and amended in September 2005. City of London information is that the developer is in the process of discharging the conditions on the planning permission in order to commence development. However, none of this is to the point since option B was not a "main alternative" which required to be dealt with in the ES.

(2) **Expert witness.** We have nothing to add to our earlier letter other than to repeat that Mr Schabas was addressing an issue (i.e. alignment) which went against the principle of the Bill. The Promoter did not therefore seek to cross-examine since this would have been pointless and wasteful of the Committee's time. Most importantly, neither Mr Schabas nor WHRA's counsel provided a satisfactory explanation on 20 March 2007 as to how his evidence related to AP3.

(3) **Locus.** Our simple point is that the submissions made by WHRA and others on alignment issues did not arise out of AP3 which did not seek to change the alignment in this area. The submissions on clause 10 of the Bill which refers to SES3 does not assist WHRA. That clause extends the planning permission granted by the Bill to those matters which have been subject to EIA and are listed in clause 10. Although the alignments are referred to SES3 they are not aspects of the project which seek new works for which planning permission is needed. The mere fact that something is mentioned in SES3 does not mean that there is a right to petition unless they affect the works authorised by the Bill. SES3 contains information which we agreed to supply and plainly does not seek authorisation for works regarding other alignments. WHRA wish to make representations to the Committee against the alignment which is (a) contrary to the principle of the Bill established at Second Reading and (b) is repetitious of submissions made last year regarding the criticisms of the current alignment. On the question of the principle of the Bill, the issue of significant changes in alignment does not compare to the introduction of new features on the current alignment (e.g. Woolwich) or the amendment to features within the current limits. It would open a debate about the whole principle of the alignment of the railway which was surely approved by the House at second reading.

(4) **Committee procedures.** I explained in my earlier letter the need to comply with the EIA Directive and Art. 1(5). The ES refers to this in terms. We simply disagree with WHRA that the Directive has not been complied with having regard to the limited requirement to consider



main alternatives.

Although WHRA complains about late provision of information, in our letter of 3 March I appended a copy letter dated 20 August 2005 from Mr Neate at DfT to Mr Carpenter and WHRA enclosing 15 reports which included studies of alignments east of Liverpool Street. The three additional reports provided in January 2007 all related to an early stage in the process as opposed to the main alternatives which emerged as the benchmark scheme was produced in 2003/4.

With respect to a fair hearing, we set out our position in our earlier letter. The Committee has, in any event, heard WHRA further on 20 March 2007 when the association appeared by counsel, and was given a fair opportunity by the Committee to explain to it in what respect the submissions and the evidence of Mr Schabas properly related to AP3, which was the purpose of that series of petitions.

We propose to copy this letter and the enclosure to WHRA.

Yours sincerely,

David Elvin QC

Enclosure: plan

# WOODSEER AND HANBURY RESIDENTS ASSOCIATION

55 Hanbury Street London E1 5JP whrauk@yahoo.co.uk 0207 247 6192

June 7, 2007

Dear Mr Alexander and Mr Meale,

**Re Petition AP3 – WHRA Response to Mr Elvin's letter on behalf of the Promoter dated May 4, 2007**

Please find a response from the Woodseer and Hanbury Residents Association (WHRA) to the letter sent by counsel David Elvin dated May 4, 2007 on behalf of the Promoter. We address our letter to the Secretary of State for Transport Douglas Alexander and the Chair of the Crossrail Select Committee Alan Meale as there is a need for a response from both parties. This is due to inaccuracies and a failure to provide us with information, which goes to the heart of the lawfulness of this Bill. We cc Mr Elvin.

In this letter, we have numbered all our requests for information in each subject area, which we request under the Freedom of Information Act and in relation to the lawfulness of the Bill. Please respond in full to the numbered questions and the issues set out in this letter in advance of the third reading.

We also wish to lodge a formal complaint about the failure to supply the following evidence under the Freedom of Information Act including the sources used to reach the summary described as an appraisal of route options in section 6 of the Environmental Statement; the studies showing the consideration of alternative routes on the central safeguarded section and in Spitalfields, the evidence relied upon by the Select Committee to determine the Hybrid Bill route over the southerly route and the need for any shaft site in Spitalfields and substantiated evidence showing the reasons for dismissing the southern route options in the 2001 report including option B.

In the letter dated May 4, 2007, Mr Elvin supplied a plan, which is dated 2005 and entitled *Crossrail April 2001 Review of Eastern Portal Options*, showing Options A, B and C. The reason given for dismissing Option B by Mr Berryman in Mr Elvin's letter cannot be relied upon. The WHRA first had sight of Options A, B and C from a plan in a document entitled the *Crossrail Eastern Portal Bow Triangle Options*, (*hereafter referred to as 'the 2001 report'*). The 2001 report was only made available on January 24, 2007, days before the suspended hearing on January 31, 2007. The plan showing Options A, B and C on the 2001 report was the first time it became clear to the WHRA that alternative southern routes did exist despite claims to the contrary by the Promoter. Throughout, experts disputed the Promoter's assertion that there were no viable southern route options in the absence of proof. Since, the Promoter has admitted that there are no studies of Options A, B and C. The information about these Options was not made available during the flawed consultation period, at the first WHRA hearing on June 20, 2006 or in the Bill documents. Therefore, the WHRA reserves the right to raise matters relating to Option B as well as other southern route options as this information was not disclosed in earlier documents.

## **Legal Opinion**

Mr Elvin wrongly states that his submission of March 1 responds to the legal opinion drafted by counsel Richard Harwood of 39 Essex Street, which states that the Bill is unlawful in its present form. Mr Elvin's letter clearly states that he is responding to a submission by the Spitalfields Small Business Association (SSBA) – a separate petitioner. For your ease of reference, the legal opinion says:

9. The EIA Directive requires the developer to provide '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' (Annex IV, para 2). The Environmental Statement and the Supplementary ES 3 fail to address the original alignment B which appears to have been a 'main alternative'. The assessment of the SES3 alternative does not lead to a conclusion on deep foundations and does not provide the data or analysis to show why the shaft site at Hanbury Street was considered preferable to the options considered on the southern alignment.
  10. The Environmental Statement and its supplements are therefore deficient in failing to explain the main alternatives considered and providing insufficient comparison of the Crossrail proposal with the alternative they describe to understand what their reasoning is and to evaluate its correctness.
- 
1. Please can Mr Elvin remedy this failure and respond to the issues raised by counsel Richard Harwood in full?

## **Lawfulness**

We disagree with Mr Elvin's statement below. For your ease of reference, he says:

(1) **Lawfulness.** This is dealt with comprehensively in the earlier letter. The duty to assess alternatives relates to the scheme as a whole and is only a limited duty as we have explained i.e. the duty is to give “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”. Option B was one early alternative to one limb of the overall scheme and was not a “main alternative”. The fact that option B was discarded (as were others) at an early stage and did not reach the stage of consideration by Montague merely demonstrates that it cannot be regarded as a “main alternative” even with regard to that part of the scheme to which it relates. We do emphasise that if the EIA duty to consider alternatives was as onerous as WHRA suggests, the ES would be a massive and impractical undertaking, since long-discarded alternatives to all other aspects of the scheme would have to be considered in similar detail. In any event, the Committee has been supplied through the Committee process with information giving more information about the alignments considered and discarded at an early stage and an outline of the reasons why that was done.

Mr Elvin is now arguing that Option B cannot be considered as a main alternative even though it has been discarded without any studies or substantiated evidence. Mr Elvin rejects the need to substantiate the reasons for dismissing Option B while simultaneously accepting that the Promoter may need to provide further information. Mr Elvin relies upon the Committee process for this purpose. Mr Elvin appears to be arguing four points:

- There is no need for the Promoter to provide substantiated reasons for dismissing Option B.
- There is no need to show the proper consideration of route Option B
- The Promoter should not be put to proof even where reputable experts challenge the efficacy of the information presented on the southern route options.
- The Promoter need not explain inconsistencies in their evidence.

In the letter dated May 4, 2007, Mr Elvin gives a reason for dismissing Option B. Mr Elvin says:

On the issue of the Heron Tower, I understand from Mr Berryman that further investigations have confirmed that option B would have had to run under the piled foundations of that part of the site where the tallest construction, and deepest piles, would have been required. I attach a plan which shows this. Planning permission was granted in July 2002 and amended in September 2005. City of London information is that the developer is in the process of discharging the conditions on the planning permission in order to commence development.

1. Experts have now looked at Option B in detail and note the Heron Tower does not affect it. Indeed, the document entitled *CrossRail Eastern Portal – Bow Triangle Option* confirms that the information provided by Mr Berryman and Mr Elvin in hearings in relation to Option B is a misrepresentation of the facts. Paragraph 3.2 says: "*A planning application has recently been submitted but subsequently withdrawn for a site including Stone House and Staple Hall*". Option B did affect Stone House and Staple Hall not the Heron Tower as Mr Elvin contends. The reason given by Mr Berryman for dismissing Option B in relation to the Heron Tower in the letter of May 4, 2007 is not valid and cannot be relied upon. What evidence is being relied upon to dismiss Option B?
2. Mr Elvin has stated the reason for dismissing Option B is the Heron Tower in his letter dated May 4, 2007 and at the WHRA hearing. At paragraph 21145, Mr Elvin says: "*Sir, Mr Schabas is quite clearly a man who has no difficulty in making accusations about lack of care and lack of reasons in consideration. Can I just ask you when you are considering this matter just to look at Mr Harwood's opinion. You will recall Mr Schabas was telling you that for alignment B no reasons were given, but Mr Harwood actually sets out the reason why Option B was rejected in paragraph five of his opinion. The Heron Tower was the reason Option B was rejected. Mr Schabas has not even noticed that, so great is his zeal for saying that we have somehow tried to look at the alternatives in an appropriate way.*" Again, Mr Elvin is misleading the Select Committee. In actual fact, Mr Harwood clearly says in the absence of information from the Promoter, he had been led to believe by the WHRA that the 50-storey-tower affecting Option B could be the Heron Tower. The WHRA assumed this in the absence of proof. What evidence was Mr Elvin relying upon when he told the Select Committee and petitioners that the Heron Tower affected Option B?

3. Mr Elvin does not provide any evidence showing that Option B would “run under the piled foundations of the site where the tallest construction and deepest piles would have been required.” On what basis and what studies, if any is, Mr Berryman relying upon to inform his understanding that Option B will “run under the piled foundations of the site where the tallest construction and deepest piles would have been required”?
4. Mr Elvin says: “*Further investigations have confirmed that Option B*” has been dismissed because of the Heron Tower. The use of the words “*further investigations*” suggests that earlier investigations were not carried out and Option B was discarded without consideration. On what basis, were earlier investigations carried out?
5. The WHRA noted the Chair and Promoter’s concern about not being informed of the presence of expert Michael Schabas at our suspended hearing on January 31, 2007. We took this into account when we appeared with counsel Stephen Whale of 4-5 Grays Inn at our hearing of March 20, 2007. However, we note that Mr Elvin did not call Mr Berryman to give evidence under oath on the reasons for dismissing Option B even though he was present throughout the hearing. We can see no reason not to have called Mr Berryman under oath if this point can be proven. Why has Mr Elvin been reluctant to call Mr Berryman to give evidence under oath about dismissing Option B for the reason in the letter of May 4, 2007?
6. The plan showing Options A, B and C is dated 2001. The plan sent to us by Mr Elvin is dated 2005. The DfT did not disclose the 2001 report or the 2005 plan in the bundle sent in August 2005. Why did the DfT and the Promoter not disclose the 2001 report containing Options A, B and C until January 24, 2007?
7. Mr Elvin now agrees with counsel Richard Harwood of 39 Essex Street that Option B has not been properly considered. However, we do not accept a viable southern route option cannot be considered a main alternative despite Mr Elvin’s assertion to the contrary. Both Mr Schabas and Mr Harwood only focus on Option B at the petition hearings because it can be considered under the directions to the Committee. However, we note that there are no studies for Options A and C despite also being main alternatives. What and where are the studies and evidence substantiating the reasons for dismissing Option B?
8. Mr Elvin appears to be relying upon the Select Committee process to remedy the deficiencies of the Environmental Statement (ES). Mr Elvin omits to mention that

experts dispute the Promoter's information on alternative routes in Spitalfields and the central section. Indeed, it has been shown to be incorrect when subject to scrutiny and yet the Promoter has not been put to proof on this. How will the Committee process remedy this when the Promoter is not being put to proof and experts are disputing the information provided on alternative routes?

9. We note the plan supplied by Mr Elvin also omits to provide any detail of the Heron Tower. To this end, please can the Promoter provide a detailed map of the Heron Tower development, which shows the footprint of the building and the basements as well as the roads and public space areas of the whole development?
10. The 2001 report contained a plan showing Options A, B and C. This was presented after the first WHRA hearing and the Select Committee's interim decision. In our last letter, we asked the Chair Mr Meale, if the Select Committee, would review the present route alignment in the light of the disclosure. What provisions has the Select Committee and the DfT made for petitioners, who have been prejudiced by non-disclosure, to review the southern route alignment options?
11. It is clear that Options A, B and C were the main alternative route options considered at the outset. Options A, B and C were the only alternative route options in 2001 and yet the Promoter is not able to provide evidence of the Promoter properly considering these options before they were dismissed. Please can the Promoter provide evidence of an outline of alternative route options A, B and C being studied with an indication of the main reasons for their dismissal taking into account the environmental effects?
12. Experts dispute the reasons for dismissing options A, B and C in the absence of proof. These options, which provide southerly routes were not disclosed until January of this year despite being the primary preference of those in Spitalfields. The documents say that should the tunnelling strategy be changed, these options will once again become viable. Previously the Promoter had told residents that the tunnelling strategy could not be changed. Given the tunnelling strategy did change, where is the evidence showing the southerly route options in the 2001 report have been properly considered?
13. We believe the Promoter has misled the Spitalfields community and the Committee about less harmful southern route options. We wish it to be recorded

that throughout the flawed consultation, the promoter claimed that Option D presented in 2004 was the only southern route considered by the Promoter. Indeed, they are on record saying there were no other southern options. We now know this not to be true. So, why were the Spitalfields community told this during the flawed consultation period on route alignments?

14. Subsequently the Promoter produced a variation on the map entitled RTS C8 (iv), which was presented as part of SES3 prior to the AP3 petition hearings following an undertaking to the WHRA to consider southern routes. However, experts say this and other southern route options have been dismissed without proper consideration. In the legal opinion, counsel Richard Harwood comments on the Promoter selecting a poor southern route known as RTS C8(iv) when compared with Options A, B and C as set out in the 2001 report. Indeed Mr Harwood says:

**The Environmental Statement does not, as far as I have been able to tell, consider alternative alignments in the Spitalfields area. The Supplementary Environmental Statement 3 considers such alignments briefly at paragraphs 3.5.9 to 3.5.12 (page 43) (as amended in the SES3 Erratum). The statement identifies an alignment which would comply with the minimum radius of curvature required for the project. It says that such an alignment would be beneath relatively modern buildings with deep foundations and that alternative shaft sites compared less favourably than the Hanbury Street site. The alternative considered (shown at RTS C8(iv)) has a different alignment to that in the 2001/2002 reports, and seems to be under more piled buildings and nearer sensitive sites than the earlier southern alignment.**

Why does the option presented to the Select Committee go under more piled buildings and nearer sensitive sites than the earlier southern alignments in the 2001 report?

#### **Consideration of alternative routes on the safeguarded section**

We now turn to Mr Elvin's evidence on the Promoter's consideration of alternative routes on the central section.

1. In the letter dated March 1, 2007, Mr Elvin presents an exhaustive list of references showing the Promoter's consideration of alternatives but as stated in our previous letter, none show evidence of an outline of main alternative routes on the central section being properly considered by the Promoter. Indeed, we say in our letter dated April 4, 2007: Mr Elvin correctly says that his references show the consideration of alternative alignments not alternative route alignments. We say: "*We have read the transcripts and the evidence relied upon by Mr Elvin but we can find no evidence that the Promoter has properly considered alternative route alignments in the safeguarded central section.*" We can see no evidence of "*an outline of the main alternative routes studied by the developer and an indication of the main reasons for this choice taking into account the environmental effects*". Yet in the letter dated May 4, 2007, Mr Elvin says this matter has been dealt with comprehensively in the earlier letter but fails to substantiate this claim. Please can Mr Elvin specify the location of the comprehensive evidence showing the Promoter has studied alternative routes on the central section, as we can find no evidence of this?
2. Mr Elvin omits to refer to the word "*studied*" in relation to alternative routes. Instead, Mr Elvin describes the Promoter's duty to consider and provide evidence on alternative routes as "*onerous*" and "*a massive and impractical undertaking*". The Promoters of the Channel Tunnel Rail Link (CTRL) and the Jubilee Line Extension (JLE) were able to provide studies as well as audited information showing the proper consideration of alternative route options. Indeed, the duty to provide studies is a legal obligation for which the Promoter has received substantial public monies. The Committee has heard proven railway planner Mr Schabas, who helped deliver CTRL and the Jubilee Line project, reject the Promoter's reasons for not providing evidence on alternative routes. Indeed, the Committee given the task to hear CTRL gave it their full consideration because it is a legal and moral obligation. We can see no reason why it was possible for promoters of CTRL and the Jubilee Line to provide information on the proper consideration of alternative routes but not the Promoters of the Crossrail Bill. What evidence was used to reach the summary conclusions on the route options set out in Section 6 of the Environmental Statement?

### **Locus and the failure to provide a copy of the Promoter's letter challenging locus**

We are advised that Mr Elvin's comments on locus are incorrect. The consideration of an alternative route alignment in Spitalfields is not contrary to the principle of the Bill for the reasons set out in the letter of April 4, 2007. The fact that Mr Elvin has felt compelled to comment on Option B is an indication that this matter of the alternative route alignment has both locus and relevance. We do not wish to add to our previous letter other than to repeat the clear directions given to the Select Committee, which say: *"This motion sets up the special Select Committee that will consider the Crossrail Bill. The remit of the Committee is to consider the petitions against the Bill and to report to the House recommendations as to compromise or amelioration."*

1. Mr Elvin fails to give a reason for not providing a copy of his letter dated March 1, 2007 challenging the locus of the WHRA until the opening of our hearing on March 20, 2007. Instead, Mr Elvin refers to letters sent by Mr Neate on August 20, 2005. We do not understand the relevance of this point. You will appreciate that our complaint was Mr Elvin's failure to provide a copy of a letter challenging the locus of the WHRA until the hearing not the provision of documents by Mr Neate at the Department for Transport (DfT). We will therefore ask again, why did Mr Elvin fail to provide a copy of a letter seeking to challenge the locus of the WHRA in advance of the hearing on March 20, 2007?

### **Expert witness and evidence**

Key expert witness Michael Schabas has been prevented from giving evidence in public under oath on the consideration of alternative routes on the safeguarded central section, Mr Schabas was also prevented from giving evidence on the map showing Options A, B and C at our suspended petition hearing on January 31, 2007 when he said the following at paragraph 18854, Mr Schabas says:

*"I think it may be not a second bite of the cherry to the extent about what this drawing reveals and points to about Heron House, it is something about the process. This drawing was not available to them before and they assumed, I guess, that they had carefully and in detail looked at the alternatives. They brought me this drawing recently,*

*and the text that went with it, and I was frankly appalled because I could see that ---- Sorry. In 2001, I met Mr Berryman and said, " You need to look at alternatives" and he said, "No, we are going to build the safeguarded scheme because the politicians want us to start building within two years and there is not time to look at alternatives". He told me that. He can correct me if he wants."*

1. Mr Schabas has been prevented from giving evidence on the Promoter refusing to consider alternatives to the safeguarded scheme at the suspended WHRA hearing of January 31, 2007 and again on March 20, 2007. You will appreciate that Mr Schabas first gave evidence about the Promoter's failure to consider alternatives outside of the safeguarded scheme at a hearing on April 18, 2006 where he corroborated his statement with letters. We note the Chair, who we understand is being advised on this issue, prevented Mr Schabas from giving evidence in public at the WHRA hearings for not corroborating the aforementioned statement. However, Mr Schabas has already provided this evidence, which the Chair has requested again, at the April 18, 2006 hearing. It is vital to hear the evidence of Mr Schabas given the disclosure of the 2001 report on January 24, 2007, which show that the Promoter's reasons for dismissing southern route options cannot be relied upon. This corroborates the experience of Mr Schabas, who said the Promoter did not consider alternatives to the safeguarded route on the central section. We understand the Chair wants to protect Mr Schabas. However, Mr Schabas is a witness-in-fact and is not seeking protection from disclosing evidence under oath, which we and other petitioners believe merits proper investigation. Please can the Committee and the DfT provide a reason why Mr Schabas' request to give his evidence in public is, and was denied?
2. We are concerned that the Promoter will not be put to proof on the consideration of alternative routes despite the serious implications for those on the central section and in Spitalfields. Given that experts are available to consider the efficacy of the information, will the Committee remedy this deficiency and ensure this Bill is not unlawful and does not cause unnecessary harm?

## **Fair Hearing**

We do not believe the WHRA has been given a fair hearing on March 20, 2007, as the information provided by the Promoter on the consideration of alternative route options has not been subject to proper scrutiny. There was a lengthy and largely irrelevant debate about locus following the disclosure of a letter, which had been sent to the Select Committee on March 1, 2007. This letter delayed and impeded our efforts to present our case in full. Indeed, a considerable amount of time was spent attempting to prevent the WHRA from raising the issue of alternative routes particularly Option B, which we believe to be a viable and less harmful option. We were not permitted to present our expert witness on the Promoter's consideration of alternative routes on the central section or indeed the history of the Promoter's conduct in relation to the consideration of alternative routes in Spitalfields.

## **Conclusion**

We can find no evidence to substantiate the dismissal of Option B or show that it has been properly considered. Indeed, the reason given for its dismissal by Mr Elvin in his letter dated May 4, 2007 in relation to "*further investigations*" cannot be relied upon. According to the Promoter, there are no studies on the route options contained in the 2001 report. To this end, in the absence of evidential proof, we reserve the right to respond when, and if, the Promoter produces any evidence to corroborate the assumptions behind the dismissal of the southern route options including Option B. We have also come to the conclusion that Mr Elvin has been unable to provide evidence showing alternative routes being studied on the safeguarded central section and the alternative southern route options of 2001 because it does not exist.

The Department for Transport and the Committee do not give reasons why the Promoter is, and has not been put to proof on the consideration of alternative southern route options, which proven experts believe to be viable and less harmful. Indeed, the Spitalfields community asked for the consideration of alternative southern route options before, during the flawed consultation process and subsequently. We believe the failure to put the Promoter to proof will leave the WHRA with no alternative but to have the

lawfulness of this matter adjudicated at a judicial rather than quasi-judicial forum. Given the discretion given to this Committee, we believe it will be a grave error if the Promoter is not put to proof on the reasons for dismissing viable southern route options.

We believe the Bill remains deficient for the reasons set out in the legal opinion and we are advised that the Bill remains unlawful in its present form. We do not intend to engage in protracted correspondence in order to ensure the matter of the lawfulness of this Bill is determined properly. We respectfully request that the Promoter is put to proof on matters relating to the lawfulness of this Bill and the deficiencies of the Bill are remedied otherwise it is likely to result in the need for a declaration of lawfulness.

Yours sincerely

Guy Carpenter  
WHRA Secretary

Cc Mr David Elvin

Mr Guy Carpenter  
Woodseer and Hanbury Residents Association  
55 Hanbury Street  
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E1 5JP

Tim Neate  
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Our Ref: F0003164 - 2/5/5

5 July 2007

Dear Mr Carpenter,

Thank you for your letter of 7 June 2007 in response to David Elvin's letter of 4 May. I am responding on behalf of the Secretary of State for Transport

On the points of law, Mr Elvin has already stated our position on the subject and we have nothing further to add to the previous correspondence you have received from him.

On the question of requests for information, the third paragraph of your letter complains that you have not received "studies showing the consideration of alternative routes on the central safeguarded section and in Spitalfields". As far as the consideration of alternative routes in Spitalfields is concerned, you have been sent the following 19 documents:

**List of Documents Provided on Alternative Alignments**

**Issued to Woodseer and Hanbury Residents Association (WHRA) by the Department for Transport (August 2005) - These documents are publicly available in the Freedom of Information section of the Department for Transport website - [www.dft.gov.uk](http://www.dft.gov.uk)**

- Tunnel Alignments East of Liverpool Street Feasibility Study Report, Volume 1 Bow Triangle and Pudding Mill Lane (February 2002) and Volume 2 Whitechapel Station (November/December 2001)
- Alignment East of Liverpool Street, Alignment Strategy (November 2002)
- Location of Hanbury Street - Cash & Carry Site (June 2004)
- Alignment East of Liverpool Street, Bishops Square Development (November 2002)
- Alignment Options Liverpool Street to Whitechapel - Truman's Brewery Site (June 2004)
- Construction Planning; Pedley Street & Mile End Sidings (September 2004)
- Pedley Street to Mile End Park Conveyor Proposals (January 2005)
- Programme Impact without Hanbury Street Shaft as a TBM Launch Site (April 2005)
- Hanbury Street Removal of Excavated Materials (September 2004)
- Summary of ventilation shaft noise levels for shafts east of Hanbury Street (April 2004)

- Review of Woodseer St as an Alternative to the Hanbury Street Shaft Site (November 2004)
- Alignment East of Liverpool Street Hanbury Street Shaft (February 2003)
- Crossrail Central Tunnels Hanbury Street Shaft, Hybrid Bill Design Report (January 2005)
- Hybrid Bill Process Hanbury Street Over Site Development Outline Proposals (September 2004)
- Crossrail Round 2 Consultation; Spitalfields Information Exchange Hanbury Street (August 2004)

**Issued to Spitalfields Small Business Association and WHRA by CLRL (25 January 2007)**

- Crossrail, Eastern Portal, Bow Triangle Option (March 2001)
- Crossrail, Review of Previously Considered Eastern Portal Options for Crossrail (March 2001)
- Crossrail, Summary of Eastern Portal Options for Crossrail and Review of Stratford Station (March 2001)

**Issued to Spitalfields Small Business Association and WHRA by CLRL (29 January 2007)**

- Alignment East of Liverpool Street - Spitalfields Shaft Location (September 2002)

You have therefore been sent all the documentation held on alternative alignments in Spitalfields.

As far as the central safeguarded section of Crossrail is concerned, I am not aware that you have ever specifically asked for reports showing the consideration of alternative routes in the central section. You have asked for reports considering alternative alignments in Spitalfields, which you have been sent as described above. In your letter of 4 April you stated that you "can find no evidence that the Promoter has properly considered alternative route alignments in the safeguarded central section" but this does not constitute a Freedom of Information request, it is simply a comment on the situation as you see it.

Would you please confirm whether you wish formally to request information in relation to the central section of Crossrail other than the Spitalfields area.

Yours sincerely

**TIM NEATE**

## **Your right to complain to DfT and the Information Commissioner**

You have the right to complain about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

RECD: 26.04.07  
WE: 25.05.07

**URGENT**

Residents' Society of Mayfair and St James's  
16 Upper Brook Street  
London W1K 7PT  
Tel: 020 7 499 9197  
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Email: marinamorriswater@googlemail.com

The Secretary of State c/o Tim Neste, Consultation Manager, Department for Transport  
Zone 2/08  
Great Minister House  
76 Marsham Street  
London SW1P 4DR

Dc: Tim Neste, Chair and Select Committee members c/o Sian Jones, David Cameron,  
Menzies Campbell, Chris Grayling and Alistair Carmichael

April 25, 2007

Dear Mr Alexander

I am writing as Chair of the Residents' Society of Mayfair and St James's' Crossrail  
Committee in relation to the lawfulness of the Crossrail Bill in its present form.

We have had sight of a legal opinion by counsel Richard Harwood of 39 Essex Street  
Chambers and a letter, sent to the Committee, in response to the Woodstock and Hanbury  
Residents Association (WHRA) by David Elvin QC, which mentions the name of our  
Society. This letter seeks to respond directly to the matters raised in that letter and the legal  
implications for the Residents Society of Mayfair and St James's (hereafter referred to as the  
Society). The Society is mentioned in the context of the evidence given by Michael Schabas,  
who was also an expert witness at our petition hearing on April 18, 2006.

**Expert witness Michael Schabas**

Mr Schabas was invited to appear as a witness for the Society because he is a proven rail  
professional, who was retained by the Crossrail team. Mr Schabas has 25 years experience in  
railway planning design and operation and has successfully worked on rail projects in  
Canada, the US, Australia and the UK where he planned and promoted the Jubilee Line  
Extension (JLE) and also worked extensively on the Channel Tunnel Rail Link (CTRL).

We understand that following the disclosure of documents presented by the WHRA, Mr  
Schabas has been prevented from giving evidence in public on the following statement made  
on January 31, 2007. For your ease of reference, the statement is in bold at paragraph  
18854. Mr Schabas says: "*In 2001, I met Mr Berryman and said, "You need to look at  
alternatives" and he said, "No, we are going to build the safeguarded scheme because the  
politicians want us to start building within two years and there is not time to look at  
alternatives". "He told me that. He can correct me if he wants.*"

At page 6655 of our hearing, Mr Schabas says: "*they [CLRLJ] were under strong political  
pressure to get something under way, and there really was not time to start looking at*

*alternatives. Any change from the safeguarded route would delay things for two years."* You will note that neither the Committee nor the Promoter refuted or objected to the same statement made at our hearing on April 1X, 2006.

At para 6651, Mr Schahas also says: "I think my evidence will show that the Promoters and their agents, Cross London Rail Links Limited, have not seriously considered alternatives to the safeguarded route between Paddington and Liverpool Street. They have considered alternatives only superficially and only in order to discard them. They have spent five years and more than £150 million of taxpayers' money to promote the scheme but they have already been in such a hurry to get shovels into the ground that they have cut corners on the planning and alternatives analysis process." The newly disclosed documents show the Promoter has not consider alternative routes between Liverpool Street and Whitechapel Station properly. The documents do not form part of the published papers in the Bill and were released earlier this year.

You will note counsel for the Society Mr Pugh-Smith of 39 Essex Street reminds the Promoter of the obligation to consider alternative routes at our petition hearing at para 6695. Indeed, Mr Pugh-Smith says: "there is a more fundamental legal point...the requirement in the Environmental Statement to consider alternatives adequately and we have called Mr Schahas to demonstrate that, in his submission."

At para 6782, Mr Pugh-Smith says: "Mr Schahas told us when he was involved with Channel Tunnel Rail Link, they looked at numerous alternatives including minor alternatives to see whether the best route could actually be put forward." The Promoter asserts that it does not make economic sense to look at alternative routes in the same way as the CTRL, but produces no evidence and is not put to proof on this or indeed, their reasons for discarding alternative routes in the central section.

We are advised the failure to hear evidence of a proven professional on the above matter in public has serious implications for those affected by the scheme and indeed, all petitioners. We appreciate the statement made by Mr Schahas has implications for petitioners but it is a very serious matter that should be subject to a full investigation. Furthermore, we believe the Promoter's evidence on the consideration of alternative routes cannot be relied upon and must be subject to proper scrutiny in public particularly following the disclosure of documents by the WHRA.

#### The consideration of alternative routes

The Society has always argued that the Promoter has not considered alternative routes adequately on the central section. Indeed, the Society has gone to considerable trouble to try and get the Promoter to consider alternative routes because of the negative environmental impacts of the Crossrail proposals in our area. Indeed, you will note at paras 70-79 of our original petition, the Society proposed an alternative route presented as the Crossrail Northern Interchange Route (CNIR) as the Promoter had failed to put forward alternative routes in the central section. That aside, we do not believe the onus should be on petitioners to produce alternative routes for the Promoter, who is obliged to do this by law. Indeed, the Promoter has received over £300 million of public monies to meet the legal obligations, which includes the proper consideration of alternative routes, to achieve the successful passage of this Bill.

However, we believe that alternative routes have not been examined properly. Indeed, Robert McCracken QC gives an example of the flawed evidence presented by the Promoter. At paras 19761 and 19762, Mr McCracken QC says: "It was interesting to hear Mr Lieven suggest that the alternative route you forward by my clients was first put forward in the last petition in

*which their substantive objection to the principle of the Bill was considered because actually the alternative route that they put forward was put forward about a decade ago. Unfortunately, the Promoters of Crossrail appear for whatever reason it is unnecessary to speculate always to have looked not at the actual alternative put forward by my clients but an entirely different scheme, which has not been promoted by my clients for something like a decade. I can demonstrate very briefly why Mr Lieven's points are, in my submission, thoroughly bad.*

You will note that, as in the case of the WHRA, Mr McCracken QC was prevented from giving a full presentation and our hearing was suspended on February 21, 2007.

We note in the letter to the Committee, Mr Elvin seeks to rely upon Chapter 6 of the Environmental Statement as a basis for complying with the Directive at para 6765 of the April 18, 2006 hearing. We refer you to para 6767 where Mr Pugh-Smith asks Mr Berryman about Chapter 6. Mr Pugh-Smith says: "Can I ask you this: does that committee what has been published to the decision-making body and to the general public in terms of your organisation's consideration of route development and alternatives?" Mr Berryman replies: "The Environmental Statement generally covers those issues, yes." At para 6768 Mr Pugh-Smith asks: "Break your position, Mr Berryman. Help me please, where in Chapter 6 do I find this NATA comparative assessment that you have told the Committee this afternoon you have undertaken with regard to these various alternatives?" Mr Berryman says: "It is not set out in that format here. This is a summary of the results." NATA is the Government's New Approach to Appraisal is to inform decisions about the selection of the appropriate option by considering five criteria, which include economy, safety, accessibility, integration and the environment. However, we note Mr Berryman has not produced evidence showing the proper consideration of route development and alternatives at our hearing or since.

At 6751, Ms Lieven asks Mr Berryman about sticking with the particular route. Mr Berryman says: "It would be quite difficult to come at a late stage and say, 'We're going to take that building out but we are going to take this building out instead', particularly if the developer had his plan in what we had originally proposed, and, of course, what we had originally proposed was covered by the safeguarding directions."

#### Cavendish Square

You will note the Society has advocated an alternative route and the use of Cavendish Square instead of Hanover Square. Indeed, at para 6748 Mr Berryman refers to "alignment 8... further south to Cavendish Square... a brief examination of it and decided that we could not really see what the advantages were in terms of getting people to their places of work and entertainment and therefore we did not take it any further." At 6785 Mr Pugh-Smith asks Mr Berryman: "where do I find in Chapter 6 any reference to Cavendish Square in that section in part of your consideration of alternatives. Indeed, on whether Cavendish Square would be a more suitable site than Hanover Square?" At para 6788, Mr Berryman says: "No analysis has been done of Cavendish Square, a superficial analysis would indicate there would not be much difference but certainly no analysis has been done."

In the evidence presented to date, it appears that the Promoter has predetermined a route alignment and then engaged in an expensive exercise to retain the same route alignment. The hybrid Bill route appears to go under sensitive historic residential areas that are prone to settlement problems. This is in stark contrast to the CTRI and the deliberations of the CTRL Select Committee, who revised the route away from residential areas to mitigate the negative environmental effects.

### EIA Directive

We are advised the Promoter has not complied with the legal requirements of the EIA Directive, which "by virtue of the European Community Directive 85/337/EC on 'The assessment of the effects of certain public and private projects on the environment' (as amended by Directive 97/11/EC) and under Part 1 of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) England and Wales) Regulations 1999 (SI No. 243) ("the EIA Regulations 1999), the Environmental Statement that accompanied the Bill should outline the main alternatives studied by the Promoter and include an indication of the main reasons for the choice of route taken by the Promoter, taking into account the environmental effects of the options.

The Promoters of this Bill are seeking consent, for a particular scheme on a particular route, which is dependent on meeting the requirements of the Directive. You will note in *Luxembourg v Lanxter*, the ECJ held that the '*national court, called in to examine the legality of a procedure for the expropriation in the public interest, in connection with the construction of a motorway, of immovable property belonging to a private individual, may review whether the national legislature kept within the limits of the discretion set by the Directive, in particular where prior assessment of the environmental impact of the project has not been carried out, the information gathered in accordance with Article 2 has not been made available to the public and the members of the public concerned have not had an opportunity to express an opinion before the project is initiated, contrary to the requirements of Article 6(2) of the Directive.*'

You will no doubt be aware that *Lanxter* was decided under the original 1985 Directive, which has since been amended in 1997 and further amendments, adopted in 2003, which have subsequently come into force. You will appreciate that there is a duty to supply the public with information. The evidence showing the proper consideration of alternative routes has not been produced in the published papers or at the hearings.

To this end, the Society requests the release of all the studies that led to the summary of the NATA assessment in relation to the consideration of alternative routes, as it is absent from the published Bill documents. We would also request a proper analysis of the alternative route proposed by the Society in Mayfair, which utilises Cavendish Square as set out in our evidence. We request this information under the Freedom of Information Act and the Aarhus Convention.

### Summary

In relation to the above, we would also ask you to consider the following:

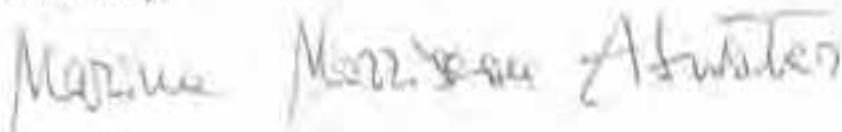
- The Bill in its present form would fail to meet EIA and Human Rights obligations and what the public and politicians will consider to be practical and fair decision making.
- The principle and whether there is a need for this project in the present form can be revisited at the third reading. MPs and Peers cannot be expected to properly analyse all the submissions and the implications of the newly discovered documents at the third reading.
- Mr Elvin argues that Parliament is not subject to the Human Rights Act but fails to mention that the procedures enacting this Bill are subject to the European Convention of Human Rights.
- It would also appear the way in which the present route has been chosen disproportionately interferes with property rights.

We believe the information produced by the Promoter to date does not comply with Article 1(5), which gives an exemption from the Environmental Impact Assessment Directive for the reasons outlined above. Furthermore, we believe the directions, given to the Committee in relation to the consideration of alternative routes are wrong. The Promoter should be under no doubt of the need to consider reasonable alternatives that exist and mitigate harm. Indeed, it is in the public interest that the Promoter selects a route that is the best option for London and taxpayers alike.

We are advised that the Promoter has not considered alternative routes on the central section so as to comply with the EC Directive 35/337/EC (the EIA Directive as amended). To this end, we concur with the findings of the legal opinion produced by counsel Richard Harwood that the Bill is unlawful in its present form. You will appreciate the failure to comply leaves the Promoter open to lengthy legal challenges such as a declaration of lawfulness, which could incur significant delay to the project and put the Bill in jeopardy. It would be undesirable for the Crossrail Bill to proceed with substantial concerns over its lawfulness. We therefore trust the Promoter will now properly consider alternative routes on the central section particularly in Mayfair.

Please acknowledge this letter by return. We ask for a substantive response in writing within 14 days.

Yours sincerely,



Mrs Marina Morrison Atwater  
On behalf of the Residents' Society of Mayfair and St James'

**URGENT**

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The Secretary of State c/o Tim Neate, Consultation Manager, Department for Transport  
Zone 2/08  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

Cc: Tim Neate, Chair and Select Committee members c/o Sian Jones, David Cameron,  
Menzies Campbell, Chris Grayling and Alistair Carmichael

May 9, 2007

Dear Mr Alexander

I write as Chair of the Residents' Society of Mayfair and St James' Crossrail Committee in response to a letter from Mr Timothy Neate dated May 2, 2007, which was received prior to Bank holiday Monday.

The letter requests further clarification of our request under the Freedom of Information Act and the Aarhus Convention. To assist efforts, we have emboldened the information, which we request in this letter. We deal with each of our requests in turn.

**1 INFORMATION REQUEST: Studies or any other information used to produce the '*summary of results*' on the route options considered in Chapter 6 of the Environmental Statement. All information of any kind, which has been relied upon to argue that the route options have been appraised in a manner consistent with NATA**

In relation to our first request, I begin by referring you to paragraph 6767 again. Here, counsel for the Society Mr Pugh-Smith of 39 Essex Street chambers clarifies what information is absent from the Environmental Statement when he questions Mr Berryman about Chapter 6 at our hearing on April 18, 2006. Mr Pugh-Smith asks: "*Break your position, Mr Berryman, Help me please, where in Chapter 6 do I find this NATA comparative assessment that you have told the Committee this afternoon you have undertaken with regard to these various alternatives?*" Mr Berryman says: "*It is not set out in that format here. This is a summary of the results.*"

In the letter, Mr Neate says: "*the route options considered as part of the development of the Crossrail project were appraised in a matter consistent with NATA*" in Chapter 6 of the Environmental Statement. However, the appraisal to which Mr Neate refers, is in fact, a '*summary of results*' as stated by the Promoter above. To clarify, the Promoter has only made a '*summary of results*' available to the public and at the Parliamentary Crossrail hearings. You will appreciate that the Government's New Approach to Appraisal, NATA, is to inform decisions about the selection of the appropriate route option by considering five criteria. This includes economy, safety, accessibility, integration and the environment. The Promoter has not published or made available the studies showing how the "*summary of the results*" in

*Chapter 6 of the Environmental Statement* is consistent with NATA despite substantial requests. We believe the summary in Chapter 6 of the Environmental Statement is flawed. Furthermore, we do not believe the route options have not been considered in a manner consistent with NATA or indeed, the requirements of the EIA Directive. **We request all the information and studies used to produce the ‘summary of results’ of the route options on the central section for the Crossrail project. We expect this request to include evidence that the route options have been appraised in line with NATA.** We have requested this information from the Promoter throughout. Counsel Mr Pugh Smith also requested this information at our hearing on April 18, 2006. The information has yet to supplied.

## **2 Comparative analysis of Cavendish Square route option in Mayfair**

Our second requests relates to the alternative route alignment option, Cavendish Square, which is specific to Mayfair. I again, refer you to para 6748 where Mr Berryman refers to the relevant option. Mr Berryman says: “*alignment B...further south to Cavendish Square...a brief examination of it and decided that we could not really see what the advantages were in terms of getting people to their places of work and entertainment and therefore we did not take it any further.*” At 6786 Mr Pugh-Smith asks Mr Berryman “*where do I find in Chapter 6 any reference to Cavendish Square in that section as part of your consideration of alternatives. Indeed, on whether Cavendish Square would be a more suitable site than Hanover Square?*” At para 6788, Mr Berryman says: “*No analysis has been done of Cavendish Square, a superficial analysis would indicate there would not be much difference but certainly no analysis has been done.*”

To clarify, Mr Berryman says no analysis other than a superficial analysis has been done of the Cavendish Square option. We can see no evidence that any analysis has been done in Chapter 6 or the published papers. **We request a proper analysis of the Cavendish Square route option in Mayfair.**

### **Summary**

**We believe the Bill is deficient and the route options have not been considered in a manner consistent with NATA or indeed, the requirements or the EIA Directive. In short, to clarify, we ask for full disclosure of the above points.** We hope the request for information is now clarified and request a substantive response within 14 days to the original request.

We raised serious issues in our letter of April 25, 2007 including expert witness Michael Schabas being prevented from giving evidence in public on the Promoter’s consideration of alternative routes and indeed, the lawfulness of the Crossrail Bill. We remind you that we expect a substantive response to all the issues raised in that letter for the reasons previously set out. Please acknowledge this letter by return.

Yours sincerely

**Mrs Marina Morrisson Atwater  
On behalf of the Residents’ Society of Mayfair and St James’**

Department for  
**Transport**

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Our Ref: F0003058 - 2/5/3p2

25 May 2007

Dear Mrs Atwater,

Thank you for your letter of 9 May 2007 in response to my letter of 2 May. Your letter is helpful in clarifying the scope of the information requested.

Section 1 of your letter requests all the information and studies used to produce the summary of results of the route options on the central section and Section 2 requests an analysis of a specific central section alternative described as the Cavendish Square route option.

In the Crossrail Environmental Statement Section 6.3.1 there is a description of the categorisation of the alternative Crossrail routes that were considered. These are divided into three categories:

- whole route alternatives;
- central London route alternatives; and
- eastern and western corridor alternatives.

Your request is for the work undertaken for the second of these categories. This response therefore covers the work undertaken for the central London alternatives, namely between Paddington and Liverpool Street.

Ideas presented to Cross London Rail Links (CLRL) by yourselves and others for alternative central London routes were only in broad outline. They required substantial engineering development by CLRL in order for any comparative assessments to be made. Therefore in 2002 CLRL commissioned engineering studies for three central London route options to obtain sufficient detail for their relative impacts to be considered. These were undertaken by the engineering consultants Parsons Brinckerhoff. The study for the Northern route (dated April 2002) was issued to you at the time. Those for the Southern and Wigmore Street routes (dated August and September 2002 respectively) are enclosed with this letter, together with further copies of the Northern route report. The Wigmore Street route is effectively the same as your Cavendish Square route.

The studies provided the engineering and construction information and assessed the environmental impacts of the route options. They demonstrated that all three alternative options had significant disbenefits when compared with the proposed (Safeguarded) Crossrail route.

The Northern route, referred to as the Northern Interchange Route (NIR), was subject to a multi-criteria NATA appraisal. We enclose the CLRL paper entitled 'Appraisal of Residents' Association of Mayfair Scheme' dated March 2003 as approved by the CLRL Board which includes the NATA assessment. This paper records that the then Residents' Association of Mayfair agreed the design commissioned by CLRL as an engineered description of their proposals. The paper concludes that 'There is no evidence that further work can address the inherent disadvantages of the NIR and so the Safeguarded route is to be preferred for Crossrail Line 1.'

The Southern route, as shown in the Crossrail Environmental Statement Figure 6.1 as route 'C', proposes the location of railway stations in the river Thames. This was not considered to be a feasible option by CLRL due to the major issues surrounding the construction of those stations. CLRL concluded that this did not merit further analysis.

The Wigmore Street route was found by inspection to contain many disadvantages compared to the Safeguarded route. It affected more residential property, resulted in longer interchange routes and had serious environmental impacts on historic London squares. Additionally, neither a site for the western ticket hall in Wigmore Street, nor a way through the piled buildings at Tottenham Court Road could be identified. No further analysis was taken forward.

Regarding your request for a NATA appraisal of the Cavendish Square route option (effectively the same as the Wigmore Street Route), no such appraisal exists beyond that included in the engineering study report for the reason given above. In these circumstances there is no justification for CLRL now undertaking further appraisal of this route.

We reject the contentions that there has been any breach of the EIA Directive or Article 6 of the ECHR. As the Residents' Society of Mayfair and St James' (RSMStJ) is aware, the promoter has already made submissions on the obligations with respect to EIA and alternatives in the context of the petitioners from the Spitalfields area, principally the Woodseer and Hanbury Residents' Association (WHRA) and in closing on Day 81 (28.3.07) at para. 21423 of the transcript (provided in writing as document A247). The duty to assess alternatives relates to the scheme as a whole and is only a limited duty i.e. the duty is to give "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". That has been done. The RSMStJ, like others, wishes to require the promoter to go beyond the obligation in the EIA Directive rather than simply outline the main alternatives studied as the main reasons for choice.

As we submitted in the context of the WHRA case, the sense of the Directive limiting the alternatives 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.

Further, the adequacy of the ES is a matter for the reasonable judgment of the decision maker (see e.g. *R v. Rochdale BC, ex parte Milne* [2000] Env. L.R. 22 at paras. 106-11), in this case Parliament. The Courts have frequently pointed out that the fact that a party making representations about development proposals does not agree with the approach or contents of an ES does not mean that it is not 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 makes it any the less a valid ES.

On the issue of human rights, we do not accept that the right to a fair hearing under Article 6 of the European Convention on Human Rights applies to the passage of legislation. We made our submissions to the Committee on this issue in our main closing on Day 81 at para. 21429 of the transcript (see also document A247). However, this issue does not arise in the circumstances since it has fairly permitted the RSMStJ to present its case consistently with the requirement that petitioners may not challenge the principle of the Bill (which we submit includes the main alignment between the stations which have been included in the Bill).

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain by writing to me at the above address. Please see the attached details of the Department for Transport's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely

**TIM NEATE**

Enc    Study of Alternative Crossrail Alignments – Southern Route - 2 copies  
            Study of Alternative Crossrail Alignments – Northern Route - 2 copies  
            Study of Alternative Crossrail Alignments – Wigmore Street - 2 copies  
            Paper ‘Appraisal of Residents’ Association of Mayfair Scheme’ - 2 copies

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You have the right to complain about the way in which your request for information was handled. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

# BINDMAN & PARTNERS



Our reference: 46451.1 JHL  
Date: 6 June 2005

Tim Neate  
Consultation Manager  
Major Projects Division 3  
Zone 2/08  
76 Marsham Street  
London SW1P 4DR

2<sup>nd</sup> June 2005

Dear Sirs,

## Crossrail Bill

### The Bill process – Environmental Impact Assessment and Human Rights

Together with Richard Harwood of Counsel, we have been instructed by the Spitalfields Community Association and the Woodseer and Hanbury Residents Association to advise on certain serious procedural defects in the Crossrail Bill process. This letter explains the advice we have given our clients and represents an opportunity for the Department for Transport and, in turn, the Private Bill Office to which it has been copied to review the process and adapt it in the ways we propose to address our clients' concerns. For reasons which we shall explain in the ultimate paragraphs of this letter, failure to do so will, at best, mean that the Bill proceeds under the shadow of a potential legal challenge and, at worst, provokes one. That can be avoided in a way which greatly improves public participation in the decision-making surrounding this significant piece of legislation.

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## Environmental Impact Assessment

You will no doubt be aware of the terms of Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment 85/337/EEC and the amendments made by Council Directive 97/11/EC of 3 March 1997 ('the Directive'). Amongst other things, this imposes a consultative framework on state decision-making which precedes the authorization of 'projects' such as the Crossrail development.

Projects approved by a legislative process may be exempted from the process envisaged by the Directive under Article 1(5) but this is dependent upon the legislative process meeting the objectives of the Directive, including the supply of information (*World Wildlife Fund v Autonome Provinz Bozen*: C-435/97 [1999] ECR I-5613, [2000] 1 CMLR 149).

In summary, our view is that despite Parliamentary Standing Order on Private Business 27A obliging the production of an Environmental Statement as required by Article 5 of the Directive, the Parliamentary Standing Orders do not meet the linked requirements of consultation and consideration it imposes. We appreciate that the Department for Transport has taken a number of administrative measures to seek further to comply. Those measures would not in themselves be adequate, but they are also administrative measures which are not a permissible means of complying with European Union law. One difficulty with an administrative, rather than a legal process, is that it lacks certainty and access to the procedure. The progress of the Crossrail Bill illustrates the defects in this approach.

We shall now explain the specific ways in which the process envisaged falls short of what is required under the Directive.

### *Consultation with statutory authorities*

Article 6(1) of the Directive provides that "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". Member states shall "designate the authorities to be consulted" and lay down "detailed arrangements for their consultation". Unlike the EIA Regulations regime, Parliament's Standing Orders do not designate the authorities to be consulted nor do they lay down detailed arrangements for consultation. Whilst there is an express discretion to hear some public authorities, such as local councils, at the Select Committee, government agencies, such as the Environment Agency and English Heritage, do not even benefit from that explicit recognition.



### *Consultation with the public*

Article 6(2) provides:

"Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 [the Environmental Statement] are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted."

Article 6(3) provides that the detailed arrangements for such consultation shall be determined by the member state concerned. The Crossrail Environmental Statement has been made available to the public. The issue is whether they have an opportunity to express an opinion. The member state may 'determine the public concerned'<sup>1</sup> but the UK approach to EIA has been to allow anyone to make representations. 'The public' cannot be confined to those with *locus standi* because those rules are about the representation of private interests, not those of members of the public who may have no financial or property interests.

The Department for Transport has invited comments on the Environmental Statement but this process has been far from clear. The Department's press release on the publication of the Bill<sup>2</sup> said that comments on the ES could be sent to the Department but did not give a timescale for their receipt or say what would be done with them. A search of the Parliamentary, DfT and Crossrail websites carried out in 20<sup>th</sup> to 23<sup>rd</sup> March revealed that the DfT 'frequently asked questions' suggested that comments on the ES can be sent to the Department, but there was no timescale or explanation as to how those comments were to be considered by Parliament on any of these websites.

Whilst the Private Bill Office in the House of Commons has informed enquirers that the Department for Transport is expected to publish the comments received about the Environmental Statement before Second Reading to enable MPs to include those concerns in the debate, it too has not been able to provide a timescale for submitting those comments.

The Department's press release dated 7<sup>th</sup> April 2005 announcing the carry-over motion gave a consultation deadline for the ES of 17<sup>th</sup> May. Please explain when the 17<sup>th</sup> May date was first announced and how was it publicised? We would be grateful for dated copies of the relevant notices. Was the extended consultation deadline of

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<sup>1</sup> Article 6(3).

<sup>2</sup> 22<sup>nd</sup> February 2005.



10<sup>th</sup> June publicized before a press release and public notices were published on 27<sup>th</sup> May?

#### *Consideration of responses*

Consultation of public authorities, the public and other states if there are transboundary effects<sup>3</sup> is linked to the obligation that the information obtained 'must be taken into consideration in the development consent procedure': see Article 8 of the Directive. The obligation is not simply to consider the Environmental Statement but to consider the comments of public authorities and the public on it. This obligation is explicitly recognized in the EIA Regulations. It is however absent from the Crossrail Bill process as presently promulgated. There are four particular failings:

##### *(i) the principle of the project*

The principle of the Bill and whether there is a need for the project is determined at Second Reading and can be revisited at Third Reading. The Select Committee does not consider these issues and so cannot perform the Article 8 obligation. Nor is it realistic to expect the Commons to do so. The Department has now requested comments on the Environmental Statement which will be published before the Second Reading debate. As the 27<sup>th</sup> May press notice says, a substantial number of submissions have already been received. Members of Parliament would need to debate a massive amount of material (the Environmental Statement and the submissions upon it), without analysis or independent professional advice, within the confines of a Second Reading debate. That is not an adequate way of addressing their obligation to consider all the environmental information. On the principle of approving the project, comments are not solicited as required by Article 6 (because of the informalities) and are not considered as required by Article 8.

##### *(ii) the limited locus standi rules*

The ability to appear before the Select Committee is limited to certain public authorities and a narrow class of people with property rights. The bulk of the public will not be allowed to make representations and representations they do make will not be considered. Consequently the public are prevented from making representations in breach of Article 6(2) and such representations are not considered contrary to Article 8. If public authorities are denied standing, breaches of Article 6(1) may also occur.

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<sup>3</sup> Article 7.



*(iii) confinement to an oral procedure*

The Select Committee procedure is that a person petitions to be heard. Evidence is then taken in an essentially oral manner. A member of the public who simply wishes to write a letter, rather than go to Westminster, give evidence to a committee of MPs and be cross-examined by Leading Counsel (even were that permitted), will not be able to make his or her point. Such a procedure, which substantially impairs the exercise of a Community right, is not compatible with the Directive.

*(iv) charges and procedures*

A petition must be in a particular form and accompanied by a £20 fee. There are probably a handful of people in this country who could draft a petition without having a precedent in front of them. The format again hinders public participation. The fee actively discourages public participation.

No such hurdles exist in the conventional planning context. Local planning authorities do not require anyone who wants to make a comment on a planning application to enclose a £20 cheque with their letter. Nor do planning inspectors collect fees as members of the public speak at inquiries. Yet in relation to the Crossrail Bill, which will impact on whole communities in a much more fundamental and irrevocable way than most planning decisions, there are greater impediments to public participation. That is wrong as a matter of principle.

*The Supplementary Environmental Statement*

The Department published a Supplementary Environmental Statement on 27<sup>th</sup> May 2005. This is of particular interest to our clients as it includes further material on the Hanbury Street shaft and consideration of alternative shaft sites and tunnel alignment options in the Spitalfields area. Our clients and many other people will wish to consider that part of the Supplementary ES and respond. A consultation date of 8<sup>th</sup> July has been set for comments on this new material. Again, how any comments will be fed into the Bill process is quite obscure. It is not even clear when the Second Reading Debate will take place and whether this will precede the closing date for this consultation exercise.

If the Second Reading is held before 8 July 2005 then self evidently the Commons will not have been able to consider all relevant environmental information as required by Article 8. They will be unable to reach a properly informed decision on matters of principle.



addressed by the Supplementary Environmental Statement. WHRA have been unable to obtain an explanation from your Department whether the Hanbury Street shaft is considered to be part of the principle of the Bill. Even if the Department is satisfied that the Bill process is generally European law compliant, and we have explained why it is not, none of the matters in the Supplementary Environmental Statement can be considered as determined in principle at the Second Reading stage. If the wider process of consideration we outline later is not pursued, specific provision will have to be made for Hanbury Street and the other issues raised by the Supplementary Environmental Statement. The Select Committee should be given an instruction to consider these matters. In particular it should be instructed to consider:

- tunnel alignment between Liverpool Street and Stepney Green, the construction and uses of shafts between those points, with particular reference to the need for and location of the proposed Hanbury Street tunnelling access shaft, separate consideration of the ventilation and intervention shaft, the spoil removal site in Spitalfields and all the proposed locations from which tunnelling should take place.

Additionally, please confirm whether Crossrail or the Department have prepared, or have in draft, any other report on tunnel, shaft and spoil removal alternatives in (or to) the Spitalfields area and provide us with any such report which is unpublished. This request supplements that WHRA made to the Department under the Freedom of Information Act 2000 on 29<sup>th</sup> April 2005 and we trust that this material will also be provided directly.

#### *Reasons for decisions*

Last, Article 9 of the Directive requires the decision maker to make available the main reasons and considerations on which the decision is based and a description of the main measures to avoid, reduce or offset the major adverse effects of the project. This requirement is new to the 1997 amendments and did not arise in *Luxembourg v Linster and others* (Case C-287/98), 19 September 2000 or *Bozen*. Parliament will have to formulate a reasoned statement as to why the Crossrail Bill is approved if that happens. The present procedures do not include this stage.

#### **Human Rights**

The Crossrail Bill, if enacted, will interfere with the Article 1, First Protocol and Article 8 rights of many people under the European Convention on Human Rights. Those rights are qualified and, in broad terms, interference with those rights can be justified if it is



necessary for the construction of major public infrastructure. Whether the Crossrail project justifies such interference either generally or in particular instances must be fully and fairly considered by Parliament. The general and specific issues must be addressed by the Select Committee.

The restrictive rules on *locus standi* prevent some persons whose 'civil rights' are affected from being heard by the Select Committee, contrary to Article 6 of the Convention. The inconsistencies in these rules will also breach Article 14 of the Convention. Whilst Parliament is not a public authority under section 6 of the Human Rights Act for the purpose of its proceedings a declaration of incompatibility could be made if a Bill is enacted by a procedure which breaches the Convention. A wider view on standing, as well as a written representations procedure, will need to be introduced to meet the UK's Convention obligations. Please confirm that the government will encourage Parliament to adopt procedures which give a fair hearing to all persons whose civil rights are affected by the Bill and that the Government/Crossrail advocates and agents will support the right of any persons whose civil rights are affected by the scheme to be heard by the Select Committees.

### **Proposals for the Crossrail Bill process**

The Hybrid Bill procedure as it stands does not meet the requirements for an Article 1(5) exemption under the Directive. The limitation on who can make representations and the failure to consider representations when the principle of the scheme is determined are the most serious failures. Environmental Impact Assessment is not simply the production and consideration by a decision-maker of an Environmental Statement. It requires public participation and consideration of the public's views – a point eloquently made by the House of Lords in *Berkeley v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 1012, [2001] 3 CMLR 223.

That is not to say that no legislative process is incapable of meeting Article 1(5). But a number of important changes are necessary. The restricted rights of standing in Select Committee and the absence of a written representation procedure also contravene Article 6 of the European Convention on Human Rights.

The Parliamentary process needs to be amended to meet the EIA and Human Rights obligations upon it.

There is firstly a need for the EIA process to be fully and properly provided for in the Standing Orders of both Houses. This should include consultation requirements, the consideration of material and



reasoning. Whilst that change can only be made by Parliament, the government ought to have a view on the matter.

Secondly, it should be recognized that expecting MPs and Peers to be able to properly analyse the Environmental Statement and all the submissions on it in the course of Second or Third Reading debates fails to meet EIA and Human Rights obligations and what the public and politicians will consider to be practical and fair decision-making.

We would suggest that the following process is adopted for the Select Committee:

- (i) the Select Committee will be able to consider the principle of the Bill and the promoters will be expected to prove the expediency of the Bill
- (ii) the Select Committee will consider all written representations on the Environmental Statement and more generally, regardless of the rules on *locus standi*. There should be no fee, or particular formality required, for the making of a written representation.
- (iii) more formality can be required for a person to be able to make an oral representation. Parliament may choose to retain some form of petition procedure, but standing should be considered generously.

Additionally reasons for the making of the Act, compliant with Article 9 of the EIA Directive, will need to be agreed between both Houses.

### **Consequences of non-compliance**

The first consequence of the Crossrail process not securing the Article 1(5) exemption under the EIA Directive is that it will need to go through a fresh development consent process. The grant of deemed planning permission under the Bill (or as permitted development under the Town and Country Planning (General Permitted Development) Order 1995) would be unlawful. It would purport to be a grant of development consent in breach of the Directive.

The UK Courts would be able to review whether the Crossrail Act (as it would become) was within the Article 1(5) exemption. The issue may be taken as a defence to compulsorily acquisition, as in *Linster*<sup>4</sup>, or as a judicial review.<sup>5</sup> The issue could also be raised by the European Commission in infringement proceedings.

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<sup>4</sup> Judgment, para 39.

<sup>5</sup> *Linster* at para 37.



A breach of the European Convention on Human Rights could lead to a declaration of incompatibility in the English Courts or a complaint to the European Court of Human Rights.

As mentioned at the outset of this letter, it would be undesirable for the Crossrail Bill to proceed with substantial concerns over the lawfulness of the process hanging over it, or for its operative provisions to be quashed if it is enacted. We trust therefore that you will be able to confirm that the proposals we have made will be considered and, ultimately, adopted. Please acknowledge this letter by return. We ask for a substantive response within 14 days.

Yours faithfully

BINDMAN AND PARTNERS

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London, WC1X 8QB

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Policy Adviser  
Crossrail Bill Team  
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Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)

Our Ref: 2/5/3p 2  
Your Ref: 46451.1

15 July 2005

Dear Sirs,

**Crossrail Bill**

1. Thank you for your letter of 6 June concerning the compatibility of the hybrid Bill process with the requirements of the Environmental Impact Assessment Directive (Directive 85/337/EEC as amended by 97/11/EC) ("the Directive"). The Department is committed to full public consultation on Crossrail and I hope that the measures summarised below which we have put in place will allay your concerns.

**Compatibility with the EIA Directive**

2. We accept, of course, that the legislative process in respect of the Crossrail Bill should be such as to achieve the objects of the Directive. We have taken account of the requirements of Article 1(5) of the Directive in particular as applied by the European Court of Justice in *World Wildlife Fund v. Autonome Provinz Bozen* (Case C-435/97 [2000] 1 C.M.L.R. 149). As you note, the Directive provides that consultation with relevant public authorities, and with the public, should take place prior to the grant of consent for a relevant development project. Given that the well-established practice of Parliament is that the subject matter of petitions against a hybrid Bill should be limited to matters that do not go against the principle of the Bill, we have carefully considered how such broad representations can be brought before and taken into account by Parliament.
3. As you aware, in addition to the ability of persons to petition Parliament (or to lobby a member of Parliament), provision for consultation has been and will be made in that:
  - (i) the public, and local authorities, have been invited to send responses to the Department's Environmental Statement ("the ES") to the Department; and
  - (ii) the Department has collated responses to the ES in a report which has been published as a command paper and presented to the House of Commons so as to be available to Members in time for them to consider it in advance of Second Reading of the Bill. The command paper is available on the Department for Transport website [www.dft.gov.uk](http://www.dft.gov.uk) in the

Crosrail Bill pages. It has also been placed in the library of the House before Second Reading.

These responses will therefore be before MPs when they debate the principle of the Bill at Second Reading on 18 July.

4. You are correct that Third Reading is an additional opportunity to revisit the principle of the Bill and the Department will seek to facilitate debate at that time. To that end, you may already be aware that the Secretary of State has tabled a motion (for debate after Second Reading) containing an instruction to the Select Committee that they, without comment;

*"report to the House for its consideration any issue relating to the environmental impact of the railway transport system for which the Bill provides that is raised in a petition against the Bill, but which the Select Committee is prevented from considering by the practice of the House;"*

5. As is already acknowledged, the Department will in due course provide a further report that will include any additional public comments on the ES made after 10 June, and comments on our Supplementary Environmental Statement (published 26<sup>th</sup> May). Therefore there will be two media (beyond direct contact with MPs) through which the House will be able to receive public comments going to the fundamental environmental balance of the project. These comments will be before the House at Third Reading at which the Government's intention is that there should be a substantive debate, including on the principle of the Bill, in the light of all the information that is then before the House.

### **Your proposals for the Bill process**

6. It follows from our above comments that we consider that in practice the principle of the Bill will not be conclusively fixed by (and in respect of) the House of Commons until Third Reading, and that therefore the Select Committee's standard practice - that the expediency of the Bill need not be proved before Committee - need not be changed (as you have suggested). However, the processes we have proposed by virtue of our tabled Parliamentary motions will provide for any issues raised in petitions which go beyond the Committee's remit to be considered by Parliament.
7. We note your comments on the formality of the petitioning process, although you will appreciate that the EIA Directive does not prescribe the form of Parliamentary procedures for the making of representations. The Department has supplemented this process through its (extended and re-publicised) consultation process which has no such formalities. Your reference to administrative measures may be relevant to the obligation to transposition of directives, but the Bill is being dealt with through Article 1(5) which (as applied by the ECJ) only requires compliance with the *objectives* of the Directive.
8. As the ECJ held at para. 57 in *Bozen* with regard to Article 1(5):

"That provision accordingly exempts projects envisaged by the Directive from the assessment procedure subject to two conditions. 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."

9. These requirements will be met by the Bill and the process undertaken. We therefore do not agree with your view that the law relating to transposition measures is relevant to determining whether the legislative process has complied with the objectives of the Directive or that the process will not comply with Article 1(5).
10. As regards the reasoning behind the eventual enactment of the Bill, our intention is that the Secretary of State should state the case for the Bill both at Second Reading and again at Third Reading. We also intend to set out our view on the inherent balancing exercises and to invite Parliament to support the Bill on that basis.

### **Human rights**

11. We accept that Convention rights to property, and to the home, are engaged in this context. However, as you acknowledge, these rights are qualified and interference with them can be justified in the public interest. As you know, the Secretary of State has made a statement in accordance with section 19 of the Human Rights Act 1998 as to the compatibility of the Bill with the Convention rights and we remain of that view. The necessary balancing exercise is reflected both in the decision as to the desirability of the project as a whole - the principle of which will be before the House of Commons at Second and Third Readings - and in the decisions in the varied contexts as they affect specific individuals. The latter issues will be considered by the Select Committees of Parliament. The Department considers that there is a considerable and extensive public interest in the Crossrail project which will be relevant when considering whether a fair balance has been struck by the legislation.
12. The Department does not consider that Article 6 of the Convention is relevant in this context but equally it has no interest, as promoter or otherwise, in curtailing proper consideration of the issues by the Select Committee. The Department's position in respect of locus standi, where this is a potential issue, will therefore be informed by a detailed and sensitive consideration of the individual position of each petitioner.

### **Requests for information**

13. We note your request for information as to when the consultation deadline was first announced and as to any pre-publication of the extended deadline. We invited comments on the Environmental Statement when it was published on 22 February 2005. A press statement was made on the 7 April 2005 giving a deadline for comments of 17 May 2005. On 23 May 2005, a written statement was made in both houses of parliament in which it was announced that the deadline for

comments was extended to 10 June. Copies of the statements mentioned above are enclosed.

14. We also note your request on page 6 of your letter for unpublished reports concerning tunnel, shaft and spoil removal alternatives in the Spitalfields area. We are dealing with this request and will reply shortly.

Yours sincerely,

A handwritten signature in grey ink, appearing to read "Tim Neate".

**TIM NEATE**

## **News Release**

*News Release 2005/0018:*  
22 February 2005

### **GOVERNMENT DELIVERS ON PLEDGE TO INTRODUCE CROSSRAIL BILL**

Alistair Darling, the Secretary of State for Transport, reaffirmed the Government's commitment to Crossrail by introducing a Hybrid Bill for the project today.

Alistair Darling said:

"The case for Crossrail is clear and the Government has long said that it is committed to the scheme. Last July, when I gave the go ahead for Crossrail, I said that we would be introducing a Bill for the project, and today sees that vital next stage."

The £10 billion Crossrail scheme linking Maidenhead in the West with Shenfield in the East and Abbey Wood in the South East will:

- bring in nearly twice as many benefits to the UK as it costs to build the project;
- support the development of London as a world city and its role as the financial centre of Europe and the UK;
- support the economic growth of London and its regeneration areas by tackling congestion and help to cope with future transport pressures on the existing network; and
- improve rail access to and within London.

Alistair Darling added:

"Crossrail will significantly improve travel into and across the centre of the capital. It will bring huge benefits to the British economy as a whole and be a catalyst for regeneration in the east of London.

"Introducing a Bill for the project after years of uncertainty represents a major step forward. It is also another example of the Government taking decisions now, not just for today but for generations to come. It will anticipate the pressures on our transport system in 10 or 20 years."

Ken Livingstone, the Mayor of London, said:

"I congratulate the Government on today's Crossrail announcement. This is

a clear demonstration of their commitment to the project taking it a vital step forward.

Crossrail is the capital's most important transport development for 40 years and would create the backbone of a 21st century transport system giving London essential additional capacity, underpinning hundreds of thousands of jobs in London's financial district and sustaining the capital's position as the world's leading international financial centre.

"We are continuing to work with the Government to agree a funding package based on a combination of Government grant, additional fare revenues arising from the scheme, and a contribution from London businesses."

Adrian Montague, Chairman of Cross London Rail Links, said:

"We look forward to the progress of the Bill through Parliament. This is an exciting time for London and the South East as these proposals for a major transport boost to the capital move closer to obtaining permission to go ahead."

A comprehensive Environmental Statement (ES) has been prepared for Crossrail, and copies deposited with the Bill. The ES runs to nine volumes, with many supporting specialist reports. A non-technical summary is also available. Comments on the ES are welcomed.

Safeguarding directions for the route contained in the Bill were also issued today. These not only protect the route, but allow affected property-owners access to compensation via the statutory blight provisions. A policy on discretionary purchase in cases of hardship has been in effect since earlier this month.

Alistair Darling also announced, following a public consultation, that the route from Abbey Wood to Ebbsfleet would be safeguarded and that he is also now going to consult on the possibility of safeguarding the route to Reading in the west.

#### **Notes to editors**

1. A copy of the Bill and accompanying Explanatory Notes can be found on the UK Parliament's Website. A copy of the Plans and Sections, Environmental Statement (ES) and ES Non-Technical Summary are available on the DfT Website and on the Cross London Rail Website. CLRL is a Cross London Rail Links Ltd is a 50/50 joint venture company owned by Transport for London (TfL) and the Department for Transport. Anyone wishing to know more about the project and the Bill can also contact CLRL's 24-hour telephone helpline on 0845 602 3813.

2. The Bill contains six main elements relating to:

- the power to construct and maintain works necessary to deliver Crossrail. These powers will be vested in a "nominated undertaker" (and, in the absence of a nominated undertaker, in the Secretary of State) and the Bill gives the Secretary of State the ability to nominate that undertaker. This will provide the Secretary of

State important flexibility in determining how the project can be implemented most effectively and efficiently;

- the acquisition of land and interests in land necessary for those works. The powers of compulsory purchase sought in the Bill are vested in the Secretary of State but could also be transferred to the Greater London Authority or Transport for London, again to provide flexibility in implementation. The compulsory purchase powers in the Bill would expire five years after Royal Assent, though they could be extended;
- the establishment of a planning and heritage regime for the works. The former seeks to give local planning authorities and the various statutory bodies an appropriate degree of control over the planning aspects of the project (and will be augmented by other arrangements, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). These provisions have been the subject of consultation with the bodies affected, and closely follow those established for the CTRL, which have generally worked well. Heritage issues will also be the subject of separate agreements with English Heritage and the local authorities;
- the application of existing railway and other miscellaneous legislation to Crossrail. Chief amongst these are the provisions which seek to establish the railways regulatory regime which will apply to Crossrail and its interface with the existing network;
- the transfer by transfer scheme of property, rights and liabilities from CLRL or the Secretary of State, or their wholly-owned subsidiaries, or, with their consent, the GLA, TfL, the London Development Agency or any of their subsidiaries, that may be necessary to ensure that the nominated undertaker is capable of delivering the project; and
- the devolution of control of the Crossrail project to the Greater London Authority or Transport for London (or a combination of the two).

3. The Crossrail Bill is a Hybrid Bill. A Hybrid Bill is a Public Bill promoted by the Government which is treated like a Private Bill for part of its passage through Parliament, in addition to being considered in the same way as any other Public Bill. This means that those who are especially and directly affected by the Bill may "petition" against it (a petition is a written description of the particular concerns and how these might be alleviated). Petitioners (or their representatives) may have the opportunity to present their arguments to Select Committee hearings in one or both Houses. The House of Commons Information Office Factsheet on Hybrid Bills (L5) and the House of Commons guidance "How to Petition against a Hybrid Bill in the House of Commons" can be found on the UK Parliament Website.

4. The Crossrail route included in the Bill has four main elements:

- a new central tunnelled section with new sub-surface stations at Paddington, Bond Street, Tottenham Court Road, Farringdon, Liverpool Street, Whitechapel and Isle of Dogs. Major construction works will be necessary at each station site, and at intermediate ventilation and emergency intervention shafts; and

- three outlying sections of the scheme – western, north eastern and south eastern. These will largely run on existing track, or on land currently in railway use, and make use of modified existing stations:
  - the western section will run along the existing Great Western Main Line between Maidenhead and the entrance to the central tunnel at Royal Oak. A new junction will be constructed to allow for the increased number of trains accessing Heathrow from the Great Western Main Line;
  - the north eastern section will run on new track from the tunnel exit at Pudding Mill Lane, then on the Great Eastern Main Line between Stratford and Shenfield; and
  - the south eastern section will join what is currently the North London Line near Custom House, running through the existing Connaught Tunnel beneath the Royal Docks. A new Crossrail tunnel will then take the line to Plumstead where it will join the North Kent Line to Abbey Wood.

5. A full Environmental Statement (ES) has been prepared for Crossrail, and copies deposited with the Bill. The ES runs to nine volumes, with many supporting specialist reports. There is also a Non-Technical Summary (NTS), of just over 55 pages, which sets out in non-technical language the main findings of the ES. Comments on the ES should be sent to the Consultation Manager, Major Projects Division 3, Zone 2/08, 76 Marsham Street, London, SW1P 4DR (e-mail: [crossrail@dft.gsi.gov.uk](mailto:crossrail@dft.gsi.gov.uk)).

6. It is envisaged that implementation of the project may in due course be handed to the GLA (the Mayor of London) or Transport for London if appropriate risk transfer can be agreed. The Department is working closely with the Mayor and Transport for London on development of the project.

7. CLRL price the scheme contained in the Bill at £10.292 billion in Q1 2002 prices. There will need to be a substantial contribution to the cost of the project from those who benefit from it. The Treasury and Department for Transport with TfL are examining options and will consult London interests in the Summer. The Government will bring forward funding proposals during the passage of the Bill.

8. Maps of the Crossrail Route are attached.

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*Press Enquiries: 020 7944 4604  
Out of Hours: 020 7944 4292  
E-mail: [press@dft.gov.uk](mailto:press@dft.gov.uk)  
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Published 22 February 2005

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# **News Release**

*News Release 2005/0045:*  
07 April 2005

## **CROSSRAIL BILL**

The Crossrail Bill - a Hybrid Bill that would authorise the construction and maintenance of Crossrail, a new East-West cross-London rail link from Maidenhead in the west to Shenfield and Abbey Wood in the east, including new tunnels under central London - was today carried over to the new Parliament.

Given the lengthy timescales associated with Hybrid Bills, they can be carried over from one session of Parliament to another, so that the Bill is not lost. Carry Over enables a Bill to continue in the next session or in a new Parliament at the same stage that it was at when it was carried over. Carry Over of the Crossrail Bill was secured through the passing of Carry Over Motions in both the House of Commons and the House of Lords.

Also a full Environmental Statement (ES) has been prepared for Crossrail, and copies deposited with the Bill when it was introduced in February. The Department has set a deadline of 17 May for comments on the ES, so that they can be presented to the House and published.

### **Notes to editors**

1. The Crossrail Bill was introduced into the House of Commons on 22 February. It had completed a number of essentially procedural hurdles when the General Election was called.
2. A Hybrid Bill is a Public Bill promoted by the Government which is treated like a Private Bill for part of its passage through Parliament, in addition to being considered in the same way as any other Public Bill.
3. A copy of the Bill and accompanying Explanatory Notes can be found on the UK Parliament's website at [www.parliament.uk](http://www.parliament.uk). A copy of the Plans and Sections, Environmental Statement (ES) and ES Non-Technical Summary are available on the Department for Transport's website at [www.dft.gov.uk](http://www.dft.gov.uk) and on Cross London Rail Links' (CLRL) website at [www.crossrail.co.uk](http://www.crossrail.co.uk). CLRL is a 50/50 joint venture company owned by Transport for London (TfL) and the Department for Transport. Anyone wishing to know more about the project and the Bill can also contact CLRL's 24-hour telephone helpline on 0845 602 3813.
4. Comments on the Environmental Statement should be sent to the Consultation Manager, Major Projects Division 3, Zone 2/08, 76 Marsham Street, London, SW1P 4DR (e-mail: [crossrail@dft.gsi.gov.uk](mailto:crossrail@dft.gsi.gov.uk)).

**Written Statements, 23 May 2005**

**By the Parliamentary Under Secretary of State for Transport to the House of Commons**

**Parliamentary Under Secretary of State, Department for Transport**

**(Derek Twigg):** The Secretary of State for Transport announced on 23 May that the period in which the public may comment on the Environmental Statement (ES) for Crossrail had been extended by three weeks, to 10 June, to give people a further opportunity to submit their views on the ES.

Comments on the ES should be sent to Tim Neate, Consultation Manager, Major Projects Division 3, Zone 2/08, 76 Marsham Street, London, SW1P 4DR (e-mail: [crossrail@dft.gsi.gov.uk](mailto:crossrail@dft.gsi.gov.uk)) **by 10 June 2005**. All comments received will be presented to the House and published.

A copy of the ES and Non-Technical Summary (together with supporting specialist reports) are available on the Department for Transport's website at [www.dft.gov.uk](http://www.dft.gov.uk) and on Cross London Rail Links' (CLRL) website at <http://billdocuments.crossrail.co.uk/>.

**By the Lord Davies of Oldham to the House of Lords**

**Lord Davies of Oldham:** My honourable friend the Parliamentary Under-Secretary of State for Transport (Derek Twigg) has made the following Ministerial Statement.

The Department for Transport invited comments on the Environmental Statement for Crossrail when it was published in February. That comment period closed on 17 May, and we have received a substantial number of submissions. Given that we do not expect the Second Reading of the Bill to take place until after the Whitsun Recess, we have decided to extend the period for comment by three weeks, to 10 June, to give people a further opportunity to offer views on the ES.

Comments on the ES should be sent to Tim Neate, Consultation Manager, Major Projects Division 3, Zone 2/08, 76 Marsham Street, London, SW1P 4DR ([crossrail@dft.gsi.gov.uk](mailto:crossrail@dft.gsi.gov.uk)). All comments received will be presented to the House and published.

A copy of the ES and non-technical summary (together with supporting specialist reports) are available on the Department for Transport's website at [www.dft.gov.uk](http://www.dft.gov.uk) and on Cross London Rail Links' (CLRL) website at [billdocuments.crossrail.co.uk](http://billdocuments.crossrail.co.uk).

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Our Ref: F0001532 - 2/5/3p 2  
Your Ref: 46452.1 JHL

10 August 2005

Dear Sirs,

**Crossrail Bill**

In my letter of 15 July, responding to your letter of 2 June, I noted the request on page 6 of your letter for unpublished reports concerning tunnel, shaft and spoil removal alternatives in the Spitalfields area and informed you that we were dealing with this request and would reply shortly. I am writing to confirm that Cross London Rail Links Ltd (CLRL) has now completed its search for the information which you requested and I apologise for the delay in them doing so. Although CLRL are not covered by the Freedom of Information Act 2000, they are acting in the spirit of the Act.

Hard copies of all unpublished reports into tunnel, shaft and spoil removal alternatives in the Spitalfields area are enclosed. These reports will also now be made available in the Freedom of Information section of the Department for Transport website - [www.dft.gov.uk](http://www.dft.gov.uk). Further reports exist in draft form, however these are to be published in due course and are therefore exempt under section 22 of the Act.

The following 15 Reports are enclosed:

1. Tunnel Alignments East of Liverpool Street Feasability Study Report, Volume 1 Bow Triangle and Pudding Mill Lane and Volume 2 Whitechapel Station (Weston Williamson).
2. Alignment East of Liverpool Street, Alignment Strategy.
3. Location of Hanbury Street – Cash & Carry Site.
4. Alignment East of Liverpool Street, Bishops Square Development.
5. Alignment Options Liverpool Street to Whitechapel – Truman's Brewery Site.
6. Construction Planning; Pedley Street & Mile End Sidings.
7. Pedley Street to Mile End Park Conveyer Proposals.
8. Programme Impact without Hanbury St Shaft as a TBM Launch Site.
9. Hanbury Street Removal of Excavated Materials.
10. Summary of ventilation shaft noise levels for shafts east of Hanbury Street.
11. Review of Woodseer St as an Alternative to the Hanbury St Shaft Site.
12. Alignment East of Liverpool Street Hanbury Street Shaft.
13. Crossrail Central Tunnels Hanbury Street Shaft, Hybrid Bill Design Report.
14. Hybrid Bill Process Hanbury Street Over Site Development Outline Proposals.
15. Crossrail Round 2 Consultation; Spitalfields Information Exchange Hanbury Street.

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If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain by writing to me at the above address. Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications. I have also sent hard copies of all 15 reports to Guy Carpenter, Secretary of the Woodseer and Hanbury Residents Association.

Yours sincerely,



**TIM NEATE**

### **Your right to complain to DfT and the Information Commissioner**

You have the right to complain about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

020 7126 1646

24 January 2007

Keith Ball  
Spitalfields Small Business Association (SSBA)  
The Business Development Centre  
7-15 Greatorex Street  
London  
E1 5NF

## **CROSSRAIL**

Further to your email request of 22 January to Tom Mantey, I now enclose copies of the following three reports:

- \* Crossrail, Eastern Portal, Bow Triangle Option, March 2001
- \* Crossrail, Review of Previously Considered Eastern Portal Options for Crossrail, March 2001
- \* Crossrail, Summary of Eastern Portal Options for Crossrail and Review of Stratford Station, March 2001

Yours sincerely

SIMON KNIGHT  
Head of Government Liaison

020 7126 1646

24 January 2007

Guy Carpenter  
Secretary  
Woodseer And Hanbury Residents Association  
55 Hanbury Street  
London  
E1 5JP

## CROSSRAIL

Further to your email request of 23 January to Tom Mantey, I now enclose copies of the following three reports:

- \* Crossrail, Eastern Portal, Bow Triangle Option, March 2001
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- \* Crossrail, Summary of Eastern Portal Options for Crossrail and Review of Stratford Station, March 2001

Yours sincerely

SIMON KNIGHT  
Head of Government Liaison

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