

**HOUSE OF COMMONS**

**SESSION 2015-16**

**HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL**

**PROMOTER’S NOTE ON LOCUS STANDI CHALLENGES**

**RELATING TO PETITIONS AGAINST ADDITIONAL PROVISIONS (“APs”)**

**The “Locus Standi” Rule**

1. Generally speaking, Petitioners against an Additional Provision (“AP”) are not entitled to appear before the Committee on their petitions unless their petitions allege, and it is proved, that their property or interests are directly and specially affected by that AP. This entitlement is called “locus standi”.
2. For this purpose “interests” means property interests. Some precedents relating to the meaning of “interests” are summarised in Appendix 2 to this note.
3. In addition, the Standing Orders of the House of Commons relating to Private Business (“Commons S.O.s”) give the Committee a discretion in certain cases to allow locus standi to other persons.
4. There is no locus standi for a Petitioner to raise points which call into question the principle of the High Speed Rail (London-West Midlands) Bill (“the Bill”) as approved by the House of Commons at Second Reading.

**Discretion of the Committee to allow Locus Standi to certain representative bodies**

5. Commons S.O. 95(1) gives the Committee a discretion to allow locus standi to a society or association which sufficiently represents a trade, business or interest in a district which is alleged in the petition to be injuriously affected by the AP in question. Under Commons S.O. 95(2) the Committee is also given a discretion to allow locus standi to a society, association or other body which sufficiently represents amenity, educational, travel or recreational interests alleged in the petition to be adversely affected to a material extent by the AP in question. The text of Commons S.O. 95 is set out in Appendix 1 to this note.
6. Some precedents relating to locus standi under Commons S.O. 95(2) are summarised in Appendix 2 to this note.

## **Discretion of the Committee to allow Locus Standi to Local Authorities or inhabitants of an area**

7. Commons S.O. 96 gives the Committee a discretion to allow locus standi to local authorities or any inhabitant of an area the whole or part of which is alleged in the petition in question to be affected by the AP in question. One reason for the Committee deciding not to exercise the discretion to allow a Petitioner locus standi is that the points made by the Petitioner are similar to those made by a local authority for the area of which the Petitioner is an inhabitant. The text of Commons S.O. 96 is set out in Appendix 1 to this note.
8. Some precedents relating to locus standi under Commons S.O. 96 are summarised in Appendix 2 to this note.

## **The petition against the AP must allege points of concern which relate to the AP in question (as opposed to the Bill as originally introduced)**

9. A petition against an AP is not intended to provide a further opportunity to be heard against matters which are in the Bill as originally introduced. The Committee may therefore wish to consider the questions "*How does the AP in question disadvantage you more than the Bill does? How does the AP make things worse for you or disadvantage you in a way which is substantially different from the effects of the Bill?*".
10. It is not enough for a petition simply to allege that the AP in question does not improve or mitigate, or does not sufficiently improve or mitigate, the position under the Bill.

## **Challenging locus standi**

11. The Committee only consider whether a Petitioner has locus standi if the Promoter has challenged the Petitioner's locus standi. In considering petitions against the Bill as originally introduced, the Promoter's general approach was not to challenge the locus standi of a person whose property and interests were not directly and specially affected by the Bill but who was raising points of concern as the inhabitant of an area affected by the Bill. In consequence many Petitioners have appeared before the Committee who are in effect repeating points already fully made before the Committee without the Committee having any opportunity to decide whether allowing such Petitioners locus standi would assist their consideration of the Bill.
12. The Committee considering the Bill commented on locus standi in their First Special Report in March 2015 (paragraphs 145-149), making the recommendation:

***"148. Our successor committee might have observations on how to improve the procedures of hybrid bill committees. In the meantime, so far as potential future petitions against additional provision are concerned, we strongly encourage petitioners to review the contents of their petition to ensure that they can demonstrate a direct and special effect and, if they cannot, to pursue other avenues of argument."***

13. In the light of this, the Promoter's approach on APs is generally to challenge the locus standi of persons petitioning as the inhabitants of an area who make general points relating to adverse impacts allegedly caused to that area without showing that they are affected in a way which is sufficiently different from that of the general public; and to leave it to the Committee to decide in their discretion whether the locus standi of such Petitioners should be allowed.
14. This approach follows the recommendation of the 1988 Joint Committee on Private Bill Procedure who in their Report stated:

*"The Committee consider that it is a fundamental principle of private legislation procedure that only parties specifically affected should be entitled to be heard, and that the rules of locus standi must be upheld. If they are allowed to lapse, more of members' time will be taken up in private bill committees. **They recommend that promoters should be encouraged to police the rules of locus standi, and that private bill committees should not treat a reasonable but unsuccessful challenge as a point of prejudice.**"* [paragraph 101 of the Report HL Paper 97, HC 625 – emphasis in original]

#### **Comments relating to the supplementary environmental statement ("SES") deposited with an AP**

15. Comments in a petition against an AP which relate to the SES are not relevant to the issue of locus standi unless the petition alleges that the Petitioner is directly and specially affected by the changes reported in the SES. Otherwise the comments fall to be dealt with under the separate procedure provided by Commons S.O. 224A rather than in proceedings before the Committee.

#### **Summary**

16. To summarise, the issues to be determined by the Committee at a locus standi hearing are:
- (1) Whether the petition in question alleges any way in which the Petitioner's property or interests are directly and specially affected by the AP in question (as opposed to the Bill as introduced).
  - (2) Whether the petition alleges that the Petitioner is an inhabitant of an area which is adversely affected by the AP in question (as opposed to the Bill as introduced) and, if so, whether the discretion of the Committee should be exercised so as to allow the Petitioner locus standi because, for example, the Petitioner is affected in a way which is sufficiently different from that of the general public. In exercising its discretion the Committee may wish to consider whether the points made in the Petition are covered by matters raised in a petition of a local authority for the area.
  - (3) Where the Petitioner is a society, association or body which is alleged to represent local trade or business interests or community, educational, travel or recreational

interests, whether (i) the society, association or body sufficiently represents that interest and (ii) if so, whether that interest will be adversely affected to a material extent by the AP in question (as opposed to the Bill as introduced); and (iii) if so, whether the discretion of the Committee should be exercised to allow the Petitioner locus standi because, for example, the points made in the petition would otherwise not be heard.

- (4) Whether the Petition calls into question the principle of the Bill as approved by the House of Commons at Second Reading.

5 November 2015

## **APPENDIX 1**

### **EXTRACT FROM**

#### **STANDING ORDERS OF THE HOUSE OF COMMONS RELATING TO PRIVATE BUSINESS**

##### **Power of Court of Referees to allow locus standi to associations**

**95.**—(1) Where any society or association, sufficiently representing any trade, business, or interest in a district to which any bill\* relates, petition against the bill\*, alleging that such trade, business, or interest will be injuriously affected by the provisions contained therein, it shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners to be heard on such allegations against the bill\* or any part thereof.

(2) Without prejudice to the generality of the foregoing paragraph, where any society, association or other body, sufficiently representing amenity, educational, travel or recreational interests, petition against a bill\*, alleging that the interest they represent will be adversely affected to a material extent by the provisions contained in the bill\*, it shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners to be heard on such allegations against the bill\* or any part thereof.

##### **Power of Court of Referees to allow locus standi to local authorities or inhabitants**

**96.** It shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners, being the local authority of any area the whole or any part of which is alleged in the petition to be injuriously affected by a bill\* or any provisions thereof, or being any of the inhabitants of any such area, to be heard against the bill\* or any provisions thereof.

\* *In the case of a petition against an Additional Provision, the references to "bill" in the above Standing Orders are to be read as references to the Additional Provision petitioned against.*

## APPENDIX 2

### SUMMARY OF PRECEDENTS

#### WHAT CONSTITUTES "PROPERTY OR INTERESTS"

1. **Kings Cross Railways Bill – Petitions of Patrick Roper and 13 others – 10 petitions disallowed [session 1988-89]**

The Bill authorised railway works including the temporary closing and dewatering of the Regent's Canal near Kings Cross Station and the construction of a new bridge over the canal.

Petitioners (1), (2), (3), (6), (8), (11), (12), (13) and (14) were individual boat owners who moored their boats along the canal, most of them under licence from the British Waterways Board. They claimed locus standi as canal users whose interests would be adversely affected by the canal works.

The promoters objected to the petitioners' locus standi on the grounds that no land or property of the petitioners would be acquired under the powers of the Bill, nor would they suffer any pecuniary loss or injury themselves. The holding of a mooring licence granted by the British Waterways Board was not a sufficient "interest" to give the licence holder locus standi.

Locus standi of the above petitioners was disallowed.

Petitioners (7), Edmundson and Martin Cottis, used their narrowboat to run a business as coal carriers and dealers in coal from the canal basin where they moored their boat.

The petitioners claimed that they would suffer a pecuniary loss as a result of the canal works.

The locus standi was allowed.

2. **Harwich Parkeston Quay Bill – petitions of (2) Harwich Mayflower Trust and (3) Harwich Mayflower Developments Limited – Disallowed [1983-91 LSR 6]**

Petitioner (2) was a charitable trust intending to construct a replica of the Mayflower in a tidal creek that was to be drained and reclaimed under the Bill. The works to be authorised would therefore deprive the Petitioner of access to the creek and a safe berth for the replica. The proposed works would also interfere adversely with the surrounding conservation area.

Petitioner (3) was petitioner (2)'s trading partner.

The Petitioners did not have any private rights over the creek or any proprietary interest in it. The replica vessel did not exist. Fundraising had not taken place (allegedly because of the lack of certainty about berthing in the creek). There had not been any negotiations with the owners of the land for rights over the creek.

Locus standi disallowed.

**STANDING ORDER 95(2) (GROUPS REPRESENTING AMENITY, EDUCATIONAL, TRAVEL OR RECREATIONAL INTERESTS)**

**3. The Channel Tunnel Rail Link Bill – Petition of the Rail Development Society – Disallowed [H.C. 21 and 22 February 1995]**

This was a hybrid bill authorising a railway from London to Kent.

The petitioners were a national rail lobby group which was an umbrella body for many user groups campaigning for better rail services. It claimed to have over 4,000 members of which over 100 lived along the line of the channel tunnel link.

The promoters sought amendments to the bill such as the relocation of Ebbsfleet Station and the reduction in car parking.

The promoters responded that S.O.95(2) did not apply since the “travel interests” in the context of S.O.95(2) relates to an interest that is a legal concern, right or title and is not concerned with those who are simply interested in the wider sense like any other members of the public. Further, while the petition sought certain amendments of the bill it did not assert any injury to a special or particular interest of the organisation.

Locus standi disallowed.

**4. The Channel Tunnel Rail Link Bill – Petition of the National Council on England Transport and Transport 2000 [H.C. 21 and 22 February 1995]**

This was a hybrid bill authorising a railway from London to Kent.

The NCET and Transport 2000 represented public and general views about the importance of certain transport issues. Transport 2000 was an umbrella group and had members in civic societies and union branches attached to it. The petition made a number of wide criticisms of the project including the location of Stratford Station, Ebbsfleet Station, the Waterloo Link and car parking at St Pancreas.

The Petitioners did not purport to represent transport users but relied on the fact that many people in both organisations were users of railways.

The Promoter responded that the Petitioners did not represent interests within S.O.95(2).

Locus standi disallowed.

**5. The Channel Tunnel Rail Link Bill – Petition of the Green Party of England, Wales and Northern Ireland – Disallowed [H.C. 21 and 22 February 1995]**

This was a hybrid bill authorising a railway from London to Kent.

The Petitioner was a political party which claimed locus standi under S.O.95(2) since the party represented its members and (a) at least one of whom was a householder who was injuriously affected by the bill and (b) in general, its supporters and members might not otherwise have an effective means of bringing their concern before the committee.

The petition supported the principle of the Bill but opposed the widening of the M2 on the grounds that there would be increased noise and pollution from the consequential increase of traffic. The petition also included proposals for additional railway works such as junctions with existing railway lines so as to facilitate an orbital rail service to be provided in the future.

The Promoter responded that the Green Party, as a political party, did not sufficiently represent amenity or travel interests for the purposes of S.O.95(2). Further, there were

no allegations in the petition of specific injury to interests sufficiently represented by the Petitioner. The Green Party's interests were general public concerns.

Locus standi disallowed.

6. **Kings Cross Railways Bill – Petition of the Goodway Boat Users Association Disallowed [Session 1988-89]**

The Bill authorised railway works including the temporary closing and dewatering of the Regent's Canal near Kings Cross Station and the construction of a new bridge over the Canal.

Petitioner (5) was the Goodway Boat Users Association. The Petitioner claimed to represent boat owners who would be adversely affected by the canal works. The Association was described by the Petitioner's Agent as "a loose association" of 8 or 9 owners of boats moored at the Regent's Canal at Goods Way having no constitution.

The Promoter responded that the Association did not sufficiently represent anyone to come within Commons S.O. 95(2), (a) because the persons they sought to represent had no sufficient interest and (b) the group was not sufficiently constituted for the purposes of S.O. 95(2).

Locus standi disallowed.

7. **British Railways (Penalty Fares) Bill – Petition of Railway Development Society – Disallowed [H.L. 26 April 1988]**

Bill enabling penalty fares to be charged.

Petitioners claimed to represent affected rail users. Also claimed an interest by virtue of (a) promoting rail services by chartering trains to use for leisure; (b) giving money for railway improvements.

Petitioner claimed to have 2,000 individual members and some 80 affiliated user associations, the latter with some 18,000 members.

Promoter objected (a) not apparent that Petitioner was a society etc., within the SO; (b) Petitioner interested in rail travel but did not represent any financial interest in the railway, which was the Bill's concern; (c) Petitioner not representative of injuriously affected people within the SO; (d) Petitioner not itself adversely affected; (e) if the Bill would have any effect on the petitioners it would be same as for general public.

Locus standi disallowed.

**AD HOC ORGANISATIONS FORMED TO OPPOSE THE BILL PETITIONED AGAINST**

8. **Dundalk Urban District Council Bill – Petition of the Property Owners' Association – Disallowed [1S&B 126]**

Bill to authorise construction of electric generating station and increase the local authority's borrowing powers.

Petitioner was formed for the purpose of opposing the Bill. It allegedly consisted of owners and lessees of property within the district. It claimed locus as representing ratepayers who would be burdened, because the electricity undertaking would be unprofitable and a burden on the rates, and whose properties would be depreciated in value.

The Petitioner claimed to represent nearly half the assessable value of the district.



On Petitioner's Counsel confirming that the Petitioner was "formed avowedly ad hoc". Sir David Brynnon-Jones MP said "We must see that any association that we deal with as coming within [SO95(1)] is a real bona fide existing association".

Evidence showed there was no resolution forming the Association. The first meeting was "a meeting of property owners of Dundalk associated in opposition" to the Bill. Mr Caldwell MP asked what would hinder any owner in any town from forming themselves ad hoc into an association and presenting a petition which otherwise they could not present themselves as owners or ratepayers. Counsel for the Petitioners claimed nothing stopped this. The Promoters were not called upon to respond.

Locus standi disallowed.

9. **County Borough of Bournemouth (Turbarry Common) Appropriation Order 1971 – Petition of (2) Bournemouth and Poole Amenity Society – Disallowed [1960-83 LSR 56]**

The Petitioner claimed locus as an amenity society.

The Petitioner's Agent stated –

*"I lodged my own petition and I did not expect that there would be a memorial ... when the memorial came I consulted other people who were generally interested in matters of this kind. As a result a meeting was held and there came into being the Bournemouth and Poole Amenity Society ... ten people form this society ... this was a definitely ad hoc arrangement, forced by circumstances."*

The Promoters objected that the Petitioner (a) would not sustain injury other than as suffered by the general public; (b) did not sufficiently represent amenity, etc, bodies within SO 95(2); (c) was in same category as ad hoc organisations whose locus was disallowed in previous cases e.g. Dundalk.

Locus standi disallowed.

**STANDING ORDER 96 (INHABITANTS OF AN AREA)**

10. **King's Lynn Gas Bill – Petition of owners, lessees and occupiers of property in the town of Kings Lynn – Disallowed [2C&S5 1870]**

The bill provided for the incorporation of a gas company and for enabling them to supply gas to Kings Lynn.

The petitioners were inhabitants of Kings Lynn and alleged that the bill would perpetuate an injurious monopoly enjoyed by the gas company to supply gas to the inhabitants of Kings Lynn. A petition had also been presented against the Bill by the Corporation of Kings Lynn.

The Court of Referees held that where the corporation of a borough petitions against a gas bill and similar points are urged in a petition of inhabitants, the doctrine of representation will apply and the locus standi of the inhabitants will be disallowed.

Locus standi disallowed.

11. **Channel Tunnel Rail Link Bill – Petition of Dr Simpson – Disallowed [H.C. 21 and 22 February 1995]**

This was a hybrid bill authorising a railway from London to Kent.

The Petitioner was a Kent County Councillor for part of Maidstone Rural North which consists of five parishes. She lived 1,000 metres from the proposed rail line. At the hearing she

mentioned her interest as a resident in that she rode and drove horses in the area and was concerned about the impact of noise but was not directly alleged in the petition. She claimed locus standi under S.O.96 as a local county councillor who was representing the views of the parish councils within the county.

The Promoter responded that her interest as a resident was not directly alleged in the petition and that, in any event, that use was as a member of the public and did not provide locus standi. She did not have locus standi under S.O. 96 because that provision does not apply so as to allow the County Council to represent the views of other bodies. Also since the County Council had itself petitioned, a person represented by that petition would not be given a separate locus.

Locus standi disallowed.

12. **The Channel Tunnel Rail Link Bill – Petition of Mr Gunn – Disallowed [H.C. 21 and 22 February 1995]**

This was a hybrid bill authorising a railway from London to Kent.

The petitioners claimed locus standi as the owner of property and as the inhabitant of an area injuriously affected. He lived 1.35km from the proposed works and alleged that the traffic generated by the proposed Ebbsfleet Station and the M2 widening would adversely affect his health. He also alleged that the Bill would cause loss of amenity in that the two nearest pieces of countryside used by him for walking would be lost.

The Promoter responded that the effects of the traffic alleged by the petition were indirect effects and not sufficiently specific to the Petitioner's property or interests. In walking in the countryside, the Petitioner was not exercising a legal right peculiar to him but a public right.

Locus standi disallowed.

13. **Kings Cross Railways Bill – Petition of Caroline Holding – Disallowed [Session 1988-89]**

The Bill authorised railway works which would it was alleged would have adverse effects including the temporary closure both of the Regent's Canal and the Camley Street Natural Park, near Kings Cross Station.

The Petitioner was an elected representative of Somers Town area who lived about 750m from the area of the works. She stated that as a Councillor she was often in the Town Hall across the road from Kings Cross Station, her two children were members of a canoeing club and used the canal for leisure facilities and that the family used the Natural Park.

The promoters responded that the petitioner was not directly or specially affected by the Bill.

Locus standi disallowed.

This can be distinguished from the case of another Petitioner against the Bill, Jim Brennan, who was a Council tenant living about 50 yards from a railway bridge to be extended whose locus standi was allowed.