

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL SELECT COMMITTEE

RULING ON LOCUS STANDI CHALLENGES HEARD 4–13 JULY 2016

18 July 2016

1. This ruling begins with the most important, and most difficult of locus standi challenges that we heard at different times between 4 July and 13 July this year. On 11 July we heard evidence and submissions from and on behalf of the Rt Hon Cheryl Gillan MP and seven other Members of Parliament whose constituents are affected by the HS2 project. Mrs Gillan is the member for Chesham and Amersham, and the others (from north to south along the route) are Craig Tracey MP (North Warwickshire), the Rt Hon Caroline Spelman MP (Meriden), Jeremy Wright MP (Kenilworth and Southam), Andrea Leadsom MP (South Northamptonshire), the Rt Hon John Bercow MP (Buckingham), David Lidington MP (Aylesbury) and Nick Hurd MP (Ruislip, Northwood and Pinner).

2. These eight Members of Parliament have presented petitions to the House of Lords in opposition to the bill, but the promoter has objected to all of them as lacking locus standi. The principal objection is that the interests of the petitioner are not directly and specially affected by the bill. A subsidiary and technical objection, that the Members of Parliament are acting as agents for their constituents, was rightly abandoned by Mr Timothy Mould QC, leading counsel for the promoters. At the hearing Mrs Gillan spoke for herself and her seven colleagues, supported by Sir Keir Starmer QC MP, whom she called as a witness.

3. Sir Keir provided us with a written note of his submissions. He began by referring to SO 114 of the standing orders of the House of Lords relating to private business, and submitted that it confers a discretion on the Select Committee. With respect, it does no such thing. It simply identifies the body which is to take any decision on locus standi. In the case of a hybrid bill, that is the Select Committee of one or other House (though these issues are decided, in

the case of a private bill in the House of Commons, by the Court of Referees, in order to reduce the pressure of work on Members of Parliament). SO 114 says nothing about whether the decision is at the committee's discretion. By contrast SOs 117 and 118 do confer discretions, as is made plain by the words "if they think fit". But such discretions may not be exercised arbitrarily, or without due process, or in a manner outside the scope of the power. There are obvious difficulties about treating an individual member of Parliament, acting not for any personal interest but in the best interests of his or her constituents, as a "society, association or other body" (SO 117) or a "local authority or other inhabitants" of a district (SO 118). Only one of the eight Members of Parliament who have petitioned refers to having a residence within the constituency. But several others refer to a constituency office, and we would assume that all do have such an office, and visit their constituencies very frequently.

4. Sir Keir Starmer's note goes on to submit that "this appears to be the first attempt to block MPs *en masse*." That may well be so, since the HS2 infrastructure project almost certainly affects more parliamentary constituencies than any previous hybrid bill, and there is no record of more than two Members of Parliament having petitioned against a hybrid bill, apart from this bill when before the House of Commons. Mr Mould very properly told us, since the hearing, that further research showed that before the Commons Select Committee there were two unchallenged petitions against the Crossrail Bill, one presented by the Rt Hon Theresa May, who wished the line to be extended westwards to Reading near her constituency of Maidenhead, and the other by George Galloway MP, who had concerns for his Whitechapel constituency.

5. On the other side of the limited stock of precedents, Mr Mould referred us to the *Hansard* report of the proceedings of the House of Commons Select Committee on the Channel Tunnel Rail Link Bill, in which the member for Dover presented a petition based on his own ownership of a house in the vicinity. The

chairman required him to limit his submissions to his personal interest as a house owner, and not to address the wider concerns of his constituents.

6. Our researches for earlier precedents from the Victorian age of railway-building have produced nothing. There is no mention of a Member of Parliament petitioning either House in James Smethurst's *Treatise on the Locus Standi of Petitioners* (1st ed 1866, 3rd ed 1876) or in the early volumes of *Locus Standi Reports*, notably the eight volumes known as *Clifford & Rickards* (1867-1872), *Clifford & Stephens* (1877-1884), *Rickards & Michael* (1885-1889) and *Rickards & Saunders* (1890-1894). Members of the House of Lords were often petitioners in both Houses, but in respect of their own interests in their landed estates. In short, no instance has been found, ancient or modern for a Member of Parliament appearing (either in person or by counsel) as a petitioner to a Select Committee of the House of Lords.

7. We conclude that neither parliamentary practice, nor standing orders, confers locus standi as of right on a Member of Parliament petitioning on behalf of his or her constituents, and we do not feel able to stretch the language of SO 118 so as to confer a discretionary locus standi. As we made clear at the hearing on 11 July, any Member of Parliament is at liberty to appear as a witness on one or more petitions. Mrs Gillan has already done so, and Mr Tracey put in a witness statement (and would, we understand, have spoken in person had he not been called away) on a petition heard on 13 July.

8. Our conclusion will be considered by the review of procedure on hybrid bills now being undertaken by officials of both houses at the joint request of the two Chairmen of Committees. It is most desirable that the position should be clarified so that there will in future be no doubt as to the position.

9. Our conclusion does not in any way diminish the reciprocal relations of courtesy and respect that prevails between members of the two Houses. Mrs Gillan has been outstandingly energetic and committed for many years in her advice and assistance to opponents of the HS2 bill and its effect on residents in or near the Chilterns AONB. As a further mark of our respect we are prepared to hear her again, not as a petitioner, but to give us her reflections on the bill and generally on hybrid bill procedure, towards the end of our sittings.

10. During the period since 4 July we have heard 17 other locus standi challenges. Most of the petitioners were unable to establish the prospect of direct and special effects on their property interests, and had to rely on generic interests which are sufficiently addressed in other petitions which are not challenged. We uphold these challenges except for those of Dr Cassandra Hong and others (050) and Richard Janko and Michele Hannoosh (339). They live in a part of Fellowes Road, London NW3, which is so close to major works as to be threatened with some degree of physical damage.

ENDS