

SHARPE PRITCHARD[®]

HS2 BILL- BUCKINGHAMSHIRE STAKEHOLDERS SUMMIT

The Petitioning Process

Alastair Lewis

Sharpe Pritchard

Petitioning – a two stage process

- Drafting and then depositing the petition in Parliament
- Appearing on the petition at select committee stage

What will have happened by petitioning time?

- The Bill will have been given a second reading in the House of Commons
- The Commons may have passed a motion setting out what is the “principle of the bill”

When will it all happen?

- Second reading: earliest possible date – around 18th March 2014
- Expiry of period for depositing petitions: earliest date around 1st April 2014 but Crossrail was longer

Who can petition?

- Any individual or body can deposit a petition, so long as they pay the fee, comply with the procedures and the petition is in the correct form
- Only those “specially and directly affected” are entitled to appear on a petition against a hybrid bill (see later)

Time for depositing a petition

- Petitioning period is set immediately after second reading
- No petition can be deposited before petitioning time starts running
- Petitions must be deposited strictly on time – no later than the final date
- Hours of opening
 - 11.00 to 5.00pm Mon-Thur
 - 9.30 to 3.00pm Fri
 - 11.00 to 1.00pm Non-sitting days

How and where to deposit a petition

- A petition must be deposited in person at the House of Commons – no post, email or fax
- It can be deposited by the petitioner in person, or by any MP or by a Parliamentary Agent
- On Crossrail, petitions were deposited in Portcullis House

What must be deposited?

- The original signed petition
- The fee of £20
- If deposited by a “Roll B” Agent:
 - An application form with a certificate of respectability (if agent is not a solicitor)
 - A letter of authority (which should include a copy of a resolution authorising the deposit of the petition if petitioner is an organisation)
- A completed cover sheet (contact details etc)

Parliamentary Agents

- Roll A Agents: firms like Sharpe Pritchard
- Roll B Agents: Individuals who are agents only for the purposes of this one Bill

What happens next?

- The promoter may contact you to discuss your concerns and seek to reach agreement on points raised in the petition
- The promoter should contact you in due course:
 - to let you know when the select committee proceedings will commence
 - to let you know if they intend to challenge your *locus*
 - to let you know when your petition is timetabled for consideration by the committee
 - to provide you with a petitioner's response pack

What is *locus standi*?

- The general rule is that only those who are specially and generally affected by a hybrid bill are entitled to appear before a select committee on a petition
- The rules relating to *locus* are set out in 3 places:
 - The standing orders of Parliament
 - Precedent cases
 - Erskine May

Who decides on *locus standi*?

- This is for the select committee to decide
- It is for the promoter (the Secretary of State) to challenge the *locus standi* of petitioners
- On Crossrail, no challenges were made
- On CTRL, 14 challenges were made, 1 petition survived (there were nearly 1000 petitions in total)

Whose locus will not be challenged?

- Local authorities (including parish councils) with land within the bill limits
- Owners, lessees and occupiers of land within the bill limits
- Statutory undertakers whose apparatus is to be affected

Whose locus should not be challenged?

- Groups who sufficiently represent any trade, business or interest in an area to which a bill relates (including amenity, educational, travel or recreational interests) alleging the interest will be affected to a material extent
- Individuals and businesses who have been assessed in the Environmental Statement as being directly affected by the works, even if their land is not being acquired

The petition - structure

- House of Commons have published advice, including a standard template
- Crossrail petitions are all on the Parliament website
- Formal topping and tailing
- Set out briefly what the bill does (1 paragraph)
- Set out who the petitioner is and why they have a right to be heard
- Set out the grievances and remedies sought (see later)
- Use headings if your petition is long. Use page numbers
- Try to order your points logically
- Sign or seal the petition

The petition - grievances

- The select committee will not hear a petitioner on any point that is not specifically raised in the petition, and the promoter is likely only to respond to points raised in petitions, so include all your points
- There is no need to go into great detail: if possible, deal with each point in one separate paragraph. The detail to back up your point will be contained in your evidence or submission should you appear at select committee
- Avoid hyperbole, CAPITAL LETTERS and exclamation marks!!! But do stress which of your points are most important to you (eg by putting them first)
- Technically the petition should only relate to grievances about the bill, the ES and supporting documents, but committees will usually hear grievances (particularly from individuals) about lack of consultation etc

The petition - remedies

- When setting out each grievance, also set out what it is you want the select committee to do. This can include:
 - Asking for the bill and/or the deposited plans to be amended
 - Asking the select committee to require the promoter to carry out a further environmental assessment on a particular aspect
 - Asking the select committee to require the promoter to amend one of the Bill's supporting documents (eg the code of construction practice, the environmental minimum requirements)
 - Asking the select committee to require the promoter to give an undertaking or assurance about a particular matter

The petition – common concerns

- Joint petitions should be avoided if there is any possibility that the petitioners may have diverging views in the future
- Councils should certainly put in separate petitions, even if their concerns overlap. That will not prevent a joint case being put to committee
- Shared drafting on generic points (for example on noise measurement) is acceptable

The principle of the Bill (1)

- The select committee is prohibited from hearing points that go outside the principle of the bill
- In Crossrail:
 - “(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.”

The principle of the Bill (2)

- When will we know what the principle of the Bill is? In Crossrail, the motion was passed immediately after second reading. On previous occasions, it is a matter that has been decided by the select committee
- The select committee will certainly not be in a position to throw the bill out
- Therefore do not draft a petition whose sole purpose is to seek to achieve HS2 being stopped. But by all means, if you are opposed to the scheme in principle, say so
- Take a liberal approach – if in doubt, put your point in

Select Committee composition/timing

- Composition – 10 backbench MPs, no constituency or other interest – Manchester/Leeds etc?
- Quorum of 3
- Quasi-judicial process: hears evidence from petitioners and promoters. Counsel/experts involved
- Timing – could start shortly before summer recess, but HS2's timetable indicates may be Autumn
- CTRL lasted exactly 1 year, Crossrail 21 months.

Committee order of proceedings

- Opening statement by counsel for promoters
- Procedural matters
- Challenges to locus standi
- Arguments about the principle of the bill (possibly)
- Petitioners cases
- Likely to start with either Birmingham CC or Camden
- Likely to progress geographically by local authority area
- Promoters agents will discuss timetabling with petitioners
- Site visits interspersed
- Decisions announced in batches at convenient times

Lead up to Select Committee

- Petitioners likely to receive a petitioner response pack. Contains stock responses and information papers about generic topics
- Committee likely to ask that any technical exhibits (eg drawings, tables, reports, photomontages) be exchanged in advance (2 days on Crossrail)

Select Committee Appearance

- Petitioners do not have to appear in support of their petitions. But unlikely that the committee will read the petition if they do not
- Petitioner can appear in person or represented by a parliamentary agent or counsel
- A statement can be made by the representative and they can call witnesses to give evidence (but don't have to)
- This is the opportunity to expand on the points in the petition and make the case for the remedy sought
- The committee will wish to know precisely what it is the petitioner wants them to do.

Select Committee evidence (1)

- Statement and proofs of evidence do not have to be given in advance (or at all) to the promoter or the committee
- Exhibits bring the evidence alive. Use photographs, maps, letters of support etc. Sufficient copies will need to be prepared
- Repetition should be avoided as should lengthy evidence unless necessary. The committee will appreciate punchy evidence that gets to the point
- Witnesses are liable to be cross-examined by the promoter's barrister and by the committee

Select Committee evidence (2)

- If promoter agrees an alternative design is achievable in engineering terms, then no need to provide detailed engineering evidence
- In that case, will come down to benefits vs. costs. May need evidence on cost of an alternative if disputed, more likely to be evidence about the advantages of one scheme against the other, and then a decision by the committee as to whether it is worth the cost

Committee - general

- Lay and unrepresented petitioners are likely to be treated with courtesy by the committee, but not if the petitioner does not reciprocate
- Joint cases – the committee will be keen to avoid repetition, and will therefore welcome petitioners with joint concerns presenting joint cases. So for example, if a number of groups are asking for a tunnel, one group could provide take the lead and do the advocacy, and could bring in evidence from other groups who have different local concerns

What can be achieved?

- Committee can recommend changes in design
 - Examples on CTRL: Barking tunnel; Maidstone lowering; Thurrock and Rainham line shifts; Stratford station long box; Full tunnel approach to St Pancras
 - Examples on Crossrail: Liverpool St Station, Romford station, Woolwich station
 - Beware: the government may disagree

What can be achieved?

- Bill can be amended
- ES can be supplemented
- Promoters can enter legal agreements/give undertakings and assurances
- Committee can require the promoters to do the above

Council formalities

- Full council resolution approving deposit of petition required (not parishes)
- At least half of the total number of members must vote in favour
- Not needed until after Bill introduced
- Parishes – a formal resolution to petition should be passed and minuted

House of Lords

- There is a similar process in the House of Lords
- Petitioners who appeared in the Commons can also appear in the Lords

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