

HIGH SPEED RAIL (WEST MIDLANDS - CREWE) BILL

PROMOTER'S NOTE ON THE RIGHT OF PETITIONERS TO BE HEARD BY THE LORDS SELECT COMMITTEE

DOCUMENTS REFERRED TO IN THE NOTE (IN REVERSE CHRONOLOGICAL ORDER)

INDEX

1. House of Lords Select Committee on the High Speed Rail (London – West Midlands) Bill – Special Report of Session 2016-17 – Appendix 2
2. House of Commons Select Committee on the High Speed Rail (London – West Midlands) Bill – First Special Report of Session 2014-15 – Petition of HS2 Action Alliance and Stop HS2 – Allowed on route wide issues only – paragraph 149
3. The Channel Tunnel Rail Link Bill – Petition of Mr Gunn – Disallowed [H.C. 21 and 22 February 1995]
4. The Channel Tunnel Rail Link Bill – Petition of the Rail Development Society – Disallowed [H.C. 21 and 22 February 1995]
5. The Channel Tunnel Rail Link Bill – Petition of the National Council on England Transport and Transport 2000 – Disallowed [H.C. 21 and 22 February 1995]
6. 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]
7. The Channel Tunnel Rail Link Bill – Petition of Dr Simpson – Disallowed [H.C. 21 and 22 February 1995]
8. The Midland Metro Bill – Petitions of (1) Auckland Drive against Metro (ADAM) Group (2) Bacon's End against the Metro (BEAM) Group (3) CARE Residents Group – ADAM and BEAM disallowed; CARE Residents Group allowed in respect of frontagers' interests only [H.C. Session 1989-90]
9. The Midland Metro Bill – (4) Petition of Bromford and Firs Residents Group (5) Petition of the Residents against Metro (RAM) – Disallowed [H.C. Session 1989-90]
10. The Kings Cross Railways Bill – Petitions of Patrick Roper and 13 others – 10 petitions disallowed [Session 1988-89]
11. The Kings Cross Railways Bill – Petition of Caroline Holding – Disallowed. Petition of Jim Brennan Allowed [Session 1988-89]
12. The Kings Cross Railways Bill – Petition of the Goodway Boat Users Association - Disallowed [Session 1988-89]
13. The British Railways (Penalty Fares) Bill – Petition of the Railway Development Society – Disallowed [H.L. 26 April 1988]

1. House of Lords Select Committee on the High Speed Rail (London – West Midlands) Bill – Special Report of Session 2016-17 – Appendix 2

**HOUSE OF LORDS SELECT COMMITTEE SPECIAL REPORT ON THE HIGH SPEED RAIL
(LONDON – WEST MIDLANDS) BILL**

**“Our five substantive rulings on locus standi can be found in Appendix 2” (paragraph 35
of the Special Report)**

APPENDIX 2: LOCUS STANDI RULINGS

**Corrected transcript of the High-Speed Rail (London – West Midlands) Bill Select Committee meeting on
Monday 13 June 2016 (PM), paras 2–17**

2. THE CHAIRMAN: Before we begin with this afternoon’s applications, I have to announce the Committee’s decision on the first group of applications, which were heard last week. This ruling relates to all the promoter’s challenges to petitions heard on 7, 8 and 9 of this month, apart from one petition, that of Mr Richard Boulton, number 756, which we’ve already ruled out as premature, since it relates to a farm likely to be affected by Phase Two of the HS2 scheme.

3. In order to avoid misunderstanding of our ruling, it is necessary to say something about the background. The High Speed Rail (London to West Midlands) Bill is a hybrid Bill, which was formally introduced into the House of Commons on 25 November 2013. It received its second reading on 28 April 2014. It was then committed to a Select Committee, which was faced with a total of over 2,500 petitions against the Bill, and five sets of additional provisions.

4. The promoter objected to the rights to be heard of only a handful of the petitioners. The right to be heard on a petition against a hybrid bill depends partly on the longstanding practice of Parliament, and partly on the Standing Orders of the two Houses, in particular, in the House of Lords, Standing Orders 117 and 118. In consequence of the promoter’s cautious approach to challenges, the proceedings before the Commons Select Committee continued for the best part of two years, even though the Committee sat for many very long working days, which imposed unreasonable pressure both on petitioners and on the Committee.

5. The Bill was introduced to the House of Lords on 23 March 2016, had its second reading on 14 April of this year, and has been committed to this Select Committee. Before this Committee, in striking contrast to its attitude in the other House, the promoter has challenged over half the petitions which have been presented, including many presented by petitioners who were heard without challenge in the Commons. In acceding, as we do, to many of these challenges, we are not differing from the Commons Select Committee. In the absence of any challenge by the promoter that Committee had no option other than to hear all the petitions brought before it, but it did complain in strong terms about the constant repetition by numerous petitioners of essentially the same points. Such repetition is unhelpful. It wastes time and resources. It can be significantly reduced by observing the correct practices to the rights to be heard, together with sensible case management. There are valuable observations on programming and hearing in the special reports of the Commons Select Committee on this Bill:

6. Some petitioners feel strongly and have submitted to this Committee that the promoter should not be permitted to change its position in this way. We understand the petitioners’ strong feelings, but the proceedings before this Committee are separate parliamentary proceedings. The promoter has had second thoughts, and, for the reasons already stated, we consider that the promoter is right to have had second thoughts. Petitioners whose individual petitions are disallowed can still contribute to our work, either as witnesses on others’ petitions or as collaborators on petitions presented by parish councils or other representative bodies.

7. It is important to note that under Standing Orders 117 and 118, this Committee has a wide discretion whether or not to hear a petition which is challenged, even if the petitioner falls within the terms of those provisions. The general practice has been not to hear petitions presented by an ad hoc group, mainly because the public interest in full examination of environmental and ecological issues, including traffic management and the control of pollution of all sorts, is better achieved by petitions presented by local authorities large and small, and by established bodies with expertise in those areas.

8. As already mentioned, petitioners whose own petitions are disallowed may still have an important part to play as expert advisors or witnesses, or other representative petitioners. That may apply, simply to give a few instances, to Mr Guy of the Wendover Chamber of Trade and Commerce, petition number 459, to Professor Payne of Little Missenden, petition 155, to Dr Mitchell of SAAG, petition number 39, and to Mr Holland of Lower Boddington,

petition number 25. It is also important to note that an individual petitioner's right to be heard as a right, and not under the discretionary powers in Standing Orders 117 and 118, depends on that petitioner establishing the prospect of direct and material detriment to his or her property interests, either by compulsory acquisition or by interference with his or her property rights which amounts to a common law nuisance, or some other interference which would be actionable if not authorised by Parliament.

9. Mr Mould appeared to be submitting at the hearing of petition number 24 on 9 June that the noise of construction work on its own without physical damage to property by vibration could not amount to a statutory nuisance. He referred to but did not cite the speech of Lord Hoffmann, with whom the other members of the Judicial Committee of the House of Lords agreed, in a case called *Wildtree Hotels Ltd v Harrow London Borough Council*. This is not an appropriate occasion for a technical discussion about the common law of nuisance, but the Committee find Mr Mould's submission surprising, if they have understood it correctly. There is ample authority for the proposition that noise alone can amount to a nuisance, actionable at the suit of a landowner, if it amounts to a real interference with his use and enjoyment of his land. See, for instance, Professor Richard Buckley, *The Law of Negligence and Nuisance*, fifth edition, 2011, paragraphs 1201 to 1213.

10. When the House of Lords reviewed the whole law of nuisance in *Hunter v Canary Wharf* in 1997, Lord Hoffmann accepted that nuisances, in his words, 'productive of sensible personal discomfort to a landowner' are part of the same tort of nuisance as physical damage to the land itself.

11. The *Wildtree* case was a claim for statutory compensation made by the owners of a hotel in respect of loss of custom during a road improvement scheme carried out by the highway authority and involving the use of powers of compulsory purchase. The House of Lords decided two points. The first was that compensation could be claimed for temporary interference with the enjoyment of land. So far as that is relevant to petitions against the Bill, it is not unhelpful to petitioners complaining of the threat of intolerable noise from works during the construction phase. The other point involved the discussion of some confusing nineteenth century decisions about injurious affection by construction works.

12. Lord Hoffmann quoted Lord Greene, Master of the Rolls, in another case of a nuisance claim by the owner of a hotel, *Andrae v Selfridge Ltd*, and this is the quotation: 'When one is dealing with temporary operations, such as demolition and rebuilding, everybody has to put up with a certain amount of discomfort, because operations of that kind cannot be carried on at all without a certain amount of noise and a certain amount of dust.' Lord Greene was here summarising the appellant's argument rather than expressing his own view. The appeal was allowed only to the extent of reducing the damages.

13. But the important point is that the principle that statutory powers are a defence, if exercised reasonably, can hardly assist the promoter when what this Committee has to consider is the logically prior issues of the extent of and possible restrictions on the statutory powers which Parliament should grant to the promoter, especially in the context of what is not an ordinary construction project but the largest in size, duration and cost of any civil engineering project ever undertaken in the United Kingdom. It may be necessary to revisit this point, on which we have not heard full argument, but that is our present view.

14. We must now make our rulings. We have decided not to exercise our discretion in favour of any of the action groups or the Wendover Chamber of Trade and Commerce, with two exceptions. The HS2 Action Alliance, petition number 766, has built up a great deal of expertise on some topics of general, route wide significance, including operational noise and statutory and non-statutory compensation. We accord HS2 Action Alliance the right to be heard on these two generic issues. We also accept that the HS2 Euston Action Group, petition number 472, is a special case. The Euston area poses some very difficult problems, and the HS2 Euston Action Group can speak for a large number of established residents associations which are affiliated to it. It can also address issues on which the London Borough of Camden may feel a degree of inhibition, as explained in the witness statement of the leader of Camden Council. We do not limit the extent of its participation, but it must not, of course, seek to challenge the principle of the Bill. We consider that these two action groups, with their accumulated knowledge and expertise, come within the terms of Standing Order 117.

15. As to the individual petitioners, in which we include Wendover Financial Ltd, we conclude that most of them have not established the prospect of direct and special detriment to their property interest in the sense explained above. We consider that that test has been met by Mr and Mrs Price, petition number 590, by Professor Geddes and Madeleine Wahlberg, petition number 380, and by Mr and Mrs Herring, petition number 197. We urge Mr and Mrs Herring to cooperate with the Radstone Residents Group, petition number 669, which is unchallenged,

since Radstone has no parish council, in avoiding duplication of their submissions. We uphold the challenge to the other individual petitioners, except for Mr Chris Williams.

16. Mr Williams, petition 814, of Chelmsley Wood on the east of Birmingham is, in our view, also a special case. He is on the local council, which has not presented a petition, but has made clear he does not claim to speak with its authority. The promoter accepts that Chelmsley Wood is a socially and economically deprived district. Some of its residents, especially in Yorkminster Drive, Lycroft Avenue and Chiswick Walk, might, with ampler resources, have been in a position to present petitions based on direct and special detriment, and several of them have been relying on Mr Williams, who is an articulate and dedicated councillor, to speak for them. We allow his petition as an exceptional exercise of our discretion under Standing Order 118, on condition that he does not address the issue of realignment of the route.

17. Our conclusions are therefore, in summary, as follows. Allowance in whole or in part does not imply any decision on the issue of additional provisions, which remains to be argued. Allowed: petitions number 197, 814, 380 and 590. Allowed in part: 766, 472. The other petitions are disallowed.

Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 21 June 2016 (AM), paras 1–38

1. THE CHAIRMAN: Ladies and gentlemen, before we hear today's petitions, I am going to read out the ruling of the Committee on the second batch of petitions, which we heard on four days last week.

2. This ruling sets out our decisions on the promoter's challenges to locus standi, which the Committee heard on 13, 14, 15 and 16 June. We heard a total of 189 applications, three of which were withdrawn in the course of being heard. There was six other petitions to which the promoter withdrew objections shortly before they were to be heard so that locus standi was conceded without argument.

3. Most of the petitioners owned property in or close to the north part of the Chilterns Area of Outstanding Natural Beauty. From south to north, on the east side of the route: Hyde Heath, South Heath, Ballinger, Lee Common, The Lee, Kings Ash and Wendover, together with a few petitions from Stoke Mandeville and Aylesbury. And, on the west side of the route: Little Missenden, Great Missenden and Dunsmore, with Little London and Wendover Dean lower down the slope of the hills. The exceptions from outside this general area—all important exceptions—were petitioners from the villages of Chetwode and Twyford, both situated between Bicester and Buckingham, and petitioners with a single joint petition from residents in Three Oaks Close, Ickenham in the London Borough of Hillingdon.

4. Two general issues arose frequently in the course of the hearings. They are both matters on which many petitioners have strong views. The first is the type or character of apprehended adverse effect which a petitioner must allege in order to be heard as of right and not merely as a matter of discretion so as to establish that the petitioner is, in the traditional words, directly and specially affected by the Bill.

5. In this Committee's first decision ruling, we answered that question in these terms: the prospect of direct and material detriment to his or her property interests either by compulsory acquisition or by interference with his or her property rights, which amounts to a common law nuisance or some other interference which would be actionable if not authorised by Parliament.

6. We have not been persuaded in the course of a further week's hearings that that answer is too narrow. There is a more detailed discussion of this issue later in the ruling.

7. The other general issue was a series of challenges to the settled practice of Select Committees of this House and the Court of Referees in the House of Commons of not granting locus standi to action groups. Instead, their practice has been to grant it to local authorities at different levels of local government and well established national organisations such as the Ramblers' Association, the Campaign for the Protection of Rural England, the National Farmers' Union and the Woodland Trust. A point that was often made was that a parish council in a rural area may have a rate precept which brings in little more than £10,000 per year to meet all the calls on its resources, whereas some action groups have access to ampler funds and have been actively involved in consultations with the promoter.

8. Another important point was raised by Mr Anthony Chapman, who spoke for himself and eight other residents of Wendover, most in Hale Road or Hale Lane. He launched a counterchallenge against the promoter's notice of

objection, arguing that the notice contained three component parts. The first, he said, was untrue; the second and third were true, but irrelevant. The notice as a whole was defective.

9. In order to understand this argument, it is necessary to set out the operative part of the notice, and I do. '1(1) The petitioners do not allege that the interests of the petitioners are directly or specially affected by the provisions of the Bill or are affected in any manner different from that which the said provisions may affect other inhabitants of the districts affected by the Bill'; '1(2) Nor is it the fact that the petitioners' petition as representatives of any district affected by the Bill.'

10. Mr Chapman put forward a powerful argument, though it is regrettable that he later made some offensive remarks about Mr Mould for which the Committee can see no justification. The Committee have already criticised the promoter's notices of objection as formulaic and illadapted for their purpose, which is to let the petitioner know the case that he or she has to meet. That should be done by the notice itself, not by a link to a website, which the petitioner may or may not pursue. But the link does give an explanation of the need to show invasion of a proprietary interest in order to petition as of right.

11. In view of the importance of a proprietary interest, Mr Chapman was wrong to describe the first part of the notice as untrue. Both his petition and those of the others for whom he spoke are in a form, with immaterial embellishment in one case, which clearly alleges that the petitioner or each petitioner is directly and especially adversely affected. It says nothing about proprietary interests being affected. Indeed, some of the petitions describe the presenter merely as a resident, without referring to ownership.

12. This is a narrow point, but in the context an important one. It does nothing to reduce our criticism of the notices as formulaic and unhelpful, but we do not hold that they were ineffective, and Mr Chapman's preliminary point fails.

13. Hyde Heath is a location that was one of the principal beneficiaries of the extension of the bored tunnel provided for by AP4. We are not persuaded by its individual petitioners that any of them is threatened by noise nuisance from the porous portal of the extended tunnel. At South Heath and Potter Row, where the portal will be constructed, some houses have already been acquired by the promoter at unblighted value.

14. The most vulnerable houses are at Bayleys Hatch and we consider that their owners, Mr and Mrs Binns and the group represented by Dr Hook and Mrs Williamson, at a real risk of being subjected to noise nuisance, and we allow their applications but not the others in this area.

15. We consider that none of the petitioners from or near Little Missenden or Great Missenden has shown the likelihood of disturbance amounting to noise nuisance. We also disallow all the individual applications from the area of Ballinger, Lee Common, The Lee and Kings Ash. Their houses are mostly a good way from the route, and their main complaints—except in the case of Mr Barrett Mould, who will experience more noise but obtain some protection from the contours—were not of noise but depreciated property values, that is so called non statutory blight, the prospect of diverted traffic or rat running on their narrow lanes; and damage to their views across a valley of great natural beauty.

16. It is clear that non statutory blight has never been treated as a ground for petition, though it may in some cases be relieved under the promoter's need to sell scheme. Rights to drive on highways, to ride on bridleways and to walk on footpaths are public rights. They do not depend on ownership of land in the district, and their protection is the concern of local authorities at different levels of local government.

17. As regards visual amenity, Mr Mould's general submission was that there is no proprietary right to enjoy a view. The Committee accept that submission as correct, subject to two qualifications which are not now material: serious interference with established enjoyment of natural light—so called ancient lights—is an actionable nuisance; and restrictive covenants can give a landowner the right to control development on other land in the vicinity. Neither of those is relevant here.

18. Apart from interference with their public rights the petitioners living in Dunsmore or Little London complained mainly of the prospect of intrusion into their beautiful landscape of two viaducts and an embankment. That is not a sufficient ground for a petition as of right. Mr and Mrs Sykes run a B&B and home teaching business at Wendover Dean and are closer to the route, but their house faces onto the main road away from the route, from which it is partly protected by mature trees. We do not allow any of these petitions.

19. A large number of petitioners are freehold or leasehold owners of houses or shops in Wendover. It is to have a cut and cover tunnel, which will take seven years to complete, though with different intensities of work during that period, along the west edge of the town, with exceptionally high 6metre noise barriers further south. There is little doubt that there will be great inconvenience from construction work, including pressure on streets and roads. Construction traffic will not go through the town, but it may increase the pressure of other traffic in the town. Those issues are primary for the local authorities at different levels.

20. The main admissible ground from an individual petition is noise nuisance. The common law as to private nuisance is based on the ancient principle that one landowner must not use his own land so as to damage the land of his neighbour. Some give and take is expected. Some account is taken of the nature of the district. Those who live in busy towns must expect to put up with rather more noise than country dwellers, but their only special vulnerability to noise may be taken into account, so long as they have not chosen to move to a noisy place.

21. In Wendover, the cut and cover tunnel will be constructed on the west side of two existing travel routes: the Chiltern Railway and the A413, designated in Wendover as Nash Lee Road. These two routes separate the HS2 route from the petitioners. They also generate a good deal of noise, which is accepted as part of urban life. The Committee has considered all the petitions of house owners and owners of commercial premises in Wendover, and we have concluded that, with one exception, they have not made out a reasonable prospect of success in a nuisance claim.

22. The exception is the Lionel Abel-Smith Trust, which owns 14 tenanted properties in or near Pound Street, about 200250 metres from the proposed tunnel, occupied by a mixture of residential and commercial tenants. These are all ancient grade II listed buildings and are built on chalk with little or nothing in the way of foundations. We admit this petition, but strongly urge the charity to cooperate with Wendover Parish Council to avoid duplication in the preparation and presentation of evidence.

23. St Mary's Church in Wendover is quite close to the route, and its petition has not been challenged. It is used not only for divine services but also for concerts, choir rehearsals and the monthly meetings of the Wendover group of the University of the Third Age.

24. In view of the church's petition and in advance of our general observations about petitions from interest groups, we do not exercise our discretion in favour of the petitions of Wendover Choral Society and Wendover Music or that of Mr Avery himself, which hovers between the personal and the representative.

25. Nor do we exercise discretion in favour of the Wendover group of the University of the Third Age. They can all cooperate with the church, perhaps as witnesses, and the church should cooperate with the parish council in presenting its petition.

26. We do not find that any of the petitioners from Stoke Mandeville or Aylesbury has shown that he or she can petition as of right. Nor do we exercise discretion in their favour, and there is no good reason to do so. But Margaret Rand of Stoke Mandeville is a lady who has previously suffered some grievous misfortunes, and she sets great store on being able to bicycle along Marsh Lane to get from her house to the stables, where her ponies are kept.

27. To build a tunnel would no doubt be disproportionately expensive, but we ask the promoter to consider what might be done to help her, possibly by a relatively small change, enabling her to wheel her bicycle across the pedestrian bridge which is to be constructed a little way north of the present route of Marsh Lane.

28. Chetwode and Twyford are villages that will, as the promoter accepts, be significantly affected by noise from construction and operation of the railway. The case for the Chetwode petitioners was put by Mr Clare, who with great objectivity accepted that his own petition and that of other members of his family was one of the weakest claims. These petitions were withdrawn. We allow the other Chetwode petitions, except for those of Mr and Mrs Thornhill, whose house is much further from the route.

29. Twyford is a similar case. There, one petitioner's right to be heard has already been conceded and we allow the petition of Mr and Mrs Searle but not that of Ms Sloan, whose house is much better protected.

30. The petition of 14 house owners in Three Oaks Close makes a strong case for prospective nuisance from noise and possible flooding from the sitting of a spoil heap 3 metres high on open ground in the near vicinity, together with noise and air pollution from increased traffic on roads that are already very congested.

31. We allow this petition but strongly urge the petitioners to cooperate with the local authorities and any other petitioners whose petitions are to be heard in avoiding repetition in the cases they present. This is a case for which positive case management may be needed.

32. We have already referred to the settled practice of regarding local authorities as the most appropriate petitioners on matters of public interest such as public health and safety, public highways including bridle paths and footpaths, and environmental and ecological issues. The practice has been to supplement the contributions of local authorities, where appropriate, by petitions and evidence from established bodies with specialised interests such as those mentioned in paragraph 7 above.

33. The settled practice is not, excepting various special circumstances, to hear ad hoc action groups. This Committee is bound to follow that practice. We do not, therefore, exercise our discretion in favour of the Heart of England High Speed Railway Action Group, the Balsall and Berkswell Residents Against Inappropriate Development, Wendover HS2, Wendover Community Petition, signed by a large number of people without any indication that they had read it, Stoke Mandeville Action Group or South Northamptonshire Action Group.

34. The Dunsmore Society, Hyde Heath Village Society and the Northampton Rail Users' Group are not ad hoc action groups, but the Dunsmore and Hyde Heath societies add little to what is in individual petitions, and the rail users' group appears, by questioning the whole design of Euston Station, to be challenging the principle of the Bill.

35. We hope that this disappointment will not discourage active members of these bodies from continuing their work in support of the very many local authorities at different levels which have presented petitions.

36. Mr Mould has shown us many of these petitions, the locus standi of which is not challenged. Those that he showed us appeared to be carefully prepared, well set out and comprehensive in their coverage of the issues. The fact that parish councils, with very limited resources, can produce work of that quality is an indication of how much voluntary assistance of all sorts they receive from their electors.

37. Some of them have worked closely with action groups and relied on action groups to conduct detailed discussions with the promoter. There is no reason why that should not continue, and many members of the action groups may be called as witnesses, especially if they have special expertise. But, in the formal business of petitioning, it is the local authority itself, acting with due formality, which should be the petitioner.

38. In summary, the petitions which we have allowed (there are others that have been conceded) are: 30, Dr Hook and others, but only in respect of Mr and Mrs Binns at Bayleys Hatch; 368, Mrs Williamson at Bayleys Hatch; 10, Mr and Mrs Graham; 113, Mr and Mrs Martin; 201 and 205, Mr and Mrs Paxton; 104 and 105, Mr and Mrs Cooper; 122, Mr and Mrs Harrison; 131, Mr and Mrs Searle; 207, Mr Semple and 14 neighbours at Three Oaks Close, Ickenham; and 464, the Lionel Abel Smith Trust.

Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 28 June 2016 (AM), paras 1-10

1. THE CHAIRMAN: Good morning. Before we start today's list I shall read out our third ruling dealing with the locus standi challenges that we heard on 20th, 21st and 22 June.

2. During the third week of our sittings, which were limited to three days because of the referendum, we heard 21 petitions. It is clear to us that there are many petitioners who find it difficult to accept the limited scope which parliamentary practice allows to the expression, 'their property or interests are directly and specially affected by a hybrid Bill'. Other petitioners understand its limited scope but find it unacceptable and have said so in forthright terms. The point was made eloquently by Mrs Emma Davies of Coombe Avenue, Wendover, one of the youngest petitioners from whom we have heard. She said that the HS2 railway is a new world and that it calls for a new approach to parliamentary practice on Hybrid Bills. We agree with that view.

3. The present system began to evolve in a piecemeal way in the Victorian age when there were many more Private Bills, but far fewer petitioners, no motor vehicles and very much less regard for environmental and ecological concerns. A start has been made towards a new approach. Following the unprecedented period of two years for which this Bill occupied the House of Commons Select Committee, the Chairman of Committees of the two Houses has established a review of Hybrid Bill procedure. We hope that it will be radical and extend not only to the form in which the principles of locus standi are expressed but also to the substantive content of those principles.

4. This Select Committee may be the last to operate under the present system but this Committee has no power to change that system. That is a matter for Parliament as a whole after the review has been completed and its recommendations considered. We must, in the meantime, apply the existing rules.

5. Five of the petitions were from unincorporated bodies of different types. Two were from action groups, HS2 Amersham Action Group and Chiltern Ridges HS2 Action Group. We uphold the promoter's challenges to these goods but notice that CRAG's petition was well researched and presented and Mr Morris, chairman of the Lee Parish Council, Mr Sully and other supporters of CRAG have much to contribute to the petitions of their parish councils.

6. The Chesham Society is an established body but we uphold the challenge to its petition since Chesham is a considerable way away from the directly affected area. It is not clear whether the other two bodies, the Forest Close Residents Association and the Ballinger Road Residents Association, should be viewed as bodies falling within the discretion conferred by Standing Order 117 or as a number of individuals claiming to be heard as of right. Some of the residents in Forest Close, Wendover, do live quite close to the site on which the green tunnel will be constructed but Dr Cooke who appeared for them did not press the claims of any particular residents on the ground of their proximity to the site. She concentrated on recreational activities. The Ballinger Road petition revisited ground we have already covered in considering Lappetts Lane and Kings Lane, South Heath. We uphold these challenges but note that Dr Cooke and Peter Jones may make a useful contribution to the presentation of their respective parish councils' petitions. So may Mrs Davies and Dr Savin, a resident of Wendover with considerable scientific expertise.

7. Vyners School, Ickenham is something of a special case. We were addressed by Mr Henry Gardner, the chairman of the Governors. The school is a large secondary school with about 1200 pupils and 250 full-time or part-time staff. It is situated just north of Western Avenue, the A40, with its playing field to the south of that road accessed by a footbridge. It is some way from any proposed works or spoil heaps. It is a successful academy and is not, therefore, under the supervision of the London Borough of Hillingdon as the local education authority. The governor's main concerns are focused on traffic congestion and air pollution, both already bad, as a threat to the safety, health and punctuality of both pupils and staff. These are very proper concerns but they will be addressed by various local authorities, including Hillingdon, acting not as local education authority but in performance of other statutory functions. We do not exercise our discretion in favour of the school but encourage the governors to provide evidence to their local authorities.

8. As to the individual petitions, six were from residents of settlements of Amersham, Chesham, Holmer Green, Langley and Little Hampden, which are geographically remote. These petitioners raised generic issues, which are better addressed by local authorities and established environmental bodies. We uphold these challenges by the promoter.

9. Three of the petitions were from residents of Great and Little Missenden. Mrs Garrett from Little Missenden and Mrs Denson from Great Missenden spoke eloquently of their fears that traffic will be driven off the A413 and on to narrow lanes through their villages bringing danger to their families and disruption to village life. These and other environmental issues are essentially generic, that is community interests. Everyone in Little Missenden walks along the narrow lanes through the village, whether their houses front on to it or not. We reluctantly uphold these challenges following the established practice. We encourage Mrs Garrett and Mrs Denson to collaborate in the preparation and presentation of evidence in support of their respective parish councils' petitions.

10. We also uphold for the same reasons the promoter's challenges to the petitions from residents and traders in Wendover, with one exception. Mr Andrews of Chiltern Road, Wendover, presented a well-researched and well-presented petition, number 106, which raises one point of duration of maximum noise which does not seem to have been raised in any other petition we have seen. This merits further consideration and we exercise our discretion under Standing Order 118 in favour of Mr Andrews and dismiss the challenge, but limit Mr Andrews to this point. Mr Andrews also had a preliminary point, a complaint that the promoter's notice of objection was inappropriate and ineffective. This point was raised by Mr Anthony Chapman on an earlier occasion. We did not uphold his complaint—see our second ruling, paragraphs 5 and 6. It is unnecessary to decide whether or not Mr Andrews' case is distinguishable on that point.

Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Tuesday 5 July 2016 (AM), paras 1–10

1. THE CHAIRMAN: Good morning. Before we hear the petition of the National Farmers' Union I am going to read out our fourth ruling on the last group of locus standi challenges that we heard. During the fourth week of our sittings we heard 37 objections made by the promoter to the locus standi of petitioners, eight on 27 June, 16 on the 28th, and 13 on the 29th. These figures exclude one listed petition, Mr Eastman, 310, to which the promoter withdrew its objection at a late stage, and three, Ms Kaneko, 693, Mr and Mrs Lowe, 660 and Mr and Mrs Brown, 696, which were withdrawn in favour of support for the group petitions put forward by Councillor Berry.

2. We do not repeat the general points made in our previous rulings as to our obligation to follow established parliamentary practice on two points of central importance. The first is the severe degree of invasion of property rights needed in order for an individual property owner to establish locus standi as a right. The other is the special position of local authorities at different levels as representative petitioners, under standing order 118, in order to cover generic issues, including environmental issues of all sorts. A further point arose about the position of small groups of councillors acting without the authority of the body to which they have been elected, and we address this below.

3. Many would be representative petitioners submitted that they were in a particularly good position to deal with some aspect of a generic issue; but in every case Mr Mould, for the promoter, was able to show us at least one petition, and sometimes several petitions, in which the point was raised by a local authority or residents' association whose petition was not objected to. The generic issues most often raised were traffic congestion and resulting air pollution, both in the Hillingdon area and the Chilterns, but with amenity also raised in the Chilterns and Denham area.

4. Traffic management is essentially a community concern calling for a balanced approach. Limiting the pressure of traffic in one place is likely to increase pressure in another place. We uphold the challenges to all those petitions, whether from individuals or groups, where the main complaint is about traffic on public highways. We also uphold the challenge to the petition of West London Line Group, 449, which was seeking to challenge the Bill on some points of principle and would have required an additional provision.

5. Relatively few of the petitioners claimed to be heard as a right on the ground that the increase in noise during the construction phase or when the railway is operational would amount to an actionable nuisance. Some were as much as 1.5 kilometres away from the route, far outside the area surveyed by the Arup sound engineers. The only petition that we allow on that ground is that of the Sibleys Rise Residents' Group, 655, whose case was very well presented by Ms Hilary Wharf. Their position in relation to the South Heath portal is very similar to that of the residents of Bayleys Hatch, whose petitions we've already allowed. We cannot allow the petitions of Ms Marjorie Fox and her neighbours, 251 and 252, but we encourage Ms Fox, who is a dedicated voluntary warden at the Colne Valley site of special scientific interest, to come forward as a witness for the Wildlife Trust.

6. We heard three petitions, 279, 552 and 584, from small groups of councillors elected to represent different wards, the Camden Town with Primrose Hill ward, the Regent's Park ward, and the Kilburn ward, respectively, within the London Borough of Camden. Camden is itself an unchallenged petitioner, but has, as noted in our first ruling, a degree of inhibition because of its different statutory functions and responsibilities. The councillors who addressed us on 28 June spoke eloquently about the social and economic deprivation of parts of their wards, and the linguistic and cultural difficulties that many of their residents encounter in trying to respond effectively to the Bill.

7. We have no doubt that these councillors are conscientiously working as hard as they can in the interests of their residents, but there is an important point of principle that arises here. Their status as councillors is as elected members of a local government corporation, which, whether or not it has a cabinet system, can act only by properly passed resolutions and properly delegated authority. Individual councillors or groups of councillors acting without the authority of the council cannot claim the special preference accorded to local authorities. Mr Mould referred us to several petitions which raised the same concerns, including one, Connor and others, 391, which is focused on the Alexandra Road vent shaft. We uphold the challenge to these petitions. This does not of course prevent these dedicated councillors from continuing to assist their residents by advising them, by cooperating with other petitioners, and perhaps by giving evidence in support of other petitions. For similar reasons we also uphold the challenge to the petition of Mr Andrew Dismore, assembly member for Barnet and Camden.

8. We heard from a number of other petitioners from the Camden area, and we uphold the challenge to these petitions, with one exception. Ms Jo Hurford, representing herself and others living in 30 to 40 Grafton Way, spoke clearly about concerns relating to traffic flows and the prospect of increased noise and pollution during the

construction period. We are persuaded of the case for granting a discretionary locus. We therefore allow her petition and the other two petitions of those whom she represents.

9. It would be remiss of us not to mention the petition of Mr Peter Bassano, 725. This represents a personal tragedy, but we must conclude that this Committee is not the appropriate forum for addressing the historical grievances he outlined to us.

10. In summary, we allowed the Sibleys Rise petition, 655, Ms Jo Hurford, 354, 30-40 Grafton Way and their Supporters, 733, and Amita and Kiran Shrestha, 783. That is the end of the ruling.

Corrected transcript of the High Speed Rail (London - West Midlands) Bill Select Committee meeting on Monday 18 July 2016 (PM), paras 2-17

2. I am going to begin by reading the fifth of our rulings on locus standi challenges. This ruling begins with the most important and difficult of locus standi challenges that we heard at different times between 4 and 13 July of 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).

3. These eight Members of Parliament presented petitions to the House of Lords in opposition to the Bill, but the promoters have objected to all of them as lacking locus standi. The principal objection is that the interests of the petitioners are not directly and specially affected by the Bill. A subsidiary and technical objection that the Members of Parliament were acting as agents for their constituents was rightly abandoned by Mr Timothy Mould QC, leading counsel for the promoters.

4. 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. Sir Keir provided us with a written note of his submissions. He began by referring to Standing Order 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.

5. Standing Order 114 says nothing about whether the decision is at the Committee's discretion. By contrast, Standing Orders 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 were 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' (Standing Order 117) or 'a local authority or other inhabitants of a district' (Standing Order 118).

6. Only one of the eight Members of Parliament who have petitioned refers to having residents within the constituency, but several others referred to a constituency office, and we would assume that all do have such an office and visit their constituencies very frequently.

7. 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.

8. Mr Mould very properly told us since the hearing that further research showed that before that 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.

9. On the other side of limited stock of precedents, Mr Mould referred us to the Hansard report of the proceedings before 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 ownership of a house in the vicinity. The Chair required him to limit his submissions to his personal interest as a house owner and not address the wider concerns of his constituents.

10. 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 of Parliament in Smethurst's Treatise on the Locus Standi of Petitioners Against Private Bills in Parliament, 1st edition 1866 and 3rd edition 1876, or in the early volumes of locus standi reports.

11. 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, of a Member of Parliament appearing either in person or by counsel as a petitioner to a Select Committee of the House of Lords.

12. 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 Standing Order 118 so as to confer a discretionary locus standi.

13. 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.

14. 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 this should be clarified so that in future there will be no doubt as to the position.

15. Our conclusion does not in any way diminish the reciprocal relations of courtesy and respect that prevail 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 and near the Chilterns Area of Outstanding Natural Beauty. 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.

16. 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 were sufficiently addressed in other petitions which were not challenged.

17. We uphold these challenges, except for those of Dr Cassandra Hong and others, number 50, and Richard Janko and Michele Hannoosh, number 339. They live in a part of Fellows Road, London NW3, which is so close to major works as to be threatened with some degree of physical damage. That is the end of that ruling.

2. House of Commons Select Committee on the High Speed Rail (London – West Midlands) Bill – First Special Report of Session 2014-15 – Petition of HS2 Action Alliance and Stop HS2 – Allowed on route wide issues only – paragraph 149

9 Rights of audience (locus standi)

~~Significance of ‘locus standi’~~

145. Petitioners against hybrid bills need to show that one or more of the bill’s provisions directly and specially affect them, because the purpose of the petitioning process is precisely to protect those who may suffer especially adversely. Petitioners not meeting that requirement may be ruled wholly or partly lacking in ‘locus standi’ that is, lacking any case to be heard by the Committee.

Locus standi challenges and decisions

~~146. The Promoter sought to challenge the locus standi of 24 petitioners, including that of the two principal campaigning bodies against the Bill, HS2 Action Alliance and Stop HS2. We recognise that more could have been challenged. We heard these challenges in July 2014, at the start of our proceedings.⁴² Several of these petitioners were in practice arguing for wholly different transport policies. Such matters are not for us, and the petitioners failed to demonstrate any direct and special effect of the Bill on them. We found them not to have locus standi. Similarly, we found that petitioners with a general interest in the affected areas, such as because they habitually walk (though do not live) there, or travel through those areas, did not have locus standi. Several petitions were entirely about Phase Two, which is not within our remit. They did not have locus standi. We decided against there being locus standi in 22 of the 24 cases.~~

147. We acknowledge that the petitioners whom we found not to have locus believed that they had genuine points to raise, but the arguments they were presenting were clearly not for us, and we do not believe that the two and a half days spent on those issues was a good use of time. We believe there is a good case for an expedited procedure for dealing with such petitions in future, such as through a written procedure.

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.**

149. The Promoter’s argument against HS2 Action Alliance and Stop HS2 having locus standi was that although many of their members might be affected by the railway, neither body would itself experience a direct and special effect. The Promoter submitted that the role of the two organisations should therefore be representative, rather than as petitioners in their own right. There was merit in that argument, and we did not easily reach a decision on the locus of the two bodies. However, many individual petitioners had argued that they would feel better represented overall if HS2 Action Alliance and Stop HS2 were allowed

⁴² A further challenge, to a petition against an additional provision, was heard later.

into the process. We felt that that point of view should be respected. We decided that HS2 Action Alliance and Stop HS2 should have locus standi on route-wide issues. This decision does not bind future committees.

~~Petitioners within 500m of the proposed Phase Two route~~

150. Clause 51 and 52 provide powers of entry to survey land within 500m of the proposed route of any high-speed railway line, including the proposed route of Phase Two. Whilst Phase Two itself is not within our remit, those clauses, although they concern future projects, are within the Bill and therefore within that remit.

151. In early March 2015, we heard a number of petitioners located along the route of Phase Two who believed that they might be affected by such powers. We heard them on clauses 51 and 52, and on compensation (as mentioned in Chapter 6). We did not wish to hear them on other matters where we believed that petitioners against Phase One could make the case equally strongly and effectively.

152. Petitioners argued that clauses 51 and 52 should be confined to Phase One matters and that they provided insufficient protection. We did not accept this. However, we recommend that the Secretary of State's power to increase the distance within which surveys may be undertaken be subject to the affirmative resolution procedure by both Houses of Parliament, instead of the negative resolution procedure which the Bill currently proposes.

153. Our remit prevented us from helping these petitioners with their specific concerns about Phase Two. No doubt those taking an interest in our proceedings will consider the points that petitioners were able to put on record. As we have said, hearing from Phase Two petitioners made clear the need for a decision on the Phase Two route and a working Need to Sell scheme for Phase Two soon thereafter.

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

21 February 1995]

[Continued]

[Mr Purchas Contd]

Committee and then go to Mr Leighton, is what in fact happened under the Leyton Urban District Council Act of 1904 because I fundamentally believe that that is at the root of the problem here.

As is pointed out in paragraph 3.4 of the Defence Committee Petition, as a result of that Act the Lammas rights were exchanged for recreational rights of one kind and another. The reason for that, as is recited in the preamble to the 1984 Act, is that Lammas rights have fallen into effective disuse, not an unusual situation. Contrary to what has been said—I am sure with no intention in any way to mislead the Committee—the Lammas rights were extinguished by declaration under section 1246. That is what is meant in paragraph 3.4, where it says that the local people gave up their Lammas rights. The land was acquired by the UDC as open space for the public as a whole. It is public open space and so when the Defence Committee, whether or not they sufficiently represent the interests at all—and that is a matter really for the Committee—complain about protecting the rights of recreation or the use of the footpath or trees providing amenity, they are public rights, not private rights, and that, of course, takes one back to the flaw in relying on Order 95(2) in this context. It is like any railway user, like any member of the public who may be using these public rights. It is not a matter for this Committee.

I can hand a copy, I hope, of the Bill to the Clerk who can look at particularly sections 139 and 146. If that is right, I am afraid this Petition of the Defence Committee falls away.

When I come to Mr Leighton's position personally, he has no property or interest whatever that is affected by the provisions of this Bill. He is presently staying at Guildford. I am sure he is hoping to move back in due course. He has been looking for many years but as far as this Committee is concerned, there simply is not any property or interest which would sustain *locus* to deal with the many matters he seeks to put before the Committee, albeit I am sure sincerely. I was not intending to elaborate on that. It is a simple point and I hope clear to this Committee.

Chairman: Do you wish to come back on that?

Mr Leighton

Yes, very briefly. Starting with me first, basically I do believe I have a specific interest simply because, as I have said before, for 40-odd years I have used those particular marshes and I think certainly it is within my personal interest to see that those marshes or rights on those marshes are safeguarded. Quite simply, if I do not petition Parliament it may not be that anybody else would petition Parliament.

In respect of the Lammas people, I agree that this comes back to the main bone of contention. We have had a QC's advice on it. The rights were extinguished in 1904 solely because the Commoners at that time gave them up for recreational rights in perpetuity. If those rights were given to the public at large—they gave them to the public at large because they were kind-hearted then in our

view and the view of the QC those Lammas rights would then come back to the Commoners. Whether or not we could graze our animals on the land at the present time would be for someone in the future to decide. The fact of the matter is that if the recreational facilities on those lands were no longer applicable, a leading QC's view is that those rights would come back to the Commoners. So the whole thing is, we would love to see this land classed as public open space. We believe it is not classed as public open space. Certainly it is not classed as public open space in our Council's UDP, so although the public have use of the common, we do not believe the public have a right to use it and we would dearly love to see the public be given the right to use that land as common land or public open space. We do not want to use it ourselves, just for ourselves. We want to do what the people have done in 1904, to give it to the people of Leyton in perpetuity forever and we feel that only Parliament can do that and this is why we believe that we should petition Parliament, and we can expand on this if we are allowed to put our Petition.

Chairman: Thank you very much, Mr Leighton. Thank you for coming today. I just want to ask a question about the two doctors who you said were not available to come today.

Mr Purchas: No, that is right.

Chairman: I am a bit concerned that we are going to deal with them separately. There is no way we can avoid this, I expect, because they are the only ones on this list who are left to be dealt with. Would they be here tomorrow?

Mr Purchas: The short answer is I do not know. I would be unhappy to deal with them this afternoon.

Chairman: Any news from the doctors?

Mr Purchas

I am afraid not very good news, in this sense. I am not trying to shift the blame but I think in discussing this through the usual channels the doctor cannot be here this week and it has been indicated to him, subject to the views of the Committee, that his *locus* point, which is a very short point, an individual point, could be conveniently taken on board when he comes to present his Petition. He accepted that it would not cause prejudice to him. In so far as it is a simple question, whether or not his Petition alleges material injury to an appropriate interest, it is not a point, at least in my respectful submission, which would influence perhaps the Committee's views on the other *locus* objections which could appropriately be taken separately.

Chairman: We must give them the opportunity. Will you let us know when they are available. We will have to treat them separately and may have to fit them into the programme.

Mr Purchas: I am sorry if it is inconvenient.

Chairman: What about Mr Gunn?

Mr Purchas: Mr Gunn is here and Ravenstein Sports.

Chairman: We will take Mr Gunn.

21 February 1995]

[Continued

Mr Purchas

While he is coming forward, one of the matters that may assist the Committee is a plan showing where Mr Gunn's property is and I would like Mr Gunn to confirm that we have identified his address correctly.

Chairman: Come forward, Mr Gunn. Have a look at this piece of paper you are going to be shown to see if it is your property. Is that your property?

Mr Gunn: Yes, sir, I do live in that road.

Chairman: Would you like to make your case?

Mr Gunn: I would like to ask, Mr Chairman, if I can also come back quickly with a quick response after this because I am just an ordinary guy without much experience.

Chairman: I have given everybody an opportunity to come back, so do not worry. Just say what you want to say.

Mr Gunn

The objections are on several grounds. No. 1 was that I do not show my land or property will be taken or interfered with under any of the powers of the Bill.

I believe that things that do affect my land may include things like atmospheric pollution. It is actually more personal than my property I am worried about.

Number three in their objections, it says that I do not Petition on behalf of any Society, Association or any other body nor do I represent them and that is certainly the case as far as my *locus standi* is concerned. There is nothing mentioning that in the Petition and therefore I cannot use that in my *locus standi* but I would very much like to ask the Committee something about that later because I am part of a local group.

Chairman: You are part of a group?

Mr Gunn: Yes, I am part of the Dartford Friends of the Earth Group.

Chairman: Have they petitioned?

Mr Gunn

No, they did not but they had a particular reason for not petitioning. Almost all of what they wanted to say, the Gravesham Group wanted to say, was in the Petition put by another group, Northfleet Action Group which is a local residents' action group. Unfortunately the local residents' action group petition was not accepted because they did not put it correctly as a Petition and by the time they corrected it it was out of time.

Chairman: That means you are not part of another, you are on your own?

Mr Gunn: As far as *locus standi*, yes.

Chairman: You speak for yourself?

Mr Gunn: At a later time I would very much like to include some issues which are pertinent to the group as well.

Chairman: I would rather not. You are here to represent yourself and your interest in this matter and how it affects you.

Mr Gunn: Right. In my petition—Do you have my petition there?

Sir Irvine Patnick: Yes.

Mr Gunn

In Section 4.1.1, I list direct costs, and I mention as direct costs the loss of amenities to myself. The two nearest bits of countryside to me are going to be taken by (a) the station and (b) the spoil in the Swanscombe Marsh area and also Ashenbank Wood is a place of recreation for me, that is an important place. Also the link goes straight through the sports ground which I had hoped to use.

Chairman: Could somebody show us on the map where the gentleman is. We have his local map but could you give us the general area. (Indicating) It is near the station.

Mr Gunn

Within something like just over half a mile of myself I have two areas of countryside which I can walk to and walk the dog over. My dog died but I will have another dog and I would, as a matter of course, walk daily in one of these places and very much enjoy the area. So it is a direct cost to me.

Also there are the health costs. These have been covered by other Petitioners and I do not want to go over the other things *ad infinitum* but pollution, if the station is built and 9,000 cars are parked there and then there are so many cars which deliver people and drive off again, that is going to be a heck of a lot of pollution which will affect me and affect my property.

Also in Section five of the objections it says the Petition contains no such specific allegations of injury which would entitle the Petitioner to be held against the Bill. My health will be injuriously affected if the station is put there.

The other point in 4.1.3, the STDR 5, which is the continuation to the proposed South Thames Development Route number 4, which will be raised by Petitioners here, we have been told goes very close to my house. It is part of the old Gravesham West Line, the other part of which will be the route to Bromley. If you look at the bit marked in pink, which is my road, that bit marked Thamesway, just by it is the old railway and that is STDR 5 which links directly to STDR 4 and as you see they go very close. So STDR 4 will create a lot of traffic which will directly affect me.

Sir Irvine Patnick: On the pink, which end are you?

Mr Gunn: I am in the middle of the pink.

Sir Irvine Patnick: Overcliffe or the river?

Mr Gunn: I am in the middle of the pink strip half way down the road.

Sir Irvine Patnick: Near Rocheville.

21 February 1995]

[Continued]

Mr Gunn

Near the "E" of Rocheville, where the "H" of Rocheville is is part of the route. That is a heavy industrial vehicle road which is used greatly because if you go north and turn right you can see there is a jetty which a lot of industrial vehicles use and Thamesway goes under the Overcliffe by the "D" of the road before Rocheville and proceeds past in that direction. So there is a great deal of traffic brought by this proposed route. This will be greatly affected by the proposed station as well.

I believe the motorway widening also affects me, the M2 which is quite a long way away and the widening of the part of the A2 because that is going to bring a lot of traffic into the area and I believe that will affect traffic and therefore affect me in the area of Gravesham.

I ask the Hon. Committee to allow me *locus standi* under Section 96 of the Standing Orders which I believe says: "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." I am an inhabitant of an area injuriously affected.

Chairman: You said you were going to be part of a Petition and the Petition failed because it was badly worded.

Mr Gunn

No, I was not. I said that rather badly. The Friends of the Earth group locally decided it was not going to petition because all of its points were being put forward by this other group and they felt a local residents action group should not say the same thing. But the local residents action group made a mess of their Petition.

Chairman: What is that group called?

Mr Gunn: They are called the Northfleet Action Group. They are a fairly high powered group. They have a county councillor and three councillors at least.

Mr Sweeney: Could you clarify on this map where is the new station?

Mr Gunn: This is quite a large scale map.

Mr Purchas: Simply a matter of fact, the new station is to the south of the urban area. Can that be pointed out?

Sir Irvine Patnick: Sadly, Mr Purchas, we have maps with roads on which are different from what you have.

Mr Purchas: I hope I have the same. The works are south of Watling Street.

Chairman: Northfleet Green, that area?

Mr Purchas: The station is just off the map here. (Indicating)

Sir Irvine Patnick: We are *there* and somewhere around *here* is the station?

Mr Purchas: Yes?

Mr Gunn

Can I give a direction from my house, as it were? If you go south and then turn into London Road and follow it along towards the left of the map, you get to a little railway line, just under that there is a thing marked "lake". The Gravesham North Kent Railway Line goes along the north edge of that lake and just at the point where the little railway joins it it branches, that is the first part of the new link railway and that is the beginning of the connection to the link.

Chairman: Right.

Mr Gunn: The map should really have been a little to the west.

Chairman: Thank you very much. Perhaps Mr Purchas would like to comment?

Mr Purchas

This is a straight forward *locus* point. At paragraph 3 this petitioner states his *locus* as an owner of property, that is the injury he asserts. He also tells us helpfully it is 1.35 km from the proposed works. Perhaps it is best tested to see whether the petition reveals any possible or substantial prospect of injury to look at the examples that Mr Gunn gave in answer to the Committee.

The first he gave was in the sense of pollution, and that he deals with in his petition at 4.1.2, and the Committee will there see how he puts it: "The traffic generated by the proposed Ebbsfleet station will add to the already over-polluted atmosphere of the Thames Estuary/London area. So will the traffic generated by the M2/A2 widening which is proposed in the Bill. This pollution will certainly adversely affect my health if I stay in the area ...". That is a very generalised assertion and the Committee will be aware insofar as it refers to the widening of the M2/A2 how remote that is, and indeed the affects of any additional traffic from the station. These are wholly indirect affects, they are generalised, they are not the kind of specialist injury to property or interest with which *locus* is concerned.

The Committee can draw the same conclusion when one looks at the loss of amenity to which this petitioner referred in paragraph 4.1.1, where his concern, and it is a sincere and understandable concern, is walking in the countryside in the Ebbsfleet Valley, but that is not a legal right peculiar to this petitioner, it is a public right in those areas.

In case the Committee is beguiled by thinking it is a very limited petition, no doubt the Committee will have in mind the breadth of some of the requests this petitioner makes, including tunnelling under Ashenbank Wood, the lack of consultation and delay in the whole progress of the Bill. But the most important point is it fails to reveal a *locus* within the terms of reference of this Committee.

Unless there is anything further, Chairman, that is all I can say.

21 February 1995]

[Continued

[Mr Purchas Contd]

Sir Irvine Patnick: Looking at this map which you have kindly given to us—

Mr Gunn: I did not present that map.

Sir Irvine Patnick: No, but I wanted to ask you about it. The "works", is that still in being?

Chairman: The power station?

Sir Irvine Patnick: No, the works.

Mr Gunn

The works are in being. The power station has been demolished and is going to be replaced. It is not clear what it is going to be replaced with but in the borough local plan it is light industry. All of that area to the left of my road and north of London Road is all industrial.

Sir Irvine Patnick: So carrying on from the power station is the works? Is that going?

Mr Gunn: Yes, that is actually creating a lot of smoke. It is Blue Circle Industries and I would not like to say what they put out in it, because I am not sure, but it does look a lot.

Sir Irvine Patnick: There are works behind Burch Road, and then on the opposite side of the road is the Imperial Business Estate?

Mr Gunn: That has now got some light industry plus a shopping centre—several shops, large stores, you know.

Sir Irvine Patnick: That is a highly developed industrial area?

Mr Gunn: My actual road is in between two highly developed areas, yes.

Sir Irvine Patnick: Did the industry come after or before you moved in?

Mr Gunn: My situation is actually better because the power station is no longer creating the smoke. It was there.

Sir Irvine Patnick: Was it there when you moved in?

Mr Gunn: Yes. That does not affect my case, I hope, because—

Sir Irvine Patnick: I am just trying to get an overall picture.

Chairman: Could you reply to Mr Purchas, Mr Gunn? You now have the opportunity to respond to Mr Purchas or add to anything you wish to say.

Mr Gunn

Yes. All the area that is shown has actually been developed. There are tiny spots of green and a small park, recreation green, but other than that the nearest countryside I have got is actually the Ebbsfleet Valley where the station is intended, and Swanscombe Marsh a little further on.

Thank you.

Mr Purchas: That leaves us one, Sir, Ravenstein Sports Hall. I do not know if the petition is represented.

Chairman: Nobody has responded so far.

Mr Purchas

On 10th February 1995 the Promoters' Agents wrote to the petitioners, having consulted through the usual channels, and made it clear that as their *locus standi* was to be challenged, they ought to be here today. Our challenge stands. It is a matter for the Committee how it is to be dealt with. We would certainly persist in the objection and I await the guidance from the Committee how the Committee wish it to be dealt with. I can, if needs be, outline briefly the position of the Promoters in terms of the objection.

Chairman: I think that would be helpful.

Mr Purchas

Does the Committee have petition number 74? The Committee will see in paragraph 3: "Your Petitioners are a charitable trust established to provide in the German Gym at Pancras Road, London facilities for physical education, sports and recreation, including the development of an awareness of Olympic and amateur sports culture, values and history; and hence to improve the conditions of life for the people who use these facilities."

That is their basis for seeking *locus*. They would claim it under Standing Order 95(2) and would have to satisfy the Committee that they are a body sufficiently representing recreational interests and alleging that that interest would be adversely affected to a material extent. That is a ground we have covered already this afternoon. "Interest", in the sense I have already described to the Committee, means a local concern, title or right, not mere curiosity, but more particularly here it must be existing, not putative or conjectural. In this case it is the latter. It is a hope, albeit no doubt a worthy hope. One can see by looking, for example, at paragraph 5.1.a—I will not read the whole paragraph just the last sentence "The Trust wishes to present this historical role of the building and to restate the aims and values that formed it."

Chairman: Do they own the building?

Mr Purchas: That is exactly the point. As far as the petition is concerned, it does not allege ownership or any existing interest.

Chairman: They use the place?

Mr Purchas

There is no evidence they use it either, not on the petition. It does not assert they do anything with it at present. We can see from paragraph 5.1.b it refers to viable future use, and in 5.1.c, "The Trust wishes to reinstate these aims . . .", and in 5.3 over the page, ". . . we envisage could provide."

5.4 "The building can be brought back into use". They have all the enthusiasm no doubt to achieve these aims but there is no personal interest alleged within the petition. It is confirmed to me it is not owned by the Trust according to our reference.

I would only add this: on the petition there is no indication of the authority to sign the petition. That may sound a small point but in Erskine May, pages

21 February 1995]

[Continued

[Mr Purchas: Contd]

757 and 856, and indeed on the Standing Orders, it is made plain the failure to explain or show the authority for signing a petition is something that can lead to the striking down of the petition. The relevant precedent is Neath Harbour Petitioners' Order. I would not wish to expand on that.

Development Society, Somers Town Labour Party, the Green Party, Mr Leighton, David Shaw and John Gunn. Is this correct, we have done it all?

Mr Purchas: We have done it all except for the two doctors.

Chairman**Chairman**

I think that is fine. Can we now just do a check that the doctors will turn up some time. We have dealt with the Central Railway Group Limited, Bromley Borough Council, the Ravenstein Sports Hall Trust, Dr Felicity Simpson, the New Lamas Lands Defence Committee, Transport 2000, the Railway

I will adjourn the meeting until tomorrow. The Committee will retire to a Committee room and consider these petitions and what our reaction is to them.

Mr Purchas: Thank you very much.

Adjourned until 10.30 am tomorrow

HOUSE OF COMMONS
MINUTES OF EVIDENCE
TAKEN BEFORE THE COMMITTEE
on the

CHANNEL TUNNEL RAIL LINK BILL

Wednesday 22 February 1995

Before:

Sir Anthony Durant, in the Chair

Mr Jamie Carr
Mr Den Dover
Mr Bill Etherington
Mr John Heppell

Sir Irvine Patnick
Mr Gordon Prentice
Mr David Tredinnick

Ordered, That Counsel and Parties be called in.

Chairman

Order, order. Good morning, ladies and gentlemen. I have a brief announcement to make. The Committee met immediately after the session yesterday afternoon and considered the various arguments about the locus standi of the Petitions which they heard. We do understand the anxieties, particularly, of the individual Petitioners, and, of course, notes were taken. They have decided that they can allow locus standi to the Central Railway Group Limited but they cannot permit locus standi to any of the other Petitioners challenged by the Promoters. The case relating to Borstal Village Surgery must be dealt with on another occasion. So that is the statement about locus standi.

We now move on to Kent County Council and Dover District Council. May I start by a question. Are you doing these two together or separately?

Mr Fitzgerald: Sir, I propose to call evidence only with Kent County Council officers, but that evidence also incorporates the requirements of Dover District Council. What I would like to do is address you, however, very shortly after I address you more fully on Kent County Council's behalf with a very short statement in respect of Dover.

Chairman: We have got a copy of the Petition. I hope you are not going to read the whole thing out. I think it would be helpful to the Committee if you drew attention to parts of the Petition as you do your address rather than read the whole thing out.

Could you introduce yourself before you start?

Mr Fitzgerald: Thank you very much, indeed. My name is Michael Fitzgerald. I appear for both Kent County Council and Dover District Council. Sir, may I first tell the Committee this: I may not be here after the completion of the presentation of our petitions to you, except to the extent I may need to come back to deal with matters outstanding. When I am away Mr Michael Pritchard of the Parliamentary Agents will stand in my place.

Sir, I only have one right of address to the Committee, so I would prefer to leave that till the end so that I can give you the up-to-date position with regard to the status of our petition and the Promoters' reaction to it. By way of introduction, without prejudice, what we have done—I hope to assist the Committee in understanding and, certainly, going through what may appear somewhat indigestible petitions (some 100 paragraphs of it)—is prepare a schedule, which I hope has been provided to the Committee. That is in the black ringed binder. Would the Committee be good enough to turn to the second page of that schedule. I can illustrate what we have sought to do by referring the Committee to that page.

We have identified there every point that we make in our petition by, firstly, the petition paragraph, then any exhibit reference which is relevant to that particular point, such as plans, documents and so forth, then the reference in the Bill to which it relates, then the issue in very summary form, obviously. So that 1, for example, is the issue of construction of the whole of the line. Then the petition starts, which is Kent County Council, and its justification, again, in summary. Then a column headed "Promoters' Reaction", and, finally, a column with the recommendation sought from the Select Committee process.

We have adopted this method as a result of our experience in the Channel Tunnel Bill, where, very helpfully but over a very long period of time, a number of other assurances and matters which came through were recorded in the end by a letter by the Government which is appended to the special report of the Select Committee to the House of Commons. That will be our aim. The column headed "Promoters' Reaction", I suspect, will be very much a moving amount of information. We have had very helpful discussions with the Promoters, as my learned friend said yesterday. As a result of Kent being on first we have not completed all of those discussions by any means,

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

21 February 1995]

[Continued

Mr Gritten. Contd]

on it, in our view in general terms there is a huge spare capacity on that railway. That is what we were saying. Minor modifications to it, largely I think within the limits of deviation any way, would enable a far more rational scheme to be passed by your Committee.

Mr Etherington

And you would pay for the whole of that?

Mr Gritten: If we raised the money to build the whole project that was our offer, yes.

Chairman

I just remind the Committee that at this stage we are only deciding whether to hear you or not. That is the issue in front of us today. If we hear you we may ask you a lot more questions. Thank you very much. We have heard the Government's side and we will consider the matter. Thank you very much. What is the next one, please?

Mr Purchas: I wondered if it would be convenient for the Committee to hear number 74.

Chairman: Is the chairman here?

Mr Purchas: Mr Smith I was told was here; otherwise we can move on to another.

Chairman: The chairman's name is Mr Smith, is it?

Mr Purchas: I think so.

Chairman: There is nobody here from the Ravenstein Sports Hall? No. Right, we will move.

Mr Purchas: The next two I thought we could take in order would be the Railway Development Society, which is number 87, and then Transport 2000. I think they are both represented by Mr Bigg.

Mr Bigg

Good afternoon, Sir. I am David Bigg, chairman of the Railway Development Society Parliamentary Committee. The society is a national rail lobby group which is all-party and has some of your honourable Members as its vice presidents. It is frequently quoted in debates in the Commons from its magazine *Railwatch* and as such I establish our credentials as being a special interest group.

We have in excess of 4,000 members, of which over 100 live along the line of the Channel Tunnel Link. Should you require names and addresses they can be supplied, but you will readily appreciate that we are a voluntary organisation, we have no permanent office and we have no full-time staff, so we live on the goodwill of our volunteer members. That data would take a week or so to provide, but it can be done.

Sir, I draw your attention to the objection which has been made to our loci and I draw your attention to paragraph 3. Clearly my first intent is to demonstrate that we have members' interests to represent in the area of Kent specifically along that line. That I think I can establish quite readily.

I would also draw your attention to paragraph 4, Sir. In counsel's opening remarks he drew attention to the fact that the Channel Tunnel Link is of vital national importance. We are a national rail lobby group so, therefore, if you are considering the Link as a national interest it seems perfectly reasonable that we as a national rail lobby group should be represented. The logic speaks for itself.

Clearly we do come under the heading of having a special interest in travel. We promote travel. We put passenger trains on freight lines where no passenger service currently runs. We lobby for the reinstatement to routes where the track has been taken up, we lobby for improved services on existing lines and clearly we lobby for new lines to be built where there are none existing. In that capacity you will assume, quite rightly, that we do support the Channel Tunnel Rail Link Bill but object to it in one small detail and that is on the question of Ebbsfleet.

You heard counsel say that there is no guarantee that there will be an interchange station built at Stratford. The option is clearly there with a long box proposal but there is no guarantee of the cash and quite a lot of attention was paid to the fact that it would cost quite a lot more to provide. In that scenario the provision of tracks and platform facilities at Ebbsfleet is vital in order to provide a connection for domestic services from international trains. There can be no argument about that. It would be relatively cheap, cost-effective and it does not affect the principle of the Bill. It is a question of detail.

In our view, Sir, the Channel Tunnel Link is vital to the nation. I am sure I am not alone in regretting it has not been built already. Too often we are the butt of the jokes of the French. It would be nice to get one back, would it not? I hope the line will be built by 2002 and that it will have all the facilities that are needed and clearly Ebbsfleet is a vital part of that.

Sir, in paragraph 7 the authority for being here is challenged. I have the minutes of the relevant meetings which give me the authority to speak for the society and I will be happy to leave those with your clerk before I leave this afternoon. A meeting held on 15 October by the Fourth Parliamentary Committee, which is a delegated authority from the National Executive, appointed a working party specifically to deal with Channel Tunnel matters. This met in London on 7 January and that meeting is the meeting which in fact approved that petition. That we have done perfectly correctly in line with our constitution and that I will quite happily leave with you in evidence.

I now turn to my basic theme. Our objection is simply that there is not sufficient facility in the Bill for Ebbsfleet, vital we believe for Kent and indeed Essex commuters going into London, vital we think for the nation. Sir, I rest.

Chairman: Do you also, may I ask, represent Transport 2000?

Mr Bigg: No, Sir.

Chairman: So you are just the Rail Development Society?

21 February 1995]

[Continued]

Mr Bigg

Yes. The Society has produced literature over a period of years of which I have bought but a small number of examples with me to demonstrate that we are not new to this. We come into this as active lobbyists for the project.

Mr Purchas

I hope Mr Bigg will forgive me for having put Transport 2000 in his name as well. Three points, if I may: first, one can see from the petition that the Railway Development Society is an umbrella body for many user groups campaigning for better services. That points out the objective of this group, that it is no different from other members of the public seeking better services on the railway. This is not a special interest in the terms of the Standing Orders.

Secondly, and more specifically, the Standing Order relied upon by Mr Bigg is Order 95(2) and that provides the discretion to grant locus where any association sufficiently representing amenity, educational, travel or recreational interest, petitions alleging that the interest they represent will be adversely affected to a ministerial extent. Travel interests in that context relates to interest that is a legal concern, right or title. The sort of example is an organisation like ABTA. It is not concerned with those who are simply interested in the wider sense like any other member of the public. That is what the question of locus is all about. There is a clear precedent on that. Again if I can mention it for the clerk's benefit. Most recently in the Railway Penalty Fines Bill 1988 the matter was considered at length in another place, but the Standing Orders are identical, albeit of a different number. That was a Bill that sought to introduce a penalty for those who had not purchased tickets in advance on the railway and as a result of that a consideration and in the light of a number of precedents the locus for this organisation was disallowed just, in our submission, as it ought to be under what is Order 95(2).

Thirdly, in any event, although within the petition it seeks certain amendments such as the relocation of Ebbsfleet and the reduction in car parking, it does not assert any injury to a special or particular interest of the organisation and that is quite apart from the fact that the location of Ebbsfleet is something that the Committee may think goes indeed to the heart of the Bill. If locus is to be allowed in that respect it should not, in our submission, be granted to this form of umbrella organisation. Unless I can assist the Committee, those are the three points I wish to make.

Chairman: Mr Bigg, three minutes to make points back.

Mr Bigg

Thank you. I rely upon 95(2). I am not a lawyer, Sir, so bear with me. I contend that the Royal Development Society has a special interest in the development of the line. It has members in the area.

It is a lobby group which has demonstrated its ability as a force for good, for building new lines and, therefore, its locus should stand.

Chairman: Thank you very much. We have heard your evidence. We shall consider the matter.

Mr Bigg: Thank you, Sir.

Chairman: Is Transport 2000 here?

Mr Meyer: Yes.

Chairman: I think you should have the opportunity now, please. The floor is yours.

Mr Meyer

Thank you for hearing me. I am Klaus Meyer. I am chairman of the National Council on England Transport. In accordance with the objections received against the locus for both NCET and Transport 2000 I have to say quite a number of things and I hope you will bear with me.

The National Council on England Transport was founded in 1962. It has always been concerned with the long distance services and it has been in the forefront of advocating not only the Channel Tunnel but also the Channel Tunnel Rail Link for many years. It is run by an Executive Council and that meets several times a year. I mention these things because paragraph 8 of the objection obviously makes it necessary to explain my position here. The Executive has over the years constantly been concerned with matters of the Channel Tunnel and of the Channel Tunnel Rail Link. It has members, counsellors from Rotherham and from Doncaster and you will see in the literature here that Doncaster is mentioned as one of the stations to which high speed rail links are to be run.

Our friends in the north have been very concerned with the fact that services beyond London are obviously not as much promoted as they would like to see. They are all very much concerned with railway matters. They are using the railway and they would like to see these matters come to fruition much sooner than so far has been achieved. It is a voluntary association. It has members from local authorities and also from other individuals and corporate bodies. We also have on our Executive a counsellor from Ashford Borough Council so we are very much involved in the Ashford questions and we want to promote and see that people can use more rail facilities.

We have been at the forefront to argue that the only solution to this problem is Government funding to provide additional capacity on the commuter runs from the coast through the Channel Tunnel Rail Link to London. We are therefore also concerned with the inner-London situation and our members have expressed this time and again and I can assure you that these items have been on the Executive's agenda for many meetings.

If I can come to Transport 2000, I share the London organisations' views. They were founded together. It was Transport 2000 nationally in November 1972, so I have been chairman of these two groups for quite a while. I have been re-elected every year. I have been re-elected chairman of NCOT every year. I can claim that I have status in the matter.

HOUSE OF COMMONS
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CHANNEL TUNNEL RAIL LINK BILL

Wednesday 22 February 1995

Before:

Sir Anthony Durrant, in the Chair

Mr Jamie Carr	Sir Irvine Patrick
Mr Den Dover	Mr Gordon Prentice
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Ordered, That Counsel and Parties be called in.

Chairman

Order, order. Good morning, ladies and gentlemen. I have a brief announcement to make. The Committee met immediately after the session yesterday afternoon and considered the various arguments about the locus standi of the Petitioners which they heard. We do understand the anxieties, particularly, of the individual Petitioners, and, of course, notes were taken. They have decided that they can allow locus standi to the Central Railway Group Limited but they cannot permit locus standi to any of the other Petitioners challenged by the Promoters. The case relating to Bostal Village Surgery must be dealt with on another occasion. So that is the statement about locus standi.

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

21 February 1995]

[Continued

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Mr Purchas

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Mr Bigg: Thank you, Sir.

Chairman: Is Transport 2000 here?

Mr Meyer: Yes.

Chairman: I think you should have the opportunity now, please. The floor is yours.

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If I can come to Transport 2000. I share the London organisations' views. They were founded together. It was Transport 2000 nationally in November 1972, so I have been chairman of these two groups for quite a while. I have been re-elected every year as I have been re-elected chairman of NCOT every year. I can claim that I have status in the matter.

21 February 1995]

[Continued

[Mr Meyer Contd]

which I had assumed everybody knew when I signed this petition.

I have helped the RDS, of which I have been a member for many years, because I am living in Central London and they might have found it difficult to be represented and fortunately Mr Bigg has been here so I do not have to speak for them. That explains my signature on that petition.

Also, I signed the petition for Transport 2000 because the secretaries of the two groups live outside London so it was purely a matter of personal ability to appear here which made me combine these two functions here at this moment. Transport 2000 is an umbrella group and it has members not only in civic societies like the Dover Society, the Faversham Society, the Dartford Society and the Croydon Society, but it also has union branches attached to it, Dover and so on.

We are people who use railways and who want to see more use of the railways by the general public. We are concerned about the fact that there must be improvements in the capacity of commuting services from Dover, for instance, and through Ashford. We are concerned with Ebbsfleet because to our mind, as pointed out in the petition, certain improvements are necessary. I will not go into the details of the petitions because I hope it will be heard at a later stage when you have granted me permission to appear before you.

There are a number of points that arise right along the line. We have been in innumerable meetings and discussions and telephone conversations and correspondence with Union Rail and their predecessors. We have been involved in these matters because our members want to use the railways. They are using them. They are working part of them and they want to see them used in future. We believe that public transport facilities must be improved and we feel we should be heard on these matters both with regard to Ebbsfleet, with regard to Ashford and a number of other matters on which you need to be informed. If you need further confirmation of my interest and representation than in the letter, let me say that I am one of the 20 people who were asked by Kent County Council to sit together and formulate a new county transport policy.

This we achieved in 1992 and we are glad to say that to some extent a good many of our recommendations have been accepted by the County Council, who have not been responsible for those publications and for the things we have said. We were able to bring together—and that was a novel and interesting thing—people from the Freight Transport Association, from the Civic Trust, from Transport 2000, from the environment, from British Rail, from the Chamber of Commerce, from the CBI, and this was the first time that the new policy was created and, frankly, I feel having my standing attacked in this fashion is slightly wrong and I hope, therefore, that on reconsideration of the matter you will allow me to deal with the points in the Petition in due course. Thank you.

Chairman: Thank you very much, Mr Purchas?

Mr Purchas

I am grateful. Can I make it clear straightaway that there is no question of doubting or questioning the sincerity and importance of the views represented by Mr Meyer and those of his view. They are plainly important. The more relevant issue, however, is whether those views have a place or *locus* before this Committee. It is our submission to the Committee that when one looks at paragraph 3 of the Petition and the generalised nature of the organisation, of Transport 2000, and, indeed, the National Council for Inland Transport, one can plainly see that there is nothing within that representation that constitutes an interest within Order 95(2). They represent public and general views about the importance of certain transport issues. That is not a novel question to be considered both in this House or, indeed, in another place, particularly on the London Transport Bill in 1978-79, when Mr Meyer was then again assisting the Committee on the question of *locus*. He was asked in terms whether he considered himself, that is, Transport 2000, as an association representing transport users, and he very fairly answered not transport users, although many affiliated organisations of North London and, of course, transport users' organisations, and *locus* was disallowed.

I would only say that apart from that general point the nature of the requests in the Petition is such that it reinforces the importance of applying the rules of *locus*. By way of example, at page 4 of the Petition Mr Meyer attacks the clause 13 suggestion that immigration and customs control should not be introduced. It is not within the Bill anyway, I might add. He also, on page 4, attacks the procedures being adopted for the M2 widening in Part II of the Bill. That should go into a public inquiry.

On page 2 and following one has a number of wide, sweeping criticisms made, including Thameslink, location of Stratford, location of Ebbsfleet, Waterloo link, car parking at St Pancras, introducing a liability for negligence. They are actually saying that the mid-Kent tunnel as at present envisaged, the Bluebell Hill Tunnel, is unnecessary, as is the Hollingbourne Tunnel, so introducing in this Petition matters of considerable controversy and, if I may say so, in our respectful submission this is not a case where *locus* can or ought to be allowed. Unless I can assist the Committee further, that is the submission I would make.

Chairman: Mr Meyer, do you wish to come back?

Mr Meyer

Yes. A good many of our people in both organisations after all are railway travellers and users of railways, so to that extent I think it is mistaken to say I cannot speak for them. I do speak for them. I also have the right to my mind to talk about people who might in future use or should use railways and for that use provision should be made and will be

21 February 1995]

[Continued

[Mr Meyer Contd]

made through the execution of this plan we have been advocating for many years and that we welcome and which every one of us welcomes. But there are problems within these provisions which need to be looked into and I would hope the Committee would agree to hear us on those points.

Chairman: Thank you very much. We have heard your evidence and we will consider it along with the other cases and let you know our decision. Thank you very much. Who have we next?

Mr Purchas: It is the Green Party.

Chairman: Mr Francis, is it?

Mr Purchas: Yes, No. 700.

Chairman: You are Mr Francis, is that right?

Mr Francis: That is correct, yes.

Chairman: Would you like to make your case about that?

Mr Francis:

Yes, I will indeed. My name is Alan Francis and I am the transport speaker for the Green Party of England, Wales and Northern Ireland. Scotland went independent some years ago from us.

The Green Party is a political party but it is known for its concern about environmental matters, but it is concerned with all aspects of life, as I am sure are you all. We support the principle of the Channel Tunnel Link. There is no doubt about that. We are in favour of international travel within Europe by rail rather than by road or air. The main aims of our Petition are two-fold, that is, to have the proposed widening of the M2 withdrawn from the Bill and for it to go through a public inquiry procedure, and the other aspect is to improve rail links and interchanges between the Channel Tunnel Rail Link and the existing rail network because we believe this would provide better links within the Thames Gateway development area and throughout the whole of South-East London, Kent and Essex. I am not going to present our case on that but will have to mention certain aspects in an attempt to justify our *locus standi*.

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Moving on to paragraphs five and six, we believe that the M2 widening is not a necessary requirement for the construction of the Channel Tunnel Rail Link. The actual rail link can be constructed with or without the M2. It is not in any way dependent upon it. Mr Sullivan in his opening remarks this morning mentioned the two projects would not necessarily be

HOUSE OF COMMONS
MINUTES OF EVIDENCE
TAKEN BEFORE THE COMMITTEE
on the

CHANNEL TUNNEL RAIL LINK BILL

Wednesday 22 February 1995

Before:

Sir Anthony Durant, in the Chair

Mr Jamie Carr
Mr Den Dover
Mr Bill Etherington
Mr John Heppell

Sir Irvine Patnick
Mr Gordon Prentice
Mr David Tredinnick

Ordered, That Counsel and Parties be called in.

Chairman

Order, order. Good morning, ladies and gentlemen. I have a brief announcement to make. The Committee met immediately after the session yesterday afternoon and considered the various arguments about the locus standi of the Petitions which they heard. We do understand the anxieties, particularly, of the individual Petitioners, and, of course, notes were taken. They have decided that they can allow locus standi to the Central Railway Group Limited but they cannot permit locus standi to any of the other Petitioners challenged by the Promoters. The case relating to Borsdal Village Surgery must be dealt with on another occasion. So that is the statement about locus standi.

~~We now move on to Kent County Council and Dover District Council. May I start by a question. Are you doing these two together or separately?~~

~~Mr Fitzgerald: Sir, I propose to call evidence only with Kent County Council officers, but that evidence also incorporates the requirements of Dover District Council. What I would like to do is address you, however, very shortly after I address you more fully on Kent County Council's behalf with a very short statement in respect of Dover.~~

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~~We have adopted this method as a result of our experience in the Channel Tunnel Bill, where, very helpfully but over a very long period of time, a number of other assurances and matters which came through were recorded in the end by a letter by the Government which is appended to the special report of the Select Committee to the House of Commons. That will be our aim. The column headed "Promoters' Reaction", I suspect, will be very much a moving amount of information. We have had very helpful discussions with the Promoters, as my learned friend said yesterday. As a result of Kent being on first we have not completed all of those discussions by any means,~~

6. 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]

21 February 1995]

[Continued]

[Mr Meyer Contd]

made through the execution of this plan we have been advocating for many years and that we welcome and which every one of us welcomes. But there are problems within these provisions which need to be looked into and I would hope the Committee would agree to hear us on those points.

Chairman: Thank you very much. We have heard your evidence and we will consider it along with the other cases and let you know our decision. Thank you very much. Who have we next?

Mr Purchas: It is the Green Party.

Chairman: Mr Francis, is it?

Mr Purchas: Yes, No. 700.

Chairman: You are Mr Francis, is that right?

Mr Francis: That is correct, yes.

Chairman: Would you like to make your case about that?

Mr Francis

Yes, I will indeed. My name is Alan Francis and I am the transport speaker for the Green Party of England, Wales and Northern Ireland. Scotland went independent some years ago from us.

The Green Party is a political party but it is known for its concern about environmental matters; but it is concerned with all aspects of life, as I am sure are you all. We support the principle of the Channel Tunnel Link. There is no doubt about that. We are in favour of international travel within Europe by rail rather than by road or air. The main aims of our Petition are two-fold, that is, to have the proposed widening of the M2 withdrawn from the Bill and for it to go through a public inquiry procedure, and the other aspect is to improve rail links and interchanges between the Channel Tunnel Rail Link and the existing rail network because we believe this would provide better links within the Thames Gateway development area and throughout the whole of South-East London, Kent and Essex. I am not going to present our case on that but will have to mention certain aspects in an attempt to justify our *locus standi*.

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21 February 1995]

[Continued]

[Mr Francis Contd]

constructed at the same time, so again that confirms their independence from one another. The M2 widening is not part of the Petition for the construction of the Channel Tunnel Rail Link so is unlikely to be constructed by the same company as the rail link, neither would the M2 be operated by the same company as the rail link. So other than the geographical proximity for part of the proposed route of the M2 widening there is no link between the two projects and we therefore believe it is not necessary for them to be in the same Bill.

As one of the previous Petitioners we believe the M2 should go through the normal process for such road projects, that is a public inquiry held in the locality before an independent inspector, and that inspector would, of course, then report to the Secretary of State who would take the decision. A public inquiry is a more accessible form of investigation than this Committee, partly because it would be held locally so it would be physically more accessible to people. We are here some 30 or 40 miles away from the proposed section of motorway widening. It would also be more open because *locus standi* is not an issue at a public inquiry, any individual, group or national body can go along to a public inquiry and give evidence, they do not have to prove they are landowners or in some way injuriously affected. It is a much more open procedure.

Many people from the Medway towns are concerned about the M2 widening but will have difficulty establishing a *locus standi* before a Committee such as this and will have difficulty taking the time and money to appear before you but they would be able to appear at a public inquiry and express their concerns. Without a public inquiry their voices will not be heard. Nationally many people and groups are not even aware that the Channel Tunnel Rail Link Bill includes the provision for widening of the M2, its title makes no reference to the road scheme. So I feel there have been people who have not petitioned who would have done so had they realised the road scheme was part of this. This has misled some people so they have not participated.

Of course, with a public inquiry which would be called the M2 Widening Public Inquiry there would be no such confusion. That is why in our Petition we have asked for M2 widening to be withdrawn from the Bill and it should be addressed through normal public inquiry procedures. Of course, if we do not have a *locus standi* before you we will not be able to present that case.

We represent the amenity and travel interests of many people and this is pertinent to Standing Order 95(2). We are concerned about the environment which is of course an amenity and we are also concerned about transport which is a form of travel. Now our Petition includes proposals which are beneficial to travellers, especially people resident in South East London, North Kent and South Essex where we have many members living. Our proposals would allow people in those areas to travel much more easily by rail. They could travel from North Kent and South East London on the North Kent Lines and from South East London on the Victoria and Chatham lines to Ebbsfleet if our proposals

were incorporated into the rail link. From there they could interchange to trains, either European passenger services for the Continent or for Essex, because we propose there should be domestic rail services linking Kent and Essex. They could go to the Lakeside Shopping Centre and other parts of the Thames Gateway on the North side of the Thames.

Without these facilities the Channel Tunnel Rail Link will be of little benefit to the residents of South East London and Kent and Essex because they will not be able to make use of it. It will be going through their areas—South East London, Kent and Essex—but it will not be of benefit to them. There will be no interim stations, no junctions. Their interests will be adversely affected because they will not benefit from those travel opportunities.

There are precedents for *locus standi* being granted to groups representing amenity interests. I note the Victorian Society was granted *locus standi* under Standing Order 95(2) to petition against the King's Cross Railway Bill in 1988-89 session of Parliament, that incidentally was an earlier attempt to build the Channel Tunnel Rail Link Terminal. Also in 1993 this was in the court, the Queen's Bench, Justice Otton granted *locus standi* to Greenpeace in *R v Inspectorate of Pollution* concerning a thermal oxide reprocessing plant at Sellafield. In that case he said: "Having regard to the fact that the applicant was an entirely responsible and respected body with a genuine interest in the issues raised, that it had 2,500 supporters in the area where the plant was situated, who might not otherwise have an effective means of bringing their concerns before the court if the applicant were denied *locus standi*, that the primary relief sought was an order of certiorari and not mandamus, which, even if granted, would still leave the question of an injunction to stop the testing process pending determination of the main issues in the discretion of the court and that the applicant had been actively involved in the consultation process relating to BNFL's application to operate the new plant . . ." This is the important bit. . . . It was clear that the applicant had a sufficient interest in the matter to be granted *locus standi*. Their *locus standi* was indeed granted in that. That is in the All England Law Report of 2 November 1994.

I believe in this case we are raising issues that would not otherwise be raised and therefore we ought to have *locus standi* so to do.

Coming on to point number seven in the objections, I am the transport speaker of the Green Party. A letter was sent in last week to the Clerk of the Private Bill Office signed by the Chair of the Green Party Executive, Dr John Morrissey, confirming I am the transport speaker and I am submitting this Petition on behalf of the Green Party. At the weekend—point number seven mentioned there had been no resolution of the Members—there was an Executive Meeting of the Green Party on Saturday and that passed a resolution confirming my position and the authorisation to

21 February 1995]

[Continued]

[Mr Francis Contd]

represent the Party. Again I will leave copies of that to prove that assertion.

To come on to the final point raised in the Notice of Objection from the Promoters, this maintains that certain of the objections raised in our Petition are directed to matters affecting the principle of the Bill as addressed by the House and no other grounds of objection are disclosed in the Petition which in accordance with the practice of Parliament and the rules of the House would entitle the Petitioners to be heard. I believe since we support the idea of Channel Tunnel Rail Link we are not challenging or objecting to the principle of it because that, as I understand it, is the principle and we support that.

Mr Sullivan said this morning we were arguing about what is the principle, and that is the argument that I have to make now. This paragraph did not specify which paragraphs or clauses of our petition the Promoters were referring to, but I did have a telephone conversation yesterday with the Promoters' Agents and they did go into more specific details as to which paragraphs of our petition they were maintain were opposing the principle of the Bill.

As I said, I believe that the principle of the Bill is the construction of a Channel Tunnel rail link which I believe we are supporting, not opposing. My dictionary gives the definition of principle as "that which is fundamental and of an essential nature", and that is the construction of this rail link.

The Secretary of State in his speech on the Second Reading did actually say that he believed the M2 widening was a principle of this Bill, however that was merely his opinion and his advice to you, it was not mentioned in the order which set up this Committee and therefore I believe it was not an instruction to you; merely advice.

The Agents also maintain that the M2 widening was part of the principle of the Bill and that we should not be challenging this, but again in challenging that we are not objecting to the principle of the Bill.

We also wanted some extra junctions and more tunnelling in the Boxley area—paragraphs 7, 8, 9 and 10 of our petition—and the Agents informed me this was contrary to the principle of the Bill because some of the requirements of that may go outside the limits of deviation. Again I believe the Secretary of State has advised you not to hear any petitions which go outside the limits of deviation, but again I believe that is only advice, there is no instruction to you and so I hope you will be prepared to take a petition which does involve some minor exceeding of the limits of deviation.

Chairman: I think you have made your case very well now. Thank you very much. It seems, to sum up, your particular anxiety is the M2 widening, where it seems to me you want to make most of your case?

Mr Francis: That and the lack of junctions with the existing rail network. Thank you very much.

Chairman: Mr Purchas?

Mr Purchas

If I may, Sir, I have three points.

First, I reiterate what I have said about the judgment of *locus* on the petition, and when the Committee was told about Mrs Russell and her property being demolished, that is neither here nor there so far as *locus* is concerned. Of course it is an important matter which may have to be considered in due course.

Secondly, under Order 95(2) the issue is whether this association, the Green Party, sufficiently represents amenity or travel interests. That is the way it has been put to the Committee. As Mr Francis has said very publicly, and it will be well-known to this Committee, essentially this is a political party and the very precedent which Mr Francis referred to is as correct a precedent as any for the disallowing of *locus* to political parties. There are a number of them. There is the King's Cross Bill, 1988-89, and although they were claiming just as Mr Francis does today they were seeking to represent amenity and travel matters, they were disallowed as not sufficiently representing those interests. The clerk will have that precedent.

The third point is this: if one looks at the prayers in this petition one can see paragraphs 5 to 9 present a wish-list of new railway works, including a link to North London, the Stratford Station and indeed an orbital railway for the metropolis. Ambitious as they may be, as recognised, even they are not supported by any assertion of direct injury to interests relevant to this Committee.

That then takes one on to the points which the Chairman referred to, which is the mid-Kent tunnel and particularly part two dealing with the M2 widening. I do not wish to consider essentially the question of principle at this stage. I would just hasten to add that as a work it appears both in the long title and also of course part two itself is directly and solely addressed to those workings, but there again one does not find any allegation whatever of specific injury to the interests sufficiently represented by this petitioner. So far as they are concerned, they are general public concerns; they are not matters for this Committee.

Unless I can assist the Committee further, those are the submissions on behalf of the Promoters.

Chairman: Thank you very much. I will give you three minutes to answer any of those points, Mr Francis.

Mr Francis

I will be very brief. Whether one sufficiently represents an interest or not is clearly a judgment, and that would be for you to be the judges of whether our interest is sufficient. We certainly have an interest, whether it is sufficient or not; I obviously believe it is and the Promoters do not. I hope you will come down in our favour.

Mr Purchas mentioned the King's Cross Railway Bill. Some local branches of political parties were indeed disallowed *locus* but I am appearing on behalf of a national political party which I think has a different status from just simply the local branches who had their *locus* disallowed in those previous cases.

Our prayers do not actually ask for an orbital rail link around London. We would like one, but we

21 February 1995]

[Continued]

[Mr Francis Contd]

realise it cannot possibly be part of the Bill. We merely said the junctions with the existing railways, the North Kent line and the London-Tilbury and Southend Railway line, would allow such an orbital rail service to be provided in the future. So we are not suggesting that an orbital rail service be part of this Bill, merely provision for it at some possible future date. Because if it is not considered now it may be too late because the lay-out of junctions may not allow in the future such a decision to be made.

Chairman: Thank you very much. We will consider what you have said and we will let you know our decision.

Who else?

Mr Purchas

Two closely associated ones. The New Lammas Lands Defence Committee, number 85, and Mr Richard Frederick Leighton, who is here, who has his own personal petition, number 578.

Chairman

While you are coming forward, Mr Leighton, I presume Mr John Gunn is here. He will be next.

Mr Leighton

Basically I was extremely surprised to be challenged on my *locus*, as I thought I had explained in the petition exactly why I feel I should be allowed to petition the CTRL.

Might I first of all say I personally have nothing against the CTRL, in fact I come from a very long line of railway people. My father worked on the railway for over 38 years, as did his father and his father before him, so we have a very long tradition with the railway and I see the CTRL as being quite a useful contribution. However, as I explain in my petition, I am a former resident of that area. I was forcibly evicted by the Department of Transport for the construction of the M11 link road but prior to that unhappy event I lived in the area for 46 years and by virtue of being an owner-occupier in the village of Low Leyton I enjoyed commoners' rights on what is termed the Lammas Lands along the Hackney Marsh area.

This is not grazing land as it was in the old days, it is recreational facilities. These recreational facilities were granted by Parliament in 1904. Parliament at that time saw fit to give the people of Leyton certain recreational facilities. What concerns me is CTRL may, by virtue of the way it is constructed, impinge upon these recreational facilities. What my Petition seeks to do is to put my concerns before your Committee and have the Committee consider whether my concerns are justified or not, and if indeed, as I believe, they are justified, to seek to remedy any of my concerns under the CTRL Bill.

My aim is not to stop the Bill whatsoever and I am quite happy if somebody at some later date, the supporters of the Bill, say that my concerns are non-existent, I will be quite happy, but I believe they

are justified. I believe I should be allowed to present my concerns to yourselves in the Committee. I believe personally these concerns are not going to be put forward by most other people. I hope very shortly I will be allowed to point out what the Lammas Lands Defence Committee Petition is about.

Chairman: We would like to know what is this body, how large is it, and how are their rights affected by the Bill?

Mr Leighton

Very briefly, that is why I believe my particular Petition should be allowed. Obviously I consider I have *locus* simply by virtue of living in the parish for 46 years and by the fact I have enjoyed Hackney Marshes for most of those 46 years, I have walked over Hackney Marshes and the Lammas Lands, I have used them for an awful long time, and I believe by virtue of the fact that I was a commoner, and still maintain the commoners' rights. These rights were given under the 1904 Act and I consider I have an interest.

If the QC wishes to know how I feel my interests are going to be adversely affected, at the moment the land being used by the railway is derelict, when CTRL comes along it will be put to more use and that use needs to be scrutinised, so it does not impinge on the Lammas Lands and the use of the Lammas Lands.

Chairman: You have not answered the point of this Committee. We understand your position. I am interested in your Defence Committee who are they?

Mr Leighton: Do you wish me to do that in one go?

Chairman: I would like to know who is the Defence Committee, how many members do you have and so on?

Mr Leighton

It is a committee of residents, individuals and resident groups, who were set up some five years ago in sympathy with the earlier Lammas Lands Defence Committee which was set up in the 1850s/1860s by groups of concerned residents of Leyton at that time which was obviously a small hamlet. They were worried that the lands they had enjoyed since the time of Alfred the Great, and he gave commoners the use of the land because of their help in assisting Alfred the Great in preventing the Vikings from whizzing up to Hertford. He allowed the people of Leyton the rights over those lands. That went to the turn of the century when development was going to be carried out on those lands by the gas, the water board, electricity and so on, and the Lammas Lands Defence Committee was set up to protect those lands.

The 1904 Act of Parliament gave commoners specific rights to recreation in perpetuity. They decided that instead of maintaining common rights to grazing because Leytonstone and Walthamstow were being built up, they would give the people of Leyton in perpetuity the rights for recreational purposes. Until recent times we thought that that was what it meant,

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Mr Jamie Carr	Sir Irvine Patrick
Mr Den Dover	Mr Gordon Prentice
Mr Bill Etherington	Mr David Tredinnick
Mr John Heppell	

Ordered, That Counsel and Parties be called in.

Chairman.

Order, order. Good morning, ladies and gentlemen. I have a brief announcement to make. The Committee met immediately after the session yesterday afternoon and considered the various arguments about the locus standi of the Petitioners which they heard. We do understand the anxieties, particularly, of the individual Petitioners, and, of course, notes were taken. They have decided that they can allow locus standi to the Central Railway Group Limited but they cannot permit locus standi to any of the other Petitioners challenged by the Promoters. The case relating to Borstal Village Surgery must be dealt with on another occasion. So that is the statement about locus standi.

We now move on to Kent County Council and Dover District Council. May I start by a question. Are you doing these two together or separately?

Mr Fitzgerald: Sir, I propose to call evidence only with Kent County Council officers, but that evidence also incorporates the requirements of Dover District Council. What I would like to do is address you, however, very shortly after I address you more fully on Kent County Council's behalf with a very short statement in respect of Dover.

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Sir, I only have one right of address to the Committee, so I would prefer to leave that till the end so that I can give you the up-to-date position with regard to the status of our petition and the Promoters' reaction to it. By way of introduction, without prejudice, what we have done—I hope to assist the Committee in understanding and, certainly, going through what may appear somewhat indigestible petitions (some 100 paragraphs of it)—is prepare a schedule, which I hope has been provided to the Committee. That is in the black ringed binder. Would the Committee be good enough to turn to the second page of that schedule. I can illustrate what we have sought to do by referring the Committee to that page.

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We have adopted this method as a result of our experience in the Channel Tunnel Bill, where, very helpfully but over a very long period of time, a number of other assurances and matters which came through were recorded in the end by a letter by the Government which is appended to the special report of the Select Committee to the House of Commons. That will be our aim. The column headed "Promoter's Reaction", I suspect, will be very much a moving amount of information. We have had very helpful discussions with the Promoters, as my learned friend said yesterday. As a result of Kent being on first we have not completed all of those discussions by any means,

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

21 February 1995]

[Continued]

Mr Purchas Contd]

paragraph 9, that when the CTRL is built that we will continue. That is their complaint, that it will, as they say later, become permanent. That eloquently testifies, in the Promoter's submission, that what the complaint is about here is not something which arises under this Bill but something which is used for existing powers. It is a short point but is an important point.

So far as freight is concerned, again if the Committee turn to paragraph 10 the complaint arises because it is thought that capacity will be released on the existing lines and as a result of that those lines will be used for freight, again wholly independent in that respect of the provisions promoted in the present Bill.

It is against that background one comes to the gravamen of the petition which is in paragraphs 12 and 14. These petitioners supporting the CTRL say that although we have existing lines under existing powers within our borough, we regard the provisions of national legislation as inadequate to protect our residents against noise from the use of those lines. That appears to be a matter which the Royal Commission believes should be addressed. It may or may not be a proper matter to be addressed, but it is not a matter for this Select Committee. That is something which affects rail users up and down the country. It itself reflects, as I say, the lack of kind of interest which properly would need to be demonstrated for this borough to have *locus* before this Committee in respect of a Bill which involves no works within their area.

Can I just finally say this: that if the Committee go to paragraph 13, the Committee will see the matter made beyond peradventure because in paragraph 13 these petitioners submit that there should be an environmental impact assessment on the whole of the route for international trains including the existing railway lines. Those trains of course go to Glasgow and Edinburgh and across the country as a whole; where does it stop? This may be a matter with merit, but it is not a matter to be addressed before this Committee. Unless I can assist the Committee further, that is all I would wish to say.

Chairman: Mr Stone, do you wish to respond? I will give you three or four minutes to respond.

Mr Stone

So far as the last point is concerned, an environmental assessment of existing lines and the rhetorical question, where does it stop, that is a matter which this Committee might well be interested in. Certainly so far as Bromley is concerned, they do have a perceptible and significant impact demonstrated which in my submission shows the justification of that request.

Sir, so far as the argument is concerned, that Bromley is not affected by the provisions of the Bill, we rely upon the connection of the Chatham mainline to the CTRL to show there is an effect which will flow from the operation of these international services. Sir, it is said the complaint is that what is there will continue. The complaint, as I hope you have understood and appreciated as I have elaborated and

explained it, is essentially that there will be an increased effect as a direct result of these proposals. Without them there would be no complaint but with them there is a marked and noticeable and significant effect which should entitle us in our submission to examine those matters before your Committee.

Chairman: Does any member of the Committee wish to ask any questions? No. Do you wish to come back again, Mr Purchas? No.

We have heard your evidence and we will consider it when we come to the time to consider these matters which we hope might be the end of today or certainly tomorrow morning. We will let you know.

Mr Stone: Thank you very much.

Mr Purchas: The next one on my list is Central Railway.

Chairman: This is going to be quite a long one. They are not here.

Mr Purchas

I was also asked by Dr Simpson, who is a Kent County Councillor, if I could do what I could to get her to come on earlier rather than later.

Chairman: Which number is that?

Mr Purchas: Number 79. She is a Kent County Councillor.

Chairman: Dr Felicity Simpson.

Mr Purchas: Would you like me to introduce this?

Chairman: Yes, please.

Mr Purchas

Paragraph 3 of this petition sets out Dr Simpson's interest. She is a Kent County Councillor for part of Maidstone, Maidstone Rural North, which consists of the parishes of Boxley, Detling, Thurnham, Bearsted and Hollingbourne. She says in 3.4 that she endorses the views of those parish councils, and that is undoubtedly right because at paragraph 5 of this 16 page petition, she commences to set out the petition of Boxley Parish Council, starting with their paragraph 5 verbatim, and then a few pages later on she moves on to Detling Parish Council, and throughout the petition she covers all those parishes' petitions.

She alleges at paragraph 4 and at paragraph 72 that her interest is injuriously affected, but nowhere in this petition does she provide any assertion that her private and pecuniary interests are adversely affected by any provision in the Bill. There is a clear precedent which I am sure this Committee is familiar with, that where one has a representative body, which has petitioned in identical terms the person represented will not be given separate *locus*. I go back to the fundamental principle on the right to petition which I indicated before the short adjournment, and I would not intend to elaborate on that. I would not intend to take the Committee to any of the precedents, they are well-known and the clerk will be familiar with them, and indeed we have provided him with copies of one or two of them. It is a short point. There is not a case made on this petition for *locus*.

21 February 1995]

[Continued

[Mr Purchas Contd]

Chairman: Would you like to begin to put your case, Dr Simpson? We are rising in about ten minutes but do not let that put you off, because we can always come back to you at 3.30.

Dr Simpson

Thank you very much, Mr Chairman. I am Felicity Simpson, I am a County Councillor for Maidstone Rural North, as has been indicated. I do actually live within the area that will be affected by the Channel Tunnel rail link. I live in Water Lane in the parish of Thurnham, which on the map is due south of the eastern side of Detling, the little green thing indicating Detling.

So I can claim personally to be affected by the Rail Line, probably about 1,000 metres from it, as is indicated in various sections of the Petition that I have submitted: paragraphs 34.1 to 4 and 37 and 38. I would be affected in the same way as other residents in Thurnham.

I might have petitioned personally, particularly as I both ride and drive horses in the area and am concerned about the impact of noise both during the construction phase and afterwards. But, Mr Chairman, I am, as has been stated for this period at any rate, the local County Councillor. I did seek advice from the Bills Office and I chose to petition in my role as the local County Councillor because that is what my local residents expected of me. I have been involved for the last two years in all of the discussions that have gone on with British Rail and Union Rail, a host of meetings. I was involved in the drawing up of the submissions by the parish councils. I did not feel I ought to petition just as an individual because I do have this other role.

Where it says in paragraph two of the challenge that I do not allege, "nor is it the fact that the Petitioner petitions as a representative of any inhabitants of any district affected by the Bill", perhaps I did not state sufficiently frequently that I do not represent just myself but I represent the interests of the people whom I represent. Perhaps somewhat naively I had assumed that by petitioning as a local County Councillor this was understood because a County Councillor is nothing if they are not a representative of the people who have elected them and for whom they are their County Councillor.

On that basis I do represent the people of Hollingbourne, the people of Rythorne Street who are specifically affected by the nearness of the Channel Tunnel route, the people of Thurnham Parish, the people of Bearsted Parish, which is close to the route and have got *locus* because all the inhabitants could be seen to be affected by it, the people of the parishes of Detling and Boxley, particularly the villages of Boxley and Sandling, as the railway line is due to pass close to those villages if your Committee does not take notice of all the Petitions for the Mid Kent Long Tunnel Option. I also represent the Parish of Boxley and the people therein who would be affected by the widening of the M2.

I really am challenging the fact that it says I do not represent inhabitants affected by the Bill. As I said, I may not have spelt it out clearly enough but

I certainly do represent those people and that really is my case. I do not think that you at this stage are going to want exactly where they live and that sort of thing.

Chairman: Can I ask you a question. Where do you personally live? Are you personally affected? Is your house affected, for example?

Dr Simpson

The railway line does not come at it but in moving about the area access during the construction phase would be an important consideration. Similarly, whilst I do not as an agent obviously represent any of the businesses there are a number of businesses located within Maidstone Rural North, particularly public houses and the like in the Hills, for whom access during the construction phase would be an important consideration. As to the mitigation measures that are going to be taken to alleviate any of the impact of the Channel Tunnel Rail Link route, because there must be a requirement afterwards not only for people to be able to live satisfactorily in the area but for that part of Kent, which is an area of outstanding natural beauty, to remain such an area so people will want to visit it.

Mr Dover: How many miles by how many miles is your ward and could we have that indicated on the map?

Dr Simpson

I have one of the largest County Council areas in terms of—

Chairman: We will allow you to get up and show us.

Dr Simpson

I start in effect at the village of Hollingbourne which is one of the key areas in the Channel Tunnel Rail Link. Although that is out there (*same indicated*) the main part of the Hollingbourne Village affected by the Rail Link is *there*. Hollingbourne itself has got several sections to it. It extends right across *there* and it includes the Hills. It goes along *there* and it in fact, as you can see, includes the village of Bredhurst and goes along like *that*. It does take into it the M2 widening.

I appreciate within my County electoral area I have probably a greater extent of Rail Link than almost anybody else does and certainly a part of the Rail Link where there are more hot-spots, if I might use that term, with the Boxley Valley, particularly with Hollingbourne at either end.

Chairman: Thank you very much.

Mr Dover: So your County Council ward is pierced to a length of about six or eight miles?

Chairman: It straddles it?

Dr Simpson: Yes.

Sir Irvine Patnick: Councillor Simpson, you are a Kent County Councillor you say?

Dr Simpson: Yes.

21 February 1995]

[Continued

[Dr Simpson: Contd]

Sir Irvine Patnick: If my memory of local government still serves me, which one doubts these days, there was a council resolution that the County Council should petition against—

Dr Simpson: Yes.

Sir Irvine Patnick: You must have voted for it or agin it?

Dr Simpson: I certainly supported that resolution.

Sir Irvine Patnick: I would say in local government terms your case is being represented by the people the Council have engaged.

Dr Simpson: May I answer that, Chairman, please?

Chairman: Yes, you may.

Dr Simpson.

You will appreciate, sir, the role of the local County Councillor is in fact several fold; one of them is to be part of and to take part in deliberations and voting on behalf of the County Council as a whole. The other very important role is that of the local member and it is that role which I have sought to exercise in this Petition in order to emphasise and support my local parish councillors, the ones that are in my area, because the County Council is going to be—and you will be hearing shortly—taking the strategic role in which it will be leading both the district councils and parish councils and hopefully somebody such as myself as well as the other individual petitioners because I was advised to petition not as an individual but in support of my parish councils in terms of the local government structure. It is as this local member that I wish to emphasise the strength of feeling about the various issues. That is why I petitioned in support of the various councils' petitions.

Chairman: Mr Purchas, do you wish to come back?

Mr Purchas

There are three points Dr Simpson has put forward. First, her potential *locus* as resident and owner of a property. That she does not rely upon; she has not pleaded it and she has been good enough this afternoon to disallow that basis.

The second, which is again not directly alleged in her Petition, is as a user of the rides, or indeed footpaths, on horseback or otherwise. That is a use, of course, as a member of the public, that does not provide *locus* and in any event is not directly alleged.

It is the third point which she relies upon. Standing Order 96 does give one of the exceptions that authorities as presenting petitions should have *locus* in appropriate circumstances. A county council does not have that exemption to represent other views, other bodies. There is a precedent dead in point, if I may say so, and I mention it for the purposes of your Clerk. It is the Bristol Development Corporation Area Constitution Order as the urban development authority, 1988, Councillor Stone, who was both the County Councillor and school governor, no doubt as seriously as Dr Simpson, sought *locus* and it was disallowed. It is pages three and four in the transcript which deal with it.

Unless I can assist the Committee any further?

Chairman: Thank you very much. Thank you, Dr Simpson. We will consider you because we are now winding up for half an hour. Thank you very much.

After a short break

Chairman: I understand now that we are going to deal with the Central Railway Group. Are they here?

Mr Gritten: Yes, I am here.

Chairman: Will you proceed now?

Mr Purchas: I am very happy to do it either way. If it is convenient to the Committee then the Petitioner can open in the usual way or I can.

Chairman: Will you open then, please?

Mr Gritten

I am Andrew Gritten. I am the Chairman of Central Railway. Central Railway is not opposing the principle of this Bill. The company has only ever wished to ensure an economically rational development of the Channel Tunnel Rail-Link section between Ashford and the Channel Tunnel. Central Railway submits that it is an interested party and as such has been treated so by the Department of Transport, and that both in law and as a matter of fact it is a competing railway and therefore has *locus*. I will develop that argument but I would like first to put my statement in some kind of context.

Central Railway is a company formed to promote a railway whose main activity is serving the whole country by running freight shuttle services from terminals in the Midlands and West London through the Channel Tunnel to France. The railway will be wholly compatible with Channel Tunnel systems and Continental railways and their equipment. The principal business of the railway will be taking lorries or their trailers off the roads, offering industry cheaper and more reliable transport to and from the Continent. The other business of the railway would be to offer capacity to any British or continental train.

Getting freight off the roads is of great interest not only to Parliament but across Europe. The primary way of doing this is now seen to be a lorry on trains system. Consequently the company, with SNCF, has undertaken a major market research exercise looking at lorries on train services on Central Railway and the extension of those services into Western Europe. At the same time, the company has looked at both the engineering and the commercial case for extending the system to Sheffield and Manchester.

Over 80 per cent of road freight to the Continent is carried in lorries rather than containers, yet the existing rail system can only address the smaller container market because of inadequate clearances and lack of capacity. Central Railway will provide what is required through the commuter systems of the South East, extending the benefits of the Channel Tunnel. Additionally, it meets market demand for continuous freight services throughout the day.

In our expert opinion, the clearance improvements to existing lines discussed to enable so-called piggyback traffic to operate on existing lines cannot

HOUSE OF COMMONS
MINUTES OF EVIDENCE
TAKEN BEFORE THE COMMITTEE
on the

CHANNEL TUNNEL RAIL LINK BILL

Wednesday 22 February 1995

Before:

Sir Anthony Durant, in the Chair

Mr Jamie Carr
Mr Den Dover
Mr Bill Etherington
Mr John Heppell

Sir Irvine Patrick
Mr Gordon Prentice
Mr David Tredinnick

Ordered, That Counsel and Parties be called in.

Chairman

Order, order. Good morning, ladies and gentlemen. I have a brief announcement to make. The Committee met immediately after the session yesterday afternoon and considered the various arguments about the locus standi of the Petitions which they heard. We do understand the anxieties, particularly, of the individual Petitioners, and, of course, notes were taken. They have decided that they can allow locus standi to the Central Railway Group Limited but they cannot permit locus standi to any of the other Petitioners challenged by the Promoters. The case relating to Bostal Village Surgery must be dealt with on another occasion. So that is the statement about locus standi.

We now move on to Kent County Council and Dover District Council. May I start by a question. Are you doing these two together or separately?

Mr Fitzgerald: Sir, I propose to call evidence only with Kent County Council officers, but that evidence also incorporates the requirements of Dover District Council. What I would like to do is address you, however, very shortly after I address you more fully on Kent County Council's behalf with a very short statement in respect of Dover.

Chairman: We have got a copy of the Petition. I hope you are not going to read the whole thing out. I think it would be helpful to the Committee if you drew attention to parts of the Petition as you do your address rather than read the whole thing out.

Could you introduce yourself before you start?

Mr Fitzgerald: Thank you very much, indeed. My name is Michael Fitzgerald, I appear for both Kent County Council and Dover District Council. Sir, may I first tell the Committee this: I may not be here after the completion of the presentation of our petitions to you, except to the extent I may need to come back to deal with matters outstanding. When I go away Mr Michael Pritchard of the Parliamentary Agents will stand in my place.

Sir, I only have one right of address to the Committee, so I would prefer to leave that till the end so that I can give you the up-to-date position with regard to the status of our petition and the Promoters' reaction to it. By way of introduction, without prejudice, what we have done—I hope to assist the Committee in understanding and, certainly, going through what may appear somewhat indigestible petitions (some 100 paragraphs of it)—is prepare a schedule, which I hope has been provided to the Committee. That is in the black ringed binder. Would the Committee be good enough to turn to the second page of that schedule. I can illustrate what we have sought to do by referring the Committee to that page.

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8. The Midland Metro Bill – Petitions of (1) Auckland Drive against Metro (ADAM) Group (2) Bacon's End against the Metro (BEAM) Group (3) CARE Residents Group – ADAM and BEAM disallowed; CARE Residents Group allowed in respect of frontagers' interests only [H.C. Session 1989 – 1990]

SESSION 1989-90

MIDLAND METRO BILL

Petitions of (1) Auckland Drive against Metro (ADAM) Group (2) Bacon's End against the Metro (BEAM) Group (3) CARE Residents Group ~~(4) Bromford and Firs Residents Group~~ ~~(5) The Residents against Metro.~~

Locus standi allowed to petitioners (3) in respect of frontagers only; disallowed in all other cases.

Thursday 8th March 1990 - before Mr Harold Walker MP, Chairman of Ways and Means, Chairman; Sir Paul Dean MP, First Deputy Chairman of Ways and Means; Mr Norman Miscampbell MP; Mr Ivor Stanbrook MP; Mr Neil Thorne MP; and Mr H Knorpel QC.

Bill to empower to West Midlands Passenger Transport Executive to construct works and to acquire lands for extension of their light rail rapid passenger transport system; and for other purposes.

The petitioners claimed a locus standi as groups of residents in the area whose property and interests would be injuriously affected by the works proposed in the bill.

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, that none of the petitioners' members were frontagers to a road in which a tramway was proposed, and that their grounds of objection were the proper concern of their respective local authorities.

Foster, for petitioners (1), (2) and (3). These three groups were formed specifically with the view to dealing with issues arising out of the proposed Midland Metro Bill, from about July of last year through till September or October.

The groups certainly are representative of the residents in the area. I have got various documents here, in particular correspondence that has passed between the local Parish council, the promoters themselves and the Solihull Metropolitan Borough Council, which is the relevant local authority in the area. I also have a pullout from a newspaper which is in connection with the Midland Metro and is produced by the promoters and also the local Council in connection with the Bill talking about meetings. It is quite clearly specified in this document that the ADAM, BEAM and CARE groups which are actually mentioned here in their own document are effectively being used for the purpose of consultation by the promoters.

What I would venture to suggest to you is that since, quite clearly, the promoters themselves have treated these groups as being representative of the residents, the promoters, you may consider, might be estopped from suggesting that the groups themselves are not representative, since their own document refers clearly to the groups, and they have actually carried on correspondence and consultation with these particular

groups before lodging the bill.

The second point I would like to make refers to the extent to which the petitioners themselves are actually directly and specifically affected by the proposals in the Bill.

Given the proximity of the intended route where the promoters intend to run the rapid transit system through the area, that certainly means that they are directly affected and that the lines of deviation are such that the proximity of the track to a number of the residences in the area will be quite significant.

I have a set of photographs which show the grass embankment which runs opposite a number of the residents' houses on Auckland Drive. It is proposed to run the Metro along that embankment.

SIR PAUL DEAN. How far are the houses from the embankment?

Mr Deverell, Chairman of the ADAM Group. From 5 metres to about 20 metres.

SIR PAUL DEAN: And the embankment is elevated, is that right?

Mr Deverell. As far as we understand it, a lot of the embankment will have to be levelled. At the moment the embankment divides Auckland Drive and the properties from a four lane dual carriageway and a six lane motorway and the embankment stops the noise.

SIR PAUL DEAN. Would the Metro be above the houses, at the same level of the houses or lower than the houses?

Gamon, for the promoters. The intention is to take the Metro along the grass embankment which is now a bund for the protection of these residents and to take it along the line as close to Collector Road as we can and as far from the houses as possible.

Foster. As you will see the route in connection with the CARE Group is proposed to be run actually along the roads themselves and also along the opposite grass embankment similar to the ADAM situation. The red line is the route of the proposed track. In a number of instances it will be running down roads past frontages of houses. In fact, notices have been served by the Executive on a number of the members of the Residents' Group pursuant to that route running down past the frontages.

There are a couple more points I would like to make. In particular, again to the extent to which my clients are directly and specifically affected by this proposal, I would like to hand to you a couple of letters I have from a firm of valuation surveyors which demonstrates that the owner/occupiers and the residents in the area do have a very real material and direct interest in the proposed track, notwithstanding that it is not intended that any of the properties are directly interfered with themselves. What we are concerned about is the actual effect on property values of the houses in question during the course of construction and, of course, resulting for a subsequent user. That letter

demonstrates some of the issues of concern which are rightly felt by the residents. In addition, there is an actual case study there of a resident in the CARE area which, it states, as a result of the Metro proposals could mean that if his property was put on the market he could have to accept a substantially reduced price in his property.

MR MISCAMPBELL. Am I right in thinking as far as the Auckland Drive petitioners are concerned, what you have got is a proposed Metro, then you have a four-lane access road and a motor road immediately to the other side of it.

Mr Deverell. Yes, I think that is a correct summary of the position.

MR MISCAMPBELL. It is not really a matter for us, but is it the case that the noise must come off the motorway? Is it suggested that it makes a material difference with this light railway going along?

Foster. It is, sir, because the embankment was built specifically as a noise buffer. Obviously it is not known exactly within the lines of deviation, vertically or horizontally, where the Metro may go. It may make a considerable difference.

MR MISCAMPBELL. Compared with the noise coming off the motorway, as I understand what you are saying it is because it is on top of the embankment that you will hear the railway?

Mr Deverell. We are not talking so much about the noise of the railway, but if they lower this embankment it is going to let through all the noise from Collector Road and the motorway.

Foster. Basically, there are issues of noise from construction and use that we are concerned about, particularly in relation to that, and also those people whose properties are actually on the same road as the traffic will go down. There are issues on the loss of amenity and enjoyment that are to be considered as well, and also loss of rights of access or substantial interference, particularly in relation to the CARE Group where the track will actually be running down and the streets are used for on-street parking.

The points I have produced in evidence today are intended to persuade you to grant the groups' *locus standi* under Standing Order 96, which relates to the discretionary *locus* for all inhabitants. We would also say in connection with Standing Order 102 there are residents within the CARE Group who will actually have frontages to the track directly and, in that sense, have a mandatory right to actually be heard before the Committee. In addition, that Standing Order also provides where access is also interfered with there is a discretionary right of *locus* that it would be competent for you to grant as well.

The Notice of Objection states that the grounds of objection to the proposals of the bill, set out in the petition, are matters which are the proper concern of that local authority which represents the interests of the residents of that area. There are previously decided cases before by your predecessors which suggest that you are not necessarily precluded from granting a *locus* merely because the local authority are not petitioning. Certainly we would say that a number of these matters are directed to the residents themselves,

particularly in relation to the property values, for instance, which the local authority would not necessarily take up on the residents' behalf.

MR KNORPEL. Can you tell us what sort of proportion there is between the residents who are actually members of these groups and whom you therefore represent and those who are not?

Foster. In connection with the BEAM Group I can tell you that a figure of 150 households is a proper one to put to you, and you will see that given the number of signatures and subscribers that I have provided you with it is 125 out of 150. As for the CARE Group, there are between 350 and 400 houses in the CARE area, and there are 208 formal subscribers of CARE.

Mr Deverell. The number of houses that front along Auckland Drive and Manchester Way I believe is around about 520. We have got an actual membership of 135 names.

Gamon. Mr Foster talked himself out of a *locus* in his very opening remarks which were to the effect that these residents' associations were formed specifically to deal with the issues arising out of the Bill. The question of the *locus standi* of residents' associations was considered by the Joint Select Committee on Private Bill Procedure very recently and paragraph 104 of their report referred to a British Railways suggestion that there should be a Standing Order to allow *locus standi* to residents' associations on the same footing as individual residents, but the Select Committee decided that this was not necessary because they considered that the terms of the Standing Order 95 and the equivalent in the House of Lords were already enough to include residents' associations in some circumstances but it has always been the rule that *ad hoc* associations formed to oppose a particular measure are not within Standing Order 95.

I refer the Court to a decision in the leading case of the *Dundalk Urban District Council Bill 1908*. This was a petition of a property owners' association which was opposed to the erection of an electricity generating station and the evidence was given about the association and the Chairman said, "Is it an association formed avowedly *ad hoc*? To which the answer was, "Yes." and Sir David Brynmor Jones, a member of the Court, said, "We must see that any association that we deal with as coming within SO 133A (now 95) is a real *bona fide* existing association," and the *locus* was disallowed on these grounds. Now this might appear to be a far cry from 1908, but that is the rule to which I understand the Court adheres and certainly quite recently in 1981 I had occasion before the Chairman to raise the same point. On the *Redcar, Marske and Saltburn Compulsory Purchase Order 1980-81* their *locus* was disallowed on those grounds. They had been formed *ad hoc* for the purposes of opposing a particular measure.

I think that would deal with possible *locus* under Standing Order 95, which is what the Joint Committee on Private Bill Legislation had in mind in saying that a residents' association might, under certain circumstances, have a *locus*.

Our difficulty is that we have considerable sympathy with the frontagers down Moorend Avenue, Helmswood Drive and Chelmsley Road. We have served notices on them as frontagers and we are laying the Metro as a tramway down those roads and that is

acknowledged as a tramway. We accept that they have a valid interest and a valid concern in respect of the tramway going down their roads. We hope to satisfy them eventually, but we accept that there is an interest.

If the petition had been in the names of those frontagers we would not be here today troubling you. It is for the Court to decide whether you should pierce the veil of the group association which has been formed and identify who those frontagers are, and accept that they in person have *locus*. This is the course which has been followed on previous occasions in a case as long ago as 1879, but which has been followed since, of the *Brentford, Isleworth, &c, Tramways Bill*. There was a petition from frontagers in streets and others, and evidence was given of 67 persons who were the petitioners in that case and about one half were frontagers. Their *locus* was allowed. There was another case where the tramway was within quite a short distance of a man's house and he was allowed in as well as the frontagers, but the others were not. That may be a course which commends itself to the Court in the case of CARE.

In the case of ADAM and BEAM it is not a tramway, it is a tramroad or railway and it is not in a street, it is on the other side of an embankment from them and we hope to satisfy them in due course that all the deleterious effects they envisage are rather exaggerated.

So far as ADAM and BEAM are concerned, we do not think they have any *locus* because theirs is no greater than that of the public at large.

Hawkins, for petitioners (4). I am Secretary and Agent of the Bromford and Firs Residents Group, which has its roots in a special sub-committee meeting called by Terry Davis, MP for Hodge Hill, on the 26th June, 1989. The only thing on the agenda at this meeting was a discussion on the Metro road through the Bromford Bridge and Firs Estates. Mr Davis moved a motion within that meeting calling upon the Birmingham Committee who were considering the Metro and the West Midlands PTE to form a working party consisting of residents, local councillors and officers of the Council and the PTE to consider the routes through the Bromford Estate and the Firs Estate and, as was also moved at that meeting, a third route which was proposed to the north of the M6 motorway. There was a meeting with 30 or 40 residents on 19th July 1989 and the Committee was elected from these residents. At a public meeting on the estate, at the Bromford and Firs Sports and Community Centre, there were more than 400 attenders, and the Committee put to them the aims of the Group, which were to consult with the planners at that point to discuss a route to the north of the M6 motorway, to lobby the councillors and the West Midlands PTE officials as far as possible to consider the route and if we got no recompense from those officials and the councillors on the City Council and the West Midlands PTE, we would then, on behalf of the residents, petition Parliament against the Bill at a later date.

The three main areas which are affected by this route through the Bromford and Firs Estate are Chillinghome Road, Wanderer Walk and Douglas House.

About 12 - 15 residents along Chillinghome Road and Wanderer Walk will be affected by the noise from the Metro. We were told three weeks ago by officers of the City

do they live and who are they and are they affected by the Metro proposals?

CHAIRMAN. How many people were present on the occasion that your Committee was elected?

Stokes. I would say about 60.

CHAIRMAN. The Court have considered very carefully all the submissions that have been made to us. Let me say first of all that the Court took very strong account of what Mr Foster said to us in respect of the CARE Residents' Group and we can grant a *locus standi* to the CARE Residents' Group if they will undertake to represent only those who are directly affected - the frontagers - and if they will supply Mr Gamon with a list of the names and addresses of those frontagers who are directly affected.

In respect of the others, Auckland Drive Against Metro, Bacon's End Against Metro, Bromford and Firs Residents' Group and The Residents Against Metro, the Court feels the requirements of the Standing Order have not been satisfied and therefore we cannot grant *locus standi*. However, the Court have asked me to point out that those persons who are specifically and directly affected by the Metro Bill will have the right as individuals to seek to petition in the House of Lords.

Locus standi allowed to petitioners (3) in respect of frontagers only; disallowed in all other cases.

Foster for petitioners (1), (2) and (3).

Hawkins for petitioners (4).

Stokes for petitioners (5).

Gamon for the promoters.

Agent for petitioners (1) (2) and (3): Mr S J Foster.

Agent for petitioners (4): Mr Kevin Hawkins.

Agent for petitioners (5): Mr Christopher Stokes.

Agents for the Bill: Sherwood & Co.

9. The Midland Metro Bill – (4) Petition of Bromford and Firs Residents Group (5) Petition of the Residents against Metro (RAM) – Disallowed [H.C. Session 1989 – 1990]

SESSION 1989-90

MIDLAND METRO BILL

~~Petitions of (1) Auckland Drive against Metro (ADAM) Group (2) Bacon's End against the Metro (BEAM) Group (3) CARE Residents Group (4) Bromford and Firs Residents Group (5) The Residents against Metro.~~

Locus standi allowed to petitioners (3) in respect of frontagers only; disallowed in all other cases.

Thursday 8th March 1990 - before Mr Harold Walker MP, Chairman of Ways and Means, Chairman; Sir Paul Dean MP, First Deputy Chairman of Ways and Means; Mr Norman Miscampbell MP; Mr Ivor Stanbrook MP; Mr Neil Thorne MP; and Mr H Knorpel QC.

Bill to empower to West Midlands Passenger Transport Executive to construct works and to acquire lands for extension of their light-rail rapid passenger transport system; and for other purposes.

The petitioners claimed a locus standi as groups of residents in the area whose property and interests would be injuriously affected by the works proposed in the bill.

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, that none of the petitioners' members were frontagers to a road in which a tramway was proposed, and that their grounds of objection were the proper concern of their respective local authorities.

~~Foster, for petitioners (1), (2) and (3). These three groups were formed specifically with the view to dealing with issues arising out of the proposed Midland Metro Bill, from about July of last year through till September or October.~~

~~The groups certainly are representative of the residents in the area. I have got various documents here, in particular correspondence that has passed between the local Parish council, the promoters themselves and the Solihull Metropolitan Borough Council, which is the relevant local authority in the area. I also have a pullout from a newspaper which is in connection with the Midland Metro and is produced by the promoters and also the local Council in connection with the Bill talking about meetings. It is quite clearly specified in this document that the ADAM, BEAM and CARE groups which are actually mentioned here in their own document are effectively being used for the purpose of consultation by the promoters.~~

~~What I would venture to suggest to you is that since, quite clearly, the promoters themselves have treated these groups as being representative of the residents, the promoters, you may consider, might be estopped from suggesting that the groups themselves are not representative, since their own document refers clearly to the groups, and they have actually carried on correspondence and consultation with these particular~~

acknowledged as a tramway. We accept that they have a valid interest and a valid concern in respect of the tramway going down their roads. We hope to satisfy them eventually, but we accept that there is an interest.

If the petition had been in the names of those frontagers we would not be here today troubling you. It is for the Court to decide whether you should pierce the veil of the group association which has been formed and identify who those frontagers are, and accept that they in person have *locus*. This is the course which has been followed on previous occasions in a case as long ago as 1879, but which has been followed since, of the *Brentford, Isleworth, &c, Tramways Bill*. There was a petition from frontagers in streets and others, and evidence was given of 67 persons who were the petitioners in that case and about one half were frontagers. Their *locus* was allowed. There was another case where the tramway was within quite a short distance of a man's house and he was allowed in as well as the frontagers, but the others were not. That may be a course which commends itself to the Court in the case of CARE.

In the case of ADAM and BEAM it is not a tramway, it is a tramroad or railway and it is not in a street, it is on the other side of an embankment from them and we hope to satisfy them in due course that all the deleterious effects they envisage are rather exaggerated.

So far as ADAM and BEAM are concerned, we do not think they have any *locus* because theirs is no greater than that of the public at large.

Hawkins, for petitioners (4). I am Secretary and Agent of the Bromford and Firs Residents Group, which has its roots in a special sub-committee meeting called by Terry Davis, MP for Hodge Hill, on the 26th June, 1989. The only thing on the agenda at this meeting was a discussion on the Metro road through the Bromford Bridge and Firs Estates. Mr Davis moved a motion within that meeting calling upon the Birmingham Committee who were considering the Metro and the West Midlands PTE to form a working party consisting of residents, local councillors and officers of the Council and the PTE to consider the routes through the Bromford Estate and the Firs Estate and, as was also moved at that meeting, a third route which was proposed to the north of the M6 motorway. There was a meeting with 30 or 40 residents on 19th July 1989 and the Committee was elected from these residents. At a public meeting on the estate, at the Bromford and Firs Sports and Community Centre, there were more than 400 attenders, and the Committee put to them the aims of the Group, which were to consult with the planners at that point to discuss a route to the north of the M6 motorway, to lobby the councillors and the West Midlands PTE officials as far as possible to consider the route and if we got no recompense from those officials and the councillors on the City Council and the West Midlands PTE, we would then, on behalf of the residents, petition Parliament against the Bill at a later date.

The three main areas which are affected by this route through the Bromford and Firs Estate are Chillinghome Road, Wanderer Walk and Douglas House.

About 12 - 15 residents along Chillinghome Road and Wanderer Walk will be affected by the noise from the Metro. We were told three weeks ago by officers of the City

Council that there are residents in Chillinghome Road and Wanderer Walk who do not get noise insulation because of the motorway or the present noise; they will be entitled to noise insulation because of the Metro.

Douglas House is in a group of four nine-storey flats at the eastern end of the Firs Estate. It stands 30 yards from the elevated section of the M6 motorway which crosses the Chester Road, and which is on a level with the third and fourth floor flats in Douglas House.

The first thing that happened about Douglas House when the Metro Bill was proposed was that there was a horror story that came out that the tower block itself would have to be demolished. Councillor Stan Austin, the Chairman of the Housing Management Committee of Birmingham City Council, sent in a letter to a local newspaper there about Douglas House and the possible plans for demolishing it. In the letter he says the Department of Transport have to make arrangements possibly to put a slip road in from the M6 at Junction 5, which again is just by Douglas House, off the motorway to what is the new spine road to be built on the north side of the M6. If this slip road is necessary it will push the Metro line close enough to Douglas House to make it necessary to talk to residents about the future of the block.

The residents have 'phoned the Housing Committee themselves, and they get a different answer from the different people, whoever they speak to. One day they are told, "Yes, I am afraid it will have to come down", and then three days later they are told, "No, there are no plans to demolish Douglas House".

The residents of Douglas House are, in the main, middle aged people. They are very happy living there and they do not wish to move.

I would like to come on to the organisations which existed on the estate before the Bill was first talked about. Bromford Bridge Football Club have a football pitch controlled by the Sports and Community Centre on this green stretch of land which the Metro wishes to go through. That football pitch is used every Sunday morning for local amateur football games, as well as during the week for local children to play their games on. I have a letter from Bromford Bridge asking me to act as their agent against the Midland Metro Bill.

The Metro runs along the back of the Sports and Community Centre and it has, literally, inches to spare, so we are told by the planners. We are still waiting for written confirmation that the Sports and Community Centre will remain.

The fact that an *ad hoc* committee has been set up to petition against the Bill was mentioned with Mr Foster's presentation earlier on. The Bromford and Firs Residents Group were not in existence before the Bill became known; the football club was, the Sports and Community Centre was and those people have asked us to represent them.

I believe a similar thing happened on the King's Cross Bill - the Crossfire group was established to oppose the King's Cross Bill and they grew out of an existing organisation of residents. That is what has happened with the Bromford and Firs Residents Group.

The existing organisations were already there and the residents were there. We have just gone forward on their behalf to petition against the Bill.

Gamon. Mr Hawkins referred to the objections of the football club and that is mentioned in his petition. He also referred to the Sports and Community Centre and the fact that the Metro ran along the back of it. There is nothing about that in his petition. In the case of Douglas House there is a confrontation and that is under discussion with the local authority. The centre line proposed runs alongside the M6 motorway and on the grass verge so far as it can as near to the M6 motorway as possible. There is a difficulty where we pass Douglas House and that we acknowledge but in the rest of the Firs Estate it is substantially clear of the Metro. Our information at one time was that Douglas House was to be pulled down but that I gather is still under consideration between the Executive and the local authority.

In so far as the petitioners are seeking a *locus* as inhabitants of an area and to contravene the decision of their local authority which represents their interests, it is certainly the case in certain instances that inhabitants as such have been allowed a *locus* to oppose a decision of their local authority but only where there are sufficiently representative and represent a substantial number of the total populace represented by that local authority. The leading case on this is the *Tottenham and Forest Gate Junction Bill 1890*, where some 950 local inhabitants petitioned against the railway involving a viaduct through their district; but it was found that they were not sufficiently representative and their *locus* was disallowed. You are well aware of the precedents in this matter and it would be our submission that the Bromford and Firs Residents' Association as inhabitants are not sufficiently representative of such a wide population that their own views should be allowed to be heard against the views of their own Borough Council.

Stokes, for petitioners (5). The committee known as "The Residents Against Metro" was formed from people who attended local ward surgery meetings in Short Heath ward during March 1989. During March 1989 councillors of Short Heath ward organised a petition and collected a total of 1,463 signatures against the Metro proposal from shops and households, both directly and indirectly affected in Willenhall and Walsall. On the evening of Friday, 19th January, 1990, a second mass public meeting was held at Willenhall School and attended by over 100 people, who recommended depositing a petition against the Bill.

We agree that our grounds for objection should be the proper concern for the Council and have done our best to point this out to them, as Walsall Council represent our interests as residents in the potentially affected area but are unable to fulfil this duty as their political obligations come before any allegiances with the residents' concerns in this matter.

Loss of local amenities is one area of concern to us, for example the local park, the Willenhall Memorial Park, which is described as being a "green lagoon in a desert of urban sea".

There are two points about invasion of privacy. From the vehicle itself you would

actually look into the bedroom windows of people's houses. There is also the invasion of privacy from people waiting either to cross the local crossing to get on to the vehicle.

Danger to residents: obviously there is the accident potential of a vehicle being derailed. As current rail accidents have shown it is possible for a railway vehicle to fall off the track and injure people. Also power line failure: power lines have been brought down and no doubt a similar system there would suffer the same problems.

Non-user disadvantages: I have mentioned the level crossings and noise, not necessarily from the vehicles but people waiting to get across the level crossing and also waiting at queues where the tram will stop. Traffic complications and any additional traffic regulatory system. Station location and pedestrian noise. Then there is illumination of the area. It will need to be lit up at night or in inclement weather. It would be necessary to have lighting that would interfere with those residences closer to the limit of deviation. Advertising boards - I would expect if it was going to be a commercial enterprise it would carry some form of advertising. Electro-magnetic interference pollution, both from the vehicles themselves and the ancillary equipment needed to operate the barriers and the warning devices on the crossings. Vehicles of this nature also suffer from vandalism.

Property values - I would like to read an extract from a report of the Department of Engineering and Town Planning to the Highways and Public Works Committee on the 28th September 1989 of Walsall Metropolitan Borough Council, "On 7th July 1989 the West Midlands Passenger Transit Authorities's Policy Resources and External Relations Committee authorised the Executive to implement a scheme whereby private residential property could be acquired from an owner who wished to sell and could demonstrate that the Metro proposals prevented the current market value from being obtained." If the Executive is prepared to implement a scheme like that they are accepting the fact that property will be affected in some way.

To demonstrate that our Committee is a direct reflection of the local feeling, I have before me a list of events from Monday 3rd April 1989 to Friday 1st December 1989. We have addressed our local authority's full council meetings, the Policy and Resources meeting, we have addressed the West Midlands Passenger Transport Authority on two occasions and we have also addressed our local area Planning Committee on at least one occasion.

MR KNORPEL. Mr Stokes, can you tell us how many members you have on your committee?

Stokes. 11.

Gamon. We have not heard much from Mr Stokes as to where these members live. He has referred to 1,463 signatures which he has obtained but has not said where they live.

They are not necessarily members of anything, they are signatures and you can easily obtain signatures. It is the question of who are the members of this association. As I understand it there are 11 in the answer you gave to Mr Knorpel. The question is where

do they live and who are they and are they affected by the Metro proposals?

CHAIRMAN. How many people were present on the occasion that your Committee was elected?

Stokes. I would say about 60.

CHAIRMAN. The Court have considered very carefully all the submissions that have been made to us. Let me say first of all that the Court took very strong account of what Mr Foster said to us in respect of the CARE Residents' Group and we can grant a *locus standi* to the CARE Residents' Group if they will undertake to represent only those who are directly affected - the frontagers - and if they will supply Mr Gamon with a list of the names and addresses of those frontagers who are directly affected.

In respect of the others, Auckland Drive Against Metro, Bacon's End Against Metro, Bromford and Firs Residents' Group and The Residents Against Metro, the Court feels the requirements of the Standing Order have not been satisfied and therefore we cannot grant *locus standi*. However, the Court have asked me to point out that those persons who are specifically and directly affected by the Metro Bill will have the right as individuals to seek to petition in the House of Lords.

Locus standi allowed to petitioners (3) in respect of frontagers only; disallowed in all other cases.

Foster for petitioners (1), (2) and (3).

Hawkins for petitioners (4).

Stokes for petitioners (5).

Gamon for the promoters.

Agent for petitioners (1) (2) and (3): Mr S J Foster.

Agent for petitioners (4): Mr Kevin Hawkins.

Agent for petitioners (5): Mr Christopher Stokes.

Agents for the Bill: Sherwood & Co.

10. The Kings Cross Railways Bill – Petitions of Patrick Roper and 13 Others – 10 petitions disallowed [Session 1988-89]

SESSION 1988-89

KING'S CROSS RAILWAYS BILL

Petitions of (1) Patrick Roper (2) Christopher Aram Sanders (3) Angus Colin John Macdonald (4) Goodsway Boat Users Association (5) Carole Ann Harper (6) Angus Alexander Macdonald (7) Ann Edmundson and Martin Cottis (8) Dawn Liggins (9) London Waterways Operators (10) W Walker (11) Simon Trevor-Roberts (12) Masha Kolomeitz (13) Jonathon C E Grove (14) Elizabeth Paffard.

Locus standi of petitioners (7), (9) and (10) allowed; of the remaining petitioners disallowed.

Thursday 18th May 1989 - before Mr Harold Walker MP, Chairman of Ways and Means; Chairman; Miss Betty Boothroyd MP, Second Deputy Chairman of Ways and Means; Mr Norman Miskampbell MP; Mr Roger Moate MP; Mr Ivor Stanbrook MP; and Mr H Knorpel QC.

The petitioners claimed locus standi as canal users whose interests would be adversely affected by the temporary closure and emptying of the canal and the construction of a new bridge over the canal.

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, they would suffer no pecuniary loss or injury themselves nor did they represent any trade or association whose interests would be injuriously affected.

Harter, for petitioners (1) and (3) to (14). All my clients and Mr Sanders are canal users. They use this canal for one reason or another. There are differences among them, but the common factor is that they use the canal. That means that they all have some kind of licence from the Waterways Board which controls the canal. So they are all not just users but they are licensed users of the canal.

In their petitions they say that they are affected in two ways by these matters. One is in terms of the whole development itself. The last time that I was here we talked about the huge disruption to the community and the roads. In their petitions they say that they too, with their boats moored so close to the works, will be joining in the general disadvantage that the area will suffer. Then of course there is the specific point they make about the canal.

One of the points concerns Clause 16 of the Bill, which is the section, if it comes into force, which would give the Board the power to temporarily "close and de-water" - in other words empty - a specified part of the canal. As licensed users of the canal they have an obvious interest in how this will happen, when it will happen, how long it will take and so on.

The second matter in which they are interested is Work 10, which is that bridge. It is the majority of my clients who are moored by that bank who are interested in that, but all the canal users will be interested in how that is to be done.

Mr W Walker examined

Witness. I operate a passenger boat on the Regent's Canal which is east of the Hampstead Road Lock that is below the Camden Town centre. I operate two boats. One is a passenger tripping boat - a traditional narrow boat - and the other is a cruising restaurant, an 80-seater. I have been operating boats on the for the past 21 years. I have been connected with the canal for something like 35 years and since 1921 I have live in Camden Town in the vicinity of the canal, so I can claim to know it quite well. I am a member and the Honorary Treasurer of the London Waterways Operators, which is a collection of individuals who provide a public service on the canal of one form or another.

Durkin, for the promoters. I am not challenging the London Waterways Operators so far as they seek to represent general interests on Regent's Canal.

Witness. There is one other rather important point that I should like to bring forward. If the canal is de-watered for any length of time - the bottom of the canal is lined with a material known as puddle, which is a mixture of clay and straw. This canal was built in 1820 and before most of the properties along the canal in fact were built. If this puddle is left exposed it will dry and crack and henceforth the canal will leak, to the detriment of the properties on the site. So there is a potential risk of substantial difficulties with the properties if the canal is allowed to dry out for any particular time at all.

CHAIRMAN. We understand from what Mr Walker says that if he is correct and the promoters of the Bill are at fault, his business will suffer major losses because his boat will be denied access for a period of time to that whole length of the canal east of Camden Lock down to Limehouse. Perhaps Mr Durkin can give us some estimates of that. If Mr Walker is wrong and what the promoters say is technically feasible, and in the event turns out to be so, his business in any event, although not being so severely damaged as in the first hypothesis, nonetheless for that period of time will suffer lesser but still some damage.

Harter. Perhaps I may now go quickly through the evidence of my other clients. First of all the petitions of father and son Macdonald. They have a boat moored on that Goods Way mooring of which we have spoken. As became plain during a hearing on a memorial in this House earlier this year, they live on it. Whether they are entitled to do so may be a matter of legal dispute between them and the British Rail Board, the Waterways Board and indeed the man who leases the bank. But the fact is that they are living there and they hold a licence for the use of the canal. To go up and down in your boat you have to have a licence from the Waterways Board.

MR KNORPEL. Indeed. When you say that they hold a licence, do you mean that they still hold it or that they used to hold it but no longer do so?

Harter. This particular pleasure boat licence has not been renewed yet because there is a dispute as to what form of licence they should hold. As they are living on the boat possibly they should not have a pleasure boat licence, but what I believe is called a houseboat certificate. But whatever it is, in the end they will have to regularise their position vis-a-vis the Waterways Board to get some form of permission.

Quickly going on past them we come to a group of two petitioners who are similar in that they are moored there - Harper and Liggins. The difference in their petitions is that each of them say they do some work on their boats. They do not live there but they carry out work there. They each therefore hold a pleasure boat licence to go up and down the canal if they want to. They are not living there so they do not need anything else. They count on it as a place to do some work.

Then, staying with Goods Way, the remaining people at Goods Way are purely holders of pleasure boat licences to go up and down the river and licences to moor from Mr Middleton. They are pure pleasure boats. They do not live or work on them but use them on a regular basis. Those are the petitions of Mr Grove, Mr Roper, Mr Sanders - he wishes to say something on his own behalf later but I put him in that group - Elizabeth Paffard, Simon Trevor-Roberts and Masha Kolomeitz.

There is a wholly distinct couple, Ann Edmundson and Martin Cottis, who operate a business called the Metropolitan and Midland Canal Trading Company. They are moored in the Battle Bridge basin that I showed to the court. They are the only one of my clients in that basin. They use their narrow boat to go up to the Midland, collect coal, come south with it and sell it to clear canal users. So they are running a business as coal carriers and dealers in coal from Battle Bridge basin.

~~The only other organisation that I should mention to the court is the Goodsway Boat Users Association. This is a loose association of those eight or nine boats moored at Goods Way. When they have to represent themselves as a unit they call themselves the Goodsway Boat Users. The association has no constitution; it is a loose grouping and it has put in a petition.~~

CHAIRMAN. The Goodsway Boat Users Association - who are the members? Are they people who use their boats for pleasure and recreational purposes?

Harter. They are the same people that I have just gone through in fact: the Macdonalds and the five or six purely pleasure boats and the two workers. It is an association of that lot.

Those are the slightly different interests of my clients who have one thing in common which is that they are all users of the canal in one way or another. They are obviously all, with the exception of Mr Walker who is up at Camden Lock, close to the work that is proposed. Strangely, they are separated out from some other similar people in Battle Bridge basin where the coal boat is. There are boats belonging to the London Narrow Boat Association and the Islington Narrow Boat Association which are similar sounding bodies to the Goods Way association of which I have just spoken. Each of those bodies has petitioned and not been objected to.

I have had some research done and know of at least two petitioners - one in particular a canal user, interestingly enough from Camden - who were given a *locus*. That is the case which appears in Clifford and Stevens at page 129 - the *Coal Owners' Associated London Railway Bill* case in 1871, where operators on a canal going north from Camden were entitled to appear when the railway company was proposing to have a Bill in which there would be agreements which might affect the right of carriage over the canal. Those canal carriers, which were rather like the coal boat here, were given a right of audience in that case. There was another not wholly dissimilar case, which was the *North-East Railway Bill*, II Clifford and Stevens, at page 140, where there was a suggestion for putting in a swing bridge over the River Tees and people who used that river and the wharves were given a *locus* to appear in front of the Committee. So in my submission that is plumb in point for the canal users and the other waterside interests in relation to the swing bridge over the Tees.

The point may be taken that my clients do not have a land interest. Indeed, they do not. I do not suggest it. They have pure licences on the canal and pure licences to moor. In my submission that should be enough to enable them to appear. The narrow boat associations cannot have more than that and they will be allowed to appear so far as British Rail are concerned; nor can the boat clubs have more than that and they will be allowed to appear.

Sanders, in person. I live at Flat 3, 22 Dunster House, Hanson Street, London W1, which is just under the Post Office tower. I walk regularly to my boat, the Landreth, which I have moored at Goods Way mooring. I have lived in and around the area for about 15 years and had a boat there for two and a half years and I use it a great deal. It costs me a fair amount of money as well. To move it away will cause me a lot of trouble. I think it is fairly obvious that I would be quite adversely affected by this Bill.

MR MISCAMPBELL. Would your mooring be affected? Would it be in part of the area which is likely to be made dry?

Sanders. Yes. I also understand that there is the possibility of a bridge being built. I am not sure if this is true, but as I understand it, the bridge would go directly over my boat.

MR MISCAMPBELL. So for a period of time you would have to move your boat?

Sanders. Definitely.

CHAIRMAN. Do I understand correctly that when these works have been carried out the water may be readmitted and there may be renewed moorings in that particular location?

Harter. Subject to this, that we do not know how long the bridge will be there and how practical it will be to live under the bridge. We have heard five years for this temporary bridge. That is a separate problem in itself.

MR KNORPEL. Mr Harter, did you tell us that Carole Ann Harper and Dawn Liggins

had businesses and that Masha Kolomeitz says that she does work there?

Harter. The answer is that she does not any longer. One of the others cleans small antiques, bits of Victorian bric-a-brac which are clean up before going into the markets. The other one makes jewellery.

MR KNORPEL. You said of both of them that their licences are pleasure boat licences?

Harter. Yes.

Durkin. Erskine May, page 952, reads as follows:

"Generally speaking, it may be said that petitioners are not entitled to a *locus standi* unless it is proved that their property or interests are directly and specially affected by the bill".

That is the bedrock upon which the rules of *locus standi* are based. An "interest" in this context means a legal concern in a thing, especially right or title to property. That is the dictionary definition of "interest". Mr Harter stated that his clients have no interest in land. They have licences but he described them as persons having a secondary interest - hence, a hobby. If Mr Harter's argument as to the meaning of "interest" were to be accepted, the world and his wife could petition against any Bill and the rules of *locus standi* would know no bounds. There would be no need for a Court of Referees. In my submission we must stick to what "interest" means. It does not mean a right or title to property.

Referring generally to the petitioners, they all have one thing in common. They do not have any property or any interest in property that is directly and specially affected by the Bill. If they do not have any property interest, they can only have a *locus* - and then only at your discretion - if they can establish that they are either inhabitants of the area who are specially affected or in the case of the Goodsway Boat Users Association that they sufficiently represent inhabitants who are specially affected.

So the promoters' submission is that none of the petitioners in person, except for Mr Macdonald and his son, are inhabitants of the area who are specially affected by the Bill, and in the case of Mr Macdonald and his son they are each committing a criminal offence by living on Mr Macdonald's boat, and if you were to allow them a *locus standi* you would be condoning their criminal conduct.

Bye-law 30 the British Waterways Board's General Canal Bye-laws 1965 reads: "No vessel on any canal shall without the permission of the Board be used as a club, shop, store, workshop, dwelling or houseboat". And No 57 reads: "Any person who offends against any of the foregoing Bye-laws shall be liable on summary conviction to a penalty not exceeding five pounds". That £5 should now read £100 because the penalty was amended by bye-laws made in 1976. That is why I say it is a criminal offence to use a boat as a houseboat without a houseboat licence or certificate. So Mr Macdonald and his son who are using their boat as a dwelling house and do not have a licence to do so, and are most unlikely to get one, are committing a criminal offence.

Hill and Redman's Law of Landlord and Tenant describes the nature of a licence. It says: "A licence does not create any estate or legal or equitable interest in the property to which it relates; it confers a right making that lawful which would otherwise be unlawful. Thus, a licence by A to permit B to enter upon A's land is, in effect, an authority which prevents B from being a trespasser when he avails himself of the licence. The difference between a tenancy and a licence is that a legal estate in the land arises in the tenant as a necessary incident of the tenancy". And it is implied that it does not if it is a licence.

Harter. There is one point in law to make. It is my friend's definition of the word "interest". If he is right that it has to be a legal interest in the sense of a freehold, leasehold or tenancy or whatever, I do not understand why he is allowing London Waterways Operators a *locus*; I do not understand why the Narrow Boat Association are being allowed a *locus*, nor the boat club. I do not understand why in 1871 the canal company were without a *locus* then. They did not have an interest in land.

Durkin. I can explain it. I said that page 952 of *Erskine May* sets out the bedrock upon which *locus standi* is based and it is an interest in land. Because it was so narrow, Standing Order 95, which is the one which allows you to give *locus standi* to amenity groups was passed. We allow that the London Waterways Operators have a licence; we do not object to it because they are people who clearly represent proper amenity interests. We do not object to them.

MR KNORFEL. Mr Durkin, could you take a little further your definition of "interest" for this purpose as applying only to a property interest? Even in that passage from *Erskine May* which you have underlined it says that:

"petitioners are not entitled to a *locus standi* unless it is proved that their property or interests are directly and specially affected by the bill".

When one looks at Standing Orders one sees that in Standing Order 93, which is not material in this case of course, and in Standing Order 95 "interest" is clearly used in a sense which is much wider than a property interest.

Durkin. I am not sure that is right. In relation to Standing Order 93 I would say that "interest" there means some proprietorial interest, but in Standing Order 95 I agree with you that "interest" is wider, and that is the amenity Standing Order. That is why we do not object to the London Waterways Operators, because we accept that they represent recreational, travel and amenity interests using that wider sense, used in a hobby sense, for the purposes of that Standing Order, which in a way was an enlargement of the basic proposition set out in *Erskine May* on page 952. Without that enlargement in Standing Order 95, in my submission people are stuck with "interest" in its legal sense.

MR MOATE. I think I understand the argument that simply the possession of an annual licence in your view does not give *locus standi* and does not give sufficient legal interest to justify *locus*. But I do not understand the argument about the organisation collectively, that the association does not truly represent a travel or recreational interest.

Durkin. Mr Harter mentioned that they have no written constitution. There even seemed to be some uncertainty as to their membership. So I say that they do not sufficiently represent anybody, first because the persons they seek to represent have no sufficient interest so they fall root and branch with those they seek to represent; and in any event they are not sufficiently constituted so they cannot properly represent anyone for the purposes of Standing Order 95 (2).

MR MOATE. Do we not have here a particular group of licence holders who have mooring licences at the present time who are directly affected by a particular contract, a particular piece of the works, and therefore they have a clear amenity and recreational interest at the very least and clearly are a group directly affected by one part of the project? Are they not therefore entitled to group together and to seek the right to petition Parliament?

Durkin. If they do that they get by the back door what they cannot get by the front door. Some of them do not even have licences. Miss Liggins and Miss Harper do not have licences; Mr Macdonald's licence has expired and his son never had a licence. If you say that as an amenity group they may have a *locus*, which they have not got as individuals, you only do so if you see fit in the words of Standing Order 95 (2). I ask you to exercise your discretion against them on that. They will have a right to be heard through the other canal users' associations to whose *locus* we have not objected.

MR MISCAMPBELL. I am not clear about the distinction in saying that an interest arises when it is exercised by a group and why an interest does not arise when it is sought to be exercised by an individual.

Durkin. I think Parliament recognised in the case of individuals that they had to have a legal interest to come forward, but then when a large group of people got together - such as the Council for the Preservation of Rural England, which was the reason why Standing Order 95 (2) was enacted - Parliament recognised that it was a good idea that a large group of persons represented by an amenity organisation should be heard through that organisation. That is why we have not objected to many of the amenity groups who have petitioned Parliament.

Macdonald. Briefly, first of all on behalf of the Goodsway Boat Users' Association of whom I normally chair the meetings, although we do not have elections as such, being only a small group, I want to try to correct the impression that Mr Durkin made that two or more members who have not got licences should have licences. I think we are known by our title, the Goodsway Boat Users' Association. We did that quite deliberately. We are not the Goodsway Owners' Association. It is those people who use the boats. There are other similar associations of the boat users and I can assure you that the users of the boat club referred to as well do not call them licensees either. It think it is misleading to suggest that every member of our association should have a licence.

Locus standi of the London Waterways Operators, W Walker and Ann Edmundson and Martin Cottis allowed.

Locus standi of Patrick Roper, Christopher Sanders, Colin and Angus Alexander Macdonald, Carole Harper, Dawn Liggins, Simon Trevor-Roberts, Masha Kolomeitz, Jonathan Grove, Elizabeth Paffard, and the Goodway Boat Users' Association disallowed.

~~Petitions of (15) Jim Brennan (16) Caroline Anne Holding.~~

Locus standi of petitioner (15) allowed; of petitioner (16) disallowed.

*Petitioner (15) claimed a locus standi as the occupier of a property close to the works contained in the bill, whose interests would be affected *inter alia* by dust, noise, vibration and interference with his access to shopping and other facilities.*

Petitioner (16) claimed locus standi as councillor for the Somers Town Ward, in that her own interests and those of her constituents would be adversely affected by the works in question.

The promoters objected to the petitioners' locus standi on the grounds that none of their lands or properties would be acquired, nor would they suffer pecuniary loss or injury under the powers sought by the bill.

Brennan, in person. Where I live is right on the edge of the whole development and I am very very close to the bridge that is going to be extended - which is another word, I imagine, for rebuilt. I see that bridge from my window over it. I see trains on it. It is about maybe 50 yards. That could cause me great inconvenience - the traffic is already intense around that area. I live about 10 minutes walk from King's Cross Station. I am tremendously affected in all sorts of ways. Just a few yards from where I live some years ago a boy of five was beheaded by a motor car. Because of this tragedy of the boy and many other children and elderly people the whole place was made a residential area. It is full of tenants and now it is pretty safe. All that will be done away with because of the Channel Tunnel.

In England and Scotland in the past few years there has been a very big increase in the rat population and particularly in London. That has been caused where property developers are digging deep down, disturbing the rats in sewers and otherwise. Where I live I have been totally free. I've lived there for 15 years and never had a mouse or rat. But there is a jolly good possibility of rats beginning to appear disturbed by all this tunnelling.

CHAIRMAN. Are you a tenant in your home where you live?

Brennan. Yes, for six years.

CHAIRMAN. Who are the landlords?

Brennan. Camden Council.

MISS BOOTHROYD. Mr Brennan, you say in your petition that you will be affected particularly because you will not have direct access to shopping facilities. You also tell

11. The Kings Cross Railways Bill – Petition of Caroline Holding – Disallowed; Petition of Jim Brennan Allowed [Session 1988-89]

SESSION 1988-89

KING'S CROSS RAILWAYS BILL

Petitions of (1) Patrick Roper (2) Christopher Aram Sanders (3) Angus Colin John Macdonald (4) Goodsway Boat Users Association (5) Carole Ann Harper (6) Angus Alexander Macdonald (7) Ann Edmundson and Martin Cottis (8) Dawn Liggins (9) London Waterways Operators (10) W Walker (11) Simon Trevor-Roberts (12) Masha Kolomeitz (13) Jonathon C E Grove (14) Elizabeth Paffard.

Locus standi of petitioners (7), (9) and (10) allowed; of the remaining petitioners disallowed.

Thursday 18th May 1989 - before Mr Harold Walker MP, Chairman of Ways and Means, Chairman; Miss Betty Boothroyd MP, Second Deputy Chairman of Ways and Means; Mr Norman Miskampbell MP; Mr Roger Moate MP; Mr Ivor Stanbrook MP; and Mr H Knorpe QC.

The petitioners claimed *locus standi* as canal users whose interests would be adversely affected by the temporary closure and emptying of the canal and the construction of a new bridge over the canal.

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, they would suffer no pecuniary loss or injury themselves nor did they represent any trade or association whose interests would be injuriously affected.

Harter, for petitioners (1) and (3) to (14). All my clients and Mr Sanders are canal users. They use this canal for one reason or another. There are differences among them, but the common factor is that they use the canal. That means that they all have some kind of licence from the Waterways Board which controls the canal. So they are all not just users but they are licensed users of the canal.

In their petitions they say that they are affected in two ways by these matters. One is in terms of the whole development itself. The last time that I was here we talked about the huge disruption to the community and the roads. In their petitions they say that they too, with their boats moored so close to the works, will be joining in the general disadvantage that the area will suffer. Then of course there is the specific point they make about the canal.

One of the points concerns Clause 16 of the Bill, which is the section, if it comes into force, which would give the Board the power to temporarily "close and de-water" - in other words empty - a specified part of the canal. As licensed users of the canal they have an obvious interest in how this will happen, when it will happen, how long it will take and so on.

~~*Locus standi of Patrick Roper, Christopher Sanders, Colin and Angus Alexander Macdonald, Carole Harper, Dawn Liggins, Simon Trevor-Roberts, Masha Kolomeitz, Jonathan Grove, Elizabeth Paffard, and the Goodway Boat Users' Association disallowed.*~~

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Locus standi of petitioner (15) allowed; of petitioner (16) disallowed.

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Brennan, in person. Where I live is right on the edge of the whole development and I am very very close to the bridge that is going to be extended - which is another word, I imagine, for rebuilt. I see that bridge from my window over it. I see trains on it. It is about maybe 50 yards. That could cause me great inconvenience - the traffic is already intense around that area. I live about 10 minutes walk from King's Cross Station. I am tremendously affected in all sorts of ways. Just a few yards from where I live some years ago a boy of five was beheaded by a motor car. Because of this tragedy of the boy and many other children and elderly people the whole place was made a residential area. It is full of tenants and now it is pretty safe. All that will be done away with because of the Channel Tunnel.

In England and Scotland in the past few years there has been a very big increase in the rat population and particularly in London. That has been caused where property developers are digging deep down, disturbing the rats in sewers and otherwise. Where I live I have been totally free. I've lived there for 15 years and never had a mouse or rat. But there is a jolly good possibility of rats beginning to appear disturbed by all this tunnelling.

CHAIRMAN. Are you a tenant in your home where you live?

Brennan. Yes, for six years.

CHAIRMAN. Who are the landlords?

Brennan. Camden Council.

MISS BOOTHROYD. Mr Brennan, you say in your petition that you will be affected particularly because you will not have direct access to shopping facilities. You also tell

us you will not have access to leisure facilities. Would you briefly tell us how you will be affected because of lack of those facilities now?

Brennan. Where I live I have to cross Euston Road to go shopping. I go to Camden High Street. I cannot do it myself at present. I manage to more or less - sometimes I have a home help. But this will make it impossible crossing the main road even if I had perfect eyesight.

Durkin. First, Mr Brennan can only speak on behalf of himself. He cannot represent others. The second point is that he is a council tenant and Camden London Borough Council have petitioned against the Bill and canvassed in their petition the sort of points that Mr Brennan has made this morning. I am sure that they will be put to the committee in great detail by Camden Borough Council. I submit that Mr Brennan, although you should show him sympathy, does not demonstrate that he is specially affected as opposed to the other people who live in the area that he lives in and that he has no *locus*.

Brennan. I am affected more than anyone else. I am on the ground floor. I am one of the two closest tenants to that railway bridge. So I am definitely personally affected.

Caroline Holding, in person. I am a parent. I am an elected representative of Somers Town area. I am very often in the Town Hall, which is just across the road from King's Cross Station. I was in the Town Hall the night of the King's Cross fire. I would like to draw attention to the fact that not only local people died in the King's Cross fire but people from all over the nation and from all over London.

I should also like to point out that I am a registered nurse. I feel that a Channel Tunnel would create an over-development in this area and further exaggerate the fragmentation that has already taken place in the community vis-a-vis young families moving out and leaving elderly people to cope alone. My two children are both members of the canoeing club on the canal and use the canal every weekend for leisure facilities. My children are also very keen naturalists and ecologists and as a family we all use Camley Street Natural Park.

I live a quarter of a mile from the site itself, in Galsford Street, to the north part of the site, about 10 minutes walk away.

Durkin. This petitioner lives to the north of the site and in fact her address is not on the map. We reckon that she is about 750 metres, which is about half a mile, from the very northerly part of the area, and we say that she is not directly or specially affected.

Locus standi of Jim Brennan allowed.

Locus standi of Caroline Anne Holding disallowed.

Harter for petitioners (1) and (3) to (14).

Petitioners (2), (15) and (16) in person.

Durkin for the promoters.

Agent for petitioners (1) and (3) to (14): Mr David Harter.

Agents for the Bill: Rees and Freres.

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

SESSION 1988-89

KING'S CROSS RAILWAYS BILL

Petitions of ~~(1) Patrick Roper (2) Christopher Aram Sanders (3) Angus Colin John Macdonald (4) Goodsway Boat Users Association (5) Carole Ann Harper (6) Angus Alexander Macdonald (7) Ann Edmundson and Martin Cottis (8) Dawn Liggins (9) London Waterways Operators (10) W Walker (11) Simon Trevor Roberts (12) Masha Kolomoitz (13) Jonathon C E Grove (14) Elizabeth Paffard.~~

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The petitioners claimed *locus standi* as canal users whose interests would be adversely affected by the temporary closure and emptying of the canal and the construction of a new bridge over the canal.

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, they would suffer no pecuniary loss or injury themselves nor did they represent any trade or association whose interests would be injuriously affected.

Harter, for petitioners (1) and (3) to (14). All my clients and Mr Sanders are canal users. They use this canal for one reason or another. There are differences among them, but the common factor is that they use the canal. That means that they all have some kind of licence from the Waterways Board which controls the canal. So they are all not just users but they are licensed users of the canal.

In their petitions they say that they are affected in two ways by these matters. One is in terms of the whole development itself. The last time that I was here we talked about the huge disruption to the community and the roads. In their petitions they say that they too, with their boats moored so close to the works, will be joining in the general disadvantage that the area will suffer. Then of course there is the specific point they make about the canal.

One of the points concerns Clause 16 of the Bill, which is the section, if it comes into force, which would give the Board the power to temporarily "close and de-water" - in other words empty - a specified part of the canal. As licensed users of the canal they have an obvious interest in how this will happen, when it will happen, how long it will take and so on.

The second matter in which they are interested is Work 10, which is that bridge. It is the majority of my clients who are moored by that bank who are interested in that, but all the canal users will be interested in how that is to be done.

Mr W Walker examined

Witness. I operate a passenger boat on the Regent's Canal which is east of the Hampstead Road Lock that is below the Camden Town centre. I operate two boats. One is a passenger tripping boat - a traditional narrow boat - and the other is a cruising restaurant, an 80-seater. I have been operating boats on the for the past 21 years. I have been connected with the canal for something like 35 years and since 1921 I have live in Camden Town in the vicinity of the canal, so I can claim to know it quite well. I am a member and the Honorary Treasurer of the London Waterways Operators, which is a collection of individuals who provide a public service on the canal of one form or another.

Durkin, for the promoters. I am not challenging the London Waterways Operators so far as they seek to represent general interests on Regent's Canal.

Witness. There is one other rather important point that I should like to bring forward. If the canal is de-watered for any length of time - the bottom of the canal is lined with a material known as puddle, which is a mixture of clay and straw. This canal was built in 1820 and before most of the properties along the canal in fact were built. If this puddle is left exposed it will dry and crack and henceforth the canal will leak, to the detriment of the properties on the site. So there is a potential risk of substantial difficulties with the properties if the canal is allowed to dry out for any particular time at all.

CHAIRMAN. We understand from what Mr Walker says that if he is correct and the promoters of the Bill are at fault, his business will suffer major losses because his boat will be denied access for a period of time to that whole length of the canal east of Camden Lock down to Limehouse. Perhaps Mr Durkin can give us some estimates of that. If Mr Walker is wrong and what the promoters say is technically feasible, and in the event turns out to be so, his business in any event, although not being so severely damaged as in the first hypothesis, nonetheless for that period of time will suffer lesser but still some damage.

Harter. Perhaps I may now go quickly through the evidence of my other clients. First of all the petitions of father and son Macdonald. They have a boat moored on that Goods Way mooring of which we have spoken. As became plain during a hearing on a memorial in this House earlier this year, they live on it. Whether they are entitled to do so may be a matter of legal dispute between them and the British Rail Board, the Waterways Board and indeed the man who leases the bank. But the fact is that they are living there and they hold a licence for the use of the canal. To go up and down in your boat you have to have a licence from the Waterways Board.

MR KNORPEL. Indeed. When you say that they hold a licence, do you mean that they still hold it or that they used to hold it but no longer do so?

~~Harter. This particular pleasure boat licence has not been renewed yet because there is a dispute as to what form of licence they should hold. As they are living on the boat possibly they should not have a pleasure boat licence, but what I believe is called a houseboat certificate. But whatever it is, in the end they will have to regularise their position vis-a-vis the Waterways Board to get some form of permission.~~

~~Quickly going on past them we come to a group of two petitioners who are similar in that they are moored there - Harper and Liggins. The difference in their petitions is that each of them say they do some work on their boats. They do not live there but they carry out work there. They each therefore hold a pleasure boat licence to go up and down the canal if they want to. They are not living there so they do not need anything else. They count on it as a place to do some work.~~

~~Then, staying with Goods Way, the remaining people at Goods Way are purely holders of pleasure boat licences to go up and down the river and licences to moor from Mr Middleton. They are pure pleasure boats. They do not live or work on them but use them on a regular basis. Those are the petitions of Mr Grove, Mr Roper, Mr Sanders - he wishes to say something on his own behalf later but I put him in that group - Elizabeth Paffard, Simon Trevor-Roberts and Masha Kolomeitz.~~

~~There is a wholly distinct couple, Ann Edmundson and Martin Cottis, who operate a business called the Metropolitan and Midland Canal Trading Company. They are moored in the Battle Bridge basin that I showed to the court. They are the only one of my clients in that basin. They use their narrow boat to go up to the Midland, collect coal, come south with it and sell it to clear canal users. So they are running a business as coal carriers and dealers in coal from Battle Bridge basin.~~

The only other organisation that I should mention to the court is the Goodsway Boat Users Association. This is a loose association of those eight or nine boats moored at Goods Way. When they have to represent themselves as a unit they call themselves the Goodsway Boat Users. The association has no constitution; it is a loose grouping and it has put in a petition.

CHAIRMAN. The Goodsway Boat Users Association - who are the members? Are they people who use their boats for pleasure and recreational purposes?

Harter. They are the same people that I have just gone through in fact: the Macdonalds and the five or six purely pleasure boats and the two workers. It is an association of that lot.

Those are the slightly different interests of my clients who have one thing in common, which is that they are all users of the canal in one way or another. They are obviously all, with the exception of Mr Walker who is up at Camden Lock, close to the work that is proposed. Strangely, they are separated out from some other similar people in Battle Bridge basin where the coal boat is. There are boats belonging to the London Narrow Boat Association and the Islington Narrow Boat Association which are similar sounding bodies to the Goods Way association of which I have just spoken. Each of those bodies has petitioned and not been objected to.

I have had some research done and know of at least two petitioners - one in particular a canal user, interestingly enough from Camden - who were given a *locus*. That is the case which appears in Clifford and Stevens at page 129 - the *Coal Owners' Associated London Railway Bill* case in 1871, where operators on a canal going north from Camden were entitled to appear when the railway company was proposing to have a Bill in which there would be agreements which might affect the right of carriage over the canal. Those canal carriers, which were rather like the coal boat here, were given a right of audience in that case. There was another not wholly dissimilar case, which was the *North-East Railway Bill*, II Clifford and Stevens, at page 140, where there was a suggestion for putting in a swing bridge over the River Tees and people who used that river and the wharves were given a *locus* to appear in front of the Committee. So in my submission that is plumb in point for the canal users and the other waterside interests in relation to the swing bridge over the Tees.

The point may be taken that my clients do not have a land interest. Indeed, they do not. I do not suggest it. They have pure licences on the canal and pure licences to moor. In my submission that should be enough to enable them to appear. The narrow boat associations cannot have more than that and they will be allowed to appear so far as British Rail are concerned; nor can the boat clubs have more than that and they will be allowed to appear.

~~Sanders, in person. I live at Flat 3, 22 Dunster House, Hanson Street, London W1, which is just under the Post Office tower. I walk regularly to my boat, the Landreth, which I have moored at Goods Way mooring. I have lived in and around the area for about 15 years and had a boat there for two and a half years and I use it a great deal. It costs me a fair amount of money as well. To move it away will cause me a lot of trouble. I think it is fairly obvious that I would be quite adversely affected by this Bill.~~

MR MISCAMPBELL. Would your mooring be affected? Would it be in part of the area which is likely to be made dry?

Sanders. Yes. I also understand that there is the possibility of a bridge being built. I am not sure if this is true, but as I understand it, the bridge would go directly over my boat.

MR MISCAMPBELL. So for a period of time you would have to move your boat?

Sanders. Definitely.

CHAIRMAN. Do I understand correctly that when these works have been carried out the water may be readmitted and there may be renewed moorings in that particular location?

Harter. Subject to this, that we do not know how long the bridge will be there and how practical it will be to live under the bridge. We have heard five years for this temporary bridge. ~~That is a separate problem in itself.~~

MR KNORPEL. Mr Harter, did you tell us that Carole Ann Harper and Dawn Liggins

had businesses and that Masha Kolomeitz says that she does work there?

Harter. The answer is that she does not any longer. One of the others cleans small antiques, bits of Victorian bric-a-brac which are clean up before going into the markets. The other one makes jewellery.

MR KNORPEL. You said of both of them that their licences are pleasure boat licences?

Harter. Yes.

Durkin. Erskine May, page 952, reads as follows:

"Generally speaking, it may be said that petitioners are not entitled to a *locus standi* unless it is proved that their property or interests are directly and specially affected by the bill".

That is the bedrock upon which the rules of *locus standi* are based. An "interest" in this context means a legal concern in a thing, especially right or title to property. That is the dictionary definition of "interest". Mr Harter stated that his clients have no interest in land. They have licences but he described them as persons having a secondary interest - hence, a hobby. If Mr Harter's argument as to the meaning of "interest" were to be accepted, the world and his wife could petition against any Bill and the rules of *locus standi* would know no bounds. There would be no need for a Court of Referees. In my submission we must stick to what "interest" means. It does not mean a right or title to property.

Referring generally to the petitioners, they all have one thing in common. They do not have any property or any interest in property that is directly and specially affected by the Bill. If they do not have any property interest, they can only have a *locus* - and then only at your discretion - if they can establish that they are either inhabitants of the area who are specially affected or in the case of the Goodsway Boat Users Association that they sufficiently represent inhabitants who are specially affected.

~~So the promoters' submission is that none of the petitioners in person, except for Mr Macdonald and his son, are inhabitants of the area who are specially affected by the Bill, and in the case of Mr Macdonald and his son they are each committing a criminal offence by living on Mr Macdonald's boat, and if you were to allow them a *locus standi* you would be condoning their criminal conduct.~~

Bye-law 30 the British Waterways Board's General Canal Bye-laws 1965 reads: "No vessel on any canal shall without the permission of the Board be used as a club, shop, store, workshop, dwelling or houseboat". And No 57 reads: "Any person who offends against any of the foregoing Bye-laws shall be liable on summary conviction to a penalty not exceeding five pounds". That £5 should now read £100 because the penalty was amended by bye-laws made in 1976. That is why I say it is a criminal offence to use a boat as a houseboat without a houseboat licence or certificate. So Mr Macdonald and his son who are using their boat as a dwelling house and do not have a licence to do so, and are most unlikely to get one, are committing a criminal offence.

~~Hill and Redman's Law of Landlord and Tenant describes the nature of a licence. It says: "A licence does not create any estate or legal or equitable interest in the property to which it relates; it confers a right making that lawful which would otherwise be unlawful. Thus, a licence by A to permit B to enter upon A's land is, in effect, an authority which prevents B from being a trespasser when he avails himself of the licence. The difference between a tenancy and a licence is that a legal estate in the land arises in the tenant as a necessary incident of the tenancy". And it is implied that it does not if it is a licence.~~

Harter. There is one point in law to make. It is my friend's definition of the word "interest". If he is right that it has to be a legal interest in the sense of a freehold, leasehold or tenancy or whatever, I do not understand why he is allowing London Waterways Operators a *locus*; I do not understand why the Narrow Boat Association are being allowed a *locus*, nor the boat club. I do not understand why in 1871 the canal company were without a *locus* then. They did not have an interest in land.

Durkin. I can explain it. I said that page 952 of *Erskine May* sets out the bedrock upon which *locus standi* is based and it is an interest in land. Because it was so narrow, Standing Order 95, which is the one which allows you to give *locus standi* to amenity groups was passed. We allow that the London Waterways Operators have a licence; we do not object to it because they are people who clearly represent proper amenity interests. We do not object to them.

MR KNORPEL. Mr Durkin, could you take a little further your definition of "interest" for this purpose as applying only to a property interest? Even in that passage from *Erskine May* which you have underlined it says that:

"petitioners are not entitled to a *locus standi* unless it is proved that their property or interests are directly and specially affected by the bill".

When one looks at Standing Orders one sees that in Standing Order 93, which is not material in this case of course, and in Standing Order 95 "interest" is clearly used in a sense which is much wider than a property interest.

Durkin. I am not sure that is right. In relation to Standing Order 93 I would say that "interest" there means some proprietary interest, but in Standing Order 95 I agree with you that "interest" is wider, and that is the amenity Standing Order. That is why we do not object to the London Waterways Operators, because we accept that they represent recreational, travel and amenity interests using that wider sense, used in a hobby sense, for the purposes of that Standing Order, which in a way was an enlargement of the basic proposition set out in *Erskine May* on page 952. Without that enlargement in Standing Order 95, in my submission people are stuck with "interest" in its legal sense.

MR MOATE. I think I understand the argument that simply the possession of an annual licence in your view does not give *locus standi* and does not give sufficient legal interest to justify *locus*. But I do not understand the argument about the organisation collectively, that the association does not truly represent a travel or recreational interest.

Durkin. Mr Harter mentioned that they have no written constitution. There even seemed to be some uncertainty as to their membership. So I say that they do not sufficiently represent anybody, first because the persons they seek to represent have no sufficient interest so they fall root and branch with those they seek to represent; and in any event they are not sufficiently constituted so they cannot properly represent anyone for the purposes of Standing Order 95 (2).

MR MOATE. Do we not have here a particular group of licence holders who have mooring licences at the present time who are directly affected by a particular contract, a particular piece of the works, and therefore they have a clear amenity and recreational interest at the very least and clearly are a group directly affected by one part of the project? Are they not therefore entitled to group together and to seek the right to petition Parliament?

Durkin. If they do that they get by the back door what they cannot get by the front door. Some of them do not even have licences. Miss Liggins and Miss Harper do not have licences; Mr Macdonald's licence has expired and his son never had a licence. If you say that as an amenity group they may have a *locus*, which they have not got as individuals, you only do so if you see fit in the words of Standing Order 95 (2). I ask you to exercise your discretion against them on that. They will have a right to be heard through the other canal users' associations to whose *locus* we have not objected.

MR MISCAMPBELL. I am not clear about the distinction in saying that an interest arises when it is exercised by a group and why an interest does not arise when it is sought to be exercised by an individual.

Durkin. I think Parliament recognised in the case of individuals that they had to have a legal interest to come forward, but then when a large group of people got together - such as the Council for the Preservation of Rural England, which was the reason why Standing Order 95 (2) was enacted - Parliament recognised that it was a good idea that a large group of persons represented by an amenity organisation should be heard through that organisation. That is why we have not objected to many of the amenity groups who have petitioned Parliament.

Macdonald. Briefly, first of all on behalf of the Goodsway Boat Users' Association of whom I normally chair the meetings, although we do not have elections as such, being only a small group, I want to try to correct the impression that Mr Durkin made that two or more members who have not got licences should have licences. I think we are known by our title, the Goodsway Boat Users' Association. We did that quite deliberately. We are not the Goodsway Owners' Association. It is those people who use the boats. There are other similar associations of the boat users and I can assure you that the users of the boat club referred to as well do not call them licensees either. It think it is misleading to suggest that every member of our association should have a licence.

~~*Locus standi of the London Waterways Operators, W Walker and Ann Edmondson and Martin Cottis allowed.*~~

Locus standi of Patrick Roper, Christopher Sanders, Colin and Angus Alexander Macdonald, Carole Harper, Dawn Liggins, Simon Trevor-Roberts, Masha Kolomeitz, Jonathan Grove, Elizabeth Paffard, and the Goodsway Boat Users' Association disallowed.

Petitions of (15) Jim Brennan (16) Caroline Anne Holding.

Locus standi of petitioner (15) allowed; of petitioner (16) disallowed.

*Petitioner (15) claimed a locus standi as the occupier of a property close to the works contained in the bill, whose interests would be affected *inter alia* by dust, noise, vibration and interference with his access to shopping and other facilities.*

Petitioner (16) claimed locus standi as councillor for the Somers Town Ward, in that her own interests and those of her constituents would be adversely affected by the works in question.

The promoters objected to the petitioners' locus standi on the grounds that none of their lands or properties would be acquired, nor would they suffer pecuniary loss or injury under the powers sought by the bill.

Brennan, in person. Where I live is right on the edge of the whole development and I am very very close to the bridge that is going to be extended - which is another word, I imagine, for rebuilt. I see that bridge from my window over it. I see trains on it. It is about maybe 50 yards. That could cause me great inconvenience - the traffic is already intense around that area. I live about 10 minutes walk from King's Cross Station. I am tremendously affected in all sorts of ways. Just a few yards from where I live some years ago a boy of five was beheaded by a motor car. Because of this tragedy of the boy and many other children and elderly people the whole place was made a residential area. It is full of tenants and now it is pretty safe. All that will be done away with because of the Channel Tunnel.

In England and Scotland in the past few years there has been a very big increase in the rat population and particularly in London. That has been caused where property developers are digging deep down, disturbing the rats in sewers and otherwise. Where I live I have been totally free. I've lived there for 15 years and never had a mouse or rat. But there is a jolly good possibility of rats beginning to appear disturbed by all this tunnelling.

CHAIRMAN. Are you a tenant in your home where you live?

Brennan. Yes, for six years.

CHAIRMAN. Who are the landlords?

Brennan. Camden Council.

MISS BOOTHROYD. Mr Brennan, you say in your petition that you will be affected particularly because you will not have direct access to shopping facilities. You also tell

us you will not have access to leisure facilities. Would you briefly tell us how you will be affected because of lack of those facilities now?

Brennan. Where I live I have to cross Easton Road to go shopping. I go to Camden High Street. I cannot do it myself at present. I manage to more or less - sometimes I have a home help. But this will make it impossible crossing the main road even if I had perfect eyesight.

Durkin. First, Mr Brennan can only speak on behalf of himself. He cannot represent others. The second point is that he is a council tenant and Camden London Borough Council have petitioned against the Bill and canvassed in their petition the sort of points that Mr Brennan has made this morning. I am sure that they will be put to the committee in great detail by Camden Borough Council. I submit that Mr Brennan, although you should show him sympathy, does not demonstrate that he is specially affected as opposed to the other people who live in the area that he lives in and that he has no *locus*.

Brennan. I am affected more than anyone else. I am on the ground floor. I am one of the two closest tenants to that railway bridge. So I am definitely personally affected.

Caroline Holding, in person. I am a parent. I am an elected representative of Somers Town area. I am very often in the Town Hall, which is just across the road from King's Cross Station. I was in the Town Hall the night of the King's Cross fire. I would like to draw attention to the fact that not only local people died in the King's Cross fire but people from all over the nation and from all over London.

I should also like to point out that I am a registered nurse. I feel that a Channel Tunnel would create an over-development in this area and further exaggerate the fragmentation that has already taken place in the community vis-a-vis young families moving out and leaving elderly people to cope alone. My two children are both members of the canoeing club on the canal and use the canal every weekend for leisure facilities. My children are also very keen naturalists and ecologists and as a family we all use Camley Street Natural Park.

I live a quarter of a mile from the site itself, in Gaisford Street, to the north part of the site, about 10 minutes walk away.

Durkin. This petitioner lives to the north of the site and in fact her address is not on the map. We reckon that she is about 750 metres, which is about half a mile, from the very northerly part of the area, and we say that she is not directly or specially affected.

Locus standi of Jim Brennan allowed.

Locus standi of Caroline Anne Holding disallowed.

Harter for petitioners (1) and (3) to (14).

Petitioners (2), (15) and (16) in person.

Durkin for the promoters.

Agent for petitioners (1) and (3) to (14): Mr David Harter.

Agents for the Bill: Rees and Freres.

13. The British Railways (Penalty Fares) Bill – Petition of the Railway Development Society - Disallowed [H.L. 26 April 1988]

HOUSE OF LORDS

MINUTES OF EVIDENCE

taken before

THE COMMITTEE

on the

BRITISH RAILWAYS (PENALTY FARES) BILL (HL)

Tuesday, 26th April, 1988

Before:

Carnock, L.
Hampton, L.
Nugent of Guildford, L.
Pitt of Hampstead, L.
Sidmouth, V.

The Lord Nugent of Guildford in the Chair

Ordered: That Counsel and Parties be called in.

MISS SHEILA CAMERON, QC, and The Hon. Hugh Donovan appear as Counsel on behalf of the Promoters.

MESSRS SHERWOOD & CO appear as Agents.

The following Petitions against the Bill were read:

The Petition of Dr Alfred Lawrence Minter.

The Petition of the Railway Development Society.

MR TREVOR GARROD and MR ERIC BARBERY appear as Agents on behalf of the Petitioners.

(2)

CHAIRMAN: Good morning. We propose to sit until one o'clock and break for one hour for lunch from one to two, resume at two and we thought it would be worth sitting to 4.30 today, take the extra half an hour, on perhaps the rather outside chance that we might conclude. Would that be convenient to you to sit to 4.30?

MISS CAMERON: Yes.

CHAIRMAN: Assuming we have not finished we shall resume at 10.30 tomorrow, sit to one, resume at two and, again, go on to 4.30 because I would have a very strong expectation we should at least finish by then. The first point we have to take is the locus of the two Petitioners. Miss Cameron, you have put in an objection to the locus?

MISS CAMERON: Yes, my Lord.

CHAIRMAN: I think we should deal with that straight away, taking Dr Minter's case first.

MISS CAMERON: Yes, my Lord.

CHAIRMAN: You understand, Dr Minter, the procedure, that there are certain Standing Orders that have to be met in order to establish your locus to put your Petition forward. Please proceed, Miss Cameron?

MISS CAMERON: My Lord, before I turn to the objection and the notice of objection to the locus standi of Dr Minter I propose just to spend a very few moments drawing your attention to the object of the Bill which is before you.

The British Railways (Penalty Fares) Bill is a short Bill and in considering the Bill it is necessary to start from the premise that a person travelling as a passenger on railway is expected to pay his fare in advance of travelling and to have a ticket in his possession as evidence that he has so paid. Your Lordships will be aware that it has been accepted since the early days of railways that that is the position. In 1889 Parliament passed an Act making it an offence and this is Section 5 of the Regulation of Railways Act 1889 for a person to travel, or to attempt to travel, on a railway without having previously paid his fare and with intent to avoid payment thereof.

The position, my Lord, is the vast majority of passengers do pay in advance and, therefore, the vast majority could in no way fall foul of the existing legislation of Section 5 of the Regulation of Railways Act 1889. There is a minority who do not pay in advance, they are also people who intend to pay, they pay on the trains or they pay at destination. The balance, however, seek to avoid the payment and they avoid prosecution in many instances under Section 5 of the 1889 Act because they presently escape detection.

If I can just give you some idea of the proportions, my Lord. If we take every hundred pounds of revenue of British Railways, £94 of that comes from those who have bought their tickets in advance, £3 comes from those who pay on the trains or at destination and £3 out of every £100 is lost, we estimate, to British Railways Board by fare evasion and that multiplied up, taking it in the most illustrative

area which is in Network Southeast, the whole of the Southeastern commuter area, it represents a total annual loss of revenue, this is this £3 out of every £100 as at present £21 million per annum of revenue lost. It represents almost two-thirds of the total revenue lost throughout the whole of the country in that particular area.

The object of this Bill which is before your Lordships is to provide a sufficient deterrent to those seeking to evade paying fares in advance by charging an increased fare to persons who are found travelling on trains without a ticket and without an acceptable explanation. The penalty which is imposed by Clause 6 of the bill is that such a person should pay a penalty fare of £10 or the full single fare for the journey he has made, or is making. The full single fare being in many instances a penalty in itself because you lose the benefits of any discounts for that particular journey.

The third recital in the preamble makes it clear that the expediency of the Bill is for "discouraging persons from travelling without having paid the proper fare the provisions of this Act should be enacted." The need for the Bill is the need to recover some of that lost revenue I have identified, my Lord, and it is, secondly, to prevent a further loss of revenue when the concept of open stations is more widely introduced. Your Lordship may be aware of what I mean by "open station", I mean the kind where there is easier access to and from stations by passengers by the removal of ticket barriers and, as you can readily see, the introduction of such a system necessitates the tightening of the existing system in relation to potential fare dodgers because otherwise it would be freedom hall. Those who at present evade that £3 out of every hundred would become a very much bigger figure.

There are protective provisions for that small percentage of travellers: that £3 out of every £100 at present who have not bought a ticket in advance and who are found on a train by an inspector without a ticket are protected against having a penalty fare charged against them. Now, the number of such persons who have not bought tickets in advance the Board envisages will be further reduced because it is intended to introduce improved facilities for the purchase of tickets in advance. You may be aware at some stations there are already ticket machines which enable you to buy tickets; there will be the introduction of a very substantial number more of such ticket machines so you do not have to queue at the ticket office, and when you do have to queue at the ticket office there will be a speedier service there, again this has already been introduced at certain major stations, by machines which are able to issue the tickets very much more rapidly than the old method of manually writing or stamping them.

in my case as a member of the travelling public, could be endangered by a conjunction of circumstances that I could quite easily envisage and against which I cannot be protected.

My privileges in this case are common to a number of members of the travelling public, in that I hold a Senior Citizens Railcard, which British Rail have sold to me and which entitles me to certain discounts on some of their fares. The circumstances of the Bill indicate that I could find that I am stuck with paying a full fare rather than a discounted fare.

My claim to be heard by your Lordships is quite simply that I am a user of British Rail. I believe circumstances could arise, which I would enlarge upon later if you wish to hear me, and that the Bill as drafted does not adequately protect me against those. It seems to me that the only way in which I could make these views known was, in fact, to raise a Petition. I hope that your Lordships will see fit to grant me locus standi to be heard before you.

CHAIRMAN: Thank you very much, Dr Minter. The Select Committee, of course, would congratulate you on your interest pro bono publico. What you need to do is to establish your right to be heard here by a Select Committee and, as Miss Cameron has told us, to show that you have some special status other than that of the general public. As Miss Cameron has pointed out, Parliament is concerned - both the House of Commons, who are of course an elected House, and this House - equally in principle to take care of the interests of the general public and, therefore, if you are to establish your locus you have to show that you have in some way a different position from the rest of the travelling public.

I think your point about a Railcard would not be sufficient because British Rail must issue those by the hundreds or thousands. I have got one myself. I shall be glad to declare my interest. Have you any thoughts? Have you got the point I am making to you? Although you are perfectly valid in saying that safeguards should be there, in order to establish locus to appear before us you do have to find some distinguishing feature which distinguishes you from the rest of the travelling public. Can you add anything?

DR MINTER: Yes, my Lord. The distinguishing feature which distinguishes me from the rest of the travelling public is that I have seen fit to raise a Petition before you about this Bill.

CHAIRMAN: Thank you very much, Dr Minter. The procedure is now that we shall hear objections from British Rail to the second Petition of Mr Garrod. Miss Cameron, I would ask if you would kindly proceed.

MISS CAMERON: My Lord, there is a similar notice dated the 18th April, 1988, a Notice of Objection, to the Petition of the Railway Development Society.

I have already addressed your Lordships on the general principle and I do not intend to repeat that in relation to these Petitioners; save to say, that the general principles apply equally to a society as to an individual; so that a Petitioner is not entitled to locus standi unless that society can show that its property or interests of its members are directly and specially affected.

I do have to refer your Lordships to Standing Order 117 in relation to this Petition, both the general point of having to prove a particular interest, and then I am inviting your Lordships to look particularly at Standing Order 117 (2).

Standing Order 117 (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 for the Select Committee to which the Bill is committed, if they think fit, to admit the Petitioners to be heard on such allegations against the Bill ..."

So that is the provision enabling the Select Committee at the Committee's discretion, because it is if they think fit. There is always an overriding discretion in the Committee, but the petition must allege a trade, business or interest will be injuriously affected. I cannot see that there is any such allegation in the Petition of the Railway Development Society, my Lord, which seems to indicate that the Petitioners' Society could not come within Standing Order 117, and ask for the exercise of your discretion under that Standing Order.

I then turn to Standing Order 117 (2) which reads: "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 interests they represent will be adversely affected to a material extent by the provisions contained in the Bill, it shall be competent to the Select Committee, if they think fit, to admit the Petitioners to be heard on such allegations against the Bill or any part thereof."

My Lord, it is clear that in my submission there are a number of conditions which must be fulfilled before your Lordships reach the stage of considering whether you should exercise your discretion in favour of the Petitioner.

In the first place the Petition must be by a society or association and it does appear from the Petition which is before you that the Petitioner purports to be a society but I do comment, my Lord, that there is no reference in the Petition to the constitution of the society and it is, therefore, far from clear exactly what its statute is.

Secondly, under Standing Order 117(2) it is necessary for the society, and the words are in the third line, line 11 of page 60, "sufficiently representing", we leave out amenity and educational and go straight to travel: "sufficiently representing... travel interests to Petition against the bill". My Lord, the Promoters understand that the interest of the Railway Development Society is no doubt a very commendable interest for the promotion of the railway as a form of transport and it is, therefore, opposed to the closure of lines and I understand, and am so instructed, that in fact there have been representations made in the past by the Society to the Board that there might be some new lines opened in various parts of the country. But their concern is the preservation and encouragement of the use of the railway as a form of transport rather than being concerned with the question of the Board's revenue, how best the Board can protect and collect its revenue so that in this respect the interest of the Society, so far as we can ascertain, is somewhat more limited than that of the statutory body which your Lordship will be aware of, the Central Transport Consultative Committee with its Transport Users' Committee over every area in the country which has particular concern, naturally, in relation to the subject matter of this Bill with which the Promoters are in continuing dialogue on various aspects of the Bill.

The interest of the general public is protected by virtue of the statutory body with whom, and with which, in respect of the various area committees the Promoters are obliged, and are currently having meetings and discussions with.

The Promoters suggest, my Lord, that it is doubtful whether within the terms of Standing Order 117(2), the Petitioner's interest is truly "sufficiently representative of travel interests" in the sense it is intended in Standing Order 117. We do draw attention to a point, my Lord, which is a technical point but we are dealing, of course, with technicalities in relation to locus standi and Parliament has seen fit to lay down rules, and technical rules, which have to be complied with. In paragraph 5 of the Notice of Objection we point out the Petition purports to be signed by one person described as the General Secretary of the Petitioners but it is not signed in pursuance of any resolution or with the authority of the members, if any, of the Petitioners. So, again, we question the constitution of the procedure which has been adopted by this body in presenting the Petition which is now before you.

Returning, my Lord, to 117(2), it is quite clear from line 13 that the Petition must allege that the interest that they represent will be adversely affected to a material extent by the provisions contained in the Bill, "the interest they represent", in other words the Petition is in the name of a society but the society must allege that the interests of the members of the society will be adversely affected to a material extent. The Petition, in fact, suggests that the interests of the society will be affected, it is paragraph 5 of the Petition which says: "Your Petitioners and their interests are injuriously affected by the Bill, to which your Petitioners object for the reasons, amongst others,

hereinafter appearing." So it is alleged that the society, their Petitioners and their interests, are injuriously affected. What is required under Standing Order 117 is that the interests they represent, in other words the interests of the members, will be adversely affected and it is not suggested in this Petition, my Lord, that the interests of the members of the society will be adversely affected in any way different from the interests of other members of the public. No suggestion that this particular society and the members of this particular society are going to be affected any differently because they happen to belong to the society when they come to travel on any passenger services operated by the board than any other member of the public who does not happen to be a member of the society and it is that hurdle which, in my submission, has to be overcome that Parliament will not hear the society unless that society shows its members are going to be adversely affected to a material extent.

We go on, we notice, my Lord, and of course the Promoters welcome this support, that in Paragraph 6 of the Petition in the third sentence the Petitioner's Society says: "As a means of combatting the widespread fare evasion on British Rail and to facilitate the provision of more 'open stations', the Railway Development Society would fully support the measure;" Of course, we welcome that support and we would recognise that that support comes from members of a society who are no doubt, and of course, must be recognised to be, honest citizens but who are no doubt those who properly pay their fares in advance of getting on to a train and for that reason they are welcoming British Rail's attempts to stop fare evasion because, of course, the loss of revenue in turn must affect the general costing and in turn can have an adverse effect upon fares which those members of the public are asked to pay. They support the principle of the bill and, therefore, where lies this adverse effect which the bill is going to have upon its members? Not only must they be able to show that their members will be adversely affected, adversely affected I have dealt with, but it must be to a material extent. Again there is no suggestion, no special case made out on the face of the Petition to show there will be an adverse effect to members of the society to a material extent, or any extent at all.

When one looks at the Petition, my Lord, paragraph 7 and the subsequent paragraphs to the end of the Petition, in fact, raise after having given the general support for the Bill, what the draftsman says is he seeks clarification, for example paragraph 8: "The provisions of clause 5 seems quite logical, but we would seek some clarification of the circumstances in which there were no facilities available..." Going back, paragraph seven, in the second paragraph, the Bill does not make clear, that is in relation to travelling on a conductor-guard service from a non-staffed station, exactly what is this meant to cover? At the bottom of the page, the last few lines: "It is not clear how one deals with a situation where a queue at a station is so long that a passenger has to decide between obtaining a ticket in advance OR missing the train upon which he or she wishes to travel" and so forth. In other words, what the Petitioners have been raising are queries and it is perfectly understandable that anybody who is taking an interest in the provision of the bill should have a number of queries. We have endeavoured to explain both orally to local representatives in the Southeast of the society and in writing recently, we have endeavoured to answer the queries which have been raised in the Petition and what I say about it, my Lord, is that essentially this is a Petition not asserting that the bill is going to adversely affect the members of the society to a material extent, in fact it does not assert that at all, what it is doing is raising simply a number of queries and it does not on the face of it disclose an interest which is sufficient to satisfy the prerequisites in Standing Order 117(2).

Even if you were against me on those submissions, my Lord, and you were satisfied that the various prerequisites which I have drawn to your attention were satisfied, you would still have a discretion because it is if your Lordship's Committee thinks fit that the Petitioner should be admitted to be heard. You would still have the discretion to decide whether it is appropriate in the circumstances having regard to the general tenor of the points raised in the Petition, that they should be allowed to be heard.

Now, the precedent is important in relation to technical matters of the locus standi of Petitioners, my Lord, because this House has clearly over the years been very careful not to extend the scope of opportunity to Petitions which goes beyond what is recognised by the established practice of the Standing Orders of the House. Because the same principles apply both in this House and equivalent Standing Orders, and of course we see those referred to in the sidenotes, the equivalent Standing Orders in another place, because the practice and procedure is the same in both Houses I will take the liberty, my Lord, of drawing your attention to three precedents which may assist you in considering the Petition of the Railway Development Society.

In relation to the London Transport Bill, session of 1978/79, the London Transport Executive, who were the Promoters of the Bill, objected to the locus standi, right to be heard, of a body called Transport 2,000, North London and South London and the Petitioners described themselves in their Petition as the "two London groups of a national organisation concerned with transport and its impact on the environment" but they did not allege in their Petition that they would be injuriously affected by the provisions of the Bill in a way which was different from the effect which the provisions of the Bill would have upon the public at large. The objection to the locus standi of this body raised by the Promoters was brought before the Court of Referees and there was argument by the Promoters and on behalf of the Petitioners and I see that on that occasion the Petition was purported to be signed by one person who was described as the Hon. Chairman of the Petitioners, it did not state the person who had signed the Petition had done so in pursuance of any resolution, of any representative body of the Petitioners or with the authority of the members, if any, of the Petitioners. The point was taken to allow them to be heard would be contrary to the practice of Standing Orders of Parliament and the Court of Referees in relation to that body, and in relation to a Petition which did not disclose a particular injurious effect upon them as a body disallowed the Petitioner's locus standi. So they were not allowed to be heard.

Chronologically then, my Lord, can I draw your attention to the London Docklands Railways Bill which came before a Committee of your Lordship's House on the 14th February 1982 when I see the noble Earl, Earl Lystowel was the Chairman and there were a number of Petitions but the Petition which was dealt with first was a Petition in the name of two individuals on behalf of an association, or group, called the Jubilee and Bakerloo Lines Users' Committee. Now, the Petition was directed against Clause 21 of the London Docklands Railway Bill which was a clause which provided that an additional fare which was equivalent to a penalty fare in the Bill now before you, could be charged against passengers travelling on the Docklands Railway system without having first purchased a ticket. So, the point in issue was exactly the same, in principle, as the substance of the Bill now before you. Now, in argument before

the Select Committee, my Lord, the Petitioners were unable, on behalf of their group, which I think numbered some 200 members, the Petitioners were unable to claim that they had any distinguishable interest separate and apart from the interest of the public as a whole and, in fact, the Petitioner himself at page 19 of Day 1 said: "The Petitioners do not claim any distinguishable separate interests as taxpayers or ratepayers. The reverse is true, in fact, the Petitioners would identify themselves very much with underground passengers generally. It is as passengers that the Petitioners are here today and as passengers that they ask that their Petition be heard. Passengers have a real and significant interest in the fares they pay and in matters such as penalty fares which others may seek to impose upon them." That is what was said by one of the Petitioners. He went on, on the following page, page 20, to say: "Our primary aim is, indeed, to represent the underground users of part of the London Underground system. The Committee though formally answerable only to its members, it is genuinely attempting, as far as practicable, to represent all users of the two lines which constitute about 8% of all underground users." So, the way it was being put was that the interest of the members of the Committee was an interest because the members of the Committee were concerned about the fares which would be charged to them and to other users of the Jubilee and Bakerloo Lines Users' Committee.

The Committee, after hearing the argument for the petitioners, and deliberating, my Lord, returned and the Chairman said: "I have to inform the parties that the Committee are of the opinion that the petitioners do not have a locus standi to oppose the Bill". So that was the London Docklands Railway Bill making a provision for opposing penalty fares.

A second London Docklands Railway Bill was considered by the Court of Referees in the same year and curiously enough only a few weeks later, my Lord, on the 8th of March 1984, and it also contained, the second Bill contained a similar provision to that which was contained in the London Docklands Railway Bill which was considered by the Select Committee of this House, and which I have just referred to. The same petitioners lodged a petition in similar terms, my Lord, to the London Docklands Railway number two Bill. They argued before the Court of Referees that they were an association concerned with travel and fell within standing order 95, which are the same terms as standing order 117(2), which your Lordships have before you, and the argument was that the association representing underground users with members who were underground users, that that was sufficient to give them locus to be heard against the Bill, and the Court of Referees, after hearing full argument, concluded that the petitioners did not have a locus.

So that those are precedents, my Lord. Not just precedents in relation to petitioners against dealing with other matters, but precedents in relation to petitioners seeking, in our submission, in a very similar way, to have a locus, and the way in which the Select Committee in this House, in the one instance, and the Court of Referees in the other two instances, I have cited, decided that that was not sufficient to establish a locus standi.

I think I have dealt with the individual points, my Lord, which are raised in the notice of objection. In paragraph one it mentions that the petitioners do not have any land or property affected by the Bill. Paragraph two of the notice of objection says: "It is not alleged in the Petition, nor is it the fact, that the interests of the Petitioner are different from those of other users of the Board's passenger train services, nor has the Petitioner any such separate and distinct interest as such a user or otherwise in the subject matter of the Bill which would entitle him to be heard in respect of that interest". Paragraph three: "The Petition does not allege, nor is it the fact, that he represents any trade, business, profession or other interest nor does he allege that any trade business, profession or other interest will be injuriously or prejudicially affected by the provisions of the Bill". Fourthly: "The Petition contains no such specific allegation of injury or prejudice as would entitle the Petitioner to be heard against the Bill". I have already drawn your Lordships' attention to the technical points in point five, and that was a point also taken in relation to the London Transport Bill in the session 1978/79. Paragraph five is a general objection: "The Petition does not disclose, nor is it the fact, either that the Petitioner has any direct or special interest in the subject matter of the Bill or that his property, rights or interests would be interfered with by the powers proposed to be conferred thereby in such manner as to entitle him, according to the practice or the Standing Orders of Parliament, to be heard upon his Petition

against the Bill".

I have drawn your attention in detail to the relevant standing order, my Lord, and I have drawn your attention to the practice and precedent in relation to petitions of this kind.

So far as the exercising at discretion is concerned, I would urge upon your Lordship that any concerns which the petition raises are matters which will no doubt be considered during the course of the passage of this Bill, and will be considered in terms of traffic in detail by the unopposed Bill Committee.

I should draw to your attention at this stage that no order bringing into force the power to charge a penalty fare can be made, and I will put it the other way around - in order to bring into force the powers to charge penalty fares, it necessitates making up an order by the Secretary of State and, therefore, this is not a question of Parliament giving British Rail powers which it can go out and exercise next week. It is setting up a scheme which is similar to a scheme which has been set up by way of a Bill which is also passing through this House, the London Regional Transport Bill, to have the power to charge penalty fares.

Now, many of the concerns which are raised for clarification and assurance in the manner I have indicated and drawn your attention to in the petition are, in fact, matters which will be of particular concern to the Secretary of State before he makes an activating order under the Bill which will then have to become an act, and you have before you, my Lord, a report from the Secretary of State for Transport, dated the 19th of April 1988, in which he says in paragraph three of his report: "Before the penalty fare provisions of the Bill could become effective on any service or group of services, the Secretary of State would be required to make an Activating Order. Before making such an order he would wish to satisfy himself that the Board had established a practical and comprehensive system for operating the penalty fares system. Among the issues about which he would need to be assured would be: - adequate staffing of ticket offices; availability of the necessary ticket machines, including deferred ticket authority machines; satisfactory arrangements for monitoring defective machines; adequate publicity to inform passengers about the new system; training of ticket inspectors to operate the system and means of informing them about problems which might arise at ticket offices or with ticket machines; adequate identification of such inspectors; adequacy and clarity of procedures for dealing with disputes and appeals. In considering these issues, the Secretary of State will be guided by the need to ensure that the honest passengers who make up the great majority of rail travellers are sufficiently protected against liability to a penalty fare as a result of operational reasons beyond their control". I respectfully submit that is a material consideration when you come to consider whether or not you should exercise, at your discretion, in favour of the petitioners.

To summarise my argument, my Lord, I would say that the petitioners have failed to put themselves in a position whereby you even need to reach the stage of considering exercising your discretion because they have failed within the terms of standing order 117 to identify in what way they will be adversely effected to a material extent differently from any other members of the public.

Therefore, the question of discretion does not arise, but if you were to consider, after hearing representations from the petitioners, that they have, although I suggest it does not appear on their petition, indicated that there is some way in which they would be adversely affected, different from the members of the public, I would urge upon you there are other protections that this is not the proper place for their concerns to be expressed.

Their concerns would be taken account of during the progress of this Bill and they would also be taken into account by the Secretary of State, and for those reasons I ask you to consider that the Railway Development Society has no locus standi on this Bill.

CHAIRMAN: Thank you very much, Miss Cameron. Now, Mr Garrod, this is your opportunity to put your case before us, why you believe that you have a locus to be heard.

MR GARROD: Can I deal firstly with satisfying points raised by learned Counsel and then come to some more general points about our Society.

On the first point in the objection to our locus standi, we certainly do not claim to have any lands or property which would be affected, and hardly think that would be relevant to this Bill, anyway.

Secondly, we certainly claim the same interest as Dr Minter in that we represent a large number of rail users who would be affected.

Thirdly, our separate and distinct interest as users of the Board's passenger train services - I would submit that we are more than just ordinary users and perhaps I could elaborate on that point. We certainly are a rail users organisation, and that is made quite clear from the headed note-paper and all the communications we have with officials of the British Railways Board and which we have had with the Board's agents and solicitors. However, I would submit we have a further distinct feature in that we do not simply voice objections or comments on the Board's services, but we also try to do something about it. We are prepared to put some of our own time and money into promoting rail services, into promoting improvements to rail services, and indirectly, perhaps, into helping the Board to boost its revenue.

Let me give some examples of these. We, and many of our affiliating user groups, charter trains from the Board at our own risk and expense to get more people to use rail for leisure and, therefore, we are actually doing the Board a service, and we are increasing their revenue. Secondly, we have published, at our own expense, seven rail based guide books to various regions of the country. These, again, are examples of putting our money where our mouths are, if you like, in getting more people to travel by train. Thirdly, we have actually given money, albeit fairly small token donations, towards improvements. For example, when Watton-at-Stone Station at Hertfordshire was opened up five years ago we actually gave money, and we were not the only body that gave money, but we gave money towards the cost of building that station, and we also currently are under contract, along with a dozen other organisations, giving them money towards the maintenance of the Reedham Yarmouth link with Norfolk.

I would submit, my Lord, if the British Railways Board really is going to introduce this Penalty Fares Bill, and it is clumsily administered, it is going to put people off from using rail, and it is going to give British Rail a bad image, and is going to make our job that much more difficulty. It will be as though we are pouring water into a sieve.

Can I go on to other points raised by learned Counsel. Point four - well, in a limited way we are, indeed, engaged in a business, so as I explained already with point three, we are going to find ourselves, as it were, pouring water into a sieve. It will be more difficult for us to do the work if the penalty fares are badly administered and give British Rail a bad image.

On point five I am indeed the General Secretary of the petitioners. This is made quite clear at the bottom of our headed note-paper, copies of which I am sure representatives of the Board have. I was elected in 1986 and was re-elected last year, and on Saturday last, I was re-elected again. My National Executive, which is elected annually by the AGM of the Society, met on the 9th of January this year and empowered me to deposit this petition, and at the following meeting, on the 12th of March, this year, agreed that the petition should stand, i.e. that it should not be withdrawn unless we received written assurances from competent people in the British Rail Board that allayed our fears. Now, on Friday of last week, the 22nd of April, I did finally receive this letter from the Solicitor to the Board which certainly goes a considerable way to allaying certain of our fears, and to clarifying some of the points about which we were worried about, but we still consider that there are further points which either need clarifying or need redrafting before we could fully accept the proposals in the Bill.

To conclude, perhaps, it is quite true that we did not submit our constitution to the British Railways Board, and we certainly have a constitution which, I would submit, is as democratic as that of any other voluntary body and that, therefore, the democratic procedures of our Society fully justify my presence here today, and that of my colleague, Mr Barbary, who may well make further representations if you accept our locus standi.

CHAIRMAN: Thank you very much, Mr Garrod. Could we ask you one or two questions on the last point you made about the constitution of the Society. You tell us you have 20,000 members; are they subscribing members?

MR GARROD: There are 20,000 including affiliates. It is, in fact, 2,000 individual members who pay a subscription, but we then have some 80 local user associations which affiliate to us. In other words, their corporate members, and their collective membership, amounts to a further 18,000. So, if you like, 2,000 directly subscribing and 18,000 or so who are indirectly subscribing.

CHAIRMAN: Can you tell us what the annual subscription is for direct members?

MR GARROD: It varies, my Lord. From £4.00 for unwaged to £7.50 for individuals. Then, in addition, there are special rates for corporate members which can go as high as £50.00.

It might be our corporate members also include some 30 firms, some of which affiliate to us because they have an interest in the railway industry, others perhaps because their own staff travel by train on business and so they have an interest in ensuring that there are efficient and attractive train services for them.

CHAIRMAN: You have told us, Mr Garrod, in your statement that you have an annual meeting, I think, in January. How many members would you have attending the annual meeting?

MR GARROD: This year, just over 100. The January meeting, my Lord, was the National Executive. This is governed by a National Executive of 16 members. The annual meeting was attended by just over 100 in Leicester. Our members come from all over Great Britain, of course.

CHAIRMAN: Does the annual meeting elect the Executive?

MR GARROD: Yes, that is right.

LORD CARNOCK: Are there minutes kept and audited accounts?

MR GARROD: Of course, my Lord, there are minutes and audited accounts.

VISCOUNT SIDMOUTH: The aims and objectives of your Society, as I understand it, are for the development of railways and, therefore, anything that promotes the efficiency and fair running of the railways would be of interest to you. Is that correct?

MR GARROD: Yes. It is also, my Lord, the interests of rail users, of course; that is why we use the subject heading of "Voice for Rail Users". As I have made clear, and learned Counsel have made clear, in principle we do not object to British Rail trying to secure their revenue. I am sure they could do a lot to the benefit of rail-travellers with the £21m that is evading them at the moment. What we are worried about is the clumsy way in which it could be introduced, because we have seen things like the open station concept sometimes introduced in a clumsy manner which has caused a lot of ill-feeling among the travelling public. In principle we would like to see penalty fares introduced, but a lot of thought has to go into the way in which they are introduced so that innocent people are not victimised.

CHAIRMAN: On that point, Mr Garrod, is that the substance of your interest in this Bill: your anxiety that British Rail might introduce this measure of penalty fares in a clumsy fashion and so upset the travelling public and far from increasing their revenue might end up decreasing it?

MR GARROD: That is a fair summary.

CHAIRMAN: That really is your substantial point of how you see your Society, which does many things in trying to promote rail interest and rail use - in this particular context you see a specific interest?

MR GARROD: Yes. Our specific interest inasmuch as we are trying to promote railways. This could make our job more difficult if it is badly handled.

CHAIRMAN: Thank you very much, Mr Garrod. Does your colleague wish to say anything else?

MR BARBERY: My Lord, may I make a few points, please?

CHAIRMAN: Not the same ones?

MR BARBERY: No, a practical question of collecting fares. Firstly, this is a question of warning notices about the penalty.

CHAIRMAN: I think we should, first of all, ask you to tell us what your status is in the Society?

MR BARBERY: In the Society I happen to be Secretary of the Severnside Branch which covers Avon, Gloucestershire, Wiltshire and Somerset. I am also Secretary of the Re-openings Committee which deals with consideration of re-opening stations throughout the British Rail system.

There are a few points which may have escaped the notice of the various representatives. The penalty warning notice - will it be a multi-lingual notice? I am not suggesting which languages should be involved in that. Remedies in collecting fares - there is the question of employment of more booking clerks in the morning, and also the need to have booking clerks in the offices in the evenings, more so than at present, so that people may purchase tickets in the evenings for travel the following day; and also perhaps to reserve seats where that is applicable. I gather in this part of the country there has been an acute shortage of applicants for vacancies for booking clerks for a considerable time, perhaps BRB should be looking at improving salary scales to attract more staff.

I would like to draw attention to how they do things in the United States of America where they seem to employ many more ticket agencies so that people may purchase tickets in advance, or the same day. I have a book which I happened to buy when in Boston a couple of years ago which shows that railway tickets, particularly local season tickets, may be purchased at some banks, some big shops and some suburban post offices, and college students may purchase local season tickets at the college so this altogether helps reduce queues at the railway stations and generally facilitates the movement of passengers into the station.

So far as this part of the country is concerned, there is a shortage of booking clerks and perhaps BR should be looking at the salary rates and the question of making sure that the offices are functioning well with more staff, and particularly not having offices closed in the evening. In fact, I was quite annoyed when I made a journey to one of the Surrey stations. I queued for half an hour to get a ticket at the London terminal, there was no-one at the ticket barrier, no guard going through the train and no staff at the destination to take tickets from passengers. Altogether it looks as if the collection of fares is very slack in this area. Having been a booking clerk for some four years, in my experience of British Railways I think a lot needs to be considered to make fare collection more effective.

CHAIRMAN: Thank you very much. British Rail representatives will take all that on board. I can confirm some of those experiences in rail travel myself.

I think we are now in a position to consider the major question of locus. Would Counsel and Petitioners kindly withdraw and we will deliberate.—Thank you.

Counsel and Parties were directed to withdraw and, after a short time, were called in again

CHAIRMAN: Madam and gentlemen, the Committee have deliberated and are of the opinion that the Petitioner Dr A L Minter, and the Petitioners the Railway Development Society have not established a locus standi to petition against the Bill. The Bill will accordingly be re-committed to the Unopposed Bill Committee in accordance with Standing Order 113.

It only remains for me to thank the parties, and to thank Dr Minter, Mr Garrod and Mr Barbery for coming here and making their submissions which we, the Committee, particularly recognise the public spirit which has inspired you, gentlemen, to come here and make your Petitions to us, which are not only respectable but constructive. The points you have been anxious about will be studied in detail by the Unopposed Bill Committee when departmental officials from the Ministry of Transport will be present and will be cross-examined on these various points, so that your points will not be lost sight of but will be brought in in the normal procedure of affairs.

I have then to thank you, Miss Cameron, for exposing before us with such clarity your objections to the Petitioners and, as you know, we have concluded from your exposition that there is no locus and the Bill should be considered by the Unopposed Bill Committee.

We did not have very long on this Select Committee, not as long as we sometimes have. We thank you very much for making it so easy for us, and thank all the parties, and that concludes the Committee. Thank you.