

**IN PARLIAMENT**

**SESSION 2022 – 2023**

**HOLOCAUST MEMORIAL BILL**

**TO THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS IN THE HOUSE OF COMMONS AND THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS IN THE HOUSE OF LORDS**

**WRITTEN SUBMISSION**

**of**

**WESTMINSTER CITY COUNCIL**

Westminster City Council (**Your Memorialist**) set out its position that the Holocaust Memorial Bill (the **Bill**) should be treated as a Hybrid Bill, and proceed on that basis, in its Memorial deposited on 13 April 2023. In response to the request from the Examiners, Your Memorialist affirms and further sets out that it considers the following Standing Orders are applicable to the Bill should the Bill be considered to be Hybrid:

- a. **Standing Orders 4, 4A, 10 and 11** – the publication of a notice with a concise summary of the Bill. As set out in the Appendix to the Secretary of State’s Representations, “*The purpose of this PrBSO is to notify persons interested/affected by a Bill of its existence and of the ability to petition against it*”. Your Memorialist considers this Standing Order is engaged given a number of parties will be affected by, and interested in, the provisions of the Bill, and would seek to Petition against its scope (as mentioned during the Examination, Your Memorialist<sup>1</sup> and others would seek to restrict the scope of disapplication proposed, seek further definition of the development which has the benefit of that disapplication, and further seek to introduce a ‘sunset clause’ on the length of that disapplication).

We note that the Secretary of State accepts the application of these Standing Orders is “*inherently connected with whether the Bill is considered to specially affect any private interests*” and so if the Bill is found to be Hybrid, there should be no dispute that these Standing Orders are applicable.

Your Memorialist considers, for the avoidance of doubt, that these Standing Orders have not been complied with.

- b. **Standing Order 5, 13, 27 and 37** – Standing Order 5(1)(d)(ii) requires that where “*rights to use the surface of ... any public park or public open space*” are proposed to be acquired under a Bill, a notice shall also contain a description of “*open space or protected square... in which it is situate, and an estimate of the area of so much of such surface as is proposed to be compulsorily acquired or used*”. Your Memorialist considers that this Standing Order is engaged, as the removal of restrictions proposed under clause 2 effectively extinguishes the public right to use as public open space the parts of Victoria Tower Gardens where the Holocaust Memorial and Learning Centre is

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<sup>1</sup> For completeness, under Standing Order 96, a local authority may be permitted to be heard on a petition in respect of an alleged adverse effect on the whole or part of its area; as well as the inhabitants of such an area.

to be constructed. Such extinguishment should in this context be treated as a type of acquisition as it permanently widens the Secretary of State's powers to use the Gardens. In compulsory acquisition terms, the permanent extinguishment of an existing right is considered to fall within the remit of typical compulsory acquisition powers.<sup>2</sup> The proposed disapplication in the Bill is substantively akin to such an extinguishment given the permanent removal of statutory protection<sup>3</sup> for open space proposed in the Bill.<sup>4</sup> For the same reason, Your Memorialist also considers that Standing Orders 13, 27 and 37 are engaged.

Your Memorialist considers that these Standing Orders have not been complied with.

- c. **Standing Order 18** – this requires a notice to any person who has the benefit of a protective provision that a bill is proposing to alter or repeal. The Secretary of State's Representation acknowledge both that “*It could be said that section 8 of the 1900 Act is a protective provision in favour of the “Commissioners of Works”*” and that it “*would apply*”. In addition to the Secretary of State as successor to the Commissioners of Works, your Memorialist considers itself a beneficiary of a protective provision under section 8 (by virtue of being a successor body to the London County Council, as well as the Westminster Vestry<sup>5</sup>), and should therefore receive notice under Standing Order 18.<sup>6</sup>

Your Memorialist considers that this Standing Order has not been complied with.

- d. **Standing Order 20** – your Memorialist considers it prudent to draw the Examiners' attention to this Standing Order which applies where a Bill includes “*any express statutory provision relating to nuisance arising on any lands is proposed to be altered or repealed*”. Section 8 of the 1900 Act is not straight forwardly a provision directly addressing nuisance, but the Examiners may conclude that a provision which protects open space and amenity is nonetheless ‘related’ (in the terminology of the Standing Order) to nuisance given the general amenity is protects.

Your Memorialist considers that this Standing Orders has not been complied with.

- e. **Standing Order 169A** – We note that the Examiners are considering only Standing Orders 4 to 68 but Your Memorialist considers that the requirement under Standing Order 169A for a “*report from a minister of the Crown on the statement of opinion required by Standing Order 38(3) shall*

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<sup>2</sup> We refer to a heavily precedented provision relating to the extinguishment of rights in Transport and Works Act Orders as well as Development Consent Orders which include an extinguishment of a right (defined broadly as any trust, incident, easement, liberty, privilege, right or advantage annexed to land) in the Parts of such Orders dealing with the compulsory acquisition of land – e.g., M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022, and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

<sup>3</sup> As noted in our Memorial, in *R (on the application of Day) v Shropshire Council* [2023] UKSC 8, the Supreme Court held that “Where a local authority uses the powers conferred by the Public Health Act 1875 (“the PHA 1875”) or the Open Spaces Act 1906 (“the OSA 1906”) to acquire and provide recreation land or open space to the public, the land is subject to a statutory trust in favour of the public and members of the public have a right to go onto the land for the purpose of recreation.” It is submitted the 1900 Act created an equivalent statutory trust, and the Bill as currently drafted effectively extinguishes that statutory trust.

<sup>4</sup> More generally, this position reflects the fact that compulsory purchase provisions relating to open space enable discharging open space land purchased from more broadly defined rights, trusts and incidents to which it was previously subject (see, section 19 of the Acquisition of Land Act 1981 and section 131 of the Planning Act 2008).

<sup>5</sup> We note the High Court explicitly confirms that the Vestry had an interest: “...the context reveals that it was not just the Commissioners who had an interest in the use of the land as a garden. Westminster Vestry had donated £100,000 to the scheme conditional on the provision of a garden” see [101] of *London Historic Parks and Gardens Trust v Minister of State for Housing & Othrs* [2022] EWHC 829 (Admin)

<sup>6</sup> In common with recent Private Bill practice, these notices have been provided on a precautionary basis. For example, notwithstanding that the Highgate Cemetery Act 2022 proposed to remove statutory protections in connection with Highgate Cemetery only, the Promoter rightly served a notice on the London Borough of Southwark given they continued to be a beneficiary of the protection.

*be presented to the House (by being deposited in the Private Bill Office) not later than the second sitting day after that on which the bill was read a first time” is also engaged. Your Memorialist would request that this Statement of Opinion be made available given the sensitive and acute interests affected by the Bill.*

**16 May 2023**

**BDB Pitmans LLP**

**Parliamentary Agents for Westminster City Council**

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