UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 21 January 2026 (Afternoon)

In Committee Room 2

PRESENT:

Lord Hope of Craighead (Chair)
Baroness Bakewell of Hardington Mandeville
Lord Evans of Guisborough
Lord Inglewood
Lord Ponsonby of Shulbrede

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FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators
Alastair Lewis, Roll A Parliamentary Agent

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FOR THE PETITIONERS:

David James
Dr Graeme Crisp
Richard Fowler
Katharine Harris
Robert Berry (Upper Welland Action Group)

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(At 2.05 p.m.)

1. THE CHAIR: Good afternoon. We resume now the meeting today of the Select Committee on the Malvern Hills Bill. As was the case this morning, we are concerned solely with the right of petitioners to be heard, and those who are appearing before us should be aware that that is the only matter that we will be considering. Before we resume the final stage of Mr James' application, I am going to ask Ms Lean to reply to Lord Inglewood's question.

2. MS LEAN: I am grateful for the time, my Lord. The reason why I just wanted to check things was that the promoter does have currently a power to dispose of certain land, which you find in Section 6 of the Malvern Hills Act 1995. In your large bundle—the reference bundle—that is at page 240. In very broad terms what that provides for is a power to sell, let, exchange, charge, et cetera, land with the consent of the Secretary of State, in respect of any land that is owned by them but has not been owned for a continuous period of more than five years, does not form part of the existing Malvern Hills, is not registered as common land or a town or village green, and the conservators have, not later than two years after the date of acquisition of it, decided it is not desirable to retain it.

3. My Lord, that is what I wanted to check. That is carried forward into Clause 73 of the Bill, so there are the same restrictions on the types of land that can be disposed of with that power. There is some updating, I think, to do with if land is let out, the Landlord and Tenant Act 1954—things like that—but this parcel of land that was specifically referred to by Mr James is not land that would fall in that category. That is what I wanted to check, in case it was one of those bits that possibly could be sold off under the power.

4. LORD INGLEWOOD: My principal thinking behind it was: do the general powers contained in the back of the Bill enlarge that?

5. MS LEAN: No, my Lord. As I hope I mentioned yesterday, Clause 83 of the Bill contains within it restrictions on what the general power can be used for, and one of those is—it is probably helpful if I actually turn it up—forgive me—just to make sure I do not inadvertently paraphrase. One of the restrictions on the face of the Bill in Clause 83(3): "Subsection (1) does not confer power to (a) acquire or dispose of land, or grant

any interest in the land". My Lord, it is also subject to the qualification then in 83(2) that the Trust cannot use the general power if it has an express power to do something. Both of those, if you read 83(2) and 83(3) together, make absolutely clear that the Trust cannot use the general power to dispose of land, and it cannot try to say, "We are not quite in the position in Clause 73 to dispose of land, so we will rely on the general power instead".

6. LORD INGLEWOOD: My concern was simply, if it happened to turn out that there was a largeish area of common land, which was not very expensive but was still quite a lot of money, whether or not they would be able to dispose of a smaller area of land that might be in a built-up area or had development potential, and thereby fulfil the purposes of the conservators, but actually do it by rejigging their portfolio. You are saying that is not possible in those circumstances.

7. MS LEAN: Indeed, my Lord. Clause 73 makes clear that the power to dispose in Clause 73 does not apply to land that has commons or town or village green on it, so that would be a prohibition on that.

8. LORD INGLEWOOD: Yes, but it just is if they had some land that was not common land, because they do have some. Anyway, I think you have satisfied—

9. MS LEAN: It would then be subject to the restrictions of—

10. LORD INGLEWOOD: You have answered the question I put, which is helpful. Thank you.

11. THE CHAIR: Mr James, thank you very much for coming back. I think that really completes your petition, and we will announce our decision on your case tomorrow morning. Thank you very much.

12. MR JAMES: Very well. Thank you very much.

13. THE CHAIR: Thank you. Dr Crisp, if you were here this morning, you will gather that we first of all hear from counsel the reasons why objection is taken to your petition on the ground of right to be heard. Listen carefully to what she has to say. You will then have a right of reply, and we will listen carefully to what you have to say.

14. MS LEAN: Thank you, my Lord. The petitioner before you is petitioner number 23 in the table that you have. The petitioner is a levy payer and accesses property over Malvern Hills Trust land. He is also a former conservator, and the standing is challenged on the grounds that no property or personal interests of the petitioner are specially and directly affected by the provisions of the Bill. That is picking up both on the levy and on the access point. My Lord, I think I have, to a degree, covered certainly the levy, and also the point about access and it being for the petitioner to establish what provisions of the Bill it is that they say that are new and fresh and will adversely interfere with any right of access that the petitioners enjoy. My Lord, if I can conclude there and hand over to Dr Crisp.

15. THE CHAIR: Yes. There you are, Dr Crisp. It is over to you.

Dr Graeme Crisp

Evidence of Dr Crisp

16. DR CRISP: Good afternoon. If I can invite you to open bundle 1, I think those are the two photographs that show you where I come from. My name is Graeme Crisp, and I am assisted by my friends and members of the local community, Mr Fowler on my right and Mrs Harris on my left, both of whom are petitioners in their own right.

17. I am a retired physicist, and I am the owner of Rose Barn, a property that abuts the land under the jurisdiction of the conservators, as shown in the photographs that I have given you. I have a wayleave agreement, which gives me access across the conservator land on to Guarlford Road. Forty years ago, when I came to Malvern for the first time, I was struck by the magnificent tree-lined entrance to the town with the backdrop of the Worcestershire Beacon. I had young children, and the amenity offered by the common was my primary reason for buying a house on Guarlford Road. My children enjoyed an unusual degree of freedom because, as youngsters, they could be allowed to explore the common in safety, and this gave them a considerable degree of independence.

18. The path on the south side of the common runs directly past my gate and my front garden, which is open to the common. This makes the area in front of my house a place of community discourse as well as the garden. My wife and I walk on the common on a daily basis for exercise, and we are particularly fond of the ancient tracks known as

Wood Street and Jack Pitts Lane, both part of the conservator estate. From time to time, unauthorised works take place on the common in the vicinity of my house, often involving utility companies. It has been my practice ever since I moved into Rose Barn to alert the conservators when such works were taking place. In short, I am by virtue of where I live, and why I chose to live there, a resident and inhabitant with an interest in the provisions of this Bill.

19. I would like to make some remarks about what I heard this morning. The argument put forward yesterday that the individual levy payers are in the same position as levy payers in general, I would submit, is unsound. We pay our rates not as a group of levy payers; we pay our rates to the Malvern Hills District Council. I think the correct comparison is with the general run of district council ratepayers, of which levy payers are a smaller group. That makes them separate and distinct.

20. This Bill is an unusual private Bill because it alters the objects of an organisation, which raises funds through a compulsory precept or levy, which falls on a minority of council tax payers in the Malvern Hills district. The promoters are challenging most of the 50 petitions submitted based upon analogies that are unsound, and upon a failure to recognise that levy payers' interests are not limited just to the money charged in the precept. Precept payers also have a personal interest in the uses to which that money is put, in how those who determined the use of that money are chosen, and in the basis on which decisions about the levy are made. The levy payers' interests extend to more than just the impact of the Bill's proposals on the size of the levy, important as that might be.

21. I question whether any of the case law relied upon by the promoters in their challenge to my right to be heard properly applies to a petition concerning a Bill about the alteration of the governance arrangements of a tax-raising charity. This Bill is not about enabling major works in the public interest. I am not a lawyer and I do not have the resources to pay for expert advice, even though as a precept payer I am funding the promoter's experts.

22. In the event that you consider the arguments that follow are ruled out for technical legal reasons, I ask that you consider in your deliberations whether the paragraph that may be found at the bottom of page 2 of my bundle 2 applies to my petition. This paragraph is taken from *Erskine May* and is on page 31, bundle 3 of the promoter's

evidence.

23. THE CHAIR: Sorry, I am not quite sure that I have—

24. DR CRISP: Have I got my numbering wrong?

25. THE CHAIR: No, I think I am just not following correctly what you are directing our attention to. It is bundle 2. Did you say page 2?

26. DR CRISP: Yes, I did.

27. THE CHAIR: It is headed "trustees' duties".

28. DR CRISP: My apologies. My pagination is clearly wrong. It would be bundle 2, page 1. I am sorry.

29. THE CHAIR: I think it must be page 1.

30. DR CRISP: It is page 1 of bundle 2, my Lord. I apologise for the confusion.

31. THE CHAIR: Now I have that. Thank you.

32. DR CRISP: It is the Holocaust Memorial Bill provision under which Lord Bottomley, I think it was—I have lost my place.

33. THE CHAIR: This is a quotation from *Erskine May,* is it not?

34. DR CRISP: That is correct, and it relates to the Holocaust Memorial Bill and the standing of residents and inhabitants. I now move on to enlarge on that. At paragraph 15 in the promoter's letter to me, dated 3 December, the promoters say that none of my property or personal interest is specifically and directly affected by the Bill. I disagree. As I am a levy payer, I differ from the majority of people because I pay the Malvern Hills conservators' levy, a mandatory charge whose amount is set by a charity, to whom that charge goes. I am specifically and directly affected by the Bill because the general ratepayer does not have to pay a levy to a charity as I do, and of those who pay rates in the Malvern district, only a proportion pay the levy. That makes my position specific.

35. The Bill is not a simple consolidation. It includes many new provisions whose costs will be borne by the levy payers. An obvious example—one of many—is the

proposal to pay expenses to members of the conservators' board. That makes me directly affected by the Bill. My standing as a levy payer is thus established, I would say.

36. The promoters claim that my position is analogous to that of electors of representatives in local authorities, and that I have no right to stand because my views have been represented by an elected conservator. They also claim that the Bill does not alter the status, functions, or duties of the corporate body, or the status, functions, or duties of the persons formerly known as conservators, and referred to in the Bill as trustees. Under the Bill, the corporate body is stated to be a charity. These statements are self-contradictory because charity trustees must act solely in the best interests of the charity, and so are debarred from considering the interests of the electors.

37. There is an alternative view that the present Acts provide for the elected conservators to represent those who elect them, and the new Bill differs from the existing Acts in respect of the status, functions, or duties of the corporate body, but that, during the preparation of this Bill, the elected conservators were unable to determine what went into it. I contend that, even if the current Acts specify that elected conservators have a representative role, the analogy with council representatives is still unsound. The reasons for this are that the conservators have not acknowledged the representative role of the conservators, and in the induction training the newly elected conservators receive, they are told that they may not represent their electors. Evidence for this is shown on page 2 of my bundle, which is a slide taken from that training. They are further told that failure to act exclusively and solely in the interests of the charity could result in personal liability.

38. My elected conservator, Mr Fowler, with a number of other elected conservators, has been excluded from decisions about the Bill on the grounds that he is a petitioner against the Bill. For these reasons, I contend that I have not been represented by my elected conservator.

39. Elected members of the board are outnumbered by appointees, both now and under the Bill's provisions. Of the board's 29 members, 11 are directly elected and 18 nominated, so unlike councillors, the consensus between directly elected conservators supporting the levy payers' views would not necessarily result in the levy payers' views

prevailing. Council decisions are always made in the favour of the majority of an elected group of representatives. This makes them different. Members of local authorities can be held to account for misconduct in public office. Elected members of the board cannot be held to account in the same way. It follows that conservator elections are not analogous to local authority elections, and that the promoter's argument is flawed even if it is accepted that the elected conservators are, at present, representatives of their electors. I and other levy payers should be heard by right as ones who are directly affected by the Bill, and who have not been represented by those who set the levy.

40. The promoters also say that this Bill does not propose to extend the levy area or impose a new levy. That does not mean that the Bill has no effect upon the levy. Some of the new powers come with new costs, which would be borne by the levy payers. This is a direct effect upon the levy payers brought about by the Bill.

41. My interests that are affected by the Bill are wider than just the amount of the levy that I will be obliged to pay. They include my democratic right to vote in the election of a local representative on the board. The present situation is set out in the 1995 Act, Schedule 1, which is reproduced on page 3 of my bundle. It can also be found on page 253, bundle 1, section B—I think it was—of the promoter's documents, presented to me only two working days ago. The schedule specifies how part of the Local Government Act 1972 is applied to the conservators.

42. The Malvern Hills Bill omits in Schedule 2 any reference to representation, which is included in the corresponding schedule in the 1995 Malvern Hills Act. That omission converts the conservators from a hybrid body to a pure charity. This has many implications. Under the Bill, the Trust's only responsibility is to act in its own best interests. Presently, the conservators are a hybrid body, and conservators are justified in weighing the interests of their electors against the interests of the conservators when the two do not coincide. If the Bill is passed in its present form, the hybrid nature of the conservators is eradicated and I will lose, as a result, the ability to elect a representative conservator.

43. The Bill fails to acknowledge that elected conservators have a representative role. The suggested allocation of an elected trustee to my ward, as set out in Clause 8(6), in no way substitutes for a locally elected representative. An allocated point of contact is

not a representative. The Bill thus has a direct effect on my interests as an elector of conservators in conservator elections.

44. My right to be heard as an owner of property adjacent to land over which the conservators hold the key to development is another ground in my petition. Being a levy payer is not the only way in which my financial interests are affected by the provisions of the Bill. Anything in the Bill that has the potential to unlock the development of land adjoining my property will have an adverse effect upon its value.

45. On page 3 of Sharpe Pritchard's letter, dated 3 September, in which the promoters identify this aspect of my petition, they raise the objection that, in their opinion, my interests are not specifically and directly affected, and that I have, under Standing Orders, no right to be heard, even as a matter of discretion. I think otherwise and that my interests are specifically and directly affected. The Bill alters the basis on which the board will make decisions. Presently, a precedent has been set by the conservators that hinders access for development of the land adjacent to mine. The Bill will affect me because it provides that board decisions will be made solely in the interests of the conservators. Presently, elected members of the board can include in their considerations the effect of their decisions on their electors. The alteration of the Trust's objects may also affect the basis on which the board makes its decisions, and that will affect the value of my land.

46. Under present arrangements, it is practical for individuals, if they so wish, to stand on a platform of their choice, to canvass on their own behalf, and to foot the bill for their election campaign themselves. These features of the first past the post electoral system will be lost under the new Bill. Canvassing the entire precept-paying area will be unaffordable and impracticable for individuals. The proposal that election material could be posted on the conservators' website places the conservators in a position where they have the power to unfairly influence who is elected. Thus, the effect of the Bill is to curtail my right, under present arrangements, to stand in conservator elections on a platform of my choice without possible interference by the conservators. That, I contend, is a diminution of my rights and of my interests.

47. The current Acts provide for 19 of the 29 conservators to be either directly elected conservators or conservators elected in local government elections. Thus, a majority of

the conservators are accountable through the ballot box. In practice, accountability to the public through the ballot box is further enhanced by the almost universal practice of local authorities to nominate from their own ranks or from the ranks of the parishes on whose behalf they make nominations. As a result, at present, 27 of the 29 conservators could be unseated by the electorate in the event that they were found to have behaved in an unacceptable way.

48. Under the provisions of the new Act, the public can have no say in the appointment or removal of nominated conservators. This situation affects my interests as a precept payer, because it is possible that, under the provisions of the new Act, a rogue set of conservators could gain office and become self-perpetuating. This situation might be unlikely, but if it arose, there is no backstop. The cost would fall on the precept payers. Under the present arrangements, local electorates have the power to bring an end to such a situation.

49. In terms of my easement agreement, which allows access to my property with a vehicle, it obliges me and my successors in title to maintain that access. The conservators' operation in the vicinity of my easement can cause wear and tear, which I have to make good, following methods of working that the conservators prescribe. The loss of representation embodied in the Bill affects me as one with an easement, because my interests as an easement holder will no longer be represented by my elected conservator.

50. Schedule 10 of the Malvern Hills Act 1884 prohibits the enclosure of or any building on the conservators' lands. This absolute protection is eroded by the power to compromise proceedings enabled by Section 84 of the Bill, Schedule 4, item 28. In future, this loophole might be exploited to gain access for development to land adjacent to mine, to the detriment of its value.

51. I will not overstress the point, but I would like to repeat that, in the case of the Holocaust Memorial Bill, the ruling was eventually given that Sir Peter and Baroness Bottomley and Viscount Eccles were granted standing in the petitioning as Peers and individuals living in the immediate vicinity of Victoria Tower Gardens who regularly use the park, and I think I am in an analogous situation.

52. It is my understanding that, to qualify on this basis for a right to be heard, I need

to convince your Lordships that I am sufficiently representative of inhabitants in my area. In 2019, I was elected as conservator for the ward in which I live. The assertion that the conservators are a hybrid body was central to my electoral campaign. I polled 909 votes, which was 82% of the votes cast. I contend that these facts establish my position as an inhabitant and resident in the area affected by the Bill, and that I should be allowed to make my case by right.

53. I would now like to make some remarks about my standing as a matter of discretion.

54. THE CHAIR: The discretion arises only under particular Standing Orders. Which Standing Order are you directing our attention to? We do not have a discretion unless in particular cases that are referred to in the Standing Orders. I do not know whether you have the Standing Orders in front of you.

55. DR CRISP: I am referring to whichever Standing Order it is that is covered by paragraph 16 of the promoter's letter to me on 3 December, which seeks to limit my arguments as a levy payer to Clauses 8 to 27 and Part 3 of the Bill. Is that a satisfactory explanation?

56. THE CHAIR: I did not actually pick up the particular reference you were making. Could you repeat it for me please?

57. DR CRISP: Yes, certainly. It is taken from paragraph 16 of the promoter's letter to me dated 3 December. That is their letter of—forgive me, the terminology escapes me. It is the promoter's objection to my right to be heard, and I refer to item 16. It says, "If the Select Committee were to decide that you had a right to be heard based on the grounds that you are a levy payer and elector, then the promoter will ask the Select Committee to decide that your right to be heard on the grounds is limited only to points made in your petition about Clauses 8 to 27, and Part 3 of the Bill".

58. THE CHAIR: That is not a point on discretion, though, is it? She is asking us to limit your right to be heard to particular clauses. It is a different point.

59. DR CRISP: In that case, my Lord, I think I have misunderstood the promoter's letter to me. If I might explain what I think is going on here, my Lord, I think the

promoters are saying that, if I am granted standing by discretion as a levy payer, then that discretion will be limited to Clauses 8 to 27 and Part 3 of the Bill.

60. LORD EVANS OF GUISBOROUGH: Is that because they are the things you referred to in your petition?

61. DR CRISP: I think that that is because those are the elements that they have identified, in their opinion, as the matters that I refer to. My point is that I think it is a wider range of matters that affect me that should be included if I am allowed, as a levy payer, to be heard as a matter of discretion. I hope I have explained myself properly.

62. THE CHAIR: I understand the point exactly, sorry. It has nothing to do with discretion or Standing Orders. It is just simply that she is asking your position to be limited so that you could only deal with certain clauses, and you say your interests are wider than that and you should be entitled to develop more.

63. DR CRISP: Exactly. That is the point that I want to make, and specifically that, in my opinion, if I was allowed to be heard as a matter of discretion, then I should be allowed to be heard on Clause 6, Clause 7, and Schedules 2 and 4 of the Bill as well.

64. THE CHAIR: Can you repeat those? Clause 6 and 7, and—

65. DR CRISP: Schedules 2 and 4 of the Bill. I hope you will not ask me which those are just now.

66. THE CHAIR: No, it is alright. I know the point. Yes, I understand exactly what your point is, and I do not think you need to speak further on that one.

67. DR CRISP: Thank you, my Lord. I have one more point to make. Again, this is in relation to a point made by the promoter to me in his letter. He has requested that I am allowed to be heard as a matter of discretion as an owner with a legal right of access over the Trust lands; that discretion be limited to Part 6 of the Bill. I think Part 6 of the Bill relates to granting of easements, and I contend that it should be far wider than that, because lots of other things in the Bill may impact on the way in which I have to maintain my access. Specifically, that would be Clause 6, Clause 7, Schedules 2 and 4 of the Bill, Part 4 of the Bill, which is about management of the hills, and Part 7 of the Bill, which is about general and miscellaneous powers.

68. In conclusion, my Lord, I just wanted to say that I claim I have a right to be heard because I am a levy payer; because I currently have the right, which the Bill threatens to eliminate, to elect a conservator as a local representative; because I enjoy the right, without any interference by the conservators, to stand in conservator elections and, if elected, the right to represent the residents of a particular parish or ward; because the Bill will allow the promoters to circumvent protections that my property presently enjoys as a result of previous conservator decisions regarding access to land adjacent to my property; because the Bill reduces protections that I enjoy as a precept payer by making it possible for control of the conservators to be in the hands of appointees who are unaccountable through the ballot box in local elections; because I have a wayleave to allow passage over conservator land; and because I am resident and an inhabitant who enjoys the use of the conservators' land on a daily basis. That is all I have to say.

69. THE CHAIR: Yes. Ms Lean?

Response by Ms Lean

70. MS LEAN: I am grateful, my Lord. If I can try to run through some of those points in turn, firstly, changes to governance and the fact that, as a levy payer, the petitioner is particularly concerned about changes to how the Trust would operate the electoral arrangements and suchlike that, I fully admit I am not sitting here putting a precedent before you as to whether and where there has been locus standi considered on a private Bill about a body that is established by statute and that is also a charity that is making changes to its provisions, and where there is a levy. I have not been able to elicit such a particular authority.

71. However, in my submission, the principles and the precedents I have cited to you stand, for the reasons I have given this morning. I have highlighted to you precedents where private Bills were affecting things like governance arrangements. That was the Harbour Commissioners Bill, where one of the commissioners who was going to be removed or reduced sought to petition, and also a number of the Bills where there have been proposed extensions or changes to ratepayer areas, and existing ratepayers have been found not to have locus standi, although those who would be brought within the new area and thus subject to a new rate may have been.

72. Yes, I do not have an example of the equivalent of the Malvern Hills Bill 2025 to

put before you but, in my submission, that does not mean that the precedents do not apply. I have shown you that they do include elements or some cases where there are changes to governance arrangements of that sort of body.

73. Secondly, my Lord, with regards elections and suchlike, I am conscious of not straying too much into points that I know are being brought by petitioners whose locus we have not challenged on a locus hearing, but there is nothing in the Bill that precludes this petitioner from standing for election as he can today. I just wish to make that clear because it is a concern that has been raised. I think Guarlford Parish Council might have raised it about confirmation as to whether their residents would continue to be able to stand. Yes, those who are eligible to stand today will continue to be eligible to stand, even when the elections are area-wide and it is not a specific vote in Guarlford about one trustee appointment that is open.

74. I do obviously acknowledge that, certainly from the petitioners' perspective and from those of many others, there is a difference between the residents or the inhabitants of Guarlford voting for one trustee as opposed to everybody within the electoral area voting for all of the six trustees, but the point remains that there is still that electoral or democratic accountability, and people able to vote and people able to stand and to put themselves forward. My Lord, yes, there are some changes to details, but in my submission, in terms of tying that to the levy, that is not something that gives rise to a particular levy payer's interest being specially and directly affected. They continue to be able to vote for and elect members to the board. This is not a suggestion that all elected trustees will be replaced purely by nominated trustees, so, in terms of that position, it is a change but it is not a removal of a right that is currently enjoyed.

75. Thirdly, and linked to that, there is a concern—again, this is raised by a number of petitioners, including some of those we have not challenged—about what the role and obligations are of an elected trustee today as compared with under the Bill. It is fair to say there is a point of disagreement here, as to what obligations are, between the promoter and a number of petitioners who put this forward.

76. May I simply say this? I identified in opening that there is no one place at the moment, in any of the Acts, that pulls together all of the obligations or duties or objects into one place, and I drew attention to the most clearly expressed duties that are found

on the conservators today being in Section 21 of the Malvern Hills Act 1924 and in Section 3 of the Malvern Hills Act 1930. My Lord, if it is helpful to go to them, I will, but if I can essentially gist for present purposes, the 1924 Act talks about the conservators at all times possible preserving the natural aspect of the Malvern Hills, preventing persons from unlawfully felling and that sort of thing, so the protection as it were. The 1930 Act—forgive me, I have temporarily lost my provision.

77. THE CHAIR: We are looking at Section 3, are we?

78. MS LEAN: Yes, Section 3 of the 1930 Act. I am afraid I am working from a note on a footnote, which is always very dangerous, rather than going to the actual text itself. The 1930 Act is at page 228 for Section 3. My Lord, the duties that are imposed on the conservators by Section 3 are: "Except as in the Malvern Hills Acts otherwise provided they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public," and, "(b) They shall by all lawful means prevent, resist and abate all enclosures and encroachments upon and all attempts to enclose or encroach upon the Malvern Hills or any part thereof", and suchlike.

79. My Lord, there is nothing in there about, "Some of them shall act in the interests of the ratepayers". It is about acting in the interests and for the benefit of the land that they hold, which is for the enjoyment and use of the public. That sense of the Malvern Hills conservators holding the land for the public—not for the levy payers, not for the manorial owners, not for those who they may appoint or nominate, but for the public—has been very clear from the recitals even to the 1884 Act. My Lord, I know there is going to be a point—and I do not want to pre-empt—but I do stress that the suggestion that there is a particular interest, because a particular trustee is required to act in the interests of those who elect them, may not fully align with the duties and obligations that are put on the conservators from the earlier Acts.

80. My Lord, fourthly, I think that probably brings me to concerns about easements and development. Now, my Lord, I think the first point that was raised here was probably around the power to grant easements that might open up development on land in the vicinity of the petitioners' property, thus enabling development and affecting the value and enjoyment of the petitioners' property. My Lord, that is the power, as I understand it, which is the one in Clause 55 of the Bill that I mentioned in opening

yesterday. If it assists, Clause 55 of the Bill you have again in the filled Bill in your bundle, and that starts at page 75.

81. My Lord, as I mentioned yesterday, that power—the power to authorise the construction or making up of ways to give access from land across Trust land to the highway—was provided for under the 1995 Act. It was one of the powers that came in in the 1995 Act. It is not a new power under this Bill to suddenly be able to grant easements.

82. I must stress that, firstly, Clause 55, which I know is of particular concern for some petitioners—it is a theme that comes up in a number of petitions—is that "(2) In granting authorisation under subsection (1), the Trust must have regard to the effect of the works being authorised on the matters mentioned in section 6(1)(a) and must impose such terms and conditions as are necessary to ensure that any adverse effect on the Malvern Hills is minimised". This is not a carte blanche power to start granting rights of way that can unlock development. It is expressed within the power, the restrictions that have to be—and of course, the exercise of any power by the trustees under the Bill, as with today, will have to be done for the purposes and in accordance with the objects more generally.

83. My Lord, in terms of concerns about unlocking development, my submission is that, if it is based on rights of way, that is not a new power, so it is not a new or fresh injury that might arise from the provisions of this Bill. It is one of those provisions that exists today, and it is a power that could be exercised today.

84. THE CHAIR: Sorry, I am not sure I noted correctly the origin of this particular clause.

85. MS LEAN: My Lord, it is Section 8 of the Malvern Hills Act 1995, which inserted a new Section 7(a) into the 1930 Act.

86. THE CHAIR: Thank you.

87. MS LEAN: My Lord, similarly, Section 8 to the 1995 Act provided powers in respect of utilities and easements. That provision is re-provided in the Bill, so the power to allow utility undertakers to do things if needs be is also not a new provision.

88. With regards the concerns about precedence and losing precedence, the conservators today will always have to exercise their powers in response to a particular circumstance that appears before them. If they have an application for an easement or for a right of way, they have to consider that particular application today in line with their objects and their powers. They cannot essentially have tied their hands 30 years ago. There is nothing in the Bill that says, "Any decisions you have made or any principles you have applied when you have been considering these sort of applications in the past three years—they are all out the window," but the point remains that the Trust today has to and will continue to have to exercise powers or make decisions about things like applications for easements or rights of way consistently with its driving purposes, which are to protect and preserve the Malvern Hills, and to do so for the benefit and the enjoyment of the public and the other matters that we have referred to.

89. My Lord, I think the next point that I identified was that there was a concern raised about the impacts of what the Trust might do that might cause the petitioner to have to do extra work or expend cost in respect of his right of way that he enjoys. Clearly, my Lord, as a legal right of way or an easement over Trust land, that does carry with it, at private law, certain protections and certain restrictions, so that is not displaced expressly anywhere in the Bill.

90. My Lord, similar to the easements, there was also a concern about buildings and the possibility that the power in Schedule 4 to compromise proceedings might enable buildings to be built or suchlike. My Lord, firstly, Schedule 4 is a myriad of different powers of the sort of things that bodies might need to do, but in exercising any of the powers, the Trust is going to have to do so consistently with its statutory objects. Where there is a very, very clear statutory admonition against allowing enclosures or buildings other than as provided for the Act, it would be surprising indeed—I will just say that—if a general provision in Schedule 4 about compromising proceedings was seen as providing carte blanche to opening up a mass-scale development somewhere on the Trust land.

91. My Lord, I am reminded by Mr Lewis, who sits to my left, that Clause 84, which is the hook power for Schedule 4—that is not the right word; I do apologise, but it is Clause 84 that introduces Schedule 4—at page 96 of your reference bundle, makes clear that, in addition to any other powers it has, the Trust may exercise any of the powers set

out in Schedule 4 “in order to further the objects (but not for any other purpose)”. Again, my Lord, we would say that, to the extent there is a concern that the Schedule 4 powers somehow open up or will affect the petitioners’ property, the safeguards are there.

92. My Lord, I think that then brings me on to also the reference—it is page 3, I think, of bundle 2 from the petitioner—to Schedule 1 to the Malvern Hills Act 1995. Much was made of the word “represents” in that provision. Again, I am afraid this is linking back slightly to the point I made about representation earlier. I apologise for taking it out of turn, but, my Lord, it is important to understand what that provision is doing and what that schedule is doing.

93. Now, what that schedule is doing is applying the provisions of certain parts of the Local Government Act 1972 to, essentially, meetings of the Malvern Hills conservators, so where you see the word “represents” in (c), essentially, that is orientating you by reference to where these additional words are meant to go in. It is not something that seeks to fundamentally specify what the purpose or role of the Trust is or what the role of the trustees is, which is how I think it may have been read or used. I just wanted to clarify that it is obviously important to make sure that the word “represents” in that context is not being made to carry a load that was not the purpose of why it appears in that schedule, which is to say you apply those provisions about meetings and suchlike, but there are some qualifications that amend, so write these words in after the word “represents” in the underlying parent legislation to understand how it applies to the Malvern Hills conservators.

94. Again, my Lord, I am also very conscious that that is something that some petitioners have raised, and it may be a point that needs to be traversed in a bit more detail in a hearing, but I just thought it is helpful. Given it is raised in the locus context, it is important for me to touch on it now.

95. My Lord, I think the final point I have to come to then on the grounds of the petition is the point about discretion. It may be that I can assist with clarifying what we were saying in the letter. Paragraph 15 of the letters tends to be where we are specifying the grounds of objection, and we have used fairly standard terminology in all of the letters. It has essentially said that the petitioners’ interests are not directly and specially

affected, and you do not have locus standi, standing as of right, or under any of the discretions. That is our way of saying, "We do not think you come within the category, or your petition discloses that you come within one of the categories, where the committee could exercise a discretion,", so Standing Order 117, Standing Order 118.

96. I understand what the petitioner has said today about having previously been elected as a conservator and previously being a representative, but in our submission, where you are looking at the word "representative" in Standing Order 117 and 118, it is really looking at now representative of the inhabitants, either through something like a body or a parish council or, if it is an inhabitant, a sufficiently representative number of inhabitants who are bringing that forward. I do not know if it was raised quite in that way, but I hope I have put together what I understood the petitioner to be saying with how that might fit under the Standing Orders.

97. Finally, my Lord, in terms of the two additional paragraphs that followed that, which Dr Crisp referred to—the reference to, "If you found levy, exercise your discretion on this basis"—my Lord, I mentioned this morning—and I think it is referred to in the letter to the committee's clerk where we talked about our approach to locus more generally—that if you consider a petitioner has standing as of right because of a particular interest or a particular reason, or that they fall within one of the categories where you could exercise a discretion and you decide to do so, that it is of course open to the committee to say that petitioner may be heard, but may only be heard on those parts of their petition going to those parts of the Bill that directly speak to or go to those interests on which we have found or granted them standing.

98. What we sought to do in terms of the levy was to identify that, in terms of the people who raised the levy, we consider that those parts would most likely be the certain clauses and powers we have identified to do with the governance arrangements and things like that—the levy, the financing—and with access to those provisions of the Bill that most directly bear on that, for example the access, roads, and things like that. That is where we have sought to identify, in endeavouring to be of assistance, that if the committee were minded to go down that route, these seem to us to be the provisions that most directly relate to those interests.

99. I am conscious there was an awful lot that was traversed during the course of the

petition, so if I may very quickly look to my left to check there is not some glaring point that I am meant to have mentioned that I have not, I would be very grateful.

100. THE CHAIR: There was another point of qualification you asked us to introduce, which was that they should not address provisions in the Bill that are not new.

101. MS LEAN: Yes.

102. THE CHAIR: I thought myself, looking at the list that you have presented of the origin of the various clauses, that it becomes extremely complicated. I thought the simplest thing was just to allow them to run on, because you can say in your reply, "That is not new", and we just take that point, but to try to police it in advance would be very difficult for us, I think, and probably occupy more time than simply listening to your point by way of objection.

103. MS LEAN: Indeed, my Lord. I appreciate that the point about the powers that are not new may be of more assistance when considering this initial locus point, that if people concerned that a right of way could be granted that opens up development, it is helpful for us to say, "That is not a new power". There are always going to be slight nuances or amendments, but in substance that power is not new. This is not a new thing that the Bill does, but I do appreciate, my Lord, that it may be just easier if, rather than picking through which of the clauses are or are not, to just say I will pick through them in responding if needs be.

104. THE CHAIR: Exactly. You can make the point to us and we will pick it up then, rather than try to do it in advance.

105. MS LEAN: Indeed, my Lord.

106. THE CHAIR: Thank you very much.

107. MS LEAN: I apologise if there is anything I have not covered, but that is my response to Dr Crisp.

108. THE CHAIR: Dr Crisp, there we are. Is there anything you would like to add just by quick reply?

Evidence of Dr Crisp

109. DR CRISP: Yes, please. Thank you. On this point of provisions for easements not having been changed, I would contend that what has changed is the Trust's objects, and that that might be used in future to justify not following precedents that are presently in place following decisions about such access. There has been an exchange of letters between a solicitor and the Trust, for which I do not have the evidence today, but in which the Trust agreed that, in relation to the access that concerns me, the Trust is liable to judicial review. My understanding is that that therefore places the Trust into a different category legally. I hope I have explained that.

110. THE CHAIR: A public body is open to judicial review.

111. PROFESSOR CRISP: Yes, that is the point. As a public body, their decisions have to be consistent. If the objects were unaltered, then all would be fine, but the objects are no longer the same, and that can be used as an argument to say that the precedent no longer applies.

112. LORD INGLEWOOD: Could I ask a point of clarification, please? You talked about the access with which you are concerned and talking about. Is that the same as the access to your house?

113. PROFESSOR CRISP: No, it is not.

114. LORD INGLEWOOD: It is a different access.

115. PROFESSOR CRISP: This is an access to land that is behind my house and adjacent to my house, across common land, which, presently, is only usable for agricultural purposes, and for which an easement could be granted for vehicular access, opening it up for development.

116. LORD INGLEWOOD: That is the point you are making. Thank you.

117. PROFESSOR CRISP: There has been an application for such an easement in the past, which was refused by the conservators, thereby setting a precedent.

118. THE CHAIR: Does that complete all your submissions, Dr Crisp?

119. PROFESSOR CRISP: Yes, it does. Thank you, my Lord.

120. THE CHAIR: Thank you very much for coming and for your presentation. You will understand that we hope to give a decision tomorrow morning and, if we decide in your favour, we will ask you to come back and present your argument more fully.

121. PROFESSOR CRISP: Thank you.

122. THE CHAIR: Thank you very much. Mr Berry, good afternoon. You will understand the procedure now: that we hear first of all from counsel as to what the objections are to your petition, and listen very carefully to what she has to say, and then you will have a right of reply, and then we will listen to her and reply to you.

123. MR BERRY: I do. Thank you, my Lord.

124. MS LEAN: My Lord, I am grateful. This petitioner is petition 39 in your table. I wonder if I could start with a question, my Lord. I apologise. Can I just clarify? I had assumed that Mr Berry was appearing here for both 39(a), the Upper Welland Action Group, and (b), Mrs Nash and Mr Ceen, but I wanted to check because I have only seen reference to the action group.

125. MR BERRY: Yes, I am.

126. MS LEAN: Thank you.

127. THE CHAIR: All of them.

128. MR BERRY: Yes.

129. MS LEAN: Now, in terms of taking those two petitioners separately, my Lord, the Upper Welland Action Group say in their part of the petition that they are a constituted group of local residents of the village of Upper Welland, part of Malvern Wells, in the parish of Malvern Wells, and that is a parish which is subject to the levy, and hence they are directly affected by the Bill as detailed in Standing Order 117, and that they represent 100-plus households.

130. My Lord, the promoter has raised a challenge on the grounds that it is an organisation that has not demonstrated that it has made a formal decision to oppose the Bill under Standing Order 117(1) and (2), and it is an organisation that has not demonstrated that it is sufficiently representative of the interests it purports to represent

under Standing Orders 117 (1) and (2).

131. My Lord, I note, again, this may just be a disjunct of the table. The letter that was sent to the petitioners also refers to Standing Order 118, that the petitioner does not sufficiently represent the inhabitants that it purports to represent under the general power to allow local authorities or the inhabitants to have their petitions considered. My Lord, I think the points are probably broadly the same that I will make in respect of the two about the representative nature, but I am afraid that does seem to have inadvertently been omitted from the table.

132. My Lord, on Standing Order 117 in particular, I start by saying Standing Order 117 does not, on its terms, contain the words about "formal decisions to oppose the Bill" or "formally constituted". You have the Standing Orders at page 12 of your L bundle, bundle 3, my Lord. Standing Order 117(1) provides that, "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 ... it shall be competent for the Select Committee ... if they think fit ... to have their petition considered". 117(2) talks about similar bodies "sufficiently representing amenity, educational, travel, or recreational interests". 118 is the one that perhaps more naturally aligns with representatives of local inhabitants.

133. Standing Orders 117 and 118 do not contain within them requirements for formal constitution and formal resolutions, but that is a theme that has appeared or certainly emerges from some of the precedents that have previously considered this. My Lord, there are two that I would refer you to, in particular, if I may.

134. The first is the Shoreham Port Authority Bill, which you have at page 81 of your locus bundle. My Lord, the relevant petitioner here is petitioner 2. Petitioner 2 claimed a right to be heard as chairman of the Kingston Beach Residents Association. The consideration of that petition starts on page 84. My Lord, just half way down the page, there are questions about whether it is a long-established association. My Lord will have picked up in the House of Lords HS2 Select Committee report references to ad hoc groups not conventionally being given standing where they have been formed to oppose the Bill, so that question seems to be in that context. There are questions there about membership—"How many? Do you have a constitution?" "Yes, we do, an informal

three-line constitution saying we want to further people's rights". "What is the purpose?" Then, over the page, "Your role was supported by a full resolution of the meeting". The petitioner: "It was a unanimous resolution".

135. My Lord, the second authority to which I wish to refer starts at page 90. It is on the King's Cross Railways Bill. It is the one we went to this morning regarding branches of political parties. The 10th petitioner that fell to be considered on that occasion was the Camden Cycling Campaign. The consideration of their locus starts at page 96. What was put forward for the petitioner there was that it does not have a written constitution, but it comprises over 200 members, who are, obviously, cyclists and residents in the London Borough of Camden. At the bottom, the assertion was made, essentially, by reliance on Standing Order 95 in the other place, which is the equivalent of 117 here, or Standing Order 96, which is the equivalent of 118.

136. Over the page, on 97, a question: "Is it a formal body with officers and a set of rules?" It does not have a set of rules. It is a local group. It is affiliated to the London Cycling Campaign. It is an organiser, a meeting, but it does not have formal written constitutional rules. Questions about members: "I do not know. Just over 200". "Did they vote on a motion to petition?" "Yes, they did". "Do you know how many did?" "Five members voted on it". The point that was made by counsel for the promoters there is that the body does not really exist in any proper form and does not sufficiently represent, and that there are a lot of people in Camden, many of whom would ride bicycles—more than 200. We do not have the reasoning from the chairman, but we have the ruling that they could not grant locus standi.

137. THE CHAIR: Because only five people were present.

138. MS LEAN: My Lord, it is not entirely clear whether it was because it was not a formally constituted body, because there had not been a formal resolution, or, if there was a resolution, it was not felt that it was probably the majority resolution you would expect it to be, or whether it was not sufficiently representative.

139. My Lord, I highlight those just to provide context for what is said in our challenge letter, which is that we have not seen or been provided with anything that shows how this body is constituted, what its membership may be, how extensive its membership may be, or whether a formal resolution or vote has been taken to authorise this petition

to be lodged on behalf of and representing those interests or inhabitants. We have sent a request. We have not received something. It may well be that that comes today, but, in our role as being invited to police the rules of locus standi, we have challenged it to bring to your Lordships' attention that this is not a petitioner where we have seen evidence to demonstrate that they clearly fall within either Standing Order 117 or 118, such as to enable you to consider whether to exercise your discretion to grant standing.

140. On the individual named petitioners, my Lords, the basis of standing claimed there in the table is that they are owners and residents of Upper Welland, they are levy payers, and are entitled to stand as and elect conservators. My Lord, I will not repeat the submissions that I have made this morning on levy payers or what I have dealt with in terms of elections with Dr Crisp.

141. If I just may, I have been remiss. I have mentioned on at least two occasions Guarlford Parish Council, which has brought petitions raising matters to do with the levy that affect residents of their area. You also have petitions from Malvern Town Council—that is petition 27—and West Malvern Parish Council, petition 25, who petition in their representative capacity as inhabitants of the area and who raised the levy. I just thought it was right that I completed the record on that.

142. My Lord, unless there is anything I can particularly assist with on these petitions at this point, that is all I was proposing to say for now.

143. THE CHAIR: Thank you very much. Yes, Mr Berry.

Upper Welland Action Group

Evidence of Mr Berry

144. MR BERRY: Good afternoon, Your Lordships, and thank you for inviting me here this afternoon to challenge the right to be heard. In doing so, I will attempt to address some of the queries posed by counsel.

145. Before I start, perhaps I could introduce myself. I am Robert Berry. I am a resident in Upper Welland. I have been a resident for 14 years, and I am appearing here in the capacity of representing the Upper Welland Action Group—UWAG for short—at the request of its chair, Mr Andrew Pitt. I am also one of the 45% of dissenting trustees who

have grave concerns in respect of the Bill proceeding in its current form. I am not a trained lawyer or advocate. I am simply a member of the community in the village of Upper Welland, which resides in the parish of Malvern Wells.

146. Upper Welland is a small village comprising of probably 200 houses. It is estimated by the chair that he has about 120 of those homes on what he calls his mailing list, which I think we can take to mean the people that UWAG represent. The parish of Malvern Wells consists of approximately 2,500 voters and is situated at the south-east side of the hills and sits below British Camp, and is home to many a fine Malvern gas lamp.

147. The petitioners would like to put on record that, after having submitted the petition, they were somewhat surprised not to have been approached by the promoters of the Bill in any way, shape or form in the intervening 10 months to consider or discuss the concerns raised in the petition, especially given that a number of the issues raised were of a technical nature as opposed, for example, to being a point of principle.

148. Towards the end of 2025, the petitioners received communication from the Parliamentary Agent seeking clarification as to what UWAG was. They—the agents—were duly informed by email on 1 December 2025, and I quote from that reply—"We consider ourselves directly and specifically affected by the proposals in the draft Bill. We are a local amenity association and fall into SO118"—I will take that to mean Standing Order 118 of this House—"as local inhabitants of Upper Welland and the surrounding area in the levy-paying parish of Malvern Wells".

149. I continue to quote—"I can confirm that our committee met in December 2024 to consider the issue of petitioning and resolved to do so, which was, indeed, minuted precisely for the purposes of ensuring an adequate response could be made available to you, as is the case today". My Lords, by way of correction, because I have asked for sight of that paperwork, it does appear the UWAG committee met on 17 January 2025 and not in December.

150. So who are UWAG? They were formed in the summer of 2014, when a local farmer sold development rights—or tried to—to a 10-acre field for a proposed 93 properties. It became quickly evident to villagers that such development was not entirely appropriate. The group was constituted on 21 October 2014 after a village meeting. I

have the original paperwork for that. I was at that original village meeting myself.

151. The initial reason for constituting the group had nothing to do with the Malvern Hills Bill or the Malvern Hills trustees or the Malvern Hills Conservators. It was, at the time, to ensure that the group could be formally recognised by Malvern Hills District Council, which it can successfully prove, I am told, it has done, based on sight of correspondence it has to and from the district council. The chair has also provisioned me with an email to that effect from the current leader of Malvern Hills District Council, who can attest to the existence and the actions of UWAG over the years, given he himself—as in the leader of MHDC, Councillor John Gallagher—has lived in Upper Welland for far longer than most.

152. My Lords, now let us consider the proximity of the village in relationship to the hills and commons, because that would seem to be relevant, and, indeed the levy-paying area. It is accepted by the petitioners that not every member of UWAG, or person UWAG represent here today, are, by definition, a levy-payer. However, the vast majority of people are.

153. Further, my Lords, if we consider the petitioners' amenity use of the Malvern Hills and Commons, it would be foolish of me to claim that every single person in every single household is a frequent and keen user of the hills and/or commons, as, for example, am I, but it is self-evident, if one spends a couple of hours, let alone days, in the village, that plenty of villagers ride their bikes and walk on to the hills and commons that surround us, as well as discuss issues such as the Malvern Hills Bill very, very regularly. In terms of the amenity use of the hills and commons, it is, quite simply, a thing that we do, and it simply forms part and parcel of people's lives. I would assert, therefore, my Lords, that the petitioners qualify as both inhabitants as well as residents.

154. The chair of UWAG has asked me to make it perfectly clear to this committee that they are keen to engage and assist, and not simply be critical of this Bill. They do, however, highlight that pretty much everything the promoters have done to date has been poorly thought through and executed, as, for example, evidenced by the failed Section 73 Charity Commission scheme vetoed by DCMS because of the contentious nature of the proposed contents at that point.

155. Now, to a different point. The promoters have written to the levy payers—and I

am assuming there was similarity in a number of letters sent to a number of petitioners—to argue they do not have the right to be heard because their position is analogous to that of electors of representatives in local authorities.

156. Three points, my Lords. First, the Trust has gone to great lengths to suggest elected trustees are not representatives. Even in the last hour, I have received an email from the secretary to the board. It is under confidential post, so I shall not divulge the contents, but, even in that email, it is very, very clear what the executive of the Trust would like me and some of my fellow trustees to think.

157. THE CHAIR: Mr Berry, can I just stop you there? You are tending to drift into arguments of the second stage. We are concerned with the question of whether your group has a right to be heard. There are some essential points about that group that I would like to find out about. You have told us when it was constituted. Does it have annual meetings?

158. MR BERRY: It has irregular meetings, my Lord.

159. THE CHAIR: It is irregular, and it is not that kind of body. It does not have a constitution of a kind that requires you to meet annually.

160. MR BERRY: There are two types of meetings it has. It has village meetings, which are irregular and based on circumstances, and the committee meets more regularly, but not regularly monthly or bi-monthly. It holds an AGM, but the committee does not meet, as I say, the third Thursday of every month or anything like that, my Lord.

161. THE CHAIR: I see advantages of that, but did you have a meeting particularly to identify whether or not, as a group, you should petition against this Bill?

162. MR BERRY: Yes, my Lord. The committee did meet, of which I have both the agenda and the minutes, on 17 January, which was the meeting I referred to earlier.

163. THE CHAIR: 2025?

164. MR BERRY: Yes, my Lord. The resolution was, if it is helpful, “We propose, on behalf of UWAG, to petition Parliament on or before 1 February 2025”. The motion was

proposed by AP, seconded by SD, carried unanimously.

165. THE CHAIR: How many people were present at the meeting?

166. MR BERRY: Three, my Lord.

167. THE CHAIR: How big is your group? Do you have any membership lists or anything of that kind?

168. MR BERRY: As I referred to earlier, my Lord, the chair suggests he has approximately 120 people on his mailing list, which he describes as his membership group. It would appear that mailing list changes as people move in and out of the area, as you might imagine.

169. THE CHAIR: Thank you very much. Sorry, I interrupted you, but I wanted those details to be on the record so that we know where we are.

170. MR BERRY: Thank you, my Lord. So back to this point of the promoters and their assertion that the position is analogous to that of electors of representatives of local authorities. Even if currently elected trustees—and that is 11, technically—agree on a point, they would always be outnumbered by nominated trustees, that being 17. As I think one of the other petitioners alluded to—or it could have been counsel, forgive me—there are a couple of vacancies on the board currently, but the point is, in a perfect world, if all the seats were filled, there would be more nominated than elected, as stands currently.

171. Point number 3: members of county and district councils—i.e. local authorities—can all be held to account by conduct in public office legislation and the related public law. Those principles do not apply in the same way to charity trustees. Therefore, Malvern Hills Trust or Conservators board elections, the petitioners would assert, are not analogous to local authority elections, hence the promoter's arguments in this respect are flawed.

172. Now to the point of the petitioners being directly and specifically affected. As I have stated, my Lord, I am not a lawyer, so I will try to interpret this as best I can. Counsel for the promoter is, of course, going to be very adept at seeking, citing and offering reasoning about past precedent, which, as I understand it, of course, is a key

component of British law. I am not going to sit here today and quote *Erskine May*—it is certainly not an area of my expertise. I have and would rather be guided by your Lordship's interpretation—but it is clear to me that one of the primary and core responsibilities of every Select Committee is to ensure that all legislation that is scrutinised ends up being the best it can possibly be, and that clearly stands the test of logic.

173. Each Select Committee, as I understand it, does have the ability, in certain circumstances, as it deems sensible, to put forward an element of leeway. This was, in fact, an argument put forward by counsel for one of your Lordships to another of your Lordships in respect of seeking locus standi for another Bill, if I recall, back in November 2024. Clearly, this is not an argument I need to rehearse further.

174. My Lords, it is clear from sight and reading through the original Acts to understand what the original arrangement was back 140 years ago, i.e. local people fund the work to protect and preserve the hills—those are my words, not precise text from the Bills—but then the public—and counsel has already shared with us that particular clause—are afforded rights of recreational use.

175. You would all, my Lords, be right to ask, "Why are the levy-paying residents of Upper Welland and members of UWAG being specifically and directly affected?" Beyond the arguments that we have already heard in this room today by a number of my fellow petitioners, apart from some of the obvious ones—i.e. the levy payers fund approximately 50% of the activities of the organisation—the levy payers fear they will have less control over the ways in which the money is spent and less accountability, thus there is a democratic deficit, as has been alleged. There is also the issue of levy increases being directly attributable to this proposed Bill.

176. Very specifically, my Lords, I would suggest the petitioners will also lose a number of protections. They lose protections as afforded in the current Acts. The current Acts are tightly defined permissions that offer those protections, and those tightly defined permissions that offer the protections are being amended, not just consolidated.

177. Let me offer some examples. Point 1: the current five Acts are successful in being very prescriptive. This limits the organisation's ambitions and activities, which is why things are as they are. This will clearly change.

178. Point 2: the new powers are such that it would be possible for them to be used in a compound way. The new powers will specifically give a new board more opportunities to engage in ancillary activities and, as long as an activity can be said to support the general aims of the organisation, it qualifies, so anything commercial that raises money would qualify. This is contra to the position of quiet enjoyment, which is the way most people understand the use of the hills and commons. These additional activities could take place on and off both purposed and non-purposed land—and these are the Trust's definitions of land, not mine.

179. For example, the purpose of the organisation is not to educate, but the levy payers could find their levies rising, for example, to fund a part-time teacher to go around the local schools and talk about conservation. This is clearly neither a wicked nor a dreadful thing, but it is, my Lords, contra to the original intentions of the founding conservators and could mean my levy and that of my fellow levy payers and members of UWAG increasing. It is irrelevant by how much that levy increases. One pence more satisfies counsel for the promoter's criteria.

180. Another issue in respect of finance includes funding capital projects, as detailed but not budgeted for as yet in the organisation's cost-benefit analysis in respect of this Bill. That was reported on on 11 October 2021 and can be found in the Trust's own archives and was considered at a conservators' governance meeting 10 days later and approved.

181. To point 3, my Lords, the change of the object, which is point 16 of the petitioner's petition: the conservators' proposals remove from the objects the need to maintain the phrase "natural aspect" in respect of the hills and commons under their jurisdiction. The current Acts place an emphasis on the conservators currently to "preserve as far as possible the natural aspect of the Malvern Hills and Commons and to keep them unenclosed and unbuilt as open spaces for the recreation and enjoyment of the public"—the same clause that counsel shared with us earlier.

182. The implications for removing the phrase "natural aspect" are potentially of great importance, as another petitioner has already alluded to, e.g. legal challenges to the Malvern Hills Conservators have been made, and they were based, in part, on the use of the phrase "natural aspect", so removing or changing the phrase could remove the

constraint of past legal precedence, to the detriment of levy payers. The previous petitioner has already brought to everybody's attention the public body requirement in respect of consistent decision-making.

183. There is no mechanism in the Bill to ensure trustees prioritise protecting the natural aspect and looking after the hills and commons, including views to and from them, in favour of making decisions that would clearly grant the Malvern Hills Conservators very lucrative sums of money, likely to be in the regions of millions of pounds—let us put that in perspective; the annual turnover is approximately £1.2 million to £1.4 million—from granting easements to commercial developers and thereby bringing about the demise of the natural aspect of the area.

184. In part, this issue is brought about by a requirement assumed from charity law, i.e. an obligation to consider what is in the best interests of the charity, in confliction, I would assert, one assumed, from the existing Acts, i.e. being true to the objects of the current clauses within the current five Acts, which have a reference to, by definition, public benefit. The connection to this is the loss of public status protections as they currently apply.

185. Yesterday, mention was made, and there have been issues when dealing with charity and public law and which has primacy. Counsel for the promoter suggested this was not an issue. As a current trustee, I beg to differ, and hope this is an issue properly teased out by your committee in due course.

186. Point 4, my Lords: changes to assembly on and use of the land. I will give you an example. If I want to take 20 children of levy payers from the village on to the hills or commons and cycle with them on the bridleways, this, in future, could incur a cost—a cost I would not incur were I to do it next Saturday morning. That is a specific and direct financial consequence of the proposals of the Bill.

187. Point 5: the levy-paying area. You have heard a lot, and I suspect you will hear an awful lot, about this. It is already an issue. There are a limited pool of levy payers, and the Trust will continue to be able to increase its land mass, using what I call the nine-mile rule. Now the reasons for acquiring land can increase, so this could be another direct potential cost increase. We also understand—and this is quite a technical point—that the Trust's position is that it is proposing to give up on the current right to levy

areas it has historically purchased and acquired, and limit the power moving forwards in a new Bill only to future land acquisitions, so again of potential direct financial detriment to levy payers.

188. Point 6: composition of the board. UWAG members can currently choose to elect their own parish board member. By "parish ward", what I mean is it is the electors of the parish or the ward who elect one of 11 board members. If the new proposals are adopted, the parishioners of Upper Welland and the members of UWAG will have their voting subsumed into the entire public voting pool of Malvern.

189. Point 7: counsel suggested the elected proportion of conservators rises from 38% to 50%. Again, there is a nuance here. Currently, all the nominated conservators bar one—the ecclesiastical commission conservator—are appointed by a body that is democratically constituted and whose primary and sole purpose is in the public interest. Arguably, with the new proposals, the democratic element is reduced from 100%—and I am moving aside from those calculations the ecclesiastical commissioner's nomination, and that is in part because I believe they have already written to the Trust and said they will not nominate somebody moving forwards—to 50%. This issue is intertwined, but it does mean that the petitioners and the members of UWAG will lose some democratic oversight and protections.

190. Point 8: the Trust seeks the power to pay trustees' expenses. That, again, has the potential to increase the levy bill, therefore a direct consequence of the new Bill.

191. Point 9: access. If fencing is put up, petitioners will not be able to walk all of the routes they currently walk. They will not have free range and access everywhere. Linked with access, there are issues in respect of the definitions relating to mobility scooters, which might directly affect Mrs Nash, who is an MS sufferer and who is entirely reliant upon the use of assisted transport, for want of a better phrase. I am no expert in the descriptions. I call it a chariot. It is an electric wheelchair that gets her to amazing destinations, as is detailed in point 15 of the petition.

192. Further the Sandford principle, if adopted, would alter the balance of access versus conservation, thereby reducing a fundamental element of amenity and access, once again qualifying under counsel for the promoter's definitions. My Lords, I bring you back to something I mentioned earlier in terms of what the original purpose was, which

was to keep the Malvern Hills and Commons unenclosed and unbuilt as open spaces for the recreation and enjoyment of the public.

193. Point 10: the amenity value to levy payers as well as members of UWAG. This is very likely to decrease as more and more rules are made and enforced, and the Trust uses its land to engage in other activities, which these powers seek to enable it to do. The petitioners are not commoners. In that, I am not suggesting that those people have rights of common in terms of sheep, cows and goats, et cetera, but there is amenity value in the siting and the use of cattle and sheep on the commons. As we heard yesterday, there is a valid ecological reason why they are there. There are plenty of people who are local, who I and others know and who put their own stock on the commons. As the promoter's presentation detailed yesterday, this amenity value is such that people wander up and take selfies and all the rest of it.

194. I would like to draw the committee's attention to the fact that, if the organisation starts commercial sheep farming, as it says it will in its own cost-benefit analysis with respect to the Bill, this could change everything and give a very different look and feel to the place, especially Castlemorton Common, which is very close to the village of Upper Welland.

195. Point 11: the power to fine people. There will, clearly, be a cost to set this up and to run it, and thereby a direct impact on the quantum of the levy.

196. Point 12: as admitted by the then chair of governance of the conservators in 2024, when asked in a trustee workshop what had been done to consider unintended consequences, "We have done no work on trying to identify unintended consequences". My Lords, I would suggest that this, in itself, suggests there may be a whole swathe of issues that might affect levy payers that have yet to be considered by the few remaining trustees who still support these proposals.

197. THE CHAIR: How many points are you going to make?

198. MR BERRY: I am getting there, my Lord. I am getting there. The petitioners believe they qualify under House of Lords Standing Order 118. The precedents reflect the convention that Standing Order 118 is directed at groups of persons who are petitioning as representatives of inhabitants of an area. This is something I believe I

have demonstrated this afternoon.

199. I also think it is relevant that I can demonstrate, as a member of UWAG, that, via a formal process—namely the Trust elections of October 2023—I represent the views of other locals in the parish of Malvern Wells. Otherwise, why would I have got 77% of the vote when standing on the platform that I did? The local populace clearly share some of those views.

200. Revisiting the fact, as we learned yesterday from the promoters to the Bill, Malvern Wells has only been levied since 1924, at which point it was able to vote a member on to the board, if that is not representation, can I ask what is? Clearly, again, this is something that will need to be teased out during this process.

201. Now, my Lords, to some precedents. The Holocaust Memorial Bill differs very significantly, as you are far more aware than I, from the high-speed rail Bills, I think, in part, because it concerns a much smaller geographical area as well as in terms of the actual content of the Bill with regard to compulsory purchase and building, et cetera.

202. The petitioners would suggest there is a very long-standing precedent as regards residents and/or inhabitants of an area close to or nearby being affected by a Bill having locus standi. By example, I refer to the report from the committee that looked at the Holocaust Memorial Bill, on their page 44, paragraph 45: "Sir Peter and Baroness Bottomley have established an entitlement to have their petition considered by virtue of having lived very near VTG for many years and the fact that they have always enjoyed regular use of the amenity of VTG. Their interests are directly and specifically affected by the Bill".

203. Paragraph 46, "Viscount Eccles has established an entitlement to have his petition considered by virtue of living at, and having a property interest in, a flat very near VTG and enjoying the amenity of the gardens on a regular and frequent basis over many years. His interests are directly and specifically affected by the Bill".

204. Paragraph 47, "Lord Hamilton has established an entitlement to have his petition considered by virtue of owning and living in a flat very near VTG and enjoying the amenity of the gardens on a regular and frequent basis. His interests are directly and specifically affected by the Bill". There is a similar paragraph for other peers, as I am

sure you are aware.

205. My Lords, the residents of Upper Welland, as represented by the petitioners this afternoon, own their properties and inhabit them in Upper Welland, which is an area very close to trust purposed land. We would propose to inherit some of the arguments that I have quoted today and, on that point, I rest and thank you all for your time and for listening to me this afternoon.

206. THE CHAIR: Thank you very much. Can you clarify this point? You are representing the two co-petitioners, Mrs Nash and Mr Ceen. Were they party to the decision of the group to petition against the Bill?

207. MR BERRY: Yes, my Lord, they were.

208. THE CHAIR: So they were the other two and you were the third?

209. MR BERRY: No, they were not the other two. Once the committee had decided it was going to petition, as I understand it, the committee approached Mrs Nash and Mr Ceen and invited them, should they wish, to co-petition with them. They felt that their views were aligned and, therefore, they co-petitioned.

210. THE CHAIR: I think you have not quite understood my question. Were they part of the three?

211. MR BERRY: No, they were not, my Lord.

212. THE CHAIR: The next question is, looking at the petition that you have shown us, it does not distinguish between the arguments on their behalf as individuals and the arguments on behalf of the group. Supposing, for the sake of argument, we would decide that the co-petitioners had a right to appear, but the group as a whole did not, do I understand that the arguments in the petition would remain as they stand? They would simply be presented on behalf of the co-petitioners.

213. MR BERRY: I believe that was the intention of the group, my Lord, and I think their logic was that everybody in the village is a levy-payer, but the vast majority of those people who UWAG represent are levy payers as well, the arguments aligned and the views aligned. I think that is the way I certainly understand it, my Lord.

214. THE CHAIR: Will they be represented or will they appear on their own behalf? Do you know?

215. MR BERRY: I think that is for them to determine. I only discovered I was coming to represent both UWAG and Mrs Nash and Mr Ceen last week. As I have alluded to with Mrs Nash, she does have MS. There is a transport and moving around issue, and I am very grateful to your Lordships for granting the right of remote hearing, if I can call it that, but she was keener to "send somebody down", which I think was her phrase.

216. THE CHAIR: Yes, I understand that. Very well. Thank you very much. Ms Lean, do you have any further points to make?

Response by Ms Lean

217. MS LEAN: I have a couple of points, my Lord. First, I am mindful that this is a hearing about standing, and an awful lot of what was traversed really went to substance, so I just put a marker down that, by not responding to that, I only do so because of the nature of this hearing.

218. Secondly, my Lord, in terms of the standing, I outlined the basis on which we challenge this petitioner. Your committee has had additional evidence today from the petitioner's representative, so my submission at this point will be that it is for your Lordships' committee to now consider whether you are satisfied, on the basis of what you have heard, that the petitioners, the Upper Welland Action Group, fall within and are able to bring themselves within the gateway of Standing Orders 117 and 118 and, if so, whether or not you wish to exercise your discretion to hear them.

219. The only additional point I would add on that is in terms of exercising discretion, and that is a broad discretion. Getting into 117 or 118 does not mean, in and of itself, that it follows that standing will be granted as a matter of discretion. Just to highlight that a number of the matters that are raised in this petition are matters that are raised in other petitions as well to do with the levy, to do with the governance changes, to do with various powers, and that there are other petitioners. The committee will be aware that we have not challenged the three councils that I mentioned a little while ago.

220. Also, in terms of concerns about things like fencing and grazing and suchlike, we

have not challenged any of the individual commoners, whether or not that may factor into the committee's thinking on the exercise of discretion.

221. My Lord, I had two final points to pick up in this context. At one point, there appeared to be almost a claim for a personal locus on behalf of Mr Berry by reference to his status as having been elected.

222. THE CHAIR: He has not presented that in the petition.

223. MS LEAN: Indeed, my Lord. That is what I was going to say. I have found the reference in the Standing Order. It is in Standing Order 111 itself. It is the first words that appear in (2), so that is what I would say on that.

224. The second point just to flag was on the Holocaust Memorial Bill that Mr Berry referred to. I think the passages that Mr Berry read from were the individual decisions. We had not included all of those in the bundle. We can easily provide those if the committee would like to have them, but the decisions on the individual petitioners need to be read in light of the generality of what the committee says in the clauses that I referred to earlier, and particularly Clause 35 through Clause 37, which give the context for the decisions that were made in that case.

225. My Lord, unless there is anything particular I can assist with further, that is all I have in response to this petitioner's locus standi challenge.

226. THE CHAIR: Thank you very much indeed. Thank you, Mr Berry, for your presentation this afternoon. As you will have heard me say earlier, if we decide that you have standing, we will invite you back to present your argument on the details that you have alluded to in your petition. The same will apply to your co-petitioners. If we decide that they have standing, they will be invited back to present their arguments. Thank you very much indeed.

227. MR BERRY: Thank you, my Lords.

228. THE CHAIR: We will now terminate today's hearing. We propose to sit again tomorrow at 10.30, when we hope to be able to announce our decisions.

229. MS LEAN: My Lord, I am very sorry. Might I just raise a couple of points of

housekeeping just before my Lord concludes?

230. THE CHAIR: Yes.

231. MS LEAN: I am conscious that there were some actions outstanding on me from the course of today. The first is, my Lord, I am conscious that I have not covered trustees. I know that Ms Palmer is a trustee. That is not something that was raised in her petition. I am hoping that I can address you on the principles relating to trustees being able to petition when Mr Myatt comes in next week.

232. THE CHAIR: Yes.

233. MS LEAN: Thank you. I just wanted to check that, because I know you were looking to make preliminary decisions tomorrow, and I wanted to check that I had not not addressed something that might be the subject for decision, because we anticipated the main petitioner coming next week.

234. Secondly, the clip of materials that we handed in this morning, with the additional locus cases—I paused and said that I cannot find the committee's decision on locus in the first one. It turns out that is because, although we had it on the electronic copy, it had not made it onto the paper copy. There was a missing page that said what the committee's decision was, which was, essentially, disallowing locus, but perhaps we can provide that electronically for completeness.

235. The third point I had was the question raised by my Lord, Lord Evans, about instructions. I must put my hand up here and apologise, and say that I had in mind that there had been instructions on the Holocaust Memorial and HS2 Bills. The instructions that we found were the instructions in the other place. After Second Reading to the Select Committee in the other place, there were some instructions that were laid but not pursued on the Holocaust Memorial Bill in the House of Lords, so I apologise for any confusion I have caused on that. If you would like to see copies of the particular instructions that were moved at Second Reading on the phase 1 Bill for HS2 and the Holocaust Memorial Bill, we can, of course provide, those.

236. Fourthly, again, just a point of correction. Earlier on today, I was asked where the power was for the Malvern Hills District Council to appoint or nominate trustees, and I

directed the committee to the correct provision of the correct Act, the Malvern Hills Act 1924, Section 7, which was at page 203 of your reference bundle. My Lord, I gave you the right section. I read the wrong line. I read the line that is not crossed through that referred to being elected by the urban district of Malvern. What I should have done was read to you the line that is crossed out in red further up, which had, "Seven persons to be nominated from and by the urban district council of Malvern". Those words were replaced by a statutory instrument that you have in your reference bundle. That is at 312, if you need the reference, My Lord. Just to highlight, there were two statutory instruments, one in 1958 and one in 1996, which have altered the governance or the board of conservators, how many, and who may appoint them. My Lord, I apologise for reading the wrong thing into the record. I did get the section right, but I hope that has just clarified the point.

237. THE CHAIR: Thank you very much. I have to correct something I said just a moment ago. I said we would sit at 10.30. We will be meeting in private, and we sit again for the announcement of our decisions at 12.45. For those at the back of the room, the meeting at 12.45 will be broadcast, so you certainly do not need to attend here. I can understand it is quite a journey for you to come all the way from the Malvern Hills to come to the meeting. It is not necessary for you to be here, but you will be able to see what we are saying. I hope that enables you to organise your lives as to what to do with tomorrow. It is very nice to see you if you come, but you certainly do not have to. At that point, I adjourn today's hearing.