

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

**MALVERN HILLS BILL COMMITTEE**

PETITIONS AGAINST THE BILL

Tuesday, 27 January 2026 (Morning)

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:

Cora Weaver  
Andrew Myatt  
Joseph Myatt  
David Smallwood

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**(At 10.30 a.m.)**

1. THE CHAIR: Welcome to this, the fourth public meeting of the Select Committee on the Malvern Hills Bill. The purpose of this meeting, as it has been in the previous meetings that we have conducted, is to examine the issue of right to be heard. At this stage, parties are not to be making submissions to us on the substance of their petitions. It is simply whether they have standing, so that we can give them a hearing, or whether we have to say that they do not have standing.

2. I think that everybody has been provided with a copy of our interim decision on standing, which we announced last week and which is the basis on which we will be deciding the petitions we hear today. Petitioners who the committee finds do have a right to be heard will be invited back before the committee in due course. It is very important to realise that that is why we are concerned in this session simply with the right to be heard, because there will be ample opportunity to expand on the petitions later if there is a right to be heard.

3. I should add also that the petitions themselves are before us and we are not discarding them. If we say there is no right to be heard, that does not mean to say we ignore what the petitioner has written. It is very important information for us as a basis for us to hear when we proceed to the next stage. If you are told you do not have a right to be heard, please do not be too dismayed because what you have written, particularly in the case of your case, Ms Weaver—a very careful submission—is before us and we will look at it when we consider the further stage.

4. There are a number of practical arrangements I have to mention, first of all about the fire alarm system. In the case of fire, we do not use bells in the Parliamentary Estate. Instead, we have a two-tone siren, which will be followed by taped messages telling us what to do. It is unlikely it will happen, of course, but, should it happen and evacuation is necessary, please follow the instructions of the clerk, who will tell you where to go. If you happen to be outside in the corridor, you could look for the nearest security officer. Please do not waste time by gathering up your papers. We are always told that you should leave the room immediately. It will be on the assumption we will be asked to come back here and you collect your things at a later stage.

5. As these proceedings are being broadcast, you may wish to be aware that a full

transcript is being taken and you are encouraged to look at the transcript when it is eventually made available just to check that what you said has been correctly recorded. If there are any mistakes, please let us know and the transcript will be corrected, so that when it is published it will be the correct version of what happened today.

6. Ms Weaver, it is your petition we are going to listen to. I am going to ask Ms Lean to present her reasons for saying you do not have a right to be heard. Please listen very carefully to what she has to say and when she is finished we will invite you to make a reply.

**Ms Cora Weaver**

7. MS LEAN: Thank you, my Lord. This is petitioner number 1 on the table that you have. In Ms Weaver's petition she has raised that she is a levy-payer with a right to vote in an election for a Malvern Hills conservator and that she enjoys and has long enjoyed the Malvern Hills. The promoter has challenged her right to be heard on the basis that there are no property or personal interests disclosed by the petition that are specially and directly affected by the provisions of the Bill.

8. My Lord, in light of the committee's interim decisions last week, I respectfully submit that the principles that were outlined in what is now paragraph 4 of the decision about the use and enjoyment of the hills, even of long standing, not being such as to give rise to a right to be heard as of right applies, and also the general principles disclosed in paragraph 10 of the committee's interim decision regarding levy payers. My Lord, with that, that summarises the promoter's position on this petitioner's right to be heard.

9. THE CHAIR: Yes. Ms Weaver, do you understand the point that we are considering?

10. MS WEAVER: I think so.

11. THE CHAIR: It may seem very technical, but, under the rules, it is only if a petitioner can say that he or she is specially and directly affected by the provisions of the Bill that they can be heard. Now, in some cases, but not this one, these Bills are asking for a right to acquire property compulsorily. Supposing the Bill was asking for a right to acquire your property, it would be very obvious you would be specially and

directly affected, because that would be what the Bill would be providing.

12. The problem in this case for you is that it does not actually affect your property interests in any way. Obviously you have interests and you have written a great deal about the Malvern Hills, I understand, and a great deal of knowledge. The question is, “Is there anything in the Bill that impacts on your own personal position, which gives you a right to be heard about it?” As a levy payer, we have already decided that you do not have a right to be heard simply because you are a levy payer. We have also decided that you do not have a right to be heard as a user, a person who enjoys the hills, because so many other people do. Is there anything special about your position that you would ask us to consider?

13. MS WEAVER: I would like, my Lord, if I could, to read what I have brought and somebody else make the decision.

14. THE CHAIR: What have you got to read? It is not your petition you are going to read to us, is it?

15. MS WEAVER: No, it is not the petition, my Lord. It is something else.

16. THE CHAIR: Okay, please do. Please go ahead.

17. MS WEAVER: Can I start?

18. THE CHAIR: Yes, of course.

### **Evidence of Ms Weaver**

19. MS WEAVER: Thank you very much. I would like to draw attention to the map that you are looking at, which is the 1884 map that went with that first Act. I would like to draw your attention—the right is north, the left is south, up is west, down is east—to the blue blob on the right that is slightly separate from the main blue blob. It is on the east side.

20. THE CHAIR: Is it the long finger that is coming down at the right-hand side?

21. MS WEAVER: Yes, it is like a rectangle at a jaunty angle.

22. THE CHAIR: Yes.

23. MS WEAVER: That rectangle is Malvern Link Common. It is 125 acres and it used to be 250 acres. The part that we can see here was in the manor of Great Malvern originally. The other half was in the adjacent manor of Leigh and it had all once been part of Malvern Forest. In 1776, the proprietors of Leigh decided to enclose their commons and wastes. They submitted a Bill to Parliament and the Bill became an Act in 1776, but at no time did the proprietors use the word “forest” in their Bill. If they had done so, the alarm bells would have sounded in Parliament and they would not have been allowed to enclose that bit of common.

24. The commoners who lived there knew that that bit of common was not allowed to be enclosed, but they could not prove it. The knowledge had come down through word of mouth through generations, but they were right because an Act of 1664 declared that all former forest land should be left open and unenclosed forever, so Link Common should never have been enclosed.

25. What I have learned from this event is two things. The first is that the omission of salient words in a Bill can be misleading and have far-reaching consequences. The second thing I learned is that forgetting or deliberately ignoring previous relevant Acts, or sections of them, can also have far-reaching consequences.

26. On the map, if you draw a line from east to west down the middle, there is a paler blue bit over on the north side, and that is Great Malvern. The little red dot for me is very important because I live there, and I have lived there for 48 years. The other bit, the darker blue, to the right-hand side—so it is north-west—is Mathon, and the other bit of blue on the south is Colwall. Colwall is a big sprawly parish in the county of Herefordshire. Mathon was originally in Worcestershire; it is now in Herefordshire, by and large.

27. It was approximately 1,100 acres that the Malvern Hills Conservators took over in 1884 and the levy was paid by these three parishes. The Act included a safeguard—Section 31—against loading extra expenses on to the existing ratepayers. Section 31 made provision for adding other commons and wastelands to lands under the conservators’ jurisdiction. It says that, if more land is added, the conservators have the right “to provide for making the poor rate of any other parishes lands wherein shall become subject to this Act liable to contribute to the expenses of carrying out this Act”.

If any other parishes gave the conservators land, they should become levy payers. It is there: 1884 Act, Section 31.

28. Everything chuntered along all right until the 1960s and the conservators took over approximately 650 acres on Swinyard Hill and Castlemorton Common. I will show you on the next map exactly where they are. The safeguard was overlooked or ignored and the Castlemorton parishioners did not pay the levy. In 1964, Powick Parish Council admitted that it did not have the means to maintain the Old Hills. It is a common. It is a beautiful common of about 137 acres. Pamela Hurle, in her book, *The Malvern Hills: 100 Years of Conservation*, which she wrote in 1984, wrote on page 107 that an appeal was made to the conservators to take over the administration of the area, a task that they could contemplate only if their rating powers were extended to include the parishes in which the common was situated.

29. The result was that the Malvern Hills Conservators reached a friendly compromise with the lord of the manor, Lord Beauchamp, and both the Old Hills and Newland Common—19.5 acres—came under the control of the conservators. Despite Section 31 of the 1884 Act stipulating that a parish with Malvern Hills Conservators land within it should pay the tax or levy, Castlemorton, Powick and Newland have never paid the levy. I do not know if that is lawful or not, because I do not know anything about the law. Anyway, they can still nominate a member.

30. The 1909 Act added Malvern Wells and Malvern Link to the list of parishes paying the levy, suggesting that the levy-paying areas had been extended. This is not quite correct, because both of those had already been paying the levy to a certain extent. Malvern Wells is on the map where that big blob is, about in the middle, just slightly to the left. That is Malvern Wells. It was carved out of the southern bits of Great Malvern and parts of the parishes of Welland and Hanley Castle, and Malvern Link was carved out of the parish of Great Malvern, so they were not two new parishes with lands in them. They were existing parishes already paying the levy.

31. I would like us to go to map 2, please. This is the Malvern Hills. The blue has been replaced by green and there is a lot more of it. That bit in the bottom right-hand side is the 137 acres of Powick Old Hills, so it is quite a way from Malvern itself. I do not know—maybe a couple of miles. The next one that came up was Newland, above

Powick, 19.5 acres. There is land there, Malvern Hills Conservators land. They do not pay the levy. The next one that came up is slightly to the south, where the hills go up. That is—I do not know—226 acres. That is Little Malvern. They do not pay the levy. The next one, please. Oh yes, I missed out Castlemorton Common. There we are: 650 acres. They do not pay the levy either. The one you have just thrown up there is Eastnor. They do not pay the levy, I do not think. The next one, please. All of these places, they have land within the Malvern Hills Conservators' jurisdiction, and they do not pay the levy at all, so that was all right, more or less, because the sheep grazed the land, so they did not need very much maintenance.

32. Up until the 1960s, there were quite a lot of sheep grazing on the hills and the commons but by the 1980s there were not very many sheep at all. I know there were sheep in the 1970s, because, when I moved there, they used to come up my drive and eat the roses, so quite a lot of sheep, keeping everything down to a minimum. Malvern means bare hills but, by the 1980s, for the first time, there was not only grass growing but saplings, and they grew into trees. The cost of maintaining the hills has rocketed since the 1980s.

33. Today, the conservators employ 21 people and pay board members' expenses. They need several modern tractors, mowers, brush cutters, chainsaws and other machinery, vehicles and field staff, including specialist tree surgeons. There is an office. There are staff and equipment. There is wear and tear of 1.5 million walkers and cyclists on the hills. Now the Malvern Hills do not own only 1,100 acres; they own over 3,000 acres.

34. Table 1 shows the parishes in which the Malvern Hills Conservators have land and the levy-paying areas. I think it says that six parishes pay the levy and eight do not.

35. THE CHAIR: The parishes that pay, are they in bold at the bottom of the table?

36. MS WEAVER: Yes.

37. THE CHAIR: Is that right? They are in heavy type at the bottom of the table.

38. MS WEAVER: Yes.

39. THE CHAIR: Do you understand what I am saying? Looking at the presentation,

the bottom six are in heavy type and I take it they are the parishes you are talking about.

40. MS WEAVER: Yes. I beg your pardon, yes. That is absolutely correct.

41. THE CHAIR: Where are you in this table?

42. MS WEAVER: I am Guarlford. I am in the parish of Guarlford.

43. THE CHAIR: You are the third from the foot of the table.

44. MS WEAVER: I am, yes. Yes, my Lord.

45. THE CHAIR: Right. Thank you.

46. MS WEAVER: I am talking about the levy-paying areas now and the conservators did address the question of extending the levy-paying area when drawing up the present Bill. Sharpe Pritchard's comments on my petition confirmed that "Malvern Hills Trust has previously given consideration to a workable and equitable alternative, but was unable to identify one simple rule that would be fair in all cases". It continued, "Any changes to the levy-paying area were also considered likely to be acutely controversial and to give rise to irreconcilable views as to what any changes should be. It was for similar reasons that no proposed changes to the levy arrangements were taken forward in the Bill that became the Malvern Hills Act 1995".

47. If you would kindly turn to page 7, I found this quite by chance in the *Malvern Gazette* just this week.

48. THE CHAIR: Page 7 of what—of your petition or the promoter's response?

49. MS WEAVER: I am sorry. I have them all here in a bundle. My Lord, I have 10 copies of something that—

50. THE CHAIR: Ms Lean, can you help us? Is it your response we are to be looking at?

51. MS LEAN: My Lord, I do not think so. I think that this may be a document or a bundle that Ms Weaver has prepared. I am afraid that we have not seen it either so I am afraid that I do not know what the document is.

52. THE CHAIR: Oh, I see. Yes. Do you have a copy of this now? It is being handed round. Yes, thank you very much. We now have page 7 before us.

53. MS WEAVER: Thank you. I found this in the *Malvern Gazette*, 4 November 1994, seven months after the 1995 Act was given Royal Assent, which seems quite odd—sorry, I meant seven months before it was given Royal Assent. Paragraph 1: “The Malvern Hills Conservators are asking parish councils whether all areas should have a representative on the board and if they should pay towards the precept. Some areas are unrepresented and do not make a contribution to the conservators’ precept. The parishes affected include Castlemorton, Powick, Old Hills and Newland”. Clearly, before that Act was signed, the Malvern Hills Conservators could see there was a problem with paying the levy.

54. Paragraph 4 begins, “Conservators clerk Mr David Judge said, ‘We are trying to find out what the general feeling is. We have acquired land since the Malvern Hills Act of 1930 in various parishes which we maintain, but where the council taxpayers have no right to elect a conservator and are not liable to contribute to our levy, so they have neither taxation nor representation’”. I wondered—I have made a little note here for myself—had the conservators, then and now, forgotten about Section 31 of the 1884 Act, or have they consistently deliberately overlooked it?

55. THE CHAIR: Ms Weaver, the question for us is not so much this past history, which is extremely interesting, of course, but whether there is anything in the Bill that alters the position so far as you are concerned. I do not think that you mentioned the Bill anywhere in this presentation.

56. MS WEAVER: Yes, there are things in the Bill.

57. THE CHAIR: It is your own position that we are looking at here and how it affects you.

58. MS WEAVER: Right. My position then—if I could please go on to page 2. I am talking about the levy and it does make a difference. Half way down it says that, if all eligible parishes paid the levy, it would bring in approximately an additional £130,000 annually. The bit that really will probably affect me is that the 1930 Act, Section 33A, states that the levy will be apportioned between the parishes of Great Malvern, Malvern

Link, Malvern Wells, West Malvern, Guarlford, Colwall and Mathon.

59. I have read Section 33, paragraph 4 of the 2024 Bill, which omits Malvern Link from the list of levy-paying areas, yet Malvern Link has neither been abolished nor renamed. Section 23, paragraph 3 of the 2024 Bill also omits Malvern Link from the trust's electoral areas. My Lord, I will be affected by the loss of a levy-paying area. Our levy has risen an average of 6.6% per annum over the past three years and it is widely thought that the levy will rise to 9% this year because of the rising costs of materials, maintenance and wages, and the massive costs related to the Bill.

60. THE CHAIR: You say that you will be affected, but that is the same for all other levy payers, is it not?

61. MS WEAVER: Yes, My Lord.

62. THE CHAIR: It stands to reason that, if somebody is omitted from the list of levy payers, it affects all the others who still remain as levy payers, of whom you are one.

63. MS WEAVER: At no time during the discussions leading up to the preparation of the Bill has it been mentioned that Malvern Link would no longer be paying the levy. I am sorry, my Lord, I think that I am wafting off the point, but it is an omission. It is an omission, I think, from the Bill, which could have far-reaching effects.

64. THE CHAIR: You have drawn our attention to Clause 33(4), which lists the parishes, and you say that Malvern Link is not there and that that affects you. That is the point you are really making.

65. MS WEAVER: The point is, my Lord, that, if one of the levy-paying areas is removed from the list, the amount of money that the Malvern Hills Conservators will ask for will be a set amount of money, but there will be even fewer people paying the money that they ask for, so our levy will rise. We will need to cover that, my Lord, somehow.

66. THE CHAIR: Yes. I think we can understand that point very clearly.

67. MS WEAVER: Perhaps I should stop there. I did have other things to say, but I am not sure to what extent—I think that, perhaps, the most important item that will

affect me is the levy-paying area.

68. THE CHAIR: As you say, it is the omission from the list in subsection 4 that affects the amount of the levy that you have to pay.

69. MS WEAVER: Yes, my Lord, but that is cheating, because it is an omission from the Bill. I was specifically told it was what was in the Bill that I should be addressing, not what was not in the Bill, and I have just done what I should not be doing. Sorry.

70. THE CHAIR: What is in the Bill is a list of parishes that you say is incomplete, because it really ought, in fairness to the levy payers, to include Malvern Link as well.

71. MS WEAVER: That is right.

72. THE CHAIR: Yes, I understand. Thank you very much.

73. MS WEAVER: I am going to stop because I think I am just going off the subject really, but that is my council tax and I think in 10 years' time it is going to more than double. Anyway, I am going to stop, but thank you very much for listening.

74. THE CHAIR: Thank you. Ms Lean, you have a right to reply to what we have just been hearing. What do you have to say about it?

#### **Response by Ms Lean**

75. MS LEAN: I am grateful, my Lord. As I indicated in opening, the Bill does not propose any changes to the levy-paying areas or who is or who is not to pay the levy. With regards to the fact that Malvern Link is not mentioned in the Bill, my Lord, the area of Malvern Link, or the area that was formerly the parish of Malvern Link, is comprised within the parish now known as Malvern Town, which is referred to in Clause 33(4)(ii). That is at page 59 of the R bundle.

76. I was simply trying to trace back where that change might have come. Forgive me, this may not be comprehensive, but Malvern Link was referred to in Section 3 of the Malvern Hills Act 1909. Section 3 referred to conservators being appointed, amongst others, one by the parochial electors of the parish of Malvern Link. Section 3 of the 1909 Act was repealed by Section 6 of the 1924 Act. My Lord, the list of appointing areas that is then found in Section 7 of the 1924 Act does not, on my reading, expressly

refer to the parish of Malvern Link. I know that there were updates between the different Acts to reflect changes in parish or electoral areas, so I am happy to completely track down where that re-organisation may have been, but the omission of a reference to the parish of Malvern Link specifically is not new, and it is not new with this Bill. It appears to have disappeared back with the 1924 Act.

77. I can see why that would be a concern, and it is always concerning from this side of the table to suddenly hear that apparently you may have omitted part of the levy-paying area, but I am told that the geographical area is included within the Malvern Town parish that is in Clause 33. It seems that the reference to Malvern Link disappearing has been a historic product of historic reorganisations.

78. THE CHAIR: Thank you very much.

79. MS LEAN: My Lord, I am conscious that there were other points made about Section 31 of the 1884 Act and the power to bring in additional areas. I fear that, if I respond to that, I am probably getting into substantive matters that the committee will be considering in later course, but if I can just highlight that, as Ms Weaver referred to at the beginning, it is obviously important to make sure that statutory provisions are read as whole and correctly. Section 31 does warrant reading in full. I say, without criticism, that you were given perhaps a paraphrased version of it.

80. THE CHAIR: Of which Act are we talking about?

81. MS LEAN: Section 31 of the 1884 Act, which is the power to extend levy-paying areas on acquisition of lands in different parishes. It is a power that I know that we will have to come back to because it has been raised about how that carries across into the Bill, but, my Lord, I say, with respect, that a paraphrased version was put forward and perhaps does not reflect the nuances on that power or, indeed, how it may have been carried forward or utilised in one form or another when additional land has been added over time.

82. In reference to the acquisition of the Castlemorton Common and Newland Common, and Old Hills being brought within the trust's jurisdiction in about the 1960s, what you do have in the reference bundle, my Lord, is the agreement between Worcestershire County Council and the Malvern Hills Conservators of July 1968, which

starts at R313. In headline terms, that is the agreement that reflects the fact that those three areas of land were coming under the trust's jurisdiction and made provision for Worcestershire County Council to make a contribution at that time.

83. I just thought that, as there were points that had been identified, it would be helpful for me just to highlight at this juncture, in case the impression was left that all this land had come in and there had not been any arrangements made reflecting that at the time on contributions from elsewhere to do with additional costs. My Lord, the promoter's position remains that, whilst this petitioner clearly has a very considerable interest in and, indeed, an in-depth knowledge of the hills and their history, nothing in the petition or, in my respectful submission, today has disclosed a specially or directly affected interest to give rise to standing.

84. THE CHAIR: Any questions?

85. LORD INGLEWOOD: Sorry, I do not know the area very well. Where, Ms Weaver, do you actually live now?

86. MS WEAVER: It is on the commons. It is a mile and a half from the hill slopes, east, on the flat bit.

87. THE CHAIR: It was the red dot, I think.

88. LORD INGLEWOOD: I am slightly colourblind, but you were not to know that. Is your property contiguous to the common?

89. MS WEAVER: Oh yes, my Lord.

90. LORD INGLEWOOD: Just so it is absolutely clear, you look out of your front window and, as it were, there is the common. Yes. Right, thank you. That is the address, which, to an outsider—I assumed that was somewhere in the middle of the town, but it is not.

91. MS WEAVER: No.

92. LORD INGLEWOOD: Right, thank you. That is all.

93. MS WEAVER: It is the old part of the deserted Saxon manor of Baldenhall. My

Lord, can I ask you a question, please? Is that allowed?

94. THE CHAIR: I am not sure you can ask us questions. You can make a point to us.

95. MS WEAVER: One other thing I was going to mention was, in the Act, the change from “natural aspect” to “natural landscape”. I think that that will affect me in conjunction with the limited general powers.

96. THE CHAIR: I think that we have heard enough from you now to understand the way in which you say you are specially and directly affected. What we will do is reserve our decision and what we are planning to do is make an announcement on Thursday, when we will say what our decision is of the various people we are hearing today and tomorrow. We will let you know on Thursday what the position is. Again, I emphasise thank you very much for your petition and what you have written there. That will remain on the table, whatever our decision is about whether you have a right to address us on what you say there. Thank you very much.

97. MS WEAVER: Thank you very much.

**Mr Andrew Myatt**

98. THE CHAIR: Mr Myatt, you understand the nature of these proceedings and what we will do is hear first from the counsel for the promoter. Please listen very carefully to what she has to say and then we will ask for you to present your case.

99. MR MYATT: Thank you very much.

100. THE CHAIR: Thank you very much. Yes, Ms Lean.

101. MS LEAN: My Lord, this is petitioner number 2 on your table. In the petitioner’s petition it was indicated that the right to be heard was based on status as a levy payer, and a right to vote in the election for a Malvern Hills Conservator, and enjoyment and use of the Malvern Hills. Subsequently we were made aware of the Select Committee’s view that the committee was prepared to consider allowing the petitioner to raise or potentially seek to establish standing by virtue of his status as a trustee, which postdated the submission of the petition. The promoter has sent a further challenge letter to the petitioner, challenging standing on that basis, which will not appear, I think, in the table

because the table obviously predates the—

102. THE CHAIR: Do you have a copy for us to see?

103. MS LEAN: We do not have a hard copy with us. We can provide it in soft copy to your clerk, my Lord.

104. THE CHAIR: Yes, I think if you can do that and you can then forward it to us.

105. MS LEAN: My Lord, it is in a similar form to the grounds on which other trustees have had their standing challenged, so we have tended to use a similar formulation for all trustees. My Lord, with regards to the levy and enjoyment of the Malvern Hills, my submission is that that falls directly within the principles outlined in last week's interim decision now recorded in paragraphs 4 and 10.

106. With regards to the petitioner's status as a trustee as of September 2025, my Lord, I do have a few additional submissions, if I may, because I am conscious I have not addressed the trustees to date. The starting point for my submissions is paragraph 8 of the promoter's note, which is at page 6 of bundle 3, the locus materials. This is paragraph 8(iii), where the promoter sets out its position on petitioners who rely on status or former status as conservators or trustees.

107. If I can go firstly to point (ii), which is on page 7, the starting point is that challenging the standing or a submission that such individuals do not have standing is premised on the long-established practice, or indeed principle, that individual members of bodies that are promoting Bills do not have a right to be heard against those Bills. I cite in the footnote for that *Erskine May*, the 21st edition, which is where the more detailed consideration of locus standi cases can be found. That is at pages 28 through to 29 of the locus standi bundle. This appears under the subheading of "Locus standi of shareholders, preference shareholders and dissentients at a Wharncliffe meeting". I will come on to Wharncliffe momentarily.

108. This is the point that the doctrine that shareholders or members of a corporate body are legally bound by the acts of the majority used frequently to be invoked as a ground of objection to the locus standi of individual shareholders who petitioned against a Bill promoted by a corporate body in which they had shares. Then there were

amendments to that to allow for certain exceptions. For an example in the authorities of that being applied to a member of the board corporate, you have in the bundle before you the Newport (Monmouthshire) Corporation Bill, which is at page 73 of the bundle of authorities. Apologies, this is one of the slightly faded ones.

109. It is the Newport (Monmouthshire) Corporation Bill and the petition of Thomas Colborne. Forgive me, this is one of the authorities that is a little faded. If it is helpful to have a better copy, I can see what I can do in the library to get a clearer copy. This was a petition that was considered in 1889, which was a Bill that included an alteration in the constitution of harbour commissioners, and it was the petition of a single harbour commissioner.

110. Amongst the things that were happening with that Bill—it is just below the head note, from 73 over to 74—the Bill proposed *inter alia* certain alterations in the constitution of the Newport Harbour Commission, whereby the number of members representing certain trades of that body would be reduced. The petitioner was himself one of the members of the commission representing the trades in question and he claimed to be heard against the proposed reductions in their numbers. The Bill had been approved by the commissioners as a body and the traders who were affected by it had also deposited a petition. It was held that, under the circumstances, the petitioner could not, as a single commissioner, be heard against a Bill approved of by the commissioners as a body.

111. My Lord, that is an illustration of that general principle that a member of a body corporate—commissioner, appointed member, shareholder, partner, such as it may be—does not have standing as of right to petition in that capacity against a Bill promoted by the body corporate on lawful resolution of that body corporate. I am sorry for the very arcane language there, but that is essentially the heart of the principle.

112. My Lord, for further information about it, if it is of assistance, you can see, at the top of the second column on page 289, the petitioner claimed standing in two capacities. One was as a landowner opposing the extension of the borough and that was not disputed. He was entitled to petition as a landowner affected by it. The other was as a harbour commissioner. It was the full-on point: “I have status as a member of this body, essentially as a dissenting member of this body, to petition”.

113. Further down the page, about a third of the way up in that column, there were some questions about, although the Bill was not being promoted by the harbour commissioners, it had been approved by them at their meetings, yes, as a body, and what it was about. Sorry, my Lord, if I misspoke there slightly. The Bill was one that was not specifically promoted by the harbour commissioners, but the harbour commissioners had resolved to accept the changes that were being put forward in the Bill. In that case, he was bound by the resolution of the body of which he was part. I have used that as the illustration of the broader principle that I referred to a moment ago.

114. My Lord, that is the starting point, and that is the historic starting point and the principled starting point. I use that as the basis for my submission, my Lord, that it is not for an individual conservator who may disagree, or have previously disagreed at the time the resolution was passed, with the decision to promote the Bill, to come to a committee of this House or the other place in their capacity as a conservator and say, “I wish, in that capacity, to petition against the decision of the body of which I am part to promote the Bill that is before you”.

115. My Lord, I said I would come on to Wharnccliffe, but, before I do that, the second point to pick up is the analogy that we have drawn at paragraph 8(iii)(i) of our note on page 6. Perhaps if I can just give you the reference for that, to the analogy with local councillors of a district council, again reinforcing that principle that membership of the body corporate—

116. THE CHAIR: Can I just be sure I am looking at the right thing? Page 6?

117. MS LEAN: It is page 6 of the promoter’s note, my Lord, paragraph 8(iii)(i). Such petitioners are in an analogous position to councillors for local government corporation. Again, my Lord, I just rely on that for the point raised about not having a separate and distinct or special identity by virtue of being a councillor or a member of the body. Any special preference accords to the body, not to the individual person on the board or council.

118. My Lord, I have mentioned the Wharnccliffe exceptions. There are limited, in my submission, exceptions to the general doctrine of shareholders or members of a body not being able to petition against a Bill promoted by that body. Those have developed over time, but do go back to the 1800s. I have checked the dates in *Erskine May*. These are

now found in Standing Order 115 for the private business of this House. *Erskine May* gives the references to the Commons, but it is 115 in the Standing Orders of this House, which you have in, again, the bundle of locus material at page 12.

119. The first exception is—well, it starts as an exception, but it starts by stating the general principle—that, where a Bill is promoted by an incorporated company, society, association or partnership, the Select Committee shall not consider petitions by its members unless their interests, as affected thereby, are distinct from the general interests of the company, society, association or partnership. My Lord, looking back in the commentary in the *Erskine May*—and you have the references from the 21st and the 20th edition in the bundle—landowners were a classic example of that. If they were affected qua landowner, then that clearly did give them a different or distinct interest from the body as such, in the same way as the harbour commissioner in the Newport case I have just taken you to.

120. The second carve-out is now found in Standing Order 115(2), which is that any proprietor or member of a company, society, association or partnership who has dissented at any meeting called in pursuance of Standing Orders 62 to 67, or at any meeting called in pursuance of a similar Standing Order of the House of Commons, shall be permitted to have their petition heard. My Lord, that is the reference to the Wharncliffe meetings, which was the subheading of the passage in *Erskine May* that I took you to.

121. My Lord, there are specific carve-outs that have been provided for from the general rule, but neither of those applies in this case. This petitioner does not claim to be specially and directly affected as a landowner, but, separately, there has not in this case been a Wharncliffe meeting because those provisions do not apply to the Malvern Hills Conservators as a body. They are not one of the types of body that fall within those Standing Orders. My Lord, if it is helpful, I am happy to go to those Standing Orders, but there are particular provisions that apply there in terms of requirements for certain meetings, and for certain things that have to be deposited with the Bill, and for procedures that have to be gone through in terms of the examiners. That is not the case here. From our researches into the 1995 Act, there was no suggestion there that there had to be a Wharncliffe meeting before the 1995 Act Bill could be promoted.

122. THE CHAIR: Can I just ask you this? Can we treat Standing Order 115 as the up-to-date code, really? We do not need to look back at the Newport case particularly, because that is really building into the Standing Order the general principle that we saw there, so this is really the up-to-date position.

123. MS LEAN: Indeed, my Lord. The reason I have gone to both is that, we say, strictly speaking, Standing Order 115 does not, in terms, apply. My submission would be that 115(2) is a specific and discrete carve-out, so the principle of there being exceptions for dissenting shareholders is not a general carry-across. It is a very specific one to that procedure. That is why I come back, my Lord, to the general rule, which we say is what applies here, that, as a member of the body of the Malvern Hills Conservators, an individual conservator does not have standing as of right to petition against the Bill.

124. My Lord, the final point I should make is—it may be there are further points I need to make in response, but, just to highlight, from the promoter’s perspective there is no difference between an elected or an appointed conservator with regards to the duties and obligations as a member of the board of conservators or with regards that general principle I have outlined, as to what status that may or may not confer on an individual conservator vis-à-vis this Bill. Secondly, I will note that, just as a factual point, that the area from which this petitioner was elected in September 2025, so after the petitioning period, falls within the area of Malvern Town Council and you do have a petition from Malvern Town Council. My Lord, if I may, I think that that is all I can outline in principle at this stage, but there may be some points I need to come to in response, depending on how the claim for standing is advanced.

125. THE CHAIR: Yes. Mr Myatt, it is over to you now. You have presented us with a bundle to look at. Can you take us through that?

### **Evidence of Mr Myatt**

126. MR MYATT: First, can I thank you for recognising my changed status as a trustee? I appreciate that. I am joined by Joseph, my son, to my right here. Just to confirm, you do have the small bundle in front of you. That contains some comments, my prepared comments. I am going to follow those. In the bundle, there are a number of exhibits. I do not intend to go to those directly, but I am more than happy to answer

questions on them. They provide background to some of the comments I am making. There are footnotes in there, so that you can jump around and have a look at that. I am going to read my prepared comments now.

127. I grew up in Malvern and have lived in Malvern most of my life. I am a levy payer and use the land managed by the trust as part of my daily life. I was an elected member of the board of conservators from 2003 to 2011. As has been stated, I have again served as a trustee since September 2025. In November 2025, I stood for the office of chair of the trust and received 10 votes against 14 for the present chair. That gives a sense of the balance of the board. I submit that my standing rests on an individual and cumulative effect of the Bill on me in three respects.

128. One, trustee. I submitted my petition in January 2025. In September 2025, I stood for election as a trustee for Priory ward in the centre of Malvern. During the election campaign I was open about my views on the Bill and received 75% of the vote. Within days of my election, my petition to Parliament was treated by the trust as giving rise to a conflict of interest and conflict of loyalty. As a result, I have been excluded from participation in Bill-related discussions and decision-making, and frustrated in accessing information relevant to earlier and subsequent decisions of the trust. I have also been informed that, by virtue of my position as a trustee, I am not permitted to comment publicly on the Bill or on the conduct of the trust, even in a personal capacity.

129. The promoter seeks to characterise my position as analogous to that of a local authority councillor, asserting that I may only act through properly passed board resolutions. However, I do not seek to be heard on behalf of the trust. I seek to be heard in my own right, as an individual officeholder whose statutory position, tenure and accountability are set out in the law and directly altered by the Bill.

130. The Bill fundamentally restructures the governance framework of the trust. Clauses 8 to 12 alter the composition of the board, the basis of appointment, the rules governing elections and the disciplinary and removal mechanisms. Clause 10 causes terms of office to cease upon the new constitution. Clause 23 combines the current 11 trustee electoral areas, including Priory ward, into a single electoral area, with elections following trust-defined rules, not local government ones. Clause 12 introduces a power of removal of trustees, including elected ones, such as myself, by special resolution. No

equivalent removal power exists under the current Act. Therefore, under this Bill, an elected trustee in precisely my current position would be exposed to removal by special resolution within months of election. These effects are personal to me as an elected trustee. I am therefore directly and specially affected as a trustee by the provisions of the Bill.

131. Two, levy payer. It was mentioned last week by Ms Lean that during the passage of the 1995 Malvern Hills Bill the conservators did not seek to challenge the standing of seven of the eight petitions lodged against that Bill. This included a petition submitted by a Mr Bates and approximately 80 others, some of whom resided as far away as Wolverhampton and Staffordshire, and reflected a broad range of persons affected. The parties identified their rights as commonable rights, interests and property. The 1995 Act did not seek to change the electoral arrangements in respect of levy payers in the way that the present Bill does. It is therefore unsurprising that status of levy payer is not specifically identified in that petition. What I believe the Bates petition does demonstrate is that the Malvern Hills Conservators and now trust accepted persons beyond just commoners as being directly affected and having the rights to be heard.

132. In my case, the promoter relies on the principle identified in *Erskine May* that those who pay a charge to a promoting authority will generally lack standing where they are democratically represented. That principle only applies where meaningful representation exists. Since 1984 the Malvern Hills Trust has been a registered charity whose trustees are required to act solely in the interests of the charity itself and not as representatives of levy payers. That position is repeatedly and explicitly stated by the trust in its governance handbook and in the promotion of this Bill. Democratic representation assumes recourse to the ballot box. The Bill removes ward-based elected trustees and parliamentary oversight, and alters the constitution so that trustees are no longer accountable, in a statutory sense, to me as a levy payer. This places me in a position distinct from general ratepayers.

133. At the same time, the compulsory levy remains. In 2025, the levy accounted for approximately 46% of the trust's income. I, as a levy payer, also bear the external impacts associated with the trust's commercial activities, including approximately 66,000 vehicle movements per year, supporting parking income that amounts to around 35% of total revenue. The Bill relaxes external statutory controls and enables

general-purpose borrowing secured via Trust land and revenues. The risk to me as a levy payer is therefore increased at the same time as statutory governance safeguards are removed. I am directly affected by the combined effect of increased compulsory financial exposure through the levy and borrowing, together with the absence of statutory mechanisms for trust accountability.

134. Three, user of Trust land. Trust land is not something I visit as a tourist. It is something I use daily as part of my ordinary life. I follow habitual routes across fields, commons and over hills for routine journeys and personal well-being. The Bill places existing rights within an expanded regulatory and enforcement framework. Clauses 45 to 49 extend powers relating to fencing, enclosure and restriction of access; Clauses 65 to 70 create new offences, fixed penalties, seizure powers and exclusion powers. These provisions alter the legal character of access. Routes that I routinely use may be fenced, diverted or restricted and areas currently open by default may be closed for extended periods.

135. On my habitual route, which I provided, the Bill will place areas such as Woodford's Meadow, Happy Valley and the upper slopes of North Hill within the scope of extended closure on protection grounds. The Bill provides closure, consultation and review mechanisms. However, exposure to restriction is real and foreseeable where trustees have no statutory accountability and have a statutory emphasis on protection. That would impact my daily life in a way not shared by occasional users and visitors to Malvern.

136. It is through these effects, as a trustee, a levy payer and a habitual user of Trust land taken both individually and cumulatively, that I seek standing to be heard and I request the committee's discretion under Standing Order 118. Thank you very much.

137. THE CHAIR: Thank you very much indeed. Can you just show us the document that gives your habitual routes, please? It is somewhere in the bundle.

138. MR MYATT: It is the last page in the document, my Lord. The map is centred according to my route, so the top of the map is to the west and the right of the map is to the north.

139. THE CHAIR: The area that you walk on is open to everybody else, of course. It is

not a private route.

140. MR MYATT: No, that is right. As I have indicated in the map, the red lines are Trust land and the other ones are just general pavements.

141. THE CHAIR: Yes, I follow. B and C—what do they refer to?

142. MR MYATT: A is Woodford's Meadow. I think it was referred to last week. It is a wildflower meadow owned by the trust. B is Happy Valley. It is a very steep but enjoyable walk. I recommend it. C is the top of North Hill.

143. THE CHAIR: Right, good. Any questions?

144. LORD EVANS OF GUISBOROUGH: What do you mean by 'regular'?

145. MR MYATT: Since I moved to my current home in 2010, and before that in different homes, I go up the hills at least twice a week following that general route. Apart from when I am away, such as today, it is my regular well-being route. But also the committee might seek to note that, from the area of my home, the way I would normally go into Malvern, because I try to avoid using cars, would go across Woodford's Meadow up into the town, so that is a regular route I follow as well.

146. LORD INGLEWOOD: Could I please ask two connected questions, which may be really directed at the promoter? Ms Lean told us about the Wharncliffe rule.

147. MR MYATT: Yes. I did not understand that, I must admit.

148. LORD INGLEWOOD: What I am trying to distil from what you have said relates possibly to that. It seems to me that you were elected to this body after the relevant decisions were taken about promoting the Bill.

149. MR MYATT: That is correct.

150. LORD INGLEWOOD: So clearly you could not have dissented at the time that took place. Are you arguing by analogy that, because you stood on the hustings and this was one of your platforms, that means that you have effectively achieved the equivalent of speaking out against the proposition at the time it was adopted?

151. MR MYATT: Certainly, as you can see from my election leaflet, which is

included, it was very much—

152. LORD INGLEWOOD: Is that what you are telling us?

153. MR MYATT: I think so, yes.

154. LORD INGLEWOOD: So that would draw you into a slightly different position than might otherwise be the case. Of course, she told us in her remarks that a nominated or an elected trustee were the same, but you would suggest that possibly in this context that might be different because of the way in which you have put forward your objection to what was going on.

155. MR MYATT: Absolutely.

156. LORD INGLEWOOD: In terms of personal interest affected, I understood you to be saying that an awful lot of the changes that you were objecting to were personal to you because you were now a trustee. Is that right? Is what in fact you are saying that the changes that would come into effect would be relevant not to you as an individual but you as a trustee for the time being of the trust, which would in turn affect the successor holder of the office you have?

157. MR MYATT: If I put it into my language, if I held my position now as a petitioner under the Bill that is being proposed, I feel certain that I would have been removed through special resolution by now.

158. LORD INGLEWOOD: It may be an analogy you would not necessarily come to, but it is rather like being a clergyman. You have the office for the time being and then you go and somebody else comes in. It is affecting the office, not you as an individual private person.

159. MR MYATT: It is a very complex analogy. I know what is going to affect me and I am addressing my standing, but I hear what you are saying.

160. LORD INGLEWOOD: Thank you.

161. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Chair, could I just clarify? In your opening sentence, you said, “I am a levy payer and use the land managed by the trust as part of my daily life” and then over the page, “It is something I

use daily as part of my ordinary life”. That is when you are out walking. There is no other purpose that you use the land for.

162. MR MYATT: I think it is very difficult to live in Malvern and not use the land. People who do not live in Malvern see the hills and think we go and visit the hills, but, as I have indicated, we walk on the commons and we walk on the fields to get from place A to place B. It is not a visiting trip. For example, I might walk down from the Nag’s Head, which is an excellent pub in Malvern—I commend it—home, and I will walk across the common. It just is part of daily life. That is, to an extent, why the Bill is causing so much concern, really, because it is not a tourist attraction; it is a daily living thing.

163. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you.

164. THE CHAIR: Yes, Ms Lean.

#### **Response by Ms Lean**

165. MS LEAN: My Lord, I am grateful. If I can first respond to standing claimed by dint of being an individual officeholder, my Lord, I do just refer back, in the first instance, to the Newport case. Again, there the petitioner was petitioning in his capacity as a commissioner or as an officer of the body and by reference to the impact it would have on that office. His office would be one that would disappear with the governance arrangements. That was not felt to give rise to the sort of special and direct effect that was necessary to bring him within locus standi rules or go against the general principle that such officeholders do not, by virtue of that office, enjoy—

166. THE CHAIR: Can we look at the case again?

167. MS LEAN: That was the Newport case, my Lord. Page 73 is the page I have in mind, my Lord.

168. THE CHAIR: I would like to just be quite sure where it is in these columns we should be looking at.

169. MS LEAN: My Lord, it is the headnote, which is quite helpful, at the bottom of page 73 and on to the top of page 74, left-hand column. At the top of 74, “The Bill [...]

proposed, inter alia, certain alterations in the constitution of the Newport Harbour Commission, whereby the number of the members representing certain trades on that body would be reduced. The petitioner was himself one of the members of the commission representing the trades in question, and he claimed to be heard against the proposed reduction in their numbers”.

170. My Lord, there is a little bit more clarity as to what was proposed at the bottom of page 74, about one-third of the way up from the bottom.

171. THE CHAIR: Which column?

172. MS LEAN: Right-hand column. Mr Chandos-Leigh: “Although the Bill is not promoted by the Harbour Commission, it has been approved by them at their meetings?” Colborne, who I think is the petitioner: “Yes, as a body. The alteration made in the constitution of the body is that at present 16 commissioners out of the 37 are elected by iron smelters and coal owners, but if the Bill passes only 10 persons will be elected to represent those trades, while the representation of the other bodies on the commission will be proportionately increased”.

173. Over the page there is reference to the resolution having been passed in the required way by the body of commissioners. There was an agreement, and “it is signed by the requisite number of commissioners in pursuance of a resolution passed at a meeting held on 12 December 1888. The petitioner is bound by that resolution and signature, and the parties aggrieved by the change in representation, namely the iron smelters and the coal owners, are going to be heard on the petition on the same point”.

174. The chairman’s ruling is in the next paragraph down. It is about four points down. “The locus standi of the petitioner on the question of the alteration of the constitution of the harbour commission must be disallowed, and it must be confined to the part of the Bill which deals with the extension of the borough so as to include his property”.

175. My Lord, my submission would be that the same principles essentially apply. Just as this petitioner has raised concerns about how he, as a current conservator, might be affected by some changes in the Bill or, to take Lord Inglewood’s point, the person who might replace him in that office at some point in the future would be affected by the constitutional changes, it seems that the commissioner in the Newport case may have

been one of the commissioners who disappeared from the board.

176. That is why I do come back to the principle that that was not found enough there to give rise to standing or to go against the general principle that individual members of such bodies are not entitled to be heard in that capacity against a Bill that is promoted by that body.

177. My Lord, I am sorry to come down to a practical point, but perhaps the logic for that may seem obvious. To some degree, once a resolution or a decision is passed, then—collective responsibility—a body is bound by the decision of its majority. The debates, discussions or disagreements happen in that initial decision around whether or not to promote the Bill. To enable individuals who dissented or differ from that decision to bring those points in their capacity as conservators, trustees or board members to a committee of your Lordships' House arguably then takes what was an internal discussion within the body corporate into reventilating that debate, where my Lords' and my Lady's committee is seized of a Bill that has been put forward by the body corporate on its lawful resolution.

178. Obviously, my Lords, I recognise that this petitioner came to the board after the decision had been taken. There would have been nothing to stop this petitioner petitioning in an individual capacity, as indeed he did, by reference to personal interests. What in our respectful submission he cannot do is rely on that subsequently acquired status as a conservator, because it was subsequently acquired, to be somehow then able to disapply or not be caught by that general principle.

179. On the point about representation, I am afraid I come back to the principles I outlined last week. If I may, I highlight again the passage in *Erskine May*, 25th edition, pages 18 and 19, that you have in your locus standi materials, which sit behind the promoter's note on its approach.

180. THE CHAIR: Are we looking at the 21st edition, page 20?

181. MS LEAN: This is the 25th edition, starting at page 18.

182. THE CHAIR: Right, yes.

183. MS LEAN: The current printed version. It is the passage at the bottom. "The right

to be heard has not been granted to a petitioner who claimed to be heard as a prospective parliamentary candidate or a local councillor for a constituency or ward within the area affected by a Bill or for local branches of political parties”. That is a general point about being that sort of representative, if I may, and the general position.

184. I would highlight that it also goes back to what was said in the HS2 report about the position of the local councillors within Camden in that case. The fact that this petitioner may have been elected by electors within the Priory ward does not, therefore, in and of itself, confer standing, as it were, as of right to petition against this Bill in a claimed representative capacity.

185. My Lord, on the representative capacity, I do come back again to the point that— if I need to take your Lordships to authority for that proposition, it is in the House of Lords Select Committee report on the HS2 Bill—generally speaking it is thought that bodies such as local councils or local authorities are the ones who are best placed or most appropriately placed to act in the interests of their inhabitants or matters that affect their inhabitants generally. The reference I have particularly in my note is pages 44 and 47 of the bundle of locus materials.

186. THE CHAIR: Whereabouts on page 44 should we be looking?

187. MS LEAN: At 44, it is in paragraph 7. It is the second sentence starting three lines down. “The general practice has been not to hear petitions presented by an ad hoc group”—I accept that is not the point here—“mainly because the public interest in full examination of environmental and ecological issues, including traffic management and control of pollution of all sorts, is better achieved by petitions presented by local authorities large and small and by established bodies with expertise in this area”.

188. On page 47 at paragraph 2—this is midway down the paragraph—picking up on a general point made in earlier rulings, the second point that was raised is “the special position of local authorities at different levels as representative petitioners, under Standing Order 118, in order to cover generic issues, including environmental issues of all sorts”. My Lord, that is the clearest example I have in the materials before you of that general practice or acceptance that, where you are dealing with matters that affect everybody generally within an area or affect the inhabitants of an area, the representative to be looked to under 118 would, by preference, be the local authority, or

such a group. As I have mentioned, Malvern Town Council, which covers the ward of Priory, from which this petitioner was elected to the trust, is one of the petitioners against the Bill before you.

189. The second point, my Lord, I would make in respect of the representative point is that there is nothing disclosed by this petitioner's petition that identifies any particular effect on the inhabitants of Priory ward as different from and distinct from any other levy payers or parishes within the trust's jurisdiction or who can vote.

190. Again, my Lord, if you are considering whether or not this petitioner may fall within Standing Order 118 or, if the petitioner may fall within 118, whether your Lordships' committee should exercise the discretion to hear him in that capacity, I do stress what is it in the petition that discloses something that shows a particular impact on the inhabitants of Priory ward as distinct from any of the other wards or any of the other parishes that pay the levy or are currently entitled to vote and therefore operate under the current governance arrangements? In my submission, there is nothing that has come out of the petition or today.

191. My Lord, if I may briefly turn to the other two matters, the first is this petitioner's status as a levy payer. Again, I just stress that there is nothing that is identified or relied on that identifies a particular impact on this individual as a levy payer that does not also apply equally to any other levy payer. I do not propose to go through the details of particular provisions or different clauses of the Bill because I am conscious we will come on to those in due course, but, to the extent there is concern about powers to borrow or powers to undertake certain activities and what that might mean for a levy payer, that applies equally to every levy payer, not specifically to this petitioner as a levy payer. As I have mentioned, my Lord, there are petitioning bodies, Guarlford Parish Council being one, for example, that are bringing issues to do with the levy, and we are very aware that that is something that we will have to go into in detail in due course.

192. As regards the reliance on the use of Trust land, the particular point that I have highlighted, my Lord, is the concern about extending powers to restrict access to areas that this petitioner particularly uses or enjoys. As I mentioned in opening, the powers to restrict or prohibit access to areas of the hills is not a new freestanding power. It has

precedent in earlier legislation. If I can just provide a reference in the table of origins for that, it is at—

193. THE CHAIR: Which clause in the Bill are we talking about, about access? I cannot remember. It is in the 50s somewhere, is it not?

194. MS LEAN: It is, my Lord. I know page 151 of the reference bundle is where the reference is to the table of origins. Specifically, it is Clauses 45 and 46. These are the clauses that provide for the regulation and prohibition of access to the Malvern Hills for particular purposes or protective purposes, as the petitioner referred to.

195. Your Lordships' committee will see where the purposes for which that may be done are precedented or find their footing in Section 15 of the Malvern Hills Act 1995. For the purposes of this petitioner, the point I stress is this. The Bill does not change the areas over which those powers may be exercised. It is not the case that those powers could not be exercised today over the areas the petitioner is particularly concerned about, if the qualifying criteria that necessitated that were met. To the extent that what is relied on is, "Well, there are areas I particularly enjoy where that access could be prohibited in the future because of this", that position is the same today under the Bill. These are not new areas of land that are being brought within the purview of those powers or the potential use of those powers for the first time.

196. My Lord, a final point, if I may—this is a general point—is the concern about the loss of statutory accountability. Clearly, there are changes that are proposed under the Bill to electoral arrangements and, as I have indicated, we are conscious that is something we will have to go into in some detail during the substantive hearings. Just to highlight, of course, there will still be a number of elected trustees. There will still therefore be, in principle, the ability for people to vote through the ballot box if they are dissatisfied with that. I know there is a debate about to what extent they are representative or not. I do not want to traverse that today because I know that will be something to be touched on in due course, but I do think it is always important to come back to the point that this is not a Bill that is proposing removing all elected trustees and solely appointing them with an appointed body. There will remain a right for people who can vote today to vote for trustees to the board, although there will be changes in how exactly that is done.

197. My Lord, I am conscious I have taken a little longer than I would have anticipated, but, in light of the ground to be traversed, I hope that is helpful, unless there is anything that I can assist with further.

198. THE CHAIR: No, thank you very much indeed. Mr Myatt, anything—

199. MR MYATT: May I respond to a couple of those?

200. THE CHAIR: Yes, of course.

201. MR MYATT: On the point about the use of the hills and the closure powers, they are expanded. As I stated in my statement, the combination of the removal of accountability and the bias towards protection would amount to a greater propensity to close off areas.

202. Under the new Bill, they would only have to review those areas of closure every 12 months so the propensity for impact is significantly higher. I think that is what I am trying to do in my statement. To the point about compartmenting the Bill into its governance and its closure, there is a lot of integration and there are a lot of composite effects.

203. To the point about trustees and voting, if you look at it, the Bill will provide a hollow choice to the electorate in terms of who they can choose.

204. My final point is, as I pointed out, I stood for the office of chair of the trust. I did not become the chair, but I received 10 votes against 14. One of those 14 who voted for the current chair has recently resigned. Although I do not understand half of what Ms Lean is saying, I think the situation is somewhat different from the authorities Ms Lean is indicating.

205. THE CHAIR: Thank you very much indeed. We will reserve our decision and announce what the position is on Thursday. You will have heard what I have said about the value that we attach to what you have written in any event, even if you do not have a right to be heard. We have your paper in front of us anyway. Thank you.

206. MR MYATT: Thank you very much for your time.

207. THE CHAIR: Thank you.

**Mr David Smallwood**

208. THE CHAIR: Mr Smallwood, you understand the procedure we operate. I will call upon the promoter first to explain why she objects to your claim that you have a right to be heard; you will then have a right of reply; and she will then reply to you.

209. MS LEAN: My Lord, this is petition 4 in your table. In the petition, it is indicated that the right to be heard is based on the petitioner being the owner of a property that enjoys a legal right of access over land owned or controlled by the promoter, living adjacent to land that is under the control of the promoter.

210. THE CHAIR: I am not quite hearing exactly what you are saying. He has a right to be heard because he is the owner of property with a right of access over Trust land.

211. MS LEAN: Yes, but what the petition indicates is that standing is premised firstly on having a right of access over land owned by the trust to his property. Forgive me. I was saying that there is also reference in the petition to just generally living adjacent to land owned by the trust, and long enjoyment and involvement with the Malvern Hills. The promoter has objected to the petitioner's right to be heard on the basis that none of the petitioner's property or personal interest is specially and directly affected by the provisions of the Bill.

212. My Lord, the submissions I make are similar to those from last week, which is there is nothing disclosed by the petition about there being something specific in the Bill that affects this petitioner's right of access or interferes with the legal right of access, similar to the petitions that were the subject of the interim decisions last week. Also, as regards enjoyment and use generally of the hills, I rely on the principle in paragraph 4 of the committee's interim decision last week.

213. THE CHAIR: Mr Smallwood, you have to understand that we are concerned only with your right to be heard, not with the points that you want to make about details in the Bill itself. Could you tell us a bit more about what you say about your right to be heard and the way in which you are specially and directly affected by the Bill?

**Evidence of Mr Smallwood**

214. MR SMALLWOOD: Yes, my Lord. In the notes that you have just been given,

you will see that I have petitioned against nine aspects of the Bill. In these notes I have endeavoured to show how I am specially affected by each of them individually. If I may, as I go through these, I will try to tie in the point I am making to how I perceive it as specially and directly affecting me.

215. If I may introduce myself, so you know a little bit about me, I am a resident of Castlemorton, owning a small house on the edge of Castlemorton Common, land owned by the Trust. The common is one-quarter of their overall land holdings. From the windows of my house, I am fortunate to have a virtually unrestricted view over the common and the Malvern Hills. A location plan and photographs of these views are shown on pages 9 to 12. On the map on page 9, there is a red circle that indicates the location of my house.

216. The only access to my property, vehicular or pedestrian, is through a gate that opens directly on to the trust's land. I use my grant of vehicular access and my right to walk on the common every day. I moved here 23 years ago to enjoy life in the countryside, easy access to the commons and hills for health, open-air recreation and the appreciation of nature. This is the landscape within which I live.

217. I have served as a parish councillor for 11 years and served as a committee member of Castlemorton Common Association and a trustee of Castlemorton United Charities. I have researched, written and published a book about the history of Castlemorton Commons, recording how they have been managed over the centuries. For many years, I picked litter on the common as a volunteer, especially after bank holiday weekends at the Gullett quarry, which was a popular venue for visitors before it was closed for safety reasons. I do not just live here. I care about the area and how it is managed.

218. I have no legal training, but I have done my best to understand some points of law. I completely support the need for a new Malvern Hills Act. The old Acts are in need of tidying up and obsolete references need removing. It is misleading when petitioners like me are referred to as being opposed to the Bill. I am not opposed to the Bill, but I am opposed to the wording of certain clauses in the Bill, and that is what I have petitioned against.

219. One of the reasons given by the Trust for needing a new Act was that the powers

relating to particular matters were scattered across various sections of the existing Acts and therefore hard to follow, and I agree with them. Unfortunately, this Bill suffers from the same problem. Powers relating to commoners' rights, fencing and access to the common are referred to in several clauses pages apart and often apparently contradicting each other, with another layer of complexity being added through by-laws and the power to add new ones.

220. The purpose of my petition is to bring this to the attention of the Committee in some detail so that a new Act can be written that is not only clear legally but also clear to the ordinary member of the public, with all these contradictions and conflicting powers ironed out. I have sought to engage with the trust on this. First, in a meeting with the CEO and the chair of trustees I pointed out two drafting errors, both of which have now been corrected. I had a second meeting with the CEO and the governance change officer, but this also was not fruitful. They clearly had no interest in engaging in a discussion about making any changes to the Bill.

221. Therefore, I am petitioning on nine matters. I believe that eight of these relate directly to matters that Earl Attlee and Baroness Coffey have asked you particularly to consider. I ask that you permit me to be heard on all nine matters on the grounds that they directly and specially affect me. It may help you if I deal with item 1 after the other eight items in my petition as it refers back to them.

222. THE CHAIR: Now, you are going on to go through the various points. These are in your petition already, are they not?

223. MR SMALLWOOD: Yes, they are, my Lord.

224. THE CHAIR: Are you just repeating what is in the petition?

225. MR SMALLWOOD: No, I am trying to tie what is in the petition to my right to be heard by demonstrating how it specially and directly affects me.

226. THE CHAIR: Very well.

227. MR SMALLWOOD: Is that satisfactory? Thank you. At present, I vote for members of Castlemorton Parish Council and Worcestershire County Council. The parish council nominates one trustee for consideration and appointment by

Worcestershire County Council. In the Bill, this electoral right will be extinguished as the parish of Castlemorton is not a levy-paying parish and therefore not part of the pool of parishes that will vote for the six elected trustees.

228. At present, I can put my name forward to my parish council to be voted for as a nominated trustee. In November last year, the existing Castlemorton trustee resigned and I put my name forward to be nominated. I did not need to be proposed or seconded in order to do this. Under the Bill I will be able to be elected as a trustee, but I have to be nominated and seconded by people who are strangers to me and who live several miles away in the levy-paying parishes. My fellow parishioners cannot vote for me nor can I vote for myself. This directly and specially affects me because it adversely affects my electoral rights, which are my interests. I believe I have demonstrated this in seeking to stand as a trustee.

229. If there is a casual vacancy for an elected trustee, for a period of time the nominated trustees will be in the majority. At present, elected trustees, together with trustees appointed by elected bodies, are always in the majority. If nominated trustees were in the majority, this would directly and specially affect my interests because trustees elected or appointed or nominated by their parishes are closer to their local community and understand how decisions made by the board will affect them. Whilst trustees must always act in the best interests of the charity, there may be many different ways in which this can be done in practice, some more favourable towards the needs of local residents and some not. Nominated trustees can come from anywhere in the country and be completely out of tune with how local residents are affected. I am directly and specially affected by these clauses because my existing electoral rights, which keep elected trustees in the majority, are diminished, and this affects my interests.

230. I turn to access to common land. I apologise for having to stray into a little bit of content here, but I cannot really make my point without introducing some content from my petition.

231. THE CHAIR: Just carry on, please.

232. MR SMALLWOOD: The Countryside and Rights of Way Act 2000—the CROW Act—states that any person is entitled to enter and remain on any access land for the purposes of open-air recreation. Clause 38 in this Bill claims to offer the same right of

access as the CROW Act. It has to do this in order to exempt the trust from the rest of the Act. Under section 15(1)(b) of the CROW Act, if land is already covered by a local or private Act, it becomes exempted land but only if the local or private Act ensures that “members of the public have a right of access to it at all times for the purposes of open-air recreation, however described”.

233. This Bill does not maintain my rights of access and therefore my interests are directly and specially adversely affected. The trust currently limits my rights of access by a wide interpretation of by-law 21. “No unauthorised person shall hold any meeting or concert, rally or assembly or permit any activity likely to cause an assembly on the hills”. Their interpretation of this is detailed on the trust’s website: “Permission will need to be sought if your activity is [...] more than 15 people”, in which case you must “provide evidence of valid public liability insurance (minimum £5 million cover)”. In the CROW Act, there is no restriction on the number of people simultaneously engaged in a particular activity. Each person is responsible for their own behaviour. The word “insurance” does not appear anywhere in the CROW Act. Therefore, I believe the trust’s present interpretation is unlawful because it does not maintain the same rights as the CROW Act.

234. Now, this Bill formalises this interpretation in Clause 63, which empowers the trust to issue licences for the use of the Malvern Hills for specific purposes, including any organised activity, to require insurance and to charge fees for issuing such licences.

235. “Recreation” is defined as “activities pursued for pleasure, relaxation and enjoyment that people do when not employed”. By definition, organised activities involve groups of people and a group is a gathering of more than two. However, the word “group” does not appear anywhere in the CROW Act. If I organise a walk on the hills with my wife, my neighbour and his wife in order to listen to the dawn chorus, Clause 63 empowers the trust to require me to obtain a licence and to take out insurance. I already give local history talks in the parish hall and I wish to organise walks on the common in the summer for residents to appreciate the archaeological features and local history. I do not intend to charge for these walks, but I may ask for a donation to the local charity I support, Acorns hospice for seriously ill children. Under the Bill, I will need a licence, which I may be charged for and have to pay for insurance. My broker has recently quoted me £170 for a small group, rendering these educational walks

impractical.

236. This also adversely affects my interests because elsewhere in the country, where the CROW Act applies, permission and insurance are not required, and this Bill cannot diminish the rights of access that I would have enjoyed under the CROW Act.

237. If I may turn to fencing, photographs of two roads that run across Castlemorton Common are shown on page 13. You can see they are both near my property. The original Bill as deposited did not include the words “on to land which is not common land”. I objected to this in my petition because the phrase “the common land in question” was ambiguous. If the Bill had said “the external perimeter of the common land in question”, it would be absolutely clear that the power to fence roads that run across the common or to create fenced areas within the common was excluded.

238. The fencing of roads that run across the common or creating fenced fields within the common would change the whole nature of the landscape and undermine the beauty of its natural aspect or natural appearance, as seen from the windows of my house and my garden. It would look more like farmland as opposed to unspoilt open countryside. This directly and specially affects me because it would adversely affect the value of my property.

239. The promoters of the Bill have amended the Bill after my petition was submitted and have thereby largely negated my objection regarding the interpretation of Clause 48(1), which could have been interpreted as giving the power to fence on common land against roads that run across the common land. I say “largely” because I remain concerned that it may be claimed that the roads are not common land, although they are clearly shown as being common land on the map submitted by the promoters under tab number R35, page 491.

240. It may be easier, my Lords, if you would kindly refer to the map in my notes, which you have on page 9. You will see on the right-hand side, where the red blob is where my house is, the land there is Castlemorton Common and marked in orange is one of the roads running across it north-east towards Welland. You can see on that map the dotted area in green. The dots underlie the orange indication of the road, and therefore it clearly shows that the road itself is common land. On the map that the promoters of the Bill had supplied, it may give a different impression because the purple hatched area

goes up to the edge of the road and the road itself is a different colour, which may give you the impression that the road is not part of the common, but it is. This can be verified by looking at the definitive map of common land held by the Worcestershire County Council Commons Registration Authority, which Defra has used to produce its map, which is the map that I have reproduced part of in the notes that you have.

241. However, I remain concerned for three reasons. First of all, 48(2) is still ambiguous. I wish to explain why, but clearly not here today, only if you give me the right to be heard. Secondly, 48(2) permits fencing on common land. It is so broadly drafted that it could be used to completely negate the restriction in 48(1). My particular concern here is that it could be used to put fencing up within the view immediately in front of my house. That could adversely affect the value of my house.

242. Thirdly, in particular, I have evidence that suggests that the Trust's intention is to fence on the common land and specifically to fence against portions of the road immediately in my line of sight out of the views from the windows of my home. Therefore, the concern that I have, because I have this evidence and wish to be able to submit it to you, is based on a legitimate foundation, and I therefore ask to be heard on these matters.

243. Turning to the regulation of games, I object to the way this power has been reworded in the Bill, differently to the existing Act, because it has been reworded as too broad a power. The trust's website states that one of its core charitable activities is to keep land open for public recreation. When my grandchildren visit, we just go out of the front gate and we enjoy kicking a football around on the wasteland of the common outside my house. This clause gives the trust the power to stop me doing this, and this directly affects me because it adversely affects my interests.

244. Regarding the general power, the trust is a small organisation, with just £1.5 million turnover, with the simple task of managing a seven-mile outcrop of granite hills and the areas of the common land, the wasteland of the former manors. After 138 years of experience, it should be evident which powers are required to do this. Clause 83 sets out a general power to do any lawful thing to further the objects, including anything that is calculated to facilitate or is conducive or incidental to the furtherance of these objects. Clause 65(1) sets out the power to make by-laws to a similar effect. My Lords, the Trust

will be able to interpret these widely, to ends and purposes never intended. In my opinion, they already exceed the powers granted in the existing Acts, and I wish to submit evidence that substantiates this because it supports my concern about the way a general power would be abused.

245. I have stated how both these clauses would both directly and specially affect me, as could many other yet unknown and unanticipated applications of general powers or by-laws. They could adversely affect the value of my property and affect my interests.

246. In response to my request to the ONS—the Office for National Statistics—they considered the classification of the Malvern Hills Trust and recently classified it as a public body in the local government sector. The test for a public body is that it is a formally established organisation that is publicly funded through a levy to deliver a public service. The trust meets these criteria. It receives about 45% of its funding through the levy, and its objectives are to protect, conserve and maintain the landscape, natural appearance, habitats, flora, fauna, geology and archaeology of the Malvern Hills and to keep the Malvern Hills unbuilt on as an open space for recreation and enjoyment of the public. This is a public service.

247. Malvern Hills Trust is a unique organisation, being both a levy-raising body, a charity and controlled by its own Acts of Parliament. The present rules for classifying public bodies are not designed to cover this situation, so the trust escapes being classified as an arm's-length public body. I have petitioned for the trust to be regarded in the new Act as a public body, by which I mean an arm's-length public body, as it qualifies under these two tests of delivering a public service and raising taxes.

248. Its classification directly and specially affects my interests. I give two examples. Firstly, the consultations on this Bill would have to have been carried out to a much higher standard than was the case. The consultation document contained misleading information, unsupported assertions and vital omissions, which would not be permissible in a properly conducted public body consultation. Secondly, they would not have been able to spend £25,000 on public relations consultants to facilitate the passage of this Bill without Cabinet Office approval. This money could have been used for the maintenance of the common, where it currently remains overgrown and neglected.

249. In addition, I have petitioned that the Trust should be subject to freedom of

information requests. At present, it is only subject to environmental information requests. By contrast, the Lickey Hills Country Park, 524 acres and only 32 miles away from the Malvern Hills, is owned by Birmingham City Council, which is subject to freedom of information requests. We can get answers to questions about the Lickey Hills but not the Malvern Hills, and this is incongruous.

250. In June last year, I requested a copy of two motions not in the papers for the meeting and read out at a board meeting the previous evening, which I had attended as a member of the public. They were lengthy and complicated and I wanted to be clear what the trustees had voted on. I was refused a copy by both the CEO and the secretary, even though I pointed out that their governance handbook promises that the trust will “endeavour to answer any questions and offer information to the best of its capability”. Patently, they do not. I wish to give more evidence on this with further examples. I have therefore petitioned that the trust should be subject to freedom of information requests as if it were a public authority.

251. These matters directly and specially affect my interests because, as a local resident, I should be properly consulted on how my local area is managed and because I should be able to obtain information from the trust to the same extent as I can obtain information from other local councils in my area that provide and maintain other public spaces.

252. I object to the power to issue fixed penalty notices for parking. On the whole of Castlemorton Common there is only one pay-and-display car park providing about 30 spaces. Under by-law 8, parking on the common is not allowed. However, exceptions are made on certain areas of Castlemorton Common in areas not designated as car parks. Elsewhere on Castlemorton Common parking is permitted near the road edges, where families pull off to picnic, play ball games with their children and enjoy the natural surroundings, especially in the summer. In some of these places signs give permission to park, but not in others. Where signs are displayed, they are notices on flimsy wooden poles that are often knocked over by the cattle or simply go missing.

253. Under this power the wardens, or rangers, as they are now called, would be able to issue fixed penalty notices on my vehicle if it was parked anywhere on the common land where parking has traditionally been allowed. This power could easily be abused to

generate income, regardless of the fact that parking in these traditional places does not damage the common. This adversely affects my interests because I have been accustomed to parking in these places.

254. I will return to my last point, which relies on some of the points I have made before. As former trustees are excluded from being independent members of the nomination committee, I object to former employees or officers of the trust not also being excluded. They cannot possibly be independent. The employees and officers of the trust are responsible for the day-to-day matters of the trust, including the interpretation and meaning of the Malvern Hills Acts and by-laws. It is not appropriate for them to have any say in the appointment or selection of trustees, and the nomination committee should exclude them and operate under the same principle, similar to the separation of powers.

255. Former officers and employees may seek candidates to be appointed who are like-minded to themselves and, in this way, would be able to influence the appointment of trustees who would favour their way of doing things. The composition of the nomination committee has a direct link to the appointment of trustees, and they are, in return, responsible for the decisions and the actions of the trust. Aspects of these, already detailed in my first eight items, directly and especially affect me in the manner described and, therefore, they also apply to this item, item 1.

256. Therefore, I ask that you permit me to be heard on all the points in my petition, on the grounds that they do directly and specially affect me and my interests. Additionally, I ask that you permit me to be heard on all the points in my petition under your discretionary power under Standing Order 118, where I believe that the area of which I am an inhabitant is injuriously affected by the Bill and its provisions. Thank you, my Lord.

257. THE CHAIR: Thank you very much. Yes, Ms Lean.

#### **Response by Ms Lean**

258. MS LEAN: My Lord, I am grateful. I will try to take matters in turn. First, as a preliminary point, noting what is said at the bottom of page 1 about powers relating to commoners' rights, fencing and access to the common, et cetera, to highlight that, first,

this petitioner does not enjoy rights of common and, secondly, that your Lordships' committee will be hearing—or we have not challenged the standing of—three petitioners who do enjoy rights of common over Castlemorton Common. That is petitioners 3, 5 and 8, all of whom, from a quick look back through their petitions, do certainly raise fencing and other concerns relating to this common.

259. Secondly, item 2, the levy. Again, to stress as a starting point, this petitioner is not a levy-payer and is not a person who has an entitlement to directly elect any of the conservators today. Vis-à-vis the reference to electoral right, the right to appoint trustees, so far as it encompasses the area the petitioner is concerned with, sits with Worcestershire County Council. There are arrangements in place with Castlemorton Parish Council, but the right sits with that body. It does not sit with or confer a right or an entitlement on individuals who may have a right to vote for members of the parish council, who may, in the practice that has been established, end up choosing as a parish council who they want to be put forward as an nominee. It does not affect the petitioner's right to vote for councillors of Worcestershire County Council, who then, in turn, can appoint a trustee.

260. There is no direct causal connection here or any electoral right that can be drawn from this petitioner and appointments to the board, if I could put it in those terms. I felt I had to address it that way because it was claimed that there is an electoral right this petitioner enjoys that would be extinguished. That is not what the Bill does. It does not take away one of the provisions that says there shall be one elector appointed by the electors of the parish of Castlemorton, of the sort that we looked at with some of the other parishes a little earlier on.

261. Moreover, the Bill does not affect this petitioner's right to potentially join the board of trustees. I will put it in those terms. The petitioner has mentioned that, today, he can put himself forward to be nominated through one of the appointments available to Worcestershire County Council through Castlemorton Parish Council, but, under the provisions of the Bill, the petitioner would be able to either stand for direct election as one of the six directly elected trustees, or, indeed, to put themselves forward, potentially, for consideration as one of the appointed trustees, so, again, in terms of substance, there is no potential ability or potential right or entitlement that is extinguished for this petitioner under the Bill in that regard.

262. Thirdly, moving on to casual vacancies in the office of elected trustees, my Lord, being mindful this is the locus standi hearing, again, I am trying to be careful not to veer too much into the merits of the substantive points on the petition, but whatever arrangements there may be today versus whatever arrangements there may be in the future of what happens when there is a vacancy in an elected trustee does not affect this individual petitioner in any way, or differently to anybody else who has an interest in the Malvern Hills Trust, be that as a levy-payer or be that as somebody within the trust's jurisdiction. It is not something that particularly attaches to this petitioner or his interests.

263. Item 4, access to common land. Again, at risk of veering into the substance, the concern here is with Clause 38. If my Lords' committee would like the reference, Clause 38 appears in the filled Bill at R63. The point to stress for the purposes of standing is that that is a right that is given to the public generally. It is not a right that attaches by dint of this petitioner's being a property-owner at Castlemorton or taking access over Trust land. It is a right conferred on the public.

264. THE CHAIR: It is headed, 'Public access'.

265. MS LEAN: Yes, indeed, my Lord, and it has its more historical roots, if I could put it in those terms, in Section 15(1) of the Malvern Hills Act 1995. For reference, that is at R245, but this is what I referred to in opening by saying Clause 38, essentially, re-provides the statutory entitlement to the right of public access for the hills on foot or on horseback, subject to rules and regulations and suchlike that you previously found in the 1995 Act, but, for the purposes of standing, there is nothing specific in this clause or this provision or this right that attaches to this petitioner any differently to any other member of the public who falls within that clause.

266. Similarly, with regards to licensing of activities—still under item 4—my Lord, again, to highlight, this is a clause, I am sure, that we will come to and spend some time on, or the promoter will have to spend some time on, as part of the substantive case before your Lordships' committee, so I do not want to veer too much into it, but just to flag it is not quite as perhaps suggested there about the Bill requiring a licence to maybe be taken out in certain circumstances. I put it as neutrally as that at the moment.

267. But again, to stress that Clause 63 and the power that it confers, by which the trust

can require people to obtain licences for certain types of uses pursuant to a policy that will have to be established, that, again, does not affect this petitioner any differently to anybody else who may fall within its purview or who may wish to undertake an activity or an event that may, in time or in the future, fall under the terms of the policy that the trust may formulate under the power that is provided for in Clause 63. For the purposes of today's hearings and consideration of standing, I would maybe stress that: that it does not affect this petitioner any differently or specially to any other person to whom it might apply.

268. Coming on to item 5, fencing and other measures of securing common land, again, my Lord, I have mentioned that these powers are ones that are specifically raised by petitioners who enjoy rights of common over the registered common that includes Castlemorton Common. But again, to stress, the focus here appears to be on the potential exercise of those powers, changing the whole nature of the landscape and undermining the beauty of the natural aspect, which may in turn, it is suggested, have an effect on the value of the petitioner's property.

269. First of all, my Lord, in my submission, that does not get us into specially and directly affected. This is a general power that applies across the entirety of the trust's area. It is not Castlemorton-specific, and it is based on, essentially, almost a hypothetical that, "If a power was granted, and if the power were to be exercised in such a way that might have a potential effect generally on the appearance of this area, that might then, in turn, in future, potentially affect my property". In my submission, I am sorry to put it in that way, but that does illustrate why the concern about this power is not such as to show that it specially and directly affects this petitioner's interests as somebody who has property near a common that is within the trust's jurisdiction.

270. In that, I am also mindful, my Lords—and I was attempting to find the reference, but there have been references, and I believe it was in the House of Lords report on the high-speed rail Bill, but it may not be in the extracts before your Lordships' committee, about a right to a view not being the sort of thing that is protected at private law. Looking in that category of impacts on property or private rights that would be actionable at common law, or actionable at private law if it was not a statutory authority, a right to a view is not the sort of right that has tended to be well established at common law as something that you can sue for if your neighbour interferes with it, as opposed to

interference with rights of light or historic rights of light.

271. Similarly—and I believe this was picked up in the Holocaust Memorial Bill report—on generalised blight, a general impact on value of property as a result of a project was picked up in the HS2 case as not being something that was such as to give rise to a special and direct effect. Again, forgive me, I have not found the exact reference for that in the transcripts during the course of this morning. If I can find that, if I can perhaps provide that, or correct that if I've misstated the position. So, my Lord, in my submission, that all indicates why the concerns expressed in respect of Clause 48 are not such as to give rise to standing as of right.

272. As regards to item 6, regulating games and other means of recreation on the Malvern Hills, Clause 65(1)(h) is the by-law-making power. My Lord, you have the table of origins on page R160. That is not a new power or a new purpose for which a by-law can be made. It has precedent in Section 10 of the Malvern Hills Act 1930, so to the extent that this petitioner is concerned about the impact that that power might have, that is not a new or fresh power or potential impact under this Bill, leaving aside the point that it applies generally to anybody who might enjoy the hills and might be affected by regulation of games. Again, it is not specific to this petitioner.

273. Then, my Lord, as regards item 7, the general power, again, that is something that is not specific to this petitioner. It is not something that touches specifically on this petitioner's interests. For the purpose of this hearing, my submission is that the fact that this petitioner may be particularly interested in things that he would like to say and arguments he would put forward does not provide a basis for standing as of right or as a matter of discretion. I apply that as well, my Lord, to the other provisions that were referred to—the status of the body as to whether it ought to be a public body or subject to the Freedom of Information Act, enforcement of by-laws, the nominations committee. Those are all matters of general application that are not specific to this petitioner, but which your Lordships' committee will, no doubt, have to carefully consider in any event as part of the matters before your Lordships' committee.

274. My Lord, I hope that has broadly covered off all the points that I understood to be particularly prayed in aid and support of the petitioner's right to be heard.

275. THE CHAIR: Thank you very much indeed. I think, Mr Smallwood, you will have

heard what was said. We will reserve our decision on your case and announce our decision, I hope, on Thursday. As I have mentioned to previous petitioners, we have your papers before us anyway, which we will be able to refer to if you are not able to present them yourself. They are useful material for us in working through the clauses to which you have drawn our attention, so thank you very much indeed.

276. MR SMALLWOOD: My Lord, may I briefly reply to two of the matters that the promoter has—

277. THE CHAIR: Do you have any short points to make in reply?

278. MR SMALLWOOD: They are short points. The first one is that my house is in a special position. As I have tried to explain, if fencing were to be put up against the roads immediately near my house—and I have evidence that I would like to bring to the committee to show you that the trust does have an intention to do this under other powers in the Act that remain—the value of my house will be affected and, therefore, I am specially and directly affected. I am not in a broad class of people who would be in an area where fencing is put somewhere where it really does not make any difference. If they put them up near my house—and I have evidence of the fact that they wish to do this—then it will directly impact on the value of my property.

279. The other point I would like to make briefly is that “specially” and “directly” are referred to as if they were like a light switch. You are either specially affected or you are not—it is on or off—or you are directly affected or you are not directly affected. My Lords, I think there is a degree, is there not, to which these are more on a sliding scale? Some people are very directly affected by something, and other people are slightly directly affected by it. For example, there may be half a dozen people who would wish to give educational walks and talks on the common and, under the arrangements, need a licence to do that. Therefore, we are not to be regarded as being part of the population of everybody who might want to do that. We are in a special case because we are the three or four or five, or however it might be, who do wish to do that. Therefore, we are in a special position as compared with the population as a whole. Thank you.

280. THE CHAIR: We will adjourn the proceedings at that point. There will be no sitting of this committee this afternoon. The next public meeting will begin at 10.30 am tomorrow, Wednesday 28 January. Thank you all very much indeed. Would you please

leave us in peace so that we can have a discussion in private?