

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

**MALVERN HILLS BILL COMMITTEE**

PETITIONS AGAINST THE BILL

Wednesday, 28 January 2026 (Afternoon)

In Committee Room 2

PRESENT:

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

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FOR THE PROMOTER:

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

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FOR THE PETITIONERS:

John Watts  
Anne Dicks  
Isabel Holdsworth  
Sue Spencer  
Professor Jerry Tew

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(At 2.00 p.m.)

1. THE CHAIR: Good afternoon, and welcome to this session of the Malvern Hills Bill Select Committee. I have to remind those who are attending and those who are watching remotely that the purpose of this meeting is to deal with the issue of right to be heard. We are not dealing with the substantive objections that the petitioners have put forward in their petitions. It is solely the question as to whether they have a right to be heard that we wish to address. Of course, if a petitioner has a right to be heard, they will be called back later and we will hear the substance of their petitions, but for the time being we have to leave that aside.

**Mr John Watts**

2. THE CHAIR: Mr Watts, good afternoon.

3. MR WATTS: Good afternoon.

4. THE CHAIR: I am going to ask you how long you are proposing to take. You have very kindly submitted a detailed paper. We have a time constraint here, as we have two other petitioners to deal with this afternoon. Would it be in order to say that we would have to finish your hearing by 2.50?

5. MR WATTS: I am hoping it is going to be shorter than that, my Lord. You have that document, and I am not going to go through every single line of that, otherwise we will be here till midnight, and I do not want to be here till midnight.

6. THE CHAIR: Exactly. That is very kind of you.

7. MR WATTS: I would hope I would finish about 2.30.

8. THE CHAIR: Yes. I am going to ask Ms Lean, first of all, to introduce the subject, because she will tell us what her objections are to your petition—to your right to be heard. Once you have heard her—and do listen carefully—we will then listen to your submissions. Ms Lean.

9. MS LEAN: I am grateful, my Lord. This petitioner is petition number 35 on your table. The promoters have identified in their letter of challenge, which is paraphrased or summarised on the table you have before you, the potential grounds disclosed from the

petition on which the petitioner might have or might claim a right to be heard. The ones identified were: as a payer of the local levy; as somebody who enjoyed or used the Malvern Hills; and as an existing or former Malvern Hills Conservator, otherwise known as trustee.

10. The promoter objected or identified its grounds of objection as being that none of the petitioner's property or personal interests were specially and directly affected by the provisions of the Bill; that position as a former Malvern Hills Conservator did not give rise to any entitlement to be heard; and also Standing Order 111 was raised with regards to particular parts of the petition, in particular part 1 and part 2; and some wider concerns that did not particularise in any way, in which it was said that the provisions of the Bill affected the petitioner's interests.

11. THE CHAIR: Could you explain what you mean by that, please? There are substantial parts of the petition that do deal with specific clauses in the Bill. Are you suggesting that we, as it were, strike out the earlier parts because they are not specific enough? It looks to me as if you cannot succeed on 111 against the petition as a whole.

12. MS LEAN: No, my Lord. That is why, in the letter of challenge, we identified particular parts that it was considered did not raise specific issues to do with provisions of the Bill, but were rather more by way of matters to do with current or historic issues of governance, if I can paraphrase it in that way. My Lord, I think we have highlighted that, in our letters more generally and in our letter to your Lordship's committee's clerk, we have identified that, in the event the committee were to decide that a petitioner did have standing by reason of a particular interest or under a particular discretion, that it would obviously be open to the committee to limit those matters on which that particular petitioner could be heard, and that is where Standing Order 111 might particularly come into play.

13. For example, if it was considered, as we have set out, that part 1 and part 2, for example, do not really go to matters in the Bill themselves, it could just be made clear that the petitioner would not be entitled to ventilate or bring those particular issues, but to focus on those matters in the petition relating to provisions or clauses of the Bill that were engaged by the particular interests that you had found, or on the basis of which interests you have granted a discretionary locus.

14. THE CHAIR: What I am really suggesting is that we leave Standing Order 111 aside for the moment. If we move to the next stage, of course we can organise how much we should be addressed on the earlier parts, if at all.

15. MS LEAN: Indeed, my Lord.

16. THE CHAIR: I think to put it into play at this stage is a bit premature, really.

17. MS LEAN: Indeed, my Lord. I just felt it would be remiss of me not to highlight that this was one of the petitioners where Standing Order 111 had been particularly identified in the promoter's letter.

18. My Lord, I should also note that I have had the benefit of reading the document that Mr Watts provided yesterday, and I recognise that the only basis of standing that seems to be prayed in aid before you, by Mr Watts particularly, is his status as a levy payer. Again, I hope I have managed to clarify that, when we have identified matters in the letter of standing, it is those that seemed to the promoter from the petition might be matters that could potentially be prayed in aid, but obviously we do not seek to import to the petitioner what they want to say to you about why they say they have standing.

19. THE CHAIR: Yes. Thank you very much. Mr Watts, it is over to you now. Can I begin by reassuring you on the point you mentioned in paragraph 3 in your note for us. The phrase we use is "affected by the Bill", so do not be troubled by the difference between the two different phraseologies. "Affected by the Bill" is the one we use, which is the one I think you prefer to use anyway for yourself.

20. MR WATTS: I cannot hear what you are saying, sorry.

21. THE CHAIR: I will do my best. Can you hear me now?

22. MR WATTS: Yes, I can hear you now.

23. THE CHAIR: What I am saying is that, with regard to paragraph 3 of your note, the phrase that we are using is "affected by the Bill", which is what you have been told by the Public Bill Office, so you do not need to trouble us on the distinction between the two different phraseologies. Anyway, on you go. You are going to tell us what the points are that you are drawing our attention to particularly.

### Evidence of Mr Watts

24. MR WATTS: Yes. Thank you, my Lord. Before starting, inevitably, there are some errors in the document I sent you. They are small ones but important ones. Paragraph 23(c) refers to appendix A, and it should be appendix 3.

25. THE CHAIR: Yes. Thank you.

26. MR WATTS: There are two others. In paragraph 61, the last word of the penultimate sentence should read “valid” and not “invalid”.

27. THE CHAIR: Yes. Thank you.

28. MR WATTS: Also in paragraph 61, “the petitioner’s definition” should read “the promoter’s definition”. I apologise for those, but I was quite ill when I was doing that paper.

29. I want to address the promoter’s objections. They came to me in a letter of 3 December, and that is the letter I am going to be referring to throughout all of this. The letter was made in a generic structure, which involved me having to read about things that have nothing to do with me. I will not go into the details because they are in that document, but I do feel that, if somebody is going to raise an objection, it should be about what I was saying rather than what is related to other people, and I do worry whether or not such a complex document caused others not to petition against this Bill.

30. THE CHAIR: You have made it quite clear in your paper that you are objecting as a levy payer, and that is it.

31. MR WATTS: I am objecting as a levy payer, and I want to come on to certain matters about that. It has already been announced that they recognise that I am limited to requiring to pay the levy, although they threw two others against me. Only one of those was obviously correct: that I am required to pay the levy.

32. I want to refer to paragraph 14 of that letter, which states that the promoter has carefully considered my petition and objects to my right to be heard in respect to the whole of my petition. I raise that because, later on, they take a different approach. This is quite frightening to have these differences being thrown at you. The promoter claimed

in that objection, objecting to the whole petition, that Standing Orders are a well-established practice of the House—that is valid—and well-established practices and procedures of the House in relation to private Bills.

33. The letter then referred me to appendix 3 without any guidance as to what was relevant to me. Of the 35 paragraphs I read, only two or possibly three appeared relevant to my petition. I am not, for example, a local authority. I am not a commoner. I do not rely on my position as a former trustee to justify my right to be heard. I am not a member of a local authority.

34. I think one of the issues we are faced with is that we have to recognise that the Malvern Hills Conservators is a unique body like no other, and I want to address that. The only organisation that comes close to the Malvern Hills Conservators is the Wimbledon and Putney Commons Conservators, but even there, there is a world of difference. The commons are local amenities for local people in the same sense that, in my example, a village green is. I live near Cambridge, and I have contributed to the upkeep of the village green in my parish rates, and I had no objections. I am suggesting that, basically, the Wimbledon and Putney Commons are a grand version of that. It is for the locals' use predominantly, and it is financed by the locals predominantly.

35. Turning to the Malvern Hills Conservators, it is established—and I will not go into the details because you have it in that document—that overwhelmingly the conservators state that the hills are a national asset, and what you have there is, in effect, an inverted triangle, with the world and its dog basically being at the top; more practically, the whole of GB, taking one of the examples given in my document. At the very bottom is a very small group of people. What is significant is they are separate from the Malvern Hills District Council. It is a totally separate entity, and I think that is of relevance when we come on to other things. The other difference is that the majority of the Wimbledon and Putney Commons trustees are elected. Both currently and in the future, that will never be the case for the Malvern Hills Conservators.

36. As part of the reference to appendix 3, we have been compared to ratepayers and shareholders. I think you will find this in paragraph 8(v) of appendix 3. I do not accept that either of those are valid. In today's terms, the ratepayer analogy is wrong because it is a sub-group of a district council; it is not a council in its own sense. Going through—

and I will rush through these—local authorities are not a charity. I think that is an important point when you are saying that this is a local authority. A local authority is a public body. The promoter states it is not a public body, twice quoting the House of Lords to justify that position.

37. Council tax payers elect members of local authorities who represent their wards. The levy payers of Malvern, neither now nor in the future, will ever have representation. Elected members of local authorities can disagree with decisions after they have been heard. Trustees of the Malvern Hills Conservators cannot, on penalty of disciplinary action. Elected members of local authorities can openly talk to the press, social media and so on. If you are a trustee of the Malvern Hills Conservators, you have to get permission off an employee, and I find that quite a frightening thing, quite frankly.

38. Turning to the shareholders analogy, shareholders choose to invest in the company; levy payers are forced to. Levy payers would face criminal proceedings if the levy was not paid. Not paying for your shares is a civil matter and, in most cases, because there is a stock exchange, it is nothing to do with the company. For the most part, shareholders make a single payment. They are not forced to pay additional funds to the company every year. Shareholders mostly receive returns; we receive no returns. Shareholders are free to dispose of their shares wherever they want; in my case, the only way I can get out of having to pay a levy is to move out of the area. The board of a company reports to and is answerable to its shareholders; the Malvern Hills Conservators report to no one. A company acts in the interests of its shareholders; the Malvern Hills Conservators acts in its own interests.

39. Shareholders are the owner of the company. The levy payers are—and it is a technical term, but it is a valid one—merely seen as a cash cow that the promoter can draw upon each and every year. Shareholders can and do influence the direction of the company; levy payers are not allowed any say whatsoever in the running of the Malvern Hills Conservators. One thing close to my heart—shareholders appoint the auditor. If this Bill goes through, the levy payers do not appoint the auditor, and I think that is extremely worrying, because all the power is going to a self-contained unit, and literally all the precept payers will be cash cows providing the money, no questions answered.

40. I want to just quickly go over the contradiction. You heard earlier that my petition

was banned on all grounds. In the self-same letter, it told me it was being banned on four grounds. I will return to that in a moment. I am aware of the time, and part of what I was going to say I am deliberately avoiding, because it is a repetition of what you have in that document. I believe that there is a serious error in the promoter's objections to my petition. We are aware that House of Lords guidance on the right to be heard states that petitioners must be directly and specially affected by a Bill, and a Bill must affect a petitioner or their interests that is different from the effect on people and bodies generally.

41. I want to hold on to those, because I believe the promoter did not apply that. The House of Lords guidance is clear. It is "directly and specifically affected by a Bill", and I believe that term encompasses somebody who, because of the Bill, is denied something that they had before. To be honest, it is similar to the Christian belief of sins of omission and sins of commission.

42. In paragraph 4 of the letter, the promoter talks about "directly and specially affected by one or more provisions". Anybody objecting because the Bill fails to carry something forward from the previous Acts is wiped out on that definition, and I think that is very, very wrong. You will see later on that one of my concerns is that the 1884 Bill had in it that the conservators could extend the precept to land as they acquire it. That is totally missing from the Bill, and there is no substitute for it. There is a reference in the Bill to something similar, but that is about land you acquire in the future, and not this solid block of people having free rides on our expense.

43. I want to just address some of the objections. It states none of my property or personal interest is specially and directly affected by the Bill. I was not able to comply with that at the time in my position, because I did not know what this term—I have it here; it will be attached to my heart, I think—"different from the effects on people and bodies generally". Without that term, I could not comply with the requirements of the House of Lords guidance. I could say I was a petitioner, but I could not say why I did not meet those qualifications.

44. In passing, I would like to bring the committee's attention to the promoter of the High Speed Rail (Crewe – Manchester) hybrid Bill, where that voluntarily informed petitioners that "people and bodies generally" meant the public at large. There has been

nothing on that. We had no idea, and that is why I could not comply with the requirements. It was not my fault, but the petitioner did not tell me what this population—I prefer the word “population”, quite frankly, from my academic background, but I will stick to the correct words if I keep having to look down for them. The population was not defined, so I could not explain, within that, what I was being asked for.

45. The fact is that definitions were available. I have identified some in my document. The first one is the preamble to the Bill. Paragraph 5 talks about who the users of the hills are and states, technically, “the inhabitants of Herefordshire and Worcestershire and by visitors coming from all parts of the country”. Basically, that says the whole of the United Kingdom. I think that it is too great a thing myself—it needs to be brought down—but it is much, much larger than the levy payers; it is unbelievably larger. If you take the situation of Great Britain, I think my statistics said it was 0.0005% who were the precept payers. Quite frankly, if we are talking in my language of business speak, as I see it, this product is people’s recreation and enjoyment, and the customer base or segment is either the combined counties of Herefordshire and Worcestershire or—take your choice, because it is all in that definition—the population of Great Britain.

46. I have actually yesterday—and this is not in your document—discovered something which was in plain sight, and that is, as you probably know, the most difficult thing to find, but I found it late yesterday. It was in paragraph 13, and I am going to read out what is involved. The promoter stated I had failed to identify any proprietary or other interest over and above members of the public generally. Those last words is the promoter saying that this population—what you choose to call “people and bodies generally”—is the public generally, and yet if I read the letter of 3 December, it is clear that, out of nowhere, they have said it is the levy payers who were that “people and bodies generally”. There is a world of difference between that and what they are stating there of “the public generally”, and I think that is significant.

47. Moving on, paragraph 10 of the letter contradicts what they said earlier. They identified a variety of grounds on which I would not be able to have the right to be heard. I am going to try and avoid as many of those as I can, because you have them in the document, so if you can just bear with me. Yes, the one I wish to flag up is that, in the second definition of why I cannot be given a right to be heard, it states that the

promoter objects to parts 1 and 2 of my petition, together with paragraphs 129 and 134. If you read that, it means they are not objecting to paragraphs 135 to 232, and so, on that basis, I believe I have a right to be heard, because the promoter is not objecting to those paragraphs. I also believe I have the right to speak about the others, but that is up to the committee to decide.

48. It talks about my position as a former Malvern Hills Conservator. They have admitted that that is incorrect. Sorry if I am rushing through, but I am aware of time pressures, and I do not want to cause you, nor myself, to be honest, to be going home at midnight.

49. What I have not addressed is my own “directly and specially affected” by a Bill. Now, regrettably, this means I have to drag in some of my petition—not a lot, but to be able to prove that, I have to bring that into being.

50. I noticed on my first day of the hearings that counsel for the promoter gave analogies, and I think that is quite useful, because I am going to give you an analogy now, and here is the analogy. You live in a ward as part of living in a local authority. Imagine if your ward had to permanently pay the council tax for another ward, which is much wealthier than your own. You approach the local authority and they tell you lies, when the reality is that they cannot be bothered as there is nothing in it for them. If you find that offensive, you have to find the Malvern Hills Conservators’ approach offensive, because that is exactly what has happened.

51. I want to just give you some facts that support that. The facts are straightforward and there is a good audit trail going back to them. First of all, practically 50% of the land managed by the promoter lies outside the levy catchment area. Under Clause 31 of the 1884 Act, which I have already mentioned, the promoter has powers to extend the levy to other areas that they have acquired. They have chosen not to. The promoter has—and all this is in writing—I am sorry; if you do not know my background, I have a background, as a member of two chartered bodies of accountants and as an academic as well, of collecting evidence and the truth, and this is what I am trying to do here. Everything I say is backed up with solid evidence. It is not my opinion.

52. The promoter has stated a number of times that not extending the levy catchment area to take account of the land acquisitions was out of date, illogical and unfair. I could

not find a better description myself, but they have chosen to ignore that. They have done nothing about it. They have actually told lies, and I will give you one of them. There are two, actually, because two organisations are involved. Here is what they have stated. “Neither the Charity Commission nor the Department for Culture, Media and Sport, whose approval is essential, will support changes to the current boundaries”. That is a lie. I have a document from the Charity Commission. I have a document from DCMS saying this is untrue. They did not do this. This worries me tremendously: that here we have a Bill going through Parliament, and it is telling lies.

53. THE CHAIR: Now, Mr Watts, we have reached 2.30. We are really looking for some respect in which you can say you are specially and directly affected. You are not really wanting to get into the details of your objections. It is the initial preliminary point that concerns us.

54. MR WATTS: I will move to that, my Lord. The fact is I am paying more than I should for the levy, because I am having to finance other people—other people, not necessarily with me, but wealthier than many of the petitioners, and I object to that on ethical grounds. I also object to it on financial grounds. I will be denied any remedy of that if the Bill goes through, for reasons I have explained—that they are not carrying forward Clause 31 of the 1884 Act.

55. I would finally say that there is an ethical issue to this: that there are many areas of poverty in Malvern. I happen to live in an area that is not. There are many areas of poverty in Malvern, and they are having to subsidise wealthier areas. Now, forget the Bill; as far as I am concerned, there is a moral issue there, and it is unacceptable.

56. Equally, if Parliament refuses to recognise that lies are being told about this Bill, I think that is going to send out a terrible message. It is going to say to everybody else who is proposing a Bill—a promoter—“Tell whatever lies you want. Parliament will not be worried”. I think that is very serious, and the fact is I have brought this to the attention of the Malvern Hills Conservators, and they just went into denial mode. I will leave it there, my Lord, so that you are not all going home at midnight.

57. THE CHAIR: Thank you very much indeed. Ms Lean, do you have anything to say by way of reply?

### **Response by Ms Lean**

58. MS LEAN: My Lord, a few brief points, if I may. First, with regards the promoter's letter of challenge, there were a number of points raised there about things that were said to be inconsistent or things that perhaps did not apply. My Lord, if I could just ask your Lordships' committee to perhaps have a look at the letter to read in its full context, perhaps after the hearing today, but to highlight that, for example, where there was reference to an alleged inconsistency because, on the one hand, the promoter said here they were challenging standing in full, but in here they only took issue with certain parts—the letter makes clear that, where it says about those particular parts, that is to do with the objection under Standing Order 111. It is not the promoter accepting that this petitioner has standing on anything other than those parts of the petition that have been specifically mentioned.

59. I can understand the petitioner may possibly have misconstrued or misread the critical paragraphs of the letter where we identify the basis on which we think the petitioner could potentially claim to have standing, then why we say none of those give right to standing, and in respect of Standing Order 111, those particular parts, but in no part of the promoter's letter is there a suggestion that yes, this petitioner does have standing, but only in respect of certain parts.

60. Secondly, my Lord, I respectfully submit that nothing that this petitioner has raised today, or in his petition or note provided yesterday, discloses any particular impact or interest of the Bill on him over and above any other levy payer. With regard to the points of principle about the impact on the interests of levy payers more generally, if I may just respectfully adopt the submissions I made to you last week on the points of principle, I have gone through why, in the promoter's view, those do not give rise to standing as of right for a levy payer. Your Lordships' committee has made an initial decision on that, and, in my respectful submission, there is nothing that shows that a different rule should be applied to this petitioner, or a different approach applied to this petitioner by virtue of the matters that have been raised today.

61. Thirdly, on that, I note a particular concern was raised by this petitioner about what is said to be something that was in the 1884 Act that is missing or is no longer in the Bill. May I please take you to the relevant provisions? Again, I fear this may have

been a slight misconstruction of the relevant provisions, and I anticipate it may be necessary to go through these in more detail during the substantive hearings on the Bill, but it would be remiss of me not to address it briefly now. First, my Lord, you were referred to Section 31 of the Malvern Hills Act of 1884, which you have in the R bundle—the reference material bundle—at page 187.

62. This is the provision, my Lord, for adding common or waste lands within nine miles from Great Malvern Priory. Two points to highlight—first, it may be done by agreement—understandably, there are no compulsory acquisition powers—between the conservators and the lord of the manor of those lands, “provided that no such agreement shall be of force until allowed by the land commissioners under their seal”. What is important to note is what follows, my Lord: “And upon allowing any such agreement, it shall be lawful for the land commissioners, if they shall think fit by order under their seal, to vary the number of conservators under this Act and the mode of their election, and 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 in such manner”.

63. That is the power or the provision about extending the levy-paying area. It is not a freestanding power that is conferred on the conservators at any time to extend the levy-paying area; it is a power on the land commissioners in agreeing an agreement to acquire certain lands. In my submission, there is a temporal link there—“upon agreeing”—to provide for the levy-paying area to be extended.

64. My Lord, I flagged the temporal element in light of what was raised about, “There is a similar provision in this Bill, but it only applies to lands acquired going forward”. My Lord, the relevant clause in the Bill is in Clause 71, which you have at pages R86 to 87 of that bundle before you. What this provides for in subsection (1) is, “In furtherance of the objects, the Trust may acquire (by purchase or grant) land of the type described in subsection (3), and on or after the date of that, any lands so acquired is part of the Malvern Hills”.

65. Subsection (3), which is on the following page, identifies the types of land, which is land “within nine miles of Great Malvern Priory” and “which the Trust considers should be preserved unenclosed and free from building”. Any land that falls within that

subsection—this is in Clause (4)—“that is common land or that is waste land of a manor may become part of the Malvern Hills by agreement between the Trust and the lord of the manor”. Subclause (5)—that lord of the manor or common land agreement requires the Secretary of State’s consent, so essentially reflecting the previous provision for the land commissioners, and at (6), “The Secretary of State may, on or after giving consent in relation to any land, by order (a) amend Section 23(3) to include within the Trust’s electoral area any parish within which the land in question is situated”, or “(b) amend Section 33(4) to include the list of parishes in respect of which a levy may be issued”.

66. I just draw attention to that in terms of how the provisions we find in the 1884 Act find their echo in the current Bill, just to provide some nuance or context to the submission that was advanced before you that there was essentially some free-ranging power on the part of the Malvern Hills Conservators to extend the levy-paying area, as it wished, to any areas where it had acquired land since 1884, and that that had been done away with. It was a very tailored power even back in the 1884 Act.

67. LORD EVANS OF GUISBOROUGH: On that point, which Secretary of State does that refer to?

68. MS LEAN: I am going to have to look quickly to my left. My Lord, I am informed that it is never formally described in statute in these contexts. It would be whoever the appropriate or relevant Secretary of State is at the time. Could I perhaps check, if it was today, who that sort of person might be under comparable legislation?

69. LORD EVANS OF GUISBOROUGH: I am just wondering how you would grant that power to a Government Minister if you do not know which one it is? Presumably, if you do not know which one it is, you have not taken their view on the subject.

70. THE CHAIR: I think the convention is not to mention a Secretary of State’s department. They change all the time, and it would be unwise to pin down one particular one. Quite how you find it, of course, I think depends on the way local government is organised, but I suspect it is something to do with local government.

71. LORD EVANS OF GUISBOROUGH: That seems to me to be very wise, actually, but I assume, if that is the case, there is some mechanism, maybe within the Cabinet Office or within Government somewhere, by which you can actually hand these

powers over, otherwise any of us could do it, could we not?

72. MS LEAN: Indeed, my Lord. As I said, I understand, as the Chair has indicated and as I am hearing from my left, the convention is just to refer to the Secretary of State to make sure that there is not a situation of defining it by one and then suddenly things have changed before the Bill has barely got through Royal Assent, as it were. My understanding or recollection, from other legislation where I have had to look at this, is often it is possible to look to other Acts to identify where certain functions have fallen, particularly if it has come through a historic mechanism.

73. I was looking at it in the context of a board of commissioners or a board of commissioners of trade in some much older legislation. There are places where it is identified which department, if I could put it in those terms, particular responsibilities or functions of certain types under certain types of legislation sit with. I was just hesitant, because I am afraid I have not checked back before today exactly who, if we looked at this, if this was today the Malvern Hills Act of 2026—which Secretary of State that would be. I understand that DCMS is currently the lead department with regards to this Bill, but I am certainly very happy to take away and see if I can come back with a more categorical answer of, “Our understanding is that, if that power was being exercised today, the Secretary of State whose consent would be required would be the Secretary of State for X”.

74. LORD EVANS OF GUISBOROUGH: I was about to ask you who exercises that power currently, so I would be interested to see the response.

75. MS LEAN: We will make sure we chase that through for you, my Lord. I think the difficulty we have is that, as far as we are aware, this particular power has never actually been exercised, certainly in terms of extending the levy-paying area under the Malvern Hills Acts, but I take my Lordship’s point, which would be: if this was a Secretary of State today, which Secretary of State would it be if this power was on the statute books in that form now and they were being asked to exercise it now?

76. LORD EVANS OF GUISBOROUGH: It seems to have become a current issue, probably as a result of the Bill you have brought forward, so there is a subsequent question which goes on, is there not, underneath your Bill in future? Who do the residents approach to have this change made if they should decide that they want to do

that?

77. MS LEAN: Yes. I understand that, my Lord. As I say, I think it is the sort of thing that would fall for consideration by the Secretary of State. I do not know if it would be on request or application of the Trust, as in, "Please can you give your consent to this agreement, and would you also consider this or would you consent to this?" I do not quite know what the process for that would necessarily be because, as I said, my understanding and my instructions are we do not think that power has been exercised in that way, but I will certainly take away that point and come back to you.

78. LORD EVANS OF GUISBOROUGH: I am sorry to detain us on this, but you are raising another question now, which is: should this power be exercised in future, can the Secretary of State exercise it on their own initiative, or do they need the Trust to go and ask them to do it? If they needed the Trust to request it first, that would mean that other people could not campaign through their Members of Parliament or their council to have it done, because it would be the Trust that would have the say ultimately.

79. MS LEAN: Indeed, my Lord. May I respectfully ask if I could perhaps park that question, because it may be that that is something we would certainly have to get into when that clause of the Bill is being particularly scrutinised with our substantive case. I am afraid I will also need to go and explore that a bit further as to what parallels that has been drawn on.

80. LORD EVANS OF GUISBOROUGH: You might wish to bear in mind that this committee has an instruction from Second Reading to consider the levy paying and the area it applies to.

81. MS LEAN: Indeed, my Lord, and we have that very, very firmly in mind. Forgive me; I do not have that level of detail at my fingertips today, and I would be loath to give you an incomplete or an answer that had to be corrected later on, but merely to highlight I do anticipate, and we have well in mind, that these clauses are likely to be the subject of particular scrutiny by the committee as we go through the rest of proceedings.

82. LORD EVANS OF GUISBOROUGH: Thank you. I am grateful.

83. THE CHAIR: I wonder whether your Lordship would be content if that is really

parked until we get round to looking at that particular clause.

84. LORD EVANS OF GUISBOROUGH: Absolutely.

85. MS LEAN: I am grateful if the committee are happy with that approach.

86. THE CHAIR: That is very helpful. Thank you. Yes, Lord Inglewood.

87. LORD INGLEWOOD: It may be a point that should be parked, but am I not right that the capability of extending the levy-paying area is actually very constrained to being the limits of the parish in which the new piece of land is situated? With that being so, its impact will be, relatively speaking, slight, as opposed to it being an open-ended power to extend the levy-paying area.

88. MS LEAN: Yes, my Lord. That is certainly my construction of Clause 71: that it would not be a freestanding power to start redrawing the levy-paying area generally.

89. LORD INGLEWOOD: You could not ask the ratepayers of Birmingham to chip in. It is merely slightly enlarging the area around the area of Malvern.

90. MS LEAN: Yes. The parish in which the land was situated would be the potential extension area, not a more general power to extend. Yes, my Lord, that is certainly my construction and understanding of Clause 71.

91. My Lord, returning to the matters raised by the petitioner, on standing, I think I have probably covered off the matters relied on by the petitioner as ones that he particularly identifies in terms of his connection as a levy payer.

92. I think the only thing that I should mention at this stage is that, clearly, as this is a hearing about standing, it is not a hearing at which the promoter would usually be entitled to call evidence or adduce evidence in response to matters raised by the petitioner. Clearly, some submissions have been put forward to your committee about things that may or may not have happened or may not have been said. May I just merely put down a marker at this stage that it is perhaps unfortunate some of the terminology that has been used by the petitioner today to express his disagreement with certain things that the Trust may or may not have said? I will say no more about it at this moment other than to say that we are clearly aware that we will have to address, in our

evidence, matters to do with why the levy-paying area has not been extended. I would look to address matters raised about that in due course through our evidence.

93. THE CHAIR: Sorry, I missed what you were saying.

94. MS LEAN: Sorry, my Lord. We are conscious that the promoter will have to address you about decisions that have been taken or reasons why the levy-paying area has not been changed in the Bill, and for the promoter to address or provide any response to the substantive points that have been raised by the petitioner.

95. THE CHAIR: I do not think it helps us on the right to be heard point at all.

96. MS LEAN: Indeed, my Lord. I am conscious of the language in particular that was used as to how it was said the Trust had behaved. I do not think it is right for me to get into the ins and outs of responding to that now, but to put a marker down that that is not a characterisation that is obviously accepted by the promoter.

97. THE CHAIR: Yes. Mr Watts, there we are. I think what we will do is reserve our decision on your petition and announce our decision tomorrow at about lunchtime. I should make clear two things. First of all, if we say you have a right to be heard, then you will be invited back to present your argument in detail. If we hold that you do not have a right to be heard, it does not mean that your paper will be discarded. It contains information that we will bear in mind as we consider the clauses of the Bill one by one, so please do not feel your time has been entirely wasted. Thank you very much. We will end your proceedings at this point and move on to the next case.

98. MR WATTS: Thank you, My Lord.

99. THE CHAIR: Ms Dicks, we are ready to begin when you are ready, but I see you have lost Mrs Spencer. Here you are. Everybody is present. Ms Dicks, you will understand the procedure, which is that we will listen to counsel for the promoter first, to explain why she says you do not have a right to be heard. Would you like her to divide it into you and have you first, and deal with Mrs Spencer separately, or do we deal with it as a single package?

**Ms Anne Dicks**

100. MS DICKS: I would prefer to speak about my petition and then my eight co-petitioners. I have things to read from them. Isabel is one of them. Then if Sue Spencer could come and present her petition after that, and perhaps the promoter could make her closing comments after we have all spoken.

101. THE CHAIR: We have quite a lot to get through. We have another petition after yours to deal with this afternoon. I should mention that we are reaching the stage in the afternoon where it is possible there will be a Division in the House of Lords, which will require members of the committee to go and vote. If a Division is called, we will adjourn the proceedings for 10 minutes and then come back and resume the proceedings after that, but I hope it will not happen. It is just a possibility that it may. Ms Lean, I think it is convenient if you address everybody as a single package, really, and then we can go one by one through Ms Dicks's presentation.

102. MS LEAN: Thank you, my Lord. The first of the two petitions for your consideration are the petitioners who are grouped together as number 44 in your Lordships' table. In broad terms, the potential basis on which those petitioners may assert or may indicate a right to be heard, from what is in that petition, are that they are required to pay the levy and to vote in an election for a Malvern Hills conservator; that the petitioners—or some of them—have property that is accessed over land controlled by the Trust; and that the petitioners enjoy the Malvern Hills and have an interest in the Malvern Hills as users and persons who care for the Malvern Hills.

103. The promoter has raised grounds of challenge to those petitioners' rights to be heard on the basis that the petitions do not disclose that the petitioners' property or personal interests are specially and directly affected by the provisions of the Bill, and that they do not have the right to be heard either as of right or as a matter of discretion under any of the Standing Orders.

104. My Lord, with regards to the petitioners' status as levy payers, I do respectfully adopt and rely on the general submissions on principle I made last week, and I submit that these petitioners do fall within the principles in your Lordships' committee's interim ruling last week, and that the petitions do not disclose anything specific about these petitioners' interests as levy payers over and above those of levy payers in the area generally.

105. With regards to access, again, it is the promoter's submission that there is nothing in the petition that specifically identifies provisions of the Bill that have a particular impact, or a new or different impact from existing legislation, on the rights of access over Trust-controlled land that the petitioners enjoy. With regard to enjoyment of the hills generally, again, I refer back to the general principle in your Lordships' ruling last week.

106. The second petitioner, Mrs Spencer, is petition number 30 in the table, and similarly, the grounds that potentially appear from the petition are that the petitioner is required to pay the local levy and has a right to vote in the election for the Malvern Hills Conservators; is the owner of property which enjoys a legal right of access over land owned or controlled by the property; and the petitioner also raises that the petitioner's property is located near land that might be developed, and that would require the promoters to exercise powers to dispose of an interest in land or grants over land in order for it to be accessible. The grounds on which the promoter has raised a challenge is that none of the petitioner's property or personal interest is specially or directly affected by the provisions of the Bill.

107. My Lord, with regard to the levy, I repeat what I said a few moments ago. Similarly, with regard to access, and with regards land nearby that might be the subject of development, this is something I touched on this morning in response to the petitioner Mr Titmuss's petition that, again, the power for the Trust to grant easements or rights of way to land that requires access over Trust land to the highway is not a new power that is found for the first time in this Bill. It finds its predecessor in an existing power inserted by Section 8 of the Malvern Hills Act 1995. Again, in terms of looking for something in this Bill that potentially affects this petitioner's interests, that is not a new power that is found in this Bill.

108. THE CHAIR: That is it.

109. MS LEAN: Yes, my Lord.

110. THE CHAIR: Thank you very much indeed. I think it is over to you, Ms Dicks, to make your presentation, please.

#### **Evidence of Ms Dicks**

111. MS DICKS: Thank you very much. My name is Anne Dicks and this is one of my eight co-petitioners, Isabel Holdsworth. Isabel will speak for herself after me.

112. I am a classics teacher who moved to Malvern in 1988. I am retired now and I have no experience whatever in legal matters, but I sincerely hope that this House will make allowance for the fact that I am endeavouring to represent myself while withstanding the adversarial onslaught of the conservators' legal team, which is actually paid for by myself and other levy payers. I will speak for myself first, then Isabel will speak, and then I will read brief statements from the others.

113. Giving concise examples of how I am specifically and directly affected by a Bill that is by no means specific and concise is challenging, but I will do my best. I will start with a specific example of one of my special interests and how it will be affected by this Bill. Clause 63, licensing of activities—nobody would thank me for quoting Clause 63 at this point. I have a presentation that I think the technical team are about to start on my behalf, so I choose to begin my presentation with a more accessible presentation of evidence than Clause 63. Could we see the first slide of my presentation, please?

114. That is the title page, just saying that it is my evidence. Second slide, please. This is the top, the very ridge of the hills, on Halloween last year. What an amazing location to share fun and exuberance, and raise money for charity at the same time. You probably noticed the dog lying on the right at the back. He is a guide dog. Two of the three dancers are guide dog owners, and the third is on the waiting list for a guide dog. Would you believe that one of these dancers lost her sight at the age of 31 and was scared to go out of her own house for 14 years because of walking into car wing mirrors and being slapped in the face by tree branches? She was a virtual prisoner in her own home before deciding to apply for a guide dog. One of these visually impaired band members is 90 years old. He has travelled the world as a member of the band of the Scots Guards, so imagine how he feels being able to share his music again.

115. These are not just Morris dancers; these are the only visually impaired Morris dancers in the country, and they are based in Malvern: So Xsighted Morris. I am one of the few sighted members, and my role is bagman. I organise things. Loneliness, isolation and despair are often associated with sight loss—not words you would use to describe this band of lunatics cavorting about, interacting with their audience whom

they cannot see, and whooping and shouting, vital to orient the dancers and alert them to the next moves. Can you imagine what it means to a person who has lost their sight to be able to get out into the community, rushing about at speed in carefully rehearsed manoeuvres?

116. Visually impaired people are used to being the recipient of other people's kindness and charity. Our group gives them the opportunity to support other charities and spread joy. You can see on that video clip exactly what that does for everyone's self-respect. We never ask for money for ourselves. We raise money to name guide-dog puppies, and we have named three already.

117. Visually impaired people do not drive, and most of our members are not in paid employment. It is difficult to get everyone up to the hills. Two, on that occasion, needed a taxi. We do not charge for our performances and, on this occasion, we were dancing to support a local business. If any of your Lordships decide to visit the Malvern Hills, you need to know that, until at least 24 April, the main road from Malvern to Ledbury is closed for repairs and you have to use a detour around the back of the hills. This is having a detrimental effect on local businesses, and we decided to dance for one of them to support them. If the conservators start making us pay for licences, they will be putting yet another obstacle in the way of visually impaired people's interaction with the world on equal terms. We cannot afford it.

118. Now to introduce myself properly and give a run-through of my other interests and how they will be affected, I just have a list of things. I have always regarded volunteering as a normal part of life and, even when I worked full-time, I created and maintained a website for the Worcestershire Animal Rescue Shelter. I made time to go there every Sunday to meet the new dogs and put their individual profiles onto the website to advertise them to potential new owners. I am a volunteer for Guide Dogs.

119. I am the secretary of the Malvern Sight Loss Club, which has traditionally used the hills and commons as a venue for activities without having to apply for a licence. We have no membership fees and, for many of our elderly and frail members, being picked up and taken to our activities is the only time they get out of their house. I used to co-ordinate the *Malvern Talking* newspaper, and I have been involved in the organisation of the annual Cancer Research walk on the Malvern Hills for the past few

years.

120. The conservators have been leading up to this Bill for some time, with increasing requests for more information, and donations, while actually the walk organisers have been doing all the work. For example, I am the person the Portaloo company rings up.

121. I walk on the hills and commons several times a day with my dog, and sometimes with a group of friends. Other petitioners have mentioned the conservators' refusal to engage in positive dialogue about matters to do with this Bill. I have seen an email string from professional dog walkers in 2023 trying to co-operate with what may happen, stressing their willingness to comply with by-laws, and detailing their professional qualifications and their code of conduct. Do I need to elaborate on what the response from the conservators has been? We should not be surprised, because they will not even discuss matters of this Bill with 11 members of their own board, so why should they engage with dog walkers?

122. My personal feeling is that, whether my dog is walked by me or by a dog walker, she should be able to enjoy the hills without me having to fork out extra to cover their costs for a licence. Fencing powers will further restrict where I and fellow dog walkers can safely roam, and it is clear from Schedule 4 and elsewhere that priority will be given to the conservators' new power to become sheep farmers, overriding what human beings have been doing as of right since the conservators were established. Mind you, the strangely worded final point of Schedule 4 defines livestock as "any creature which is or is to be kept by the Trust", and not necessarily for grazing, making me wonder exactly what we might come up against.

123. I am a member of the Malvern U3A. A group leader says, "It is important not to add charges, as the group are retired people who need exercise to maintain health and well-being". That includes me. I also belong to a Facebook social community where the members ask, for example, if anyone fancies meeting for a walk on the hills, or a tai chi session, or Sunday brunch in a local café. I am also a member of various music groups, including two morris bands.

124. I want to show that I am directly and specially affected by new provisions in the Bill, but it is difficult when Clause 63, about licensing specific events, is written in such convoluted language. I do not understand how the promoters of this Bill can say it is

designed to simplify and modernise the language of the existing Acts and then throw this gratuitous obfuscation at us.

125. I cannot tell when an informal gathering of dog walkers or a picnic among neighbours becomes an organised event, and I do not want to be interrogated on my activities by officers of the conservators, who, under this Bill, will be empowered by more new by-laws to demand personal details from me. As secretary of the Malvern Sight Loss Club and bagman of the morris dancers, I am the person who will have the hassle of sorting out licences and working out what we can afford. Clause 63 also seems to be based on a policy that does not seem to have been written yet.

126. I have also played saxophone in specially formed wind bands for picnics and carol singing on the commons near where I live, informally organised by neighbours, who value and enjoy the beautiful open common land along the Guarlford Road, which this committee saw in photos during Mr Bills' initial presentation last week.

127. Powers to adjust, define or improve the boundaries of conservators' land could well affect the lowland commons where I live, and I was first alerted to the broadening of the conservators' objects, due to them becoming a charity, as well as a public body, by a previous CEO, about 15 years ago, talking about how decisions about easements will have to start considering the monetary advantage as well as the natural aspect. That is what started alarm bells ringing in my head about the difference between the objects of a public body and those of a charity.

128. Schedule 4 includes raising funds as point 2, and I do not see this among the provisions of the original Acts. All land in the care of the Trust is there for them to cherish, not assess for monetary value against other potential areas that could be bought.

129. There is a photo at the bottom of this slide that you cannot see very clearly. This photo at the bottom shows me playing saxophone on the very land that we were discussing, and which, without the safeguards in the current Acts, could become a two-lane road with footpaths. Call it an easement if you are into euphemisms.

130. This Bill removes the safeguards, and even the phrase "natural aspect", with its concomitant precedents, and it adds money-making as an object, and fundraising, in Schedule 4. That is the difference if you are a charity. The conservator at the time, who

was representing this particular area—another feature that the reorganisation of how trustees are elected in this Bill will remove—was there at this evening carol singing on the common. He was a neighbour, and aware of this common’s importance in the local community, as well as the importance of this land to the wildlife living on it. The original objects of the conservators, as I said, were strong enough to outweigh motives of pure financial gain when easements or altering boundaries came into consideration.

131. New powers in this Bill to weigh certain parcels of land against others, and neaten the boundaries by selling bits off and buying perhaps larger areas elsewhere, will have a massive impact if they are allowed to go through. The spot where I am standing in that picture could well be one of the first to go. I will spare you a video of my saxophone quartet playing “Teddy Bears’ Picnic” on a beautiful summer afternoon in exactly the same spot, but I hope I have illustrated that all land in the care of the conservators should be cared for by the conservators, and not regarded as a money-making opportunity.

132. THE CHAIR: Ms Dicks, I have to tell you, you are straying into some of the detail behind your petition rather than the issue that we are dealing with. How much longer are you going to be?

133. MS DICKS: Not much longer. I am towards the end—just about more money-making opportunities set out in Schedule 4 under “miscellaneous”. Why does it need to be in Schedule 4 if it has always been an object? Relegating all of this to the very end of the Bill in Schedule 4 seems to prove that it is a new priority, and it will directly affect me because it would be dangerous for me to stand in the middle of a two-lane suburban road playing my saxophone. If this Bill goes through, that common could well be a road.

134. I am quite sure that our heritage is safe in the hands of the present conservators. I have no reason at all to distrust them or their possible actions, but who knows what future conservators may consider a reasonable action to take?

135. Can I have the next slide, please? These are not my words; this is a direct quotation from Baroness Nicol in Hansard from 1994, when a House of Lords Select Committee was considering the 1995 Act. When considering things like this, they did reject quite a few of the clauses that are being put before us again on this occasion.

136. Last Tuesday, I was struck by the way Ms Lean described Schedule 4—things the Trust may do, which she anticipated may need some consideration by this committee. Can I have the next slide, please? This is a quotation from the video. I think it was 12.30 last Tuesday. The word “may”— a number of things that the Trust may do.

137. Taking this and Baroness Nicol’s comments as a precedent, I am assuming that I can regard Schedule 4 as containing points that may directly and specially affect me, since the conservators intend to give themselves those powers. If this committee decides to allow me the right to speak, Sharpe Pritchard, the promoters, in their letter to me of 3 December, have announced their intention in paragraph 18 to ask that I should be restricted to Clause 6, part 4 and part 5 of the Bill. I cannot see their justification for doing this, because I consider I can prove I am directly and specially affected by most of it, and definitely Schedule 4. I will hand over to Isabel now.

### **Ms Isabel Holdsworth**

#### **Evidence of Ms Holdsworth**

138. MS HOLDSWORTH: Thank you. My name is Isabel Holdsworth. I am a levy-paying Malvern resident, and I am also totally blind. Ms Dicks has already said some of what I was going to say, so I will be very brief.

139. Three months ago, my guide dog, Obi, retired. He worked hard for me every day and I felt he deserved some downtime, but I am unable to run my dogs freely by myself because my previous dog ran out of the park and was hit by a car. What I have to do instead is pay a dog walker. She used to come three times a week and bring Obi up into the hills, both to give him some downtime to sniff around and play with other dogs, and to give him exercise by running up and down the hills, because he was not getting enough exercise just by working with me.

140. A lot of people with disabilities use professional guide dogs to walk their dogs because they cannot, for various reasons. As Ms Dicks has already said, a lot of people with disabilities are not in employment. I could afford to send my dog out three times a week, and I am in employment. If the dog walker has to suddenly pay a licence fee, that cost is going to be passed on to dog owners, of which I am one, and so I will probably have to reduce the number of times that my next dog is exercised, and I really do not

think this is fair.

141. The second reason is that, in those hills, I feel a sense of peace, freedom, safety and autonomy when I am up in those hills by myself that I do not feel anywhere else. As Ms Dicks mentioned, I hardly go out by myself now since my dog has retired, because of things like overhanging bushes. There are a lot of brambles in Malvern, and I have had my face and my eyes scratched by overhanging brambles. There are narrow pavements. I have also sprained my ankle at the end of my street when I first moved here, because I did not realise how narrow the pavement was. There is street furniture and, worst of all, silent electric cars. Two of my guide dogs have saved me from being hit by electric cars, and I am terrified of them.

142. My friend drives me up into the hills. He is a self-confessed recluse, and so he drops me off at the beginning of the accessible path. He stomps over the grass and goes goodness knows where, and I wander by myself up the path. I will go up there for 15 or 20 minutes. I will sit down in the grass on the edge of the path and just drink in the peace, tranquillity and freedom.

143. I just cannot describe what it means to me, and I am so worried that this new Bill, if it becomes an Act, is going to introduce electric fencing, building works, and things that I do not expect and that will stop me from feeling safe and being able to walk on my own in the hills.

144. Also, I am worried that, because of the special powers that MHT officers are asking for to stop people and ask for their personal information, I will not be able to see their ID. I will not be able to see if they are wearing a uniform. I will not have a clue who is asking me for this information and whether it is okay for me to provide it, so I will just stop going up into the hills by myself. As a levy payer, I am glad to pay the levy just to have that level of autonomy, and I do not want it to be taken away from me. This feels to me like commercialisation without representation. Thank you.

145. THE CHAIR: Thank you very much indeed, Ms Holdsworth.

**Ms Alison James and Mr Stephen Matthews**

**Evidence of Ms Dicks**

146. MS DICKS: I have now got brief written statements from the other people that I am representing. Alison James and Stephen Matthews say, “We are defending our right to be heard because this Bill directly affects our ability to protect the wildlife living on land in the care of the conservators which adjoins our property. In our petition, we specifically mention the vulnerable white-letter hairstreak butterfly, which, according to the Government’s UK butterfly monitoring scheme, has seen a rapid decline in numbers. The 2006 Natural Environment and Rural Communities Act in England considers it a species of principal importance. It is a woodland habitat specialist which feeds on elm trees, which we have growing alongside us on the common.

147. “Taking the party wall analogy mentioned last week, they can be considered as our neighbours. At present, we have the power, as levy payers, to elect a member to the board who will represent our area and have expertise in our area. Under the provisions of this Bill, this will no longer happen. An earlier petitioner has explained the advantages when conservators have an intimate knowledge of their local area and can represent the concerns affecting humans as their individual local board member.

148. “We have not just the white-letter hairstreaks as neighbours, but also bats, which so appreciate the dark night-time corridor of Jack Pit Lane, an ancient footpath, the line of which also adjoins our property. Our concern about conserving habitats, restoring endangered species and monitoring populations is shared by the UK Government’s statutory advisor for the natural environment, Natural England. Please do not allow this Bill to take away our ability to look out for and protect our neighbours, the vulnerable butterflies and bats”.

**Ms Suzanne Dowson**

**Evidence of Ms Dicks**

149. The next person is Suzanne Dowson. “I am specially and directly affected by the proposals in this Bill to introduce licences for activities on the hills and commons, which I have, for many years, enjoyed without any restrictions. I am a group leader for a Malvern U3A group. I also participate in several unofficial groups and I have different groups of friends who might, for example, decide to go to meditate quietly, taking advantage of our unique and special surroundings, which have inspired people such as Elgar and which provide such refreshment and sustenance for the soul.

150. “It is impossible to work out from Section 63 of the Bill which activities will, in future, need licences. Also, I am dismayed by the idea that I can be challenged by an official of the conservators if they think I might be infringing some new by-law and told to give them my name and address. This would worry me”.

**Mr Michael Crowe and Mrs Shirley Crowe**

**Evidence of Ms Dicks**

151. Next, Michael and Shirley Crowe. “We are residents and precept-payers of more than 30 years and, for the last 10, have been walking on Peachfield Common specifically, and other areas more generally, for about two hours every day. There exists at the moment quite an important and effective feedback loop to the Trust from those local to the commons and hills, and it is via our local representatives elected as trustees. This communication corridor passes knowledge upwards but also disseminates those policies that the Trust are invoking downwards, thus helping the understanding of both parties’ point of view.

152. “However, it is the stated aim of the Trust to totally remove the local trustee, whether through expediency or a desire to follow charities guidelines. This would seem to be a very retrograde step and should be considered very carefully, as it may remove the opportunity for me to canvass the immediate electorate in the vicinity and bring my observations to the board”.

**Mrs Deirdre Drake and Mr Philip Drake**

**Evidence of Ms Dicks**

153. The final two are Deirdre and Philip Drake. “It appears that establishing locus standi necessitates proving how we levy payers are distinct and differ from any other ratepayer, as suggested by Ms Lean. There appear to be only two similar examples in England where a limited, circumscribed number of households in an area are bound by identical legislation to pay a special levy in addition to the normal rates paid in the same area by every other ratepayer. The two areas are our Malvern Hills, and Putney and Wimbledon.

154. “In this respect, we are a very special, limited group of ratepayers, considering

that Putney and Wimbledon is 300 acres shared between 66,000 levy payers. The Malvern Hills Trust is 3,000 acres, and the governance change officer was unable to tell me, when I asked at a recent meeting, how many households pay the levy. We think about over 30,000, but the comparison there needs noticing.

155. “In this Bill, we are about to become responsible for even more unspecified future expenditure, and possibly debts in the event of new commercial ventures of the conservators being unsuccessful. Who knows what the powers sought in Schedule 4 may lead to? We plead for locus standi. Thank you”.

156. That is the end of my petitioners. Sue Spencer will swap places with Isabel now and read her own plea for locus standi.

157. THE CHAIR: Thank you very much, Ms Dicks.

### **Ms Sue Spencer**

#### **Evidence of Ms Spencer**

158. MS SPENCER: Good afternoon. My name is Sue Spencer. I am a resident of Malvern and have been for over 30 years. My husband has lived in Malvern all his life, as did his father, grandfather and great-grandfather. The family owned an area of land just off Court Road, now marked by the street named Spencer Drive. The family also owned a butcher shop on Court Road, dating back to at least 1920.

159. I first came to the area on a school trip to Elgar’s birthplace nearly 40 years ago. As part of the trip, we walked the hills and I was struck by the outstanding views and peaceful atmosphere. The area champions artists and creative people, giving them the space to be who they are and create wonderful work. Many people worldwide are familiar with Elgar’s work.

160. My husband and I settled here after we were married, and we have welcomed four children. Our eldest has cerebral palsy and is a wheelchair-user. I am his full-time carer. I am grateful to your Lordships for letting me appear before you in this way, as it would have been almost impossible for me to do so otherwise with my care responsibilities.

161. I am involved with many community groups and have been for a number of years.

I have cooked for Malvern Street Kitchen. I dress a well for the well-dressing festival and regularly make knitted display items to brighten the community. My son and I are regulars at bands in the park events in the summer, and have been to every Malvern Pride.

162. As a resident of Malvern, I have paid the levy to the conservators in all this time. I appreciate that your Lordships have already ruled on this point as regards my standing. However, I would like to say that, last week, I heard Ms Lean mention that, were the levy extended to residents of Old Hills and Castlemorton and the like, they would have standing, as the Bill would directly and specially affect them, when before the Act did not. I wonder if this is one of the reasons why the levy has not been extended. I also wonder if the public outcry at making more people pay money to a supposed charity was another reason that the unfair situation has not been resolved.

163. My property directly borders on land maintained by the Trust. Again, I know your Lordships have ruled on this issue as regards standing, so I will not labour this point.

164. As a petitioner and as one who has been involved with local issues, I worry that I would be specially and directly affected by Schedule 2(2)(a) that gives the chair the power to exclude people from meetings if they believe that the person would disrupt the meeting—not that they had disrupted the meeting, but they would potentially disrupt it, in the chair’s opinion—all very subjective.

165. In the local press, the chair has constantly labelled those who voice concerns as spreading misinformation, though, when asked directly by a petitioning trustee, they could provide no evidence for this assertion. One trustee even had the police, fire department and counter-terrorism officers contacted about a mere phrase that they had voiced on a social media post. No further action was taken.

166. At the meeting on 13 November—this is a board meeting for the Trust—I heard the chair accuse a trustee of wilfully misinterpreting the Bill for their own ends, though no evidence was given for this assertion. The trustee was rendered silent with astonishment.

167. At a meeting on 9 October 2025, the governance change officer was heard to say that people were being incited to come, as if they were merely there to cause trouble, not

express their concerns about the maintenance of the hills and surrounding land. At that meeting, it was decided that newly appointed trustees should be denied access to relevant papers regarding the Bill.

168. With the ill feeling that exists from some board members to those who have concerns about the Bill and actions of the Trust, and the chair constantly calling those concerns misinformation in the local press, I fear this new power may exclude me from board meetings.

169. As Professor McCrae noted, I cannot see into the future or know that this will happen to test this hypothesis, but what I have experienced at board meetings, I fear this may happen. It is something the Trust may do. Along with a lack of representation for my area, I would lose another method of accountability. I would not be able to speak or ask questions, even if I had submitted them before noon, one clear day before the meeting, and have it take no longer than three minutes to read, as required by the Trust.

170. At present, the chair of the board is not a levy payer and can still wield power. With this clause, this confers extra powers on someone who may not pay the levy. As a levy payer being challenged on my right to stand, this does not seem fair. I have been to numerous meetings of the conservators and the consultation event, and filled out two consultation documents. I am not a busybody who has nothing better to do than cause trouble or spread misinformation.

171. I care about the hills and surrounding area. I care about this landscape and the wonderful recreation that it allows, and the concomitant mental health benefits. I am concerned about how this will all survive into the future. We petitioners have been placed in a legal adversarial situation. We have to defend our right to even voice our opinions, whilst also paying for the legal team against us.

172. Trust is not built through restricted consultations or closed dialogue. It is built through transparency, accountability and a willingness to listen and adapt. There needs to be space for challenge and discussion. If the aim of the Bill is reform, the public and petitioners must be recognised as essential partners in shaping the Bill, not obstacles to be managed or dissenting voices to be silenced. Thank you for your time.

173. THE CHAIR: Thank you very much indeed. Ms Lean, it is for you to reply.

### **Response by Ms Lean**

174. MS LEAN: Thank you, my Lord. I will endeavour to be brief.

175. THE CHAIR: I think there is one point that struck me, listening particularly to Ms Dicks and to Ms Holdsworth. They were speaking in a personal capacity, dealing with things that particularly affect them as individuals, not as levy payers. It is made very clear, really. For a person who is blind, for example, we do not have any instruction from you about how to deal with people like that. Does Ms Holdsworth, for example, not have an interest as a blind person, for the reason she is explaining? What about Ms Dicks, whose activities would be subject to licensing? These are serious issues that they have raised, which are not to do with their levy payer situation at all.

176. MS LEAN: My Lord, vis-à-vis Ms Holdsworth, we have not specifically considered, anywhere in our notes or submissions to you, individuals who are in Ms Holdsworth's position or who have raised the sorts of matters that Ms Holdsworth raised. All I can say on that, my Lord, is that, if your Lordships' committee considers that there is some particular thing that has been raised by Ms Holdsworth about her particular personal or property interest that means that she is or may be affected by certain provisions of the Bill or parts of the Bill differently or specially to others, then, of course, it would be open to your Lordships' committee to conclude that she was specially and directly affected.

177. On that, my Lord, I would then invite your Lordships' committee to consider whether any standing should be limited to those matters that particularly engaged that, so matters such as those that were raised to do with fencing or the licensing powers, if that might interact with a particular service that she has used in the past for dog walking, for example.

178. In my respectful submission, it does not necessarily open up unlimited locus for matters such as governance and the rest of it, which were not prayed in aid as affecting Ms Holdsworth differently or specially as compared with anybody else who lives within the jurisdiction of the Trust, so that would be, I think, my response.

179. With regard to Ms Dicks, again I listened very carefully to that and see matters that have been prayed in aid in that regard. I think this is what is picked up on or

touched on in paragraph 3(b) of the petition, where those sorts of matters seem to be particularly raised about licensing. My submission in response to Ms Dicks would be, again, if your Lordships' committee considered that, by virtue of the matters that have been expanded upon today, you are satisfied that Ms Dicks is, because of her involvement in those activities, in a different position, or her interests are affected differently to others, then, of course, it is open to your Lordships' committee to so conclude.

180. Whether that is as of right or whether it is possibly, under the 118, being representative in some capacity of perhaps the groups with which it is associated, then that would be an avenue open to you to pursue, but, again, I would respectfully invite your Lordships' committee to consider whether that should properly give rise to unlimited locus on all the matters raised, which include things like governance and the levy, or should be more appropriately limited to those particular parts of the Bill or those particular matters that are directly engaged by those interests. In particular, what was prayed in aid was the Clause 63 licensing powers, the one that I had particularly picked up on as being most directly engaged there.

181. The only thing I would, of course, feel it is right for me to highlight, because I believe I highlighted this in respect of an additional petitioner, is whether Ms Dicks, as somebody who is involved in, or may wish to in the future, organising activities on the hills, is in a different position to another person or any other person who may wish to do so. I only flag that for consistency with a submission I made in respect of an earlier petitioner last week.

182. My Lord, if I can just perhaps quickly highlight a couple of points, and I am mindful this is not the opportunity for me to respond to anything of substance, but there were a couple of points raised that I can see why they may cause concern if they were correct or properly reflected the Bill. There was a concern raised that an object of the Trust would now be raising money, and that, in deciding whether to grant easements, raising money would be a particular consideration.

183. First, my Lord, to highlight, the objects for which the conservators would have to act are in Clause 6 of the Bill, page 36 of the R bundle. There is no reference there to raising money for monetary gain. The objects are very clearly tied to for the benefit of

the public, protecting, conserving and maintaining the landscape, et cetera, and to keeping the Malvern Hills “unbuilt on as an open space for recreation and enjoyment of the public”.

184. My Lord, with regard to the power to grant easements, we have been to Clause 55 a couple of times already today, but it is right for me to stress again there is no reference at all in Clause 55 to considering the desirability of monetary gain from the granting of any easements. To the contrary, in deciding whether to exercise power to grant an easement, or if so, on what terms and conditions should be granted, “the Trust must have regard to the effect of the works being authorised on the matters mentioned in Section 6(1)(a)”, so that is the first lot of the matters in the objects, “and must impose such terms and conditions as are necessary to ensure that any adverse effect on the Malvern Hills is minimised”.

185. I highlight that because there was very much a theme that came through that there was a concern that the Bill somehow opened up a commercialisation power, and that matters such as commons being lost or land being sold off would be driven by this need to take into account raising money. That is not at all what Clause 6 or Clause 55 of the Bill provides.

186. Linked to that, Schedule 4, there was a particular concern there about the fundraising power. My Lord, when we looked at this briefly in opening, Schedule 4 has to be read with Clause 84, which is the clause that introduces or brings in Schedule 4, at page 96 of the reference bundle for the filled Bill, which is that, “In addition to any other powers it has, the Trust may exercise any of the powers set out in Schedule 4 in order to further the objects (but not for any other purpose)”. Any of the powers in Schedule 4, which include matters like fundraising, can only be exercised to further the purposes that are specified in Clause 6.

187. There is not a “tail wagging the dog” situation of, because fundraising is mentioned in Schedule 4, somehow fundraising and raising money becomes one of the objects, or the primary objects, of what the Trust does, and I thought it was right for me to highlight that because that did seem to be a concern that was being expressed by Ms Dicks. I can understand why that would be a concern if that was what the Bill did, and it seemed right to perhaps put the record straight on that, if that was a more commonly

held perception as to what Schedule 4 did.

188. My Lord, similarly, the Trust cannot sell common land. Common land is expressly excluded from what is in the powers of disposal in Clause 73. There is a limited power of ability to exchange small parcels of land, but that has precedent in earlier legislation, with some updating to reflect Charity Commission nuances.

189. My Lord, apologies. I am conscious I did veer there into a couple of matters of substance, but, given the severity and the real concerns that I could see being expressed, I thought it was right that I took the opportunity to correct those. Apart from that, my Lord, I rely on the general submissions I have made.

190. With respect to Ms Dicks and Ms Holdsworth, as you particularly mentioned, to highlight that it is the promoter's role to raise a challenge where it does not seem from the petition that individuals do not clearly fall within a Standing Order, but, ultimately, it is your decision as to whether you consider that that is, in fact, the case.

191. THE CHAIR: Ms Dicks, we will have to leave it there. We have got another petition to hear. We will reserve our decision on your case and Mrs Spencer's case, and announce a decision, if possible, tomorrow, about lunchtime. Thank you very much indeed.

192. LORD INGLEWOOD: Does the Bill enlarge the permissive powers of the trustees to exercise charging for licences above and beyond what is there now?

193. MS LEAN: The current legislation does not expressly provide a power to charge for licences. Licensing is a practice that has come in, I think, by reference to the current by-laws to try to manage or keep an oversight on the hills potentially being used for larger-scale events or for commercial activities. The power to require a licence or to require a fee for a licence is a new power. However, it is subject to some important qualifications in Clause 63 itself, which includes, at Clause 63(7) on page 79 of the filled Bill, at subsection 6, which is about a charge for the person to whom the licence is issued, "No person may be charged a fee for a licence issued under subsection (1) for any use of the Malvern Hills that involves the exercise of the public right of access to the Malvern Hills on foot or horseback for the purpose of open-air recreation that is conferred by Section 38", so it would not be open to the Trust to, say, require Ms Dicks

to pay a licence fee to go and walk on the hills as an individual, if that makes sense.

194. LORD EVANS OF GAINSBOROUGH: You are saying this is a new power, but that some discretionary charges are already made.

195. MS LEAN: Not charges, but requirements to get a permission.

196. LORD EVANS OF GAINSBOROUGH: Some discretionary licensing is already made.

197. MS LEAN: Yes.

198. LORD EVANS OF GAINSBOROUGH: I presume that the promoter has done this work. Do you know how many organisations would fall under the umbrella of this who are currently using the hills, given the increased scope of this power?

199. MS LEAN: My Lord, this may be something I have to ask Mrs Satchell to deal with in more detail in her evidence. The way the power is framed in the Bill is that it is, essentially, permissive. It would allow for the Trust to require licences to be obtained in certain circumstances, but for uses that were specified by the Trust in a policy that was to be published and made available. I do not know if I can answer your question specifically, because it does not specify and say a licence would have to be obtained for X, Y, and Z of people of more than A, B, and C. What it does is it gives a power to the Trust to, essentially, have the ability to say, “We will require licences for certain types of commercial activities or organised activities”, and then to develop a policy that would sit alongside that, which made clear what sorts of activities or events that applied to.

200. Because it is in those terms that it allows for the making of a policy in the future, I cannot sit here today and say, “Here is the draft policy that sits alongside that power, and it would, therefore, capture this group and this group and this group who may be using it today”, but I can certainly ask Mrs Satchell, when she comes to deal with this clause in her evidence, to talk about the sorts of activities or groups that the Trust has, in practice, asked to obtain prior permission or authorisation as a working practice over the past couple of years, to give an illustration, perhaps, of the sorts of activities or groups that might be caught by it.

201. LORD EVANS OF GUISBOROUGH: I think what I am trying to get my head

around here is whether there are so few organisations that would fall under it that they would be regarded as being affected particularly by this Bill, or if it is rather a lot of organisations, and whereabouts we would draw the line.

202. MS LEAN: My Lord, I do not think I can give you a clear steer or a categorical answer on that today, I am afraid.

203. LORD INGLEWOOD: Will you be able to do that at a later stage? I was wondering, for example, just to take one at random, whether going on to the Malvern Hills and playing your saxophone might or might not fall within this kind of scope.

204. MS LEAN: My Lord, for a matter of submission, it does not seem to me obvious that going on to the hills and playing a saxophone would fall into using the hills in the course of a business if you are purely doing it for your own enjoyment or as part of any organised activity, but, my Lord, I do take the point.

205. LORD INGLEWOOD: It is in the context that it came in.

206. MS LEAN: My Lord, I do understand the point, and I am not sure I can promise that Mrs Satchell will give a categorical answer, because, as I said, the Bill provides for a policy to be formulated and published in due course if the Trust wishes to, in fact, exercise or put in place the power in Clause 63. I will certainly ask Mrs Satchell if she can provide a bit of colour or some illustration.

207. LORD INGLEWOOD: There is a degree, possibly, of uncertainty that is increased about the lawfulness of some of these activities, which is not there under the existing rules.

208. MS LEAN: Indeed, my Lord.

209. LORD INGLEWOOD: That is all I wanted to establish.

210. MS LEAN: I will make sure that we try to deal with that when we come to that, if I may.

211. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It strikes me that all these activities, which people are extremely concerned about whether they will need a licence or not, are very similar to debates that we have frequently in the House

about the fact that they are not on the face of the Bill, and so therefore people do not really know or understand what the implications are, but they will come forward later, in your case by the promoters making some policy about them in our case, through a statutory instrument. I know, from having dealt with statutory instruments, that they are extremely concerning when you are dealing with the Bill, in that it does not tell you the meat of what it is you want to know. I can understand that the petitioners are very concerned about this.

212. I will just, while I am speaking, make comment on the issue around “may” or “must”, where the Trust may exercise powers or must exercise powers. I would just say that the promoters do have to accept that trust has completely broken down between the promoters and the petitioners, and that is why we are getting this level of objection. That is all. Thank you.

213. THE CHAIR: Ms Dicks, you had a question, please.

214. MS DICKS: I just wanted to say that I am not surprised that Ms Lean found it difficult to clarify, because, in my original exposition, I described Clause 63 as “gratuitous obfuscation”. I have got it here. I have sent it to three fellow ex-heads of classics, and some heads of English; as I said, I am a retired teacher. Nobody can make head or tail of this. The basis of it does say that it is going to depend on a licence, which nobody can find. It has not even been written yet, so I will be very surprised if Ms Satchell can explain exactly what Clause 63 means.

215. THE CHAIR: We will have to look very carefully at that clause when we go through the Bill at a later stage in these proceedings. Thank you very much. I am very conscious of time, because we have got another petition to hear before 4.30, and so we are up against pressure of time. I am going to end your session now, with many thanks to you and your colleagues for your presentations. We will announce our decision, if possible, tomorrow. It may be not as easy as that. Thank you very much.

216. MS DICKS: Brilliant. Thank you.

**Professor Jerry Tew**

217. THE CHAIR: Professor Tew, you will understand the procedure. We would like

to hear from counsel for the promoter first, and then you will be able to reply.

218. MS LEAN: My Lord, I am grateful. This petitioner is petition number 10 in your table. The promoter has identified from the petition that a right to be heard may be claimed based on Professor Tew being required to pay the local levy and on enjoyment of the hills or views of the hills. It has raised a challenge to entitlement to be heard on the grounds that it does not appear from the petition that any of the petitioner's property or personal interests are specially and directly affected by the provisions of the Bill, with the usual phraseology around not having a right to be heard, either as of right or as a matter of discretion. My Lord, at this point, I merely rely, again, on the general principles that were set out in the interim decision last week.

219. THE CHAIR: It is over to you now, Professor, to explain yourself.

#### **Evidence of Professor Tew**

220. PROFESSOR TEW: Thank you, my Lord. Can I introduce myself? My name is Jerry Tew. I am a professor at the University of Birmingham. In 2022, I had the pleasure of appearing as an expert witness to the House of Lords Adult Social Care Committee, and thereby made a contribution towards their excellent report entitled *A "gloriously ordinary life"*, so I have positive history here.

221. It is a privilege for me that I live in West Malvern with immediate access out on to the Malvern Hills. I am a levy payer, and I am happy to pay the levy in order that this supports the amenity of walking on hills on a daily basis with my nine-year-old labrador. My house is adjacent to the conservators' land and, more specifically, vehicular access to my garage is via a rather steep metalled access road that is owned and maintained by the conservators, although potentially dangerous potholes are just now being allowed to get worse.

222. It is probably of relevance that part of the land on which the garage is constructed was purchased from the conservators by the previous owner of the property with the express purpose of rebuilding and extending the garage, so I think it would be hard to argue that it was not intended that the property should have safe vehicular access up the access road owned by the conservators.

223. I would now like to set out my case for being given locus standi, that my interests are directly and specifically affected by the Bill in a different sense to people and bodies generally.

224. I feel somewhat in the position of Mr Bates versus the Post Office, in that I am just a citizen seeking to stand up for what is fair and right against a well-funded organisation and a legal team who are seeking to deny me a voice. I stand here on a far from level playing field. As your Lordships will be well aware from the previous contributions, there is a particular irony in this case that, in addition to having to pay my own costs in order to appear before you today, I, as a levy payer, without consultation or consent, will be footing my share of the additional legal costs associated with attempting to silence my right to petition.

225. As a citizen, I would have liked to speak to the public interest in relation to the Bill, but I recognise that I am prohibited by procedure from doing so. I, therefore, entreat your Lordships to consider the public interest first and foremost in determining how the Bill may need to be amended so as to ensure proper governance and accountability for what has been constituted as a public authority for well over 100 years.

226. Returning to my specific situation and analogy, were I to have vehicular access from a road under the ownership of Worcestershire County Council, and the road were to be poorly maintained, I would have the opportunity to go to my local ward councillor and ask them to take up my case that the road should be made safe. If the councillor were to refuse to represent my case, then I would have the democratic right to campaign and vote against this councillor when they next came up for election. That would be my right as a citizen living in a representative democracy.

227. As currently constituted by statute, the Malvern Hills Conservators have functioned in the manner of a local authority. In line with the fundamental principle of no taxation without representation, which I believe is a constitutional right that goes back to the Magna Carta, I have the right, as a West Malvern levy payer, to elect, under Section 9 of the 1924 Malvern Hills Act, a conservator who will represent the people of West Malvern in relation to the proper preservation and maintenance of the part of the Malvern Hills estate that lies within the parish, and potentially also in matters relating to

the proper governance and activities of the Malvern Hills Conservators.

228. Section 9 of the 1924 Act requires that conservators are elected “by the local government electors” of the parish “in the same manner as urban district councillors”. In the current time, I believe this means that they are elected under the provisions of the Representation of the People Act 1983, as this Act is referenced in the published nomination pack for candidates standing for election.

229. On Thursday 18 September 2025, I went to our local polling station to vote in the election of a new conservator to represent the people of West Malvern. The voting was conducted in the manner of all local and general elections. The result was a three-to-one victory for a candidate who had stated her concern about certain aspects of the Bill and its need for amendment. Somewhat presaging the new way of operating that is desired by the promoters of the Bill, the duly elected representative for West Malvern was, at a publicly attended board meeting, denied the right to speak on matters relating to the Bill and denied access to all papers or correspondence relating to the Bill.

230. It would seem that the promoters of the Bill are seeking to use their charitable status in order to shroud the workings of what is still a public body behind what, with due deference to J. K. Rowling, might be described as a cloak of unaccountability, a total flouting of the principles set out by Lord Nolan of transparency and accountability that should govern conduct across public life. Clearly, this has wider ramifications and hence my plea to your Lordships to consider the paramount importance of the public interest in determining future governance arrangements.

231. In order to establish how I am directly and specially affected by the Bill, let us return to my concern about the inadequate maintenance of the access road belonging to the conservators that offers vehicular access to my property. Heretofore, statute provides me with a mechanism whereby, as an individual citizen, I can challenge any negligence of the conservators in so far as it affects my vehicular access to my property. This mechanism is the right to elect, under the terms of the Malvern Hills Act 1924 and, I think, the Representation of the People Act 1983, a local representative to whom I can turn, as I would turn to a local councillor.

232. This mechanism and my democratic rights to elect such a representative would disappear under Clause 8 of the proposed Bill. The Bill a) takes away my right to elect a

local representative for West Malvern; b) takes away the security and probity of a democratic process in which elected conservators, now termed trustees, “shall be elected in the same manner as councillors” and instead, under Clause 24(2), confers on trustees the right to make rules governing the conduct of elections—they can write the rule book—and c) effectively abolishes the principle of accountability.

233. As far as I am aware, the removal by means of a private Bill of the statutorily established right to elect a local representative on a public body has no precedent. In your interim judgment, your Lordships cite the Bristol Corporation (Docks Purchase) Bill 1884 as a relevant precedent. While this limited the entire population of Bristol from petitioning against a potential increase in their rates, this Bill did not seek to abolish the democratic voting rights of the people of Bristol and their rights, if they so chose, to vote out those who had acted to increase their rates.

234. In the present climate across the world, in which some groups of people in powerful positions are seeking to weaken or abolish statutory mechanisms of democratic accountability, it would seem dangerous if the precedent were to be set in relation to this Bill that there should be no right to petition if a public body chose the route of a private Bill in order to abolish representative democracy and accountability in relation to its governance. Perhaps at some point in the future, those running the county of Worcestershire might seek to go further in a private Bill than the powers sought by the Bristol Corporation in 1884 and be able to cite a precedent set in relation to the Malvern Hills Bill to silence any potential opposition from citizens wishing to petition against the abolition of their democratic rights.

235. To return to the specifics of my locus standi, although the threatened loss of democratic rights affects all those living within the levy-paying area, it more directly affects me, given where I live in relation to land owned by the conservators, and my dependence on the conservators to carry out necessary maintenance on the access road, on which I rely for vehicular access to my property. Maintenance of infrastructure may be seen as a core task of the conservators, as they are constituted as a body akin to a local authority charged with preserving the estate over which they have jurisdiction. However, were the Bill to be passed in its current form, this may not necessarily be seen as a priority by a Trust that would have succeeded in making itself unaccountable to those who would be compulsorily funding its activities through local taxation. Thank

you.

236. THE CHAIR: Thank you very much indeed. Ms Lean, do you have anything to say by way of reply to what we have just been listening to?

**Response by Ms Lean**

237. MS LEAN: My Lord, just very briefly to highlight that, with regards the right of access or the legal rights over the Trust property, nothing in the Bill affects any legal rights that the petitioner has today as the owner of an easement at private law. My Lord, I merely say that, in terms of concerns about maintenance or suchlike, there are, as I am sure my Lord will be aware, ancillary rights or obligations that can attach where you have an easement or right of way over property, and nothing in the Bill affects any of those or changes the position from what it was under the existing legislation.

238. THE CHAIR: It very much affects the person to whom the professor can make his complaints. He is making a point about accountability, access to somebody equivalent to a district councillor, and he is saying that the new structure will completely change that. Is that not relevant?

239. MS LEAN: My Lord, in terms of effects on this petitioner's private or property interest vis-à-vis the right of way, I stress that nothing affects those legal rights or interests that exist today.

240. The point about changing the person to whom the petitioner may complain, in my submission, is not something that is attributable directly to those private property interests or is something that is particular to this petitioner. Any of the levy payers who have come before you who currently have the right to vote for one trustee or one conservator in a particular area could say, "Well, I have today the ability to go to one individual and expect them to raise that with their body". In terms of whether this petitioner is specially and directly affected, that position is no different vis-à-vis any of the other persons who are currently levy payers today. It does not distinguish or differentiate his interests from the others.

241. My Lord, two further points I suppose I should highlight. One is regarding the concerns about removing the right to vote for members of the conservators. As my

Lordships' committee will be aware, the Bill does not propose the whole-scale replacement of elected trustees with appointed trustees. It provides a change in the sense that all those who are entitled to vote currently can vote for all of the elected trustees rather than the people who live in this area happening only to be able to vote for one person. Regardless of how that may carry across, my Lord, this is something we will come to in our evidence about the degree to which the voting arrangements today or the numbers who are within a particular area today correlate to the number of trustees across the board.

242. Second, my Lord, I would also highlight that one of the provisions in the Bill is within Clause 8. I believe it is Clause 8(6), if I can just find the reference in the main bundle. This is more a practical point rather than a legal point as such. Yes, Clause 8(6), page 39 of the R bundle. "The trustees must select one or more of their number to act as a point of contact between the Trust and the inhabitants of any of the parishes comprised in the Trust's electoral area".

243. Now I recognise that, certainly from the petitioner's perspective, that is not the same as, "This is the trustee who is been elected from West Malvern", but the Bill does seek to make provision for recognising the value that is placed on people who live within the levy area being able to identify somebody who can be a point of contact that they go to rather than having to write to or contact the Trust as a corporate body.

244. My Lord, my submission would be that nothing that has been disclosed through the petition or today demonstrates that this petitioner's interests are specially and directly affected in a way differently to another levy payer or, even when combined with the fact that this petitioner takes a right of access over Trust land, marks him out from the position of other petitioners that were looked at last week who also happen to enjoy access over Trust land and also happen to be levy payers. My Lord, that is all I had in reply.

245. THE CHAIR: Any questions from the committee?

246. LORD PONSONBY OF SHULBREDE: Yes. Have you actually complained to your locally elected conservator about access to your garage?

247. PROFESSOR TEW: It is a very interesting question.

248. LORD PONSONBY OF SHULBREDE: Have you got a reply?

249. PROFESSOR TEW: As you are aware, the Trust is in a state of governance turmoil at the moment and so my local trustee is debarred from many of the Trust's activities. Now, technically, she would still be allowed to speak, but she would not be, as the Trust is currently operating, allowed to speak on my behalf because, the way that the Trust is currently operating, anything that smacks of accountability is not allowed within board conversations.

250. I am not sure that I explained it correctly, but they are interpreting their charitable status to mean that trustees can only support, to use the word that was used in a board meeting, the settled position, i.e. the position of a particular group of trustees who have created a settled position. Anybody who represents a different point of view is ruled out of order within the current governance of the Trust. It is a very tricky and difficult situation.

251. I think that throwing out the Bill and sticking with the status quo is not good and in the public interest. I think that change and reform is badly needed. Therefore, I think it is good that the Bill has been presented to Parliament. What is crucial is your Lordship's scrutiny of that Bill and recommending something that actually does provide proper accountability and recognises the public functions and the public duties that are performed historically and will need to continue to be performed by this body. The complications caused by its dual status as a charity are enormous and well beyond my capability to respond to that.

252. LORD PONSONBY OF SHULBREDE: Going back to my original question, have you specifically raised your own specific—

253. PROFESSOR TEW: No, I have not because I know that my local trustee would not be allowed then to proceed with that in the way that the board is currently operating. That, unfortunately, is an indictment of a very serious situation.

254. MS LEAN: My Lord, might I possibly come back on that? That is a concerning point to have heard from this petitioner. I am instructed, of course, that trustees can raise or speak to particular interests or concerns that have been raised by persons such as this petitioner if it is to do with things, for example, like concern about an access or

maintenance.

255. The issue that there is at the moment is about certain trustees interacting on things to do with this Bill—I think it is important that we are absolutely clear on that—but, if this petitioner or other is concerned that their trustees are not allowed to speak or raise any issue at all, that is not the case. The extent to which the view has been taken that certain trustees should not participate in certain decision-making or certain meetings is where those meetings are concerned with things to do with the Bill. It is not an absolute prohibition on them being able to participate or advance matters otherwise.

256. THE CHAIR: Can you just clarify that point? One of the documents we have is the minutes of the meeting at which Mr Myatt was trying to raise issues and he was disbarred from doing that. He is probably in the same position as the professor's elected representative.

257. PROFESSOR TEW: It is exactly the same position.

258. THE CHAIR: Was the purpose of that meeting specifically to discuss the Bill or was it possible to increase or include in the agenda the kind of point that Professor Tew would want to make?

259. MS LEAN: My Lord, I am going to have to go back and have a look at the minutes of the meeting of 9 October. I am afraid I have not got that with me.

260. I understand a complaint was made or an issue was raised certainly to the Charity Commission after that meeting about the fact that two newly elected trustees—I am quoting from the email; this is from the Charity Commission—were excluded from receiving information and from voting on any decision regarding the Malvern Hills Bill. The Charity Commission has since written to all of the trustees about expectations on the Trust and the trustees in light of that. It is publicly available on the Trust's website. I am happy to make copies available to your Lordships' committee, if you would find that helpful.

261. I can go away and double-check exactly what the position was about the 9 October meeting. I had understood that, certainly, the complaint that arose out of it was about things to do with the Bill as opposed to no trustee could ever at any point raise

something if it was not to do with the Bill, but I have not got the minute in front of me. I would not like to misspeak.

262. THE CHAIR: Well, can you just bear that in mind when we get around to looking at that particular chapter in the Bill? Obviously, we are not able to go into the details this evening, but it is a point of deep concern and we will need to really look quite carefully at the way that meeting was handled and other meetings of a similar kind to know exactly what is going on. That has a real effect on our consideration of Clause 8 and other clauses relating to the structure of the new arrangements.

263. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: This is just a small point of clarification. Ms Lean, you referred to Clause 8 of the Bill. I just wanted to clarify whether the six trustees elected by the electors of the Trust's electoral area refers to the levy payers only or the whole of the Malvern Hills area.

264. MS LEAN: Forgive me a minute. I am just checking to see whether there is an obvious—

265. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It is page 39, to which you referred us just now.

266. MS LEAN: Yes, indeed.

267. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It is 8(1)(b).

268. MS LEAN: Forgive me. I was just checking to see where the definition of electoral area is. My understanding is that the electoral area is coterminous with the people who pay the levy, so the people who pay the levy are the people who can still vote in the elections. If I can just quickly check, I am sure I have seen a definition somewhere. I just cannot put my hand on it immediately.

269. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Just to be absolutely clear—I am sure we will come back to this again—it is those people who live within the Malvern Hills area but not within the levy-paying area who will not be able to elect trustees.

270. MS LEAN: Yes, that is correct, my Lady.

271. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you.

272. LORD INGLEWOOD: Can I just confirm, Ms Lean, what you said earlier? The problem that Professor Tew is facing in respect of his access is a private law matter. It does not matter what else the owner of the land does. This is a straightforward matter, which, if ultimately it is not resolved properly, he could bring proceedings in the local county court for injunction. Is that right?

273. MS LEAN: My Lord, it is certainly a private law matter, yes. In terms of his legal right of access to his property over Trust land, yes, that private law right and any courses of action that might be available to him are unchanged by this Bill.

274. LORD INGLEWOOD: By the dispute between everybody in them.

275. MS LEAN: And by any disputes that there may be by trustees within the board of conservators.

276. PROFESSOR TEW: Could I please just clarify, your Lordships? The issue that I am referring to is not a right of access; it is an issue of proper maintenance of the infrastructure that the conservators are responsible for. The argument that I was presenting is that under existing legislation, the 1924 Malvern Hills Act, there is a very clear parallel drawn between the election of conservators and the election of councillors. There is a very strong implication in that Act that, in many senses, they have similar responsibilities.

277. Therefore, what I am losing, if this Bill were to go through, is that process that is very much part of our normal constitutional way of doing things. I do not actually have to go to private law to try to sue Worcestershire County Council for the pothole in front of my house. I can just go to my local councillor and say, "Can you raise this on my behalf?" I have confidence that, within the governance structure of the local authority, that is well accepted. Of course, councillors can raise more difficult issues than potholes on behalf of their constituents, and that is a normal process. That is the point that I was making, not an issue of private law and access.

278. THE CHAIR: Right, I would like to bring the proceedings to an end at this point. Thank you very much indeed. We have only a very short time before a Division and

there are some things that the committee have to discuss. Do you really want to put a point?

279. LORD EVANS OF GUISBOROUGH: This feels actually like an area that other people have probably been over before us because of the amount of local government reorganisation that there has been in the past. Someone may have made this argument. I wondered whether Ms Lean had any precedents that would be useful.

280. THE CHAIR: Perhaps you could bear that in mind when we get round to it. I am sorry to press people, but we have some important matters we have to deal with.

281. Actually, before we finish, Ms Lean, there were two points. One is that Lord Inglewood put a question to you and I put a question to you about Malvern Link. Lord Inglewood's point first, please.

282. MS LEAN: Indeed, my Lord. May I beg your indulgence very quickly before I turn to Lord Inglewood's point? I found the definition I was looking for, but it is under "the Trust's electoral area", not "the electoral area", in Clause 3 of the Bill. It means the area described in Clause 23(3), which sets out the parishes. That is just where it was. It shows that the levy-paying parishes are those. Forgive me. That is where the definition of it was.

283. With regard to Lord Inglewood's question, this was about the potential interplay between the power to grant easements over land and the power to acquire land within nine miles of Great Malvern Priory. First, my Lord, if the question was whether or not the Trust could potentially use its power to acquire land within nine miles of Great Malvern Priory almost to buy in sites, as it were, that might in the future become suitable for development and—I am not going to say "speculate to accumulate" because that is a very poor phrase—essentially identify land that it could buy, which then it might be able to sell on at a higher price in the future and raise money for the Trust's wider objects, in my submission, my Lord, no.

284. The power in Section 29 and Section 31 of the 1884 Act is quite tightly prescribed for the purposes for which it could be used. Certainly, in Section 29 it is for land that the Trust considers should be preserved and kept unbuilt on and open in connection with the range of the Malvern Hills and the commons. It is not a general power to be able to

acquire land within nine miles. It has to be particular types of land, essentially, as it were.

285. The power to grant easements is a separate standalone power and, as with the power to acquire land in Section 29 and Section 31 of the 1884 Act, it has to be exercised on its terms. It is a discretion. They may; there is no obligation to do so. They are required to have regard to the matters that are specified in the power itself and they must impose such terms or conditions as they think fit. Those two powers are separate powers.

286. I cannot hypothetically rule out that there might be a situation where you might potentially get a parcel of land where somebody might, in principle, say, “I have a parcel of land right in the middle of your common. Please will you grant me an easement so I can build three houses, for example?” That might be a situation where the Trust might, not surprisingly, say, “No, that is not somewhere that we are going to grant an easement because we don’t think that is in keeping with our purposes. We don’t think we should do that”. Hypothetically, you could also see that that parcel of land might be one that the Trust might be approached by such a landowner to say, “Well, I have this parcel of land. I can’t really do anything with it because it’s right in the middle of your common. Would you like to buy it from me?” It might be that they might hypothetically overlap like that, but they are not connected as in the Trust going, when it is deciding whether to exercise its Section 55 power, “Well, should we exercise a power to acquire instead?” That is not how it is set up in the statute.

287. LORD INGLEWOOD: It is too late in the day to be too hypothetical. We might come back to it and we might not. Is that right?

288. MS LEAN: Duly noted, my Lord. I hope that broadly covers off the particular matters that your Lord had in mind in asking that question.

289. LORD INGLEWOOD: That was what I was thinking about.

290. MS LEAN: I am grateful. My Lord, Lord Hope, we had a question raised through your clerk about Malvern Link and the parish of Malvern Town Council that is referred to in the levy power in the Bill and confirmation or comfort that they were captured. My Lord, the best I can do is if I could ask you to have regard to two plans. One is R489,

which is the first of the deposited Bill plans.

291. THE CHAIR: Can I just explain my problem?

292. MS LEAN: Yes.

293. THE CHAIR: If you look up on the website the number of parishes that are composed within Malvern Town, it does not include Malvern Link as one of the parishes. That troubles me. I am not concerned with geography. It is just simply very odd. If you are right that Malvern Link is included within the parish of Malvern Town, it is not listed on its website.

294. MS LEAN: My Lord, if I may put it in these terms, the area that formerly fell within the civil parish of Malvern Link, which no longer exists as a civil parish, is now contained within the civil parish of Malvern Town Council.

295. THE CHAIR: It is enough for you to say that you are informed that Malvern Link no longer exists as a parish.

296. MS LEAN: It no longer exists as a civil parish, my Lord. I cannot speak to the ecclesiastical status, but the civil parish, which is the one that was referred to in the previous Act, no longer exists as a separate civil parish and the land is included within the parish of Malvern Town Council.

297. THE CHAIR: Thank you very much. That is an answer to my question. Well, I think we will bring our proceedings to an end. We will resume the proceedings tomorrow at 10.30 am.