

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 10 February 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

FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators
Alastair Lewis, Roll A Parliamentary Agent
Susan Satchell, Governance Change Officer, Malvern Hills Trust

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(At 2.05 p.m.)

1. THE CHAIR: Good afternoon. We will continue with this session on the Malvern Hills Bill. It is over to you, Ms Lean, to carry on your presentation, please.

Statement by Ms Lean

2. MS LEAN: Thank you, my Lord. I was just starting to go through the levy provisions in the Bill. I think I had only got through subclause (1) or (2). If I just recap at the beginning, this is now contained in Clause 33. By way of a rough run-through, 33(1) essentially provides that the Trust can still be a levying body, and that is linked to (2)(a), essentially. It is about making sure that the Trust still comes within the relevant bit of the Local Government Finance Act that means it is a levying body for those purposes, even though it is now in a Bill from, hopefully, 2020-something as opposed to pre-1992.

3. In subclause (2) are the purposes for which the Trust can raise the levy. These reflect the purposes that were in Section 19 of the Malvern Hills Act 1884 and in Section 33 of the Malvern Hills Act 1924. My Lord, if it is helpful, I was just looking there at the table of origins that you have. I do not think it is necessary to go to it for the purposes of this clause, but I would perhaps let you know that it is within page 15 of the table of origins. It is page 142 of the big reference bundle that we gave you in week 1. That is where you find some of that more technical information about where precedents are for this clause.

4. That brings me up to subclause (3). Subclause (3) is essentially making clear that the levying regulations still apply.

5. Subclauses (4) through to (6)(a) are the ones that fix the area. (4) specifies the areas by parish within which the levy may be issued. Subclause (5) says that, if any of the names changes, read it as a reference to the new name. Subclause (6) basically allows for a reorganisation. If any of the land that is currently within one of those parishes falls into a different parish because of a reorganisation, they will still be subject to the levy. If you are in at the date of the Bill, you stay in, even if your parish boundary changes in the future. (6)(a) is the converse. If you are out at the moment, if you are not in at the moment, even if your area is brought within one of the parishes that is named at

some point in the future, you do not then have to start paying the levy. These are essentially the no-change clauses on the geographical area, if I can put it in those terms.

6. (7), (8), (9) and (10) are basically about collection provisions.

7. (11) and (12) are calculations. These are the provisions that say that you have to calculate it in accordance with the levying regulations—that is the 1992 regulations that I referred to before the lunch break—and that annual increases cannot be more than is provided for in those regulations.

8. (13) I am going to come back to in a moment, if I may.

9. (14) to (17) are really still applying the levying regulations and (18) gives you some definitions.

10. I said I would come back to subclause (13) because it might look a bit odd. Essentially, this provides that, if there are voluntary contributions or subscriptions that are paid to the Trust, those can be applied at the desire of the donor to reduce the amount of levy issued in respect of any parish. Now, that is essentially reflecting what is in Section 199 of the 1884 Act. This is not something new that has come in. It is part of the whole “cannot materially change the levy provisions; carry forward the provisions as was” point.

11. Essentially, Section 19 of that Act talked about how the rates were generally to be levied and, at the end, it said “provided also that any voluntary contributions or subscriptions to be paid to the conservators may be applied at the desire of the donors in reduction of the amount required by any such precept to be paid by the overseers of any such parish”. Back in 1884, if there was some very benevolent individual who decided that they would like to pay a lump sum and relieve the burden on the inhabitants of Great Malvern, then the amount that they paid could go down. That is essentially carried forward. Again, if some particularly benevolent soul decided they would like to reduce the amount that the inhabitants of Guarlford have to pay this year or in the future, that is carried forward.

12. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Has that ever happened?

13. MS LEAN: The indication I have had is that we are not aware of it ever happening, but it is part of the whole taking forward of the levy provisions unchanged. That was a provision that was there in 1884. It has been carried forward just in case a particularly benevolent individual may wish to come forward in the future. The opportunity to do so is retained.

14. LORD EVANS OF GUISBOROUGH: Are there any other ways in which that benevolent individual could hypothecate the money that they give to the Trust?

15. MS LEAN: I am sorry, my Lord. In respect of reducing the levy or in giving it in some other way?

16. LORD EVANS OF GUISBOROUGH: Yes. You can say, "I am giving the money to reduce the levy for this parish". Could you say, "I am giving you the money to buy this piece of land", "preserve this particular tree", "build a statue of myself", or whatever?

17. MS LEAN: It might depend on the specific purposes for which they were giving it. There is no reason why an individual could not give a sum of money to be used for a particular purpose. I have a recollection that there is something to that effect in the Trust's accounts and the annual review. In the bundle of material that came from Ms Satchell last week there is reference to a couple of funds that are to be used for particular purposes. This is not the only way by which a benevolent individual could give money to the Trust for a particular purpose. This might look like a slightly odd provision. I assumed that somebody might ask me about it if I did not get out ahead of it, so I thought I would address it that way.

18. LORD INGLEWOOD: There is no legal obligation for any levy to be raised at all, is there? Provided they get the resources that they want from another source, the whole question of levy just goes on the back burner.

19. MS LEAN: Yes, my Lord. They do not have to charge a levy. It is a power, not a duty.

20. LORD INGLEWOOD: Yes. What was occurring to me is that the levy payers are clearly feeling aggrieved that they are paying for the amenities enjoyed by people from

everywhere, Birmingham and so on. If that was the case and the resentment continued, would it be possible to reduce the levy and try to get precepts or something from other places?

21. MS LEAN: Indeed, my Lord. I know one of the things that Ms Satchell will come on to when we look at a particular in Schedule 4 is about some powers that are in the Act that might enable the Trust to bring in money from elsewhere, which would have the effect of reducing the burden on the levy payers.

22. LORD INGLEWOOD: All right, fine.

23. MS LEAN: My Lord, if I may just finish up, although that is the provision that is headed “levy”, there are a couple of others that probably need to sit alongside it in terms of the overall arrangements and the no change. The first, if I may, is Clause 36. This is at page 32 of your filled Bill. This provision essentially carries forward what was in Section 9 of the Malvern Hills Act 1909, which on the one hand provides a power for the councils of now Worcestershire County Council and Herefordshire Council to make a contribution to the Trust’s income in each year, and also allows them, if they do that, to treat the whole or part of it as expenses to be levied upon such parishes as they may specify.

24. I may have referred, when we talked about the 1968 agreement before, to the fact that Worcestershire had agreed to make a contribution. They did not, as far as we are aware, exercise the corresponding power to say, “We are going to pay X amount to the Trust every year and we are going to exercise the power to raise a levy within certain parishes to pay for that”. It was just paid for by Worcestershire. The power to do that, to contribute and to recover those monies through levying certain parishes, is carried forward in Section 36, again as part of the “no change to the existing levy arrangements” approach.

25. There is one qualification, which is that Clause 36(3) essentially says, “Well, they cannot raise a levy on a parish if that parish has to pay the levy under Clause 33”. Under the 1909 Act, it was not an absolute prohibition. It was that they could not impose a levy on those parishes without the consent of, I believe, those parishes. That is the change there.

26. The final provision, if I may just pick it up, because it sits sort of with the levy provisions, is Clause 71. This is at page 56 of the filled Bill. We are now into the land acquisition section, but I have gone to this provision because Clause 71 essentially brings together two powers in the 1884 Act. That was the powers in Section 29 and Section 31 of the Malvern Hills Act, by which more lands could be acquired or brought under the control of the Trust. Section 31 was the one that said that, for common lands, if that was approved by the land commissioners, they could also extend the levy-paying area. There was reference by some of the petitioners during the standing hearings to, “Well, under the 1884 Act, you could extend the levy-paying area”, but that was linked to acquisition of particular land parcels at a particular point in time.

27. Those provisions are now found in Clause 71. It is in Clause 71(4) through to (7) that the levy provisions particularly come in. In subclause (4), land that is common land or wasteland may become part of the Malvern Hills by agreement between the Trust and the lord of the manor of which the land forms part. That is subject to the consent of the Secretary of State under subclause (5). (5)(a) requires that to be published, but (6) is the power that essentially reflects the power that was in Section 31 of the 1884 Act. The Secretary of State, on giving that consent to bring those lands in, may a) amend Section 23(3) to extend the electoral area, and b) amend Section 33(4) to include that parish in the list of parishes that pay the levy, if it is not already there.

28. Subclause (7) says, if that order is going to be made, i.e. if the Secretary of State is going to have an order saying, “Okay, this new part of land has come in. I am also going to order that the electoral area be extended and the levy-paying area be extended”, that has to be made by statutory instrument and approved by a resolution of each House of Parliament. Having checked with Mr Lewis, our understanding is that is a positive affirmation procedure—sorry, an affirmative resolution; I will get my language right. I do apologise for that.

29. I hope that is a bit of an overview of the provisions of the Bill that relate to the levy and how they have essentially been carried forward unchanged, modernised with some additional protections in, from the existing legislation and the provisions in that.

30. I think at this point it might be helpful for me to turn to Ms Satchell to say one thing that we have set out in the note on the levy that the petitioners will have seen and

we have referred to before is changes to the levy area is not something that the Trust has just ignored. It is not that they just went, “We will never look at that”. It has been considered, and it may be that Ms Satchell can assist with what consideration has been given to that and why the Trust has not found an easy solution, if I could put it in those terms, and gone, “Yes, this is what we should do, a this is why we should do it, and this is how we should do it”.

31. THE CHAIR: I think that would be very helpful. It is obviously a matter of some importance to many of the petitioners who do not have a right to be heard, but nevertheless it is of interest to them.

Evidence of Ms Satchell

32. MS SACHELL: Yes, my Lord. The Trust is obviously in a very unusual position with regard to the levy, and everyone on the board has always been very conscious that the land holding has changed and the levy-paying area has not. Ms Lean has already drawn your attention to the map at 494 in the original bundle, which shows you the land that belongs to the Trust or is in the control of the Trust and the levy-paying area. It might be handy to actually have that out to have a look at it.

33. You can see from that map that actually, in broad terms, two-thirds of the spine of the hills does sit within the levy-paying area. The outliers are Old Hills—I am going to be un-geographic and say “top right of the map”—and the southern end of the hills, which is not within the levy-paying area.

34. There is one exception to the general rule there, which I will just point out, and that is the parish of Little Malvern. If you look towards the bottom half of the map, there is a big pink blob, for want of a better expression. That is effectively British Camp Herefordshire Beacon, a large section of it, which was brought under the Trust’s management and control by the 1924 Act. Most of that, not all of it, sits within Little Malvern Parish. In Section 5 of the 1924 Act, an arrangement was set up whereby William Berington, the then major landholder in Little Malvern, the Berington estate, in consideration of the sum of £250, I think it was, opted Little Malvern out of paying the levy. Little Malvern—it has a tiny population—has been not part of the levy-paying area, whereas it might otherwise have been. Certainly I think it may cause a very small wave, but I can see that Little Malvern might object, the Trust having been paid out, to

being reincluded, but that is a strange historical aside.

35. The Trust, as I said, has given consideration to whether there should be some change to the levy-paying area. We raised this when we first started discussing the Section 73 scheme with the Charity Commission and the DCMS. The representative from the DCMS said that, basically, the Department would only take the scheme forward if it was uncontroversial. They would not be happy with putting anything controversial before the Minister. In the course of that conversation, one of the things that they would consider to be controversial was an extension of the levy-paying area. There is also a question to whether imposing a new tax could actually have been done through a scheme, effectively under an order.

36. However, the Trust did consider the position, and you have before you the paper from October 2017 where, in the context of the scheme, the then board thought about whether there was a way to change the levy-paying area that would be fair all around. Without going into the detail, which you can see in the paper, one of the difficulties is how you classify where the extension of the levy-paying area would be because some of the parishes in which the Trust holds land have an absolutely tiny amount of land in; some have a lot. Just looking at the paper, for example, Bromsberrow has less than 0.1 of a hectare. They might say that they do not really get very much benefit from the Trust land at all.

37. On the other hand, there are parishes immediately adjacent to the levy-paying area that have no land in them at all, and the big example is the village of Welland, which sits literally right on the edge of Castlemorton Common, but there is no land actually within the parish. They get a big benefit, but there is no land within the parish. One of the big problems was finding a sensible rule that you could apply as to whether one of these parishes came within the hypothetical new levy-paying area or not, and that was a point that was never satisfactorily resolved.

38. I just note, having looked at that paper, there are actually 25 households in Little Malvern, so not a lot of people are affected by that particular exception from having to pay the levy and it would not generate a huge amount of income by including them.

39. I think it is hard to find anybody who disagrees that, yes, in an ideal world it would be fair to include the other parishes that certainly have large tranches of Trust

land, but it is a knotty problem as to which areas you include and which you do not. Because of the issues with the Department for Culture, Media and Sport and the question of whether we could extend it under the scheme, it was effectively parked at that stage. When the application was made to pursue the Bill, the application said, “The Trust has not really looked at this and, in the course of preparing the Bill, we would like to revisit it and get some advice”, but that came to a bit of an abrupt halt because the Charity Commission then did impose this limitation in relation to extending the levy.

40. That is how we got to where we are today. I would say I do appreciate the position of the levy payers in feeling somewhat aggrieved that they are paying for coming up to 50% of the cost of maintaining this huge national asset and other people are enjoying it and not paying anything. It is not quite true because, of course, all the people who come and park their cars there are contributing. The contribution is—I am saying this now without looking back—around the 30%-plus mark in terms of the car parking income. But they do, by the same—

41. THE CHAIR: Can I just interrupt you there? They do not get any benefit about car parking, for example. A levy payer could say, “I should be relieved of charges because I am paying a levy anyway”. You do not do that.

42. MS SATCHELL: We do, yes, my Lord. We do.

43. THE CHAIR: You do.

44. MS SATCHELL: Again, I do not have the exact detail, but the levy payers can get, I think, two parking passes for Malvern Hills car parks. They just pay basically the cost of the admin, so it is under £10 for one of those car parking passes.

45. THE CHAIR: Per year.

46. MS SATCHELL: Per year, yes. You can pay on the day in the car parks, but you can also buy an annual pass, which is well worth doing if you are going to come more than four or five times a year. The rate is—as I say, I have not checked this; I am sorry, and I can get the exact details—something like £57 to buy an annual pass. The levy payers do get a reduced cost on their parking passes.

47. In actual fact, the figures just happen to work out that, if you live outside the levy-

paying area and buy an annual pass, you pay roughly the same amount as you pay if you were paying the levy. It does kind of even out, but clearly there are an awful lot of people who come to the hills who do not necessarily park their car and do not make a contribution.

48. It is really difficult. The levy is an anomaly, but it does raise the question of, “If you were starting again today, how would you do it?” There is absolutely no possibility of putting a fence around this land and charging people to go in. The money has to be raised in some way.

49. As the people who came before you on the right to be heard hearings mentioned—I particularly remember Mr Myatt saying that he walked across the Trust land every day when he was just going into town. I am not belittling their contribution, but they do get a benefit both of the use of the land and the setting of their homes. They have that 24/7.

50. I do not quite know what the alternative would be to the levy, but the corollary of the Trust not coming up with any proposals to extend the levy-paying area is that they have really tried, in the additional provisions for fundraising, to come up with other ways in which they can raise money, because at the moment the Trust, because it is a statutory body, only has the powers that it is given or that are implied. At the moment, the Trust has no powers to do anything other than raise the levy and charge for the car parks. That is one of the reasons why the other fundraising powers are included in Schedule 4, to enable the Trust to relieve the burden on the levy payers. I am not sure whether there is anything else I can add on that.

51. LORD INGLEWOOD: Can I just ask you: what used to be the Malvern AONB—they have resources.

52. MS SATCHELL: They do. We get grants from them.

53. LORD INGLEWOOD: You draw grants from them.

54. MS SATCHELL: Yes, we do.

55. LORD INGLEWOOD: They are in turn spending public money to you that way.

56. MS SATCHELL: They are. They have the funding streams that they have. I think

FIPL is one of them. I cannot remember; it is something “in protected landscapes”. It funds works in protected landscapes.

57. LORD INGLEWOOD: Is it project-specific?

58. MS SATCHELL: It is project-specific and we have to apply for it. In theory, if there were lots of other applicants, we might not get it, but we have been quite lucky in getting a number of grants from them to do things like tree planting, fencing and access infrastructure, where required.

59. The other thing I would just mention in terms of our funding is that we have quite a big income stream in terms of Defra Countryside Stewardship grants. The levy payers are not paying for entirely everything.

60. LORD INGLEWOOD: Do you view the levy payers’ money as a kind of ongoing estate management fee? I am just trying to look at it from—

61. MS SATCHELL: I do not think I could put a name on how the Trust views it, and I am sure every person views it differently. It is undoubtedly an absolutely massive help to the Trust. It pays for a substantial proportion of what the Trust does and how it runs the hills. An instance of that where we were so lucky was during Covid when the car park income just stopped dead, but we did have that secure source of income in the levy, which enabled us not to be perhaps quite as panicked as we might otherwise have been.

62. THE CHAIR: You mentioned Schedule 4 to be read with Clause 84. The two petitioners withstanding who have points against that are Mrs Dicks—do you remember?—and Ms Holdsworth, the blind lady. They are concerned that the powers in Schedule 4 might be used to restrict their ability to use the hills as they presently do.

63. MS SATCHELL: My recollection, my Lord, in relation to those two petitioners was that their problem was with the licensing provisions rather than Schedule 4. I have no specific recollection of—

64. THE CHAIR: I cannot turn it up in the time available, but I have noted them in my chart as objecting to Section 84 and Schedule 4.

65. MS SATCHELL: Yes, I do only recall their concern about the licensing

arrangements for groups of people using the hills. I am just checking whether any of my colleagues have any better recollection than I have.

66. MS LEAN: I am going to have to check that myself, my Lord. I am just thinking that I think we are hoping to get on to Clause 84 and Schedule 4 after we finish the finance provisions.

67. THE CHAIR: Yes, of course. Just as we are touching on Schedule 4 now, I am just raising that as an issue that we will have to keep an eye on. That is all.

68. MS LEAN: We will frantically check back through the petitions before we get to that point and see whether we can pull out the specific points that they may have raised.

69. My Lord, that is the overview of what the levy provisions are, what consideration the Trust has given in the past to altering that, the difficulties with doing so and I think also the importance of the levy as a continuing source for the Trust today. Unless there is anything in particular we can assist with on levy, maybe if we moved on to the other finance provisions in Part 3.

70. THE CHAIR: Yes, I think we can move on, thank you.

71. MS LEAN: My Lord, the other financial provisions are in Part 3 of the Bill. The first one will be Clause 34. This, I think, is raised by Mr Myatt in his petition. This is the clause that provides, as it says, provision for capital and income. Now, that clause is premised on Section 7 of the Malvern Hills Act 1995. If it assists for your note, my Lord, the table of origins deals with this starting at internal page 16, bundle reference page 143.

72. There is really one main difference between the power in the 1995 Act and what is in Clause 34, if I can perhaps pull out, which is that Clause 34 provides that, "Capital money received by the Trust from the sale, letting, grant or other disposal of land or interests in land under the provisions of the Act may be applied by the Trust for the repayment of the principal of any amount borrowed or any purpose for which capital money may properly be applied". The addition into Clause 34 is "repayment of the principal of any amount borrowed". That is not something that appears in Section 7 of the 1995 Act.

73. I wonder whether I can put it this way. What Clause 34(1) would enable the Trust to do, as currently drafted, is, if it had the opportunity to buy a large parcel of land, that was common land or it felt it was appropriate for it to buy for its objects and for its purposes, but it did not have enough capital sitting in one of its capital funds to buy it and so it had to raise a loan in order to purchase that land, if six months or a year or so down the line it granted an easement and it got a capital payment for that easement, it could take the money it got from the grant of that easement to pay down or pay off the capital of the loan that it had used to buy the other land rather than having to put that money from the sale of the easement into its parliamentary fund that Ms Satchell told you about last week, i.e. its capital receipts fund, and then carry on servicing the loan from its general fund and its income, which would include, for example, the monies that came in from the levy payers.

74. What this does is it allows for the situation where you have monies that, if they were in the capital fund, you would have used to buy a parcel of land, but you did not have enough in there at the time you bought it. It allows you to use it for the same purpose, just reflecting the fact that the money came in from one transaction after the outlay, but you could still have used the money for the same purpose, if the timing had been the other way around. Sorry, that might have been a bit disjointed, but that is my understanding. I can ask Ms Satchell to confirm whether that is broadly the Trust's understanding and expectation of what this express provision of being able to repay down the capital of the loan would enable it to do.

75. MS SACHELL: Yes.

76. THE CHAIR: I am looking at the phrase "capital money" in subsection (2), which appears in subsection (1). Capital money is what subsection (1) is talking about, is it not?

77. MS LEAN: Yes, my Lord. Subsection (1) is what you can do with capital money.

78. THE CHAIR: Yes.

79. MS LEAN: Subsection (2) is things other than capital money. If you receive any money from the sale, letting, grant or other disposal of land or interest of land other than capital money, then you can treat those monies as income of the Trust. It is drawing a

distinction between the outright sum that would come from, say, the grant of a lease, if it is a premium, and any monies that might come during the tenancy of that lease. I am going to look to Mr Lewis in case I have misunderstood that, but, no, that is my understanding of the distinction being drawn there.

80. LORD INGLEWOOD: This is based on the sort of 19th century concepts of estate management, is it not, and things like the Settled Lands Act and what tenants for life can do and what they cannot? In private sector land management the distinction is clear, and it seems to me this is the same distinction that you are striving for. It is quite a sensible way of looking at it, I would have thought.

81. MS LEAN: My Lord, I will be honest with you and say I would have to go back and have another look at the Settled Lands Act because I did not read it over the weekend, but, certainly, under the Act what will come—we will be looking at a provision in a moment that is to do with different types of land, for example. There is a difference between existing relevant land, based on what was inalienable land with very, very limited powers in relation to that, and then land or assets that might be acquired after that, which do not have quite the same status.

82. Yes, in a similar way, it is the sense of any money that has come from capital from the selling of land or something like that is treated in a very specific way, which is meant to only be used for the purchase of further land or for capital works. Ms Satchell referred in her evidence last week to improvement work. You could use it to improve certain areas of land. It has to be used for those purposes. It is not something that could go into the general funds and be used in a—

83. LORD INGLEWOOD: Just to go back to what Ms Satchell was saying about the repayment of the principal, there is nothing to stop you now from borrowing the entire sum, even if you have assets in the parliamentary fund that you might like to keep there. You could borrow more and deal with your finances that way.

84. MS SACHELL: The Trust does have a power to borrow. I find it difficult to think that, if the Trust had the capital money available, it would not use it.

85. LORD INGLEWOOD: Fine. That has answered my question.

86. MS LEAN: My Lord, that would be Clause 34. If we could perhaps move on to Clause 35, the power to borrow and mortgage land, again, if I could take a similar approach just because it is a slightly evolved provision, the Trust currently has a number of powers to borrow in different places in its existing legislation, specifically in Section 11 of the Malvern Hills Act 1909, Section 32 of the Malvern Hills Act 1924 and Section 10 of the Malvern Hills Act 1995. What Clause 35 does, as a starting point, is to bring all the powers to borrow into one single provision in a single place. It is based on Section 10 of the Malvern Hills Act 1995.

87. My Lord, I will go through the different subclauses because this is one that has raised some concerns for petitioners, but, if I can just flag again, in the table of origins note, there is quite a detailed consideration of what the language is or what the provision is in the three existing powers to borrow and then what is said in the Bill in Clause 35. That is at pages 143 through 147 in that first large bundle. I was not proposing to go to it necessarily because there is quite a lot in the table about provisions that are in the earlier Acts that no longer need to be in this Bill because they have been essentially superseded or overtaken by other provisions or because the way that Clause 35 is drafted means you do not need all the minutiae that you had, say, in the 1884 Act.

88. If I could just perhaps run through Clause 35 in the Bill, 35(1) is the freestanding “You can borrow”. You can borrow or raise money, as may be required, for the purposes of this Act. That is helpful because everything is now in this Act, but you will find in some of the earlier legislation—you can do it for the purposes of the 1884 Act or you can do it for the 1924 Act and this Act or the 1995 Act and the 1930s Act. That is just the blanket statement that the Trust can borrow or raise money, as may be required, for the purposes of the Act, so their objects, their functions, their duties.

89. Subclause (2) is about security, essentially. Money borrowed by the Trust can be secured on the security of all or any of the revenues and property of the Trust, including the contributions authorised to be raised by the levy, and the Trust can mortgage or assign over to a person those revenues or the property or any part of them. I am going to say now that there are important qualifications to that in a couple of subclauses that I will come on to in a moment, but, just in terms of subclause (2), i.e. the in-principle power to borrow upon security and to mortgage or assign, again, that is preceded in the earlier Acts, and, in particular, the inclusion of the levy there is reflected in Section

11 of the Malvern Hills Act 1909, which allows for borrowing on the security of the contributions authorised to be raised by precept and the security of any property belonging to the Trust. Although the wording on the levy might look like it is new, it is reflecting an in-principle provision from the 1884 Act. Again, the power to mortgage or assign the secured assets is also not new. That finds its precedent in the borrowing provisions in the earlier legislation.

90. Subclause (3) is an ability to charge a security, essentially, rather than mortgaging or assigning.

91. My Lord, I said that there were two important sub-qualifications. These are subclauses (4) and (5) in particular. These are restrictions on the Trust's ability to charge or offer a security or mortgage existing relevant land. Now, to find the definition of existing relevant land, we have to jump down to subclause (7), but, essentially, another way that this has been described in some documents would be purpose land. This is the land that the Trust holds today, which is its kind of core land. It is the common lands. It is the hills. It is the land that it has under its management and control for those reasons.

92. That is as distinct from what is referred to as ancillary land. Now, ancillary land is defined in Clause 75. I do not know whether you want to jump there, but, in very broad terms, ancillary land is things like land that it is bought to provide offices for the Trust or for the purpose of certain functions. It is distinguishing between what you might call the Trust's core inalienable land—it is the commons, the hills, the land that is been given to it to hold in trust for the public and to manage for the benefit of the public—as distinct from land it may have bought to help it do that and carry out its functions of a certain type, like its offices.

93. Essentially, the Trust could not charge, mortgage, assign, use as security any land that is in the core part of the hills today, common land today, unless it gets the consent of the Secretary of State, and it could only do so upon any terms and conditions that the Secretary of State might impose. That is the protection in subclause (4).

94. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ancillary land is referred to in the glossary of terms in the consultation document. It does not exactly say what you have just said.

95. MS LEAN: My Lady, I was probably paraphrasing—forgive me—what is in Clause 75 of the Bill, which is the read-across here. Clause 75 of the Bill, which is at page 60, talks about ancillary land being land that is acquired by the Trust before the relevant date, so the date of the Bill, under Section 9 of the Malvern Hills Act 1995, the power to provide buildings for use by the conservators; under Section 53 of the Commissioners Clauses Act 1847, the power to provide offices, et cetera; with the sanction of an order of the Charity Commission; or it is land that is acquired by the Trust under subsection (3) of the Bill, which includes offices, staff and volunteer facilities, provision of refreshments, retail sale of goods, storage and the keeping or management of livestock. I am sorry if my paraphrasing was a bit inaccurate.

96. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: That is more or less what is here, except at the bottom it says “which is not public access land”. I think that is really important, that qualification that it is not public access land.

97. MS LEAN: Forgive me, my Lady. Can I just check which provision you are in?

98. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: This is page 331 of the documents that we had on the first day. It is the public consultation document

99. MS SACHELL: It is correct, my Lady, that ancillary land is not public access land. It is land that the Trust holds to do its functions, so to speak.

100. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Yes, obviously, if you are using it for offices or storage, you would not want the public to access it and they would not want to access it.

101. MS SACHELL: No, and there is a provision in the Bill.

102. MS LEAN: My Lord, I am grateful to Mr Lewis. Picking up the point that Ms Satchell was just making, that distinction about it not being public access land is found in Clause 75 of the Bill. Yes, it is subclause (3). “The Trust may acquire land for any use which is ancillary to the objects of the Trust”, so because it is ancillary to the objects of the Trust, that would carve out, essentially, the land that is core to the Trust’s object—i.e. the land it manages for public access and public benefit.

103. Just returning to Clause 35, that is the protection that, if the Trust wanted to do

anything in respect of non-ancillary land—core land or purposed land—which it had at the date of the Bill becoming an Act if it got Royal Assent, that has to be with the consent of the Secretary of State and upon terms.

104. There is a second qualification, which is in subclause (5), which is that, despite the general provisions in Section 101 of the Law of Property Act 1925, which is, in very broad terms, the power that says, “If you are a mortgagee, you can pretty much do anything that an owner can do”—please forgive the paraphrasing—if it is mortgaged or assigned, there are certain things that that mortgagee or assignee cannot do, such as sell the land, cut or sell or contract for the cutting and sale of timber or other trees on the land. That might seem like a slightly strange thing to have a particular carve-out for, but that is something that is reflected in the existing legislation about certain types of land, so if land was mortgaged or charged today, the mortgagee would not be entitled to go on and cut and sell timber.

105. LORD INGLEWOOD: Could I ask one quick question? If some public access land is acquired after the date of this legislation, which category, if either, does it fall into?

106. MS LEAN: My Lord, it would not fall into 4 or 5, so it would be just subject to the powers in Clauses 1 to 3 and Clause 6, which I will come on to in a moment, if I may. There would not be the requirement for the consent of the Secretary of State for land that was purchased after the Bill became law if it gained Royal Assent.

107. I am sure Ms Satchell can speak to this. My instructions are that what this would allow for would be a situation where the Trust wanted to buy land and needed to borrow to buy that land. The person or entity from whom it was borrowing would likely want security, so a way of doing that would be to give security over the land that was being acquired. If the Trust were to buy common X, then, as security for the money to buy common X, there would be a mortgage over common X.

108. Requirements for consent could potentially stand in the way of that, if there was a timing issue, for example, but what that would mean is, in broad terms, if there was a default, this would be new land, so it would be the Trust having to acquire something, but, if it defaulted, it would not be losing anything that it had at the date of the Bill.

109. My Lord, that is still subject to the protection in subclause (6), which is that, if it did want to enter a mortgage arrangement, it has got to comply with the relevant protections of the Charities Act 2011. If you do not need the Secretary of State's consent, you still need to check that you are okay in terms of the Charities Act 2011, which can, in some situations, require the consent from, I think, a court or a commission, if you have not complied with certain procedures, so it is not a complete free hand just to go away and mortgage. There are still protections that would be in place for that new land. That would apply to new common land or that sort of land, as well as to ancillary land.

110. I am sorry that took a bit longer than it maybe needed to have done, but that, in broad terms, is the structure that is set up for the borrowing, and the distinction that is drawn between the land that the Trust holds for the public benefit as at today's date and land that it might look to acquire or seek to acquire in the future. I know there is a concern that has been raised by a number of petitioners of, "Will these powers mean that the Trust could sell off or mortgage existing land to try to buy new land?", and I hope the drawing attention to the fact that the consent of the Secretary of State is required in that and the qualifications, even if it was to be mortgaged or used as security on what that person could do with it, will give some comfort that this is not going to suddenly start being able to lose parts of the hills to try to acquire more land.

111. THE CHAIR: Subclause (6) is new, is it not?

112. MS LEAN: Yes, that would be a new clause.

113. THE CHAIR: It is, presumably, brought in because of a requirement in the Charities Act 2011. Would that be right?

114. MS LEAN: Yes, my Lord. That is a new clause. I am hesitant to say it may be that it applied in any event by dint of the Trust being subject to the Charities Act 2011, but this makes the point explicit, and makes explicit that the Trust has to comply with those provisions in circumstances where it does not have to get the consent of the Secretary of State.

115. THE CHAIR: Yes, indeed.

116. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Can I just ask: where does the Trust usually borrow its money from?

117. MS SATCHELL: My Lady, we have been in the very lucky position to not have to borrow any money for really quite a long time. I do not know when the last borrowing was. I suspect it was around the time when a lot of land was acquired under the 1924 Act. We have been in a situation for a long time where the Trust has had capital money, which it has been able to use for the purchase of land.

118. MS LEAN: My Lord, I think, on financial provisions in Part 3, that then brings us on to Clause 37. I am afraid I have temporarily put my note of unopposed clauses to one side. I had a paper note that that was not an opposed clause. Just in broad terms, as we are in Part 3, this is the provision that was raised on a couple of occasions during the standing hearings and, essentially, changes the situation from relying on the Commissioners Clauses Act 1847, which says about the auditors being appointed by the ratepayers at the annual general meeting, to saying that the auditors shall be appointed by the trustees, but maintaining requirements in there for there to be a report on the financial year, and there has got to be approval of the accounts by the Trust and for the auditors to be appointed at the annual meeting.

119. We have touched on the provisions elsewhere in the Act, which I know we will come back to when we come to Clause 7 in Schedule 2 about meetings being open to the public, unless there are confidential matters or exempt matters being disclosed.

120. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Clause 4, about those attending the meeting, “Unless there are exceptional circumstances which, in the opinion of the chief executive, prevent the physical presence of all the trustees”—is that to do with Covid or anything like that?

121. MS SATCHELL: My Lady, yes. As you can see, that is a later addition. The aim is that that meeting at which the accounts are approved should be open to the public. All meetings are open to the public, but it should be a face-to-face meeting, not an electronic meeting. It was then considered, “What if we are back in the Covid situation and we cannot have a face-to-face meeting and we need to get our accounts approved?”, so that is why there is that proviso in, and it is intended to cover a situation where you cannot meet.

122. THE CHAIR: It could be a temporary serious disability, which means you simply cannot be there. Would that be covering that situation?

123. MS SATCHELL: My Lord, with the general meetings, the proposal is that, yes, you can have both electronic meetings and hybrid meetings, which would cover an individual trustee not being able to be physically present, but I think, in this particular instance, the intention is that it has got to be a physical meeting and that, if anyone, for reason of accident or illness, cannot attend, then they simply will not be present and will have to give their apologies.

124. THE CHAIR: So there is no question of doing it online or anything like that at all. They just simply cannot be there.

125. MS SATCHELL: Yes.

126. THE CHAIR: Going back to subclause (2), can you remind me of the rationale behind changing from appointment “by the ratepayers” to “by the trustees”?

127. MS SATCHELL: My Lord, it is quite a historical provision. Most bodies, including councils, do not have their auditors appointed by their ratepayers. The Trust has gone on for years and years—I think I have mentioned this possibly in my introduction—without any levy payers coming forward to appoint auditors at all. They have been appointed at the suggestion of the chair, and the levy payers present at the meeting have voted on it.

128. The difficulty with the auditors being put forward, proposed and appointed by the levy payers is that they possibly are making that proposal in something of a vacuum without necessarily having a great deal of knowledge of the audit requirements—specifically, auditors who are experienced in charity audit work. I think you will probably have gathered by now the Trust is quite a complicated body and it does take some years for auditors to bed in and get to understand the way in which the Trust’s financial management works.

129. We did have the unfortunate experience where, as I did mention, one of the levy payers came forward and, out of the blue, suggested PricewaterhouseCoopers be appointed without having contact with them to ask if they could and without having got

any sort of idea of what they would charge if they would act, and it caused considerable disruption.

130. It was overcome, but it meant that we were unable to appoint new auditors until later in the year, and it was not felt to be very constructive, I think, to have that provision remain whereby the levy payers could propose and appoint the auditors. They can, of course, be present at the meeting and, if anybody had any particular views, I am sure we would take them into account, but it is felt that it would be better if that power came back to the Trust.

131. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would it be a solution to this if you had an audit committee, and one of your appointed trustees was a qualified accountant who sat on or perhaps chaired the audit committee, and then that audit committee could deal with all the nuts and bolts of the issues around the finance and appoint the auditors?

132. MS SATCHELL: I think it would probably still need to be the board who appointed the auditors, but, my Lady, I did note what was said some days back. I am sure that arrangements for an audit committee and exactly how the audit is dealt with are things that the, hopefully, newly constituted board will attend to in their rules and regulations and other documents, and they will set up a procedure for how the audit is dealt with. It is something they could do, but I do not think it is necessarily something that would want to be covered in the Bill.

133. LORD INGLEWOOD: In the private sector—I have chaired some companies—in the AGM, you appoint the auditors. It is generally proposed by the chairman or one of the members of the boards. There is nothing to stop those who are shareholders then going in a different direction, but the initiative lies with the board to identify the relevant accounting firm, for the very reasons that you described about the possibility of PwC looking after your activities.

134. MS SATCHELL: My Lord, that is correct. I think, in those circumstances that you described, my understanding would be that the shareholders could refuse to ratify the appointment, but it would then fall back to the board of directors to reassess the situation, and would have to put the matter again.

135. THE CHAIR: I suppose one has to look at this clause in the light of the professional qualifications to be an auditor. There is a very high degree of independence required of auditors, is there not?

136. MS SACHELL: There is, my Lord, yes.

137. MS LEAN: My Lord, if I could just highlight as well, I am conscious of the issues that are still around the Trust under the Act or under the Bill as a charity, but, of course, there are obligations on the Trust, as Ms Satchell has referred to, to have properly audited accounts and to do that in accordance with certain standards that are required of the Charity Commission.

138. Of course, it does bring in the concern that if, for example, the appointment of auditors or any delay could be introduced into the process because there was a dispute amongst the levy payers, for example, as to who the auditors should be, it does potentially then run up against the obligations that the Trust has under the relevant legislation, or as trustees of the charity, to make sure its auditing and its accounts are done in the way that is required and in the time that is required.

139. Even though it might have been on one occasion, it has occasioned a delay. What this does do is potentially remove something that could potentially cause problems with compliance with other regimes down the line, if it were to cause a longer delay than was experienced a few years back, which Ms Satchell referred to.

140. LORD INGLEWOOD: It is right, is it not, that the Charity Commission will then review the audited accounts and, if it finds something that it does not like to look of, it is going to draw that to the attention of various people, is it not?

141. MS SACHELL: My Lord, they do not review the accounts. I think the current accounting standard is FRS 102. That is set by the Charity Commission. The auditors have to audit against that standard and certify that it is compliant. The accounts are filed with the Charity Commission.

142. LORD INGLEWOOD: They are filed, yes.

143. MS SACHELL: They are filed with them, but, unless there was some complaint—

144. LORD INGLEWOOD: Exactly. Unless there is a complaint.

145. MS SATCHELL: —the commission would not review them. They would rely on the professional auditors.

146. MS LEAN: My Lord, I think that brings us to the end of Part 3, finance. We were potentially going to touch on land, but I wonder if it might be helpful, because it is more in the keeping of these general powers, to go to Part 7, which are the general and miscellaneous provisions, where we come on to the general power and miscellaneous powers, which brings in Schedule 4. This starts at page 66 of the filled Bill. My Lord, Mr Lewis has gone back to the petitions on the Schedule 4 point, and I have been passed a note that identifies that the trustees' petition—petition 32—raises a number of issues.

147. THE CHAIR: Give me that reference again.

148. MS LEAN: Sorry, my Lord. The trustees' petition, which is petition 32, lists a number of the Schedule 4 powers in connection with, I think, "If they have got these powers, then what about the funding position?" Ms Dicks's and Ms Holdsworth's petition that you refer to, my Lord, asks for Sections 83 and 84 to be rejected generally as an unnecessary extension of powers.

149. On that, if I could perhaps start with Clause 83—and this might be a bit from me again, I am afraid, to start with—on the general power, when we dealt with Part 3, financial provisions, I mentioned that you had a note in the bundle of materials that came with Ms Satchell's evidence last week on that. You have a similar note in that bundle on the general power in Clause 83, which is at P467, so very much towards the back of that bundle.

150. It just may be that, in introducing the general power, it is helpful for me to speak to this note. Like the financial provisions note, this is one that was prepared and was sent to petitioners who had raised issues about Clause 83 to try to give—and it is a bit of a legal point, I suppose—an explanation as to what the general power was and what it does not do and why it is there.

151. My Lords, in broad terms, Clause 83 is a new power. It is a general power that does not appear in the existing Acts. As set out in Clause 83(1), it would give the Trust

the power “to do any lawful thing (whether or not involving the expenditure of money) to further the objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of those objects”. That is subject to the important restrictions and qualifications that you see in Clause 83(1), in Clause 83(2) and Clause 83(3).

152. The first is that the Trust cannot exercise the general power if it has an express power in another provision of the Act to do that thing, or that sort of thing, if I could put it in those terms. That is subclause (2). When I say “that sort of thing”, what I mean is if, for example, it says, “You can acquire or you can fence this”, there are powers of fencing. It may not say, “You can fence this specific area”, but that is what I meant by that slight gloss.

153. There have been concerns raised, for example, that this power could be used to sell off land or to put up a building here or to do this. There are express powers in the Bill to do with buying and selling land and to do with any buildings that may be erected. If the Trust has an express power, it cannot rely on the general power.

154. THE CHAIR: The express powers probably have qualifications around them.

155. MS LEAN: Yes.

156. THE CHAIR: Does subclause (1) enable them, in effect, to override the qualifications, or are you saying to us that the effect of subclause (2) is that it is a power that is there? If you cannot do it because it is qualified in a way that is uncomfortable, you just have to live with that.

157. MS LEAN: Exactly, my Lord. Subclause (2) makes it clear that, if you have got an express power to do the thing that you want to do, you have got to do it under that power and in accordance with the terms of that power. You cannot say, “I want to do that thing, but I do not want to comply with the qualifications and restrictions in Clause 36 or Clause 38, so I will rely on the general power instead”. That is what subclause (2) is saying you cannot do.

158. LORD EVANS OF GUISBOROUGH: Do you have an example of what was in the Trust’s mind when they asked for this? I think it would help me to understand what

it is for. It is not there randomly, is it?

159. MS LEAN: My Lord, it may assist if I just provide this context, which is also from this note, which is that, as Ms Satchell has referred to, because the Trust is a body corporate established by statute, it can only do the things that the Acts let it do or told it that it can do, or things that are reasonably implied from that or are reasonably necessary and incidental to that.

160. In the Bill, the Trust has set out a number of express powers for things it currently does or knows it needs to do—fencing, or borrowing that it might need to acquire or dispose of property. In Schedule 4, it has identified a whole host of things that it may not be doing at the moment, but it can foresee it might need to be able to do in the future. We will come on to that, but, for example, if it wanted to establish a supporters’ organisation, or if it wanted to partner up with another charity to do something like that, those are not necessarily things that it is specifically wanting to do at the moment. It has a clear precedent it can provide and say, “We have got this power here. We want to use this power here”, but that is a list of, “You would be able to do these things if the need arose in the future”.

161. What Clause 83, essentially, does is, in a similar way to the similar power that will tend to be in charities’ objects or, indeed, in the Local Government Act 1972, Section 111—you may not have been able to sit down and write a list of absolutely everything that you think you might possibly need to be able to do for the next 10, 15 or 20 years. What this does say is, “If it is in furtherance of the objects, then if something comes along and you cannot find an express statutory footing for it or an express reference to it in this Act, you can do it under the general power”.

162. My Lord, that might be a longwinded way of saying, “It may not be easy to say what was in the Trust’s mind about what it might need it for”, because, almost by definition, what the general power helps you with is the situation you have not yet thought about, because, sitting in 2025, you have not foreshadowed something that might come up in 2045. If I may, an illustration of that might be, in the 1884 Act, there is no reference to car parking or provision of car parking, understandably, because, in 1884, there were no cars. By 1930, in order to be sure that they could make provision for car parking, the Trust had to come back to Parliament and say, “Please can we have

a power to make provision for car parking?”

163. That is probably a bad analogy in some respects, but, if there had been the equivalent of Clause 83 back in the 1884 Act, then the Trust could have sat back and said, “Hang on. Is the provision of car parking something that we think needs to be done to further the objects or is conducive to or incidental to the furtherance of the objects?” Our objects include public access to the hills. There needs to be car parking so that people can visit the hills. We think probably we could do that under the general power.

164. As I said, my Lord, it is difficult for me to say what the Trust thinks it might need this power for, because it is almost there for the things that have not come up as things you might need to be able to do.

165. As I said, my Lord, it does have a precursor in Section 111. It is not open-ended. I know it looks like it is an open-ended chequebook; it is not. Because of the qualifications that there are in Section 83(1), it has to be something in furtherance of the objects, or conducive or incidental to the furtherance of the objects. It can only be for something that will advance the Trust’s objects. It is not that you can do it for any purpose that you like.

166. It cannot be used if you have an express power to do that thing, and it cannot be used for the specific things that are specified in subclause (3), so it cannot be used to do with the acquisition or disposal of land or granting interest in land. It cannot be used to borrow or raise money, and it cannot be used to erect any building, fencing or other type of enclosure on the Malvern Hills. It is a sweep-up power, which means that, if the Trust finds itself in a situation five, 10, 15 or 20 years down the line of going, “We are struggling to put our finger on exactly what the express statutory authority in the Act is for this particular thing we want to do”, they do not have to come back to Parliament and seek another Act in five, 10 or 15 years’ time to be able to do that one specific thing, if it falls within the definitions of subclause (1).

167. MS SATCHELL: If I might just sum up in a sentence, I think the direction that the Trust came from is that it is future-proofing. It is a back-breaking exercise, and more than back-breaking for a small charity to have to come to Parliament to ask for a Bill. A general power is very common in the constitution of other charities. We were aware of how much concern this was causing in the community from the first consultation, which

is why we have hedged this round with all of the qualifications, but it is precisely, as Ms Lean said, to stop the Trust, when some unknown future eventuality arises, having to come back to Parliament to have another Bill.

168. LORD EVANS OF GUISBOROUGH: It may be common in the constitution of charities. Is it common in legislation?

169. MS LEAN: My Lord, if I may, there is a provision for this in Section 111 of the Local Government Act 1972. I was just going to check if that was in the bundle. I am told it is in the initial reference bundle that you have. As we have referred to in the note in paragraph 7, the Government have recently proposed extending the general power of competence in Section 1 of the Localism Act 2011, which is in broader terms than Clause 83, to English national park authorities and broads authorities.

170. If I may, my Lord, Section 111 of the Local Government Act 1972 was almost a similar result of the sort of situation that the Trust is dealing with here, which is that, because local authorities were bodies corporate established by statute, they could only do that which they had express or implied or reasonably inferred power to do. The provision of a general power took away that issue for them of, “Are we sure we can find an express statutory hook for this?” To some degree, it is not just charities. The precedent for it almost started in that local government context.

171. We are just checking the reference for where we think the provision is. It is in page 448 of the initial reference bundle that came over on the first week. My Lord, when you have had an opportunity to turn that up, there is quite a clear read-across between 111 and Clause 83. Section 111(1): “Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act”—that is the exact starting language in Clause 83—“a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”.

172. My Lord, that is a more expansive power than is in Clause 83, but that is almost the precursor, if I can put it in those terms, for the general powers that have been given to other bodies as a result of it, because of the difficulties, I think, that local authorities

were finding. There are quite a lot of cases where there is back and forth about, “Is there the power to do this? Is this power reasonably implied, or is this power derived by reasonable implication from the powers that are in the Act?” This, essentially, meant that authorities had the greater capacity to act, if they could not find a very specific statutory provision that said, “You can do this”, even if it was something they needed to do for carrying out their duties and functions.

173. LORD EVANS AND GUISBOROUGH: That is a debate that we have to this day, is it not, even though that was a 1972 Act, so it perhaps was not all that effective?

174. MS LEAN: My Lord, lawyers will always find scope for arguing about whether or not something is specifically permitted or not. Yes, my Lord, it does not solve all the problems, but perhaps I could do this. Perhaps I could ask Ms Satchell to give you an illustration of a situation or two where the Trust has been finding it difficult to work out whether or not it has got the express power it needs to do something that it has had to do as part of its obligations today, to give an illustration of how that might have been avoided under Clause 83.

175. LORD EVANS OF GUISBOROUGH: Say you got this power in 1972 when everyone else got it.

176. MS SACHELL: I did rehearse some of these examples, and I have to confess that I now cannot remember what they are. If we had had this power in 1972, although we have put every provision we can think of in this Bill, we have only got a power under the Commissioners Clauses Act to compromise proceedings; we do not have the power to compromise anything else. The Madresfield estate had purported to convey us some land as part of their title as lords of the manor, and the Croome estate had purported to convey exactly the same piece of land to somebody else, and so we had an impasse and the Land Registry would not register the land to either of us.

177. This situation went on for a number of years. We sat down with the other purported owner and decided that the easiest thing to do would be to say they took one portion of land and we took the other portion. We were happy with that compromise, but we did not have a statutory power to be able to effect it.

178. There is a provision in Section 105 of the Charities Act to enable the Charity

Commission to step in in such circumstances, and we had to go down that route, but I think we would have been able to use the general power in those circumstances to deal with this, because we did not have an express provision that allowed us to make that compromise, no matter how sensible it seemed to be.

179. LORD EVANS OF GUISBOROUGH: That would not fall foul of subsection 3(a), which forbids you to acquire or dispose of land or grant any interest in land.

180. MS SATCHELL: We are back to the lawyers having an argument over that one, and I see exactly your point. Yes, there is a question, I suppose, as to whether we had acquired it or were disposing of it, because nobody seemed to be able to lay claim to it. That is an example where we did not have a power, and yes, it might have fallen foul of this particular one. I can go away and think of some other examples, but I just cannot at this instance. It comes up all the time. We are having to go to the lawyers and say, “Do you think this is covered or not?”

181. Another example is—again, we have put it in—installing the water troughs. Do we have a power ancillary to just the fact that we are landowners? Can we put in water troughs to facilitate the grazing of the commons? We did not have an express power to do that. We took it that it was an implied power, but it is not express. Nobody has challenged it. There are things that come up on almost a day-to-day basis where we are scratching our heads and saying, “Is this covered or not?”

182. LORD EVANS OF GUISBOROUGH: I think it would be useful to have a clear idea of what this is for, as it is an issue that is contested. Otherwise, I think you are quite likely to have this debate again in the other place when you take it down the corridor.

183. MS SATCHELL: Yes, my Lord. It is quite difficult to come up with examples of where we might use the power, because we have included everything in the Bill that we can think of now. The problem is if something happens in the future. We have covered it in our by-laws, but one of the things in recent years has been the prevalence of people flying drones. We have got nothing specific that says you can stop people flying drones, because, in 1995, there were not any. It is that sort of thing that takes you by surprise, where you suddenly find there is nothing you can hang your hat on to say you are going to curtail it.

184. LORD EVANS OF GUISBOROUGH: Yes, that is fair.

185. LORD INGLEWOOD: As somebody who is a landowner, it seems to me that a clause of this kind is quite useful, for the very reasons you have given. I was wondering about drones, and eventually found reference to flying over the Malvern Hills, which may not have been exactly what you had in mind when you drafted it, to deal with what could be a new and quite complicated and contentious use of the land. Provided you have spelt out as much as you can, and provided it is properly locked to the purposes of the legislation, it strikes me that you are prudent to do it. Is that the way you are looking at it?

186. MS SATCHELL: That is the way we are looking at it, my Lord, yes.

187. MS LEAN: My Lord, that, in broad terms, was Clause 83. If I could just quickly highlight again, for any petitioners who may be following proceedings today, the restrictions in 83(3), which are that you cannot rely on the general power to acquire or dispose of land or grant any interest in land, to borrow or raise money, including by levy or precept, or erect any building, fencing or other types of enclosure on the Malvern Hills. One point that has been, I think, a particular concern is, “Could the general power be used for the commercialisation of the hills, or selling off of this or the building of that?”

188. Certainly, in terms of borrowing or raising money, or erecting any buildings or structures or such like, that would fall squarely within the prohibition in 83(3), and it is always subject to the overarching requirement in 83(1) that the general power could only be done to do something to further the objects or which was to facilitate or conducive to the objects. It is not a free-ranging power to do something the Trust thinks might be a good idea. It has to be in furtherance of or conducive or to facilitate the objects.

189. My Lord, on subclause (4), Section 38(6) of the Commons Act—I think we might come back to the Commons Act when we are dealing with fencing. If you are happy for me to park that now, I do not think anybody has particularly raised subclause (4) of Clause 38 in the context of objecting to the general power. It may be that I end up getting ahead of myself by getting into what that means and where it gets engaged before we get on to fencing.

190. THE CHAIR: Do we go now to Clause 84?

191. MS LEAN: Yes, my Lord. Clause 84 is the power that brings in Schedule 4. This is the proviso that, in addition to any of the other powers—essentially, powers set out earlier in the Bill—the Trust may exercise any of the powers set out in Schedule 4, but that power must be exercised in order to further the objects, so it cannot be used for any other purpose. It can only use it to further the objects. I stress that again, because there has been, I think, some concern, when petitioners have looked at Schedule 4 in isolation, that things that are in Schedule 4 might look a bit commercial or you might start doing things, but these can only be exercised for the purpose of furthering the object. They are not freestanding powers that the Trust can use for any reason it likes.

192. With that, it might be helpful if I just turn to Ms Satchell to run through the powers that are in Schedule 4, just to highlight perhaps why these ones have been included and, if there is a precedent for them that has been drawn on, where that is.

193. MS SATCHELL: Yes, my Lord. I have not got prepared where the precedents were, so I do not know whether somebody could possibly turn up the table of origins. I know where we have a precedent, but I do not have the reference for it. Again, we do not really have very much in the way of powers. There are limited powers in the Commissioners Clauses Act, but this is bringing in a fairly general set of powers that most organisations would need to function.

194. Again, there are a lot of things that we do now, which we assume that we can do because we could not run without it, but they are now, hopefully, set out fairly comprehensively in here. It is not identical to the list that was in the consultation document, but it covers broadly similar ground.

195. Starting at the top, the power to employ staff is something that is in the Commissioners Clauses Act. I am just going to take some of these as self-evident, to be honest.

196. THE CHAIR: We are looking at the origin papers, and it does say that one or two of these powers are found in earlier legislation, but not many, so a lot of this is new.

197. MS SATCHELL: No, my Lord, that is right. The Commissioners Clauses Act

goes to 1847. When they were incorporated in 1884 into the Malvern Hills Act, I think that bodies just were not given the range of powers that a modern organisation would expect to have, and hence we consider them to be implied, but if we are going to the trouble of having a Bill, we have tried to set them out.

198. The second one is engaging volunteers. I do not think that has got a specific origin in the current Acts. General fundraising—again, I have alluded to trying to include powers in the Bill that will enable us to raise funds other than from the levy payers and from the car parking. Again, I would hope you will find it self-evident that it would be useful for the Trust to be able to raise funds.

199. THE CHAIR: It is the only one that does not seem to have a precedent, according to the origin paper—paragraphs 1, 12, 13, 14, and 23. Am I right?

200. MS LEAN: My Lord, I think that is certainly right when looking at the existing legislation. “Precedents” may have been an unfortunate word on my part, but Schedule 4 has also drawn on other places in existing legislation. I think there is reference somewhere to model clauses from the Charity Commission. You have a copy of that document in the bundle that came with Ms Satchell’s evidence, starting at page 259 to 276. Again, my Lord, this is not necessarily saying that you will find an exact carbon copy of everything there.

201. THE CHAIR: It is a model trustee, is it not?

202. MS LEAN: It is a model trustee for charitable trusts from the Charity Commission, but, at page 264, for example, there is a list of powers. In addition to any other powers they may have, the trustees may exercise any of the following powers in order to further the objects, but not for any other purpose. My Lord, if it would be helpful, what we could do is perhaps do a Schedule 4-specific note, tying together where something may come from existing legislation, something has come from this, or where it has maybe come from advice from the Trust’s charity lawyers as to things that are commonly included, even if they are not in the charitable trustee.

203. THE CHAIR: That would be helpful. It is a very long list, really, and to go through it all one by one is a bit tedious.

204. MS LEAN: Indeed. If we take that action away, but if Ms Satchell perhaps just went through the powers in case there are any particular clauses that are causing any concern for my Lords' committee, or where Ms Satchell might be able to give a particular illustration of why maybe that power would be helpful.

205. THE CHAIR: Yes.

206. MS SACHELL: Ignoring the precedent factor, then, establishing and maintaining a supporters' organisation was one of the things that we were very keen to do. Again, it is not something that it appears we have a power to do at the moment, but the purpose of that was to try to be able to engage and forge connections with those who live outside the levy-paying area but who love the hills. We would hope that having such an organisation would enable us to educate people about the special features of the hills and also help create volunteering opportunities, and possibly the supporters' organisation might run fundraising activities.

207. MS LEAN: May I just ask, then, Ms Satchell? It refers in paragraph 3 to "individuals or bodies may pay subscriptions". Does that interact at all with the points we talked about earlier with burdens on levy payers?

208. MS SACHELL: This would sit completely at one side. If levy payers wanted to join, they could, but we do get our money from the levy payers. This would be something completely aside from that.

209. Co-operation and entering into joint ventures, collaborations and partnerships with charitable and non-charitable organisations—the big one here for the Trust was, again, something we thought that we could not do, which is our ability to take part in the ELM schemes—environmental land management schemes. A big part of that is now the landscape recovery scheme. I think I saw somewhere that the Government have just set aside £500 million for these types of schemes. They are for large tranches of land, and much larger than we have, where you would, together with other landowners, join the scheme to carry out landscape-scale management and long-term projects to restore nature and biodiversity.

210. There are a number of large estates adjoining the Malvern Hills, and we considered with some of those landowners whether we thought we could go into a

collaboration, but we decided we did not have a power to do it. Doing something like that would enable us to tap into another source of grant funding.

211. Some of these do slightly overlap. The next one is establishing or supporting any charitable trusts, associations or institutions formed for any of the charitable purposes included in the object. We do, I think, already do this to some extent.

212. THE CHAIR: I can understand the supporting, but why would you want to establish something new?

213. MS SATCHELL: A parallel to this would be establishing a charitable trust. I did refer to the money that we were given when we acquired the verges at Townsend Way. We were, effectively, given a tranche of money with conditions attached to it. In fact, that does sit there as a separate trust within the Trust, where we only hold that money for very specific purposes, which is to fund the maintenance of the verges at Townsend Way.

214. THE CHAIR: So it is a reserved fund that cannot go into the general fund.

215. MS SATCHELL: Yes.

216. THE CHAIR: And it is sitting there, you say.

217. MS SATCHELL: Yes. We have to hold it for those specific purposes.

218. LORD INGLEWOOD: You could do that for a trust that had more restricted purposes than the full Trust, could you not? That would be a way of guaranteeing to the donor where his money went.

219. MS SATCHELL: Yes. It is guaranteeing where the money is going to go. I have got to be a little bit careful, because, clearly, we can only accept money that is appropriate for our charitable—

220. LORD INGLEWOOD: Yes, but the donor may decide he does not want to give it to you more generally. He would just like to target it.

221. MS SATCHELL: Target it, exactly. It is precisely that. One of the things that people do is perhaps they are very keen on butterflies or something like that, and they

want to give some money on the condition that it is just used for those particular conservation purposes, which would come within our general objects, but they may have a very specific beneficiary or target species in mind.

222. The next one—as I say, there are some overlaps, and these have primarily come from our charity law advisers—is acquiring, merging or affiliating with or entering into partnership with joint venture arrangements with another charity formed for any of the objects. They do very much run in parallel. Clearly, we are not going to merge with a charity of any significance, but the example that I came up with there is some little, tiny charities around the hills that have a very small landholding. If, for example, those charities did not feel they could continue to exist as a freestanding body, it might be that they would see passing that land into becoming part of the Trust land as a way to continue their purposes, but without them having to run it as a separate entity.

223. A joint venture comes back to somebody like Butterfly Conservation, who might want to do some work on a particular area in the hills, and it may be that they would say they would provide the labour and we might provide some funding to do the work.

224. LORD EVANS OF GUISBOROUGH: Do you require the word “merging” in this?

225. MS SATCHELL: That is quite a technical question, my Lord.

226. LORD EVANS OF GUISBOROUGH: You have used this as an example of something you would not do. You have said you would not merge with—

227. MS SATCHELL: We are not going to merge with the National Trust under the provisions of Schedule 4.

228. LORD EVANS OF GUISBOROUGH: This potentially gives you the power to do that, does it not?

229. MS SATCHELL: I am not sure that it does, my Lord. Because of us both being statutory bodies, it would require statutory change. It would only be with a small organisation with very similar aims. I would suggest that, while I do not have an example of somebody or some body who is coming forward at this moment to suggest that they would like to merge their organisation into ours, it is not to say that that would

not happen in the future.

230. MS LEAN: My Lord, could I ask if we could possibly take that wording point away? I think it might throw up some questions around other provisions of the Bill that we probably need to check, so if we could take a note to check the provision of the word “merging” in paragraph 6.

231. LORD EVANS OF GUISBOROUGH: When I looked at that, it looked existential to me, potentially. I suspect you may have to alter some of this legislation to achieve things like that, so we might see you back again if you needed to merge.

232. MS SATCHELL: We certainly would, yes, my Lord.

233. LORD EVANS OF GUISBOROUGH: It would just be good to be clear we are not giving you that degree of latitude.

234. MS SATCHELL: Yes.

235. MS LEAN: The power to merge ourselves out of existence contrary to the purposes of the Bill.

236. MS SATCHELL: Holding seminars, conferences, lectures, tours and courses. We do not quite do things on that scale, but we certainly do do walks and talks and have people in to meetings to talk about our work. Again, it is a provision to enable the Trust to enhance people’s understanding of what makes the Malvern Hills special and, thereby, encourage them to take more care of it. It is all part of looking after the hills.

237. Promoting or carrying out research and dissemination of such research. Again, we do do this. We ask volunteers to carry out research for us, and we assume that it is implied that we can do that for the better care of the landscape. It is a power to do something ancillary. I am not going to advance suddenly doing a lot of research. It will just be part of the protective provisions for the hills.

238. Providing advice is quite limited. It is something we do get asked to do from time to time. For example, neighbouring landowners might ask us to help make suggestions as to how they could better manage their land in concert, as a neighbour, with our land.

239. Publishing or distributing information in any form. We do currently provide a lot

of leaflets on the hills—leaflets for our neighbours, leaflets as to where you can go with your bicycle and all those sorts of things. Again, it is something that we do do now.

240. Making grants really would come in with the point above, where I was saying perhaps doing a joint enterprise with somebody like Butterfly Conservation, where they provided the labour and we provided some funding to them to undertake that. It would have to be all these things tied into the furtherance of our purposes.

241. LORD EVANS OF GUISBOROUGH: Do you currently make grants?

242. MS SATCHELL: We do not, no. Setting aside funds as a reserve against future expenditure in accordance with the policy on reserves. There is already limited provision in Section 11 of the 1995 Act, which relates to the levy, but it is self-evident that, from time to time, we do need to set aside funds. I referred, when I was going through the general introduction, to, for example, setting up a reserve for dealing with tree disease.

243. MS LEAN: Ms Satchell, if I can just jump in there, I think, my Lord, paragraphs 12, 13 and 14 are ones for which you have entries in the table of origins by reference to earlier legislation.

244. THE CHAIR: It is a funny, scatterbrained set of stuff here. It is not really grouped neatly by subject matter, which is rather a pity, really. If you had organised it a little bit more, you could have had ones like 12 to 14 and 15 and so on in a group, but there are other ones that really do not relate to them in any way. Do you see what I am getting at? It looks as though somebody has just been dragging a whole lot of things in without very much thought or organisation. Am I being unfair to you?

245. MS LEAN: My Lord, it may be that, from the perspective of those drafting or those looking at it, there are things that more naturally group together. The first group might be seen to be around things like staff and supporters' organisations working with other bodies, and then we get into more money stuff, but I do take my Lord's point that perhaps some subheadings might potentially have been helpful to group them.

246. THE CHAIR: Yes. A group of financial things and then a group of other stuff that is to do with people and so on, and things to do with buildings and so on. I will just

throw that out as something you might like to think about, just to make it look a little more organised. You are going to give us, anyway, a derivation sheet, are you, for all of these?

247. MS LEAN: Yes. We will endeavour to provide where a drafting precedent for that has been, or what the source of that power has been, and whether it finds a source in the Charity Commission model trust or if it has been on advice from charity lawyers, or if it is in the previous legislation.

248. THE CHAIR: Ms Satchell, I am not sure there is much point in your going through them one by one, really. I am going to, in a way, bring the session to an end, because we have completed all the clauses and schedules that are referred to in the forthcoming business, but we have left aside material in Parts 4, 5 and 6, which we will need to look at tomorrow. Are you planning to do that?

249. MS LEAN: My Lord, we were planning tomorrow to deal with a couple of powers in Part 6 to do with acquisition and disposal of land, but to leave Parts 4 and 5, which are really around the management of the land, to when Mr Bills comes in in March, because that is really covered by a combination of Mr Bills and Ms Satchell, and will also be spoken to by an individual who is coming along with the Trust then.

250. I think what was on our list for tomorrow is some of the more technical powers to do with acquisition and disposal of land, and things like that. I am conscious that there are some mop-up items from me around representation, the nature of the body receiving land, and the interaction between the charity and the corporate body status with the current election arrangements.

251. THE CHAIR: What I suggest is that we adjourn now. You can come back, of course, on Schedule 4 if you have got any more information on your organisation and the sources of origin and so on to tell us about. We could come back tomorrow and then deal with the matters we have just been mentioning, and then that will bring this session to an end, in effect. We will not be sitting tomorrow afternoon.

252. MS LEAN: No, that is what I understand, my Lord: that this would be tomorrow morning, when we deal with those remaining points.

253. THE CHAIR: Yes.

254. LORD INGLEWOOD: Looking at the schedule, I was thinking. I do not know whether you want to answer it now. You may say I have got it wrong. Do you have powers to deal with Travellers?

255. MS SACHELL: My Lord, we do.

256. LORD INGLEWOOD: You can answer tomorrow. I do not mind.

257. MS SACHELL: In the by-laws, we do. It is not a specific power, but we do have by-laws that say that you cannot, for example, camp on our land and you cannot bring vehicles onto our land, and we use those powers in the by-laws to deal with Travellers.

258. LORD INGLEWOOD: You have got the authority, then, to follow it up. Secondly, things like filming and pop concerts.

259. MS SACHELL: We absolutely do not have pop concerts.

260. LORD INGLEWOOD: Leave it. I just raise it.

261. MS SACHELL: I will say the filming comes under licensing, which is one of the powers we have not got to yet, and I think probably putting off discussion about filming until then would be good.

262. MS LEAN: My Lord, if it assists, you have the by-laws starting at page 315 of the big reference bundle. What I have just flagged, as I was flipping through quickly, is by-law 20 deals with meetings, concerts, rallies or assemblies.

263. LORD INGLEWOOD: I had looked at some of it, but you have got ahead of me. It is my fault.

264. MS LEAN: My Lord, I think we were assuming we might come to the by-laws in Part 5, when we deal with management of the land generally, probably in early March.

265. THE CHAIR: Good. Thank you both so much indeed for your help today, and we look forward to seeing you tomorrow morning at 10.30. We will adjourn the proceedings now.