UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

**MALVERN HILLS BILL COMMITTEE**

PETITIONS AGAINST THE BILL

Wednesday, 11 February 2026 (Morning)

In Committee Room 2

PRESENT:

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

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FOR THE PROMOTER:

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

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

1. THE CHAIR: Good morning and welcome to this, the 11th public meeting of the Select Committee on the Malvern Hills Bill. May I remind those in the room to be careful to make sure that their mobile phones are silent and to refrain from having conversations behind the witnesses so that they are not distracted when they are giving evidence?

2. May I remind you also about the fire precautions, which perhaps by now you are fairly familiar with? We have a two-tone siren and taped messages that tell us what to do. The drill is to leave the room immediately and follow the guidance of the clerk. If you are outside in the corridor, find a security officer and follow their instructions.

3. These proceedings are being broadcast and a full transcript is being taken. Those who are giving evidence, please check the transcript to be sure that it is accurate. If there are any errors, let us know and they will be corrected before the Hansard version is published. If we have to go into private session, we will adjourn briefly, but I do not expect that is going to happen today and this morning we will not be troubled by votes in the House.

4. We are ready to proceed now, Ms Satchell, with the further evidence from you, which is looking at Clause 71 and that group of clauses.

5. MS LEAN: Yes, my Lord. We are going to move on today to the first set of powers in Part 6 of the Bill dealing with land.

6. THE CHAIR: Yes.

**Statement by Ms Lean**

7. MS LEAN: My Lord, before we do that, can I just pick up two points from yesterday—points of correction or clarification, if I may.

8. First, on Clause 18, eligibility to be elected, I believe I may have made reference to provisions in there about keeping parish areas the same. There are provisions in subclause (8) of that about “former parish area” and “parish area”, which essentially means, if you are in the parish today and the parish changes, you remain eligible to stand for election. Clause 18 does not contain the more detailed provisions that you find

in Clause 23, electoral area, or in 33, the levy, which essentially tops and tails and says that everything is completely shut down for all time. If the parish expanded, you do not expand the electoral area or the levy area. There is not the exact parallel in eligibility for who can stand in terms of the provisions that you find in those two related clauses. I just wanted to clarify that in case I had inadvertently misspoken.

9. THE CHAIR: Yes. Are you suggesting any change is needed to Clause 18?

10. MS LEAN: I am not suggesting any change is needed. It is just that I wanted to be sure that I had not inadvertently given the committee the impression that those clauses were identical.

11. THE CHAIR: No. Certainly, on reading it, I had spotted the difference myself. Yes, thank you.

12. MS LEAN: My Lord, the second point is a minor one. Ms Satchell thinks she referred yesterday to Capita as an organisation that runs elections on behalf of different bodies. It is Civica. I may not have said that right, but that was whom Ms Satchell meant and she just asked me to clarify that.

13. THE CHAIR: Yes. Thank you very much.

**Evidence of Ms Satchell**

14. MS LEAN: My Lord, then turning to the land powers in Part 6, again, we will focus on the ones that are identified on the list as being opposed clauses in the front end of this part. If we can tag-team again in the same way we have done for the last couple of days, I will run through a couple of how the provision works and operates and then look to Ms Satchell to provide the why as required. My Lord, this is one where it is probably helpful to have to hand the table of origins.

15. THE CHAIR: Which bundle should we look at?

16. MS LEAN: Now, that is in the first big bundle that came over in week 1.

17. THE CHAIR: It is not bundle 4.

18. MS LEAN: It is in bundle 1.

19. THE CHAIR: Yes, I have got it.

20. MS LEAN: It starts at page 128. My Lord, Part 6 starts at page 162 on my note.

21. THE CHAIR: Page 162.

22. MS LEAN: Internal page 35. My Lord, to start with Clause 71, we did go into this clause yesterday in connection with the levy provisions. If I can just touch on the provisions on the acquisition of land side, in broad terms, Clause 71 reprovides or follows the powers that were in Sections 29 and 31 of the 1884 Act, which allow for the acquisition of certain types of land within nine miles of Great Malvern Priory by the Trust, including common lands or wastelands of a manor.

23. From a land acquisition perspective, this is not a freestanding power to acquire any land within nine miles of Great Malvern Priory. First, it has to be of a type falling within subsection (3), specifically subsection (3)(b), that it is land "which the Trust considers should be preserved unenclosed and free from building as part of the Malvern Hills". In subclause (1), the power is to be exercised "in furtherance of the objects".

24. I should highlight that the provisions are obviously not an exact replica of the 1884 Act, and a concern has been raised by some petitioners about the loss of the words "in connection with", which appear in Section 29 of the 1884 Act, which provided that the land could be acquired within nine miles of Great Malvern Abbey, which the conservators regarded "as proper to be so preserved as part of or in connection with the range of Malvern Hills or for the purpose of maintaining any common or commonable rights which may subsist".

25. My Lord, I do just highlight there that, reading Clause 71, what it is essentially doing is sweeping up the fact that it is not just the range of Malvern Hills; it is all those lands regarded as the existing Malvern Hills, so all the lands that are under the Trust's control and management today. There is not the distinction drawn, as it were, quite so clearly between the range of the hills and the common lands. Section 71 applies to all land that it considers to be part of the Malvern Hills, being all the land that is under the Trust's control and management today. It is also caught up in the point about it has to be in furtherance of the objects. My Lord, perhaps if I could just park the point or connection there. I just wanted to highlight it because I am aware it is something that

petitioners may wish to bring to you, but, from the Trust's perspective, this does the same thing. There is nothing that is lost as a result of the change in language in Clause 71.

26. My Lord, the other points to just highlight on Clause 71—

27. THE CHAIR: Would you have any objection to putting it back in again?

28. MS LEAN: My Lord, I understand the words "in connection with", which you may see struck out in red, in Clause 71(3)(b) itself—

29. THE CHAIR: Yes, it is there.

30. MS LEAN: —came out in discussions with, I believe, House of Lords counsel.

31. THE CHAIR: Yes.

32. MS LEAN: I am sure that, if needs be, Mr Lewis can provide me with chapter and verse on that. It may be, my Lord, that it was in; it has been taken out. As drafted in my submission, it still does capture exactly the same things.

33. THE CHAIR: It is unnecessary verbiage, really, is it? Is that the idea?

34. MS LEAN: I am hesitant to speak, not having been part of the particular discussion as to why the word came out, but, my Lord, in my submission, yes, to say if it has to be exercised for the purposes of the Trust, it has to be land that the Trust considers should be preserved as open and unbuilt upon as part of the Malvern Hills—in my submission, it is difficult to see what the "in connection with" particularly adds.

35. THE CHAIR: It is a question of what it really means. That is another way of looking at it.

36. MS LEAN: Indeed, my Lord.

37. THE CHAIR: It is just a bit vague, really.

38. MS LEAN: My Lord, if I may, respectfully, the words "in connection with" are something that has been raised in petitions. It may be that, once petitioners say, "Well, we think the 'in connection with' should be there because…", I can then respond at that

juncture for any particular points that are raised there.

39. My Lord, there is also then the specific provisions to do with common land or wasteland of the manor, which you find in subclauses (4) to (7). These are essentially based on the provisions that are in Section 31 and 32 of the 1884 Act. It is just a slight modernisation of it, including referring to the consent being of the Secretary of State rather than the consent being of the land commissioners, who have not existed in that form for some time.

40. The one provision to flag that is new, my Lord, is Clause 71(2), which just makes clear that the Trust can also essentially acquire land or land can be brought within the control and management of the Trust if it is given by a gift or a request as opposed to a purchase or a formal agreement of that sort. Again, that still applies to land that is the sort of land that is within subclause (3), but it is just reflecting that this might be a different way in which it comes to the Trust, and the acceptance by gift or bequest in that context is not something that is currently expressed in the existing Acts.

41. LORD INGLEWOOD: Can I make a quick point there? That would include, would it not, land given in lieu of tax to satisfy inheritance tax obligations? I think so. Sorry, I am being a pedant.

42. MS LEAN: My Lord, I am hearing from my left that there is no reason to think that it would not. I think it just might be the precise mechanics of how that plays out, but, yes, I think in theory, if it was land being given for the benefit of the public in lieu of an inheritance tax payment, that would seem to potentially fall within Clause 71 too.

43. LORD INGLEWOOD: I expect it would. That would be consistent.

44. MS LEAN: It would seem consistent with that, my Lord.

45. My Lord, unless there is anything further on Clause 71—I am afraid that was a bit of a mechanical run through it, but, as it is largely replicating provisions that already existed but updating and modernising them, unless there is something particularly you would like to ask Ms Satchell—this is not one where we are saying, "Well, the Trust needs this new power because, and here is why we have thought about it". It is more of an updating of the old.

46. If perhaps then we can move on to Clause 72, this one is again based on an existing power to adjust boundaries of Malvern Hills land. It is a very specific power. It can only be done for an area not exceeding 0.12 hectares in the case of any one sale or exchange. That finds its footing in Section 9 of the Malvern Hills Act 1930, which refers to exchanging of land for the purpose of adjusting, defining or improving the boundaries of the Malvern Hills, doing it for land not exceeding a quarter of an acre. Now, I am reliably informed by Ms Satchell, when I asked about how you translate 0.12 hectares to a quarter of an acre, that that is roughly the same but slightly rounded up a bit. Essentially, it is not materially extending the power to adjust the amount of land that can be exchanged land. It is just an as close as possible modern equivalent, if I can put it in those terms. Just to highlight, that power is subject to the consent of the Secretary of State.

47. What then appears in subclauses (3) through to (7) are, in (4) through to (6) more detailed mechanics than were provided for in the earlier Acts. Rather than just providing for a requirement for an advertisement in local newspapers, there is a requirement to publish notice, what the notice is to contain, details of method by which objections can be made to the Secretary of State and where it is to be published.

48. In subclause (7), there is a new proviso that expressly requires the Secretary of State, in deciding whether to give consent, to have regard to any objections that may have been received. If the Trust is proposing to exercise the power to sell or exchange a small area of Trust land, there is scope there and a provision for essentially public consultation or public objections to be made to it.

49. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It seems a very small area to be bothering the Secretary of State with.

50. MS LEAN: Yes, my Lady. It is fair to say that common land in particular has always had very special protections in general legislation. For example, there are specifics in, I am going to say, the Local Government Act 1972 Section 122 about appropriating land or local authority appropriating land held for one purpose for another purpose. There are restrictions on that, if it is more than a certain amount. Similarly, if there are compulsory acquisition powers sought, which look to acquire land that is commons or allotments, there are restrictions on that. It can, I think, potentially have to

go through a special parliamentary procedure unless dispensation is given for it.

51. Yes, it seems like a very small area of land, but this essentially reflects the general provision that there is still in legislation. If you are dealing with anything to do with common land, there are very particular protections that apply to it.

52. THE CHAIR: Looking at the subclauses, subclause (3) obviously is necessary because of the Charities Act legislation. That obviously was not there in the previous Acts because it did not exist. Why is it in blue here? Is this an amendment you are proposing?

53. MS LEAN: Yes, my Lord, it is an amendment that is been proposed in the filled Bill as part of discussions.

54. THE CHAIR: There have been discussions with our counsel to clarify that these are in order.

55. MS LEAN: There have been discussions with your counsel and also with other stakeholders. I understand that this one may have been one that the Charity Commission had identified, but, yes, all of the suggestions that are in blue in this filled Bill will have also been the subject of discussions with your counsel.

56. My Lord, if it assists, I have one question for Ms Satchell in terms of this power being used previously. Ms Satchell referred in her evidence last week to certain land that the Trust acquired in Townsend Way towards the north of the Trust area some time ago, where there was a broader development coming forward. In return, the Trust received an area of woodland and some other areas there. I was just going to ask Ms Satchell to confirm whether that was a transaction that took place under the exchange provisions in the existing legislation or if it was some other transaction.

57. MS SATCHELL: Yes, my Lord. It was a transaction authorised under Section 9 of the 1930 Act, which is the predecessor to this clause.

58. MS LEAN: Again, my Lord, although this is a provision that obviously some petitioners have raised concerns with, this is one that is not new. It is carrying forward and modernising existing powers that the Trust had.

If I might then move forward to Clause 73, this is a power of disposal of land, but I should stress again that this is one that finds its footing in the earlier legislation, specifically in Section 6 of the Malvern Hills Act 1995. The details of that are on the table of origins note at page 164. I am trying to do it from that rather than jumping backwards and forwards to the Acts too much because they are a little unwieldy.

59. THE CHAIR: It is the same in all material respects. Perhaps some adjustment of wording, but no change of substance is what you are saying.

60. MS LEAN: Yes, in (1) to (4) there is no change of substance, except there is the one thing that is flagged there, which is that the power in subclause (2)(a) is expressed as a power to sell, including sell free of any restrictions, which wording does not appear in Section 6 of the 1995 Act.

61. THE CHAIR: Is there a purpose for that?

62. MS LEAN: My Lord, my understanding is that that would largely be a clarification point. It makes clear that it could be sold and it would then no longer be subject to things such as, "Well, it has to be held in trust for the public", or that it has to be subject to anything like by-laws or things like that that affected it. That is my understanding. It could be sold with a clean title, essentially.

63. THE CHAIR: Yes. Has there been some experience in the past that it was a problem, not being able to give a clear title?

64. MS SATCHELL: My Lord, I think it is just clarification. I do not think there has been a problem with it. I think it is just purely to make it absolutely clear that, once the land is sold, it is not subject to the Malvern Hills Act.

65. THE CHAIR: It is what the purchaser would require, I would have thought, really, to be free of restrictions.

66. MS LEAN: Yes. It is probably helpful to highlight here that there has been some concern about the extent or nature of this power and whether it just gives the Trust power to go and sell any part of the Malvern Hills that it likes. That is not what this power is. This is a power to be able to sell land with consent in writing from the Secretary of State, but the types of land are set out in subclause (3). The power to sell

conferred by Clause 73(1) only applies to land that falls within all of the following paragraphs. It has to be land that is owned by the Trust. It has to have not been owned for a continuous period of more than five years. It cannot be land that forms part of the existing Malvern Hills, i.e. land that was under the management of the Trust as at the date of the Act, if it is passed. It cannot be registered common land or village green. There is a specific carve-out for those types of land, and, "The trustees have not later than two years after the date of acquiring it decided that it is not desirable to retain the land".

67. This is really quite a limited power of disposal. It is really about land that may be acquired in the future if, within a short period of doing so, the Trust says, "Actually, although we bought it thinking we needed it for particular purposes, no, we actually do not think that that is the case".

68. MS SATCHELL: My Lord, I think it might be helpful if I explain the reason why this power came in in the first place, which is that periodically parcels of land do come up. That might, for example, be a house with a substantial piece of land with it. The Trust would never have the intention of retaining the house, but it might very much want the piece of land. This is the mechanics of saying, "You can buy that, Malvern Hills Trust, and you can make your decision to get rid of the house but keep the land, which is what you actually wanted". Sometimes you might be able to negotiate and say, "Can I just buy the land and you sell the house separately?" but it is just to cover that sort of situation.

69. LORD EVANS OF GUISBOROUGH: Can I just ask about this? Just taking us back to the discussion we had earlier on Clause 71, acquisition of land bequests and agreements, subclause (3)(a) and (b), which were the parts of this that restricted the purpose for which the Trust could buy land, (b) states "which the Trust considers should be preserved unenclosed and free from building as part of the Malvern Hills". That seems to be the only reason why you can purchase land, and the only land that you would be disposing of would be land of this type because everything that you have already is excluded under this clause. How likely is that situation actually to occur? You would buy the land seeking to preserve it and then decide it did not need to be preserved and sell it.

70. MS SATCHELL: No, my Lord. I think the example that I gave, where the parcel of land is for sale with some element that the Trust would not want to retain, is the likely scenario. It is highly unlikely that the Trust would purchase land and then suddenly decide it did not actually want it. I can say that we have a policy in relation to the acquisition of land that is very detailed and scores the land, and we would only buy the land if it fell within the criteria for acquisition. It is just to cover those situations where there is a bit which, at the time of purchase, it is clear that the Trust is not going to want to retain.

71. LORD EVANS OF GUISBOROUGH: Because land is sold in parcels, you might actually have to buy some bits you do not want as a consequence of acquiring the bit that you did want.

72. MS SATCHELL: My Lord, that is correct.

73. LORD EVANS OF GUISBOROUGH: This enables you to dispose of the bit that you do not want, but does the earlier clause not prevent you from buying the bit that you do not want in the first place?

74. MS LEAN: My Lord, if I may, my understanding is that Clause 73 and the disposal power would also apply to ancillary land, the land in Clause 75. Sorry, forgive me. I may have muddied the waters by saying this is land that you have bought that you maybe do not need anymore. It might be that land was bought as ancillary land, not as land for the purpose of keeping the Malvern Hills unenclosed or in trust, so for example land for offices or to support grazing or livestock. That would also fall within the clause that we are talking about. Maybe it was purchased and, for whatever reason, circumstances had changed, and so, although it was thought at the time that you needed to have this land for this particular support function, that was no longer the case. Clause 73 would not just apply to land that was acquired under Clause 71 for the purposes you have referred to, but also capture the ancillary land that could be purchased under Clause 75 in support of the objects.

75. LORD EVANS OF GUISBOROUGH: The Trust's power to acquire land is more extensive than what is stated in Clause 73. It is extended by what is in Clause 75 as well.

76. MS LEAN: My Lord, in terms of the power to acquire land, I think it is probably

71, 72 in a sense—because that is the exchange; it might bring in more land than is given away by the Trust in exchange—and also then 75. Those are separate and different means or powers by which more land may be acquired by or come into the ownership and control of the Trust. The disposal power in Clause 73 does not apply to all of the land that could possibly be acquired by the Trust. It only applies to those parcels of land or those types of land that may fall within subclause (3).

77. LORD INGLEWOOD: Thank you. Is the underlying issue that people who sell land do not necessarily parcel it up in a way of maximum convenience to the Malvern Trust? Rather, they do it in order to extract the biggest amount of money they can out of the marketplace. Therefore, you find yourself boxed in unless you have these kinds of powers.

78. MS SATCHELL: That is exactly right, my Lord, yes.

79. MS LEAN: My Lord, just perhaps touching on the point about people selling their land or maybe parcelling it up in a way that is not helpful, picking up on the question that was raised earlier about gifts or bequests, Clause 73 makes specific provision about what happens if the land that the Trust has acquired that it might want to dispose of came to it by means of a gift or a bequest. There are some protections there that are factored in essentially for the person who may have given it to the Trust, as in the Trust cannot exercise the power to sell, assuming it falls within the qualifying criteria, in any manner inconsistent with any condition that was attached to the gift or the bequest, except with the consent of the donor or personal representative or trustees thereof, unless after diligent inquiry they are unable to identify any such person.

80. My Lord, the other point to highlight is that subclauses (6) and (7) are also new clauses. They are essentially updating the mechanics, if I could put it in these terms. Subclause (6) really relates to the power in 73(2)(c) to let the types of land that fall within subclause (3), subject to such terms and conditions, covenants or arrangements as the Trust thinks fit. In very broad terms, that says, “If it is going to let it, the Trust can specify whether or not that parcel of land, even though it is leased to somebody, should still be treated as being part of the existing Malvern Hills for the period during its let”. That would encompass things like being subject to by-laws, for example.

81. Subclause (7) essentially excludes the security of tenure provisions from the

Landlord and Tenant Act 1954 and from the Housing Act 1988 in respect of any leases. It essentially keeps the land subject to the provisions of this Act as opposed to inadvertently potentially bringing it into the regimes that may apply to business tenancies or residential tenancies under those Acts.

82. My Lord, that is, in broad terms, Clause 73. We have in the table of origins note where those two new clauses I referred to, subclause (6) and subclause (7), find a precedent in other legislation, albeit not in existing Malvern Hills Act legislation.

83. My Lord, I believe Clause 74 is on the list of unopposed clauses.

84. THE CHAIR: Clause 74 is new.

85. MS LEAN: Clause 74 is new. Yes, that is new, but it is one of the unopposed, so if we could deal with that when we deal with the unopposed clauses later on in the committee's business.

86. THE CHAIR: You are not going to say anything about it this morning.

87. MS LEAN: No, my Lord. We were not proposing to. If we can move on to Clause 75, ancillary land, which is another of the opposed clauses, this was briefly touched on yesterday.

88. THE CHAIR: Just to be quite clear, according to my note, there is no petitioner with the right to appear who is objecting to 74. That is your point.

89. MS LEAN: Indeed, my Lord. Yes, my Lord. Forgive me, yes. Because it is not one that is opposed in the sense of there is a petitioner with the right to appear who will be heard before you on it, we were putting it on the list of ones that we will have to deal with and no doubt go through in detail at some point but towards the end of the business when we might be dealing with unopposed clauses.

90. THE CHAIR: How it is to operate is a matter of concern to Mrs Dicks and Ms Holdsworth, the idea of licences and so on, but you are deferring that until we hear from them and see what exactly their point is.

91. MS LEAN: My Lord, I think those might be slightly different licensing powers. I think the licences that they were concerned with were ones in Clause 63 of the Bill. This

is about leases and licences of land to somebody else or who can use it whereas I think what they were concerned about was requiring licences for people to carry out activities like the Morris dancing that was referred to, the licensing of activities on the land as opposed to the granting of leases or licences of land.

92. THE CHAIR: Yes, I understand. Thank you very much. Where do we go now?

93. MS LEAN: Clause 75, my Lord, ancillary land. We touched on this briefly yesterday. This clause is based on or finds some footing in Section 9 of the Malvern Hills Act 1995. This is set out in the terms of origin note at page 165. Section 9 essentially was a power to provide buildings for use by the conservators and identified that they could, by means of purchase, lease or otherwise, acquire buildings for use as offices, for use as information centres, for the purpose of storage, in connection with carrying out their functions and for the purposes of residential occupation by an employee of the conservators, in the interest of the security of any buildings used and that any buildings so acquired could be used to sell goods, including books, maps, souvenirs, et cetera, as may be reasonably ancillary to the use of the hills by the public for enjoyment, recreation and education.

94. That is the existing power, and that essentially gets carried forward into Clause 75. It is a slightly longer list in subclause (3), in that it now expressly brings in the keeping or management of livestock. I should note that subclause (1) and subclause (3)—the whole of Clause 75, really—refer to land rather than to buildings. Section 9 of the Malvern Hills Act 1995 referred to buildings with or without land. Clause 75 talks about land, obviously which includes buildings, but it means that there can be no doubt, for example, that, if the Trust wanted to acquire, say, a field for the use of grazing and livestock, it could do it. It is not required to find a building that that land is attached to, if I can put it in those terms.

95. Subclause (5) provides that the Trust has the powers of an absolute owner relating to ancillary land. The subclause also makes clear that any land that was ancillary land prior to the date of the Act falls to be treated as ancillary land for the purposes of the Bill. These provisions then will apply to anything that the Trust has currently acquired in terms of offices or suchlike. It does not have to be something that is newly acquired after the Bill becomes an Act, if it gains Royal Assent.

96. THE CHAIR: It is expanding a little bit on Section 9.

97. MS LEAN: Indeed, my Lord. My Lord, I should highlight that subclause (7) is new in the sense of being a standalone power, although there are previous provisions elsewhere in legislation in terms of things like maintenance or reconstructing or repair in the earlier Acts.

98. LORD INGLEWOOD: Can I ask a question about the keeping or management of livestock in (3)(f)? Presumably, you are not farmers in a conventional sense, but you may want to have livestock on the Malvern Hills for essentially environmental purposes. Obviously, that may involve you in a business, but it is not a conventional agricultural business as are normally understood, is it?

99. MS SATCHELL: It is not, my Lord. If I could just explain a little bit about the background to this, you heard Mr Bills at the outset explain how important conservation grazing is for the management of the habitats that we have. We are in a situation where the exercise by commoners of their rights of grazing took a nosedive in the late 1990s and still does subsist a little bit in some areas but is not sufficient. We support that grazing by Countryside Stewardship grants because it is otherwise not commercially viable.

100. Our big concern is that those grants are taken away and we are left with a situation where the people who are currently grazing do not want to do it anymore. The Trust priorities go, "Please graze this land, commoners". If we cannot get commoners to graze the land, is it possible to grant a licence to somebody to carry out the grazing? Clearly, our key skills are not in livestock management. As a last resort, we can see a situation arising where it may be necessary for us to carry out that grazing, if we cannot get anybody else to do it.

101. Consequently, we felt it was necessary to expand the definition of what we could acquire ancillary land for so that we can create some livestock handling facilities and that sort of thing, should we have to take over the grazing or, indeed, if we have a licensee who does not live immediately adjacent to the common and who needs some handling facilities from time to time. This acquisition has to be in pursuance of our objects and it is not going to turn the Trust into a livestock farming enterprise, my Lord.

102. THE CHAIR: I think I can understand this. For the preservation of the ability of the land to grow flowers, you need to cut off the top grazing every so often. You have to cut the grass down. There are some places in Scotland where farmers are able to get a licence to move their sheep from one bit of land to another that is in need of treatment of that kind. It is that kind of idea, is it?

103. MS SATCHELL: It is exactly that kind of idea, yes, my Lord. As I am sure you are well aware, if the land is not grazed, the grasses tend to dominate and then you start getting scrub, trees, et cetera. It is a very well-used mechanism by all sorts of conservation organisations to keep the habitat for that purpose.

104. MS LEAN: My Lord, I think that broadly covered off Clause 75, ancillary land. If I could just correct slightly, I think I may have inadvertently muddled up something in the table of origin with something else. I think I referred to subclause (7) as being talking about repair and maintenance and suchlike. That is obviously in subclause (5) and is picked up in Clause 76. Subclause (7) just provides that the Trust can exercise their functions in respect of ancillary land as if it formed part of the Malvern Hills. If there are things that the Trust feels it needs to do in respect of its functions, it is not precluded or it has the power to do it, even though it is ancillary land and it is not land that technically forms part of the Malvern Hills as defined in subclause (4).

105. My Lord, in terms of the remaining powers in Part 6, the only other ones we had down on the list as being opposed by petitioners with standing or whose standing has not yet been determined are Clauses 79 to 81, which are raised by Mr Myatt. Although these appear in the land section, they are almost more about what happens on the land or to the land. I understand from Mr Lewis that there have been some drafting amendments to at least one of these provisions that have been sent to Worcestershire County Council.

106. I just wonder, my Lord, if possible, whether we could possibly pick up Clauses 79 to 81, which really sit together because they are to do with quarrying and materials, and deal with them when we deal more generally with the land management issues, when Ms Satchell will be back with Mr Bills in March to talk about Parts 4 and 5. Maybe we could quickly pick those up then rather than today.

107. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask what sort of minerals are quarried? Is it something that is used in housebuilding in the

area and is in very short supply, or is it just ordinary minerals for highway maintenance?

108. MS SATCHELL: No, my Lady. Nothing is quarried on the land under the management and control of the Trust at the moment, but I think I did mention before there are people who, when the land was transferred to the Trust, retained the mineral rights. We cannot change that position. We cannot change the ownership of those mineral rights. Yes, I think that is the answer to the question. There is nothing that is currently being taken.

109. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You have not answered my question.

110. MS LEAN: I am sorry. Perhaps you could just—

111. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: What kind of minerals are they? Obviously, it is not hamstone. Is it granite? Is it some other limestone?

112. MS SATCHELL: There is stone, my Lady, which is the reason why there were so many quarries. There were a lot of quarries just simply providing stone for building. Because it is very hard stone, I think it was used for highways and that sort of thing. I cannot speculate as to what other minerals there might possibly be there beneath the ground but the main quarrying was for stone.

113. THE CHAIR: Can you just explain again what you are proposing to do? Are you going to defer this group for explanation at a later stage?

114. MS LEAN: Yes, my Lord. If we could take those three powers through to the hearings in March, when I believe the committee is timetabled to hear from Mr Bills with Ms Satchell and another gentleman primarily on Parts 4 and 5 of the Bill, which are to do with management of the hills and by-laws. My suggestion is—hopefully, these are quite short or quite quick provisions—that we could sweep up with those, but then I think we have otherwise covered the opposed clauses that deal with Part 2, the governance changes, Part 3, which are the financial provisions, and the opposed parts of Part 6, which deal with land acquisition and disposal powers, which I think is linked for several petitioners to their concerns generally around governance and suchlike, and we

have also dealt with the general power provisions in Part 7 and Schedule 4 of the Bill.

115. My Lord, we are conscious and we have a list of the clauses in those parts that we have not dealt with, but it is our understanding that we would be dealing with those, explaining those and providing evidence as required on those when the committee comes to consider the unopposed clauses section of the work after hearing the petitioners.

116. THE CHAIR: I think it would be helpful if you could discuss with us when we will be updating our programme so that it will be identified in the programme which clauses are going to be dealt with on particular days. I think we are looking at a date in March, which is Thursday, 5 March, is it not?

117. MS LEAN: Yes.

118. THE CHAIR: If we could just get a note of which clauses you are proposing to deal with then, we will put it into our programme to alert us to prepare for that.

119. MS LEAN: Indeed, my Lord. We will do that. We will take our broad Parts 4, 5 and a bit of 7 and compare it against the list of opposed and unopposed clauses and spell out which clauses we anticipate that we will be dealing with when we call our primary evidence on those days.

120. THE CHAIR: Yes, thank you. That would be very helpful.

121. MS LEAN: My Lords, in terms of the remainder of today, I am very conscious that I respectfully asked to park some issues at the end of last week and possibly yesterday for submissions to deal with the relationship of the Trust as a charity and as a statutory body on the issue about representation on the Trust as a public body. Would the committee be happy to hear from me on those points now?

122. THE CHAIR: I think it would be helpful. Please do, yes.

123. MS LEAN: My Lord, I hope a note came over to the committee yesterday evening. I am sorry it is another note, but mindful of some of the points that have been raised or questions that have been raised in the first couple of weeks of the hearing, sought to provide just some context or some background that might help shed some light

on the provisions in the Bills or the Acts to date, and form the basis for some submissions that I wish to make to you on those points. I am told that that is also now on the website. My Lord, I will be referring to that note as I go through, and what I am proposing to touch on is, as I mentioned, the status of the body, how the charity points come into it in broad terms, and the public body issue.

124. THE CHAIR: I would like to be quite sure that I have the document you are going to refer to.

125. MS LEAN: It is a document entitled, "Note on the status of the conservators, including the question of whether it is a public body".

126. THE CHAIR: It is not in an existing bundle.

127. MS LEAN: It is not in an existing bundle.

128. LORD EVANS OF GUISBOROUGH: Is this the one that was circulated yesterday?

129. THE CHAIR: Yes. I have the document in front of me. Thank you.

130. MS LEAN: I am grateful. Thank you, my Lord. My Lord, I will start, if I may, by saying, as I did in opening, that obviously the Malvern Hills is iconic and an area all of its own, but it is far from unique in being the subject of a specific order, or even a private Act of Parliament, which entrusts its management and control to a body like the conservators. I have set out, in paragraph 2 of the note, an illustration or a handful of examples of other commons that are subject to arrangements either established under private Acts of Parliament, or schemes under the Metropolitan Commons Act, or the Commons Act of 1876.

131. THE CHAIR: Wimbledon and Putney is the closest analogy, is it not? It is a body corporate and it is a registered charity.

132. MS LEAN: Yes.

133. THE CHAIR: I do not think the Banstead Commons Conservators—they are not a registered charity, as far as I can see.

134. MS LEAN: I have not been able to find that they are a registered charity, my Lord, but it was to give an illustration of the types of different arrangements that subsist for essentially doing the same thing, which is managing—and holding it and using it—an identified body of common land for the benefit of the public.

135. There is the Wimbledon and Putney Commons Conservators, which you have mentioned, my Lord; the Banstead Commons Conservators, which were established by a scheme under the Metropolitan Commons Act, who have conservators, formerly appointed by the owners of the soil and the six elected by the vestry of the parish, now essentially all done by the borough council; the conservators of Epping Forest, for whom the City of London Corporation are the conservators. That is separately a charity on the Charity Commission's website.

136. Previously, the common at Monken Hadley was entrusted to the churchwardens, which was a body established in 1777 to hold the commons and to make rules and orders for managing it along with persons in the area who were liable to the poor rates. Dartmoor has its own specific regime—Dartmoor Commoners' Council—under the Dartmoor Commons Act of 1995. Then there is the National Trust, which holds amounts of common land which it has to manage, which is governed by its own statutory regime as well.

137. My Lord, looking in Gadsden and Cousins, I have not given you all the chapters from that. It is quite a chunky work, but there are substantial lists at the back of that book of commons that are the subjects of schemes approved under the Metropolitan Commons Act, and those that are subject to private Acts of Parliament. I think on my maths it was 22 that they mentioned that were subject to private Acts of Parliament, and around 30 that were schemes under the Metropolitan Commons Act, and a number of others that are regulated under the Commons Act. That is just to give a flavour of the fact that, although we are dealing here very specifically with the Malvern Hills Conservators and the Malvern Hills, there are a lot of other arrangements out there that manage bodies of land like the Malvern Hills and Commons.

138. My Lord, clearly, here the land is entrusted to the conservators, which often raises the question of: what is this being called the conservators? What are they? What status do they hold? This is addressed in paragraph 3 of my note, in one of the slightly older

commons books going back to the 1960s, where Harris and Ryan, in that text, outline a number of different types of persons or bodies who may be responsible for managing or holding common land. Under the subheading of "trustees", they identify conservators, saying there, for those who may not have yet seen the note, that, "In another class of trustees, also appointed under statutory authority, are the conservators of common land". Then it details how often, where they are appointed under—so, for example, private Acts—and they are given powers of managing common land, preventing encroachments and suchlike, and taking legal proceedings for enforcement of by-laws, and generally for the protection on behalf of the commoners.

139. My Lord, I do highlight there the word "trustees", for reasons I will come on to momentarily, because that does shed some light, in my submission, on the status and obligations of those persons, even leaving aside any status as a registered charity.

140. First, if I may come on to—fine, we have these people called conservators. Who are the conservators? How do they come about? In the note at paragraph 4, I have given you a passage from Gadsden and Cousins on Commons and Greens, which is the most recent edition from 2020, who highlight that, for boards of conservators in orders under the Commons Act 1876, "The constitution and membership of the board varied from one order to another. Where an order related primarily to upland grazing and regulation, it was not unusual for the board to consist of the lord of the manor and persons entitled to rights of graze. On the other hand, where the main use to which the common was put was of an amenity nature, the board was more likely to include representatives of the local inhabitants and local authorities, and in a number of such cases, the functions of the board were exercised by the council itself. Otherwise, a representative of an owner of the inhabitant was almost invariably included as well as the conservators". Forgive me; I feel they might have got something wrong there in the transcription of that. I will check that.

141. Again, that identifies that, depending on the nature of the order, there is no one necessary, obvious group of people who may be the conservators. There will be different arrangements for appointing who the conservators are to be or how they are to be appointed, depending on the order itself.

142. THE CHAIR: Does it cause any problem for you in respect that you are dropping

the word “conservators” in this Bill? They are going to just be called “trustees”, and you are changing names of the Trust and so on.

143. MS LEAN: My Lord, in my submission, no, because, going back to the point I just made from Harris and Ryan, conservators were regarded as being a species of trustees.

144. THE CHAIR: They really were trustees.

145. MS LEAN: They were trustees. That is what they did. That was their status or their function. They were called conservators but they are obviously treated, certainly in—that is one of the reasons I have gone back to one of the older texts, when perhaps there were more of the older Acts dealing with the commons floating around, to see how conservators were regarded back in the middle of the last century. That is how they are classified there: as being a subspecies of trustees.

146. LORD INGLEWOOD: Could I ask a question just to clarify? Are you saying that conservators and trustees are the same, or that conservators are also trustees?

147. MS LEAN: They are the same. Conservators are trustees.

148. LORD INGLEWOOD: They are synonyms.

149. MS LEAN: They are synonyms, essentially.

150. LORD INGLEWOOD: Thank you.

151. MS LEAN: Forgive me, my Lord. I was saying that exactly who these individuals are for a particular area of land—there was no one size fits all. It was dependent on what was set up under the order or under the private Act, and you will see that in some of the examples that I have identified in the note. For example, it was the churchwardens in Monken Hadley; in the Epping Forest case, it is conservators, but that is the City of London as conservators; and in the Banstead Commons example, it was a mix, but it is now essentially almost sitting with the local authority, as the success is entitled to both of those.

152. Just for context in this case, looking at the arrangements that were put in place for who was to appoint conservators or where the conservators were to be drawn from

going back to the 1884 Act and going forward for the Malvern Hills, as Mr Bills, I believe, said in his presentation—and I outlined in opening—the Bill resulted from a group of freeholders, tenants and commoners coming together to say, "We want a Bill that is going to vest management in this local body—the new conservators". I believe Mr Bills highlighted that there was a poster on one of the slides he presented about calling a meeting to discuss it, and I believe he highlighted that that was a meeting for tenants, commoners and freeholders; it was not a general public meeting.

153. It is reflected in the recitals to the 1884 Act that I mentioned that there were both aspects there being represented. The Bill was considered desirable, as well as in the interests of the freeholders, tenants and commoners, who were entitled to common rights on the said land as for the benefit of the public, that provisions should be made by means of the Bill.

154. In a sense, that mix of being in the public benefit but also for the freeholders, tenants, and commoners, you can perhaps see reflected in who the conservators were to be or to be appointed by in the 1884 Act, in Section 6. It is a mix of appointments of conservators for landowners or lords of the manor, and conservators who are appointed by the vestries of the identified parishes.

155. In my submission, obviously the exact reasoning for it is possibly lost in the depths of time or some parliamentary papers that sit behind the Bill, but what is seen reflected in the recitals is that there was a concern about the interests of freeholders, tenants, commoners, and also being for the benefit of the public. You can also see that following through into who the conservators were.

156. In terms of the shift then, in the 1924 Act, to people electing as if they were local government electors, or people electing as if they were rural parish council electors, in my submission that is readily explicable by the fact that there had actually been a shift at the end of the 1800s in terms of this new system of local government, for want of a better word. It was the Local Government Act of 1894 that brought in this idea of constituting parish councils with elected parish councillors, and brought in urban district councils and rural district councils with elected councillors, which essentially replaced or moved on from the previous vestry, ecclesiastical parish regime. Certainly, in terms of the Act, there is reference to—certainly in commentary around the Act—almost the

secular functions being moved away from vestries or ecclesiastical parishes into these new parish councils.

157. My Lord, in my submission, if we look at 1924 and say, "The current arrangements are elections by the urban district, or people who could vote for the urban district of Malvern or in the parish councils", that essentially does also reflect the fact that there had been this change away from the vestries into this new system of local government. That just may be a bit of historic context as to looking at why the provisions read as they do, and why it seems to be tied to these urban district electors, these parish council electors—that was the regime or the arrangements that were in force. Short of, say, setting up an entirely new body or an entirely new register, it would seem logical to utilise or work with the existing arrangements that there were for elections of councillors and suchlike that subsisted in 1924.

158. Now, none of that is in any way to try to detract from the fact that obviously there is a reference to people being elected, and being elected by the electors of a parish of here or a parish of there, but it may just provide a little bit of context for why it seemed to have ended up being set up in that way.

159. LORD INGLEWOOD: Can I quickly ask you a point about this please? At the start of your presentation on this bit, you said it was set up and it was to look after the interests of the tenants, the freeholders, and I think the lord of the manor, and in the public interest. Now, it has evolved. Was it in 1924 where, as it were, their individual private interests were subsumed into the wider public interest?

160. MS LEAN: I am not sure if I can pin it to a precise Act, my Lord, but what you can see, in my submission, as you follow through the 1884 Act, the 1909 Act, the 1924 Act, the 1930 Act, the 1995 Act, if you follow through the recitals, you follow through who the conservators were appointed by—and looking at it with the maps that were part of Mr Bills' presentation, where you can see how the Trust's landholding has changed over time—you can see that, essentially, lords of the manor and landowners have almost fallen out of the picture slightly. More and more land has come into the ownership of the Trust. You do see that shift away from there being so many landowners.

161. As you have heard from Mr Bills, in terms of commoners and grazing rights, probably the situation is very different in the late 1900s to what it was in the late 1800s.

You see more of a reflection or more of a focus and an emphasis in the recitals, perhaps, on general public use and enjoyment—visitors coming to the hills.

162. I do not think I can pinpoint it and say, "Look, here was an absolute sea change that says originally this was set up to represent all of these interests, and this is when it fundamentally changed and became a completely different body", but there has obviously been a change of sorts in, perhaps, the focus or the emphasis or the interests that were there over time.

163. LORD INGLEWOOD: The private interest in all this has been subordinated to the public interest.

164. MS LEAN: I think, my Lord, it is fair to say that the private interests are much more discrete and reserved and carved out now, whereas perhaps when the first Bill came forward, the interests and the concerns of the private interests were much more at the forefront of some of what ended up in the then Act.

165. My Lord, I come back now to perhaps the levy point in terms of, having dealt with looking at the arrangements in the Acts for who the conservators were, looking at the power of the levy, because clearly the arrangements have been tied to those who could elect or appoint in the parishes appointing or electing conservators.

166. THE CHAIR: Are you still working through your note, or are you moving off it? I am interested in paragraphs 5 and 6.

167. MS LEAN: Yes, my Lord. Paragraphs 5 and 6 I am going to come back to momentarily, but if I could jump to financial arrangements, this finishes off my point about the arrangements that might have been put in place under the different orders. I have mentioned how the board of conservators make-up would depend on the area and what was needed for that particular location—so too the financial arrangements. As I have set out at paragraph 7 of the note, Harris and Ryan—the 1967 text—talk about the need, obviously, for some financial arrangements; obviously you have to get some finances from somewhere, particularly if you are going to have to do things like any extensive physical works.

168. One of the reasons that was often picked up in the commons was things to do with

drainage, for example. It was not just protecting land; it was taking land and things that had to be done to regulate it or allow it to be used properly. They have identified that, obviously, the schemes had to make provision for how things that needed to be done were to be financed. This varied, again, from scheme to scheme. If it was a voluntary arrangement rather than a formal order or Act of Parliament, then contributions would be voluntary, but if it was a scheme made under statute—that would cover ones made under the Commons Act 1876, the Metropolitan Commons Act, or private Acts of Parliament such as the Malvern Hills Act—then the financial powers were whatever it said or were based on what was in that Act.

169. What they have noted is that the Commons Act 1876, which gave different means by which financial provision could be made in individual orders, including selling off a portion of land to get money in to do what you needed to do, or subsequently, "By means of rates levied on person and in respect of property benefitting therefrom"—that power was formerly found in Section 14 of the Commons Act 1876. That has now been repealed.

170. I have given you Section 14 at paragraph 8 of the note, and that is the one that says that a provisional order "may provide for the raising from time to time by such persons interested in the common, and for such amounts as the commissioners: think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectfully will be benefitted or principally benefitted by such improvement regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common".

171. As I say in paragraph 9 of the note, although we have obviously been looking at the Malvern Hills Acts and the Wimbledon and Putney Conservators Acts as different in that they have this levy-raising power, that was a possibility that was provided for in the general legislation relating to commons at that time. This was the Commons Act 1876, which obviously would have been part of the working background to the Malvern Hills Act of 1884.

172. I think all I can say is that this idea of a levy being raised was not something new or innovative that came completely out of the blue with the Malvern Hills Bill of 1884.

The possibility of that being the means of funding a scheme or an order to enclose commons was foreshadowed in the general commons legislation in the Commons Act of 1876.

173. THE CHAIR: Thank you very much.

174. MS LEAN: My Lord, that was tying off the "why might different bits come in"—the bits of the Act that might look a bit different, i.e. the election of conservators and the levy power, which I think then brings me to duties and the representation issue, if I could put it in those terms.

175. My Lord, on duties, this is back to paragraphs 5 and 6 of my note. These have been taken from texts on charities, but in my submission, they hold good as statements of general principle. What you have in paragraph 5 is from Tudor on Charities: "The main duty of the charity trustee has been said to be to carry out the trust according to the terms set out in the trust instrument". I just pause to say here that would be essentially the Acts. "This is the same duty as applies to trustees of private trusts". Then in Tudor they state, "Charity trustees are not delegates of the body that appoints them".

176. In the footnote, I have given you the footnote from the original, which is a reference to the Charity Commission guidance. I do not labour that point, because I know you have heard from Ms Satchell what the Charity Commission says about not being delegates of a body that appoints them. The point I take out from that is this idea that the core duty to carry out your functions in accordance with your trust instrument is the same duty that applies to trustees of private trusts, so to that extent there is no magic in the word "charity" or being a registered charity. If you are a trustee, you are a trustee, and there are core things that you have to do.

177. That is reflected in the passage I have given you at paragraph 6 of the note from Halsbury's, again in the charities volume at 331, which highlight that, "The duties of trustees of charitable trusts do not differ in principle from those of non-charitable trustees"—I have given you the footnote from the original in the footnote in my note—which include, for example, a duty not to deviate from the terms of the trust, and to act impartially between the beneficiaries, and to distribute the trust's property only to those properly entitled to invest prudently.

178. Going back into the main body of the quotation, the primary duty of trustees is "to execute the trust in accordance with its terms, whether contained in a will, a deed, a scheme or other instrument, and with the general law, in the interests of the intended beneficiaries".

179. THE CHAIR: You have just emphasised the word "primary" there, and if you look at paragraph 5 it says "main duty". Could there be other duties in addition that are not mentioned in those statements?

180. MS LEAN: Certainly, my Lord. Indeed.

181. THE CHAIR: I am just looking back at Clause 8 of the Bill, which is talking about the duty of the trustees. (3A) says: "Each trustee must exercise the powers and perform the functions that the trustee has in their capacity as a charity trustee in the way that the trustee decides, in good faith, would be most likely to further the objects". That is the main duty.

182. MS LEAN: Yes.

183. THE CHAIR: I am just wondering, looking to the levy payers and the problem of representation, whether one might say that those who are elected could have a duty to consider the interests of the electorate, so long as it does not conflict with the main duties as set out in subclause (3A). Is that something that you could accommodate?

184. MS LEAN: My Lord, I think where the difficulty comes there is the possibility of a conflict.

185. THE CHAIR: If I can just add to what I was saying, if you look at your interesting subclause (6)—the selection of one or more of the trustees to act as a point of contact—what is the person who has that point of contact to do? Is he to receive representations from the electorate, and can he have regard to those representations in drawing the attention of the board to these matters? Is that something that would conflict with the main duty to act in the best interests of the charity?

186. MS LEAN: My Lord, I think it is fair to say that drawing the attention of the board to concerns or points that have been raised by individuals in an area would not conflict with the duty. It might be about what happens to that information or how that

information is brought to bear in any decision-making. That is where, in my submission, the potential issue could come in if there is a suggestion that there is a duty to the levy payers.

187. THE CHAIR: Would it be acceptable, looking back at (6), for example, to expand that a bit and say that the trustee who has that point of contact may draw the attention of the board to matters that have been raised with him or her by those with whom she is in contact? I am just trying to give the levy payers something, because one of the problems—and in the electorate, they say they are losing representation. I follow the point that the charity duty, the primary duty, as has been set out in these paragraphs, is to act in the best interests of the charity, but it does not close the door entirely, does it, in having regard to the interests of the electorate?

188. MS LEAN: My Lord, may I put it in this way? Perhaps the concern about putting it in that way is to look at the way the word "represent" has potentially become a bit of a polarising issue. It is not that there is a problem with the word "represent" in and of itself in its colloquial sense. If the people elect person X, colloquially you would say that person is representative of or represents those people who elected them. It is the language that you see in Gadsden and Cousins.

189. I cannot get away from the fact that people talk about being a representative of the inhabitants or a representative of a landowner, but it is what that conveys with it, and it is what that is perceived to convey with it, because the Trust—the conservators—have to act in the interests of the Trust and for the benefit of all those for whom they hold the land, impartially, as between those for whom they hold the land. Distinguishing out a subgroup or a subclause potentially cuts against that "impartially" point, because it says, "You have to act in the interests of everybody for whom you hold it, but you also have to act specifically, in some way, for the interests of this particular subgroup of persons".

190. THE CHAIR: So much depends on what the issue is, but if it was qualified by saying that, should there be a conflict between the point coming from the representation from the electorate and the interests of the charity, then you must give way to the interests of the charity—the interests of the charity will always prevail, but nevertheless, so long as there is no conflict, then you may be able to have regard to what the electorate is raising with you.

191. MS LEAN: My Lord, in practice it is difficult to see that that would essentially be not done, that if there are—my Lord, you will see this from, perhaps, the board meeting minutes that you have in Ms Satchell's evidence that came in from, I believe, January of last year. I can just quickly find the reference. For example, in deciding to approve the budget and set the budget, the Trust is clearly very mindful of the impacts of the levy on those who pay it. My Lord, yes, I have found it. It is page 336 of bundle 5.

192. THE CHAIR: I am looking at paragraph 10 on page 336.

193. MS LEAN: Paragraph 10, budget approval and levy setting 2024. What I just wish to highlight, if I may, is at the top of 337. "There was a robust discussion, with trustees expressing concern about increasing hardship for local families and acknowledging the risk of potential exposure to public criticism if the levy were raised above the rate of inflation, set against the need to support and invest in Trust staff", and then a discussion about it. Then there is a vote, and it is resolved that the levy should not be set at £730,000. It is resolved on an alternative proposal that it be set at £697,000.

194. My Lord, I just highlight that in terms of saying that, in practice, it is difficult to see that the Trust would not, when it is making decisions, be mindful of the fact, particularly with those that involve the budget and the levy, that there are people who are paying that, and their impact on the people who are paying that. The concern, in my submission, would come about somehow writing that into the Bill, setting up as a legal requirement about how that is to be done, because that does not appear in any of the existing Acts.

195. THE CHAIR: It does not have to be put as sharply as that. It is just that the point of contact referred to in subclause (6) may have regard to the representations that are made to them—may report them to the board—some sort of permissive provision. It just highlights that the levy payers are not being forgotten in that particular clause. We have heard so much about the concerns that the levy payers have, and also the lack of representation. I am just looking for some way that does not conflict with the overriding main duty, but nevertheless would allow a point to be taken in favour of the levy payers. Can I just leave it with you to think about?

196. MS LEAN: Yes, my Lord.

197. THE CHAIR: This is early days yet, and we are not getting into the detail, but it is just a point that occurred to me as a way of softening this a little bit in the interests of those who are most concerned, and particularly the levy payers and the increased volume of—the fact that the levy payers are having to pay for a greatly increased use of the Malvern Hills compared with what the original plan was. It is a basic problem that I know you recognise, but just something in Clause 8 to in some way recognise that that point has not been forgotten.

198. MS LEAN: My Lord, I take that point.

199. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: In relation to paragraphs 5 and 6 of your note, there are any number of small trusts up and down the land in parishes whereby the church appoints a representative, the parish council appoints a representative and other organisations appoint representatives on to that trust, to look after whatever the trustee says, usually to deal with the poor or the bereaved within the parish, but then none of them is elected. It is this dichotomy around the appointed versus the elected. I do not think you can get round the democratic accountability of those that are elected.

200. MS LEAN: My Lady, if I may, perhaps two points. One is that, obviously, the Bill still retains the connection between the levy payers and appointments to the board of trustees by providing for six of the trustees to be elected by the levy payers. That connection is maintained; what has changed is it is no longer, "There is one trustee appointed by this parish, with X number of appointed".

201. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I understand that completely. It is the issue around, once you have been elected, you must not only refer to the charitable aims of the organisation you are being elected to. You cannot, as far as this—it is the point that the Chair has made: that there has to be some link back to the levy payers and the electors.

202. MS LEAN: My Lady, I think this comes back to my point about what is it that the fact of electing or the fact of representing is thought to bring with it. I have sought to track back to historically why it seems these arrangements may have come in as they were, but it is important, in my submission, to distinguish the Trust from local government. The Trust is not a local government body or part of the local government

framework, or like a local government that is responsible for carrying out duties and functions in respect of all of the inhabitants of its area for things like planning or licensing or social care, where there may be, as it were, a sort of political mandate about how those services are delivered in the interests of the inhabitants. The Trust is a very specific body that has a very specific role, which is to hold and manage this land in perpetuity for the benefit of the public as a whole.

203. That, in my submission, is an important distinction that needs to be borne in mind when thinking about what is the right connection or relationship about the democratic accountability in the election, and what it is then that those trustees who are elected are expected to do or how they are expected to act or in whose interests they are expected to act, because that is where the direct conflict potentially can directly come.

204. Could I give you a couple of hypotheticals that I have been trying to run through to show how this problem might arise if the idea is carried forward that, like the councillors elected to the Malvern Hills District Council or like the parish council, the councillors somehow are there to carry forward the wishes or the desires of the people who elected them? These are slightly extreme hypotheticals, but I have almost had to do it this way to highlight where the issue could come.

205. Let us take the controversial issue of an easement. There is a parish, and somebody wants to build a second house within a big parcel of land where there is already a house. They have gone to the local planning authority. The local planning authority has scrutinised this and said, "Yes, this is absolutely fine, in keeping with the character and appearance of the area. No harm to AONB. No issues on residential amenity. This is absolutely fine".

206. The Trust then has the application for an easement and it goes, "Right, somebody wants an easement so that they can build this second house. We have looked at this through our lens of our obligations, our functions, our responsibilities. There is no harm here at all to the appearance or anything of the Malvern Hills. It is absolutely fine—no harm. We are perfectly satisfied that granting the easement will not harm any of the things for which we are responsible".

207. Now, it could not be the driver of that decision, because the starting point has to be, "What is the impact on the Malvern Hills if the easement is to be granted?", but

obviously that is going to realise a capital receipt for the Trust, which it can then put in its parliamentary fund, so that if a parcel of land comes along in due course that they go, "We really want that land for the Trust. That is really important land that we think should be part of the Malvern Hills", they then have that asset there to be able to purchase that.

208. Let us say, in that decision-making process, this is all fine—no harm, no problem, and there is obviously the capital receipt that would be in the interests of the Trust, because it would add to its asset base to fulfil its functions going forward, but there is a core group of trustees who have been elected or appointed on a standing platform of, "No development absolutely anywhere within the Malvern Hills". There is a direct conflict there because the Trust might have gone, "This is absolutely fine, and objectively speaking it is in the interests of the Trust to grant this easement. No harm, only a gain", but these individuals who say, "No, we hold a mandate, for the people who elected us or appointed us, not to allow any more development. We must stand in the way of any development anywhere in the Malvern Hills"—that is where you then see a real clash coming between those two interests, and why that sort of mandate idea is problematic if you import it into a body such as the Trust.

209. If I could take that extension one step further, say, then, six months after that decision has been taken, this brilliant parcel of land comes up that would obviously fall within the sort of land the Trust should be holding for the Malvern Hills. It does not have the money there to go and buy it. It has to go and raise a loan or borrow money in order to do that. That borrowing will then have to be serviced through the general income of the Trust, which may mean having to increase the amount charged to the levy payers as a whole in order to finance it.

210. You could end up with a situation there where the particular concerns of a particular group of individuals in one potentially quite small area of the Malvern Hills has ended up driving a situation where not only has the Trust not done something that would be in its interests, but it has then introduced the burden on the levy payers as a whole, because it has had to go and borrow money rather than being able to rely on a capital asset.

211. I know that is an extreme hypothetical but, in a way, I had to put it in those terms

to highlight where that disjunct could really come, in the sense of, if there are particularly strong views about a particular issue that may be held in a very, very small area or represent a very, very small part of the overall electorate, that could end up driving a decision that runs contrary to the best interests of the Trust, and actually the inhabitants or the levy payers more generally.

212. THE CHAIR: I am not suggesting that it should be treated that way round. The main duty, as we have seen in these texts, is to have regard to the interests of the charity. That will always prevail if there is a conflict. I am not in any way suggesting that should be departed from.

213. LORD EVANS OF GUISBOROUGH: Just to continue this discussion, a lot seems to hinge on subclause (6) in Clause 8, which we have already referred to. "The trustees must"—"must", not "may", so at least one person is going to have this role—"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". That is the bit of this legislation that seeks to reassure on the representation front. What is meant by "point of contact"? Is that a legal term or is it a term that would then be left open to interpretation? I think the interpretation of that is where the problems are going to lie.

214. MS LEAN: My Lord, my understanding is I do not think "point of contact" is necessarily a legal term that I know there is an immediate definition for, but it is the sense of liaison, as in that there will be somebody who is identifiable: "Residents of X parish, if you want to speak to somebody about concerns you have and you are in this parish, this is the trustee that you can go and speak to about it".

215. If I may say, my Lord, the representative element of it, in my submission, is primarily retained through the requirement to have the six elected trustees. Everybody in the electoral area who pays the levy still gets to have a direct say in who is appointed to now half of the board as opposed to a third of the board.

216. Yes, that provision is the one that reflects that, historically, people in a certain area will have voted for a trustee for that particular area, so there will presumably, in that sense, almost be a name or a face that they associate as being, "That is the person I go and speak to if I have a concern about the Trust". This re-provides that in a different form. They are not the trustee elected by the inhabitants of Guarlford parish or Mathon,

but they are the Trust liaison with the inhabitants in Mathon or Guarlford, in that sense.

217. LORD EVANS OF GUISBOROUGH: Do they have to be an appointed trustee or an elected one?

218. MS LEAN: Just a trustee.

219. LORD EVANS OF GUISBOROUGH: They could be an appointed trustee.

220. MS LEAN: It could be an appointed trustee but then, my Lord, as we have identified—

221. LORD EVANS OF GUISBOROUGH: That would usurp the role of the elected trustees, to some extent.

222. MS LEAN: In my submission, my Lord, not necessarily, because there is no restriction on who can stand as an appointed trustee. It may be that, actually, the person who is appointed as the point of contact or liaison for Guarlford is an appointed trustee, but they are an appointed trustee who happens to live in the parish of Guarlford. What it is doing is—"breaking the link" is the word I was looking for, but obviously the position has previously been that there is an elected trustee from Guarlford or an elected trustee from Mathon. There is no longer, under the Bill, going to be an elected trustee by the parish of Mathon or by the parish of Guarlford. They are trustees who are elected across the entire area.

223. In a sense, by keeping the liaison separate, it is making clear that it is no longer the position, as it were, that the trustee who is the liaison—you treat that as being the Guarlford elected trustee. It is reflecting the fact that the electoral arrangements have changed, but trying to provide the same function, in a sense, or the same ability to identify a name and a face if people want to go and raise issues.

224. LORD EVANS OF GUISBOROUGH: You voted for these people, but there is some completely different person who you are expecting to have contact with because they live there.

225. MS LEAN: My Lord, as I said, the trustees will have to identify how they are going to work out who the point of contact should be for any particular parish. I do not

know that anything has been worked up in terms of what the process for appointments is. It may be that a decision is taken that, yes, all of the six elected trustees will be people who are points of contact, or it may be the view is taken that it is going to be done some different way because also, with the turnover, it may be that, as I said, maybe potentially the people—it may be that there is not an elected trustee who lives within a particular parish or is associated with a particular area, where there is an appointed trustee who is, so it may seem that the more natural candidate to be the point of contact for people who live in a particular parish is the trustee who lives in—they may hold some other role within that parish. They may be a parish councillor.

226. THE CHAIR: Is each parish to have its point of contact?

227. MS LEAN: Yes, my Lord. That is the amendment, I think, that was discussed in terms of subclause (6).

228. THE CHAIR: It is not worded quite in those terms. It is just that they can choose any of the parishes, but the idea is that each parish should have a point of contact.

229. MS LEAN: My Lord, this is the drafting amendment that I referred to. I think my Lord asked the question and said, "Should it not be 'each' rather than 'any'?", and I said yes; I believe that is one of the amendments that has actually been put in recently. The filled Bill says "any". I think you will be getting possibly a revised list of amendments, and one of the amendments that is proposed is to replace "any" with "each", so it will be that each of the parishes will have a point of contact.

230. THE CHAIR: Could we be provided with the amended form at some point? We do not need it today, but when we come back, it is a very important subclause, for the reasons that Lord Evans has been pointing out.

231. LORD EVANS OF GUISBOROUGH: I just wonder, Chair, if your witness, Ms Satchell, could explain to us more about how this is intended to work? We have got our teeth into the numbers issue here, but there is also the responsibilities issue. I think someone is going to have to define what being a point of contact involves and where that person's responsibilities lie, possibly in the legislation; possibly in a job description or your standing orders or whatever afterwards. Do you have an idea of how this is going to work?

232. MS SATCHELL: My Lord, not really at this point, because there are an awful lot of things under this Bill that there has been no detail worked up, but, as you say, there will be some terms of reference created for the point of contact, but that will be something that the board will need to work up in due course.

233. Again, this is slightly an aside on this point of taking the views of the levy payers, which you have been concerned about. I think I did mention that, now and in the future, the Trust does consult very widely, and it does consult if it is going to grant an easement on the land management plan, cutting down a stand of trees. The Trust always does open its ears to the views of the residents.

234. The views that will be taken into account are ones that are relevant to achieving the Trust's objects and the constraints within the Bill. For example, with an easement, if a levy payer or the levy payers come to the Trust in response to the consultation and say, "Please. We think this is going to be in a very prominent position, either in relation to the Trust land in the immediate vicinity or the views from the hills", of course the Trust will take that into account, because it is a very pertinent point to how it must carry out its duties under the power to grant easements, but if somebody says, "This is going to affect my view or affect a listed building", or "We just do not like the idea of development here", those matters are not ones, I would suggest, that the Trust can legitimately take into account under the Acts, in relation to the constraints and the matters that it must consider when it grants an easement.

235. THE CHAIR: I am sure that the way it works is that the primary duty is to have regard to the purposes of the charity. That is what is set out in the text we have in front of us in paragraphs 5 and 6 of this note. That would not be in dispute, really. I understand the way you are thinking. You would consult and take account of them, but certain representations or points would have to be discarded because they conflict with the primary duty, and the primary duty will prevail. That is all I am suggesting on my particular point.

236. Time is moving on a bit. I am wondering whether we might be able to finish by lunchtime instead of coming back later on. Lord Inglewood has a point.

237. LORD INGLEWOOD: I have a very quick point arising out of the comments of the Chair and Lord Evans. Could you make the point of contact something slightly

stronger here? It seems to me if they are not merely a means of contact but become a conduit through which the concerns of the local people, in respect of what the trustees are wanting to do in the Trust area has to be reported, with an obligation to do that, then it is up to the conservators—the Trust as a whole—to decide whether or not either their concerns are relevant or they wish to adhere to what is being suggested, but they cannot say that nobody knew.

238. It is clear from some of the evidence we heard initially that people think that they are being just steamrollered a bit. It may be completely wrong, but there is this anxiety that things are happening and they cannot make their view felt, and they are the levy payer and it is right outside their house's window. That would, I think, get round that, because you could say, "Look, these people have a duty to do this. They do it. It has been in front of the trustees, and the conclusion they reached was as follows".

239. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Chair, that was my point that I was going to make as well. This needs to be a two-way process, so a point of contact is also making contact with the electorate about what the Trust is doing.

240. MS LEAN: My Lord, we have certainly taken on board what has been said there. We will take that away and come back to you, if we may, when we return. I am afraid I do not think we can just redraft Clause 8 sitting here today, but we will take that away and certainly give some very careful thought to whether something could be done to that subclause.

241. THE CHAIR: Yes. It looks as though the first day we come back, we are dealing with a particular group of petitioners. I doubt we will occupy the whole day with them, so there may be an opportunity, in the course of that day, for us to resume this part of our discussion before we move on any further.

242. MS LEAN: Indeed, and I believe, from recollection, that those petitioners—if granted standing, it may be timetabled to then go into their substantive petition later on. They do raise issues, I think, to do with the governance, so it may be that it is a natural point to pick up this issue again in any event. My Lord, we will certainly take that away.

243. Sorry if I have ended up sending things down a rabbit hole, but all I was seeking to do was to draw a distinction, picking up on what seemed to be a concern about the

parishes had previously had an elected trustee, and that was seen as being a particular link, and how that played out in the Bill, but to highlight how there can be a conflict if people are perceived as being the voice of, or there on a mandate for, a particular viewpoint, as opposed to the way the decision-making has to happen, but that is in no way, shape or form to seek to try to diminish or underestimate the important link there has been historically, and continues to be between the people who live in and pay the levy within the hills and the work of the Trust.

244. We will certainly go away and look at whether there is potentially something that could be done within that subclause that makes more explicit the role of that point of contact and what is expected in terms of, as my Lord said, acting as a conduit for concerns from those within the area to be communicated and brought to the attention of the trustees, so it is not just a question of at the ballot box every three years.

245. THE CHAIR: Can we leave that chapter alone? I am looking at your note again. Can we move on to the public body section?

246. MS LEAN: Indeed, My Lord.

247. THE CHAIR: It is a fairly straightforward point that "public body" does not have any universal meaning. It crops up in one statute or another for its own particular purposes: the freedom of information example, the human rights example and so on. So far as you are concerned, you are not, in the Bill, asking for a declaration that the Trust is a public body for any particular purpose. We know that it has been declared as a public body for statistical reasons, and we can narrate that in our report. Beyond that, there does not seem to be anything more we need to say about public body.

248. MS LEAN: I am grateful, my Lord. The only point I was going to add was to say that there is nothing in the Bill about it and there is nothing in the Bill that affects it. If the Trust is a public body or the conservators are a public body for certain purposes today, that is not changed by the Bill, and if there are concerns by petitioners that feel that the Trust ought to be subject to EIR or ought to be subject to FOI, there are means through which that can be pursued outside of the Bill.

249. THE CHAIR: Of course, the end product of our debates will be a report. What I was suggesting was, in our report, we could mention this and simply say that public

body appears in various bits of legislation for legitimate purposes, but what really matters in this case is that this is a charity.

250. MS LEAN: Indeed, my Lord. I think it is probably important for me to say that the fact that a body is a charity does not preclude it, in and of itself, being subject to certain types of legislation that may apply to public authorities as defined in that legislation, or carrying out a particular function that might be seen as a public function, but yes, my Lord, certainly it would be the promoter's strong position that there is certainly no need for this Bill and it would be undesirable for this Bill to purport to specify that the Trust is a public body, because that is not a term of art, as it were, that carries a certain meaning for every person in the UK.

251. THE CHAIR: It is not only undesirable; it is not necessary, because the legislation exists already.

252. MS LEAN: Indeed. If we are a public body for the purposes of the Human Rights Act for the EIR—"if", I say—then that is the position, regardless of what might be in this Bill. My Lord, that was all I had on public body.

253. Just finally on this point, I did have an outstanding note from Lord Inglewood about a query about, if you granted land or somebody granted land to be used for the public benefit, was it affected by whether it was given to a charity or whether it was given to a person. I do not know if it is helpful for me to go back on that or if we have covered that off.

254. LORD INGLEWOOD: I think we have basically covered it, unless you disagree.

255. MS LEAN: No, my Lord. I think we have covered it. All I was going to say was that the magic is not in the word "being a registered charity"; what matters is the nature of the gift. If land is given to be held by person or body for the public benefit for certain reasons, that is what gives it the character of being a charitable trust.

256. LORD INGLEWOOD: The gift creates a trust.

257. MS LEAN: It is the gift that creates the charitable trust; it is not the person to whom it is given that alters it, as it were. My Lord, I am sorry if I have taken too much time on those issues, but I hope that mops up some of the points that I had understood

were outstanding, or concerns that were outstanding from the first couple of weeks.

258. THE CHAIR: Your note was extremely helpful. Thank you very much indeed for that and for your submissions today. Can we finish the session now and bring the hearing to an end?

259. MS LEAN: That was all we had today, my Lord.

260. THE CHAIR: Very well. We will adjourn at this point. Thank you very much for your attendance today. The next public meeting of the committee will begin at 10.30 on Tuesday, 3 March.