

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 3 March 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

FOR THE PROMOTER:

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

FOR THE PETITIONERS:

Jessica Jones (Malvern Environment Protection Group)

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(At 10.40 a.m.)

1. THE CHAIR: Welcome to this, the 12th public meeting of the Select Committee on the Malvern Hills Bill. The purpose of this meeting is to consider the issue of the right to be heard of the Malvern Environment Protection Group, which Ms Jones is representing today. You will be making submissions on your petition if we say that you do have a right to be heard, which will follow at a later stage this morning.
2. May I remind all those who are present to put their phones on silent, please, and to refrain from having conversations behind those who are in front of us, because that can be very distracting in this room, where the acoustics are not all that good?
3. In case of fire, we have a fire alarm system. We do not use bells in this estate. Instead, we have a two-tone siren, which is followed by a series of taped messages, which tell you what to do. If evacuation is necessary, please follow the instructions of the clerk. If you are outside in the corridor, find the nearest security officer. When you are leaving this room, please leave papers behind, because the important thing is to get out as quickly as possible if it is a real fire alarm.
4. These proceedings are being broadcast and a full transcript will be taken. If the committee wishes to deliberate, we will ask for the room to be cleared and we will go into private session and call parties back when we have reached our decision.
5. Ms Lean, I think the procedure we follow is that it is for you to put forward your case as to why the group does not have a right to be heard. Then, Ms Jones, we will ask you to reply. We have read your very helpful paper, so you can assume that we have read the paper and base your submissions on that assumption.
6. LORD INGLEWOOD: I just ought to declare that I am a patron of the Friends of the Lake District, which is an independent charity, which is the local branch of the CPRE in Cumbria, where I live.
7. THE CHAIR: Very well. Ms Lean, I think it is for you to start.

Malvern Environment Protection Group

Statement by Ms Lean

8. MS LEAN: Thank you, my Lord. The petition today is in the name of four petitioners: MEPG, CPRE Worcestershire branch, Mr Percy and Mr Sarginson. It is the promoter's understanding that Ms Jones only appears for MEPG and thus that the other three petitioners have not come before the committee to argue for their right to be heard.

9. If I can highlight, for the purposes of CPRE Worcestershire, the issue that was raised was around having seen authorisation for CPRE Worcestershire to put in a petition on behalf of that body, for the purpose of Standing Order 117. For the other two petitioners, both referred to being levy payers, so they were challenged on the basis that their interests were not specially and directly affected by virtue of being levy payers. In respect of one of the individuals, there was a reference to his property potentially being affected if an easement were granted in the future for development in the vicinity of his property. Again, from the promoter's perspective, we would submit, for the reasons we have outlined for earlier petitioners who have raised that issue, that that is not something that gives rise to the special and direct effect by this Bill that would give rise to standing as of right or a discretionary basis for standing.

10. THE CHAIR: Really, the others are quite straightforward. We are really concerned about the group only.

11. MS LEAN: Indeed, my Lord, but I thought it was probably sensible for me just to broadly highlight the reasons why challenge has been brought to those other petitioners who are not, it seems, appearing before you to advance their case for standing. My Lord, in terms of MEPG, the promoter has raised the challenge on the grounds that it is an organisation that has not demonstrated and made a formal decision to oppose the Bill under Standing Order 117 and it had not demonstrated it was sufficiently representative of the interest it purported to represent.

12. As in the submissions I made, my Lord, in respect of the Upper Welland Action Group, I start by saying that Standing Order 117 does not, on its terms, contain the words about formal decisions to oppose the Bill or formally constituted, but that is a theme that has emerged, or certainly appeared from some of the precedents that have previously

considered Standing Order 117. My Lord, in my submissions on that occasion, I referred to two of the authorities in the bundle of locus standi materials before you, which I hope I do not need to go into, but if I can just flag which ones they were. It was the Shoreham Port Authority Bill, which was at page 81 of the locus standi materials, and the King's Cross Railways Bill, which was at page 90 of those materials.

13. In very broad terms, the Shoreham Port Authority was about a residents association and the King's Cross Railways Bill was a petition of a cycling organisation within Camden. Forgive me, I have just temporarily forgotten their exact name.

14. THE CHAIR: It was a cycling group, was it not?

15. MS LEAN: It was a cycling group. Certainly in the King's Cross Railways Bill it was considered that the necessary had not been shown that they were representative of the interests they purported to represent or formally constituted or suchlike. My Lord, those were the two authorities I previously referred to for the need for there to be some sort of formal constitution and some sort of formal resolution or representative vote for a petition to be lodged.

16. My Lord, that is the context, again, for the promoter's challenge, that, certainly at the time of the challenge letters, the promoter did not consider it had seen sufficient evidence to demonstrate either membership or extent of membership of MEPG or the formal authority to authorise the petition being lodged on behalf of or representing those persons the organisation said it represents. My Lord, again, as with the Upper Welland Action Group, in the promoter's role to police the rules of locus standi, we have challenged standing to bring this issue to your Lordship's committee's attention, such as to enable the committee to consider whether you consider the gateway criteria are satisfied and, if they are, separately, whether you would wish to exercise your discretion to grant standing.

17. My Lord, I am conscious that the decision will be made based on the documents before you, including the submissions and the materials that came over on Friday. I am unclear if you would like me to address those now or it would be appropriate for me to hand over to Ms Jones and me to say anything then in response.

18. THE CHAIR: I think you could probably deal with it briefly, because Ms Jones

really would want to reply to what you really want to say, rather than go backwards and forwards, so I think if you would like to just proceed. Ms Jones, are you content with that, so that she makes her position clear?

19. MS JONES: I am, my Lord. Thank you.

20. MS LEAN: My Lord, on the first point—essentially whether the gateway criteria are satisfied—there are three short points I would like to make in respect of the documents that came over on Friday. The first, my Lord, is membership. There is still a lack of clarity, from the promoter’s perspective, as to what the membership of this group is said to comprise. There have been references, variously, to a mailing list, which seems to have been set up in about 2020 but does not seem to have any new entries after 2023. There has been a reference to public meetings. What we have not seen is anything to suggest that attendance at meetings is limited to being a member or how somebody formally identifies themselves as being a member of MEPG. What is it they have to do? What are the criteria? What is the membership body and how can we see how extensive that is or who it really represents?

21. THE CHAIR: You have seen appendix 3, have you not, with a list of people? We do not see the names, but we see the contact details, email addresses. Presumably they are people who, in effect, are offering their support to the group, either as members or as supporters. It is quite a substantial list. It is very different from the Upper Welland case. Do you remember—that was where we were presented with a decision taken by three people and we were not able to hold that they were representative of the area they said they were representing? The picture presented by that appendix is rather different.

22. MS LEAN: Indeed, my Lord. I merely highlight that because it is not entirely clear how membership has seemed to work in respect of this body. There are references to membership being attendance at public meetings. There is reference to some people having asked to be put on one mailing list to get newsletters and some people being asked to get information in another way. I merely draw attention to perhaps a lack of clarity. Are these people who assume they are members of MEPG or are represented by MEPG, as opposed to people who have signed up to get information or out of interest? I say that in the context of understanding that this is about a society, an organisation or a representative body. In my submission, it is important to understand the nature of who it

is, or who is a member of it, or what exactly the body is doing in respect of people who have in some way associated themselves to it.

23. My Lord, the second point is around the constitution. This is more of a factual query, perhaps, rather than a legal point. The document that came over at annexe A on Friday says that it is the constitution of the Malvern Environment Protection Group, adopted on 4 September 2019. It starts by saying that the name of the group shall be the Malvern Environment Protection Group. There was just a query about how that squares with the minutes of the meeting of 11 December 2024 and if that was actually the extant constitution at the date. At the point of looking at when the decision was taken to petition, was that the constitution as it stood at that time?

24. In the minutes at annexe B to the written submissions, in terms of what the meeting was called to discuss, point 1 was issues in respect of the private Bill, but 2 was to formalise and update the constitution of the Malvern Environment Protection Group. It is motion 3 that raises a question mark as to when the document you have at annexe A came into force or effect. Resolution 3 is that it is agreed that the name of the organisation should be formally changed from Friends of the Commons of Malvern to the Malvern Environment Protection Group. My Lord, as I say, that is maybe not a massive point on standing, but it is just in terms of our understanding of how exactly decision-making has to be taken with respect to this body, to be clear whether that is the document that governed decision-making at the date.

25. Linked to that is my third submission, which is around the need for a vote or a decision that is properly representative of those members of the body it is said to represent or their interests. In the constitution document at annexe A, point 7, which is under the section of “membership”, talks about how every member shall have their chance to share their opinion at meetings and have a vote in taking key decisions. Over the page at 14, which is under the heading of “management”, the work of the group shall be organised by a committee, the constitution of which shall be determined by the membership.

26. My Lord, given the emphasis that is placed in submissions in particular on the Bill having been a key aspect of MEPG’s focus over the past couple of years, it would seem like a decision whether to petition against it might fall into the category of a key decision, on which the constitution seems to indicate all members should have a right to share their

opinion and have a vote. There is no indication, from the documents we have seen, that there has been a vote at any meeting, other than this one committee meeting of 11 December 2024, about petitioning the Bill.

27. Indeed, my Lord, to the extent that meetings are referred to in my learned friend's written submissions relating to that, which I have at paragraph 17(1) of my learned friend's submission, there is a reference to the committee having taken a formal resolution following months of engagement, including, for example, two public meetings held on 11 May 2024, but that meeting of 11 May 2024 was actually before the consultation had even opened as to whether the Trust would proceed with a private Bill.

28. My Lord, in my respectful submission, if what is required and seems to be required under the constitution is that there is to be a meeting and a vote of members on key decisions, perhaps one would have expected to see a decision being taken or a vote being taken at a meeting, or a meeting being relied on, which actually postdated the Trust's decision to deposit the Bill and the terms of the Bill so deposited. My Lord, that is all a slightly roundabout way of saying that, in the promoter's respectful submission, there would still seem to be a query, as with the Upper Welland Action Group, as to whether the decision that was taken by nine people at this meeting in December 2024 is sufficiently representative of the interest that MEPG claims to represent as a whole to enable the committee to be satisfied that the gateway condition in Standing Order 117 is met.

29. I merely just highlight finally there, if I may, my Lord, obviously taking on board what was said in my learned friend's submissions about the slightly informal nature and workings of MEPG—and I say that without any criticism at all—the constitution, as I have alluded to, does suggest, at 14, that the constitution of the committee is to be determined by the membership, whereas it seems that the practice has been for the committee membership to be self-selecting and the core group to comprise, I think, between eight to nine people generally, with an additional 15 who may be more actively involved. I highlight those points, my Lord, because obviously much is prayed in aid about the numbers of people this organisation is said to represent, whereas, in terms of drilling down into some of the more detail of it, the impression does emerge that it may be that there is actually a rather smaller core group who are making decisions. Just then to raise the question whether, on the documents, your Lordship's committee is satisfied that this body is one that is properly representative of a wider interest in the area and that

the decision taken to petition the Bill is one that has been taken in a way that is sufficiently representative of those individuals.

30. THE CHAIR: If you look at the opening lines of Standing Order 117, paragraph 1, what it directs attention to is the nature of the society or association. The question is, “Is the society sufficiently representative of an interest that is affected by the Bill?” It does not actually go into the details of how decisions are taken and so on. We just simply look at the nature of the society. Of course, one has to be satisfied that a decision was taken to proceed and so on, but I am not sure we need to go into the fine details of timing, do we? We need to look at the nature of the society represented by the members and so on and the constitution as we see it.

31. MS LEAN: My Lord, that is why I referred back briefly to the two authorities I mentioned when we were looking at the standing of the Upper Welland Action Group and that the theme that has emerged is that there does need to be this properly taken decision by a sufficient number, as it were, to be representative of the society or the organisation. It may not be a question of numbers or timing, my Lord, but I was merely seeking to highlight that the constitution seems to say that key decisions will be taken at a meeting of the members. It seems that this decision was taken at a meeting of the committee where about nine people were present.

32. To the extent that reliance is, or may seem to be, placed on things that had happened at an earlier meeting, that meeting, temporally, was not taken at a time when the Bill was in the immediate offing or deposited so that what there actually was was a Bill that had been deposited, or was about to be deposited, with the terms of the Bill and doing what the Bill actually does. It seems that the meeting that is relied on is before the Trust actually went out to consultation on its proposals for a Bill and before it had even taken the final decision to proceed with that. That was why I brought in the timing point, my Lord, in case it is relied on as essentially giving the authorisation to the decision made by the committee in December 2024.

33. THE CHAIR: There are two questions then. What is the nature of the society? Is it a representative society of an interest and so on? The second is: does the society have proper authority? It is the second point you are really questioning.

34. MS LEAN: It is the second point, my Lord, that has probably come to the fore more

from those documents and the points I have raised to you today. That is one of the grounds on which the challenge was raised, which was, “Has there been the properly authorised resolution? Had they been properly authorised to deposit this petition?”

35. THE CHAIR: Thank you very much. Ms Jones?

Evidence of Ms Jones

36. MS JONES: Thank you, my Lord. As you know, I act for the Malvern Environment Protection Group, which petitioned along with the Campaign to Protect Rural England and a number of individual levy payers. As Ms Lean has identified, it is only MEPG that is here today. That is not because of a lack of continuing support for the petition by the other co-petitioners, but because they have been happy for the group to advance the petition on their behalf and for the committee therefore to direct its attention, for this morning’s session at least, merely on the point of Malvern Environment Protection Group’s right to be heard.

37. My Lord, what I intended to do was to take you through some of the background first about the group, how it came to be and how it organises itself, and then to address the specific terms of Standing Order 117 and the points raised by Ms Lean and the promoter in its objections to the group’s right to be heard. I will then address you briefly on why we say that both the gateway conditions under the Standing Order are satisfied, but also that that then puts you in a position of having a discretion to exercise, and why we say, in the circumstances of this group, that that discretion ought to be exercised to grant them the right to be heard on this Bill. Unless there is any contrary indication, my Lord, that you would like me to address things differently, that is how I propose to proceed.

38. THE CHAIR: That seems fine, but you do understand that we have read the paper you have presented to us.

39. MS JONES: I do understand that. I do not intend to go through everything. I just intend, in the background, to draw out the key issues, which will then help when I address the Standing Order itself, because it will identify the factual matters that we say satisfy the requirements in the Standing Order.

40. THE CHAIR: Okay.

41. MS JONES: As you have seen, my Lord, the association was established in 2019, pursuant to a constitution adopted in September 2019. In that constitution, at annexe 1 to our written submissions, paragraph 3 identifies the aims of the organisation. They are to have concern for and protect the natural aspect of the Malvern Hills and surrounding commons. Paragraph 4 of the constitution then sets out the actions that the group may take to pursue those aims, which include organising events, doing media work, lobbying elected representatives and working with other groups and exchanging information. These are indeed all activities that Malvern Environment Protection Group has undertaken over the last seven years of its existence in pursuit of its aims.

42. Its work is undertaken entirely by volunteers who share its aims and who give freely of their time because they share its commitment to the Malvern Hills, in which they live, and because they have a sense, as local residents, that they ought to be actively engaged in trying to protect and preserve the landscape that they enjoy. As my written submissions address, the fact that it is run entirely by volunteers does mean that, although it is a formally constituted organisation and it does conduct meetings and regular activities, some of that is necessarily done in a more informal way than you would see in, for example, a business or some other institution with paid officers.

43. The primary organisation of the group's activities and its day-to-day administration is run by a committee. That committee meet every six weeks or so as the need arises. There are usually eight or nine attendees, with a further 15 or so regular volunteers who contribute to the organisation and day-to-day administration of the group and its work. The constitution provides, at paragraph 11, that the group will have one main point of contact and one or more group organisers, and offer opportunities to all members to take on specific roles.

44. At paragraph 14, as my learned friend identified, the constitution provides that the work of the group shall be organised by a committee, the constitution of which shall be determined by the membership. The way, in practice, that this has happened is that, when public meetings have taken place, all of those who have attended have been informed of the opportunity to become more involved in the organisation and day-to-day administration of the group. They have been invited to join the committee and its work if

they so choose. That is how the 20 or so people who are currently actively involved on a more daily and granular basis have been identified. There are the founding members and their group has grown through interest expressed by others who have attended public meetings, have heard about the work of the group and have volunteered themselves to be involved in it.

45. The committee sends out monthly newsletters to all of the 320 or so people who appear on the mailing list at annexe 3. That is a list of people that continues to grow. There was a public meeting last month that took place. More people signed up to join the mailing list and will be added. They are not yet reflected on the copy of the mailing list that we have been able to provide to the committee.

46. THE CHAIR: What is the date of the mailing list? It does not have a date on it. Is it up to date?

47. MS JONES: It is up to date with the exception of those who signed up at the meeting that only took place, I think, just over a week ago. The reason that some of the entries on that mailing list show a subscription date indicates, I understand, that they signed up through the group's website, in which case the time that they signed up is recorded. Others will have been manually entered because they would have signed up on a physical sign-up sheet at a public meeting and then been added by hand to the database by members of the committee subsequently.

48. When the promoter raises the question of what constitutes the membership of the Malvern Environment Protection Group, the group would say that it is essentially the people on this list. Yes, for some of them their membership will therefore involve receipt of the monthly newsletter and not much more. One of the purposes—the constitutional aims—of the group is to provide public information about matters concerning the group's interests. For many of them, they are more involved. The mailing list publicises the public meetings that occur. As my written submission set out, the regular attendance at those meetings of between 100 and 200 people suggests that in fact many of the people on this mailing list are actively involved and do show their commitment to the group and its aims by turning out in person to participate in the debates that take place at the public meetings.

49. My Lord, alongside the 320 or so members on the mailing list, further local support for the group was demonstrated in the 2024 online petition that it organised. It organised

it through the 38 Degrees website. It is no longer available on that website. They are hosted for a period of time and it is no longer publicly available. I do have a copy of it here. We have not provided it to the committee because, with the 38 Degrees petition no longer being online, we were not sure what consent was given by people, when they signed it, to their personal information being in the public domain. We did not want to put their personal information back in the public domain until we had got to the bottom of that or until we had had a chance to redact the petition. It being 2,500 signatories strong, that is a time-consuming task, which the group are happy to undertake if the committee would like to see it.

50. I do not think that it is contested by the promoter that that petition was undertaken and received that number of signatories, and that then the job that the group did was to look through the signatories to establish who were local residents, who had signed up to that petition from a WR13 or WR14 postcode, so that they were essentially in the core levy-paying areas. That base has also been used by the group as an understanding of the local support for its position on the Bill, because the petition was formulated around a pause in the progress of this Bill for greater public consultation for issues like the public body status and the protection of the natural aspect of the Bill to be more fully considered before the Bill progressed.

51. THE CHAIR: Unless my colleagues are apt to think otherwise, I do not think we need to see the document. Thank you.

52. LORD EVANS OF GUISBOROUGH: Might I just ask a question about the petition? You told us that the petition is what, two and a bit thousand?

53. MS JONES: That is right: 2,500.

54. LORD EVANS OF GUISBOROUGH: You have done the work on identifying how many of those were local postcodes. How many were there that were local?

55. MS JONES: Two thousand.

56. LORD EVANS OF GUISBOROUGH: So 2,000 out of the 2,500 are—

57. MS JONES: They are WR13 and WR14 postcodes.

58. LORD EVANS OF GUISBOROUGH: Right. Thank you.

59. MS JONES: Then 1,500 people among the 2,500 who signed the petition also ticked the box on that petition to say that they wanted to receive continuing updates from Malvern Environment Protection Group about their work on the Bill. Those people do not appear on the mailing list. They do not receive the monthly newsletters, but they have indicated a desire to be kept updated and the group can email them specifically through the petition platform. I should clarify that, of those 1,500, we have not done the job of how many are—they are from the full 2,500, not necessarily the 2,000 who are from the local area.

60. THE CHAIR: When you look at paragraph 7 in the constitution, to which Ms Lean has drawn our attention, it says that every member shall have a chance to share their opinion at meetings and have a vote in taking key decisions. Obviously there was a key decision to be taken. Who are the members for that purpose? Are they the people on the mailing list, or do you expand it as far as all the people who put their names to the petition?

61. MS JONES: No, my Lord. In terms of how MEPG would define its membership, it is the people on the core mailing list of three hundred and something people. The petition signatories are indicative of the wider support in the local area, but they would not be considered to be members of the organisation.

62. THE CHAIR: That is fair enough. I think that we can understand that. Nevertheless, when it came to the vote, the 300 or so were not there.

63. MS JONES: They were not there, my Lord, no. I think the consistency with paragraph 7—my submission would be that there had been the meetings on 11 May 2024. Those were highly participative. Many people who attended contributed and discussed the issues that were arising. My learned friend raises the fact that that was before the consultation period on the Bill had opened. We accept that to be the case, but in fact the broad content of the Bill and the Trust's proposals had been known for some time. There had been the Section 73 charity scheme back in 2019. There had been many meetings of the Malvern Hills Trust at which specific issues arising, and which now form part of the content of the Bill, had been discussed.

64. It was not like there was no information on 11 May and then, when the consultation

opened later in May, suddenly people could see what was proposed through this Bill. The specifics, of course, were not known, but the issues were known. They were discussed and the mandate that was understood to be given to the committee at that meeting was that, if the issues discussed did in fact prove to be issues that were not resolved by the consultation period and that found their way into the final draft Bill, the group's membership were not happy about that and would want their concerns to be known to the parliamentary process by the means of Malvern Environment Protection Group submitting a petition.

65. I accept entirely that the decision that was taken on 11 December was a decision of the nine committee members who attended. That decision was fully informed and based on what they had heard from the 200 attendees on 11 May about the scope of the issues arising and the action that that larger public group would expect to be taken on their behalf in the event those issues remained.

66. The period for putting in the petition is short. The Bill was lodged on 27 November, with petitions due, I believe, by early February. In the circumstances, the committee felt that they were entitled to proceed with that without trying to call another public meeting to confirm that. There have, of course, been subsequent public meetings again that have addressed the position on the Bill and have, I think, confirmed to the committee that the action that they took was indeed the action that was endorsed by the membership and that they have the continuing support of the wider public membership in raising the issues in this petition.

67. THE CHAIR: Lord Inglewood has a question.

68. LORD INGLEWOOD: Just a quick point, please. Has there been any dissent against the direction of travel the organisation has been going down, from either the members or what you might call the wider supporters club, or is there a degree of solidarity in the organisation behind what is going on?

69. MS JONES: My Lord, my understanding is that there is substantial solidarity. Of course the public meetings involve debate and there will be shades and gradations of views expressed at that. In terms of proceeding with this petition and with the four core concerns that are identified, or the four clauses that are identified as being of particular concern in the petition, my understanding is that there is significant unanimity about that.

70. My Lord, if I might then turn to the terms of the Standing Order itself, it is in the promoter's small file of materials at tab 2, but it is also reproduced at paragraph 13 of my written submissions, whichever is easier to take up. There are, of course, two subparagraphs of the Standing Order and so two routes through which Malvern Environment Protection Group might satisfy the gateway. My focus will be on paragraph 2, but I do wish to address paragraph 1 as well.

71. My core submission is that the group satisfies either of these paragraphs, in paragraph 1 because it is an association representing an interest that will be injuriously affected by the Bill, namely the interest of local people who enjoy the amenity of the hills and commons, and who wish to see them preserved in their current manner. I am aware of discussion before previous committees about whether the meaning of "interest" in subparagraph 1 ought to be interpreted narrowly to mean a pecuniary or business-type interest. That is something that was put forward by the promoter in the King's Cross Railways Bill. It is not an issue that I have seen has been resolved anywhere, and in fact in *Erskine May*, which we can turn to if necessary, but it may not be, there is no suggestion that "interest" should be construed so narrowly in paragraph 1.

72. THE CHAIR: I do not think that Ms Lean was taking that point against you.

73. MS JONES: No, I accept that, my Lord. In any event, given the content of paragraph 2, where amenity associations are expressly included, my submission is that, if there is any doubt about our fulfilment of the conditions in paragraph 1, in any event we clearly satisfy the conditions in paragraph 2, because the organisation represents an amenity in the local area. The objection that is taken is not whether there is a relevant amenity in issue, if I might phrase it that way, but whether we are sufficiently representative.

74. My Lord, if I might just deal shortly with the first issue that was raised by the promoter that the group has not demonstrated a formal decision to challenge the Bill, I hope that that is resolved by the provision of the 11 December 2024 minutes, so that we are not in a position where there is not a formal decision. We are in a position, essentially, of the committee determining whether that decision is sufficiently representative of the organisation's membership.

75. Because my learned friend raised a point about the 11 December 2024 minutes, if I might just address that factual point about the formalisation of the name of the group, the

2019 constitution has been operative since September 2019 and remains so. It was the operative constitution on 11 December 2024 when the decision was taken. What paragraph 3 does is it resolves an anomaly or an overhang, if you will, from the prior organisation and the formal naming of the bank account that is associated with the organisation. MEPG had operated and continued to operate under the name MEPG since 2019, since its constitution was passed, but it had not done all of the associated administrative bureaucratic name changes with things like the bank, and that is what that provision or that motion addressed.

76. In terms then of the extent to which the group is sufficiently representative, I have three basic submissions in this regard. The first relates to whether it sufficiently represents an interest that is affected by the Bill. The second is whether it sufficiently represents local people who are engaged with or share that interest. The third is whether the petition itself is sufficiently representative. We have touched on some of that already.

77. In terms of the group's representation of an interest at stake—a relevant amenity interest—my submission is that the group will be directly and specially affected by the provisions of the Bill because its exclusive concern is the protection of the natural aspect of the Malvern Hills, and that falls precisely and squarely within the subject matter of the Bill that is proposed. How the natural aspect and the hills and commons in their current state will be protected going forwards is what this Bill seeks to address.

78. This is not a case where an organisation with wide or general interests seeks a right to be heard on a Bill. This is a case in which an organisation with very specifically focused aims, which coincide precisely with the Bill before you, seeks to be heard in respect of that. The counterpoint that may be drawn is the Labour Party branches in the King's Cross Railways Bill, where, effectively, the committee questioned them and said, "If you, with a general interest in the well-being of the residents in your area have a right to be heard on this Bill, you would have a right to be heard on anything at all". That is not the case for Malvern Environment Protection Group, which is very specifically focused on matters that fall within the purview of this Bill.

79. Then secondly, in terms of the extent to which the group represents local people, essentially, my submissions have already been covered on that. We have the 320-or-so-strong mailing list that constitutes the membership of the group. There have

been repeated meetings that have focused very directly on the Bill, the members' concerns about the Bill, and the action that the group ought to take in response to that over the last few years, which have attracted attendances of between 100 and 200 local people. We have the broader support evidenced by the petition.

80. As well as engagement with its own membership through the public meetings, it is perhaps worth mentioning the broader representative role that the group has played as a liaison between those of its membership, those local people who are interested in the relevant amenity interest and other democratic bodies in the local area. For example, members of the group's committee have spoken at public meetings of the relevant local authorities—Worcestershire County Council, Malvern Town Council and Malvern Hills District Council—on repeated occasions over 2024 and 2025 when matters arising in respect of the Bill have been debated. The group has also been invited to meet privately with officers and elected members of Worcestershire County Council to discuss the issues arising and with the Malvern Hills Trust itself. That is covered in paragraph 10 of our written submissions. I would say that this serves as evidence that the group operates and is treated as a representative organisation of the relevant amenity interest in the local area.

81. Then, in terms of the petition that is submitted by the group being sufficiently representative, as well as the points I have already made, the meeting on 11 December and the resolution passed was understood to reflect a mandate that was given on 11 May 2024, and that has continued to be evident in the subsequent meetings since. In my submission, therefore, MEPG does sufficiently represent an amenity interest, namely the interest of the local people who seek to have the Malvern Hills and commons protected and preserved in their current form for future generations, and that is sufficiently representative and satisfies the gateway in Standing Order 117.

82. My learned friend referred to the two authorities that had been addressed in respect of the Upper Welland Action Group. If I might respond on those, and give you our submissions on how those apply here, my Lord, it might be easiest to turn them up, but I am also happy to address you and if a point arises that means we think we need to go to them—

83. THE CHAIR: I do not think that we want to take time to turn them up. It takes a bit of searching through lever arch files and so on. Can you be very brief?

84. MS JONES: Let me just make our broad points in response to them then. You have already had my point on why we are not in the same position as the Labour Party in respect of the King's Cross Railways Bill. In respect of the Camden Cycling Campaign, that was an organisation, the evidence which was that it was not formally constituted. It did not have a set of rules. In trying to establish that it was sufficiently representative of an amenity interest, it could only point to a meeting of five people who had attended to vote on the resolution.

85. We, conversely, are in a position where we are able to show you our substantial membership, as I have done in annexe 3 and in our report of the numbers of people who attend the public meetings. That is much more significant than five people who voted in favour of the cycling campaign's resolution. I say that that puts us in a very different position. Where Camden Cycling Campaign was not able to show it was sufficiently representative, I would say that Malvern Environment Protection Group is able to show that, through the submissions that I have made to you so far this morning.

86. Then in respect of the Shoreham Port Authority committee meeting and the locus standi of an individual there on behalf of the residents association, the chair of the residents association was granted the right to be heard in that case. The questions that the committee puts to him, I say, show the relevance of the issues that I have addressed today. He was given leave, essentially, after being able to show that the organisation did have a constitution. In his case, it was an informal three-line constitution. It had a broad purpose of furthering the interests of people who live in the area that were accepted to be impacted by the Bill in that case. He was able to show that there had been, I believe, meetings where he heard and took on board the views of the residents who he represented.

87. All of that being said, in fact, all we get from that authority here is another committee having been interested in similar kinds of issues, but in fact he had not petitioned as the chair of the residents association. He had petitioned as an individual who happened to be the chair of the residents association. My understanding, from reading that authority, is that, in fact, he must have been granted, under the equivalent of Section 118, the discretion to hear from an individual rather than the equivalent of Standing Order 117 itself. It is not a direct precedent, but I do say that, for the reasons that the committee there was interested in hearing what he had to say on the provisions of the Bill in that case, this committee may well consider itself equally interested to hear what Malvern Environment

Protection Group has to offer in respect of this Bill.

88. THE CHAIR: I think that that really is about all you have to say, is it not?

89. MS JONES: It is, my Lord. The only final point was going to be two short points on why I would say that, having satisfied the gateway conditions, if I have persuaded you of that, I would invite you to exercise your discretion, which is simply that this is an important amenity interest for the purposes of this Bill. It is not represented by any other petitioner who appears before you. The four core concerns that are raised in the group's petition correlate almost precisely with the instructions that have come to this committee from the Second Reading, suggesting that the group has identified the key concerns that arise from this Bill and which we hope your Lordships and your Ladyship might be assisted by the group in hearing from us.

90. THE CHAIR: Thank you very much indeed. Ms Lean, do you want to say anything in reply?

91. MS LEAN: My Lord, if I just can respond very briefly on the point about discretion, if the committee is satisfied the gateway conditions are met, clearly, discretion is a matter for your Lordship's committee, but I would just highlight, in terms of those issues raised, the committee will be hearing on those matters from other petitioners. I have a note, for example, that on the objects clause, Clause 6—this is raised by Guarlford Parish Council, which raised—

92. THE CHAIR: I think we know that. There are quite a number of clauses on which a number of petitioners are making representations, slightly different, each of them, and really putting them all together presents us with a useful picture, so there is not really a point to be made about that. We can see that these have been well presented by Ms Jones in her written paper and they are all within the rule because she is not straying outside her petition.

93. MS LEAN: I am sorry, my Lord, I just missed the last part.

94. THE CHAIR: The point is that she cannot go further than what she has focused on in the petition, and she is not doing that, so she is within the rules to that extent.

95. MS LEAN: Of course, my Lord. I do not suggest to the contrary. We do not take a

Standing Order 111 point here. It was just more to highlight that, as part of considering discretion, I thought it would be right for me to highlight that all of the issues raised, in terms of “natural aspect” or “unenclosed”, the changes to the constitution of the Trust, the levy and the general power are matters, of course, on which you will be hearing from other petitioners, including the group of trustees to whom you granted standing as a matter of your discretion.

96. THE CHAIR: Thank you both very much indeed. I am going to adjourn the proceedings at this stage so that we can deliberate and we will call you back in when we have reached a decision.

Sitting suspended.

On resuming—

97. THE CHAIR: We are resuming the public meeting to consider the Malvern Hills Bill. The purpose of the hearing we are now going to embark on, because we have decided to give permission—I should say exercise our discretion under Standing Order 117(2), so that you are to be heard. The purpose of the hearing is to establish what remedy you wish to ask us to provide in response to the points mentioned in your petition.

98. What we have in front of us, just to enable those who are watching us to know what we are dealing with, is a copy of the petition by the Malvern Environment Protection Group, as well as the written submissions that we have received from counsel, both of which are available on the website. I should explain that petitioners may only address the committee on elements mentioned in their petition. It is not possible to introduce new issues at this stage, but I do not understand your written submissions to break that rule. You are concentrating on what is in your petition. Ms Jones, I think it is for you to address us now on what is really the merits of the case.

99. MS JONES: Thank you, my Lord. There are four clauses in Malvern Environment Protection Group’s petition, or four clauses to which that petition is directed: Clause 6, which sets out the statutory objects of the Malvern Hills Trust going forwards; Clause 8, which changes the number and manner of selection of trustees; Clause 33, which addresses the levy, but fails to modernise the levy-paying area; and Clause 83, which would bestow on the Malvern Hills Trust a general power. My Lords, my Lady, as I said

in my submissions on the group's right to be heard, it is notable, I say, that those four clauses picked out by the group for criticism and concern are also the aspects of the Bill on which the instructions coming to this committee from the Second Reading are based. I suggest that that lends support to the concerns raised by Malvern Environment Protection Group being real concerns and that the group's petition does identify and engage with the primary issues that arise from this draft Bill. I intend to address each of those clauses now in turn.

100. My Lord, it might be helpful for members of the committee to have what I believe is referred to as the R bundle, as there are, first of all, because that is where the draft Bill is found and it might be helpful to have before us the clauses addressed in the petition while I make my submissions on them and because there are a couple of other documents that I might ask you to turn up in the course of my submissions.

101. In respect of Clause 6, that can be found behind tab 1 and it is at page 36. This is a new provision that, for the first time, creates a set of statutory objects for the Trust, and what these objects do is they draw together obligations that exist in the current Acts, but Clause 6 elevates them above the other duties that will continue to fall on the Trust. The closest precursor to Clause 6 is the general duty that was imposed on the conservators by Section 3 of the 1930 Act, but there is one material omission and one alteration about how those duties are expressed, which give rise to Malvern Environment Protection Group's concerns about Clause 6.

102. So if we may look first at Clause 6(1), "The objects of the Trust are, for the benefit of the public, (a) to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills, and"—I will return to that sub-paragraph in a moment—" (b) to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public".

103. What this omits, my Lord, is any object to keep the hills and commons unenclosed, which has been a primary duty under the existing Acts and which is an essential feature of the landscape of the Malvern Hills and commons as they exist today. The duty to keep the hills and commons unenclosed recognises that the land under the management of the Malvern Hills Trust was not set aside just or even predominantly as a nature reserve or for environmental protection but as land part of the fundamental purpose of which was

for the use by and enjoyment of members of the public.

104. We see that foundational purpose reflected, for example, in Section 13 of the 1884 Act. We also see from the very beginning of the statutory regime a twin focus on keeping the hills unenclosed on the one hand and unbuilt upon on the other. If I might ask your Lordships and your Ladyship to turn up the 1884 Act at tab 6 of the R bundle.

105. THE CHAIR: You say “R bundle”, but which file is it?

106. MS LEAN: It is bundle 1, my Lord.

107. THE CHAIR: I am afraid we have very large lever arch files that are very difficult to navigate.

108. MS JONES: First of all, my Lord, if you might just go to page 172, the preamble to the 1884 Act.

109. THE CHAIR: Yes.

110. MS JONES: The opening line there describes the 1884 Act as “An Act for the prevention of encroachments upon the Malvern Hills, and for other purposes”. The centrality of the prevention of encroachments is the motivation behind the start of the statutory regime.

111. On page 178 is Section 10. This is where we see the beginning in the statutory regime of the twinning of “unenclosed” and “unbuilt on”. If I start at the beginning of Section 10, “From and ever after the passing of this Act no enclosure shall be made or building erected on the lands subject to this Act”. The conservators are then placed under a duty to “take all necessary measures to keep the said lands as open spaces free from enclosure and building”.

112. My Lord, Lord Hope, is right that I also referred to Section 13, which is over the page at 179. That was for a slightly different point, not the linking of “unenclosed” and “unbuilt on” but just to substantiate the point that the management of the Malvern Hills through the conservators has, since the 1880s, been not just about the protection of the natural landscape in and of itself but for the purpose of making that landscape available to members of the public to use and enjoy for recreation. I say that that foundational

statutory basis is something that needs to be reflected in the current Bill, in the statutory regime going forward. It is one of the key issues in removing from Clause 6 the duty that the hills be kept unenclosed as a statutory object that causes MEPG concern in that regard.

113. The obligation in Section 10 that I have referred to, unenclosed and unbuilt upon, tracks through the statutory regime to the 1930 Act, where the general duty that I have already referred to in Section 3 is placed upon conservators. It is at page 228 of the bundle. By this provision, Section 3, “The Malvern Hills shall be regulated and managed by the conservators under and in accordance with the Malvern Hills Acts and there shall be imposed upon the conservators the following duties (namely): (a) except as in the Malvern Hills Acts otherwise provided they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public”.

114. We have again that linking of those two obligations, unenclosed and unbuilt on, and the recognition of the fundamental purpose of the statutory regime, to ensure that those open spaces can be enjoyed by the public.

115. LORD EVANS OF GUISBOROUGH: That is almost exactly the same wording as in the Bill we are considering in paragraph (b) of subsection (1) of Clause 6.

116. MS JONES: Exactly, my Lord.

117. LORD EVANS OF GUISBOROUGH: Except with the word “unenclosed” left out.

118. MS JONES: Precisely, my Lord. That is exactly the point. The concern is that, where the current Bill creates in Section 6 statutory objects—and I will come on to why we say the formulation of those statutory objects is so important—it ought to be doing so in a way that properly reflects what in fact have been the existing duties on the conservators, and it does not because it takes the language, but it removes this very important word “unenclosed”.

119. What we see is that the “unenclosed” obligation, and in fact almost precisely the wording in the Section 3 general duty, appears in Clause 40 of the Bill. There is still a requirement to keep the hills unenclosed, but it is not part of the fundamental statutory objects. We say that is a material omission. Where the statutory objects are elevated in a hierarchy of rights, essentially, because other rights and powers in the Bill are defined by

reference back to Clause 6, it is not enough for the “unenclosed” obligation to simply appear as one of the many other duties under which the Malvern Hills Trust will operate in future. It must form one of those objects because, when they are considering, for example, whether to exercise the general power under Clause 83 or whether to exercise any of the Schedule 4 powers, the new powers that are introduced are defined by reference back to the objects. If it is not an object to keep the hills unenclosed, the Clause 40 duty to keep them unenclosed will fall lower down and have the potential, at least, to be overlooked when those other powers are used.

120. THE CHAIR: The phrase “unenclosed and unbuilt on” appears in 40(2)(a), does it not?

121. MS JONES: It does, my Lord, yes.

122. THE CHAIR: Your point is that it should really be an object rather than just a duty.

123. MS JONES: Precisely, precisely. My Lord, what I understand to be the promoter’s position on that is that it has been removed from Clause 6 not because it is thought to be less important but because that created more straightforward statutory language, essentially.

124. If I might make that plain, if you were including a duty in the objects to keep the hills unenclosed, you would need that to be qualified because the Bill does, of course, provide certain powers to enclose in particular circumstances. The inclusion of that qualification in Clause 6 was thought perhaps to be too clunky. We say that is not an adequate basis to remove from this Bill going forward what has been a really fundamental feature of the statutory regime governing the Acts and in fact becomes an even more important feature now by the creation of this objects clause.

125. The objects clause is particularly important because, as I have said, other statutory powers are now defined by reference back to it, but it is also important when one considers the hybrid nature of this body. I know there have been discussions before this committee about how the Malvern Hills Trust must balance its duties as a charity with its duties as a statutory corporation and a public body with coercive powers of taxation. Now, the charitable objectives of the Malvern Hills Trust currently do include, as registered with the Charity Commission, the duty to keep the hills unenclosed and unbuilt on. My

understanding is that, if this Bill passes, the charitable objectives will also be defined by reference back to Clause 6.

126. Again, when we hear that those on the Trust will have to prioritise the interests of the charity and acting in the interests of the charity, the proper and comprehensive definition of what those objects are—Clause 6 is the provision that purports to do that—must include, say those instructing me, the requirement for the hills and commons to remain unenclosed.

127. LORD EVANS OF GUISBOROUGH: If the committee were minded to amend paragraph (b) to include “unenclosed”, that would deal with your concerns with respect to this item.

128. MS JONES: It would, my Lord. I understand the point made earlier in the course of these hearings by the promoter, which is that there may then be a conflict between the Clause 6 object and the Clause 48 and Clause 49 powers to enclose. I say that could be quite easily qualified, and Section 3 of the 1930 Act provides an example of how one might do that without creating unnecessarily complicated statutory language.

129. Section 3(a) of the 1930 Act says, “Except as in the Malvern Hills Acts otherwise provided they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces”. Equally might Clause 6(1)(b) include a similar qualifier. For example, sub-paragraph (b) might begin “except as otherwise provided in this Act, to keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public”.

130. THE CHAIR: You are not asking for that. Ms Lean could propose that, I suppose, if we say that the words “unbuilt on” should be written in.

131. MS JONES: The word “unenclosed”, my Lord. “Unbuilt on” is there. It is the addition of “unenclosed” that would satisfy us. My Lord, Lord Evans, is right that, for the purposes of Malvern Environment Protection Group, the insertion of the words “unenclosed and” would be sufficient to address our concern in respect of sub-paragraph (b) of the objects.

132. THE CHAIR: Yes, thank you.

133. LORD INGLEWOOD: Sorry, Chair. You have used the word “unenclosed” quite a lot, but it seems to me it has potentially two slightly different meanings. The first one is if you think about the enclosure awards. This land was not enclosed, and is unenclosed and is therefore common land. Alternatively, if you are talking about things in a more casual ordinary language sense, it means that it does not have a fence around it. When you are using the word in this context, are you using it as meaning both or one or the other? I just want to be clear, please.

134. MS JONES: Both, my Lord. The potential conflict, I think, only arises in respect of the latter, the fencing, because it is the fencing of the land that there are additional powers in this Bill to do.

135. In fact, if I could ask you to turn up Clause 48, which does that, this does provide another basis on which we would say it is important for the Clause 6 object to keep “unenclosed” in the “unenclosed from fencing” meaning.

136. LORD INGLEWOOD: Commons legislation has quite a lot of strictures about physically enclosing common land, which we have not really touched on at all yet.

137. MS JONES: No, my Lord. My understanding is that, essentially, of course, that legislation applies to the Malvern Commons, but the specific provisions in this Bill will be additional to—

138. LORD INGLEWOOD: It is belt and braces.

139. MS JONES: Precisely.

140. LORD PONSONBY OF SHULBREDE: Earlier in these hearings we saw pictures of temporary enclosures. They may have been electric fences or something as a way of managing the pastures. Does what we are talking about now affect that at all, these temporary arrangements?

141. MS JONES: I do not think so, my Lord, because those are arrangements that have existed under the current statutory regime as well. There are bases on which, for reasons of safety, prevention of fire and risk, and all those kinds of things, the Malvern Hills Trust already has the power to enclose as necessary. That is not proposed to be changed by the Bill and it has coexisted in the current statutory regime with this fundamental obligation

to keep unenclosed, so we do not see that those would be inconsistent with each other.

142. What is new in Clause 48 and 49 is a wider power to fence, and the threshold for fencing that is introduced by Clauses 48 and 49 is that common land, in Clause 48, may be fenced “if the Trust considers that doing so is [...] desirable for the prevention of animals straying from the common land in question” on to land that is not common land. In Clause 49, the Trust may fence other parts of the Trust’s land—

143. THE CHAIR: It is limited in time.

144. MS JONES: Limited in time and where it is necessary or desirable. A point I would wish to make is that, where the threshold for fencing, in a time-limited way in 49 or, in my understanding, not in a time-limited way in 48(1), that raises an additional reason for “unenclosed” to form part of the general statutory objects of the Trust because that is a low bar. Fencing land that otherwise has to be kept unenclosed and has for the last 140 years been unenclosed because the board considers it to be desirable opens the possibility of extensive enclosure. If the exercise of those powers in 48 and 49 must be by reference to objects, which include the general duty to keep the land unenclosed, that will necessarily act as a safeguard on the exercise of that power.

145. LORD PONSONBY OF SHULBREDE: In south Wales, there is common land as well and I am aware, through friends of mine, that there are experiments with cattle and sheep on the common land where they essentially have tags on. It is a sort of sat-nav type arrangement, so there is no physical barrier. However, those animals will receive—I do not know—a shock or something like that if they go past a certain point, and I am told it works very well. That is a new technology-type approach. Is that thought about within these provisions, as far as you know?

146. MS JONES: My Lord, I confess I have not thought of that. I do not think that would probably constitute fencing. If the fencing did not prevent access to the land for the public, I do not think that would fall within these provisions. It may well be a land management approach that the Malvern Hills Trust would choose to take, if there is a significant issue of animals leaving common land. I can foresee that there would need to be liaison with the commoners who were exercising the rights and whose animals those were, but I do not think that that would count as enclosing the land.

147. LORD INGLEWOOD: If I might, as a farmer from the north of England, if you adopt this system, the animals carry a transponder and the transponder then reacts with whatever the message is that is coming from a source. You do not physically enclose the land, but when the animals get within a certain range of the signal it gives them a shock. It could only affect human beings if those who went on the common had to have a transponder around their neck. I do not think this is directly germane to the problems of physically containing the land in question.

148. THE CHAIR: Maybe Malvern Hills Trust will get around to these wonderful new things and avoid fencing altogether, but that brings me back to your point. The prime object is to keep it unenclosed, and therefore they should be trying to do that.

149. MS JONES: Yes, indeed.

150. THE CHAIR: Very well. Looking ahead.

151. MS JONES: My Lord, in terms of Malvern Environment Protection Group's concern about the absence of "unenclosed" from Clause 6, that was all I proposed to say unless there are further questions.

152. There is one other aspect of the Clause 6 objects about which the group are concerned, which relates to 6(1)(a), and this is the absence from 6(1)(a) of the phrase or any reference to protecting the natural aspect of the hills. You will recall from the constitution of the Malvern Environment Protection Group that that is its primary concern, protecting the natural aspect of the hills. The phrase is used in Section 21 and Section 31 of the 1924 Act and in Section 16 of the 1995 Act. It also appears in Malvern Hills Trust's charitable objectives as published by the Charity Commission, which includes to "manage the hills to preserve the natural aspect of the hills", but this is something that does not appear in Clause 6(1)(a), which instead obliges the Trust to "protect, conserve and maintain" the natural appearance of the hills, along with other features of the hills, which are specified.

153. My Lord, to the extent that "natural appearance" is intended to be a replacement for "natural aspect", in MEPG's views those are not synonyms. "Natural appearance" means only the look of the place, whereas "natural aspect" brings in, we would say, wider considerations, which would include views from a place and the intrinsic natural

characteristics of the land, for example its natural resources and fabric.

154. If one looks at the context in which the phrase is used in the existing Acts—I do not suggest we need to turn those up—in the 1924 Act the provisions relate to the removal of wood and stone from the hills and in the 1995 Act to the impact on the landscape of horse riding, which does suggest that the phrase, as understood in the current statutory regime, encompasses the impact on the intrinsic features of the environment and not just how the land looks.

155. Of course, with this concern we do recognise that Clause 6(1) also stipulates that the Trust is to protect, conserve and maintain habitats, flora and fauna, geology and archaeology of the Malvern Hills, and it may be that the promoter says that the inclusion of those features is intended to and does address the broader aspects of natural aspect, if you will. If that is the promoter’s position, the response of the Malvern Environmental Protection Group would be that the phrase “natural aspect” is simpler statutory language and should be included.

156. If a definition of it to include these additional features is thought to be necessary, that could be included in the Clause 3 definitions, but in Clause 6 itself there would be real benefit in maintaining the language that has been used in the existing statutory scheme, which is a well-understood phrase. It was observed by the noble Earl, Lord Attlee, at the Second Reading that it is a phrase that is used and understood in the planning context and it appears in other pieces of existing legislation, some of which has been identified to the committee: the Epping Forest, Wimbledon and Putney Commons Acts and then, more recently, by reference back to older Acts, the City of London Corporation (Open Spaces) Act 2018.

157. It is a phrase that has not been seen to cause any problems and that captures something essential about the natural environment and the place that the MEPG would wish to have conserved as an object of the Trust going forward. It does so with due regard and deference to the history of the phrase as well. While the group supports the modernisation overall that the Bill proposes and sees the value in Malvern Hills Trust having the powers necessary to be a fit-for-purpose modern organisation, it seeks for that to be done in a way that shows proper consideration for the history and the success of the statutory regime over the last 140 years. Its hope that the natural aspect would continue

to be something that ought to be protected stems from that position.

158. In respect of how that might be achieved, we suggest that there might be two options, either that “natural appearance” is replaced with “natural aspect” or that the object becomes “to protect, conserve and maintain the landscape and natural aspect of the Malvern Hills”, with “natural aspect” defined somewhere in Clause 3, the definitions clause, as including “the natural appearance, habitats, flora and fauna, geology and archaeology of the hills”.

159. My Lord, that is all I propose to say on Clause 6. If we might then turn to Clause 8.

160. LORD INGLEWOOD: You are saying that—I am just trying to probe—the natural aspect includes looking out from the hills. What you are saying, just so I am quite clear, is that, if you had a set of circumstances where one of these verges was potentially the subject of an easement to release a very big housing development outside the area of Malvern Hills as described, there would be a duty on the Trust to turn that down because it would affect the view out from the Malvern Hills.

161. MS JONES: Certainly, in considering whether granting that easement was consistent with its statutory objects, the Trust would need to consider not only how the granting of that easement affects the look of the land right here but how it affects the views over this land. Yes.

162. LORD INGLEWOOD: Thank you for clarifying. Secondly, you have made a lot of play—I use that word in a completely neutral sense—about the natural state of the land. Of course, what we see now in the Malvern Hills, as in the uplands everywhere in the United Kingdom, is not the natural state of the land but a condition of the land that is the subject of human intervention over a very long time. We cannot think of this as being something that is godsent and remains permanent. It has to involve management. How do you deal with the arguments that management by definition is changing what we have there now? It is not natural. Is “natural” the right word?

163. MS JONES: My Lord, I understand the point. I know, in this House and other places, that has been discussed in various contexts: the fact that most of the land of England is the product of significant human intervention over centuries. Indeed, the state of the Malvern Hills as it is today reflects the core point that I have adverted to earlier:

that it is land open to the public for their use and enjoyment through recreation and the exercise of commoners' rights. Of course, it is not a pure state of nature.

164. We would say that “natural aspect” captures something important and is still worthy of protection in the Act, and that it does not mean that one needs to try to return that land to some state prior to its current state or prior to human intervention in it. I do not know whether that sufficiently answers my Lord’s question.

165. LORD INGLEWOOD: I am not sure it does not complicate it more, because then there is a move for rewilding, but I do not want to stray too far from—

166. THE CHAIR: The word “natural” is not in dispute. That is there in the draft Bill. You are not criticising the use of the word “natural”. The word that follows it is the key. Anyway, we have really probably closed that chapter off, do you not think, Ms Jones?

167. MS JONES: Thank you, my Lord. If I turn to Clause 8, this is the clause that alters the Trust’s constitution. It is at page 39 of the bundle. It alters the Trust’s constitution in three ways: first, by reducing the number of trustees from the current maximum of 29 down to a maximum of 12; it reduces democratic accountability by removing the current majority of trustees in whom levy payers have some say either by direct election or because they are appointed by another democratically accountable body, one of the local authorities; and it changes the electoral area for the remaining elected trustees, creating a single electoral area from which all elected trustees would be elected, thus severing their link to any specific parish. Each of these changes are changes of profound concern for the Malvern Environment Protection Group. Possibly they are the issues of the highest concern for this group and the people it represents because, if they are enacted, they will create a profound rupture between the Trust and the local people, who, first, care about the hills and want to have some say over how they continue to be managed and protected and who, secondly, pay taxes to fund the work of the Trust.

168. The proposals made under Clause 8 appear to MEPG to stem from the Trust’s prioritisation of its status as a charity over and above its status as a statutory body with powers of taxation and powers to make and enforce by-laws. While the group underscores that there is nothing wrong with the Trust simultaneously having both of those characteristics, neither supplants the other. Both bring into play duties that the Trust needs to remain sensitive to and that its manner of organisation going forward through this Bill

needs to address.

169. THE CHAIR: Can I just see whether I can understand the point you are making? If it was just pure charity, the representation point would fade into the background, really, because you know what the charitable object is, and you want people who really understand the charitable purpose and how it is to be achieved to be the trustees. You are saying, “Well, this is a statutory body with various aspects to it, the power to make a levy, to enforce by-laws and so on, and that brings in a public aspect that the charitable object itself does not cover”. That is why, you say, one needs to look more carefully at Clause 8 to see whether it really deals with that point. Is that really the essence?

170. MS JONES: Precisely, my Lord. That is the essence of the point. It was observed at the Second Reading that in the case of a charity, if funders do not like how the charity is run, they may withdraw their donations or make no further donations, but that is not the case here. Levy payers under compulsion pay the annual precept, and that brings with it an obligation on the Trust to have representation of those levy payers and involve them through their representatives in the work of the Trust, including by the levy payers having a mechanism to remove people, if they disagree with how the Trust is being managed, by not voting them into power again at the next election.

171. My Lord, one of the other reasons that I say that this appears to be a provision that stems from the Trust’s prioritisation of its status as a charity is that the push to reduce the size of the board—in general, this is a point that MEPG agrees with; we accept entirely that 29 is an unworkably large group to run any organisation—to 12 stems from 12 being what the Charity Commission suggests the appropriate maximum board size is. That is for a charity, and what the MHT needs to do, in our submission, is take into account the fact that it is not just an ordinary charity. It is a charity with these additional coercive powers, and so a board of 12 may not be enough in these circumstances, where adequate representation of the levy payers also needs to be protected among the trustees.

172. LORD EVANS OF GUISBOROUGH: Subclause (6) of Clause 8 is an attempt to deal with this situation. Do you feel that is adequate?

173. MS JONES: It is an attempt to deal with it, my Lord, and my learned friend has also provided me with the more detailed amendment that the Trust will be proposing that puts some more detail on that and in fact, as I understand it, expands what is offered by that

provision so that there is, in fact, a link to specific parishes rather than just the levy-paying area overall.

174. While the Malvern Environment Protection Group is glad to see that there is, in this amendment, some developing recognition of the need for greater representation of the levy payers on the Trust going forward, this provision is not adequate because what it provides is essentially a conduit for communication. That is not the same as representation because it omits the crucial feature that levy payers currently have, which is that they can vote for an alternative if they are not happy with how the Trust is being managed.

175. We say, without there being any mechanism for levy payers to choose and remove specific trustees, communication between every individual parish and the Trust is not sufficient. It does not address that concern. What the MEPG would say is that, rather than six elected trustees from one pool of electors, elections should continue from individual parishes so that individual parishes retain their link to the Trust and their representation on the board. That is also important because the precept-paying parishes are different from each other. Some are more rural in nature, some are more urban in nature, and they may have different interests that entitle them to have a separate representative.

176. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would you accept that continuing with the existing system gives a completely skewed effect on representation because some parishes have very few voters in and others have thousands? That is a dichotomy for you, surely?

177. MS JONES: Indeed, my Lady, it is. The current system, we accept, is not a system that would be devised now. The disparity in the number of electors in each parish is problematic because it means that some—

178. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You are suggesting it continues.

179. MS JONES: My Lady, MEPG would be in support of reform overall to the levy-paying area that would include things like regularising the number of electors in different areas, which may include, for example, joining some of the smaller parishes that abut each other into single electoral units.

180. I was going to come on to some of those points in my submissions on the levy-paying area itself rather than the representation because we entirely accept that the current system is unfair. In fact, in the promoter's own words, in its consultation material in 2019 it said it is "unfair and illogical", and Malvern Environment Protection Group absolutely agrees with that and thinks this Bill was and should have been the opportunity to address that and create a system that functions properly as fair and representative going forward. That opportunity has not been seized.

181. In respect of Clause 8, it is probably Clause 33 that would be the place that would deal with that rather than Clause 8 because Clause 33 is where those electoral areas are still set out.

182. THE CHAIR: Your solution is set out in paragraph 37 of your submissions, is it not? That is where we find what you are proposing. You are objecting to the idea of a single electorate area, which is what the Bill provides.

183. MS JONES: Yes, but, just to answer my Lady's question, the proposal to maintain the status quo is because the alternative provided is even worse, essentially, because what the alternative does is it severs the democratic link. MEPG would say that the issues relating to the specific parishes and how they are represented as levy payers—that is a nettle that ought to be grasped overall. In redefining the levy-paying area, regularisation of the number of voters per representative could and should form part of that.

184. THE CHAIR: We have been presented with problems under the existing arrangement about the lack of interest of people coming forward, people not attending meetings and so on. The system as presented to us by Ms Lean in her introduction was a system that really is creaking at the seams because it is too big; people are not interested; and recruiting people through the local authorities is reaching into areas well away from the Malvern Hills, which is of course a concern because they do not know enough about it. Why should they be on the board when they live 30 miles away? It is that sort of problem. Just to keep the existing pattern has problems, which I do not think your note is really addressing.

185. MS JONES: My Lord, if we look at paragraph 37 and the alternative proposal that MEPG suggests, we do say that many of those problems are resolved. MEPG would support a significant reduction in the number of trustees on the board down from 29 to,

we suggest, 16. Now, I take the point that elections have been uncontested and people have not attended meetings perhaps, but that is still a reduction of 13. I think that would go a substantial way to address the issues. That would also retain then direct election from the individual parishes. Of course, a better system could be produced to identify areas that might properly be grouped together, but a single grouping without what has been felt to be adequate local consultation does not address that problem other than essentially saying, “Doing a better system seems too complicated, so we will just take this route”.

186. The group’s support of the current system is really so that a properly fit-for-purpose one could be devised rather than introducing through this Bill a system that does not feel fit for purpose, that introduces new problems and that then is enshrined in law and endorsed by this House going forward.

187. My Lord, I appreciate it is a difficult issue. It is one that needs proper thought. The proper thought that Malvern Environment Protection Group has been able to give to this issue is that some local authority representation is still helpful and necessary because there are duties of the local authorities in respect to the local areas and that interact with the duties of the Malvern Hills Trust. It is helpful for there to be ongoing engagement through their representation on the board and it gives comfort to the local residents that they have other means of lobbying or being involved in how the board makes decisions and in the management of the hills and commons, but that primary direct election is necessary and that link should be maintained.

188. THE CHAIR: As I understand your paragraph, you do accept that the idea of appointed trustees with expertise is desirable, and that fits with the charitable aspect of the thing, which one cannot ignore. We have the two together. You cannot, as it were, say it is a local matter and discard the charitable. We have to provide for that.

189. MS JONES: Indeed, my Lord. As you say, it is a body with a dual status. Both deserve respect and must be reflected in the way that it is organised going forward. Essentially, we say the balance is struck wrong in what is proposed by this Bill. A balance where there is a 50-50 division between these two functions—in fact, in funding terms, significantly more money comes from the levy payers than from charitable donations—is not an appropriate balance and does not adequately represent the levy payers.

190. What we propose, essentially, is that there are two seats on the board that can be

filled with missing expertise, if one might put it that way. Of course, members of the board may well bring to the table legal, financial or environmental expertise themselves and then omissions can be identified and appointments made in that regard. Of course, if there is an ad hoc need for other expertise that is not properly reflected on the board, that is something that arises for all organisations from time to time and that they deal with by bringing in and buying in the necessary expertise.

191. THE CHAIR: You are really presenting us with a thing for us to think about. You are making a suggestion. You recognise that you have not actually dealt with every problem and the balance point could be adjusted in a different way than you are suggesting, but that is really for us to think about.

192. MS JONES: Of course, my Lord, precisely so. The starting position of those for whom I act is that this thought should have happened with proper engagement from the local stakeholders to a greater extent than has been the case here. We are now in the position where what is considered to be a deeply unsatisfactory and concerning position is put forward to this committee. Recognising that it is a difficult issue for the committee to resolve, we would say that in its current form the erosion of the relationship between the levy payers and the decision-makers on the board is excessive and should not proceed in its current form.

193. THE CHAIR: Now, you go on to the levy, but you realise that there is a real problem here. The promoters were hoping to be able to alter the levy-paying area and address what is a very obvious problem of unfairness, but they have been pre-empted by the Charity Commission. The question is, "Can we do anything about that?"

194. The problem also is that, if we start making suggestions that more people are brought in, that gives rise to what is described as an additional provision, which requires the Bill to be readvertised and delays the whole process by possibly 18 months and so on, which in itself is a problem because there are things that really need to be done without much more delay. The problems about the levy are much more deep-rooted than perhaps your submissions are recognising.

195. MS JONES: My Lord, we do accept that the issues are significant and complicated. In terms of the Charity Commission's stance on this, my understanding is that a number of years ago the Malvern Hills Trust did seek and passed resolutions intending to change

the precept-paying area, but then in fact it became apparent that that would not be possible through a Section 73 scheme because it was too controversial. Once it got to the promotion of this Bill, before the Charity Commission had put the limitation on the Section 74 response, in fact the Trust had decided by that point that it would not pursue this issue through this Bill.

196. It was not that the position taken by the Charity Commission prevented them from doing something that at that point they did still seek to do, but the Charity Commission's position, as represented in its letter on the point, was, "The Malvern Hills Trust confirms that it has decided not to proceed with this and that is consistent with the limitation that we also place on how money will be spent in promotion of this Bill".

197. THE CHAIR: The additional provision problem is a real one for us because we can override the Charity Commission, I dare say, because we are a legislature and we have the final say, but opening up the Bill to readvertising is a huge step for us to take. I do not know how my colleagues feel about that, but there is a real warning that we should be very careful about doing that because of the complications. The Charity Commission has drawn attention to that. I think the promoters, with great respect to them, have recognised the problem and do not want to engage with it.

198. MS JONES: Yes, my Lord. I understand that. I understand that it is a very big issue for this committee to consider and it is a very big action for this committee potentially to take. It is action that the Malvern Environment Protection Group would say is necessary, because the passage of a Bill through Parliament that is intended to make the Malvern Hills Trust fit for purpose going forward, but does not engage with this critical issue—an issue that was raised during the passage of the 1995 Act as something that needed to be addressed but 30 years later still has not been. If the opportunity is not seized now, the status quo will continue, and it is a status quo that is accepted by everyone who looks at it, including the promoter, to be a status quo that is illogical and unfair.

199. We do say that the precept-paying area should be extended. If now is not the opportunity, even though that may involve the drastic action of readvertising the Bill, it is something that is not going to happen. Essentially, the passage of this Bill without such a provision would be an endorsement of an inadequate and unfair system.

200. THE CHAIR: There is another aspect to this, which is that the levy payers, some of

them appearing before us, have said, “Look, because of the nature of the levy, we are really paying for these proceedings”. To put an additional provision would increase the cost of the Bill by a huge amount, and that means a further burden on the levy payers. One has to think of that aspect too. I quite see your point, but there are many pointers in the other direction.

201. MS JONES: Indeed, my Lord, but, if we think about what happens going forwards, the way that I understand the levy is imposed on local residents is that the Malvern Hills Trust essentially, consistent with the regulations, under which it is entitled and required to do this, sets the sum that the levy needs to raise each year and then that sum is divided between the households that fall within the levy-paying area in order for that sum to be raised so that the Trust can perform its functions.

202. If that is now and for the foreseeable future through this Bill going to continue to fall on the heads of a limited group of households, not even necessarily the households that would be selected today to do that because they are not the households that have the biggest proportion of MHT land adjacent to them or have the easiest or most direct access to land managed by the Trust—there are other areas that have similar or, one might say, better such access—there will always be an argument not to do anything because increased costs will fall on those people unless and until a system is created where the costs of managing the land and funding the Trust are spread equitably between the people in the local area who benefit from it.

203. THE CHAIR: Well, there we are. I think we will have to think about this, but I am not sure there is more you can say about it, really.

204. LORD EVANS OF GUISBOROUGH: I think there is possibly another concern, which is that, were we to make an additional provision and restart the process effectively, the promoter may decide not to present the changes to the legislation at all, so we would lose all of the other possibly valuable items and changes that are in the legislation before us today. It could be the case that we end up with nothing as opposed to half a glass.

205. MS JONES: My Lord, might I suggest one other possible route through this? I would have to be led by your Lordships and your Ladyship as to whether this would constitute an additional provision. I think it may not because it would be an amendment to a provision. There is, for example, in Clause 71, at page 87 of the bundle, a power to

extend the levy-paying area on acquisition by the Trust of new land. That is a power exercisable with the Secretary of State's consent and by an affirmative statutory instrument before this House. An anomaly in this is that it does not provide any power for the levy-paying area to be extended to existing lands, only when new land is acquired.

206. THE CHAIR: This clause is objected to for the reason that you hinted at. It is expanding the Trust's jurisdiction, but the levy-paying area is not. The imbalance is being made even worse, if that power is exercised. That is the point that some petitioners are making, if they acquire more land.

207. MS JONES: My understanding, my Lord, is that, from 71(6)(b), when land is acquired, the area under the Trust's management is extended. At the same time, with respect to the same land, the levy-paying parishes might also be expanded. While that has not been done under the existing legislation because, as I understand it, acquisitions like the Powick Old Hills increased the land under the management of the Malvern Hills Trust, but the levy-paying area was not extended to include Powick or the adjacent areas, there is at least in this provision the power to do that. Essentially, there has been a historical failure to do that, a failure to keep the levy-paying area up to speed with land acquisition.

208. It might be that either through some amendment here or in Clause 33 itself—which does not itself expand the levy-paying area but creates a mechanism for the Trust to consult on and introduce secondary legislation for that purpose.

209. LORD PONSONBY OF SHULBREDE: Are you saying that could be done retrospectively on the land that has already been acquired or suggesting that that might be half the solution?

210. MS JONES: Indeed, my Lord. I am not sure I would describe it as retrospective because it would not be trying to collect any kind of levy for the years in which a levy has not been imposed, but it might provide a route for the Trust to assess its current holdings and update the levy-paying area so that it properly reflects what appears to be an equitable distribution of levy payers in that area.

211. LORD INGLEWOOD: What you are suggesting is that the Trust acquires a piece of land as big as the open area in the middle of this meeting room and uses that as the trigger for extending the levy-paying area. Is that right?

212. MS JONES: No, my Lord. That is not what I am suggesting, no.

213. LORD INGLEWOOD: I am glad.

214. MS JONES: No. What I was doing by taking you to Clause 71 was showing that this Bill does include provision to extend the levy-paying area in respect of new acquisitions. When this piece of land is acquired, those of us who sit around it might be drawn into the levy-paying area by an order under the subsection that I identified, whether that may be a means either by amendment to Clause 71 or in Clause 33 itself, not for this Bill to amend the levy-paying area in respect of the existing lands, but for a mechanism to be introduced that could do so or a provision that requires the Trust to consult on how a new levy-paying area ought to look with an associated mechanism to introduce that.

215. THE CHAIR: The consultation, if it was successful, would lead to more legislation because it would have to be by legislation that the situation was changed, would it not?

216. MS JONES: It would have to be by legislation, my Lord, but, since Section 71 proposes an extension by secondary legislation, it is not clear to me that secondary legislation would not be possible.

217. THE CHAIR: It would go through the Secretary of State.

218. MS JONES: Indeed, my Lord.

219. THE CHAIR: That is the mechanism here. You say that might be written into Clause 33.

220. MS JONES: Indeed.

221. THE CHAIR: All right, I think probably that is as much as we can say about levy. We then come to the general power.

222. MS JONES: Exactly, my Lord. The last point that the group petitioned against is the introduction of the general power in Clause 83. My Lord, I do underscore from the start that this dovetails with the other concerns that have been raised by Malvern Environment Protection Group in its petition because the concerns about the Clause 83 general power are linked to the failure of Clause 6 to reflect the requirement to keep the hills unenclosed because the exercise of the power is specifically to further the objects or

to facilitate matters conducive or incidental to the furtherance of the objects, and it is linked to the reduction in representation brought about by Clause 8 because the general power enables the board to spend money in circumstances where representation of the taxpayers whose money will be spent is reduced among the decision-makers who decide how to spend the money and exercise that power.

223. THE CHAIR: The word “objects” is referred to several times in Clause 83(1), is it not? That takes you right back to Clause 6.

224. MS JONES: Precisely, my Lord, yes. Central to the group’s concern about the insertion of a general power is that the promoter has not, in our view, identified a compelling case that such a power is needed. If a permanent general power is to be introduced, it should only be bestowed where there is a demonstrable need for it, and no such need has been shown here.

225. The specific powers that are conferred and maintained by the Bill are substantial and, given the nature of the Trust and its particular focus on the management of the hills, that gives it a much narrower remit than is the case, for example, for local authorities, whose general power under the Local Government Act 1972 has been adverted to as a precedent for Clause 83.

226. It is difficult to think of issues within its remit that the Malvern Hills Trust will be unable to address on the basis of the specific powers conferred on it by this Bill, so why, in those circumstances, ought one to introduce a general power through this Bill? The most that has been said in its support is that there is a risk of something arising in the future that the Trust has not thought of at this point and is unable to respond to under its existing power, but that risk seems no more possible or likely than the risk that the existence of a general power is itself a hostage to fortune and causes issues in future where there has been no real need for it identified so far. For example, the Trust has not been able to point to issues that it has previously been unable to address, with the exception, perhaps, of legislation that was brought in in respect of car parking.

227. THE CHAIR: It is a question of the unforeseen. I think in the argument we were presented with the suggestion of drones, which were not known about when the last Act came before Parliament, the 1995 Act. Nobody knew about drones then. Of course, it can be written into this Bill. It is the unexpected and the cost of coming back to Parliament

that has informed Section 111 of the Local Government Act, which contains a similar provision. Is there anything wrong with trying to provide for the future and avoid having to come back to Parliament for further powers, which, by experience, in the future are shown to be necessary?

228. MS JONES: We entirely take the point, my Lord, but, in the circumstances of issues like drones and particularly where MHT also has the power to introduce by-laws, we say that it has mechanisms to address many currently unforeseen issues and that there is an associated unforeseen risk in introducing this power. We would urge caution on the introduction of a power in circumstances where the need for it, we say, has not been satisfactorily shown and where the precedents that are pointed to have been introduced for bodies that are in materially different circumstances.

229. On the Section 111 power, local authorities have much wider obligations than the Malvern Hills Trust does. This Bill confers a substantial set of powers on the Trust. We find it difficult to conceive of issues that might arise that one would be unable to find a relevant power in the Bill as proposed to respond to them. I know that there has also been mention of the potential extension of Section 1 of the Localism Act to national park authorities, and that prayed in aid as a potential precedent for a general power being conferred on the Malvern Hills Trust.

230. We say again the position is different. National park authorities are funded by central government grant, and here we are dealing with an organisation that is funded by individual levy payers, and so real caution must be brought to the scrutiny of a provision that would empower the Trust to spend levy payers' money in undefined circumstances.

231. LORD INGLEWOOD: Can I come in on this point, please? Of course, in fact, the Malvern Hills Trust is funded something like 60%, is it not, by other money? It is not solely funded by levy payers, and we are in that funny world of known unknowns and unknown unknowns. You say that the promoters have been unable to produce any demonstrable reason why this power is required, but then you have said, of course, "I can't see any demonstrable reason why it is needed". We are in the world of complete hypothesis here, are we not, and we have to take a prudent approach, given the purposes and objects of the whole operation?

232. MS JONES: I understand the point entirely, my Lord. You have my submissions on

the caution that we would urge on the committee in putting forward and proceeding with such a provision.

233. THE CHAIR: I think that completes your submission, does it not?

234. MS JONES: It does, my Lord.

235. THE CHAIR: It is all in writing as well, which is very helpful. Thank you very much. Ms Lean.

Response by Ms Lean

236. MS LEAN: My Lord, if I can respond first on this point about the term “unenclosed” no longer appearing, or not appearing, in Clause 6 of the Bill, Ms Satchell did speak to this in her evidence on 5 February. I have a note that it starts at paragraphs 244 of the transcript on that day. She identified on that occasion that the objects are important, but they are, in effect, the Trust’s mission statement, and how it goes about achieving its mission statement is really what is set out in the rest of the Bill.

237. In that context, she drew attention in particular to the fact that “unenclosed” may not appear in Clause 6, but you have a specific duty about keeping the hills unenclosed and unbuilt on in Clause 40 of the Bill.

238. THE CHAIR: Can I be clear? The existing wording, which includes the word “unenclosed”—has that created difficulties for the Trust so far?

239. MS LEAN: My Lord, I think it is less whether it has created difficulties, but maybe the framing of it. So the Malvern Hills Act 1930 is where it appears. It is Section 3. “There shall be imposed upon the conservators the following duties (namely): except as in the Malvern Hills Acts otherwise provided they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public”. So it was not a “your objects are”. It was a duty, save as otherwise provided under the Act, but that is back in 1930.

240. At that point, my Lord, looking at things historically, my Lord, Lord Inglewood, picked up on, “What is meant by ‘unenclosed’?” Probably historically, there was that sense of people improperly taking land out of common use or access or suchlike, but also

this idea of some physical works, but it has been an increasing pattern over time where the Trust has been given powers to do more things. Having looked back at some of the transcripts of the proceedings on the 1995 Bill, one of the issues that was raised there was where these greater powers of fencing came in. In particular, it is the power that is in Section 15 of the 1995 Act, which gives the Trust the ability to exclude members of the public or restrict access to areas for various purposes.

241. An issue was raised, “Well, there are powers coming in for building. There are powers coming in for fencing. How does that sit with the duty to keep the hills unenclosed as their intention?” It was acknowledged that, yes, on the one hand, when you are saying, “You can fence” or, “You can do this”, there does seem to be a bit of juxtaposition there, but that is reflected in the duty in Section 3, which says, “Except as otherwise provided in the Act”. It is not that it has necessarily caused a problem. It has just been that there—sorry, my Lord.

242. THE CHAIR: Sorry to interrupt you. Could we look at Section 15? It is page 245 in the bundle. It is quite a long section. I would like to know what bits you are referring to. It is all about public access.

243. MS LEAN: My Lord, the parts I was referring to were really in subsection (3). My Lord, this is where the greater powers came in than the Trust had previously had to close off or restrict access, even temporarily, to parts of the hills. It is the text that appears below (f). “Notwithstanding anything in the existing Malvern Hills Acts, the conservators may post such notices and for the purposes of paragraphs (a), (b), (c), (d) and (f) above, may fence and enclose parts of the Malvern Hills for so long as may appear necessary for the attainment of the purposes of the regulation or prohibition of access”, and, during the currency of that, it should be excluded.

244. My Lord, this is where powers of fencing or suchlike were much, much more limited in the Acts leading up to the 1995 Act. There is a power in the 1930 Act to fence dangerous places, for example, but this was a controversial provision when it came in in the 1995 Bill because it was felt that it came up against that duty in the Malvern Hills Act 1930 to keep the hills unenclosed.

245. My Lord, perhaps it is not that it has caused a problem, but it perhaps provides some context for why it has been framed the way it has currently in the Bill, that the objects

reflect the requirement to keep it unbuilt on as open space for the enjoyment by the public, but you separately keep this statutory duty, except as otherwise provided by the Act, to keep the hills unenclosed.

246. My Lord, it perhaps just reflects the fact there has been a bit of a change, perhaps, of powers and how things have been happening and how things have needed to happen, and the fact that perhaps enclosures have had to happen in the sense of fencing or fencing off of areas to meet some of the needs of the hills in the modern era.

247. THE CHAIR: What about the suggestion that came from Ms Jones about putting in the words “except as otherwise provided for in this Act”? Would that solve the problem that you are referring to? That would qualify Section 6.

248. MS LEAN: My Lord, I suppose the question there is: does it risk becoming a little bit circular if you have to exercise your powers by reference to your objects, and your objects are qualified by reference to the powers? Is this not just a neater way of keeping it, that you do not have the word “unenclosed” in the objects? You just have that dealt with in the specific duty. I would just highlight that there is an element of this that has been picked up within the definitions in Clause 6 already, because Clause 6(1)(b) talks about keeping the Malvern Hills “unbuilt on” as an open space for recreation and enjoyment of the public, and the definition of “unbuilt on” in subclause (4) is not limited to buildings but also includes structure.

249. In 4(c), “unbuilt on” means “except for any buildings or structures which the Trust is empowered to provide, construct, place, reconstruct, replace or erect by virtue of this Act”. I am sorry. That sounds a little bit convoluted, but there is a sense to which there is already a qualification in 6(1)(a), but that qualification itself reflects the fact that there may be structures like fencing that come into play.

250. My Lord, the reality is that if you did input the word “unenclosed” into 6(1)(b) you would probably end up with another definition section at the end of the objects that said, “and for the purposes of this Act, ‘unenclosed’ means”, and then possibly quite a convoluted explanation of what “unenclosed” meant or did not mean for the purposes of the Act.

251. My Lord, I know it might sound a little bit trite to say, “Well, it is a cleaner way of

doing it”, but, in my submission, it really is. You keep the same duty that you find in the Malvern Hills Act 1930, Section 3, except as otherwise provided by the Act, to keep the hills unenclosed and unbuilt on, but you keep that in a separate section, Section 40, rather than trying to also somehow shoehorn it into Clause 6 with potentially a lengthy definitional qualification section in Clause 6 itself.

252. I would respectfully submit that the phrase “keep the Malvern Hills [...] unbuilt on as open spaces for the recreation and enjoyment of the public”, when you look at how “unbuilt on” is defined in the clause, carries with it some element of it is not just buildings that are being talked about. It is other things like fencing and suchlike. Although it is not an exact replica of what you see in the previous Act, the terminology carries with it this idea of open and accessible, which is, in my submission, the core feature of “unenclosed and unbuilt on”.

253. My Lord, that was my primary submission that I wished to make on the point about “unenclosed”. I think it is probably helpful if I just very quickly pick up on—there was a particular concern raised about Clauses 48 and 49 of the Bill, which are the additional fencing provisions, which I am conscious we have not come to yet, because we will be turning to those, I think, later this week or early next.

254. THE CHAIR: I think perhaps you could leave it at that, because you need to give an explanation for all of that, and it is fairly complicated.

255. MS LEAN: It is fairly complicated. I was merely going to highlight that there are some safeguards built into those provisions themselves in terms of access and providing access, but I will come to those when we touch on those clauses later on.

256. My Lord, natural aspect—again, Ms Satchell addressed this in her evidence on 5 February. My note is that it started at paragraph 253 onwards of the transcript from those proceedings. My Lord, what the Trust has, essentially, sought to do in Clause 6, particularly Clause 6(1)(a), is really spell out in modern form what it considers the existing duty of preserving the natural aspect of the hills is.

257. That is not limited to appearance or anything like that, but it tries to bring in other features that might fall under the umbrella of natural aspect—so habitats, flora, fauna, geology—but it also brings in not merely natural appearance, but landscape. In my

submission, my Lord, it is really not clear what it is that is said to be omitted from 6(1)(a) that is somehow encompassed in the term “natural aspect”.

258. I highlight in that regard, of course, that it is not just natural appearance—i.e. it is not just to preserve the same natural appearance, habitats, flora and fauna. To the extent that “aspect” may bring in a sense of how the views are experienced or perceived, in my submission, that would be captured by “landscape”. Although, quite often, landscape is looking at the characteristics of a particular area or how it may relate to other land, it does tend to bring in an experiential element, so often factors like tranquillity or remoteness are talked about in the landscape context.

259. It is difficult, in my submission, to see what it is that is missing from 6(1)(a) that would otherwise fall under “natural aspect”. I listened very carefully to my learned friend’s submissions on behalf of MEPG about views out, but, my Lord, I do question what the authority is for the term “natural aspect”, including views out in and of themselves. The case that we have previously mentioned, where we are aware of the term having been considered—the National Trust v Midlands Electricity Board case that we referred to a few weeks back—does not shed any light on that issue. Essentially, it says, “What does aspect mean? Presumably, the appearance, but viewed from what point?” The focus of that seems to be, “What you are worried about is the appearance of the land—of the Malvern Hills—not the appearance of some other land”.

260. Certainly, what was very clear from that case is this lack of certainty and this lack of concrete terms of, “What does natural aspect mean? How do you apply that term? How do you enforce that covenant in that case?” In my submission, my Lord, it can be said that “natural aspect” is a term that has appeared in lots of legislation and it does not seem to have been a problem so far, but where there is not a clearly defined and accepted definition of what is meant by “natural aspect” that we can point to, and where the judicial consideration that there seems to have been says, “This all looks a bit vague”, if you will forgive the slight colloquialism, in my submission, I would question the utility of putting that language back into what is intended to be a modernising Act, rather than keeping the more detailed attempt to break down what it is that is sought in this day and age to constitute those matters that the Trust is meant to be preserving, conserving and looking after.

261. THE CHAIR: I wonder whether that would be a convenient point to break, because we are going to have to break for lunch and come back at 2.00. Can we stop there and then move on to the next clause, or have you not said all you want to say about Clause 6?

262. MS LEAN: My Lord, I am in your hands. I think I had broadly covered what I wanted to say on natural aspect. Perhaps if I can just do a quick check of my notes, and if there is a 20-second point when I come back, if I can pick that up.

263. THE CHAIR: All right. We will adjourn now and look forward very much to seeing you at 2.00.