

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 10 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
Matthew Gardner, Grazier
Susan Satchell, Governance Change Officer, Malvern Hills Trust
Jonathan Bills, Conservation Manager, Malvern Hills Trust

FOR THE PETITIONERS:

Glen Harnden, Professor Jerry Tew and Jenny Burford (West Malvern Parish Council)

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(At 10.30 a.m.)

1. THE CHAIR: Good morning and welcome to this, the 14th day of the Malvern Hills Bill Select Committee. Can I mention one or two matters of detail before we get into the hearing itself? First of all, I would be grateful if, if anybody has a mobile phone with them, they are quite sure that the phones are turned off so that we are not disturbed by them ringing in the course of the presentation of the evidence.

2. Secondly: fire precautions. In this place we do not have bells. What we have is a two-tone siren, which is followed by taped messages telling people what to do. If evacuation is necessary, please follow the instructions of the clerk and do not waste time by trying to bring your papers with you. The idea is to clear the room as quickly as possible. Anyone who happens to be out in the corridor at the time should simply look for a security officer and follow instructions.

3. As I said earlier on, the proceedings are being broadcast and a full transcript will be taken. We would be grateful if you would examine the transcript when it is available and draw our attention to any errors you think have crept into it or that your presentation has not been correctly recorded. If we have to go into private session, we will ask you to clear the room so that we can discuss matters in private, but I think that that is unlikely to happen this morning, so we will be able to proceed straight away.

4. Before I go any further, Ms Lean, we are very much against the pressure of time. We have not covered nearly all the clauses that are supposed to be covered. What I suggest is that you concentrate particularly on the bits that require the presentation from your witnesses, and we may come back to other clauses if there is time later on, but it is very important we get full value from your witnesses. We are in your hands as to how you organise your time.

Statement by Ms Lean

5. MS LEAN: I am grateful, my Lord, and we have had that very firmly in mind in preparing for this morning, so we are looking to focus very much on those clauses and those parts of clauses where perhaps evidence is of most assistance and which are likely to perhaps be the subject of most debate with petitioners over the next week or so.

6. THE CHAIR: Thank you very much indeed.

7. MS LEAN: My Lord, on that, towards the end of—sorry, forgive me, is that acceptable? Was that an invitation to commence our case?

8. THE CHAIR: I was saying thank you very much indeed. I am grateful.

9. MS LEAN: My Lord, towards the end of last week, we were looking at the fencing powers that were in the Bill. There is one fencing power for us to cover off, which is Clause 49. Before I turn to Clause 49, I will ask Mr Gardner to give his evidence.

10. Before I do that, may I just quickly pick up on one point from last week on Clause 45, which is at page 37 of the filled Bill? I raise this because it is a point that is particularly raised by two petitioners this afternoon and one tomorrow on the powers to fence and whether they might be used to stop livestock straying on to the road and to fence roads within commons. My Lord, there was some discussion on Thursday about how this clause should be construed and the fact that there are express powers to fence a road where that is the case. My Lord, my submission is that this power could not be used to fence the road to stop livestock straying, because this power can only be used to regulate or prohibit access by the public or any section of the public for one of the purposes set out in Clause 45. My Lord, that is the wording you see in Clause 45(1).

11. I know that the concerns that have been raised have perhaps looked at Clause 2 in isolation or Clause 3 in isolation, which just see the reference to fencing or prohibiting access, but you can fence to stop people going. It is not a power to fence to stop animals, if I could put it in those terms.

12. My Lord, with that point of clarification, which I hope addresses some of the concerns that were outstanding from last week, I can turn to Mr Gardner. Mr Gardner, Matt Gardner, is somebody who grazes on the hills and commons today. He grazes in part pursuant to rights of common and he grazes in part under licence, so he wears both hats that you will have heard about. We are were going to ask him, with the committee's permission, to just explain to you today what he does, how it works, particular issues that he has come across, which hopefully will provide the factual context for some of the powers that the Trust is seeking, in particular those in 48 and 49.

13. THE CHAIR: Yes, and we have a bundle of documents before us with

photographs that you can use to describe what you do.

Evidence of Mr Gardner

14. MR GARDNER: Brilliant. Thank you, my Lord.

15. Thank you very much, my Lord. First of all, I will just give you a brief introduction to me, if I may. If we can look at the map at the very start of the bundle, towards the bottom right there is a not very elegant dark blue shading area. That represents Coombe Green Common and that runs contiguously with Malvern Hills Trust land. It is part of CL9, although it is not actually owned by the Trust itself. I was born and brought up there. That is my parents' family smallholding, which has rights to graze cattle and sheep on CL9. They grazed sheep when I was a child, right through, and I now exercise those rights in my own right. I use the whole of CL9 common using those rights.

16. I have basically been keeping cattle and sheep around the common for in excess of 40 years, so I hope I have some useful evidence for a couple of the clauses in here, which are primarily Clause 48, which is the power to be able to contain the animals within the common, and then Clause 49, which is the electric fencing power. In particular, it is 49(1)(b), which is to extend the duration to which we can use an electric fenced compartment.

17. If we could turn and just look at photo 1 in the bundle, those are our animals. In the foreground, we have Castlemorton Common. That is a typical day. Then, if we look to the back of the photo, we can see the southern hills on the horizon. Those two bits of common run concurrently. Basically the one runs into the other.

18. I graze the common with my grazing rights via my parents' holding and also I rent various parcels of land, which have grazing rights as well. Then, on the southern hills, I am a licensed grazier by the Trust by virtue of the fact that it had got to the point where there was little or no grazing taking place up there. There is a scheduled ancient monument, British Camp, a historic hillfort, so a lot of concerns were generally raised that the area was deteriorating. I took that licence from the Trust some time ago, so I graze that on a licensed basis.

19. If we can look now, with reference to Clause 48, at photograph 2, that, I hope, sums up the primary issue around trying to graze a completely open common. That is 5.30 a.m. In reality, that photo could be taken from 5.30 a.m. until possibly 10 p.m. through the summer. That is the sort of situation where typically—and other commons, people I know that graze commons—there would be a cattle grid there to secure an area like that.

20. THE CHAIR: Is there a cattle grid in the photograph? I am not quite clear.

21. MR GARDNER: There is no cattle grid in that photograph.

22. THE CHAIR: The lines are just painted lines on the road, are they?

23. MR GARDNER: To the left is the SSSI part of the common, which is one of the most significant areas. To the right is another part of the common. That is a completely open road, which heads down into a village, as I say, by virtue of the fact that there is no grid.

24. If we turn and look at photo 3, that is the result of what can happen when animals head down that road, and there is no barrier. This is something that has always gone on to a smaller or larger extent, but what has definitely changed recently is just the volume of traffic, the volume of houses and just general attitudes to stock. That sort of thing is very difficult. As you can see, the animals are in among the traffic. Many of those people will not have seen animals in that context before. It is not unusual for the police to get phone calls from people and for me to subsequently get phone calls saying that there are escaped animals. That is how they are often described.

25. That makes keeping animals on the common, in those particular areas, increasingly difficult. If we look at the next page, it shows that that is an open-plan estate, so the animals are free literally to walk around the estate. There is a school on the right-hand side. As I say, that particular situation can happen any time of the day. My Lord, what tends to be a typical situation with small to medium-sized farms of my type is that the size means that there is not a 100% income to be made on a farm—I do not have 24 hours a day to sit and proactively herd the animals out of Welland—and so, traditionally, farmers such as me would have part-time income, be it potentially fencing, driving, contracting, to name but a few. Having to be on site 24 hours a day, in effect—

it means you can go round in the morning, check your animals, be very happy with the welfare, do all your normal checks. Everything can be where it should be. It could be in the centre of the common. Fourteen minutes later, they might be in Welland village.

26. THE CHAIR: Can you tell us where Welland is on the map? It is difficult to read the printing on the map.

27. MR GARDNER: Yes. If you were to look to the right of the map, just below the key, you have Malvern Hills Trust and then the key to all the different colours. If you follow that down, you should come to Welland.

28. THE CHAIR: I am not finding it. It is my fault, I think. If we look at your blue land, which direction should we—

29. MR GARDNER: Head north. If you were to follow that yellow road—

30. THE CHAIR: Oh, heavens. Right, so it is half way up the right-hand side.

31. MR GARDNER: That is it. Yes.

32. THE CHAIR: I see. Yes. Thank you very much.

33. MR GARDNER: If we then look at photograph 4, my Lord, that is then an example of where animals can leave the common via the various side roads. We have the main road that goes down through Welland and then there are numerous little side roads off the common. If we look particularly at the bottom photograph, again this is a product of the increase in traffic that you get these days. That is animals leaving the common. A very common occurrence now is that you would get potentially a delivery van or a large vehicle that will sit behind those animals. They are unable to overtake and so potentially those animals can get driven a considerable distance away, because there is no room for a car to overtake them. There is nowhere for the animals to dip off and they will go basically until they reach perhaps an open field, somebody else's land. Somebody might think they are being helpful by letting them into somebody's field, thinking that they have escaped. That is not uncommon at all and so a large part of the day can be spent actually finding where the animals are.

34. If we look at the top photo, that shows a particularly attractive roadside verge. The

key point with animals is that they have memories and so, if you return the animals to the common from a road such as that, there is nothing to stop them simply returning there later in the day and the next day without any kind of physical barrier.

35. THE CHAIR: Your photograph 4 shows the position of side roads very clearly and the attraction of grazing on the side roads.

36. MR GARDNER: Yes, and they can be particularly attractive in the winter because you get the de-icing salt that gets washed on to there. Once you have a bunch of animals that find something like that, it can be quite difficult to deal with.

37. I hope that that sums up why I believe that there is a need for the ability to secure the perimeter. I do not and I would not support any kind of internal fencing or subdivision of the common. I believe that this Bill does not facilitate that. If it did, I would not be sat here because, when we look back to the position of my parents' holding on Coombe Green, any kind of division would have a hugely detrimental effect on that. It is not something I would be supporting.

38. LORD EVANS OF GUISBOROUGH: How do you keep track of the animals?

39. MR GARDNER: In day to day?

40. LORD EVANS OF GUISBOROUGH: Yes. How do you know where they are?

41. MR GARDNER: Basically, first thing in the morning, assuming the buzz of social media is not at work, which it very often is—I will very often get messages or phone calls saying, “There is a message on Facebook” et cetera—my first task is to check the animals. At the end of the day, we generally push them up to the top of the common. There is one area of the common that adjoins private land, so that is, in effect, fenced by the landowners. We push the animals to the top of the common and that is an opportunity to do a head count, husbandry checks, et cetera, and just look over everything, see what might possibly be missing and find it, basically.

42. Day to day, my Lord, it is a very, very big time commitment and something that, as time moves forward, is less and less sustainable. I am the only person who grazes cattle on the common and I have been for the last 10 years. I think my animals represent around 60% of the grazing that takes place on CL9 currently.

43. LORD PONSONBY OF SHULBREDE: Can I ask if you have looked into technology, which we have been talking about in our previous sessions?

44. MR GARDNER: Yes, we have used the collars. We have tried them in a few areas. They work very well on large expanses of land. What we have found, particularly on the hills, is that we get quite a lot of problem with what is called GPS drift. Where the boundary is one day might be quite different to where it is the next day, which, again, on a big land expanse is not so much of a problem. When we talk a bit more about the southern hills in a minute, where you are trying to do a very specific thing with the collars, we have found that, at the moment, they are not quite there really.

45. They also are not very good on young stock, because, in order to get the collar to the right size, you have to have a little bit of slack, if you like, to allow the animal to grow, but they are then quite good at losing the collars and ditching them along the way. It is something that I think might develop in the future. I think it could go one of two ways, really. It could potentially develop and the technology will improve, but, equally, with that might come legislation and the like around their use. At the moment they are not, unfortunately, a solution.

46. THE CHAIR: Do you use electric fencing?

47. MR GARDNER: Yes. I will go on to talk about that, my Lord. We have used it on Castlemorton Common. We used it quite extensively around 2015, because at that point grazing was at an all-time low on the common. There was a lot of concern from the Trust and from Natural England particularly about the SSSI. We used it then to target the relatively small number of cattle that we had got on the priority areas, which were the mire, so the wet areas of the SSSI.

48. THE CHAIR: Electric fencing can be quite movable, can it not?

49. MR GARDNER: Yes, very, very mobile. That worked very, very well to actually be able to put the animals on a particular area, graze that area off and then either move them somewhere else or take it down. There are six of us, my Lord, who graze Castlemorton Common in different capacities. There are five sheep graziers. Day to day, it does not work to have the big areas of the common potentially electric fenced, which might interfere with somebody else, so it involves a bit of co-operation, basically.

50. We used it for a period then until the numbers increased a little bit and now we use it in very specific circumstances. The mire areas that I just talked about, my Lord, that still suffers a bit from under-grazing and so, with agreement of everybody on the common, I put the cattle there at a particular point in the year. Also in conjunction with—it is called the consistent effort, I think, a bird monitoring project. That site is used by a chap who works with other people across the country where they catch and ring and monitor the birds the same day, the same place and have done for the last 40 years. There has been concern that that site has deteriorated from a lack of grazing, so we put the animals in there to help maintain that habitat for that purpose as well.

51. THE CHAIR: When we move on to the other photographs, they are sheep and they are not your sheep. They are the other people's sheep, are they?

52. MR GARDNER: They are, actually. This shows the southern hills, which I was going to go on to talk about, my Lord, and how we use temporary fencing in a slightly different way. That is the British Camp hillfort, which is often described as one of the best preserved in the UK. It is very important ecologically and historically. It also has a car park at the bottom of it with spaces for in excess of 100 cars and it is very often full.

53. Trying to keep sheep on a site like that, unenclosed, is very, very difficult. Sheep being sheep, if they have an open run back down to Castlemorton Common, they do not tend to want to stay there. We are able to use the electric fencing basically to target a site like that. In the winter, when there are not very many people around and footfall is very low, we can put sheep on that site and they will stay there very well within an electric fence. Then, on the lower slopes, which is quite coarse vegetation and it does not have the sensitive archaeology, we can put cattle. They are very happy to coexist and will stay within electric fencing on the lower slopes.

54. THE CHAIR: What are we looking at in the last photograph? It is more sheep, is it?

55. MR GARDNER: That is simply more sheep. That is basically showing the hillfort itself with the sheep on. Then, in the background, you can see the other parts of the southern hills, which are more suited to a cattle grazing environment. We can put cattle on there, but, cattle being cattle, they then need an electric fence. Otherwise, they will be all over that hillfort, treading just where you do not particularly want them and

causing erosion.

56. My Lord, I will just talk a little bit about how we set electric fences up and the thought process behind the size of them. If we are trying to graze that sort of site like that, the terrain is not easy and opportunities for watering points are very, very limited. I think there is one. The sheep we can effectively bowser to in the winter, with a small bowser, because their water requirement is quite low. If we look at a lot of that site, it is quite difficult to get at. There is one natural water source that runs reliably down in a little bit of a valley and so the compartments need to be arranged, when putting cattle up, that they can get to that water. That is a key thing.

57. We also have health and safety considerations to think about. We cannot put cattle in a very small electric fenced compartment with full public access, because that then potentially gives rise to conflict between cattle, cattle triggering perhaps a fright response if they were potentially cornered, and we get those potential conflicts. The enclosure needs to be big enough that they have the freedom, my Lord, to express natural behaviour. If there are lot of people coming through—people come through walking dogs—they can move off as they would naturally. They are not contained per se. Safety is a big consideration when we are putting those compartments together.

58. We also need to be able to arrange that compartment to meet the animals' needs. You can see that that is open hillside. If we were to have a very small hectare compartment, as I believe has been talked about, that does not allow to give the animal shade in the summer. Access to water: it is worth noting that we have had two droughts in the last four years. They need shade. They need water. They need cover of some description in the winter. Quite a lot of consideration goes into how those electric fences are put up and also to minimise disruption to people who are walking there.

59. THE CHAIR: As far as sheep is concerned, it is simpler because on the whole they do not need a water source. Do they need shade in the same way as cattle do?

60. MR GARDNER: They do indeed very much need shade. Yes, they very much need shade. They also need, again, that freedom to be able to exhibit normal behaviour. If we were to condense sheep into a small electric compartment with public access, if people walk through with a number of dogs, even under control, sheep are likely to scatter. To actually get them to stay within that electric fence in a very condensed area

is—it does not work, basically. The compartment needs to be large enough that they can move, and adapt and coexist, basically, with all the other many users, my Lord.

61. MS LEAN: My Lord, I hope that provides some context, from somebody who is actually doing it today, of why the powers, particularly in Clause 48 and 49, are sought. If I can just flag also, you do have in your bundle of materials, bundle 7, a letter from Mr Chance, who grazes the north and central Malvern Hills. That is tab 6, page 31 of your bundle.

62. If I could just flag that for a note, because he has given a letter to your Lordships' Committee explaining, in similar terms to Mr Gardner, how he uses the central and northern hills under licence to graze his animals and some of the practical constraints there. One of the things that he says in particular, if I can just flag, at the bottom of page 32, is that, "With all of the disadvantages of the smaller grazing compartments on the Malvern Hills, I would not and could not continue with conservation grazing". That is a point just on suggestions that there should be restrictions on size. To go with that, you also have, in the previous tab, at page 30, a map showing the grazing compartments on the northern and central hills. That would sit with the letter, just to give you a sense of, from another grazier's perspective, how he is grazing the northern and central hills today. Being mindful of time, I do not propose to go through those today, but, if I could respectfully ask the committee to read through that letter and look at it with the map, it will sit nicely alongside what you have heard today from Mr Gardner.

63. Just to highlight, as I understand it—I am sure Mr Bills will correct me if I am wrong—the green outlines with the labels show what the grazing compartments are that are used on a rotating basis throughout the year. Mr Chance refers in his letter to the fact that these are essentially set. These are not just him going out and saying, "I think I will put up some fencing here". There is an established area of where the compartments are on the hills and which areas are fenced off. We mentioned, I think, back in opening that there is information available on the Trust website about where there are these compartments at any given time.

64. THE CHAIR: That is a very helpful map, because actually it is readable. Not all the maps are, and you can actually see the names of the villages.

65. MS LEAN: Indeed, my Lord. Unfortunately, it is only two parts of the hills, not

the whole of it, but it is the northern and central parts. My Lord, being mindful of prioritising evidence today, I can just perhaps finish off on clause 49 by turning to Mr Bills. You have heard reference previously to the grazing being a way of managing the hills and managing the SSSIs, and he has prepared a document for you, which you have in your bundle at tab 4, page 24, which just highlights where there is support for grazing as a management tool in this area. There is one document referred to there: Natural England views about management. We have given you that document in the bundle as well, if you want to look at that document in due course, which is at page 49.

66. What I just wanted to ask Mr Bills to confirm was—you have the document in there from Natural England about grazing being an appropriate means of managing certain types of habitat—whether Natural England is aware of and has expressed any view on the grazing compartments scheme that the Trust has been running now for some 20 years, I believe it is, Mr Bills.

67. MR BILLS: Yes, they certainly support livestock grazing on the hills and they understand the way in which to do that. The best way is via these electric fencing compartments that we have been using. I have that in a letter from them from a few years back. As Ms Lean said, it ties in with their views about management and their text to do with the SSSI on the Malvern Hills as well. A few years back, I met Natural England staff every six weeks to go over management of Malvern Hills Trust land, so they were very aware of how we undertake the management. Yes, they are very much in the picture and we have never received anything from them to say that they are not happy with the way in which we are managing the hills in the last 20 years or so.

68. MS LEAN: My Lord, I think, subject to any further questions the committee might have, that would finish our evidence on fencing powers. I am certainly happy to go through Clause 49 if that is helpful, but if I can just, in very, very high-level terms, being mindful of time, say it does two things. One is that it allows the Trust to fence non-common land. That is not just ancillary land, but it is also other land that does not have rights of common over it. Mr Bills can give you an example of that type of land if that is helpful. It would allow for fencing wider areas to allow for management of grazing in the way that has been going on for the last 20 years, with these compartments in particular. It does the two different things.

69. This is not a power that would require consent under the Commons Act 2006 on the Bill as it is currently drafted. It is one of the clauses that Natural England has raised a query about in the letter I mentioned on Thursday. I just wondered. I do not think that anybody else has raised an issue about the Commons Act consent per se. Perhaps if I could ask to park any discussion about the Natural England letter or the particular nuances of that to a later session, I would be grateful.

70. THE CHAIR: I think we should park it meantime. These points may come up in petitions against as we go through them.

71. MS LEAN: They may do. I am not aware of any petitioner having specifically raised the Commons Act consent. I am sure that I will be told I am wrong on that if that is the case, but, yes, we will certainly address it if and when it comes up with petitioners. Perhaps rather than my potentially taking 10 minutes or so to go through the Natural England letter now, I could park that for the time being.

72. My Lord, those are the fencing powers at an end. Perhaps at this point I could ask to swap Mr Gardner and Ms Satchell as we move on to the other powers in these parts of the Bill.

73. THE CHAIR: Yes. Thank you, Mr Gardner, for coming to see us. I hope it has not disturbed your tasks looking after your animals too much.

74. MR GARDNER: Thank you, My Lord.

75. MS LEAN: My Lord, carrying on through the powers in Part 4 of the Bill, the next one I have down on the opposed clauses list, and which I think we may be coming to later this afternoon, is Clause 56, trees and shrubs. I mentioned briefly in my opening remarks on Thursday that, essentially, this carries forward a power to be able to acquire and plant trees and shrubs for the Trust, but also clarifies the position as to any rights of estover that can be exercised in respect of trees that are planted by the Trust, to make clear that that is a right to gather fallen wood. It is not a right to cut wood, which reflects advice the Trust has received about the customary rights that subsisted under the chase of Malvern. Perhaps I can just deal with this clause by asking Mr Bills whether he is aware, during his time at the Trust, of anybody having positively asserted a right to go and cut down trees on the Malvern Hills or the Trust land, pursuant to a right of

estovers.

76. MR BILLS: No, I am not aware of that happening in the time I have been there, which is 13 years.

77. THE CHAIR: Is there a right to do so under the Commons Act 2006?

78. MS LEAN: My Lord, this is in Mr Cameron's petition, I believe. I think he refers to a description in the glossary to the explanatory notes in the Commons Act 2006. I think I mentioned on Thursday that there are different rights of estover, depending on what was the custom and what was the right in the place. The advice the Trust has had previously is that, in this area, the right would have been gathering fallen wood, not cutting down trees. There is not a sort of redefinition in the Commons Act 2006 generally that says, "An estover is a right to do this", so it is about what the right was in a particular place. The Commons Act does not purport to say, "Yes, you can always go and cut down trees if you have a right of estover".

79. THE CHAIR: Right, so in practice that does not happen, you say.

80. MR BILLS: Not the felling of trees, no, My Lord.

81. THE CHAIR: That is a big undertaking anyway, is it not, if you are going to fell a tree?

82. LORD INGLEWOOD: Not lopping branches off them either.

83. MR BILLS: No, that is right. It would be the taking of—

84. LORD INGLEWOOD: Fallen wood, is it not?

85. MR BILLS: —small wood, or the cutting up and taking of larger fallen wood.

86. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would that include trees that were damaged in storms, where the majority of the tree was sound but some of it was still attached to the tree but unsound, if you get my drift?

87. MR BILLS: I think what it might come down to is whether it has fallen from the tree. If it is separate to the rest of the tree, it would be up for grabs, if you like.

88. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: But not if it was still attached to the tree.

89. MR BILLS: No, that is a question for someone smarter than me, perhaps. My guess would be, no, that would not be up for grabs.

90. LORD EVANS OF GUISBOROUGH: You have a responsibility to manage the site. If you have trees that are damaged in a storm, would you not go out and fully remove anything that was hanging off anyway for the safety of the public, apart from anything else?

91. MR BILLS: Yes, we certainly do. We have a live tree safety policy and it involves our own staff doing surveys and work, and also bringing in contractors every winter to look at, exactly as you say, any dangerous trees.

92. THE CHAIR: Presumably, if you do that, you would be removing the timber that you take off the tree. Is that right? Supposing there is a branch of a big ash tree that is dangerous, you take it down and take it away, do you?

93. MR BILLS: It can be site by site. If it is at a roadside, we would probably take it away so it is no longer a danger. If it is in a woodland, we would leave it as habitat.

94. THE CHAIR: I see. Right. Then it is available for somebody to collect bits from it as firewood.

95. MR BILLS: That is right.

96. LORD INGLEWOOD: Only if they have a right of estover.

97. MR BILLS: Correct, my Lord.

98. MS LEAN: My Lord, I am conscious that this is probably one we may come back to this afternoon, because it was raised specifically by one of the petitioners who is appearing then. The next clause I have down on my list as an opposed clause is Clause 58, parking places. My Lord, if I can just deal with this very, very briefly, that clause is the same in all material respects as Section 6 of the Malvern Hills Act 1930. Mr Bills has provided a document in the bundle—tab 12, page 67—which, just in case it is helpful to have an illustration, indicates how the Trust tries to sympathetically or

sensitively locate parking places, and also the problems that can arise if you do not have enough or do not have them in the right place, with people parking in places they should not. I think that, unless there is anything you would particularly like to ask Mr Bills about on parking, we would then propose to move on to the licensing provisions.

99. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask about parking places? You refer to them as places as opposed to car parks. How many cars could be parked in one of these parking places?

100. MR BILLS: The car parks that the Trust looks after are all of different sizes. There are some where you can fit three cars in. There are some where you could fit just over 100. It really does vary from car park to car park, my Lady.

101. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: In some cases, let us say on a bank holiday when the weather is fine, there could be cars parked in unauthorised places.

102. MR BILLS: Yes, that is right. We do try to anticipate that and our rangers are out there and they erect signage saying, “Further parking this way”. They will direct people from the full car park to the not-full car park just round the corner, to try to avoid them parking where they should not.

103. MS LEAN: My Lord, the next clause I have down as an opposed clause—I believe it is one that is opposed by West Malvern Parish Council, who will be appearing before you this morning—is Clause 62, licensing of stalls. That is page 48 of the filled Bill. Again, if I can take this one just very quickly, just because it will be mentioned. There are two parts to Clause 62. The first is in subclauses (1) and (2), which says that the Trust can grant licences for up to a year to erect, maintain, operate temporary mobile stalls for food et cetera and it may grant up to six of those licences a year.

104. THE CHAIR: That is the same as the existing position.

105. MS LEAN: That is the same as the existing position, my Lord, so there is no change on that front. What is additional in the clause is the express power in subclause (3) that, if there is an event that has been authorised by the Trust—you see that condition in subclause (4)—then the Trust can authorise additional licences for a period

not exceeding four days. Essentially, you have your annual licences, which are unchanged, but it now makes clear as well that, if there is something happening and the Trust has signed off on an event, it is possible to get licences for up to four days for additional mobile facilities in connection with that event.

106. THE CHAIR: Subclause (3) has to be read with (4).

107. MS LEAN: Subclause (3) has to be read with (4), my Lord. My Lord, there is what might look like a slightly odd provision in subclause (6), which talks about not doing it within the vicinity of a certain property. That is a carryover from an earlier Act as well. My Lord, on Clause 62, the headline position is pretty much no change, apart from this additional power to grant these very temporary licences, which probably brings us to one of the more controversial, I think, clauses in the Bill, which is Clause 63, licensing of other activities.

108. LORD INGLEWOOD: Could I ask a quick question about subsection (3), please? That is restricted to the food and refreshment stalls, as opposed to other stalls that might be expected to be found in a festival or whatever, sports or something.

109. MS LEAN: Yes, it is limited to food and refreshment stalls. My Lord, on Clause 63, this is the clause that provides that the Trust may, if it thinks fit, issue licences for use of the Malvern Hills for specified purposes, including uses which would otherwise be in breach of by-laws. There is, attached to that, the power to potentially levy a charge for such licences in the circumstances specified.

110. My Lord, although this is a new clause in the Bill, it does have precedents elsewhere in legislation. My Lord, if I could just flag, you are given two precedents in other legislation in the table of origins note, which is in bundle 1 at page 156. I do not know that it is necessary to turn that up. I am just highlighting it, if I may, because I am going to ask Ms Satchell to speak to this power and where it is used elsewhere, but just to highlight there is other legislation where you find that.

111. What Ms Satchell has done is there is a note that you will find starting behind tab 16, page 88 of bundle 7. This note addresses, essentially, why the Trust wants this power and other bodies that are doing the same or similar things today. Perhaps I can just turn now to Ms Satchell, firstly to explain, possibly in conjunction with Mr Bills,

why the Trust is looking for this statutory power.

Evidence of Ms Satchell

112. MS SACHELL: My Lord, life at Malvern Hills Trust is almost entirely about managing competing interests. It is either managing the competing interests in our duties, so public access versus looking after the habitat, or it is managing the competing interests of the graziers and the people who visit the hills for recreational purposes. This power to license is not a money-making exercise. It is to manage those competing interests.

113. You will see in the note that I have made one or two bullets saying: making sure events do not clash; assessing the cumulative interest of events alongside other activities; making sure there is no damage to the Trust land; ensuring events do not unduly impact on the enjoyment of other people; and checking those who are running events have adequate arrangements in place to ensure the safety of their own participants and other users. That is very much about checking that they have a risk assessment and checking that they have appropriate insurance. That is something that we do on the advice of our own insurers on the basis that, if we consent to an event and something goes wrong, it would give potentially an injured party the opportunity to come back to the Trust and say, “Why did you let them do this? Why did you not check?” It is really important. It is something that we do at the moment.

114. As you will see from the note that Ms Lean has referred to, it is something that everybody else who runs a public open space—well, I say everybody else—a very large number of people who run public open spaces do. You will no doubt have your attention drawn this afternoon by Mr Smallwood when he talks about the interests of the people he is here to represent this afternoon. One of the points made in those petitions is “Why do you need a general power? You have been here 140 years. You ought to know what you need to do”. This is one of those things that we know we need to do, and therefore we have made a provision in the Bill to cover it.

115. There is a small sample in here of organisations where we have checked out what their policy is. One of those organisations is Natural England. There is a licence in there to hold an orienteering event from Natural England. Then there is a table of other bodies: National Trust, Forestry Commission, Wimbledon and Putney Commons,

Cleeve Common, Epping Forest. You will see that, to a man, they have an events application process. They have criteria for deciding what counts as an event and whether it is an event that might be charged for, whether they charge a fee and the general requirements to speak to staff et cetera. Again, every single one, the land holder checks out that they have appropriate insurance.

116. It is really important that we have a discretion as to how we exercise this power, because there is no one-size-fits-all in relation to licences. The provision in the Bill refers to the Trust making a policy and that policy being well publicised to enable people to check out where they need to check in with the Trust when they are thinking about organising an event, and the formulation of that policy is something that we would consult on.

117. On the flexibility, I am going to refer on page 92 to the starred paragraphs, which illustrate the need for flexibility, which are the National Trust's conditions for running events. They have something that they call an impact value, where they work out the balance of the competing interests. I do not need you necessarily to refer to that in detail, but it is an illustration of why there is no one-size-fits-all for this sort of provision, because no two places are alike.

118. THE CHAIR: Page 93 distinguishes between what are called commercial fees and non-profit. What are you planning to do? It does not say in the clause itself whether it is to be a commercial or non-profit.

119. MS SATCHELL: That will be something that goes into the policy and there will obviously be a dividing line, generally speaking. This is Epping Forest's policy and I am not sure that we would necessarily reflect their definitions or their scale of charges, I have to say. I found some of them quite high. For example, if somebody is coming on to film, we would certainly charge that out at a commercial rate and, again, that is something that we do now. If somebody is coming on, they want to make a documentary or something like that—and I think, again, our policy on commercial filming is in the bundle—we do charge for that because they are doing that as a purely commercial exercise.

120. We do not generally make charges other than for large-scale commercial use at the moment. I am not going to try and write the policy, because we do need that freedom,

but there are examples where we would not necessarily make a commercial charge, but we would certainly hope that—a lot of people—and it is the same with Cleeve Common and Epping Forest. They want to run their event on our landscape because our landscape is very attractive and it will draw participants into their events because they will think, “It would be lovely to do this on the Malvern Hills. Let’s go and join in”.

121. At the moment, the levy payers and the people who come recreationally, park their cars, are actually subsidising that for when we assess what the impact is going to be of that event. For a large event, a large charity event, we need to make sure we have a warden available, because somebody is going to have a mishap. Somebody is going to fall over and twist their ankle, and they are going to need some help getting off the hills. At the moment, we ask for a donation. We very rarely get it, but I think it would be certainly fair to look at making an administrative charge for the assessments that we have to make and for the provision, where necessary, of some support in order that they can run those events.

122. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Satchell, can you understand that some of those petitioners who live in and around the common will be concerned that this will mean, should they, for instance, want to hold a 21st birthday party in an area of the common that was close to them, that they would have to apply for a licence if they were just having a large picnic for instance?

123. MS SATCHELL: My Lady, it is not a case of us wanting to make a charge for those sorts—

124. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: They have to apply for a licence and that to them seems incorrect, and also they might be charged for something that, as you have just said, they have already paid for through the levy.

125. MS SATCHELL: Yes, they are paying for the maintenance of the common. I think Mr Bills has some examples, I think not particularly of parties. The whole point is we need to know it is going to happen. It is not because we want to restrict it, but we need to know. If somebody says, “I live up somewhere on the hills. I am going to have a 21st birthday party. I want to park some cars. Would it be possible for us to park some cars on the common on this particular afternoon, evening, because we do not have enough capacity on our property?”, and we happen to know that there is going to be a

sponsored walk or something that afternoon that is going to come past their property, we would need to look at those competing interests and whether the clash was going to be problematic. I am not saying that it would be. It is just knowing what is going on.

126. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Could I just ask, Mr Bills, have you in the past had to do a lot of clearing up of rubbish after there have been events on the common, whether small scale or larger scale?

127. MR BILLS: For the events where we have seen their paperwork and given them the go-ahead, generally they are very good and they clean up after themselves. I think the cleaning up that we do is following events that we had no knowledge of.

128. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would they be on specific dates, like bank holidays, or just random?

129. MR BILLS: There tends to be more in the summer, when more people are out and about, and having barbecues and things, but it is almost a weekly event that the rangers are cleaning up after something or other.

130. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: You do allow barbecues on the common.

131. MR BILLS: No, we do not.

132. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you.

133. MS SACHELL: We are straight out with a container of water if we hear there is a barbecue.

134. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Are there signs, for the casual visitor, to say “no barbecuing”?

135. MR BILLS: Yes, and we put even more up when conditions are hot and dry, for fear of wildfire.

136. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Okay.

137. LORD INGLEWOOD: Is it a matter of principle that you stipulate that whoever has the consent to any of these things has to make good any damage that is done,

regardless of fees?

138. MR BILLS: Yes, more or less. Sometimes we ask for a bond up front as well, again depending on what the event is. Quite often we ask for a bond if an event uses portable toilets. That is because, if the event organiser were to have an accident or somebody tips the toilet over in the middle of the night and then the event organiser disappears, the Trust would be left having to try to clear up those very strong chemicals within that toilet from the common, which would pose a hazard to everyone and their dogs, so we would use the money from the bond. The bond is a worst-case scenario of what we can see happening, enough money to repair the damage that could be done. If there is no damage at all, they get it straight back.

139. THE CHAIR: What does this clause give you that you cannot do at the moment?

140. MS SACHELL: Most of it, my Lord, we do do at the moment, but what we cannot do—obviously everything is voluntary at the moment, and it will still remain voluntary to a large extent, particularly for small events, whether people give us notice that they are going to hold a party or a family cricket match somewhere on the common.

141. What it will do is give us a little bit more leverage. The board looked at the issue of whether we thought we could charge for issuing licences for events some time ago, and I can see that some of these bodies do make a charge. I would say, without having checked, but certainly Wimbledon and Putney Commons—I do not think they have anything in their Acts to say that they can make a charge.

142. THE CHAIR: The power to charge is new then.

143. MS SACHELL: The whole power is new, because, although we do it, we do it in our capacity as landowner and, as I said, because of those competing interests. We think, in fairness, sometimes when people are holding large events and they are using the Trust land to attract their participants—and, as I said, at the moment, it is the general income of the trust that pays for that. I think that Mr Bills is probably better equipped to talk about what we need to do sometimes than I am, if somebody wants to run a large-scale event, and how we assess what the impact might be.

144. MR BILLS: Depending on the event, we might meet them ahead of it, walk the

site and consider it with them. We would have to keep an eye on it while it was going on and check it afterwards as well. In the planning, we would also have to have a think about whether it has any impact on other user groups, so we would check schedules of events that are coming up, our own works and also the conservation features of the area where they are asking for the event.

145. An example would be that we allow activity groups, youth groups, to do abseiling on one of our quarries, but we do not allow that during the bird breeding season. That one is completely entertainable, but only for these months of the year. As a couple of other examples which might help, we have paragliders who regularly use the hills for their hobby. We also were made aware of a Spitfire flyover planned for one weekend, and it was when there was also planned a very large paragliding event, so we let both parties know and they sorted it out between themselves. That could have ended horribly. The paragliders were certainly very pleased that the Trust, as landowner, was aware of what else was going on on that day.

146. In a couple of weeks' time the BBC will be pushing a giant red nose up Beacon Road for Red Nose Day to raise money for that charity. We have given permission for that, but, again, the size of this item will pretty much fill the whole of that road, so we had to think about emergency access to some of the properties up there, how the grazier might get up and how the public could continue using that very popular access route during their event. There is one that I dealt with just last week, as an example for you.

147. THE CHAIR: Is there any conflict between what you are proposing here and the Countryside Code, dealing with people who are just trying to exercise their ordinary rights, not a commercial activity, just people who want to enjoy the benefit of the Countryside Code? I am raising this because one of the petitioners makes the point that you should not be inhibiting the right to enjoy what the code gives you.

148. MS LEAN: My Lord, if I can pick that up, my understanding, from what is raised in the petition there, is that what would or would not be available to a member of the public, if access to the hills was under the Countryside and Rights of Way Act 2000 rather than under these private Acts—to an extent, that was general legislation that applied to relevant access land, but that carved out from that definition land where there was already some right of access to the public, whether under a private Act or otherwise.

The right that is granted to the public under the current legislation is the right on foot or on horseback for the purpose of open-air recreation, and so that right is carried across.

149. In terms of looking at whether something cuts across what is in the Countryside Code, I think it is necessary to look at what the right actually enjoyed is today and to say, “Well, at the moment there is not a right under the Malvern Hills Acts today that goes beyond that right of access on foot or on horseback”, so that position has not changed. What this is about is saying, “Well, there may be some things, quite rightly, that people would like to be able to do that are not just accessing it on foot or on horseback, but, if that is going to happen, we would like to have a regime so we can manage that, we can keep an eye on it and we can license it”.

150. Yes, you might say, “Well, actually, if I was accessing this land, if it was CROW land and I was accessing it under the Countryside Code, maybe there will be some things I could do there that I cannot do”, but we have to start from what rights have been granted.

151. THE CHAIR: It is Ms Satchell’s point about competing interests, really, and managing the competing interests. You need some powers to enable them to properly interact with each other.

152. MS LEAN: Indeed, my Lord. At its heart, this power ensures that the Trust can manage and keep an eye on and try to balance where there may well be competing interests: for example, between those who would like to run a sponsored walk or a sponsored run on the hills and people who are exercising rights of common, to make sure you do not suddenly put—I do not know—2,000 runners through a fairly small compartment with sheep grazing, for example.

153. On the charging point, my Lord, if I may just pick this up as a legal point, of course, what the Bill would do would give the vires or the power, if it was considered appropriate, to levy a charge for a particular type of event. It is not a requirement. It does not mean a charge will always be levied for anything that is licensed. It just means that, if the Trust decides, for example, “Do you know what? If somebody wants to come and run a big corporate celebration of 200 years of their business and they want to do it on Malvern Link Common, we think that probably we should be able to levy some charge for that to cover the costs of that”, they can do it and there is no issue around,

“Well, does the Trust actually have a power to levy a charge for that?”

154. THE CHAIR: Time is marching on.

155. MS LEAN: Indeed, my Lord.

156. THE CHAIR: I think we should move to by-laws. It is clause 65, the next one we have to deal with.

157. MS LEAN: Yes. My Lord, on by-laws, again, I hope I can take these relatively quickly. Clause 65, the power to make by-laws, is not new and the purposes for which the Trust may make by-laws are not essentially new.

158. THE CHAIR: This is a shortened version of Section 10 of the 1884 Act.

159. MS LEAN: I hope it is a slightly lengthened version, my Lord. There is a very useful note on this in the table of origins note that you have starting at page 232, but essentially it is possible to go through and map an awful lot of the purposes in 65(1) to Section 10 of the 1930 Act, but there are a couple in there that come in from elsewhere. For example, regulating quarrying or erection of cranes, work and machinery, which you have in (p) and (q), have come out of something in the Malvern Hills Act 1924. The one that I have down is—I could not find exactly where it came from in terms—the power in clause (k) prohibiting or regulating the use for any part of the Malvern Hills for the purposes of carrying on a business, but that does find a little bit of an echo in earlier Acts, which talk about, “Well, you can license, but only in these particular places”.

160. Pretty much all the purposes or all the subject matter that is covered in the by-law-making power in Section 5 you either find in Section 10 of the Malvern Hills Act 1930 or you can pull in from where it is covered in different provisions elsewhere.

161. There are a couple of points I should highlight on Clause 65. The bits that are new, if I can put it in those terms, you find in subclauses (4) through to (6B). Subclause (4) is really a commonsense provision. It just makes sense that we can make by-laws and they may apply for different purposes or in different places of the Malvern Hills. Given the range of land and landscapes you have heard about, you may see why that makes sense. They do not apply where a licence is granted under Section 63. It is making the point

that, if you can grant a licence to do something that would otherwise be a breach of a by-law, it would be a bit odd if the by-laws then still applied and stopped you doing it. Essentially, that is how that clause is meant to work.

162. The key point to pull out—the amendment has been made in the filled Bill and it does pick up on a concern that is raised by the petitioner this afternoon, Mr Cameron, about mobility vehicles and access for people using mobility vehicles. The new clauses (6A) and (6B) make clear that ,if you are making by-laws under subclause (1)(f) preventing or regulating vehicles or devices, including cycles, being parked, driven, ridden or flown on the hills, you cannot use that power to regulate or prevent the use of relevant invalid carriages, which has its own definition, unless it is necessary for the safety of either the person using the carriage or for others. It is essentially making clear that, if you are going to have a by-law that would apply or would regulate or restrict somebody accessing a particular area with a mobility vehicle, you can only do that if it is for safety reasons.

163. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Would that apply to pushchairs? For instance, if somebody had a double pushchair, that would be quite wide. Would that restriction apply to that?

164. MS LEAN: My first thought was that that would not constitute an invalid carriage. What I was just looking at is whether that might count as a vehicle or a device. I would be slightly surprised because ordinarily, under public rights of way provisions, if you can go on foot, you can take a pushchair or a perambulator. I can certainly take that away and double-check that, but my sense is that it would not say that you can regulate preventing a pushchair being taken somewhere.

165. THE CHAIR: The word “device” is rather loose, is it not? We would not think of a cycle as a device, but it is included within the meaning of “device” for this purpose.

166. MS LEAN: Indeed, my Lord. I think the reason why “device” may be in there is because of the reference to something being driven, ridden or flown. It would be apt to capture, say, drones or model aeroplanes or things like that. The power itself is meant to be general and it is not restricted to somebody in a vehicle type of thing. It is meant to capture a wider range of things like that, which may not fall naturally within the definition of a vehicle. I am going to look to Ms Satchell.

167. MS SATCHELL: We had at one stage a phase for somebody coming on—I am not sure whether it was called grass-boarding, but people going down the hills on a board, for want of a better expression. Of course, that is actually quite dangerous, if you have people who maybe do not have full control and people walking in the way. That is why “device” is such a loose word: because it is very difficult to anticipate what the next thing is going to be.

168. THE CHAIR: Why do you not mention drones in this clause?

169. MS SATCHELL: I think the intention was that drones was going to come within “devices”. My recollection was that where “devices” came in was drones in the first instance.

170. THE CHAIR: For reasons I well understand you include cycles—that is because you do not want arguments about this—but, if you put in drones, it would avoid any dispute as to whether a drone is a device for this purpose.

171. MS LEAN: My Lord, we can certainly take that away. I think my submission probably would be, if you read “devices” with “flown”, it would probably be quite difficult for somebody who was on the wrong side of a by-law breach to say, “Well, no, sorry, I don’t think this restricts drones”. I think that is why also it has probably been kept a little bit wider than just drones because, of course, drones would not have been thought about back in 1995 when the by-laws were looked at then. Who knows what might come forward in the next 30 years that would need to be the subject of a by-law but we have not yet visited today, although it would fall within that broad category?

172. THE CHAIR: I am aware of the problem of cycles. There is an area of hills near me in Scotland where people use these. They go down the hills at high speed and cross over paths that people are walking on. It is extremely dangerous, and I understand why that is there.

173. LORD INGLEWOOD: The reverse of this is that you are providing access for all kinds of invalid carriages and things, but clearly there are parts of the Malvern Hills where it is not possible, because of the nature of the terrain, to provide access. That is an accepted characteristic of your approach to all these matters, is it?

174. MS LEAN: My Lord, I think in the context of the by-law power this is about regulating or precluding. That would not be engaged, if the terrain just was not suitable or accessible for people in invalid carriages.

175. LORD INGLEWOOD: I just did the Disability Discrimination Act years ago, and in the context of listed buildings there was a “where reasonably possible” proviso entered in behind all these things. I just was checking that the same sort of thing was in your minds in respect of crags, marshes and everything.

176. MS LEAN: Certainly, my Lord, I think it has been very much in the mind of the Trust when it has been drafting the Bill because there are other clauses where there is reference—it is actually in some of the fencing powers, for example—to, if gates or access points are to be provided, having in mind the needs of different people who might need to use those.

177. LORD INGLEWOOD: Some things you cannot make accessible to disabled people, and that is clear.

178. MS LEAN: Yes, indeed, my Lord. I do not think there is anything in the Act that would require you to do so if it was not possible to do so or, conversely, say you could not do it if it was possible.

179. THE CHAIR: If we need to move on, really. You have probably done enough for by-laws. There are a group of clauses dealing with by-laws, but it is all part of the same package.

180. MS LEAN: Indeed, my Lord. The only point that I may draw attention to on by-laws is something that is raised and coming up later today. Clause 66 is process. Clause 67 is a penalty for contravening them. It is an offence and liable on summary conviction to a fine. That is the same in all material respects as the current position. If you breach the by-law, it provides that it is an offence and it is punishable on summary conviction by a fine.

181. What is new is the express provision in Clause 68 to instead issue a fixed penalty notice if an authorised officer has reason to believe that that individual has committed an offence against a by-law made under the Act. I am going to quickly ask Ms Satchell,

if I may, to explain why the Trust thinks this should be brought in.

182. MS SACHELL: Very briefly, my Lord, it is a real problem trying to enforce the by-laws. I do not count parking without paying in that because that is done under fixed penalty notice arrangements, contractual arrangements. It is a real problem enforcing the by-laws. The only option that we have at the moment is to take people to the magistrates' courts, and it is a very expensive process to try to do that. We are looking at what other organisations did. This is clearly something that other organisations have a power to do.

183. Clearly, if we want to enforce a fixed penalty notice, we have to know where someone lives. If we do not have that information, we cannot effectively do it. It is going to be used sparingly and it is going to be used almost certainly only where there is a repeat offender. We have always had the policy on the hills that we try to educate people. We try to explain why we do not want them to do something, why they cannot park their car there. It is just trying to find an easy way of remedying the problem of by-law enforcement. It is something people complain about, that we do not enforce the by-laws, but the reality is that it is not economically viable for us to do so. This would just give us another tool in our armoury.

184. LORD PONSONBY OF SHULBREDE: Is it the parking contractor that enforces the by-laws or is it the Trust?

185. MS SACHELL: It is the Trust that runs the car parks and so it is the Trust that goes and sticks the little thing on to say that you are parking in contravention.

186. LORD PONSONBY OF SHULBREDE: There is not a contractor, then, is there?

187. MS SACHELL: No. Again, as many parking people do, we offer a discount if people pay straightaway. Sometimes they say that the ticket has blown off the dashboard and we cancel it.

188. MS LEAN: My Lord, if I may, there is a concern that has been raised in some petitions about, for a fixed penalty notice, the power to require somebody to provide their name and address. That is actually, strangely, not new. The Trust can, in principle, do that today because Section 17 of the Malvern Hills Act 1884 basically applies certain

provisions of the Parks Regulation Act 1872 to keepers who are appointed for the hills. In very sweeping terms, that essentially says that a keeper who may be appointed for the hills has essentially the same powers, rights and liberties as a constable would in a police area. The relevant details to this are in the table of origins note, page 161. Those powers include a power to require somebody to provide a name and for it to be an offence if somebody gives a false name. Ironically, it seems that there may also be a power of arrest. That is certainly not something that the Trust is looking to carry forward. Arguably, the powers that there may be floating around today might even be more onerous than the ones that the Trust is seeking through the Bill.

189. I just wanted, because I know that is something that may be raised by a couple of petitioners in particular tomorrow, to have flagged that provision.

190. LORD INGLEWOOD: Do you appoint keepers?

191. MS SATCHELL: The rangers are effectively the keepers under a different title, but they do not arrest anybody.

192. MS LEAN: My Lord, I think that probably then comes off the by-law powers. What I should just flag is—I will do it as a flag in passing—there are some provisions in Schedule 7 that are essentially the transitional provisions and savings. There are some provisions in there that talk about offences of by-laws that happen while current by-laws are in place and suchlike. I do not think anybody is raising that, but maybe we will come to those when we deal with the unopposed clauses.

193. My Lord, I think that the final clauses that we had on the list for now are back in Part 7 of the Bill.

194. THE CHAIR: It is 74 and then 79 to 81.

195. MS LEAN: Indeed. On 74, which is at page 60, there may have been a slight conflation of this clause with the licensing powers in Clauses 62 and 63 possibly in some of the petitions. They stand separately. This is about leases or licences of land; it is not about licensing or permitting activities. It is a new power. Certainly, it is the first time you will find a heading that is entitled “leases and licences of land” in any of the existing Acts in such general terms.

196. Essentially, what it provides for is that in Clause 1 the Trust can lease any part of the Malvern Hills that is not common land and any building. Subclause (2) is about licensing. It can grant a licence of any part of the Malvern Hills or any building. If a lease is going to be longer than 10 years, the Secretary of State has to consent. That is subclause (3). Subclause (4), if I could just highlight, provides that any lease that is granted or renewed and any licence granted under Clause 2 is subject to the public right of access under Section 38, where it applies.

197. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Does that apply to leasing common land as well?

198. MS LEAN: It would not be possible to lease common land, my Lady. It is only possible to lease non-common land. If a licence was to be granted over part of common land, say to use a small part of it temporarily for a particular purpose, then that would in theory apply.

199. Hopefully, my Lord, that brings us on to 79 through to 81. Clause 79, quarrying, is addressed in the table of origins note at page 167. It is essentially the same in all the material respects as what is currently in the Malvern Hills legislation, but it puts it on a modern footing, reflecting the fact that there are now obviously the requirements for planning permission and suchlike. What it does is it says, “Before anybody puts in an application for planning permission to quarry on the Malvern Hills, they have to consult the Trust”, and there is the provision that any proposal for a new quarry in the Malvern Hills must provide that it be located and designed so as to cause as little injury and disfigurement to the Malvern Hills as reasonably practical, and it must be fenced for the protection of the public. Essentially, it puts in a more modern context the provisions to do with quarrying.

200. THE CHAIR: The application is made to the local authority for planning permission.

201. MS SATCHELL: Yes.

202. MS LEAN: It would be to the minerals authority. I am just trying to work out who that is.

203. MS SACHELL: It is usually a county council.

204. MS LEAN: Sorry, I am getting “county council” from both directions. Yes, it would not be, for example, Malvern Hills District Council. For a quarrying permission, it would go to the authority that is responsible for minerals, which is usually the county council.

205. LORD INGLEWOOD: This would be an application by a third party on the Malvern Hills common land for a quarry, consent for which has to be obtained from the minerals authority, and in addition you have these extra powers, were it to be granted, which I must say sounds slightly unlikely to me.

206. MS LEAN: Well, there is the proviso that the Trust has to be consulted before you input the application for planning permission, and then there is that statutory requirement that would have to be applied that, if they are going to put a proposal in, it has to do what is said in subclause (4).

207. My Lord, the next clause is Clause 80, which is the power of the Highway Authority to get materials for repair of publicly maintainable highway. It provides that the power that you have in the Highways Act may not be exercised in respect of any waste or common land in the Malvern Hills. I do not think this is one of the opposed clauses, but, just to flag, this is based on Section 15 of the Malvern Hills Act 1884. It is not a new clause, as it were.

208. Clause 81 is the one that was particularly raised by, I believe, Mr Myatt, the power for the Trust to use materials. This is essentially a new power. If I can just quickly ask Ms Satchell to explain why this power is there.

209. MS SACHELL: We obviously do a lot of path repairs over the course of the year and, because some of those paths are in the SSSI, it is necessary for us to use materials that are a similar pH and obviously appropriate colouring to fit in with the Malvern Hills landscape. Again it is not something we have a direct power to do at the moment.

210. We have thought many times that, obviously subject to safety considerations, if there was a rock fall—there are a lot of deposits on the Malvern Hills from the previous quarrying—it is a great shame that we cannot use some of our own stone to do those

repairs from time to time. We have to get material in. We have to buy it in. It has to be transported. It is not always the match that we would quite like it to be.

211. We have limited that. It is limited to loose material that we can just pick up off the surface of the ground; it is not quarrying.

212. THE CHAIR: There is a challenge to the maximum amount. If you look at subclause (6), it is 25 cubic metres. It is suggested that that should be restricted to 10 cubic metres.

213. MS SATCHELL: My Lord, I have been searching for a comparison. The comparison I have is that the large-size transit van is 15 cubic metres. It is not an awful lot of material. I doubt very much whether, because of landscaping considerations, we would take it all from the same place. We would also have to be mindful of the nature conservation issues as well because I know that one thing that was raised in a previous consultation was that scree is habitat for particularly butterflies and things basking. They particularly asked that we take that into consideration as well. We would be very mindful of where we took it from and how we used it.

214. I would put it to you that it is not an unreasonable amount, given the extent of the Malvern Hills. It is likely to be taken out with a shovel and a wheelbarrow, or at most a small digger and a little trailer or something, where access is permitted. It is not going to be a large-scale operation picking up this sort of stuff just to do path repairs or possibly to put a stone to obstruct where somebody is parking, or something of that sort.

215. THE CHAIR: Thank you very much. I think you have probably covered the ground now, Ms Lean, have you?

216. MS LEAN: I think all of the clauses I had on my list I have ticked off. It is a bit of a whistlestop in some respects, but no doubt we will come back to some of them in due course.

217. THE CHAIR: Well, I think we will leave it on this basis. Obviously, some of these are going to be raised in later petitions, when we come to them, but thank you very much indeed to the witnesses for your assistance.

218. Perhaps we can move on to the petition that is before us. Mr Harnden, you are

coming to present on behalf of West Malvern Parish Council. It is still the morning, so I can say good morning to you. Do you understand the procedure that we are proposing to adopt? It is for you to open up and make a presentation. Do you have a witness you intend to lead or are you just simply making a presentation?

219. MR HARNDEN: I will be working from my presentation, but I do have a witness here, which is Professor Tew. Mrs Burford is purely here as a piece of tangible evidence.

220. THE CHAIR: Well, I think we are in your hands as to how to do this. Once you have made your presentation, I will call on counsel for the promoter to reply. We will take it in that order, so it is up to you now to make your presentation. You understand, of course, that you cannot go beyond what is in your petition.

221. MR HARNDEN: No, I am fully aware, my Lord. I will try to stick to the subject in hand.

222. THE CHAIR: Thank you very much.

223. MR HARNDEN: Okay, would you like me to start, my Lord?

224. THE CHAIR: Yes, please do.

West Malvern Parish Council

Evidence of Mr Harnden

225. MR HARNDEN: Good morning, my Lord. Just very briefly, I cannot say that I am in familiar surroundings at all, so I do apologise in advance, should protocol or my etiquette be in error. Please bear with me.

226. My name is Glen Harnden. I am the chair of West Malvern Parish Council. I am also a Malvern Hills conservator levy payer. I am a long-term resident of West Malvern and have paid the levy since 1988.

227. I will just give you a very short little piece of preamble just to let you know who I am and where we are from. The parish of West Malvern lies on the western slopes of the Malvern Hills at the northern end of their range, which is about the highest end of their

range, really. A significant proportion, approximately 50%, of the parish comprises Malvern Hills Trust land. This includes the western slopes of the area referred to as the northern hills. The eastern parish boundary lies along the top of the upper ridge of the hills. Park Wood and the peaks of North End and North Hill, Table Hill, Sugarloaf Hill, Summer Hill and the Worcestershire Beacon itself, the highest place in Worcestershire, all lie within the parish. The parish is a very large part of the Malvern Hills Trust area. The extent of the parish and its importance within the overall Trust estate may be seen on the map and the aerial photograph that is on page 1 of the bundle. It just gives you a very quick overview of the hills. The blue area on that map is that of the parish of West Malvern.

228. Now I will endeavour to present the serious reservations detailed in the petition that many West Malvern parishioners have had with respect to the proposed Malvern Hills Bill. You would be absolutely right in asking me how I know that these reservations exist and are not just a figment of my imagination. Well, on 24 November 2025 in West Malvern we held a special meeting in our parish hall that local residents were invited to to discuss the proposed Malvern Hills Bill. We include the agenda and minutes of this meeting as pages 2 and 3 of the bundle. They are quite short, really, but if you wish to scrutinise or ask any points on that, please feel free.

229. The meeting was to sense public opinion and establish whether the parish council should continue its petition to Parliament because, at that stage, we really were not sure which way this was going to swing. Our parish hall was full, with people standing at the rear and attendance of the order of about 90 persons. Unlike the Trust board meeting held on Thursday, 9 October 2025, straightaway ground rules were established by the then chair of the parish council. I hasten to say I was not the chair at that point. The previous chair had to resign for personal reasons, but straightaway he did specify that the ground rules had to be established, that all present had a right to speak and that debate had to be conducted in a fair and civilised manner. We were not aiming for a bun fight. We did not need that.

230. The unsuccessful candidate in the election for the local conservator trustee for West Malvern spoke at length as to why he considered the petition should be withdrawn. He was not interrupted or prevented from speaking. He was not shouted down. He had full right to say anything he liked. Thereafter, a considerable number of other

parishioners spoke, but, apart from just the two Trust officers present and the wife of the unsuccessful candidate, no one spoke to support the view that the petition should be withdrawn. It rapidly became evident that the vast majority of the assembly were united in opposing the proposed Bill in its current form. Emotions ran high; they ran very high, but they were united in opposition. Consequently, West Malvern Parish Council voted unanimously to continue with their petition. It was a totally democratic decision. Hence I am here now, for my sins.

231. The need to petition has largely arisen due to the complete lack of meaningful engagement by the Trust, as they now like to be known. They have made no significant effort to satisfy or allay parishioners' concerns. There is no detail in any conversation and certainly no dissension allowed from within their own ranks. This is clearly demonstrated by the number of trustees, 11, barred from discussion of the Bill in board meetings. The problem has been further aggravated by the very late disclosure of the proposed Bill's content. The late disclosure of information appears to be a tactic used often by the Trust.

232. THE CHAIR: I wonder whether I can interrupt you.

233. MR HARNDEN: Yes.

234. THE CHAIR: You have a lot of ground to cover. We have heard a lot of mention of the points you are raising, but it is not really directly relevant to the points directed to what you want this committee to do, what changes you want to make to the Bill and so on. We understand the background, but it is important you get to the detail in your petition.

235. MR HARNDEN: I will fast-forward, my Lord.

236. THE CHAIR: We do not have all day to give you, I am afraid.

237. MR HARNDEN: No, okay. I first visited Malvern in 1976, 50 years ago. Much has changed in that time. Today is different. Over the last 10 years, the Malvern Hills Trust has grown away from its neighbours. We were good neighbours once. It has become aloof and is now renowned for being confrontational, arrogant and secretive. I apologise for using those words, but they are the words that are used to me by

parishioners.

238. THE CHAIR: This is what I am trying to steer you away from. We know a lot of this background from what people have been telling us before. What we really want to know is what your objections are and what you want us to do.

239. MR HARNDEN: Okay, my Lord. We would like to start with concerns relating to Clause 5 of the Bill, which is about changing the name of the organisation to the Malvern Hills Trust and the title of “conservators” to “trustees”; and to Clause 8 of the Bill, which addresses governance and concerns regarding the change of board composition. My Lord, if it is okay with you, at this point I will hand over to my co-presenter, Professor Jerry Tew.

240. THE CHAIR: You are doing exactly what I was hoping you would do. You are concentrating on your objections. Thank you very much indeed. Yes, Professor.

Evidence of Professor Tew

241. PROFESSOR TEW: My Lord, as you may imagine, I had not been expecting to be addressing your Lordships for a second time. However, I have been asked by the parish council to speak in relation to certain of their concerns, and I feel honoured to be doing so. As Glen Harnden has said, I will be addressing points relating to Clauses 5 and 8 of the Bill on behalf of the parish council. I would like to make it clear that the parish council recognises the need to reform the current governance structure of the Trust and is therefore not seeking to oppose the Bill in its entirety but to propose constructive amendments that take account of concerns and representations made by individuals within the parish.

242. In an earlier hearing, one of your Lordships asked Susan Satchell whether there might be a perception from outside the organisation that the Malvern Hills Trust was a mates’ club, a suggestion that Ms Satchell sought to deflect as far as she was able. Unfortunately, there was already rather a strong element of truth in his Lordship’s concern, a concern that has been greatly exacerbated as local people became aware that in Clause 8 of the Bill the Trust wishes to give itself power to appoint its own nominations to half of the board, thereby blocking the possibility that the elected members will be able to pass any motion that was opposed by the block vote of

appointed board members.

243. If this Clause were to be enacted, the Trust would truly become an unaccountable mates' club enshrined in law for ever after. Such a constitution would deter any publicly minded individuals from putting themselves forward for election as conservators, as they would always be blocked by the Trust's appointed board members from having any voice, and hence it might tend to be just friends and associates of those already part of the mates' club who might put themselves forward for election. Through this, we would have the real danger not only that the Trust would fail in its core mission of the stewardship of the hills, but that it could become corrupt and have the unopposed ability to grant easements or other favours to unscrupulous individuals and property developers.

244. Such concerns have been brought into focus when an independently minded person with a long record of public service recently stood for election as conservator for West Malvern and indicated in her election material that she was not in favour of some aspects of the Bill as presented. She was manifestly not part of the mates' club and won a resounding victory to represent the people of the parish of West Malvern with around 75% of votes cast. We are delighted that Mrs Jenny Burford has been able to join us today in support of the parish council's petition.

245. As your Lordships and Ladyship will be aware, many concerns have been raised by what happened at the Trust's board meeting on 25 October, at which decisions were taken to disbar two newly and lawfully elected conservators, one of whom being Mrs Jenny Burford, from any discussions, documents or archives relating to the most pressing business of the conservators, the pursuance of the Malvern Hills Bill. The parish would ask your Lordships and Ladyship to consider amendments to the Bill that would ensure that proper standards and mechanisms of governance and accountability are enshrined in the Bill so that actions such as the silencing and exclusion of an elected conservator and the prevention of her taking forward the concerns of those who elected her cannot ever again take place.

246. As your Lordships and Ladyship will be well aware, there is currently some lack of clarity and indeed dispute as to whether the Malvern Hills Conservators as a legal entity should be considered as a public authority alongside being a charity. As currently

constituted by statute, the Malvern Hills Conservators have certain of the characteristics and responsibilities of a public authority: the power to levy taxation via a council precept, and duties to perform certain statutory functions, such as enforcing by-laws in relation to publicly owned land.

247. In its current constitution, conservators are elected as set out in Clause 9 of the 1924 Act, pages 4 and 5 in the bundle, which require that conservators are elected by the local government electors of the parish in the same manner as urban or district councillors. Although, as I will discuss in more detail shortly, there are very serious concerns that all notions of public accountability will be removed by the proposed Bill, it is interesting to note that in Clause 26 of the Bill there is still a residual reference to Part III of the Representation of the People Act 1983 in relation to the conduct of elections.

248. Although not considered legally binding in relation to the passage of this Bill, you will be aware that a recent legal judgment on this matter is the KC's opinion sought by the government agency the Office for National Statistics as to how the Malvern Hills Conservators or Trust should be classified. This concluded that they are still a public authority. However, when I asked the Trust's governance change officer Susan Satchell about this in a "meet the public" event last year, she stated categorically that the Trust was not a public body. I then asked her whether she had read the KC's opinion. In her reply, she said she had not read it and implied that it was not necessary or relevant for her to do so. This refusal to consider any alternative and potentially valid points of view has unfortunately been the hallmark of the conservators' approach in the drafting and pursuance of this Bill.

249. My Lord, this Select Committee now has the opportunity to resolve this uncertainty and, through suggesting amendments to the proposed Bill, remove this uncertainty for future generations. In order to achieve this end, the parish council would ask for an amendment to the Bill that acknowledges that the Trust is a hybrid public authority with a legal status of both a public authority and a charity.

250. This term was a term used by Lord Justice Elias in the 2009 High Court judgment in the case of R (Weaver) v London and Quadrant Housing Trust, in which the appeal by the housing trust that it should not be considered a public body was dismissed. In his

dismissal, which is paragraph 84—and paragraph 84 of the judgment is reproduced on page 6 of the bundle—Lord Justice Elias states, “In my judgment the Trust is a hybrid public authority”. He goes on to say that not all such providers of social housing will necessarily be in the same position as the Trust. “The determination of the public status of a body is fact sensitive. For example, a potentially important difference is that apparently some RSLs”—registered social landlords—“have not received any public subsidy at all, and arguably—and I put it no higher than that—their position could be different”.

251. Our submission would be that, as the Malvern Hills Trust is substantially funded by a precept on local taxation, it should be considered as a hybrid public authority and a charity. Making this status explicit in the Bill would clearly make actions of the Trust, such as the action of disbarring duly elected conservators, subject to judicial review, in the event that the Charity Commission were to decide to take no effective action as in relation to the current exclusion of Mrs Burford.

252. This amendment could be accomplished by the addition of wording to the effect to Clause 5(2) along the lines of, “The Trust is to be recognised as a hybrid public authority and charity. It will continue to be a body corporate with a common seal and having power to hold and manage land and other assets”.

253. It is accepted that formally changing the acting name of the Trust back to the original title of Malvern Hills Conservators would be expensive in terms of a second rebranding and therefore not necessarily in the public interest. However, as indicated in the petition, what really matters is the title given to those serving on the board.

254. THE CHAIR: I beg your pardon. In the petition, you say the name should be Malvern Hills Conservators.

255. PROFESSOR TEW: Yes.

256. THE CHAIR: That is what you are asking us to do, is it?

257. PROFESSOR TEW: What I am suggesting is that actually changing the name of the Trust back to the conservators—another rebranding—is probably not in the public interest, so the parish council is not pursuing that the overall title of the Trust is changed

back.

258. THE CHAIR: Thank you very much. That is quite clear.

259. PROFESSOR TEW: Thank you, my Lord, for that. As indicated in the petition, what really matters is the title given to those serving on the board. Are elected conservators elected in the manner of local councillors, accountable to their electorate and dedicated to the conservation of the hills and commons, or are they simply yes-people, constrained never to question or challenge the settled position of a dominant group of board members, as was the position articulated by the deputy chair and leader of the board on governance responsibilities, Mr David Core, at the board meeting that took place on Thursday, 9 October 2025?

260. Therein lies the difference between the title “conservator” and the title “trustee”. The Trust’s position that trustees are not accountable to the wider public or to the electorate is made abundantly clear in the letter sent to our parish council from the Bill presenters’ solicitors Sharpe Pritchard, and that is reproduced as pages 7 and 8 in the bundle. In this, it is stated that, once elected or nominated, trustees are required to act solely and exclusively in the interests of the MHT. The elected trustees are not the representatives of those who elect them.

261. The only comparable public authority and charity with responsibilities for conservation with funding on the basis of a levy on local council tax payers is the Wimbledon and Putney Commons Conservators. It is important to note that there the board members retain the title of “conservator”.

262. Your Lordships will notice and will note that in the code of conduct for the Wimbledon and Putney Commons Conservators, part of which is included as pages 9 to 12 in the bundle, section 1.3 sets out that, “Each conservator must exercise the powers that the conservator has in that capacity in the way that the conservator decides, in good faith, would be most likely to further the purposes of WPCC”—Wimbledon and Putney Commons Conservators. “Each conservator must in the performance of functions in that capacity exercise such care and skill as is reasonable in the circumstances, having regard in particular to any special knowledge or experience that the conservator has”.

263. THE CHAIR: Section 1.4 matters too, does it not? They are charity trustees,

which is the position in this case because the Trust is a registered charity. It says—I am reading from 1.4—“Conservators, as charity trustees, have a legal duty to act in the best interests of WPCC and to achieve the purposes” as set out in the Acts. That is part of the package as well, is it not?

264. PROFESSOR TEW: Let me just catch up with your Lordship.

265. THE CHAIR: It is page 9(a). You were reading from 1.3; I am just pointing out that you need to—

266. PROFESSOR TEW: I do not think there is any dispute about 1.4. I do not think that that contradicts 1.3, unless your Lordship sees that differently. Section 1.4 is emphasising “the best interests” of the Wimbledon and Putney Conservators and 1.3 says that the conservator must decide, in good faith, what is most likely to further the purposes of the WPCC.

267. So what is contained in 1.4 is consistent, I think, with 1.3. It is all related to the stated objects of the—

268. THE CHAIR: I am sorry I interrupted you. You were taking us to 1.10, were you not, which is freedom of expression?

269. PROFESSOR TEW: Yes.

270. THE CHAIR: Thank you very much.

271. PROFESSOR TEW: Section 1.10 adds, “Freedom of expression is a right which applies to all conservators of WPCC. The criticism of opposing ideas and opinion is considered to be part of democratic debate”. Furthermore, in section 2.3.iv it is stated, “Conservators must be accountable to the public for their decisions and actions”.

272. Your Lordships will also note that under section 1.5 of the code of conduct, conservators, as holding public office as well as running a charity, have a duty to maintain the standards of ethics and conduct that are set out in the Nolan principles of public life. These standards are somewhat higher than those that would seem to be expected by the Charity Commission for trustees, as evidenced by their failure so far to intervene effectively in relation to a number of allegations of malpractice within the

recent operations of the Malvern Hills Trust, where the Nolan principles of accountability and openness have been far from evident. Therefore, the second amendment that is required is that the term “trustee” is replaced by the term “conservator” throughout the Bill.

273. In addition, Clause 8(3A) should be replaced with wording taken from the code of conduct of Wimbledon and Putney Commons Conservators, a document that was published in response to a recent Charity Commission statutory inquiry and may therefore be seen compliant with Charity Commission expectations.

274. The proposed wording would be, “Each conservator must exercise the powers that the conservator has in that capacity in the way that the conservator decides, in good faith, would be most likely to further the objects of the Malvern Hills Trust as laid out in Section 6 of this Bill. Conservators must be accountable to the public for their decisions and actions”.

275. There would need to be consequent amendments to Clause 11, with the insertion as an additional subsection that would become Clause 11(1)(d), “Elected conservators being accountable to the public for their decisions and actions”.

276. Although outside the proposed legislation, your Lordships might consider recommending to the Trust that they adopt as a model the code of conduct that was adopted by the Wimbledon and Putney Commons Conservators in 2019.

277. THE CHAIR: With great respect, you are drifting well away from your petition. I have in front of me page 3 of your petition. I do not find anything on page 3 that is covering what you are addressing us on now. The rule is that you have to stick to what was in the petition.

278. PROFESSOR TEW: I hear the point that your Lordship is making. This is in terms of the change of name to the Trust to—it is the role of the conservator as an independently minded person who can contribute to the debate within the aims of the overall organisation rather than the more limited definition that is currently provided in Clause 8(3A), which does not include that accountability to the wider public.

279. I would now like to turn to the composition of the board. In its petition, the parish

council emphasised the important principle that democratic legitimacy depends on locally elected representatives who are directly accountable to the local community. As raised in many petitions, there is the fundamental principle of no taxation without representation. A key provision of the Bill would need to be the retention of locally elected conservators for each of the levy-paying areas, whose role would be to ensure that levy payers' money was being spent most effectively in preserving both the wider Trust estate and that falling within their area.

280. As a resident of West Malvern, I have some intimate knowledge of the conservation and biodiversity issues that affect our part of the hills. Somewhat differently from the evidence you heard this morning, I can see damage caused by the Trust's current policy of grazing cattle on steep slopes with thin soils and fragile ecosystems. I have no such intimate knowledge of Castlemorton Common, on the other side of the Malvern Hills, and would therefore have no basis for seeking to influence local conservation practice there. Were the Trust's proposals to go ahead, there would be a likelihood that most or all elected trustees would come from Great Malvern, as it is a main population centre. There could easily be no one with local knowledge advocating for the specific conservation issues facing the West Malvern side of the Trust estate, which composes a large and important part of the hills, as my colleague said at the beginning. I am going to skip the next paragraph in order to speed up our presentation.

281. What we are recognising is that in the final composition of the board we may be having the existing levy-paying area or there may be an extended levy-paying area, and we are seeking to consider both possibilities. If the levy-paying area were to stay unchanged, we are proposing that there are elected conservators for each of the six current levy-paying areas. If the levy-paying area were to increase, we would suggest that adjacent parishes might amalgamate and elect a single conservator so that the board would not be too large.

282. Were the levy-paying area not to be increased or to be only increased to bring in parishes with larger land holdings, there would be a strong case for Worcestershire and Herefordshire Councils or their successor bodies to each nominate a conservator to represent those areas with smaller Trust land holdings that would not otherwise be represented. This would also embed a mechanism for accountability for funds transferred to the Trust by these councils under Clause 36 of the Bill, something that is

currently lacking in the proposed constitution of the board.

283. While we do not contest the Trust's view that it would be helpful to have board members with particular areas of expertise, the proposed mechanism for appointing board members via a Trust-appointed nominations committee is not acceptable. It will be open to the alarming possibility of an organisation that one of your Lordships has suggested might already be seen as a mates' club appointing trustees with relevant legal, land management or financial credentials who might also be friends or business associates of existing board members, people who could potentially derive indirect benefit or financial advantage from granting easements or other Trust actions.

284. Instead, a process that would not be open to corrupt practice would be to invite nomination of candidates with relevant knowledge, experience or ability to stand for election to posts on the board linked to specific areas of expertise to be determined by the Trust, such as the protection and conservation of the environment, law and governance, and finance. It is probably unhelpful to specify these in detail as the challenges of the Trust will change over time. For these conservator posts, election could be from the entire levy-paying area and conducted alongside the election of local conservators.

285. Although rejecting the appointment of half the board by appointment, it may be pragmatic to allow for the possibility for the board, once constituted, to co-opt up to two additional conservators in circumstances where additional expertise is required.

286. Based on the foregoing considerations in the event that the levy-paying area remains unchanged, we would like to suggest that your Lordships might consider amending Clause 8(1) to read—I will not read the first paragraph in full. The meat of the change is in the subsection. Subsection (a) would be that the board would have six conservators elected by each of the levy-paying areas of Malvern Town, Malvern Wells, West Malvern, Colwell, Mathon and Guarlford; four conservators elected by the electors of the Trust's entire levy-paying area, and those posts to be specified on the basis of particular areas of expertise as determined by the Trust; one conservator appointed by Worcestershire County Council or a successor body; one conservator appointed by Herefordshire County Council or a successor body; and up to two conservators who may be co-opted.

287. Were your Lordships to accept these amendments, then Clauses 14 to 17, relating to the appointment of trustees, would need to be taken out of the Bill in their entirety, and there would also need to be appropriate revision of Clause 18(2), with clause 18(2)(a)(ii) being deleted altogether.

288. Finally, in relation to governance, Clause 24(2) and (3) raises major concerns in terms of safeguarding the practice of fair and well-managed elections. As it stands, this clause would give the Trust carte blanche to manage the process in whatever way it chose, potentially by a process that is not fair, transparent, independent or open to scrutiny.

289. As I believe Ms Susan Satchell said in response to one of your Lordships' questions, the management of the election could be outsourced, and there is no requirement that it could not be outsourced to a company whose credentials might be somewhat dubious. Interestingly, although Clause 26(1) appears to offer more robust protection, with the provisions of Part III of the 1983 Representation of the People Act being seen to apply, and offering the possibility of legal redress should there be concerns around malpractice, Clause 26(3) offers the Trust the power to modify and, hence, potentially water down the provisions applied by subsection (1), as may be necessary.

290. THE CHAIR: Well, again, you are moving well beyond your petition. You do not mention these clauses at all in the petition.

291. PROFESSOR TEW: In which case, then, I think I finish my evidence at this point. Thank you very much, your Lordships.

292. THE CHAIR: I did not want to cut you off quite so quickly, but we have that rule and we have to stick to it. We cannot look at these other clauses.

293. PROFESSOR TEW: These are matters related to the election of—

294. THE CHAIR: Yes. Well, I can understand the temptation to enlarge, but it is not permitted.

295. PROFESSOR TEW: I apologise.

296. THE CHAIR: Yes.

Evidence of Mr Harnden

297. MR HARNDEN: My Lord, I would like to speak in relation to several other issues, the first being the levy. Hopefully, I will stick to the issue here. All parishioners, through their council rates, pay a precept, also known as the levy. This goes to the Malvern Hills Trust. This is compulsory. You cannot opt out. To opt out would put you in court.

298. In 2025, the levy totalled 42.6% of the Trust's income, compared to an income from charitable sources of less than 2.1%, or, in 2004, 46.1% versus 1.3%. That is referenced in the bundle, pages 14 and 15, and that is a source extracted from the Malvern Hills published accounts, page 39.

299. One really would have to agree that the Trust looks more like a public body than a charity and, therefore, it has to be answerable to the public that funds it. Interestingly, these accounts state the levy income as income from charitable activities. I respectfully ask you, "Do they really mean that?" I am not sure that the levy payers of West Malvern would agree.

300. The levy payers, through their elected representative, should have the ability and they should have the right to question how their levy is used. Is it used responsibly? Is it used ethically? Is it used efficiently? Indeed, is it used legally? This certainly is not the state of affairs that exists at the moment.

301. Currently, elected conservators, such as Mrs Burford, sitting here, are excluded from many decisions—for example, the borrowing of additional funds from the Charity Commission to fund the spiralling costs associated with us all being here today, without engaging in any way the concerns of parishioners. Can these costs be met from the charitable income received by the Trust? I do not think so, as may be seen from the figures quoted on pages 14 and 15 of the bundle.

302. Instead, the costs will have to be met by levy payers as well as loans, but, at the same time, all conservators are being instructed that they should consider themselves to be charity trustees and, therefore, not represent the concerns of their electors. That does

make Mrs Burford somewhat redundant as the elected representative. Mrs Burford's election is an illusion of choice. It is an illusion of democracy.

303. There is deep concern about the proposed reduction in the representation of levy payers. The existing composition of representation is well documented in the 1924 Act. For a long, long while, the elected part worked well, until charitable status was granted. The relevant part of the 1924 Act is, just for your reference, in the bundle under pages 16 and 17.

304. However, the term "representation" seems to have little part in the proposed Bill. Any mechanism of accountability to the public in relation to the use or misuse of levy payers' money is completely absent from the proposed Bill. The proposed composition of the Board, in Clause 8, and the circumscribed role allowed for trustees in subsection 3(a), provides no checks or balances, with the appointed members being able to block any motion from elected members expressing concern as to how funds may be spent.

305. The Trust, as it likes to be known, would claim to be a charitable trust, yet less than 2.1% of its income comes from charitable donations. If it were a true charity, then the levy would become a donation, not compulsory, but, in this House, it has been said the Malvern Hills Trust has been compared with that of being like the National Trust. That is a completely incorrect analogy. No one is obliged to subscribe to the National Trust. It has no guaranteed income, not from government or anywhere else. With the Malvern Hills Trust, there is no option. One must pay the levy, so guaranteeing nearly half of the income to the Trust.

306. As the Trust likes to take on the guise of a charitable trust, they are, therefore, of the opinion that they do not have to answer to the parishioners, and so we come back to the question, "What is the point of elected trustees if they are not permitted to challenge spending decisions or possible financial impropriety?"

307. For the Trust, the obvious advantage of their charitable status appears to be their ability to collect the levy and spend it as they wish, with no accountability to those who supplied the funds. They would like to cherry-pick the advantages of being a charity. This is totally wrong. Is this the sort of accountability—or rather the lack of—that we expect from a body spending our money managing or mismanaging the immediate environment in which we live, indeed potentially controlling the livelihoods in the case

of those with commoners' rights?

308. A particular concern of the parish council is the use of the levy payers' funds to extend the Trust's estate into non-levy-paying areas. Should not the levy be channelled towards the preservation of the hills and the conservation of the existing estate? Remember that old name, the Malvern Hills Conservators. The Trust, as it now likes to be known, would appear to have aspirations of becoming a land acquisition company. As acquiring more land does not acquire more levy payers with it, the result is that the existing levy gets spread thinner and thinner, or increases disproportionately with respect to other rising costs due to the increasing operational maintenance costs associated with these acquisitions. Why should the existing levy payers pay for this increasing burden?

309. I would like to leave the levy there and move on to fencing, if I may, your Lord. Removal of the term "unenclosed". The term "unenclosed" has been a cornerstone of the Malvern Hills Act for over 140 years, giving legal weight and symbolic importance to the Malvern Hills Trust's commitment to maintaining a truly open landscape. The removal of the term "unenclosed" from the primary objects of the MHT in the proposed Malvern Hills Bill could be seen to dilute a long-standing safeguard.

310. THE CHAIR: Well, I am sorry to interrupt you, but that is not a point you raise in your petition. Other people do raise that point, but it is not in your petition.

311. MR HARNDEN: In which case, I will skip on a little bit, my Lord.

312. THE CHAIR: You do have an important point about fencing, though. It is how it is used in the control of livestock. Are you objecting to the use of fencing to control the movement of livestock?

313. MR HARNDEN: Not expressively so, my Lord. There is a time and a place for fencing for livestock. It has been said in here that fencing is necessary, and yet, in reality, the requirement to fence lies with the properties that surround or are adjacent to the commons themselves. There is no responsibility whatsoever on the commons owner to do any fencing at all, and it is a natural feature of commons life. They are completely and utterly open, and animals—cattle, stock—have free rein to roam around. I feel, though, we are digressing into another area there.

314. THE CHAIR: No, absolutely. It is within your petition. It is perfectly fair. You are saying this is intended to be open access land, and you are concerned that fencing might be inhibiting the open access of people to the hills.

315. MR HARNDEN: Yes, my Lord, absolutely.

316. PROFESSOR TEW: Go to “New powers of fencing”.

317. MR HARNDEN: In the Act, as it has been written, it is unclear what the term “open space” means. In Clause 6(4), objects of the Trust, the term—

318. PROFESSOR TEW: Just go down to “New powers of fencing”.

319. MR HARNDEN: I’ll just say this one paragraph, if I may. Objects of the Trust. The term “unbuilt on” is given a definition, but the term “open space” is not, and it does create ambiguity. With that, I will move on.

320. THE CHAIR: Yes. Now, you have a point about licensing in your petition.

321. MR HARNDEN: Yes, I have, but I will just go on to new powers of Trust, my Lord. Under Clauses 48 and 49 of the proposed Bill, the Trust is seeking additional powers to fence land. The Trust would seem to be intent on managing its estate as if it were farmland, and we come back to what we were saying a moment ago, really, on the commons. It is not farmland. It facilitates the more intensive grazing of the land by livestock and, in particular, cattle. There is a time and a place for cattle, be it on the commons mainly, not on upper ground, but that is another story.

322. Not only is the Trust seeking additional powers to fence in open land to facilitate and control grazing; under Clauses 48 and 49, and Clause 59, they wish to have the power to install permanent watering points on the hill. These would be specifically for cattle, because sheep do not need watering points, and they would be very expensive to put in. They would be visually intrusive and it is not really a requirement that should be there at all, and we would really ask that Clause 75 be removed.

323. THE CHAIR: Well, I do not think that is in your petition either. It is very difficult for you to understand the rule, but the rules are there. Clause 75 is not open to you to address.

324. MR HARNDEN: I do appreciate where you are coming from, my Lord, and I do apologise. I will just say that, originally, our petition was written under headings and not clauses. That could well be a major error of ours.

325. THE CHAIR: Well, the petition is very clear and very succinct, if I may say so.

326. MR HARNDEN: Well, that is an omission of ours, being amateurs, so I do apologise, my Lord. Would you like me to move on to fencing and grazing management? Unfortunately, Malvern Hills Trust does not have a very good track record for the management of livestock and fenced grazing compartments within the bounds of the parish of West Malvern since year-round grazing was introduced in 2000.

327. THE CHAIR: It may seem very technical, but, again, that is not in your petition. You are not criticising the grazing policy.

328. MR HARNDEN: Well, it comes in, my Lord, partly by the fact that there is a problem with the fencing used in these areas. It does not seem to be satisfactorily used, and frequently breaks down. Cattle get out, and cattle are destroying parts of the hill. If you feel, my Lord, I am straying from the point, I respect your decision and I will move on. Would you like me to move on to licensing, my Lord?

329. THE CHAIR: Yes, please do.

330. MR HARNDEN: I do not have too much to say about that. At present, there is a limit of six on the number of traders' licences issued. It is felt that they should not be increased, and there is no intention, I am aware, in the new Bill to increase this, apart from the fact that, in Clause 62(3), it would enable licensing of further food stalls, albeit for short term, possibly connected to an event.

331. This may lead to a small income for the Trust, but it would invariably lead to expenditure in terms of waste disposal, litter picking and collection. With the best will in the world, people do drop some rubbish. They might not do it intentionally, but you need to clear up afterwards. Stalls, food or otherwise, do not add to the beauty of the hills. There is no benefit to the conservation of the hills, just a benefit to commercialisation. This would be against the ethos of the Malvern Hills Conservators. Again, the clue is in the name—conservators.

332. Further to licensing, though, is the potential licence required for group activities, as indicated in the proposed Bill, Clause 63(1)(b). This would be to the detriment of local sports groups and school activities. School activities, as well as those from the outdoor centre in West Malvern, frequently take place on the hills. They regularly do take place on the hills.

333. On the commons, groups of young cyclists hone their skills in preparation to riding on the highways. Malvern Cycle Sport, for instance, is quite active in that area. Add to this the Boys' Brigade, scouts and guides, who all have group activities on the hills and commons. Would we really expect these groups, who are local and already paying a levy in some direct or indirect way, to pay for a licence to meet on the hills or commons? Any chance of a short-notice activity would be thwarted by the inability of obtaining a licence at short notice. This would quite simply be unworkable.

334. There appears to be no definition of a group. Would a family be a group? In fact, the provisions of Clause 63(1), in conjunction with (3) and (4), are for specific purposes—and I pick on “specific purposes”—that the Trust has not yet established a policy for. I am not an expert in this area, so you may correct me, my Lord, but we would suggest that it is rather worrying to introduce a Bill, or a part of a Bill, where the policies within that Bill have not yet been established. I would put it as putting the cart in front of the horse. We would suggest Clause 63 to be ill conceived and it should potentially all be removed. That is all I wish to say on that subject, if I could move on to commercialisation.

335. THE CHAIR: Yes.

336. MR HARNDEN: As I mentioned earlier, the present Malvern Hills Trust appear to have aspirations of becoming a land acquisition business. They have the ability of using the levy to purchase land at will. Indeed, over the years, they have purchased significant parcels of land, some at a premium price. It has never been made clear by the Trust just what the end objective was or, indeed, is. Again, the Trust feel that they do not have to answer the levy payers on just how or why their money is spent.

337. Clause 75(3)(b) and (c) demonstrate a further step towards commercialisation in the way acquired land may be used. However, Clause 84 refers to Schedule 4, and here, unless I am terribly misunderstanding this, the possibilities for commercialisation in

Schedule 4 appear to be almost endless. We would draw your attention to all the sections from 2 to 28. It is not made clear whether there would be a charge for some or all of the services listed, but it is not unreasonable to assume that there would be a charge for most. Schedule 4 has the potential of allowing commercialisation on a grand scale. Schedule 4 requires close scrutiny of all sections if it is to remain.

338. Furthermore, the request for a general power, Clause 83(1), is quite alarming. I quote, “Power to do any lawful thing (whether or not involving the expenditure of money) to further the objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects”. Here, the wording “incidental to” would give the Trust an ability to use its power to undertake activities that deviate substantially from its stated objects, perhaps installing a cable car to the top of the Worcestershire Beacon.

339. Again, the possibilities become wide, left unchecked. The consequences of such a power could have a widespread and devastating effect on the Malvern Hills and Commons if left unchallenged. Furthering the objects is not necessarily the conservation of the hills, but pandering to the commercial world of profit and gain. The request for a general power was thrown out in the 1995 Bill. We would suggest that Clause 83 is removed from the Bill, since there should be no material change from the way the Trust was originally designed to operate.

340. Should your Lordships decide that a general power is necessary, then we would ask you to consider a more circumscribed power, solely to furthering the objectives of the Trust, with the deletion of the phrase, “anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects”. That is all I wish to say on that. Could I move on to fixed penalty fines?

341. THE CHAIR: We have to finish your presentation by lunchtime, so it is not very long.

342. MR HARNDEN: I am rattling on quite well, my Lord. I am nearly there. Due to the proximity of many parishioners’ properties to the Trust land, the Trust does consider itself to be our neighbour. I know this because they have actually told me this personally. It is not an unreasonable assumption, and it works both ways, or at least it should do. Having a neighbour with the ability to fine you appears to be potentially

antagonistic. How antagonistic does the Trust really wish to be? They have done an excellent job of alienating the levy payers—their neighbours—in the last 10 years. How much further would they like to go?

343. Forgetting the bad feeling that would be generated, what would be the administrative costs of a punitive fining system? Would the levy payers help to pay for a system that could potentially fine themselves? There is no mention of a right of appeal. Would there be a right of appeal? It is not mentioned anywhere. Life is difficult enough without having a neighbour with the ability to fine you.

344. I mentioned much earlier that the days have gone where amicable discussion could take place. It seems that it is more likely to be replaced by a fine under the terms of the proposed Bill. Combining this attitude with a lack of accountability that the Trust exhibits would make an absolute nightmare situation. Of course, the Trust might intimate that fines are more for outsiders, visitors who contravene by-laws, possibly completely oblivious to such by-laws. Do we really wish to put that to the test? It is not exactly a good advertisement for tourism. “Come to the Malvern Hills and be fined”. Fines would lead to aggression and bad feelings towards the Trust and its employees. We certainly do not need that.

345. Through its own admission, there have been no cases of the infringement of by-laws brought about by the Malvern Hills Trust or the police in recent times. Does that not suggest that there is not really a big problem? We do not have fixed penalty fines at the moment and we would wish not to have them in the future. We would therefore ask that Clause 68 be removed in its entirety. Again, would we wish these powers to fine to be put in the hands of a body that is so unaccountable and has become so unneighbourly?

346. I have finished with that. I now have one section that I hope falls within scope, because it is very much a generalisation. I will keep it very brief, my Lord.

347. THE CHAIR: All right.

348. MR HARNDEN: It is other views. My Lord, I have to apologise to some of my parishioners. Just yesterday evening, we had our monthly West Malvern Parish Council meeting, and it rapidly became obvious to me that I had overlooked the view of some. I

hope to rectify that here, although I have had little time to prepare. There are parishioners who would wish to see the proposed Act completely withdrawn. I would be inclined to agree with you, my Lord, that much effort, expenditure and time has already been expended on this, and there is a need to make this work, so to speak. However, democracy dictates that I must represent their views.

349. It was suggested that we should step back and view the whole scenario at a distance, as we could not see the wood for the trees. We were too deeply embedded in deciphering this new proposed Act. On one hand, we have the Malvern Hills Conservators working within the framework of five existing Acts. Since 1884, they have done a remarkable job of conservation—and I do mean that—preserving and keeping the hills available for everyone to use. They did exactly what it says on the tin. They did it precisely, and it was very successful. These Acts were written by our forefathers, people with a passion for the hills. This can be seen in the way the Acts are written. There is passion in those words. However, in the last 10 to 15 years, through a selected board comprising of yes-men, directed by a dictatorial feud—

350. THE CHAIR: You are drifting into an area that I was asking not to go into. We have heard all of that in the earlier stages of this Committee. We do not want to get into that ground. You have made your general point; perhaps you should just leave it there.

351. MR HARNDEN: Okay. My Lord, the bottom line is that we have conservation versus commercialisation. This is where the real problem lies. The two are incompatible. They are as chalk and cheese. Through modifications made to the proposed Bill, we may be able to push the two nearer to one another, but there will always be incompatibility in the objectives. The two could be moved considerably closer together through a Trust that was more open and democratic, and receptive to levy payers. However, financial business experts suggest that failure is likely in this type of relationship, as the dominant objective will always override the lesser. The dominant objective will always be that of commercialisation, succumbing to commercial pressures and the commercial world. Conservation would take a poor back seat. This is a state of affairs that could exist if the proposed Bill proceeds to fruition unchallenged. That is the end of that part, my Lord.

352. Just to sum up in a couple of sentences, should it be through this Bill that we have

the Malvern Hills Conservators with a clear and singular responsibility to conserve the beautiful environment in which the people I represent enjoy and may traverse, unhindered, an environment not to be taken for granted? Can we get back to having a board of conservators that have the hills and the people at its heart, a partnership where we both strive together for a common goal, or should it be through this Act that we have trustees who are gagged and tied to an agenda, driven by a dominant group of internal appointees with the potential of mismanagement and corruption, opening up the hills and surrounding area to commercial activity, for profit and gain, at the expense of what we all hold dear? By doing so, we would have a Trust that would be further alienating itself from the wider public, both locals and visitors, the very people whose interests the Trust was constituted to serve. The choice, my Lords and my Lady, may well be yours. I have finished, my Lord.

353. THE CHAIR: Thank you very much indeed. We are going to have to break for lunch now. Ms Lean, we can give you 15 minutes after lunch without cutting the next petitioner's time back too much. Can I suggest that you need not deal with things that are beyond the scope of the petition? We well understand that a lot of this went far beyond that. One point in particular, which I would like your guidance on, is about right of appeal against a penalty notice. You can just give us the references to that. Otherwise, there is not very much that you need to cover, because a lot of the ground has strayed beyond what was in the petition. Keep it as short as you possibly can. We will rise now and we will meet again at 2 pm.

354. MR HARNDEN: My Lords, my Lady, I thank you for your attention, consideration and understanding. I thank you sincerely. I am sure that, if all my parishioners were with me, they would do the same. I thank you all very much.

355. THE CHAIR: You have had a very difficult task to perform. Thank you very much for the way you have done it.

356. MR HARNDEN: Thank you, my Lord.