

UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 10 March 2026 (Afternoon)

In Committee Room 2

PRESENT:

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

FOR THE PROMOTER:

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

FOR THE PETITIONERS:

Marilyn Birks and Linda Blake (Malvern Town Council)
David Smallwood

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(At 2.02 p.m.)

1. THE CHAIR: Ms Lean, I think it is for you to reply, as briefly as you can, to the petition we heard before lunch.

Response by Ms Lean

2. MS LEAN: My Lord, I am grateful, and I will endeavour to do so. Clause 8, constitution of the board—I am conscious that you have heard a lot from us on that already, so I can limit my response to just a couple of points. First, the proposals that have been put forward by the petitioner would not address key issues that are driving changes to governance in the Bill. They do not address the situation of the board needing to be able to recruit for particular skills or experience, and to have some control over securing trustees with that skill or experience.

3. THE CHAIR: Do you need six for that purpose?

4. MS LEAN: My Lord, I will come on to that in a moment. The Trust considers that the balance is right, but these are just the headline points that we would suggest that the proposals do not do. The first is the skills and experience; the second is that it does not address the disparity in the electoral areas to number of trustees; and, thirdly, it does not protect against the issues that might come about from any further local government reorganisation or boundary changes.

5. Secondly, my Lord—and this may be where it touches on the balance—as you will recall from Ms Satchell’s evidence, the Trust thought long and hard, and has looked at a number of different options for how to reconstitute the board. If I may, perhaps the fact that there is no one obvious, outstanding solution compared to what is in the Bill is illustrated by the fact that the proposals that were advanced to you today, orally and in the written material, are actually quite different from the ask that was included in the petitioners’ petition.

6. THE CHAIR: Yes. You do not need to go into that.

7. MS LEAN: Indeed, my Lord. I am not going to on that point. In terms of the balance, my Lord, as you have heard, the starting point, if I may, is perhaps a point that I do not know has been pulled out as yet, which is that it was the 1924 Act that

reconstituted the board in what has become the board today. That Act did not set a board up with a majority of trustees who are elected by the levy payers. Section 7 of the 1924 Act, as originally enacted, had 10 elected conservators and 15 appointed conservators. Even moving to a situation under the Bill proposals of a 50-50 split between directly elected and not directly elected trustees is an increase in the proportions of the board as it has been historically.

8. My Lord, in my submission, the question then becomes: what is the justification for not merely bringing the number up to 50-50, which is itself adjusting what was set up in 1924, but flipping it over so that, having been in the minority of the board, trustees who are elected by the levy payers are given an enshrined majority on the board? Bear in mind the nature of the Trust itself, which is a body set up by statute to manage and control land for the benefit of the public, of whom the levy payers are a discrete subset. My Lord, I am sure we may well come back to margins and proportions and suchlike for future petitioners, but those are just the points I wish to pull out on those points today.

9. Finally, a fourth point in response to this particular petitioner's concerns—there was some focus on the potential for a mates' club, or the fact that some of the trustees would be appointed and somehow the Trust can be controlled. There is a theme that comes through there, which is that these appointed trustees are somehow appointed by this faceless entity or they are somehow separate to the Trust itself, but of course, when the appointments are being looked at, when there are candidates to be appointed as trustees, that gets voted on by the whole board, so it would be voted on by a board that is made up of 50% elected trustees and 50% appointed trustees. This is not something that is imposed or taken away somehow. There is involvement of the elected trustees in the selection and appointment of the appointed trustees. It is not something completely separate and other.

10. Again, the question perhaps there comes: given that it is the board of trustees that appoints the appointed trustees on recommendation from the nomination committee, and given the safeguard that is built into the Bill, which says that, if the board wants to go against a recommendation of the nomination committee, they need a 75% majority on a vote, that does, in my submission, raise an issue. When you start adjusting that 50-50 starting point to give a majority to a particular group or type of trustees, you do start eroding away against that safeguard.

11. THE CHAIR: You only have about five minutes left, and we are going to go over this ground in other petitions as well.

12. MS LEAN: Indeed, my Lord. Forgive me. That was just a point to raise about the concern about one group being able to take control of the appointments commission.

13. My Lord, the second point, probably, for me to address is—I do not think I need to address the levy, because that has been addressed in our evidence. The third point was on fencing. You have heard today and on Thursday from the Trust’s witnesses on that, as to the need for and utility of the powers. There are two points I can highlight or emphasise, if I may: Clause 48, which is the power to secure the Commons—as I mentioned on Thursday, that is one that would require consent under the Commons Act, so an independent decision-maker with the opportunity for the public to input into that.

14. On Clause 49, two points on that—one is that the power to fence for grazing purposes is required to be done in furtherance of the objects. It is not just a power to fence for grazing; it is fencing for grazing in furtherance of the objects. Of course, the objects include maintaining the landscape and natural appearance of the hills, as well as keeping them on built-on and open space for public recreation.

15. The second subpoint on Clause 49, if I may, is that there is specific provision in subclause (4) of 49 about provision for access. If the fencing is going to cross a public right of way, you have to make access points. The Trust also has to consider otherwise if it can make access available, bearing in mind the purpose of the fencing.

16. My fourth point is on licensing. I think we have broadly addressed that in Ms Satchell’s evidence this morning, unless there was anything particularly to address on that.

17. A fifth point on commercialisation—there are two aspects to this. The first is general power. My Lord, previously I have drawn attention to the particular restrictions in Clause 83, but just to highlight the particular concern about the cable car up the Worcestershire Beacon, there is obviously the express exclusion in 83(3)(c) not to use that power to erect buildings or structures. It does seem that you would not be able to put a cable car up the Worcestershire Beacon in reliance on Clause 83 of the Bill.

18. Secondly my Lord, the concerns about commercialisation in Schedule 4—again, as the Chair identified when we first looked at Schedule 4, that has to be read with Clause 84 that says you can exercise the powers in Schedule 4 “to further the objects (but not for any other purpose)”. It is not a freestanding power; it has to be done to further the objects. Just to highlight, there seems to be a concern that those powers could enable additional costs being put on the Trust, but of course a couple of them—you can see how they might work to alleviate the burden or expectation on the levy payers, given that they would give the power to raise funds or to perhaps establish a supporters’ organisation with potential subscriptions. There has been a lot of concern about what these powers might put in terms of a burden, but obviously they are also there to potentially assist in that regard.

19. Finally, fixed penalty notices, which I had expressly down—my Lord, it is not an appeal point per se, but the way that the fixed penalty notice provisions work, which you have in Clause 68, are that, essentially, the fixed penalty notice gives you an option. You can pay it, and that deals with your liability; if you do not pay it, it is dealt with in court. It is not an appeal procedure, but you could choose not to pay it and then dispute the underlying offence or what-have-you in court. That is my understanding. I will look to Mr Lewis in case I am wrong on that.

20. THE CHAIR: That makes sense. There is no appeal, but you have the option to go to court and sort it out that way.

21. MS LEAN: I am told it is essentially like a speeding fine or something like that. You can take the notice and you can pay, and that deals with it, or you can say, “No, I am not going to. I am going to go to court on this instead”. My Lord, those are my points in response.

22. THE CHAIR: Thank you very much indeed. That is very helpful.

23. LORD EVANS OF GUISBOROUGH: Chair, might I just raise one very brief point? I think an assertion was made by the petitioner that a general power similar to the one that is being requested this time around was requested on a previous occasion, when legislation was considered, and was turned down by Parliament. It is the first time I have heard that. Is it correct?

24. MS LEAN: I am grateful, my Lord, because that is something I should have put on my notes. I put it on my notes for a future petitioner. We have gone back and looked at the deposited Bill for the 1995 Act and cannot see that there is reference there to a general power. We have also been wondering where the basis was for saying this had gone in and been taken out. As far as we are aware, there was not a situation of an equivalent of Clause 83 being put forward in the earlier legislation that was then rejected, as it were, through the parliamentary process, but it has been raised by a number of petitioners, so it may be a slight plea from us that, if there is a particular document or something in particular that petitioners have in mind as forming the basis for that, we would be very grateful to understand from them what it is, because we have not been able to track down where that might have come from.

25. LORD EVANS OF GUISBOROUGH: Thank you.

26. THE CHAIR: Thank you very much. We now move to the petition from Malvern Town Council. It is for you to decide whether you want to make an address, lead evidence, or just make a presentation.

27. MS BIRKS: We would like to make an address. We do not have a formal presentation with us.

28. THE CHAIR: Yes, please do that. Thank you very much.

29. MS BIRKS: If I may say, I have just heard information that was not contained in the Bill that I have read. I do refer to something, but I have heard information just now that is an additionality.

30. THE CHAIR: Your petition raises just two points, as you are well aware. First of all, it is the composition of the board—the number of trustees, which we have just been hearing about. The other one is the way meetings are held; you say they should be held in person, not online.

31. MS BIRKS: That is absolutely right.

32. THE CHAIR: Yes, so if you could develop those two points for us, that would be very helpful.

Malvern Town Council

Evidence of Ms Birks and Ms Blake

33. MS BIRKS: Thank you. We are both going to speak. We represent Malvern Town Council, and this afternoon present and speak on its behalf regarding the council's objection to specific clauses of the Malvern Hills Bill. I am Marilyn Birks, and I am chair of Malvern Town Council and the mayor.

34. MS BLAKE: I am Linda Blake and I am the town clerk of Malvern Town Council.

35. MS BIRKS: We will establish our objections and provide the general and specific context on which they are founded, and describe the process by which Malvern Town Council reached its conclusions. Malvern Town Council objects, as far as in our petition, as follows: that the proposal for six trustees, which is half the proposed board of 12, being appointed—any of the trustees being appointed, whether on merit and/or in accordance with a published recruitment policy. We strongly advocate that all trustees should be elected.

36. We further object to the proposal that meetings should be held online and not in person. The view of the town council is that all trustees on the board of the Malvern Hills Trust should be elected, and there should be no appointed trustees. The council supports the board being reduced to 12 members to represent the levy-paying areas, but these trustees must all be democratically elected. If there are any specialist skills required to assist trustees or the wider work of the Trust—those being skills not held by elected trustees—then advisers in specialist areas such as legal matters, finance, land management or human resources should be sought and appointed as necessary. These advisers should not have voting rights and should not be trustees.

37. Meetings of the Malvern Hills Trust should be held in person and not online. However, this should be reviewed and kept in line with local authority practice.

38. THE CHAIR: What is your own practice?

39. MS BIRKS: At the moment it is to hold all our meetings in public.

40. THE CHAIR: No online at all in your town council.

41. MS BIRKS: No.

42. THE CHAIR: Do other councils, to your knowledge, use online services for meetings?

43. MS BIRKS: By and large, particularly looking at our own councils, no, they do meet in public. What we are saying is that there may be circumstances where it might be appropriate, but what we felt was that, in that proviso that we put into our response as well, we think that we should make sure we are up to date with what is happening across the country.

44. THE CHAIR: Yes, so it is the public element of a meeting in person that is important.

45. MS BIRKS: Absolutely, and I do go on to qualify this later on with examples, if I may. I would like to just talk for a moment about the overall context in which we have responded. In the UK, we live in a democracy, which of course means rule by the people. Democracies rest upon a fundamental principle that citizens not only have rights, but they have a responsibility to participate in the political system. That in turn protects their rights. Democratic societies are committed to values of tolerance, co-operation and compromise, and provide opportunities to participate fully in the political, economic and cultural life of society. The matter of democratic representation is significant in our opposition to the proposed board of trustees.

46. MS BLAKE: We come on to some information about Malvern Town Council. Malvern Town Council represents around 28,000 residents. It comprises nine wards, with each ward having a proportional representation of councillors according to its size. There are 20 elected councillors. The town council is a corporate decision-making body. No one councillor or group of councillors can make a decision without the majority agreement of full council.

47. The council is committed to conducting business according to democratic procedures, committee structures, systems of delegation and standing orders. Although we have differences of opinion, as does any healthy democracy, on the matter of the

petition against the Bill the council has been unanimous. The council decision to ratify its decision was agreed unanimously by all councillors present at the full council meeting held on 17 December last year.

48. The town council levy-paying wards—the wards that pay the Malvern Hills Trust levy and are located within the town council’s boundary—include all of the nine wards represented by town councillors. These range from Lygon ward, with 168 electors to Chase ward, with 5,202 electors. A total of 23,873 electors is by far the largest group of electors across all of the Malvern Hills levy-paying parishes, with the others representing approximately 8,000 electors. The total levy income provides between 43% and 46% of the Trust’s annual income—46% in 2024 and 43% in 2025. Town council wards provide approximately 80% of this levy, amounting to in the region of £558,000.

49. MS BIRKS: We are going to just add that the total income of the Trust for 2025 was made up as follows: the levy was 43%, donations were 2%, car parking 27%, stewarding grants and other grants 18%, investments were 4%, and other was 6%.

50. MS BLAKE: In the statement of the accounts for 2025, the councillors noted that the levy-paying element appears under the heading of “charitable activities”. This is a levy—a tax—and not a charitable donation. Council is of the view that charities rely on donations, legacies, deeds of will, et cetera, but not on a levy—a tax on local inhabitants in this case.

51. As indicated, Malvern Town Council is representing a considerable number of electors. The proportion of the public who have expressed their views to individual town councillors as well as directly to the town council is substantially and considerably weighted towards the objections we have registered in our petition.

52. The process of consultation—on 19 June 2024, the town council voted unanimously to appoint a group of town councillors to work with myself to prepare and submit a response on the proposals by the Malvern Hills Trust to update the Malvern Hills Act. Subsequently, the consultation group met on three outcomes and listened to, debated and requested further information from a wide range of representatives. Parity was meticulously sought, with no one interest group being afforded more time or engagement than another. The chief executive and the governance change officer of the Trust both attended a meeting to present their views and answer questions.

53. We would like to draw attention to the fact that the consultation was never more than a partial document. It contained certain sections of the proposed draft Bill only, the rest of the consultation being questions. Town council challenged the governance change officer about the partial release of information, and on this matter we were told, “The main point, from a purely administrative point of view, is letting everyone have a chance to look at the draft Bill or further draft clauses in due course. There is a balance to be struck between releasing sections of drafting to get feedback, and the fact that this, the consultation, is an iterative process”.

54. No further information or draft clauses were forthcoming. A response to the consultation was duly submitted by the town council, and the answers relating to our petition are as follows. Question 3 asked, “Do you agree there should be a maximum of 12 trustees, and do you agree that half the board should be elected and half selected for their skills and experience?” Town council replied “yes” to a size of 12, but “no” to a mix of elected and selected trustees. The council said, “They should all be elected, but if there are any specialist skill areas not held by elected trustees, then an adviser should be appointed by the board as required”.

55. When asked if we agreed that combining electoral areas is the most practical way to overcome the current disparities in the size of the electorates, the council said that, “Yes, the 12 elected trustees should be elected by all levy payers and not just an area”. We do suggest in the response that every ballot paper would allow a levy payer to select candidates by ranking them. If board members do not have the relevant skills required, then specialist advice in areas such as law, finance, land management and human resources should be sought as necessary.

56. In answer to the question about whether meetings should be held online so long as they are streamed in public, we answered “no”, and added that this should be reviewed and kept in line with local authority practice. With question 8, when asked, “Do you agree that the meetings of the Trust should be open to the public when a binding decision is to be made?”, we confirmed we did, unless there was a confidential item which requires the public to be excluded.

57. THE CHAIR: Can I ask you just to pause there? There is an interesting point here. You realise that bringing a Bill before Parliament is a very slow and expensive process.

There may be something to be said for including a provision that allows meetings to be held online because, looking to the future, that may be more common than it may be now. The trouble is that to come back with another Bill to allow that to happen would be delay, expense and so on, which is best avoided by having it in the Bill now. Do you accept that argument?

58. MS BIRKS: I think so. This being, though, the formal meetings—again, I will make reference to this. It is in relation to the ordinary meetings that are held. Yes, there may be occasions where we do need to speak to councillors, and having what we might call a Zoom meeting is expedient. I will put those points, if I may, when I come to that—is that why we think it is important, because the element of meeting in person carries a lot more to the nature of that meeting than it does when that meeting is online. If you would bear with me, I do make these points later.

59. THE CHAIR: Thank you very much. I am sorry to interrupt you, but it is an important factor that we should bear in mind.

60. MS BIRKS: Not at all; thank you for raising that. We are aware of that.

61. MS BLAKE: After the submission of our responses, I received an email from the governance change officer in which it was acknowledged that councillors had diligently gone through the consultation document and formulated the responses. She went on to write, “I am sure there was a lot of staff input into the response too. There are a few points for the trustees to pick up in deciding how to respond to the consultation. It is really important the Trust gets it right and everyone’s input is valued”.

62. When the full Bill was finally released, it was evident that the major points regarding the composition of the board of trustees had been ignored and, if not ignored, certainly rejected. Council submits that the composition and process of getting a board of trustees in place was the absolute kernel of the majority of those who responded to the consultation, and certainly all of those representing levels of local government.

63. A letter I received on 22 December from Sharpe Pritchard provided the promoter’s response to the points we made in our petition. The council considered that these did not provide a rationale nor information that went above and beyond the questions laid out in the consultation documents, and the validity of the consultation response was

subsequently reaffirmed.

64. MS BIRKS: Thank you. Now I would like to give you the details of the town council's objections. Firstly, in relation to Clause 8 entitled "Constitution of Trust and status of trustees as charity trustees", our understanding is that the Trust plans to continue as a hybrid—and that is my term—organisation, where it is a charity as well as a public body. This confuses matters and brings into question that trustees only serve as charity trustees. This should not be the case. According to one definition of a public body that I have found online, a public body is any body, corporate or otherwise, that performs its duties and exercises its powers for the public benefit as opposed to private gain. Under the Local Government Act 1972, public bodies include local authorities or those who have powers to issue or levy precepts.

65. In our view, the Malvern Hills Trust, which raises a levy from our electors, is a public body, and in this matter, any trustee should embrace the role of not only a charity trustee but also that of a representation of the levy payer. This matter must be addressed and resolved. The hybrid nature of the organisation leads to a misunderstanding with the voting public, who in this case are the levy payers. Indeed, the first Malvern Hills Act infers this to be case. I would argue that the vast majority of voters believe that they are voting for representation of their interests as a taxpayer. Most are not aware that the Trust will not tolerate any discussion, challenge or debate to matters it deems do not relate to its role as a charity. The town councillors are of the view that the Trust does not only operate as a charity, and, according to that adage, there should be no taxation without representation.

66. The proposals in the Bill regarding the status of trustees are not fit for purpose. They deny representation of the levy payer. They only permit representation for the Trust's charitable aims. They do not embrace the fact that representatives are elected by levy payers. Who and how is the levy payer represented? Who represents their pecuniary interests and rights as part of what should be a democratic system?

67. In relation to this, I would go further, to suggest that the new administrative arrangements may marginalise the elected trustees, as the process described could lead to the board, at certain points, having a majority of trustees that are appointed and not elected. Where the appointed trustees vote for one of their number to become the chair

of the board, that chair, in all probability, will hold a casting vote. If the chair is an appointed trustee, then all the elected trustees could be outvoted, and therefore the levy payers' representatives would lose the vote and not be able to bring their concerns into policy or practice.

68. THE CHAIR: Can I just ask you to pause there? If we accept your proposition that all the trustees are elected, that really meets your basic objection, as I understand it.

69. MS BIRKS: Yes, it does.

70. THE CHAIR: What about a position, as some people are suggesting to us, that the composition of the board is changed so that there is a majority of elected—for example, eight elected, four appointed. Would that be acceptable too to you?

71. MS BIRKS: Council has instructed me to say that it is all elected, not appointed.

72. THE CHAIR: Your point is really for the point of view of representing the positions of the levy payers and the public nature of the Trust.

73. MS BIRKS: Also, I will go on to say, if I may, and give you an example. As we say, we are a corporate decision-making council, so therefore I cannot put forward views that have not been agreed by full council.

74. THE CHAIR: I understand that. I do not want to press you to something you do not have authority to accept.

75. MS BIRKS: We say what we think may be something that would be acceptable to town council, if that is helpful to you all. I will cover that, if I may.

76. In Clause 8, I draw your attention to the following points. In Clause 8(1)(a), we notice that the six appointed trustees come before, as it is written, six to be elected. Now, we sincerely hope that the order in which the adjectives appear does not subliminally indicate a rank ordering of importance to the authors of this Bill. Town council is of the view that all trustees should be elected, and agrees that they should be elected by the electors of the whole of the Trust's electoral area.

77. Clause 8(6) refers to trustees selecting one or more of their number to act as a point of contact between the Trust and the inhabitants of any of the parishes comprising

the Trust's electoral area. This is restrictive, as only one or more of the trustees is required to be the point of contact with the inhabitants—inhabitants who are also levy payers. It does not state that this role should fall solely to the elected trustees, nor does it specify a mix of trustees. This could potentially mean that the only link between the levy-paying public and the Trust might be through an appointed trustee.

78. I suggest the possibility here of a scenario when someone who has not been voted into position by levy payers, in this case being an appointed trustee, and someone who does not have to meet criteria by living or working in an area of the Malvern Hills, may be disadvantaged by not having any knowledge or understanding of the area. They may not be an advocate for the needs of the levy-paying inhabitants, and may not be equipped or capable of forwarding matters that levy payers may wish to raise. People who have been elected do have a responsibility to respect their voters; an appointed trustee does not have any such responsibility. Indeed, they have no reason to know any of the electorate or the inhabitants, especially as they could come from anywhere in the UK or beyond.

79. As with town council's elections, which are run according to the relevant local government law, a candidate confirms eligibility, and in most cases provides a statement of their reasons to seek votes. Information about the candidate is published, although some information, such as the home address, can be withheld, but the information is kept by the returning officer.

80. For town council, if it is co-opting a councillor—co-option being a situation that arises when a vacancy occurs and no election is called by local electors—the candidate has to provide eligibility information, and is encouraged to provide a personal statement. All this information is published on the council's website for public perusal. The council interviews the candidates and takes a vote.

81. In this Bill, the proposals in Clause 8(1)(b) mean that half the board—the appointed six—will not be required to provide any information about themselves to the public. The appointed trustee will have responsibility, according to Clause 8(3), for the general control and management of the administration of the Trust. However, we believe the appointment process is not transparent, fair or accessible to the public, nor to independent scrutiny.

82. Clause 9, about the term of office of trustees—in Clause 9(1), once again we note in the wording of the Bill that the term “appointed trustee” comes before that of “elected trustee”, as it does elsewhere in this clause. We strongly argue for democratic accountability and for there to be no appointed trustees. We did agree that all trustees are elected for four years. We do agree with that. Subsequent matters in this clause could equally apply to the terms of office for 12 elected trustees.

83. Clause 10 deals with transitional arrangements and co-opted trustees. Under Clause 10(1), it is stated that each of the existing trustees’ terms of office “expire at the end of the day preceding the new constitution date”. In Clause 10(3), it gives existing trustees the right to co-opt two from their existing number, which could be “in addition to the trustees appointed in accordance with Section 14”, albeit the two trustees who were on the previous Trust board will serve for a period of six months only.

84. According to Clause 10(3), I am led to construe that they will be joined by six appointed trustees as well as the six elected trustees. Therefore, there could be a period up to six months where there are eight trustees who have not been elected. This is cause for concern here to those of us who argue for a fully elected board of trustees to be in place from the date a new constitution is adopted.

85. In Clause 11, which is the declaration to be made by trustees, subsection (1)(a) relates to the trustee’s functions being “solely and exclusively to advance the objects”, objects being for the benefit of the public. The most appropriate way to ensure this matter is to establish a board where all trustees are elected.

86. Clause 11(1)(b) should contain a proposed code of conduct for trustees whereby they both recognise and are accountable to the electorate, but always taking into account that the Trust has legal requirements and constraints as identified in the Acts of Parliament that relate to the Trust. This would underpin the responsibilities of the 12 elected trustees who should comprise the board.

87. In Clause 12, which concerns disqualification and resignation of trustees, there is a concern that invoking this clause could cause a specific interest group to remove a trustee and, in doing so, would skew the membership of the board in the period until a replacement trustee is found. The imbalance in the trustee membership could influence or affect decision-making processes. Whatever the cause, if all trustees are elected, then

no such gerrymandering could occur.

88. Clause 12(3)(e) refers to the Trust's status as a charity. As noted earlier, there is also a question of the Trust's status as a public body that levies a local tax. This point is pertinent to the representation of the levy payers, and it does not appear in the Bill.

89. Malvern Town Council, operating under local government policy, cannot remove from office or declare the office of a councillor to be vacant. If there is a complaint about a councillor, then it is taken to the district council's monitoring officer for investigation. Thus, a decision is made by an external public body. Under similar circumstances as noted in Clause 12, the town council is subject to the provision of a safeguard whereby one or more councillors cannot be removed by other sitting councillors. If it was permitted to do so, it may invoke a situation where one faction of the council may seek to remove a councillor for mischievous reasons or to ensure that a dissenting or controversial opinion is squashed. There may be pitfalls in that policy, but it does ensure that the council is not its own judge and jury.

90. Under Clause 14 about appointed trustees, we object to any appointed trustee or interim appointed trustee being a part of the board. All trustees should be elected. There is another area of land in England that is also governed by an Act of Parliament where a levy is paid by the local inhabitants, and this is the Wimbledon and Putney Commons. They have a board of trustees comprised of eight people. Of the eight, five are elected by the levy payer, and three are appointed. They are not appointed as in this Bill—reference to Clause 14—by a nomination committee—reference Clause 15, subsections (2), (3), (4) and (5). One of their appointments is made by the Home Secretary, one by the Secretary of State for Environment, and one by the Secretary of State for Defence.

91. Each of these nominators, although appointed to their offices, are members of the Government who in most cases themselves would have won an election through a national, general or byelection process. It is acknowledged that the appointment is likely to be made by a civil servant, but none the less the nominator is a public body open to public scrutiny. The nomination committee as proposed in this Bill is not open to scrutiny in the same way.

92. As referenced in Clause 14(2)(b), the board will create its own published recruitment policy and determine, under Section (2)(a), its own definition of the word

“merit”. There is no suggestion that these functions of the board will be scrutinised.

93. Clause 14(3) and (4) state that the recommendations of the nomination committee can only be rejected by the passing of a special resolution and provision of written responses. The recommendations of the nomination committee will be paramount, no matter how long it takes to agree who should be nominated. To note, if a nomination is accepted by the existing trustees, then the nominee becomes an appointed trustee to that board. Unless specifically stated in the standing orders of the board, if any such orders are put in place, no majority vote would be required. That is the element I heard earlier that I had not read. The public would know nothing about that appointed member none the less, unlike those people who had been elected.

94. Levy payers vote for someone to become a Malvern Hills trustee. They have access, when they are voting, to information about the candidate, and in most cases the candidate will supply a statement or a manifesto outlining their aims, objectives and principles, followed by them attending a public meeting or by invitation to a parish meeting to give a statement followed by questions and answers. This provides the elector with an understanding of the candidate.

95. In Section 14(5) it is stated that the appointed trustee “must be a person who appears to the trustees to have special knowledge, experience or ability” in matters relating to charity governance, management of land, the protection or conservation of the environment, or financial, human resources, public relations or legal matters. Why put the Trust at risk of appointing someone who appears to be able to cover these areas, when there is no indication in the clause that they must have proven experience and ability?

96. I referred to the Wimbledon and Putney Commons board of trustees, but, to be clear, I am not, on behalf of Malvern Town Council, suggesting an alternative model for the constitution of the board. I do not have the corporate agreement of the council to recommend alternatives other than the matter on which it unanimously voted, being that the Malvern Hills Trust board should be 12 elected representatives.

97. THE CHAIR: If I may interrupt you, we have another petition to deal with this afternoon. We are going to have to finish this particular petition at about 3.00 pm.

98. MS BIRKS: How are we doing? Sorry. I am not far off.

99. THE CHAIR: Another five minutes? Good. Thank you.

100. MS BIRKS: Other petitioners may suggest alternative models, and that is what we are going to say to you—that they may do that—but for us it is election that is most important, not nomination and appointment. In the nomination committee, that make-up could maybe not include any elected member. It might be noted in subsection (4)(e) that the independent members of the committee must not be “a person who would be entitled to vote at an election for an elected trustee were an election for an elected trustee to be held at the time of their appointment”. Therefore, at certain times electors would be barred from becoming an independent member of the committee. These matters effectively could reduce the capacity for elected trustees or members of the levy-paying electorate to participate in a nomination committee.

101. Please note also that in subsection (6) it proposed that subsection (5)(a) could be superseded by Section 2. (5)(a) states, “In appointing an independent member, the trustees may take into account whether the candidate has any connection with the Malvern Hills and the local area within which the Malvern Hills are situated”. Members of the nomination committee do not have to have any connection with the hills at all; only elected members have to be from the area.

102. In Clause 21, there is a provision that affords the appointment of an interim appointed member to take place to fill a vacancy of an elected trustee, whereas the calling of an election is constrained either according to the scheduling of ordinary elections, or the time period from when a vacancy occurred. This appears to imply that an elected trustee’s place could be taken by an appointee. If this is the intended case, then it adversely impacts on the make-up of representatives of the board and affects the number of elected members. The above point is further referenced in Clause 22, and there I have noticed that, for a vacancy of one or more elected members, only an interim appointed trustee will fill the vacancy until an election is held.

103. In terms of meetings, Malvern Town Council agrees that meetings should be held in public, and proposes that the Trust should hold all its board meetings in public. In Schedule 1, part 1, subsection (4), there is a requirement that ordinary meetings—

104. THE CHAIR: Sorry, Ms Birks. You explained your position at the very beginning very clearly—that it is the public element of a meeting which is absent if it is online, because the public are not watching what goes online. It is as short a point as that, is it not?

105. MS BIRKS: It is. For example, when you hold a meeting in public and people are sitting and looking, they can read a lot of other signs of communication. They can see who is putting their hand up in what order, because sometimes online the Chair will select who is going to be speaking.

106. THE CHAIR: I am sorry. In view of timing, I have to try to cut things as short as I can. I think you covered that point very clearly earlier on.

107. MS BIRKS: We think that essential forms of communication may be lost to the public. Let us be honest. How often do we hear someone draw breath, tut or shake their head? All of those things may not be seen through electronic means and where the camera is positioned. Indeed, sometimes the camera may not be switched on if people are in different locations, so they cannot see that actual member. We think that the public have a right to be in the minute in the present with that committee, particularly for all these ordinary meetings.

108. THE CHAIR: Yes. If you forgive me, can you bring your presentation to an end now?

109. MS BIRKS: Yes, I can, certainly. The point we want to make is that it is evident that the most substantial percentage of the annual income of the Trust comes from levy payers, and it would be undemocratic and unjust for them to be denied proper representation on the Trust. Let local levy payers elect local trustees to represent their interests—trustees who will be open, accountable and scrutinised in their role, both on the Trust and by the public, through the ordinary meetings, all of which should be held in person.

110. THE CHAIR: Thank you very much. Ms Lean, a very short reply, please. I think one of the things that you really need to address is whether it is acceptable, given the nature of the board and what it has to do, for the appointed trustees to be replaced by people appointed from outside the board to give advice, so that the board would be

entirely elected but the special skills would be obtained by asking people to come to give advice to the board but not being representatives in the board with a voting right. What is the answer to that?

Response by Ms Lean

111. MS LEAN: My Lord, I have not had the chance to take instruction on that specifically this afternoon, but from the Trust's perspective, that does not solve the issue. The Trust can today bring in advice or advisers, but, as Ms Satchell outlined in her evidence a couple of weeks ago, we cannot get away from the fact that this body is a statutory body but it is also a charity. Part of the obligations of that are making sure you have the necessary skills and experience within your board to be able to take forward your charity's functions. Saying it almost does not matter whether you have those skills on the board because you could buy it in does not address that fundamental point.

112. Also, if I may, it comes back to the situation of going, "There is also an obligation on anybody, including charities, to use their resources wisely". It is not particularly desirable to be in a situation where you are always having to buy in advice and expertise because you simply do not have that within your organisation or within your board at a time, because that in turn will also place pressures on levy payers in that respect, if that is upping the costs to the Trust of having to do that. I am sure Ms Satchell could speak to that further if needed, but I hope that is rough and ready.

113. Can I just check if I have missed something? I am reminded of another point—I am grateful to Ms Satchell—which came up, which is that, of course, part of the benefit of having the expertise within the body itself is you know what advice you might need, and you know where you may need to go and get it, and you know you may be able to formulate the questions. Again, there is the benefit of having that within the body itself because then, for example, you know what you do not know or you know what you might need to seek advice on. When any advice comes back in, there is that sense of at least somebody who has the information or the experience who can look at that critically and go, "Does that look like it does what we need it to do or are we just missing it there?"

114. Those are the three aspects as to why, in part, it would not be acceptable to replace being able to build in the skills and experience of the board with just being able to bring

it in through advice or buy it in.

115. THE CHAIR: Thank you very much.

116. MS LEAN: My Lord, was there anything else you wished for me to address in response to this petitioner?

117. THE CHAIR: Unless members of the committee think so, I do not think you do, really. We have covered this ground about membership often enough. I think we understand the argument on the question of meetings. You accept, I am sure, the benefits of a public meeting that Ms Birks has been addressing. You are putting it into the Bill really as a safeguard so that, in future, you may need to use online resources more often than you do just now.

118. MS LEAN: Indeed, my Lord, and, if I may, on meetings, I do not think it is necessary to go to it, but in bundle 4, which is where Ms Satchell's materials were from when she gave her main evidence, you have a note starting at page 460 on the proposed constitutional changes. The last page of that, 463, paragraphs 15 to 17, deals with this point about access to meetings. What they make clear is that there is nothing that says, "You shall have meetings electronically"; what it says is that you can have them, but you must have at least two meetings that have to be in person. It is not the other way round. It is not suggesting only two.

119. As my Lord says, it is an important safeguard power, as we saw with the coronavirus, when there had to be legislation passed to enable local authority business, for example, to carry on because there just was not the provision there. It is an important safeguard power that means the Trust can work out how practically to do it, or, if an event happens where we are all not allowed to be in the same room again anymore, that they can still carry on carrying out their business.

120. My Lord, I think the final point I should touch on is that I am conscious—and I say with respect—that we traversed some distance today or some clauses today that we have not previously addressed in our evidence because they were not on the list of opposed clauses.

121. THE CHAIR: Yes, and I think you need not worry about that.

122. MS LEAN: I am grateful. I was just going to flag that I know there are some points there. If I pick them up when we come to the unopposed, I would be grateful.

123. THE CHAIR: No, I did not stop her doing that. She was just building up her case that elected is necessary for all sorts of reasons.

124. MS LEAN: Indeed, my Lord. It was just that I wanted to flag that we are aware we have not. If you want to hear anything from us, we will make sure we put it on the list to deal with in that later session.

125. LORD INGLEWOOD: Could I quickly ask one point? Clause 12—it was suggested by Ms Birks that you are marking your own homework as far as misbehaviour or inappropriate behaviour by the trustees. Is the reality that, in the event of that sort of thing happening or being a possible course of action, you would consult the Charity Commission? How do you respond to that criticism?

126. MS LEAN: My Lord, I am afraid I am dredging my mind back to when we looked at this back before proceedings began, when we thought it might be one of the clauses that was raised by somebody, which was it is not so much about the Trust marking its own homework as providing an important safeguard in the context of this body and the charity that, if there is a trustee who is not meeting the criteria or does fall within those almost what looks like quite extreme situations, the Trust can do something about it. Of course, what is important to bear in mind is that, from recollection, any decision to remove from office has to be by a special resolution. That is in Clause 12(2). It would need 75% of the trustees at a particular meeting to vote to remove a fellow trustee, provided that one of those grounds was made out.

127. LORD INGLEWOOD: It is just that there may be dispute about the facts.

128. MS LEAN: Indeed.

129. LORD INGLEWOOD: That is all I am concerned about in this context. I do not want to go more deeply into it, and I think you have answered the point I was trying to establish.

130. MS LEAN: I am grateful.

131. THE CHAIR: With that, I think we must bring this proceeding to an end. Thank you very much indeed to Ms Birks and to you both for your presentations.

Ms Susan Windle and Mr David Cameron

132. THE CHAIR: You have probably gathered that we do not have a great deal of time. We would like to finish this within about one hour and 15 minutes, possibly one hour and a half. We are in your hands. Are you making a presentation, delivering an address yourself, or are you leading any evidence from anybody apart from your own words?

133. MR SMALLWOOD: Thank you, my Lord. We are fine timewise. I have timed the verbal presentation that I would like to make to your Lordships and my Lady this afternoon. It is about 35 minutes.

134. THE CHAIR: That would be great if you can stick to that.

135. MR SMALLWOOD: You have now each a new ring binder, which contains both petitions that I am representing. It is separated in each case into the verbal part, and then separately additional pages with supplementary notes, which are too detailed to present verbally.

136. THE CHAIR: That is extremely efficient of you. Thank you very much indeed. Off you go.

Evidence of Mr Smallwood

137. MR SMALLWOOD: My Lords, I am speaking on behalf of Susan Windle. She lives opposite Coombe Green Common in the parish of Birtsmorton. This common is approximately 50 acres and it belongs to the owners of Birtsmorton Court, who are the lords of the manor. It adjoins the Trust's land, Hollybed Common, in three places. On page 1, may I ask you kindly if you would refer to the map? You can see there that the dotted green areas represent common land. Most of it is Trust land apart from the area marked with a red boundary at the bottom, which is Coombe Green Common, which is obviously common land as well. It abuts the Trust's land in three places.

138. Ms Windle has the right to graze and the right of piscary—that is to fish—on

common land unit 9 or CL9. CL9 is a single unit for the purposes of registration of commoners' rights and everyone with grazing rights on Castlemorton's commons—that is to say, Castlemorton Common, Hollybed Common and Shadybank Common—also has the right to graze on Coombe Green Common and vice versa.

139. Ms Windle has a particular interest in the upkeep of common land, and she runs Friends of Coombe Green Common. She organises working parties of volunteers to clear bramble and to look after the general upkeep of the common. The common is also maintained by grazing and a small amount of mechanical scrub clearance. All this is achieved at a cost of £800 a year, paid for entirely by fundraising and a grant from Birtsmorton Parish Council.

140. If I might refer to you, please, to the photographs on pages 4 and 5, this will give you an indication of what Coombe Green Common looks like. In some of them, you can see the Malvern Hills in the background. If I could also please refer you to page 7, here you have a location plan and a photograph of the first place where the two commons meet each other. Locally, it is known as the cut. Again, the diagram shows you the red boundary, with Coombe Green Common on the south and the Trust's land on the north. The diagonal maroon line is the parish boundary between Castlemorton parish and Birtsmorton parish. The photograph underneath with the red line across it shows the course of the dividing line between the two commons, which is the same as the dividing line between the two parishes.

141. Again, if I could ask you to turn to page 9, this is showing the other two places where the two commons meet. The red line is the dividing line of the parish boundary. On the left-hand side you have Coombe Green Common; on the right-hand side you have the Trust's common land. You can see the complexity of the boundary where it zigzags across the road and then rises steeply up a hill.

142. THE CHAIR: Is the road we see on page 8 the same as we see on page 9?

143. MR SMALLWOOD: Yes, my Lord. It is further down the road.

144. THE CHAIR: It is a different direction.

145. MR SMALLWOOD: Yes. It may help you to refer back to page 6, where the

location points of the individual photographs are marked as 2A, 2B, 2C and so on. That will tie you back to the diagrams in the photographs when there is a little more time.

146. THE CHAIR: Yes.

147. MR SMALLWOOD: Ms Windle's petition is virtually identical to Mr Cameron's, so she has asked me to say that she is content with the submissions and supporting material I will be making on his behalf. She has asked me to speak on her behalf only about one particular aspect of Clause 48.

148. Clause 48(1) limits the power to only install fencing on the boundary between common land and land that is not common land. That means that the conservators would have no power to fence the boundary between Coombe Green Common and Castlemorton's commons. Animals would remain free to move between them without any impediment, as is the case today.

149. This is really important because the register of common rights, the CL9, embraces Coombe Green Common along with Castlemorton's commons. This was a matter that was completely overlooked in the consultation document. The consultation document was written from the perspective of Malvern Hills Conservators, and they were quite right in it when they said that CL9 is Castlemorton Common, Hollybed Common and Shadybank Common. What they omitted was that it also includes Coombe Green Common, which they do not own. We feel that was misleading to the public.

150. She has asked that your Lordships ensure that no other clauses in the Bill could be used by the conservators to fence the boundary between the two commons, even temporarily, as it would interfere with the commoners' rights for their animals to move freely over the whole of CL9, and also the right of intercommoning. She has asked that a clause is included such that, where the Trust's common land adjoins common land with a different owner, there is no power to erect fencing or prevent the free movement of animals between the two commons—in other words, that there is a prohibition preventing such fencing. She asks that it be clear that this cannot be overridden by any other clause, including a general power, nor by a by-law.

151. My Lords, since this basic response was produced, a new bundle of documents emerged last week. In your binder, you will find another page headed "Response to

promoter's bundle 7". This comes after the numbered page 10. It is an unnumbered page. On that page, we have reproduced the two photographs submitted by the promoters in bundle 7. They really flag up the same concern that Ms Windle has. Why are the promoters showing you these photographs? The top one is the road junction in Birtsmorton. The second one is a photograph of Birts Street in the parish of Birtsmorton. In both cases, we have sheep that have strayed off the common into these two locations.

152. Now, if the conservators have the power to fence Castlemorton's commons but not the power to fence between Castlemorton Common and Coombe Green Common, these animals can still get there. If the Trust are showing you those photographs as evidence of where there is a problem and they are seeking permission to fence against that problem, they are indicating to you and to Ms Windle that they have found a power in the Bill to be able to fence Coombe Green Common against Castlemorton Common; otherwise the pictures do not make any sense.

153. If they are there to show you that there is a problem and the solution to it is to give them the power of fencing, which they have asked for in the Bill, it is not; it only solves the problem if they have found some loophole in the Bill where, instead of only being able to fence their land against land that is not common land, they have found a way of fencing their common land against somebody else's common land. In the detail, you will see that the distances in the captioning of the photographs submitted to you are misleading because—you have to read the notes to see, but essentially the reference to "common"—it is not clear which common is being referred to. In one case it is Castlemorton's commons; in the other case it is Coombe Green Common. The Trust do not own Coombe Green Common and they have no responsibility for it whatsoever.

154. In conclusion, Ms Windle thanks your Lordships for hearing her petition.

155. THE CHAIR: Good. Thank you very much. I think we will proceed to Mr Cameron's petition now. We are going to take them both together before I ask Ms Lean to reply.

156. MR SMALLWOOD: I am speaking on behalf of David Cameron. Mr Cameron is 84. He lives in a 42-acre nature conservation farm in the parish of Castlemorton on the south side of the Malvern Hills. He is boundaried on three sides by land owned by Malvern Hills Conservators. He has commoners' rights on the hills and Castlemorton's

commons, and of course Coombe Green Common. For the last 10 years, Mr Cameron has been paralysed from the waist down. Nevertheless, he regularly travels around the whole area on his mobility scooter and further afield, driving an adapted motor vehicle.

157. Mr Cameron has a razor-sharp mind and is fully able to understand and debate the nuances of the Malvern Hills Bill. He came to this House in 1995 as one of the petitioners against the last Malvern Hills Bill. He would be here again today if it was physically possible. I have known Mr Cameron for over 15 years, and we have had many discussions about the conservators and how they conduct their affairs. As time is limited, I have brought for your Lordships a document that goes into Mr Cameron's objections in some detail, together with maps, photographs and supporting references. I will do my best to answer any questions, replying with what I believe Mr Cameron would say if he were here today.

158. Again, for brevity, I will not be speaking about the proposal to change the name of Malvern Hills Trust, nor about the right of estovers. These will only be covered in the written notes. I propose first to deal with two straightforward matters and then address the four matters of commoners' rights, fencing, access to the hills, and general power.

159. The two straightforward matters relate to Clause 65(1)(f), item 11 in Mr Cameron's petition. First, he was concerned that this clause would deny him access to the Commons on his mobility scooter, as it is a device that can be driven. The promoters have now amended this in Clause 65(6)(a) and (b), but not to his satisfaction. This is because they have added an additional power that could be used to regulate his right of access. His detailed reasons are given in the notes.

160. Secondly, the wording also refers to devices being flown, and could therefore be interpreted for the flying of kites, model gliders and model aircraft. Mr Cameron wishes to ensure that flying kites and other devices for recreation, providing it is done safely, cannot be prevented by this Bill. He objects to the conservators' claim on their website, "Model aeroplanes and drones require permission to be flown on land under the care of the Trust". This is not true. By-law 12(c) actually only permits the flying of gliders and aircraft where they are likely to unduly interfere with people and animals. Mr Cameron sees this by-law as a reasonable power, but suggests that by adopting the Civil Aviation Authority's drone and model aircraft code, it would be a better alternative. A copy is

provided in the notes.

161. I will now move to the first of the four major issues, commoners' rights. After the Second World War, the Government wanted to ensure that open spaces were available to the public for recreation and enjoyment. They were aware that there was common land and commoners' rights, but knew little about them in detail. The Royal Commission on Common Land was set up to investigate this matter, and it reported in 1956. This led to the Commons Registration Act of 1965, which required all common land to be registered, with a map showing the boundary and a record of ownership. It also required that a definitive register of commoners' rights should be created showing which rights attach to which parcels of privately owned land, and over which areas of common these rights could be exercised. It also limited the rights of grazing into stints—for example, 80 cattle or two pigs—whereas previously, if you had common rights, they were unlimited.

162. The 1884 Malvern Hills Act specifies that commoners should be forever left free to take their common rights. Section 10 gave the conservators the right to regulate commoners' rights in accordance with “the ancient customs of the forest of Malvern or other customs under which such rights are enjoyed”. This was reinforced under Section 33.

163. The 1930 Act permits by-laws to be made for the same purpose, but what is meant by the “ancient customs” is obscure. However, Sharpe Pritchard in their letter to Mr Cameron of 19 December 2025, point 15, have helpfully explained that this phrase was superseded once the 1965 Commons Registration Act came into force. We are therefore only concerned with what commoners' rights were at the date of registration. The whole point of registration was that henceforward it would be clear who had what rights. If those rights could be lessened in any way by regulation, then how and by whom would have been recorded against them. The 1965 Act contains no powers for their regulation, so it appears that they are unqualified rights.

164. The 2006 Commons Act contains a new provision for regulating rights of common in relation to fencing on common land. However, the conservators have given themselves an additional power under by-law 30. “No person shall turn out an entire animal between 1 September and 25 October in any year”. This is to prevent the animals

of one grazier breeding with the animals of another grazier, which would lead to valueless crossbreeds. The conservators never needed this power. It is dealt with within the 1908 Commons Act, an Act to regulate the turning out upon commons of entire animals. The Act makes it clear that it is a matter for the graziers to sort out between themselves in their own best interests.

165. On the Malvern Hills and Commons, some commoners enter into voluntary stewardship schemes, where they are paid by Defra to graze in a particular way. The conservators manage these schemes on behalf of Defra, but membership is voluntary. Conservators are able to regulate the rights of the members of the scheme, but only because, by joining the scheme, the members have given their consent.

166. The Bill omits the purpose expressed in the 1884 Act to keep commoners' rights free forever. Instead, in Clause 44, it proposes a new power: "The Trust may by all lawful means regulate the exercise of any rights of common exercisable over the Malvern Hills". This is enhanced by Clause 65(1)(j), where they make by-laws for "regulating the user and enjoyment of any rights of common". On Mr Cameron's behalf, I have spoken to the families of the four principal graziers who have grazed on Castlemorton's commons over the last 70 years. None have any recollection of their rights ever being regulated by the conservators. Mr Cameron objects to any part of the Bill that gives the conservators power to regulate commoners' rights other than under Section 38 for fencing. Specifically, he wants Clause 65(1)(j) removed.

167. THE CHAIR: That is the power to make by-laws.

168. MR SMALLWOOD: I would have to check that, my Lord. Thank you. Commoners' rights are what they are, and only national legislation should regulate them.

169. THE CHAIR: I just wonder whether 65 is the correct one.

170. MR SMALLWOOD: 65(1)(j) is, indeed, the by-law under which they regulate "the user and enjoyment of any rights of common", so he wants that removed so that neither by a clause in the Act nor by a by-law can they regulate the—

171. THE CHAIR: I am sorry. So it is 65(1)(j).

172. MR SMALLWOOD: Yes, my Lord.

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

174. MR SMALLWOOD: I beg your pardon. Sorry, have I clarified that?

175. THE CHAIR: Yes.

176. MR SMALLWOOD: Thank you very much. Mr Cameron's point is that commoners' rights should only be regulated by national legislation and not by local Bills.

177. Mr Cameron's second point is regarding fencing. The conservators claim that they only want to fence the perimeter of the common against land that is not common land, and the Bill has been amended to make that clear—Clause 48(1). However, many other powers of fencing remain that enable them to get round this limitation, and Mr Cameron is wary of what he believes are the conservators' true intentions. For example, Clause 48(2) completely contradicts Clause 48(1) and enables fencing to be installed not necessarily on the boundary. The scope of this variation is not limited, so fencing could easily be installed on the common, hundreds of metres from the boundary.

178. Mr Cameron wishes your Lordships to know that I met with the CEO on 9 December 2024 and that I emailed her the following day with my record of what we discussed. I wrote, "You confirmed that the Bill empowers the Trust, with permission from the Secretary of State, to fence the edges of the roads which run across the common". It is evident that this is what the conservators wanted to do, despite the assurances given on pages 36 and 37 of their consultation document.

179. On the next page is a copy of a plan from about 2002 produced by the Malvern Heritage Project, to which the Trust was a party, showing their plan to fence roads that run internally across the common. May I ask you just to glance across to page 6 where the plan is reproduced? You will see the wording "proposed fence connects to grid at site F". This is a proposal to put a fence along the left-hand side of that road from one location right off the top of the map to wherever location site F is. We were never told where it is, so we do not know. Further down, against the green hatched area towards the bottom, again the words "proposed fence" appear, showing the proposal to fence the

left-hand side of the road, all of this bounded in common land, the road being Gloucester Road, which runs across the common land and is part of the common land itself.

180. On the diagram, the red line is an access track to a property, and an access track to Hope Orchard comes off it to the south-west. Without the proposed fence at the top, the cattle grid scheme in this area will not work because the animals will simply walk down the road as they do now.

181. Bypass gates are required under Section 82 of the 1980 Highways Act, to enable traffic that is unable to pass over the cattle grid to be able to use the highway. This includes mobility scooters, horse-drawn Romani caravans, ridden horses, and a pony and trap.

182. Maps on pages 7 and 8 show the whole scheme, produced roughly 20 years ago, to secure the perimeter of the common with cattle grids—the power that the Trust is currently seeking. Although this was 23 years ago, the road network has not changed. Considerable lengths of fencing and resurfacing common land will be required in at least 11 of these locations in order to provide bypass gates. Mr Cameron does not object to cattle grids in principle. His concern is that the Bill does not specify how fencing and resurfacing for bypass gates will be permitted or limited where they are on common land.

183. May I ask your Lordships to turn to the photograph on page 9? Bypass gates need to be at least 2.5 metres wide to allow, for example, a horse-drawn Romani-style caravan to pass through. These caravans are typically two metres wide and they do pass along the main road across Castlemorton Common. There is also the need for an area of hard standing before and after the gate, long enough for the vehicle to pull off the road, open the gate, pass through and close the gate, before rejoining the highway. Overall, an area of about 20 metres by 3 metres will be required.

184. The conservators have undertaken not to fence the edges of roads that run across the common. A bypass installation as described would be the equivalent to a permanent fence at the edge of the road and would be contrary to this undertaking. Mr Cameron objects to this, as it spoils the natural aspect of the area and interferes with the free movement of cattle.

185. Mr Cameron wants Clauses 45(2) and 48(10) to be amended so that it is clear that the conservators do not have the power to enter into agreements with the highways authority to erect on common land bypass gates and the associated fencing that would be required to make a cattle grid installation across the highway secure.

186. There will be local opposition to cattle grids, as there was 24 years ago, because they are noisy, inconvenient to walkers and horse riders, and because the associated fencing to facilitate bypass gates will spoil the natural aspect of the area, which is within an area of outstanding natural beauty.

187. Regarding Clause 45(2)(b), (c) and (d), Mr Cameron invites your Lordships to consider how easily these could be used as a power to fence roads which run across the common. These clauses could also be used to fence areas of the hills and commons, changing their appearance to that of agricultural fields. For example, Clause 47 deals with the fencing of any part of the Malvern Hills that, in the conservators' opinion, gives rise to a permanent danger. Mr Cameron acknowledges that animals stray on to the internal roads that are part of the common land. This does represent a danger to those motorists who foolishly ignore the warning signs and drive too fast, especially when it is dark or foggy, and they do sometimes hit animals. However, this should not be used as a safety reason for fencing internal roads. The danger is caused by the way motorists choose to drive, and that is not the responsibility of the conservators.

188. If I could, my Lord, refer you to the page in your binders that has a little yellow tab sticking up at the top, and which is attached to an additional page, "Response to promoters' bundle 7", which was released last week, if you could kindly turn to the third page of that, which is headed, "Mr Cameron wishes to draw your Lordships' attention to the photograph on page 11"—

189. THE CHAIR: We have seen that photograph before and I wondered what had caused all the mess on the grass, but you are explaining it now.

190. MR SMALLWOOD: Sorry, my Lord. I did not quite catch you.

191. THE CHAIR: I wondered what had caused the marking on the grass there, but you are now explaining what it is.

192. MR SMALLWOOD: We need to be a couple of pages on from there, please, my Lord. That is the first of three pages. If you could kindly move to the third one, which refers to the photograph on page 11 and shows some kind of traffic incident on the common, this one is captioned, “Road traffic collision between a cow and a car on Castlemorton Common”.

193. Mr Cameron’s concern is, “Why have you been shown this picture?” If the Trust is sincerely promising in this Bill not to fence the roads that run across the common, then it will not make a scrap of difference to this incident that occurred, where a vehicle crossing the common hit an animal that was on a road that is part of the common.

194. His deep concern is that, by showing you that picture, they are indicating that they have some covert means of finding another clause in this Bill that will enable them to put fences up across the perimeter of the common, which is the very thing that they have undertaken not to do. There seems no point in showing why a road traffic accident occurs on the common unless you are going to say that the Bill is going to stop it, but the Bill specifically says that it does not contain provisions to stop it, so it is a red flag to Mr Cameron that the Trust may be looking to use some other clause, particularly the safety clause, as a device for being able to give themselves the power to put permanent fencing up along the road that goes across the common.

195. Just returning to the body of the text on page 10, instead Mr Cameron wants it to be clear that the free movement of grazing animals across common land cannot be limited or interfered with in any other way except the power to erect temporary fencing. Clause 9(3) deals with temporary fencing. Mr Cameron objects to this because the existing 28-day limit is sufficient. If areas of common land were to be fenced off for longer, common rights would be diminished by the grazing livestock being prevented from roaming freely. Instead, he proposes that the wording is changed so that the decision-making power is removed from the conservators and put in the hands of the graziers.

196. Mr Cameron would like to see a limit of one hectare on the area of common land that could be fenced off under this clause in order to protect the commoners’ grazing rights. Mr Cameron also asks for a provision to prevent larger fenced areas being created by contiguous areas of one hectare being individually fenced. Mr Cameron also

asks for an overall limit to prevent several non-contiguous areas being fenced. He proposes the existing limit for common land generally under Defra regulations should be adopted—“The area you want to fence off must not be bigger than either 10 hectares or 10% of the area of registered common land that it is part of, whichever is the smaller area”.

197. His third major point is about access to the hills. Mr Cameron would respectfully remind you that you have already heard a detailed argument about how the conservators cannot maintain the status of their land as exempted land if it offers less access than that provided by the CROW Act. If it is not exempted land, then the CROW Act comes into full force and protects the rights of public access.

198. In particular, he wishes to draw your attention to the conservators’ current restrictions on public access, where they require groups of more than 15 people to obtain their permission before using conservators’ land. Mr Cameron would like you to know that I wrote to the CEO regarding this on 27 August 2024. When I met with her on 9 December 2024, she acknowledged that informal gatherings such as large family picnics do not require the conservators’ permission. I offered her an alternative wording for her website to make that clear. On page 11, you can see that the following month the website had been changed to make that clear—the highlighted area in yellow, “Informal gatherings do not require permission”. However, on page 12, you can see that, by October, that wording had been removed, and it had gone back to the way it was before, and that is the way it remains today.

199. An additional page has recently appeared on the conservators’ websites entitled, “How the Bill will not affect areas of the hills”. I will not read it out, but it seems to Mr Cameron that the conservators have finally realised that their present policies are untenable, and they have sought to reassure the public that the Bill will protect their rights of access.

200. However, far from protecting the public rights of access, Clause 65(3) increases their power to exclude the public. This clause gives the conservators the power to charge the public for a licence for an organised activity, including one that is simply walking on the hills for open-air recreation. This is utterly contrary to the spirit of the CROW Act and, in Mr Cameron’s opinion, it is an all-embracing power to regulate public access

and to make visitors pay for the privilege of walking on the hills.

201. While Mr Cameron supports the sentiment of not causing unnecessary harm to the landscape, he wishes to point out that the freedom to roam means that anyone can walk anywhere on the hills and commons, and people are not restricted to walking on the footpaths. If one group of walkers wishes to walk from A to B, and another group wishes to walk from B to A at the same time, each person is walking under their individual right of access. The conservators have no right to intervene.

202. Mr Cameron has no objection to requests that organised activities are notified to the conservators, providing it is clear that there is no obligation to do so, and no suggestion that they can be regulated unless they require an exemption from the by-laws, for example to put up temporary signs.

203. In the bundle of papers, bundle 7, which the promoters filed last week, I believe there was a letter in there showing a licence they had given to one group to walk on the hills, but they imposed a condition on it that they might ask the group to change the date if the ground was muddy. My Lords, if we go to the Lake District and walk on the fells, we can walk on them whether they are dry or whether they are muddy. If we go to south Wales, as my wife and I occasionally do, to Porthcawl, and we park up by Rest Bay Common, we can walk on that common land whether the ground is soft or whether it is firm. That is what it is there for. Mr Cameron finds it outrageous that the conservators would seek to exclude a group from walking on the ground because it was muddy.

204. Mr Cameron wants the Bill to be clear that the power to license commercial activities cannot be applied to any non-profit-making activities, which it is at the moment—for example, organised events where a payment is made to cover costs, and fundraising activities for charities and good causes, including where donations are requested. Donations are not a commercial activity. The conservators are well aware of this, as they offer to the public logs cut from felled trees in return for a donation. Being a charity, they are unable to sell the logs, as this would constitute a commercial activity.

205. THE CHAIR: Can I take you back to the bit at the bottom of page 14? There is a problem of erosion. It is quite plain from some of the photographs that it is one of the problems of modern life that more and more people go to these beautiful places, and they walk over path after path and erode the ground. At some point, a body such as the

Trust has to try to correct the erosion, and that involves putting in re-turfing or re-seeding. That would not succeed if people just continued to walk over the ground that has just been treated, so there has to be some mechanism to combat erosion by being able to keep people away from the ground that is being repaired. Does Mr Cameron accept that?

206. MR SMALLWOOD: Mr Cameron certainly accepts that temporary fencing for the purpose of allowing ground to recover or be resurfaced is acceptable. Of course, it is the Trust's choice to create footpaths on the hills and commons. They do not create any on the commons. The only man-made footpaths are on the hills. If they choose to build footpaths for people to use, they can hardly complain when people use them and they need repairing. If there were none, people would simply walk anywhere. Indeed, they have the right to walk anywhere on the hills. You do not have to follow the footpath. If you want to scramble up the side of the hill, you are perfectly entitled to do that. Your right of access is the whole of common land. There is no restriction on being kept to footpaths. Of course, this is exactly what the cattle do. The cattle go everywhere, and the sheep.

207. There is no problem with temporary fencing to make repairs, but the objection is the regulation of groups of any size. For example, if your Lordships' committee wishes to visit the Malvern Hills, under the terms of this Bill, if you literally want to go for a walk on the hills, you are organising an activity, and you will be required to obtain a licence from the Trust in order to do that. That is what the Bill says. You may have to pay for the licence as well, because that is a power they wish to award themselves.

208. THE CHAIR: Sorry, I interrupted you. We are on page 15.

209. MR SMALLWOOD: That is fine. Mr Cameron respectfully draws your Lordships' attention to the Government's, "Guidance. Open access land: management, rights and responsibilities" webpage, where it makes clear, "You cannot charge visitors to use open access land for open-air recreation".

210. Finally, the general power—the conservators are a small organisation with the simple task of managing a seven-mile outcrop of granite hills and areas of common land—the wasteland of the former manors. After 142 years of experience, it should be evident what powers are required to do this. They already have the ability to amend and

create new by-laws, and Mr Cameron believes that this should be sufficient to deal with new and unforeseen circumstances.

211. In her evidence on 11 February, Ms Satchell referred to the issue of drones as her only example of where a general power would have been used. However, the conservators have been able to deal with this through their by-laws, even publishing a drones policy on their website, which is reproduced in page 40 of this document. Significantly, in the Bill, they have sought no new powers specifically to deal with drones.

212. Mr Cameron objects to the general power, as it would allow the conservators to interpret it widely to ends and purposes never intended. In Mr Cameron's opinion, the conservators have an established track record of over-interpreting and exceeding the powers they already have. Your Lordships have already heard how this happens in the way the conservators interpret by-law 21, seeking to regulate access of groups of over 15.

213. Perhaps a more telling example is where the consultation document on page 46 states, "At the moment, the Trust cannot acquire land specifically for livestock management purposes", yet, in 2018-19, the conservators purchased two areas of land adjoining Castlemorton Common for this express purpose at a cost of nearly £300,000. Their annual report for that year explains that this land was for "a safer place for lambing, shearing, medical treatment, and somewhere to feed the livestock where there is little food left on the common". To Mr Cameron, that sounds like livestock management, and the conservators have no power to buy land for that purpose.

214. Further examples of the conservators exceeding their powers are given in the supporting notes. Mr Cameron's concern is that, once the Bill has been amended, after your Lordships' careful scrutiny, the conservators will simply use a general power to do whatever they wanted to do in the first place. No private individual could afford to challenge their use of a general power in the courts, and the Charity Commission will not intervene. He fears that the conservators will use it to do whatever they please.

215. Instead, Mr Cameron wants this general power removed from the Bill, and wants Clause 65(1) to include wording that will prevent the conservators from having anything similar to a general power under a by-law. Should your Lordships be minded to allow

the general power to remain, then Mr Cameron respectfully requests that it contains a specific restriction that it cannot be used to supersede any parts of the Bill that deal with commoners' rights, fencing and access to the hills.

216. In conclusion, Mr Cameron thanks your Lordships for hearing his petition and hopes that you find his submissions helpful.

217. THE CHAIR: Thank you very much indeed for the way you have presented it. It was extremely clear and helpful for us to understand. Ms Lean?

Response by Ms Lean

218. MS LEAN: My Lord, I will endeavour to pick up what I hope are some key points, but there is quite a lot of detail also in the supporting notes. To provide a comprehensive response to every point that is raised might take us beyond 4 pm.

219. THE CHAIR: You have until 4.15.

220. MS LEAN: I am grateful. Maybe what I should have said is that there were an awful lot of points of detail in some of the supporting documents. Perhaps I am not in a position to provide a point-by-point response to them if there are particular issues there.

221. THE CHAIR: What I suggest is, if there are points you would like to pick up that you are not able to, you could produce a paper just bringing them all together, and we can then read your paper. That might be a helpful way of dealing with the other points of detail that have come up, which you have not had notice of.

222. MS LEAN: I am grateful, my Lord. I am just conscious that some of them are quite technical, and I would hate to inadvertently misspeak by trying to do it too quickly.

223. THE CHAIR: We have to get this right, so I think, if we do it that way, that is a better way of dealing with it.

224. MS LEAN: Thank you, my Lord. In which case, I will focus on the points that were raised orally today, which I think are in the two documents at the beginning of the folder. If I can, I will pick up a couple of points in the more detailed notes that sit behind.

225. My Lord, in respect of Ms Windle, the critical point that I picked up on was to do with Clause 48 and the installation of fencing, if it might be done to fence between different parcels of common land. My Lord, in my submission, Clause 48 is clear in its terms. The power in Clause 48(1) can be used if it is for preventing animals straying from the common land in question on to land that is not common land. That would not lend itself to being used to fence two different parcels of contiguous common land merely because they were in different ownership.

226. My Lord, of course, there is no other specific power that deals with fencing off or fencing common land per se, except in Clause 49. That is the temporary grazing power, which would not seem apposite for the concern that has been raised about, essentially, separating off two different parcels of common land so animals can no longer wander freely from one to the other.

227. Of course, the fencing powers do also need to be read with Clause 94 of the Bill, which you have at page 69 of the filled Bill, which I touched on briefly before, that, “Except where specifically provided, nothing in this Act is to be deemed or construed to take away prejudice or affect any right of common exercise by any person or persons over or in respect of the Malvern Hills”. My Lord, in terms of the fencing powers, they will need to be read with that. In my submission, it is not necessary to include any specific provision that says, “And for the avoidance of doubt, you must not, at any point, put any sort of fence up between two parcels of common land, even temporarily”.

228. I say “not necessary” because, of course, it is not always possible to foresee any possible situation. It may be that there is an emergency situation or something that comes up in the future that would fall within one of the fencing powers that might mean it was desirable to temporarily restrict something, so there is a risk of something going too far. If the concern is, “I am worried you could use the powers in the Bill to do this”, my submission is you have to read them with what they say and with Clause 94, which maintains that general protection

229. THE CHAIR: Going back to Clause 48(1), the filled Bill has wording in it that you have drawn our attention to, those words being “onto land which is not common land”. Was that in the Bill as it was originally—

230. MS LEAN: No, my Lord. That has been added in for clarification. I think, also,

that is the point at which (2A) came in as well, which is the old hills, because that is the one place where the Trust is given the power to fence within common land separating parts of common land.

231. My Lord, in terms of the general power, we have been to that previously. Of course, the general power cannot be used where you have an express power that covers the same subject matter. As I alluded to slightly earlier today, you cannot use the general power to erect any building, fencing or other type of enclosure on the Malvern Hills. That is Clause 83(3)(c). In my submission, my Lord, if the concern is, “One of these powers might be able to be used, or the general power could possibly be used, to do this”. The Bill is, in my submission, clear on the very limited powers that there are that might touch on that, and the circumstances in which they could be exercised, and it is not necessary to go any further.

232. In respect of the points raised in response to the documents in bundle 7—i.e. the material that the promoter provided last week before Mr Bills and Ms Satchell started their evidence on this part of the Bill—I think, in fairness to Mr Bills, he did explain in his oral evidence that, when he was talking about CL9 and the photographs that have been extracted there from bundle 7, CL9 included a parcel of common land that was not in the Trust’s ownership, but the photographs he included were more by way of illustration to demonstrate the nature of the issues that can arise and why it is desirable to have a power to be able to secure common land.

233. Now, that does not mean that what the Trust is looking to do if it gets this power is go out and find some way that it can stop animals getting out through the Coombe Green end, if I can put it in those terms, even if that means putting a fence up in the middle of the common. What the power would allow for is, say, in the future, if the Trust were to acquire that parcel of common land, so Coombe Green Common, of course, at that stage, the power would be available to it to then fence to secure the common along those boundaries.

234. Again, it is always important to bear in mind that, in my submission, with these powers, we are not seeking things that the Trust wants to be able to rush out and do tomorrow. This is about making sure that the Trust has the arsenal, as it were, to be able to go out and address the situations that may arise going forward into the future. This is

somewhere where it may be a very useful power to have in the future, in the event that Coombe Green Common were to come into the Trust's ownership.

235. LORD INGLEWOOD: Could I ask a quick question about that, please, very rapidly? Do you have a power to contribute to the fencing of a common that is like this to help keep the greater area of common land safely enclosed? You may not want to answer that.

236. MS LEAN: I think I would have to think about that, my Lord. Under the Bill, I do not think there is an express power, so it would be a question of, I think, looking at the powers that are there and working out whether, by reasonable inference, it was a reasonable part of that power for that purpose. There certainly is not an express power that I have read that says, "You may, in conjunction with another landowner, do X, Y and Z", but, clearly, as well, although this would not be exercising a power under the Bill, if the landowner who owned that part of Coombe Green Common themselves wished to or took steps to fence that part against the road, that would have the same effect.

237. Moving on, then, to Mr Cameron's petition, can I pick up, first, on by-laws? I think there are two aspects to this. One of them is the by-laws that may affect Mr Cameron to which he objects. The other is the by-laws that touch on drones and suchlike.

238. In terms of the by-laws that Mr Cameron is concerned could affect commoners' rights, as I alluded to earlier today, the power to make by-laws to regulate the use or exercise of rights of common is preceded in the 1930 Act. It is not a new power. It has been there for some time, as is the proviso that says, as otherwise provided, you cannot interfere with the rights of common.

239. There is no suggestion, as far as I am aware, that those by-laws have been exercised in any way that is problematic. Mr Bills explained in his oral evidence last week and gave some illustrations of where there has been some regulation of exercise or use of rights of common to do with the entire animals and to do with marking of animals, for example. This is a power that has been on the statute book for nearly 100 years. The Bill is simply re-providing it. In my submission, this is not a new power that could adversely affect this petitioner.

240. With regard to the concerns about affecting Mr Cameron's ability to frequent the hills using a mobility vehicle, as I highlighted earlier today when we looked at the by-law's power, there are now the express provisions that have been provided in Clause 65 itself to make clear that, if there is going to be any regulation or prohibition or by-law about regulating or prohibiting access where somebody is using a mobility scooter, that can only be done on grounds of safety.

241. I have seen the reference in the speaking note from Mr Smallwood about some further detail or some particular concern as to why this does not address Mr Cameron's point being found in more detail in his notes. I have not, I am afraid, yet been able to put my hand on the specific paragraph it is that says, "Well, that is not enough because...", so perhaps if I could take that one away to check. I am sure I have probably just not seen it, or it may be that it is bound up with something else and I have not registered that it is specifically to do with that provision. That is the response on that aspect of by-laws.

242. With regard to by-laws about aircraft and drones and suchlike, in my submission, my Lord, it would probably be undesirable and unnecessary for this committee to start writing the text of by-laws or what exactly specific by-laws ought to be done by reference to, but I would just flag that I think there was a reference to by-law 12(c) in the existing by-laws, which only limits the flying of gliders and aircraft where they are likely to unduly interfere with people or animals.

243. I think it is right that I also highlight that there is another by-law that specifically deals with aircraft, gliders, et cetera, including drones, which is by-law 11(a), which you have at page 103 of bundle 7. I do not think it is necessary to turn to it, but, just for completeness, it says that, "No person shall, except in the case of accident or other sufficient cause, take off from or land on the hills any glider, manned or unmanned, or any other aircraft", save that the by-law shall not apply if the gliders are below a certain weight.

244. I think there was a suggestion that drones were not captured or needed to be. They are, and the by-laws do give an illustration at present about how these powers have been carried through. In my submission, it is really not necessary for the committee to get into drafting specific by-laws or specific points by which by-laws should be drafted in terms of any codes or guidance.

245. In terms, then, of the other points that were raised under fencing, I hope I have addressed the similar concern that was raised about whether or not there might be fencing within commons. With regard to the power to fence roads within commons, as I have alluded to, the power in Clause 48 is only a power to fence so as to prevent animals straying from common land on to land that is not common land.

246. If a road is running through the middle of the common and is part of the common, it cannot be used to fence against that road, so it could not be used to fence that road that you saw in photographs from Mr Gardner this morning that runs through that northern part of Castlemorton Common, where it goes to Welland, which was on the left of the photographs. He was referring to the fact that the SSSI was on one side of the road and then there was other common on the other side. It could not be used to fence there to stop animals getting from one side of the road to the other, and nor could the power in Clause 45 be used for that purpose.

247. That is also raised on page 9 of the submissions on behalf of Mr Cameron. As I clarified, I hope, first thing this morning, the power in Clause 45 is a power to regulate or prohibit access by the public or any section of the public. It is not a power to fence to stop livestock going somewhere. I think, on Clause 47, we have always raised the fact that there is no indication that Clause 47 has ever been used to try to fence to stop livestock going onto a road that is part of the common.

248. On temporary fencing, Clause 49, my Lords and my Lady, you will have heard today from Mr Gardner about—

249. THE CHAIR: I will just interrupt you. My attention has been drawn to the fact that we may have a division in a few moments. When the bells ring, it is very difficult to speak. We will terminate the proceedings at that point and come back 10 minutes later. If we are interrupted, the transmission will finish and we will meet again after 10 minutes.

250. MS LEAN: Thank you, my Lord. In terms, then, of Clause 49, my Lord and my Lady, you will have heard today from Mr Gardner about why restricting temporary fencing to one hectare is simply not practicable. It simply would not work for how grazing has been carried out to manage the hills for the past 20 years. Again, you have in bundle 7 the letter also from Mr Chance, who grazes the northern and the central

hills.

251. With regard to the time limit, my understanding is that the 28 days that is referred to there on page 10 may be a reference to some guidance from, I believe, either Defra or the Planning Inspectorate that talks about when Commons Act consent may not be required. One of the examples they give where you may not need consent under the Commons Act is if you are temporarily fencing for less than 28 days, for example for lambing. What the Bill does is provides its own bespoke regime of exemptions for the sort of instances that could be done. In my submission, the 28 days is not really the right comparator because the power here is about what is needed on the Malvern Hills, not what might, in the general guidance, not even require Section 38 consent at all because of the nature of what is being done.

252. My Lord, moving on, then, to item 12 on page 10, which is Clause 38, access to common land, this comes back into the CROW Act. My Lord, I touched on this briefly this morning, but, under that Act, land is not access land that is governed by the rights of access under that Act if, among other things, it is treated as being accessible to the public apart from the Act in a variety of situations, one of them being that, “By virtue of a local or private Act ... members of the public have a right of access to it at all times for the purposes of open-air recreation (however described)”. That is the language that appears in Section 15(1)(b) of the Countryside and Rights of Way Act.

253. My Lord, I have not been able to find anything that says that the conservators cannot maintain their status of land as exempted land if it offers less access than that provided by the CROW Act. There are circumstances in which land that is exempted land can find itself in the CROW Act if, for example, things are revoked, but, my Lord, I am certainly happy to look into that point in a little more detail. I am conscious it is a legal point, but I have not quite followed through how that is said to arise.

254. THE CHAIR: Do you want to include a bit more in your note?

255. MS LEAN: I think, if I could deal with that in a note, that might be helpful, because I think it has become a bit clearer, in light of what has been provided today, what exactly the point was that was being raised around the CROW Act and how this might interact with the regimes. It would be helpful for me to put it in writing, I imagine.

256. THE CHAIR: Yes, it would be. Thank you.

257. MS LEAN: I am grateful, my Lord. I think, my Lord, the next point that then brings me to in headline terms would be Clause 65(1) and the general power, again to highlight that there are restrictions on how the general power can be used. It cannot be used where there are expressed powers to do the same thing. It cannot be used for fencing and suchlike. It can only be done to further the objects of the Trust.

258. My Lord, I think there is a concern raised in there that, somehow, the by-law making power could be used to create some sort of general power. My Lord, in my submission, I do not see how that could properly be done, because the by-law making power only gives the Trust the power to regulate for the matters that are specified in Clause 65 itself. It is not a power that, in and of itself, lends to an opening up or granting of additional powers for the Trust to confer upon itself.

259. My Lord, if it is of assistance, there is a point raised there about the purchasing of land for livestock purposes. At the moment, the Trust cannot acquire land specifically for livestock management purposes. It does not have an express power that says, “You can buy land for these purposes”. That is now provided for in Clause 75 of the Bill, which is the one that relates to ancillary land, and which now says expressly, “The Trust can acquire land for a use which is ancillary to the objects ... including, without limitation ... the keeping or management of livestock”.

260. I am instructed that the land that was acquired back in 2018 and 2019 and to which the petitioner referred was purchased under the power in Section 29 of the 1884 Act, but, again, it seems probably one of those aspects that involves some careful looking at and, “Is this implicit or inference?” It is not that it was done without any power to do so at all, or without trying to find a basis for doing it in the existing Acts, but there is really a lack of clarity. There is certainly not an express power that says, “You can do it for these purposes”, and having the express power in the Act would mean that the Trust is not put in the situation of, “Is it doing it or is it questionable whether somebody could challenge it and say, ‘That was not authorised under that power’ or not?”

261. My Lord, I think there is a final point that I think may have arisen out of the material in the promoter’s bundle 7.

Sitting suspended for a Division in the House.

On resuming—

262. THE CHAIR: Ms Lean, you were interrupted, I am afraid.

263. MS LEAN: Not at all, my Lord. I was, I think, just finishing up on the last topic, as it were, which is behind the back of the document about the response to promoter's bundle 7, which picks up on cattle grids and bypass gates. I slightly glossed over these provisions when we dealt with Clause 48 because they are a bit involved, but there is specific provision made in Clause 48, which is the power of securing common land about cattle grids.

264. In very headline terms, there is a power to, in association with the highway authority, provide a cattle grid to secure common land. That is not something that would be subject to consent under the Commons Act 2006, because there is a general carve-out for things that are authorised under other enactments, because the cattle grids are dealt with specifically under the Highways Act, and that makes specific provision about common land as well. Basically, cattle grids are a final way out of the Commons Act 2006 generally, but, ordinarily, under the Highways Act, the bypass associated with the cattle grid would also be dealt with all as part and parcel of that, without having to go for Commons Act consent.

265. THE CHAIR: The animals cannot walk over the grid, so it is the gate at the side.

266. MS LEAN: The infrastructure either side of the cattle grid, which would allow for people on horseback or with carts or suchlike to pass through. Ordinarily, that infrastructure would all be dealt with like the cattle grid itself. If it was dealt with by the highways authority under the Highways Act, it would not need Commons Act consent.

267. What the Trust has suggested in Clause 48 is that the cattle grid would not need Commons Act consent, but the bypasses would. It is something I will probably come on to when I deal with Section 38, perhaps in more detail, in a later session, but it is an example of where the Trust has tried to strike the balance between recognising that particularly bypass infrastructure is something you can see that there will be a particular interest in or particular concern about. They have provided that that could go through

the Section 38 process, by which there would be the scope for public representations and suchlike in consideration by PINS on behalf of the Secretary of State. There is a concern raised, and I just wanted to flag that there is specific provision that is made in the Bill to deal with cattle grids and bypass infrastructure, if it is considered appropriate to do that to secure the common.

268. This is not a final point, but it is circling back. In the brief adjournment, I put my hand on the particular part in Mr Cameron's more detailed notes that relate to his concern about the by-laws and the provision in the by-laws to do with mobility vehicles. My understanding from that is that the concern is that, apparently, the reason why it can be done is for the safety of users of those vehicles, and that the power is too widely drafted, as it could be argued it would be safer if mobility scooter users were kept off the hills and commons completely.

269. First, I would highlight that the proviso in the Bill itself, in Clause 65, is not just about the safety of the users of the mobility vehicle, but also of other persons. That is Clause 65(6A)—“By-laws ... may not be made ... except for the purpose of preserving the safety of persons”, including persons in charge of relevant invalid carriages. This is not, essentially, the Trust being paternalistic and saying, “We will make a decision as to whether it is safe for mobility users to use the vehicles”. It is also reflecting that there may need to be consideration for the safety of others.

270. With regard to the suggestion that the Trust might say, “It is just not safe to have mobility scooters on the hills at all”, of course, I hope, my Lords and my Lady, you will recall that, when Mr Bills gave his introduction to the hills back on day one of proceedings at the end of January, he did put up some photographs showing people accessing parts of the hills using such vehicles, and referred to a scheme or a partnership that there was with another organisation that identified where people could access suitable devices in order to be able to access the hills in that way.

271. I think, unless I am being told anything from behind, that is what I was proposing to say in response, but I am grateful for the indication that I can take away and particularly look at some of the points of particular detail that are raised in the written notes, and provide you with a response in writing on that.

272. THE CHAIR: Do you have any idea when that note will be available? Will it be

available tomorrow or is that pressing you too hard? Could it be Thursday?

273. MS LEAN: I think Thursday may be more achievable, my Lord. I will endeavour for Thursday.

274. THE CHAIR: Yes, let us make it Thursday, then. That is fine. Thank you. Mr Smallwood?

275. MR SMALLWOOD: Thank you, my Lord. Ms Windle would be delighted to see that the promoters and her wishes are now aligned and that we have on record that the three points where one parcel of common land joins a parcel of land owned by somebody else cannot be fenced. She will be very pleased to have that on record. That would address her point.

276. Regarding some of the by-laws, Mr Cameron would say that there is a theme running throughout this Bill where the Trust is seeking powers to do things which are already covered by national legislation—the putting out of entire animals, for example, as he mentioned, under the 1909 Act. Ms Lean mentioned briefly the legislation for marking animals. I think you will hear from a petitioner tomorrow that this is also already covered by national legislation and there is no need for the conservators to seek specific powers in their Bill for something that is already covered.

277. THE CHAIR: Is there anything wrong in gathering all the material into this measure so that you can see, in a package and one single measure, the powers that the trustees wish to exercise? So long as they are not contradicting, there does not seem to be anything wrong with that. Are you saying that there are contradictions?

278. MR SMALLWOOD: No, my Lord. Just that it is not necessary to be there. I do not think there is a contradiction. Ms Lean has found the correct reference to Mr Cameron's objection, which is on page 39. He is just concerned that, if he drives his mobility scooter on to the common, which he does, then he just wishes to be responsible for his own safety. He would accept the point, I think, that, if it was an invalid carriage where a third party was involved, that would be a different matter. In his case, he does not need help from the Trust to decide whether he is going to drive on the common with it or not.

279. THE CHAIR: I do not suppose Ms Lean is suggesting that he is a danger to other people, but there could be others who are much less responsible. There are all sorts of vehicles that could be used.

MR SMALLWOOD: I think, at less than five miles an hour, which is the regulation for the vehicle, he is unlikely even to reach that speed on common land.

280. On the point about the CROW Act and the exempted land, to Mr Cameron's understanding, the point is that you do not need the same power twice. The CROW Act wanted to ensure that everybody had the right to enter and remain upon common land and access land for the purpose of open-air recreation. If that power was already provided by a private or local Bill, then it was not needed to be given again by the CROW Act. Therefore, they were exempted from the CROW Act for that reason. His point is that, by being exempted by local and private Acts, which the Malvern Hills Bill is, if that lessens the right of access provided in the CROW Act, then the exemption fails and it should revert to the wider right already protected by the CROW Act. That was his point.

281. LORD INGLEWOOD: Is the point, if I have understood it correctly, not that, in the particular circumstances that apply in this particular area of land, there may be good management and other reasons why you want to slightly modify the general provisions of the CROW Act in the interests of the overall project of looking after, in this case, the Malvern Hills? The exemption may, in fact, be something that, in the wider public interest, is justified.

282. MR SMALLWOOD: I am thinking what Mr Cameron would say, and I think he would agree with you, my Lord.

283. Ms Lean made a mention to the general power and, again, Mr Cameron's concern is that the Trust is such a self-contained organisation where, once it makes a decision, it is accountable to nobody. The Charity Commission will not get involved in what they call day-to-day matters, which is pretty well everything that the conservators do. This interpretation of what is in furthering the objects of the Trust is left for the Trust to determine, and there is nobody else a member of the public can go to other than the courts to say, "Well, it is not". They are judge and jury on themselves, and that is the area of concern that he has.

284. You see that in the example that Ms Lean has given. They managed to find an inferred power somewhere to spend £300,000 on buy land or set aside land, which they do not have an express power for, and they need to come in this Bill to get that express power. They are sufficiently worried that they did not already have it that they need to have it made explicit.

285. Mr Cameron would agree with her points about cattle grids. Where the cattle grid goes over a road, it has to be the highways authority that installs it. They will put it out to their subcontractor, and the bypass gates, if they sit on common land adjacent to a highway, are, indeed, still a Section 38 matter. Of course, where the Bill gives the power for the fencing or the cattle grid not to be exactly on the boundary, it could be in either direction. It could be both inside the common or outside the common. The written document will help you here, but, if you refer back to the plan showing where some of the cattle grids were to go 23 years ago, then it is a very good plan. One of the cattle grids there is something like 500 metres outside the boundary of the common, because it is the best place to put it. At that point, there is highways verge available, which is not common land, for the bypass gates to go on. That would be a preferred solution to intruding into the common.

286. Thank you, my Lord. That is all I have to say.

287. THE CHAIR: Thank you very much indeed for coming and for your presentation, both in writing and in your oral submissions as well. We will adjourn the proceedings now and we will meet again at 10.30 am tomorrow.