UNCORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 17 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:

Robert Berry
Richard Fowler
Paul Bennett
David Fellows
Andrew Myatt

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(At 2.00 p.m.)

1. THE CHAIR: Good afternoon. Ms Lean, it is now for you to reply, please.

Response by Ms Lean

2. MS LEAN: I am grateful, my Lord. I do have a few points to run through. I will take them as briefly as I can. My Lord, I am broadly following the chronological order of the petitioners' submissions. Firstly, if I may, just a point on consultation and engagement about the Bill generally—my Lords and my Lady, you have a chronology of events leading up to the Bill deposit, which we have previously provided the committee with, but to stress, the consultation—again, you have the consultation paper in 2024—ran for eight weeks. There were five drop-in sessions. I am instructed that there were 13,000 leaflets that were sent out about the consultation, in addition to adverts and posts on Trust land and in the newspapers.

3. You do also have, in the bundles that we provided you with back in February, bundle 4, reports on the consultation responses itself, which gives you an idea of the order of magnitude of the responses to that consultation. You have the 2019 consultation in the bundle at around page 288. I was going to come back to this in a few minutes when I pick up on a particular point. Yes, it starts at page 285. There were 467 respondents to the 2019 consultation, and the 2024 consultation—you have a series of papers that were prepared by the working group which start at page 382, and there were 483 responses to that consultation. My Lords and my Lady, I do just highlight that in light of what has been said about this not being something that people would have been particularly aware of, or not having had an opportunity to be involved in.

4. THE CHAIR: The point was being made that, in another consultation, all the ratepayers or whoever were being circulated. The figure you have given is well short of the number of levy payers, is it not?

5. MS LEAN: My Lord, the issue would be households. I think it may come back to the point that we discussed when it came up with one of the petitioners back in the standing hearings: that more people may live in a property and who therefore are on the electoral roll, as distinct from the number of addresses.

6. LORD EVANS OF GUISBOROUGH: It has been suggested that local authorities

were not consulted.

7. MS LEAN: My Lord, I was going to come to that at the end. I am instructed that Ms Satchell wrote personally to Hereford Council, Worcestershire County Council, Malvern Hills District Council, Malvern Town Council and the parish councils to notify them of the consultations. Certainly, there was at least a response from Malvern Hills District Council. Ms Satchell has also had meetings with Malvern Hills District Council and Worcestershire County Council. They have both also petitioned against the Bill. One is not appearing; the other has withdrawn it. I am afraid I do push back in the strongest terms on the suggestion that the councils were not aware of this and, if they had been, it might be in a different position now.

8. My Lord, if I could come on then to the provisions of the Bill that were raised in the submissions, the first point I have noted down is the objects clause and this issue about "best interests of the charity". This perhaps picks up in part on the questions Lord Hope was asking about the interests of the levy payers—presumably they are represented in the objects clause. The interests of the levy payers are in seeing the preservation and management of the hills, and it being kept open and unbuilt on, but a concern seemed to have crept in that maybe there was this idea of "best interests of the charity" being something different or separate from that.

9. My Lord, it may be that this has been a phraseology issue. When the Trust has been referring to acting "in the best interests of the charity", that is essentially using a shorthand that you have perhaps seen in some of the Charity Commission guidance. It may be helpful just to turn the document up. It is in bundle 4, starting at page 210. I am very sorry that this is probably going to involve going to a few documents in this bundle again that we spent some time with a couple of weeks ago.

10. THE CHAIR: Yes.

11. MS LEAN: The document starts at 210. It is from the Charity Commission. "The essential trustee: what you need to know, what you need to do". If I could ask you to turn through to page 216, the committee will see there subsection 2.3, "Act in your charity's best interests", so the shorthand that you may have heard from us. What does that mean? "You must do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes" and "make balanced and adequately

informed decisions, thinking about the long term as well as the short term", and "avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body".

12. My Lords and my Lady, you will see that repeated again if you turn through to page 230, which is a big subheading 6, "Act in your charity's best interests". Again, you will see, "You must do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes", and then, at 6.1, this is where the point comes in about, "What is that not meaning?" Again, it has to be enabling the charity to carry out its purposes; it is not about serving the interests of trustees or staff, the personal interests of members of beneficiaries, the personal interests of supporters, funders or donors, or the charity as an institution in itself, or preserving it for its own sake.

13. I hope that has provided a bit of context for, when we have been talking about needing to act solely and exclusively in the charity's best interests, what that is meant to have conveyed is in furthering the Trust's purposes, which are those objects and requirements set out in the Acts in the public benefit.

14. My Lord, that might be a slightly long-winded way of saying that, in the Trust's submission, there is not a conflict of any sort between what the objects are in Clause 6 and any charitable objectives, because the Bill is meant to draw the two together. There are some provisions of the Bill that are meant to make clear that if you do one thing wearing one hat, you are also doing it wearing the other hat. If you have your "trustee under the Act" hat on, and you are acting in furtherance of the objects, you are also then fulfilling the charitable objects.

15. THE CHAIR: It would remove the risk of confusion if one was to write into Clause 6 a provision to that effect—in other words, the objects set out in subsection (1) under charitable purposes.

16. MS LEAN: Indeed, my Lord, and we have certainly picked up on that from this morning. The provisions in the Bill that perhaps were meant to link to that were if you look at Clause 5(4), which is at page 6 of the filled Bill. That is, "The Trust is to exercise its functions in accordance with the provisions of this Act", which obviously carries with it all of the provisions of the Act, which include the points about what they

are to do as trustees.

17. Then, in Clause 8(3A) at page 9 of the filled Bill—I am conscious that this is one I think we may have touched on when we were going through these provisions originally—that "each trustee must exercise the powers and perform the functions that the trustee has in their capacity as a charity trustee in the way the trustee decides, in good faith, would be most likely to further the objects". That was meant to tie in this idea of, as a charity trustee, if you are furthering the objects, you are ticking all the boxes, but, my Lord, we can certainly take away the point and perhaps suggest some drafting to make it more explicit that if you do one, you are also doing the other, and the objects for the purposes of the Act are the charitable objects for the purposes of charity legislation.

18. LORD INGLEWOOD: Could I please ask a quick question? In 2.3 it says, "Do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes". I do not think there is any requirement in this context for unanimity, so it is quite possible to conceive that people will come to different conclusions in entirely good faith.

19. MS LEAN: Indeed, my Lord.

20. LORD INGLEWOOD: Certain things can follow from that, but the fact that some trustees think one thing and some trustees think another is not inherently impossible underneath the arrangements.

21. MS LEAN: Indeed, my Lord, and that is picked up at page 231 of the trustee guidance document that we were in a few moments ago. 6.1 was where I picked up the point about how it is not there to act in the interests of trustees or funders. 6.2 is about making decisions; collective decision-making is stressed there. 6.3 actively advises trustees to avoid mistakes and to be prepared to challenge assumptions. It recognises at the bottom of 231 that "decisions do not usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree". If you strongly disagree, you can ask for your disagreement to be recorded, and if you think that the others are acting in breach of their duty, they should report it.

22. My Lord, it is recognised within the charity framework that there may well be matters on which reasonable people acting reasonably differ in their views. That is not precluded just because they are a charity. You do not have to just go along.

23. LORD INGLEWOOD: It says in the rest of the paragraph what you do if you still remain unconvinced, I think.

24. MS LEAN: Yes, but, my Lord, I think it is picking up on that point about collective responsibility, and it comes back to perhaps the point I made earlier that it is one thing to disagree with a decision; it is another thing to perhaps try to actively impede the implementation of a decision that has been taken by the majority in accordance with the Trust's obligations. I think this was when we were discussing Clause 12 last week. My Lord, we will take that point of drafting away if we may.

25. The next point to come to is the point about public bodies and accountability. My Lord, I know I have addressed you on public body issues already, and my response would today have been the same. Lord Hope pointed out that what is a public body or a authority for a particular purpose has to be looked at in the context of a particular legislation or provision, but just to stress the idea that this concept of accountability is not something that is novel to the public law sector and does not apply in the charity sector.

26. The guidance that I was just referring to at page 220 in bundle 4 identifies the importance of these matters and talks about how, for example, at the bottom of 220, "Many charities' governing documents allow or require some or all of the trustees to be elected by the members", "the trustee body to include beneficiaries, other groups or organisations, such as local authorities, to appoint trustees", and that it is important "to listen to the views and perspectives of members, beneficiaries and other bodies with an interest in your charity", and that having those people as trustees is one way of obtaining it, but they all have to act in the interests of the body going forward.

27. There is more express provision somewhere in there at page 217. Going forward, "ensure your charity is accountable". There is a requirement to comply with statutory accounting and reporting requirements, but also to ensure appropriate accountability to members if the charity has a membership separate, and to ensure accountability within the charity. This idea of accountability is not something that is solely constrained to

where there is direct voting for trustees or members. It is reflected in the general guidance there.

28. My Lord, my fourth point—there is a concern that has been raised, I think in terms of from the Trust's perspective currently, about the prevalence of the Acts or the charitable objectives by reference to the governing documents. I do not know if it is helpful to go to it, but just to make clear that the Trust's own governing documents make very clear that a key priority of the board is ensuring that things are carried out in furtherance of the Acts.

29. If it is helpful just to have the reference—I do not think we need to turn it up—it is bundle 4 page 79, and that is within the Trust's governing documents. "Terms of reference for members of the board" was the page I pulled up, and it says, "MHT is a creature of statute and a charity. Trustees have and must accept the responsibilities and regulatory requirements of this status". It says, "All board members are equally responsible in law for the board's decision. They must act individually and collectively to"—the first one there is, "further MHT overall purposes as set out in the Malvern Hills Acts". I just wanted to make absolutely clear that the Trust's own governing documents say, "You have to act in accordance with the Acts". It is not, "You must act in accordance just with charitable obligations".

30. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Lean, do you accept that every trustee believes that that is what they are doing, although they are coming from different viewpoints and arriving, unfortunately, at a different conclusion?

31. MS LEAN: My Lady, I do not think I can express a view or answer that question. I would have to seek the Trust's instructions on that. Forgive me. Sorry, I may have misunderstood the question.

32. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I was asking whether you accept that all the trustees would feel that they were fulfilling the terms of reference as set down here on page 79, although what has happened is that there has been a divergence of how that is interpreted and they have arrived at two different—or in some cases more than two—ways of interpreting that.

33. MS LEAN: My Lady, the reason I just pause slightly on that, and why I would

need to just seek some instructions behind me, is that there is of course the issue that has arisen in January this year, which is that when the Charity Commission wrote to the Trust asking for the trustees to confirm in writing that they understood certain obligations on them, there was a refusal by a number of trustees to sign that letter or that confirmation. I think that is probably the only factual answer I can give at the moment: that there has been this issue that has come up of a number of trustees refusing to confirm that they—forgive me, I am just trying to find the letter in question—confirm in writing the matters that the Charity Commission has asked for confirmation of.

34. If it assists, you have the correspondence on that in bundle 4, starting at page 444, going through to 452. My Lady, I am not quite sure that is an answer to the question, but that is why I just had to hesitate slightly.

35. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: On page 445, under "newly appointed trustees", the second bullet point says, "Trustees do not act on behalf of a person or organisation that nominated or elected them. These trustees must, like all trustees, act only in the best interests of the charity". I put it to you that the vast majority of the trustees believe that that is what they are doing.

36. MS LEAN: My Lady, I am obviously not taking issue with any suggestion that the trustees may believe they are doing that. Forgive me; I thought you had asked me for the Trust's perspective or a view on whether they were acting, objectively speaking, in accordance with the obligations in the governing document. I certainly do not dispute or suggest that the trustees who are objecting to the Bill are doing so because they do not feel that that is not their view as to what the right course of action is.

37. LORD INGLEWOOD: Is it your view that the smallest objection to one minor part of the Bill covers everything or is it that, in the case of this particular process, the possibility might exist that if you, say, petition against the Bill, and you are not against having a Bill but a number of details you disagree with, does that fall foul of all this?

38. MS LEAN: My Lord, I think it comes back to the issue that we traversed during the standing hearings—that ordinarily the members of a body such as the Trust that is promoting a Bill like this would be expected to stand by the collective decision-making and not to petition against a Bill unless they had a particular private interest that was affected. My Lord, I think it does get back into some of the territory that we traversed

there about the fact that the Trust has corporately decided to promote the Bill in the form that it is, and that is the decision that is being implemented. For a trustee to petition against even parts of it technically is going against the resolution that has been made by the Trust to promote the Bill in the form that it has put forward. I am not sure if I can take that much further forward than that.

39. LORD INGLEWOOD: I understand entirely what you are saying. I just noticed that you prefaced it with the word "ordinarily".

40. MS LEAN: My Lord, I said "ordinarily" because I think any lawyer always knows that there are potential exceptions, but I had in mind that there are the specific carve-outs in Standing Order 115 that make specific provisions for certain types of bodies where people can petition even though they would ordinarily be caught by that collective responsibility. As we traversed during the standing hearings, this is not that sort of body. Forgive me, that was what the "ordinarily" was directed at.

41. LORD INGLEWOOD: That is fine.

42. MS LEAN: Thank you. My Lord, I think then that brings me to my fifth point, which is on the levy. I am afraid this has five sub-parts, for which I apologise. First, just picking up on a factual point, there was a reference to a document at page 40 of the petitioners' bundle, which are some committee minutes from 2017, which it said showed a decision by the Trust not to pursue an extension to the levy. The particular passage was at page 40; the minutes start at 38. Just to highlight, of course, that that was a decision in the context of the Section 73 scheme that was taken back in 2017. That is not any decision the Trust may have taken about the Bill.

43. On that, because we veered slightly into the Section 74 application and what the Trust's position might have been on that, we have addressed that briefly in submission in some earlier hearings about what the position was with the Section 74 consent, but if I can just highlight that you do have a redacted copy of the application for consent, so the application itself provided with Mr Myatt's evidence bundle for later this afternoon. The position on the levy is set out in there at section 7.4. You do actually now have, sitting behind, the consents that the Charity Commission issued.

44. THE CHAIR: What page number was that?

45. MS LEAN: It is page E87 of Mr Myatt's bundle, section 7.4.

46. THE CHAIR: Yes.

47. MS LEAN: In headline terms, what is said at 7.4.6 and 7.4.7 is, "The trustee's view is that, whilst it would be fairer to extend the levy, it is likely to prove controversial. If the levy-paying area is extended, the electoral area would likewise need to be extended". It is quite an open statement about the levy. It is not a categoric statement of, "We have decided we are definitely not going to do this" or "We definitely are".

48. Second subpoint under the "levy" heading—it is a very minor point, but there were some questions or concerns raised about why the levy has been going up if what the Trust is meant to be doing has remained the same. I just wanted to contextualise that question. That was perhaps a slightly surprising query to come from these petitioners, a number of whom have been trustees for several years. Just to flag that previously the committee has looked at the minutes of a meeting from January 2024, which was when part of the private Bill work was being looked at, which contains the discussion and debate around the levy-setting for that year. Certainly, four of the trustees were involved in that. Just to highlight that there seemed to be a concern raised of, "Why is this happening?" You do have some information about that.

49. The third point was there was a concern, I think, about Worcestershire County Council losing its ability to nominate conservators by reference to the agreement it entered into in the 1960s. Obviously, it was just to flag—and I think I have picked this up already in response to Lord Evans' point—that obviously the county council were clearly well aware of the provisions of the Bill. They petitioned against certain parts of it, but not on the issue of losing an entitlement or an ability to nominate conservators.

50. The fourth point to pick up on, my Lord, was the Malvern Hills District Council letter from around the time of the 1995 Bill, and what might have been looked at about changing the levy back in the 1990s. Just to highlight that we did provide a very high-level overview of what had been looked at in the 1990s, and then the levy being looked at again in the 2000s, on 5 March. I do not think it is necessarily helpful for me to go back over that again, but if it is helpful, it is at paragraph 53 to 56 of the transcript of the morning session on that date.

51. Fifthly, just under this levy subheading, the concern about the ability to acquire additional land within nine miles of Great Malvern Priory—that power is carried forward into the Bill at Clause 71 from the 1884 Act. Just to stress that obviously it is not a completely untrammelled power to acquire the potentially thousands of acres that lie within nine miles of Great Malvern Priory. It has to fall within the type of land that is specified in Clause 71(4), and if it is common land or waste land of a manor, it needs the consent in writing of the Secretary of State. That carries with it, of course, the potential to extend the levy-paying area to include the parish in which such land is situated, if it is not already within the Trust's electoral area. Given that that was raised in the context of what that might mean in terms of additional burden on the levy payers, if that power is used, there is potentially the provision there to deal with the levy at the same time in respect of the parish in which that land is situated.

52. Linked to them, I am instructed that, obviously, when the Trust does exercise its power—any powers it has to acquire land—one of the things it necessarily has to look at is, "How is this going to be funded?" in terms of its management and maintenance going forward. By way of example, management on the Castlemorton Common, which was one of the ones that was particularly raised as a concern, is financed substantially by a countryside stewardship scheme rather than the burden of that falling wholly on the levy payer.

53. My Lord, that probably brings me on to point 6, which is the objects. I am conscious that I have addressed this in some detail in response to the petition from the Malvern Environment Protection Group petition, so I would not propose to go back over the points again, but if I can highlight, I think a point was raised—and forgive me if I paraphrase—that most people are not happy with the proposed changes to the objects. I have mentioned briefly the report on the consultation responses to the 2019 and the 2024 consultation where, amongst other things, changes to the objects were looked at. If I could just perhaps highlight for your note in both of those, a majority of respondents responded positively to the question of whether the proposed objects clause effectively summed up the Trust's existing duties, and about the Sandford principle. My Lord, if I could just flag a couple of pages, the 2019 consultation report—you will find this part at page 288 in bundle 4 that we were in a few minutes ago.

54. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Ms Lean, this

consultation response was before anybody had actually seen the Bill.

55. MS LEAN: My Lady, what I will come on to is you do not have the 2019 consultation paper in full in the bundle, but certainly the 2024 consultation—what you did have was for some of the clauses, you did have a proposed draft wording, so, for example, if I could just flag for reference, in the 2024 consultation document, the objects were dealt with in section 3 at internal page 8 of that document. This is in bundle 1, but if I can just highlight this, perhaps for looking at in due course, it is section 3 of the 2024 consultation document, which dealt with objects. Page 8, which is page 334 in bundle 1, summarises the background, deals with natural aspect, says what changes are proposed, and then, if you go over to page 336 of that document, there is a big green text box and, above it, it says, "It is proposed to include the following clause or similar in the Bill".

56. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: "Or similar", yes.

57. MS LEAN: My Lady, if you look at the core of it, it is difficult to see what is substantively different from what you have in the objects clause that is currently in the Bill. "The objects of the Trust are, for the benefit of the public"—that is exactly what appears at the beginning of 6(1)—"to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills"—that is a direct read-across to what is in 6(1)(a)—"to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public"—that is a direct read-across to what you have in Clause 6(1)(b) of the Bill.

58. Then at subclause (2) there is the Sandford principle, which you have in Clause 6(2) of the Bill. Subclause (3) in the consultation document reads across to 6(3) in the Bill, "consideration by the trustees of the health and safety of persons". Then in (4), there is a slightly expanded version of what "unbuilt on" means in the Bill as opposed to the consultation document.

59. I am just seeking to highlight that, certainly, what there was in the two consultation documents—certainly in this consultation document, and I am sure I will be told what the situation was on the 2019 document on the scheme—is that in some places it says, "We are looking to change this", or "We are looking to do this", but for a

number of provisions, there was actually proposed draft wording of what the clause might look like in the Bill.

60. It is against that context that the questions arise, which you will see there in that consultation document at page 336. Question 1 on the questionnaire, "Do you agree that the proposed clause accurately sums up the Trust's existing duties and is appropriate for the future? Do you agree that, if an unresolvable conflict arises between (1)(a) and (1)(b), conservation should be given greater weight?" I took you to the 2019 consultation document essentially just for the numbers when this was looked at in 2019; that is back in 288. At that time, on the wording that was being looked at in the 2019 consultation, the view was that the proposed objects clause effectively sums up the Trust's existing duties. 68% agree; 8% had no view. The working group response notes that the consultation revealed a high level of agreement that the proposed objects clause reflects the Trust's current duties, but there are some things that they wanted to look at.

61. You have the 2024 equivalent, which directly correlates to the passage and the draft wording that we were just looking at. This is at page 404 of that bundle 4. Forgive me, my Lady; 403 sets out the current draft clause, so that is what was in the consultation paper, and then 404—it is slightly faint text, but the first lot of bar charts are, "The proposed clause accurately sums up the Trust's existing duties and is appropriate for the future". 41% agree strongly; 13% agree slightly. Some people neither agree nor disagree, and then there is 39 and 4 who disagree. Then the unresolvable conflict—48% strongly agree and 10% slightly agree. If I may, although that looks a little bit more red than there was on the 2019 consultation, if I could just flag the note on the—

62. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Is this the 2024?

63. MS LEAN: That is the 2024 consultation, but if I could just flag the bottom of page 382, which provides a bit of context for some of those numbers. This is under the heading "consultation responses". There is a reference there to obviously thanking everybody who participated, and noting that unfortunately there was some misinformation being circulated before and during the consultation, but noting—it is the last three lines up, starting "in addition"—that one of the websites that was active during

the consultation set out how to respond to the Trust's consultation in four minutes in order to submit an entirely negative response without reading the Trust's consultation document. 56 Degree Insight—that was the company that was commissioned to do the consultation and provide a high-level review of the responses—confirmed that 12% of the validated responses conformed to this template.

64. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Sorry, where is this on page 382?

65. MS LEAN: It is the bottom of 382, my Lady. It is right at the bottom, three lines up. It is about two-thirds of the way through the sentence. It starts, "In addition".

66. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Yes. I have got it.

67. MS LEAN: Essentially, there was information given on a website about how you could skim through the consultation and do an entirely negative response. It starts at the bottom of the page. "56"—and then over the page—"Degree Insight confirmed that 12% of the validated responses conformed to this template". It was more to highlight that, although you do see in the 2024 consultation responses perhaps a greater figure or greater percentage of people disagreeing, that does have to be read against the context of 12% of the responses just disagreed with absolutely everything without having to engage with it. I just wanted to draw your attention to that.

68. My Lord, again forgive me. That was just a way of responding to the suggestion that came through, I thought quite strongly, that most people are unhappy about what these object changes are. That is not borne out by the responses that were received during the consultations.

69. THE CHAIR: In the consultation paper itself, on the question of removing the word "unenclosed", it says it was put in originally for a particular purpose and it is no longer necessary, but that suggests, as an abundance of caution, it might as well be a good idea just to keep it in. There is no particularly compelling reason for taking it out that was put forward.

70. MS LEAN: My Lord, this was something we touched on in response to MEPG,

but there is a sense of, on the one hand, things have moved on slightly, because one issue that was debated during the 1995 Bill was, "There is the duty to keep unenclosed, but you are introducing these new powers to fence and to regulate or prohibit access by the public. Is there not a tension or contradiction there?" There has been that slight development, even before we got to this Bill, in terms of that matter.

71. Secondly, that there is the freestanding duty that is retained in the Bill, which is how it appeared in the 1930 Act—it was a duty to keep unenclosed, rather than putting it in the objects. Thirdly, there is a sense to which the core of that idea of "unenclosed" is captured in the keeping it "unbuilt on as open space for recreation and enjoyment of the public" in Clause 6(1)(b), when you look at the definition of "unbuilt on", which captures within it not just buildings but structures. That is where it got to. That was the justification for keeping the Bill as it was set up, keeping the word "unenclosed" not in the objects but maintaining it as the freestanding duty.

72. My Lord, my seventh point was on representation in reference to a letter in the *Times* about the 1884 Bill, potentially about fairly representing. I know you have heard an awful lot from me about representation and elected versus nominated so I do not want to traverse that today because I am conscious of time, but just to highlight that it maybe comes back to a point that we raised earlier on in proceedings, which is the issue may be less about the word "represent" and more about what that word "represent" is said to carry with it.

73. It is one thing to say that it is "represent" in terms of ensuring there is a voice on the board for the levy payers to be heard—that the people who are most closely connected with the levy payers, who have been elected by them, who know what their concerns are, are sitting there in the board and making decisions, and the sense of "represent" as meaning, "Gives them mandate to or should be able to direct the decision-making of the Trust", but I am sure I will end up coming back to this, possibly briefly, in closing tomorrow.

74. Eighth point—another very quick one. There is a concern—this is where we moved on to appointed trustees and the fact that elected trustees have a local knowledge or interest, and that appointed trustees do not have to have that. My Lord, we touched on this briefly last week: that, of course, in Clause 15(5), which is the provision dealing

with independent members—that they may have regard to a local connection—and we were going to come back to you—and perhaps we could pick this up tomorrow—on local connection more generally. It was more to flag that that is something I know was raised, and we have a response that we have to provide to you when we look at some remaining clauses tomorrow.

75. Ninth point, also on appointed trustees, on skill sets—just to highlight, of course, that, first, you have obviously heard from the petitioners today. You have also heard from Ms Satchell about the position over the period of time during which she has been involved with the Trust. Certainly, it is not suggested that elected trustees may not have these skill sets, but what this is about is ensuring that the Trust can ensure it has the right skill set when it does its audit of its elected trustees or its current trustees. It can see where might there be any skills gaps so it can then specifically look to recruit through the appointments process for any particular skills deficit there may be at that point in time.

76. Just on the elected trustees as well, my Lord, again, I do not in any way, shape or form seek to suggest that you are not going to get candidates coming forward who have relevant skills, but of course one of the points that was picked up at Second Reading was the concern about the single-issue candidate slate. Clearly, in a situation where there may be very strongly held views about a particular issue at a particular point in time, there cannot be necessarily any certainty or guarantee that consideration of skills will be the deciding factor, say, when an election is happening, and you will not find yourself in a situation of going, "People stood on a particular issue and felt very strongly about it", but the Trust does then find itself having to look very specifically for, "We do have some gaps here and here".

77. Point 10—the suggestion of moving to nominations by Worcestershire County Council, Herefordshire Council, Malvern Hills District Council, Malvern Town Council, and the suggestion that I think inquiries had been made of certain individuals associated with those organisations. I suppose just a word of caution, my Lord, that of course they are statutory corporation bodies who act through matters such as resolutions, and to the extent that the committee has the authorised or the formal view of those bodies before it is in the absence of any reference to concerns about the nomination or suggestions about how appointments should be done in the petitions that you have received from those

bodies.

78. My Lord, finally, board of 12, point 11—we have touched on this in our evidence, so I do not think I need to go back to that. The point 12 electoral areas—obviously, some detailed work has been done by this petitioner about looking at the numbers and maybe how this could be done, but if I could highlight three points, first, looking at the numbers that were in table 4 at page 48 of the petitioners' exhibits, it may address some of the more extreme elements of the disparity, but it does not really address the fact there is still a disparity there.

79. If I can highlight, for example, you will see that Chase ward—the figure that is given is 5,117, as opposed to Malvern Wells, which is 2,463. The Colwall Mathon situation still only brings you to, I think, around the region of 2,270-odd, so although it might go a little way to adjusting some of the numbers, it does not address that key issue of the fact that, if you do it by ward or by parish, there is that disparity. You eliminate that if you take the full electoral area, and every single person's vote carries exactly the same weight in terms of the elected elections to the board.

80. Secondly, it does not address the underlying issue with potential local government reorganisation or ward changes. Under the Bill proposals, clearly the Trust is going to have to have set in stone or on a map somewhere exactly what the areas within the electoral area are today, so that if things shift, you make sure that you keep levying from the same geographical area. That is one thing; to have to try to juggle that with doing that for individual ward boundaries to work out which particular households get to vote for which particular trustee—that is, in my submission, a different order of magnitude, and comes back to some of the issues that have driven the proposed changes today.

81. Thirdly, just to highlight, in terms of the proposals overall, in terms of four nominations and the particular nominations proposed alongside the elected, this still does maintain a degree of disparity, because what you would end up with is, for example, Colwall and Mathon go from, I think, currently today having five trustees between them plus appointments by Herefordshire—they have one elected, and then there would be potentially the Herefordshire nomination if that is what is taken forward, whereas, for example, Pickersleigh also falls within Malvern Town Council, which I think is technically a parish council although it is called a town council, and Malvern

Hills District Council and Worcestershire County Council. You will end up with some areas where, if you take the concept of a nominating body being representatives of an area, some of them have one directly elected and three bodies that are representative, as opposed to others that have one and one.

82. Moving on then, finally, to some specific points that were made by Mr Fowler, before I turn to Mr Rouse's petition. First, this was in the separate note that came over on Clause 18 and the eligibility criteria of who can stand. Yes, part of the purpose in changing the eligibility requirements has been to widen the group of people who can stand for election, reflecting the fact that, for example, people in Castlemorton do obviously have a very particular interest in land under the Trust's jurisdiction. They just cannot stand today because they do not pay the levy.

83. In respect of the specific query about, "What if you have an acquisition and then a Section 73 disposal?", in my submission, the references in Clause 18 to land in the parish, that has to just be looked at as at the date of the relevant elections. If the land is in the parish today, yes, in theory that brings it in, but if it is not two years down the line, it would not be in for the elections two years down the line. That would be picked up ordinarily as part of looking at, when people put forward applications, who could stand and suchlike.

84. The next point on that was terms of office. My Lord, I think you have heard from us on that in terms of the refreshing of the board. Again, it does pick up on that safeguard idea. It is one way of guarding against the idea of potential issue capture or a particular hot issue capturing the particular attention at that time, so the elections end up being driven by that in particular.

85. The third point was about excluding former employees from being independent members of the nominations committee. If I may, my Lord, in my submission, there does not need to be a specific provision on that because it is dealt with by 15(5)(b). In appointing an independent member, the trustees "must take into account whether any conflict of interest is likely to arise as respects the independent member carrying out their functions on the committee". That would seem apposite to potentially capture a very recent former employee if there had been any issue there, but there is a slight difference between, with respect, former trustees who may then become eligible or wish

to re-stand to be nominated or elected or appointed themselves in the future, and a former employee who, if there is no conflict of interest, what is necessarily the problem with them at some point in the future coming back to the Trust but in the role of an independent member?

86. Then, finally, the electoral rules—under Clause 24, the mechanics of elections will be things that have to be established in rules by the trustees. The Bill says roughly which window things have to happen in and who can be eligible and returning officers and things like that, but Clause 24 is really about the mechanics. In terms of the safeguard and having to do things in accordance with the Representation of the People Act, there is a safeguard that is provided in Clause 26, which is page 23 of the filled Bill, that the provisions of Part III of the 1983 Act—and that is the Representation of the People Act 1983—"which apply to an election under the local government Act apply to an election of an elected trustee under this Act as if it were an election under the local government Act".

87. If I can just flag there, one of the provisions in the Representation of the People Act 1983 in Part III about the questioning of a local election is in Section 127—that an election may be questioned "on the ground that the person whose election is questioned was at the time of the election disqualified or was not duly elected, or on the ground that the election was avoided by corrupt or illegal practices or on the grounds provided by Section 164 or Section 165 below". There is that mechanism that is built into the Act for an external challenge if there are issues about how the election has been carried out.

88. I think that then brings me on to Mr Rouse's petition as a commoner specifically. I think I can deal with this very briefly, if I may, which is that we traversed Clauses 49 and 44 in some detail last week, 49 being the power to fence common land for a period of up to 60 days to regulate grazing in furtherance of the Trust's objects. Obviously, we drew attention on that occasion to, first, there is also the protection of rights of common generally in Clause 94 of the Bill, but also to the sort of circumstances where that might, in practice, look to be exercised.

89. Then with regards to Clause 44, which is the ability to regulate use or exercise of rights of common, to highlight of course that that is precedented in Section 10 of the 1884 Act. That ability to regulate exercise of rights of common goes all the way back to

the very first Act. It is not a new power, and in our submission there is no reason to add anything further into that.

90. My Lord, I was going to conclude with picking up on some points at the end, but there is obviously the point that has been—forgive me, I have just had a note. I think one point was raised. Going back into contributions, there was a suggestion that in 1968 or 1969, Worcestershire County Council was contributing £10,000, which seemed quite high if you carried it forward. I am instructed that actually it was £1,500, which perhaps, if you allow for inflation and escalation, does not quite get us to the very high figures that we were looking at earlier.

91. My Lord, I was just going to conclude. I know I started by saying about consultation and engagement, but, again, there has been the reference to confidence in the Trust being at rock bottom. I think it is only right that I reiterate that, of course, necessarily, given some of the strength of feeling about the Bill and its provisions, there has been a lot said. There have been quite polarising opinions. Of course, your Lordship's committee is only hearing from those who have objected to the Bill and have petitioned, not the full voice of everybody in the Malverns, including those who you will see from the consultation document have been supportive of what is proposed in the Bill.

92. I think I may just finish on that point, unless there is anything else. Forgive me; I know there was an awful lot that was covered in the petitioners' petition this morning. I have tried to just pick up on some headline points, but if there is anything further, I will do my best to assist.

93. THE CHAIR: Thank you very much. Mr Fowler, I said you have a right of reply. We really must finish this at 3.00 p.m. because we have Mr Myatt coming on, and I want to give him as much time as possible. Do you have anything to say by way of reply?

94. MR FOWLER: We do have a few things to say, but we will do it in five or 10 minutes.

95. THE CHAIR: As quick as you can, please.

96. MR BERRY: In terms of point 1, the consultation, the first consultation was marked by the governance change officer. The second consultation was marked by a group that was originally called the communications group. This was two people selected by the chair and vice-chair, and they then joined that group, and it was then called whatever group it was called. Fundamentally, the Trust marked its own homework, and many people did analysis of the figures and certainly disagreed with them. In terms of the second consultation, it was a company in Scotland that ran it. Nobody could understand why, and a large number of responses were vetoed for reasons that were never properly and fully understood.

97. Point 2, best interests of the charity—this is best summed up with regard to—I cannot give them today, but I can send them to you—the minutes of the meeting on 18 March 2019 with regard to an easement meeting regarding Chance Lane. It is the issue of, "Does the Trust want a cheque for £2 million or does it want a housing estate you can see from the top of the hills?" That is what it comes down to.

98. In terms of accountability, things have not been as effective as they need to be, because we probably would not be sat here now. As Baroness Bakewell alluded to, there are 12 trustees who think one thing and 13 who think another, and I do not think any of the trustees who are likeminded with me or on the other side are evil, bad people with poor intent. There is a clash between them, as I have alluded to.

99. In terms of the objects, I agree with counsel. Where we are here is that it is just the two missing elements: "unenclosed" going back in; and "natural aspect" being retained. In terms of the levy, all the proposals for the Section 73 scheme were just carried forward into 74. In fact, the Trust was at pains to tell us all that, in fact, this would save some money when it came to the drafting because they would take one lot of ideas and just shovel it from one set of lawyers to the other. That does not appear to have worked, looking at the legal bill.

100. In terms of the 1968 nomination, it may well be that officers wrote to officers. I have spoken to the leadership, the councillors, and it is those people who are the elected councillors, who knew no more about this than I did to start with.

101. In terms of the power to acquire, I totally agree with the promoters. The rule with regard to the nine miles is historic. It was there. I am just pointing out that there is a way

of limiting or changing that so that it might then not trip over into further levy-paying issues later on. In terms of that sum, 30% of £1.4 million is £420,000. That is not forthcoming with regard to looking after Castlemorton Common, but I would accept that it does not cost the same amount to look after each acre of land that we own, so that it is a little bit of a false figure, if that makes sense. There is clearly a disparity there.

102. I have spoken about the objects before—the natural aspect. In terms of the point about what we understand by this word "represent", you put two lawyers in a room; you get two people disagreeing. You put four in a room; you get two disagreeing with two others. It happens, does it not? I get that. We look at it with a bit of common sense. If we line up 100 people on the street and say, "What does 'represent' mean?", I think we would probably get a fairly sensible answer. It is not that Mr Fowler and I argue that the Trust has spent 42% more on his levy-paying area than mine, because that it is not what it comes down to. It is simply about the local people having an idea of what is going on and being able to take an interest. If you get people who are interested in looking after an organisation and being involved in it, normally it thrives, and that is really what we all want to see.

103. The single-issue thing—yes, the Trust has been a party to that. Look at the composition of the board. When the previous Green-led administration of MHDC were on board, they just put all the Green candidates on to the Trust. It is there. The evidence is there. Go and look it up. We want to avoid that. That is why I have given you eight nominated from individual places and four from these places. I totally accept that these areas overlap as you go from big areas to small areas, which is why I have explored district boundaries as well.

104. In terms of the nominations, as I alluded to, the people of Malvern—I am going to get grief for this, but we are slightly slow burners, if that makes sense. It has taken people a while to wake up to the implications of this Bill. It is not straightforward, and some of those responses—I do not think people really understood, in some cases, exactly what they were responding to. There was a whole lot of leading questions. Take those questions, give them to somebody who does it professionally, and you will probably get a different set of questions.

105. THE CHAIR: Mr Berry, I think we are getting quite close to my time limit.

106. MR BERRY: I think we are there. Thank you for your time and your patience.

107. MR BENNETT: I just wanted to make a quick point.

108. THE CHAIR: If you want to say something, please make it very short.

109. MR BENNETT: Yes, very quickly. First of all, there has been a conflict between charity and public body in the sense that we have been excluded from every single discussion about this Bill for months and months. That is all of the trustees who have petitioned against this Bill. We have been excluded from every meeting, every discussion, all information about it.

110. THE CHAIR: Yes, we are aware of all this.

111. MR BENNETT: That is because of their use of charity law, not putting the Bill first.

112. THE CHAIR: I think we have to leave it there. We are well aware of that point.

113. MR BENNETT: I just wanted to let you know.

114. THE CHAIR: It is a point of real concern, I can assure you.

115. MR BENNETT: Yes, because they are saying something different to that. The only other thing I wanted to say is that I genuinely think that if people had really known what was within this Bill, the councils concerned, who petitioned on very specific things, at the time would have been very much more active than they have been. They are now. They are not allowed to be here in front of you; if they were, they would have a lot more questions than you are allowed to be asked.

116. THE CHAIR: There we are. That is speculation.

117. MR BENNETT: I just wanted to let you know that.

118. THE CHAIR: Thank you all very much indeed. We have to move on. Mr Myatt will have to come forward to present his petition.

119. Good afternoon, Mr Myatt. We have to finish this session at 4.30 pm, so that is the time limit.

Mr Andrew Myatt

Evidence of Mr Myatt

120. MR MYATT: Thank you very much. I have 12 clauses to address and I am very much aware of the time. I was so aware of the time that I submitted my evidence on Friday, both in terms of the exhibits and the written evidence. I do not plan to read all that, you will be glad to know, but I do hope you have read it. I plan to précis it but to leave the substance as it is.

121. I did prepare some slides and it feels a bit like "Star Wars". The main film came first and then the prequel came after. I got quite interested—and I think it was in response to one of the questions by one of your Lordships—in terms of what were the origins of the 1884 Bill. I went into the archive and, as has already been cited, some interesting articles in the *Times*. I thought it would be quite interesting—and I will do it really quickly—to cover some of that history.

122. First, I would like to just see what my definition of representative accountability is. My understanding of representative accountability is it is a cornerstone of democracy. Elected officials are responsible for their actions and decisions, subject to evaluation by the voters. It is a duty to explain actions and exposure to scrutiny. That is what I see as the issue here, and we will explore some of those. I do not know whether the promoters agree with that, but that is what I seek out of this representation.

123. The historical context—the promoters, on the first day, did point you in the direction, and I do hope you get the chance to read this book; I have a spare copy. It is an excellent book from the 1980s by Pamela Hurle. It is the definitive book. What I am going to tell you now comes from Pamela Hurle, but it also comes from a look at the archives and the *Times*.

124. The origins of the first Bill came back to a committee called the Malvern Preservation Committee, which sought to bring in a Bill in 1882. That Bill was rejected. The issue was one down to representation. What they tried to do was have a representational structure where there were 18 compartments or components, and voters, I think, or elected members. Eighteen of them came from the Great Malvern area and one came from the rest of the area. That fell, but, in doing that, it caused a lot of upset

with the commoners, the freeholders and the tenants of the Malvern area.

125. As a result, a committee was formed, and that was called the Malvern Commoners Committee. That was established by Raper and Ballard, who you have heard about before. Raper and Ballard and the commoners committee were the drafters of the first 1884 Bill.

126. What we are seeing here in this slide is a minute from 10 September 1883, where a deputation from the preservation committee—the first committee—visits the commoners committee. The preservation committee is seeking to get an amendment to that commoners committee Bill. The commoners committee submit their Bill, and there is quite a lot of coverage of it in the *Times*. I have provided quite a long transcript of this—it is four pages of transcript—where you can get quite a clear insight into some of the discussions that were going on and why the first Bill by the preservation committee failed, and some of the benefits of the second Bill by Raper and Ballard and the commoners committee.

127. Just going back to what I have said, the *Times* article says, "The east side of the hills were to appoint 17 out of the 18 elected conservators, while the agricultural parishes, the whole of whose land were included, were only to appoint one". It continues, saying about the second Bill—the 1884 Bill—"In the composition of a board of conservators, the rural population and agricultural poor are well represented". It was an active conversation. What I am trying to put across here is the issue of representation in that first Bill was an active issue.

128. If we go to our next slide, this is the minutes of 4 August 1884, where the commoners committee, which put through the first Malvern Hills Conservators Bill, celebrate and record the fact that they have achieved their goal. What we see here is a minute that has included in it a pasted newspaper report of the achievement. It goes through the principles of the Bill that has been passed. That is on E14 to E20, if you are wanting to look at it.

129. Principle 2 is the board of conservators was constituted to give proper representation to those who were going to pay for the conservators—I am jumping ahead of myself; apologies. "That the ratepayers of all the parishes contributing common land be fairly represented on the board of conservators, which will have to

make and administer by-laws affecting the land contributed". Again, we have the representational quality of it going through all the way, and they record that.

130. Where we are getting to now is we have our Bill, and we are talking about how we have moved to a charitable perspective. What we are seeing on this slide is the first reference to a charity. It is the minute of 12 November 1962. I have looked through all the indexes of the board meetings, and this is the first reference. It says, "The financial officer was in correspondence with the Inland Revenue over the designation of the board as a charitable organisation".

131. On the next slide, we see, in correspondence, it is saying, just a few months later, "The financial officer advised the committee that he had received confirmation from the inspector of taxes that the conservators would now be recognised as a charity for income tax purposes". Mr Nash was thanked. That is the first time this organisation is associated with charitable deeds for income tax purposes.

132. If we follow through, the nature of the organisation changes. One of the interesting aspects of this slide is, if you look below that red line, you also see the first reference to the issues of a precept. "The chairman was advised at the committee that Brigadier Scott had suggested that, now that the conservators own land in parishes that were not subject to a precept, they would consider it advisable to seek and amend their Acts so that the parishes could be included in the precept. The committee considered the matter, and it would not warrant the expense of obtaining an amendment to the Act". There we are. That is one of our first references to the fact that it just was not worth its while to change the Act.

133. Briefly, going forward—and I will not hold you much longer on this—the first reference to charity. It has been covered at length here. This is the minute, and it is in your bundle here, from 19 March 2019, which my colleagues were talking about before. This was in relation to an easement that was quite controversial. This is the first reference that I can see to what I will call the charity-first identity. Here we see what Mr Hall-Jones is saying in relation to a decision about conflict of interest. "Mr Hall-Jones", who was the chair of the board when the last Act of Parliament was put through, "stated it was absurd to put district councillors in" a position of conflict of interest. "There was no planning application. Had it been expected that district councillors would not be able

to participate, the Acts would have so provided". Mr Freeman was reminded of a duty "to act solely and exclusively in the best interests of the Trust and its charitable purposes". Here we are, having the ability of the members of the board to be controlled by the charity.

134. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Who was Mr Freeman?

135. MR MYATT: Mr Freeman was the chair of the board at that point in time. I think that covers my points on the slides. I hope that gives you some sense of the origins of representation and how the nature of the board and the organisation has morphed through time. It is trying to reflect what is in my statement, so I hope that is clear.

136. Moving on, your Lordships identified, on 5 February, that it is absolutely fundamental that your committee is on sound ground in understanding the current nature of a body whose constitution this committee is being asked to report to Parliament upon. I hope this evidence provides and assists the committee in that. It is clear, as I have said, that it was founded as a representational organisation, and I believe the representation in that respect is the definition that I gave at the beginning.

137. You have heard the promoter repeat many times—and we have seen it here—that, because the Trust is now a registered charity, trustees must act solely in the interests of the charity and not as representatives of those who elect them. Your Lordships have asked, "What changed? What has changed from this to the situation that we are presented with now?" The Act of Parliament is asking for a radical change, but are we on firm ground in terms of what the organisation is at this point in time?

138. You asked Ms Lean to write a note, and that note was on 10 February, on the status of the conservators. I have read that at length, and over and over again, and I do not see anything in that note that points to a change. Maybe she will correct me. It talks about the statuses of charities, and general aspects of it, but we do not see a specific incident, event or inflection point in the last 140 years where the status has changed to the status that they are asserting now, which is, "We are basically a charity, so therefore put this Bill through and make us a charity". The "what changed?" question goes directly to Clause 8, which proposes the new constitution.

139. Following on from my fellow petitioners, can the Bill properly proceed on the basis of an incorrect assertion, which I believe has been made to you, that it is a charity and therefore, "There is nothing to see here. It is just a migration"?

140. THE CHAIR: Could we go back to that slide where you were quoting from Mr Freeman? There is something that strikes me as a little odd. At the bottom there, it says, "Allowing personal views to sway the exercise of a trustee's judgment would be a breach of duty". If the word, instead of "views", was "personal interests", I would understand it, but I do not follow why personal views should not be—

141. MR MYATT: That is the minute, and you have the minute.

142. THE CHAIR: Every trustee is surely entitled to express an opinion.

143. MR MYATT: Yes, exactly. This goes to the point about our status and it being expanded upon. We have the best interests of this organisation at heart. I joined this organisation from 2003 to 2011. I have eight years on this organisation, and the organisation that I am part of now is very different from the organisation that I served back then. That is my motivation.

144. THE CHAIR: Is that sentence what is guiding the board now?

145. MR MYATT: I cannot talk for the board, but that is a minute. I can turn it up. It might take me a few moments, but you have the minute to reference there. It is E56 to E57. It is a really interesting minute in the sense that there is a whole raft of conflicts of interest questions. People were being challenged on conflict of interest in relation to this easement that was going through; it was very controversial at the time. I was not a board member, but Mr Rouse was. I come back to the question of whether this Bill can properly proceed on the basis of, I believe, an incorrect assertion of the status of this organisation.

146. Secondary to that is that, if you accept my view that it is an incorrect assertion, the whole tenet of it is so woven into this Bill. If you look at the Bill, the whole perspective of, "This is a charity and we are just converting it into another type of charity" is so woven through the Bill that I find it difficult to believe that it can be passed, and it should be returned for further consultation. I think anything other than that is going to

end up with an unsatisfactory piece of legislation. I put some questions in my paper. I asked you to consciously consider those aspects.

147. LORD INGLEWOOD: One quick point. Are you telling us it is not a charity?

148. MR MYATT: I am telling you it is obviously registered as a charity, but the charity status should be subservient to the statutory status.

149. If you do consider that you want to move this Bill forward, I have proposed an amendment, and it has been referenced this morning. Can we not explicitly express in the objects the representational quality? I proposed an amendment that would be to add—and I know it is Clause 6, but it talks to Clause 8—"In pursuing these objects, to have regard to the interests of those members of the public who contribute to the Trust through the statutory levy and who are represented in its governance under the Malvern Hills Act".

150. There are not explicit objects in the current Acts, and what we have in the Bill is an interpretation of the objects. I would argue that we could extend that interpretation and say, "There is a representational quality in the current Bill. Therefore, let us take that representational quality and make it explicit in the objects to support the Charity Commission in their work", although I am aware that one of the challenges that us trustees have is that that would not address the issue of the unanimity of the decision-making process.

151. If we go back to our definition of representation—exposure to scrutiny, requirement to explain actions and subject to evaluation by the voters—we would still have a challenge in respect of that. That really covers my preface on the situation. I support entirely what my colleagues say in other regards.

152. Turning to Clause 8 in more detail, I believe that some realignment of the board is of benefit. I believe that we, and your committee and your Lordships, should proceed with some caution. I think many of the administrative inefficiencies that have been put to you by the promoters could be down to the promoters' incorrect assertions of their status. If you have a board of people who do not have a clear definition—it has been constituted as an organisation that is representative, and it has been working under this definition of it being a charity—necessarily, or understandably, it is going to be

inefficient, because people just do not understand how they fit in. I think we should, therefore, have some caution in how we try to redefine it.

153. I do agree with the basis of reducing the numbers. I think, if we go back to the original Act, there were 10 elected members and five land-owning members. That two-thirds to a third proportion seems right, which is what my colleagues were proposing, which is eight elected members and four general land-owning members, and would work. The third would represent the broader community. The larger number represents the specific levy payers, and the third represents the broader landowning area.

154. I believe that there should be provision for the levy to be extended, and the representational equality of the board should follow that levy. As you add land to the area, you should be able to add additional members. I do not really want to dwell on what has already been said beyond that, unless you have specific questions in terms of what I put in my paper.

155. In terms of trustees' terms in office, I am trying to pitch this submission in various levels. I do not believe that there should be appointed members. I think there is no justification for needing a subset of skilled members. I think the skills are more than adequately provided by those people who are willing to stand and those who are appointed by their nominating organisations.

156. At a fundamental level, people are paying their taxes. They are worthy of having professional advice. An ordinary charity, which raises its money through gifting, understandably might want to seek external free advice, because that is great, but we do not expect our Members of Parliament to work for free because they are experts or whatever. We should not have appointed members. We should only have representative members. Therefore, there is no need for appointed members.

157. In terms of trustees' terms in office, in Clause 9, the electorate should be free to determine who represents them without statutory restriction. The Bill, as drafted, places a term limit of two terms. That does not talk to accountability. Term limits only have the effect of increasing the power and influence of the executive. Appointed trustees, were you to want those, should transfer their knowledge to the organisation. Appointed trustees should have a fixed term; elected trustees should not.

158. In terms of Clause 14, please read the paper that I have put in. More detail is there, but, in the interests of time, in terms of Clause 14 and the requirements and process for appointment of trustees, the nominations committee should advise; it should not mandate. Requiring a special resolution to reject a recommendation effectively reverses the ordinary hierarchy of authority. It places the onus and practical control of the composition of the board on the nominations committee. It makes the board's rejection exceptional and procedurally onerous.

159. Also, we find that elected trustees must satisfy very many more conditions to becoming a trustee than an appointed trustee. An elected trustee must live within the area, must be on the electoral roll, must be nominated by two people and must be elected. An appointed trustee just has to be appointed. Again, I am reminding my Lords that this is a levy-raising organisation with a power to tax. How can that be appropriate? Also, if we are going for appointed trustees, they must have the same geographic connection requirements as elected trustees.

160. Clause 15, the constitution of the nominations committee. As I have already inferred, the structure of the nominations committee significantly influences the balance within the Trust. The Bill defines the composition as five members, only two of whom are trustees and two are independent members. The fifth member is the chief executive in an advisory capacity. I have seen chief executives in an advisory capacity, and it is quite influential. I do not see anything different here.

161. Recommendations from the nominations committee can only be rejected by a special resolution. That means 75% of the board has to disagree with this. This has been discussed previously. As I have said, in levy-raising and by-law-powered bodies, it is significant that this function is placed in a structure insulated from the electorate, with the oversight of the executive. I believe the composition of this nominations committee should be revised so that it contains no appointed trustees, and should have three elected trustees. That is two independent members and three elected trustees.

162. As has already been said, former employees and contractors working in staff replacement roles should not be eligible as independent members. This talks to influence and the ability for the executive to move people through into independent members. I think we have to guard against undue influence. I am open. In many of these

amendments, I am trying to make the organisation representative and guard against undue influence and control.

163. Current electors should be allowed as independent members. Why exclude electors from being independent members who have a say on the nominations committee? There should be a cooling-off period between independent members becoming eligible to become appointed members—"I was a member of the nominations committee. Wouldn't it be nice if I am an appointed member?" Again, undue influence and control.

164. Moving to ordinary elections, the Bill proposes staggered elections every two years. The argument is that this provides continuity, but it also dilutes the influence of the elected members. They have to adopt the policies and processes that have already been accepted. It is much better from a representative perspective, I believe, for there to be one electoral cycle. A single four-year election cycle allows the electorate to determine the composition of the elected board in a coherent way and to representative standards.

165. Clause 24, methods and rules of conduct of elections. I have recent experience of being elected to this organisation, and I am sorry if I am going to bore you with it. Clause 24 dispenses with elections under the Local Government Act. It allows the Trust to define their own rules and methods of voting as they think fit. The electoral process is not defined in legislation on the face of the Bill, nor is it subject to any external review or approval. I think this talks to the legitimacy of the organisation. Again, it is a levy-raising organisation. It has statutory powers to take money off people. It should have clear election processes on the face of the Bill.

166. By way of example, my election last September was announced on Wednesday 13 August. The Trust announced the election on 13 August on Facebook. It was noted on the Trust's website on 15 August. Nominations closed on Thursday 21 August, a full five working days between it appearing on Facebook and the nominations closing. We have heard a lot about the fact that there is not the level of engagement from the electorate. Many elections go uncontested. Isn't that strange?

167. If that is the level of period from nominations opening to nominations closing, I am surprised that anyone stands. I only became aware of it because someone phoned me

up and said, “Have you seen this on Facebook?” The critical thing is that five days does not give notice of that election to appear in the local newspapers, so I would propose that a minimum of one month be provided between the notice of election and the close of nominations. I think this is an example of a concern that would happen if the Trust was in control of its own rules.

168. Another aspect of what happened with my election was that there were two information evenings in the ward that I was standing in and the ward which Jenny was standing in. Those just happened to be in my ward. The Trust rejects the fact that they are under obligation for purdah. It is absolutely critical that we have on the face of the Bill the standards of election that are needed. Those include things like provision for in-person voting, appointment of an independent returning officer, a clear and transparent nomination procedure, a defined election timetable, the ability to challenge an election result, which we have heard—Clause 26 does not really address the issue. If we are requiring open rules, and then it can be challenged afterwards, that places the candidate under the obligation to litigate, which, clearly, is not satisfactory—and, as I have said, a defined period of purdah.

169. On that issue, we have heard about a single electoral area at some length. Having delivered election leaflets—and I am sure you all have delivered election leaflets at one point in time, possibly—a single election area is a big area. The Malvern Hills is a big area. If you have a single election area, it is practically impossible to deliver election leaflets to everyone. I do not know how candidates would be expected to engage with the electorate. Therefore, I would ask that the Trust be required to deliver at least one election communication to the electorate, and that be at their cost because of that practical reason, obviously with the exception of things that might be defamatory or illegal.

170. Moving on to Clause 34, use of capital, money and income, Clause 34 allows capital receipts from the disposal of land or interest to be applied to repayment of borrowing, both capital and operational debt. Really, I am seeking confirmation here. There is an existing land purchase 1992 fund. This fund was established within the Trust as a result of the sale in exchange of a strip of land that enabled the development of a retail park back in 1992. This is the fund that the Trust is borrowing against in order to fund this Bill.

171. I seek confirmation that that fund, which holds the remains of receipts, falls beyond the scope of capital from disposal of land and interest for the purposes of this clause.

172. I also seek confirmation that Clause 34 does not apply to special funds resulting from disposal of existing relevant land as set out in Clause 72(2). I would also ask that it be confirmed in the Bill that this clause, therefore, can only be used in relation to capital released from the sale of ancillary land.

173. A concern I have about this clause—and I am sure it will be clarified—is that, in the way it is worded, it implies that, if I incur operational debt, I can clear that operational debt through the release of capital money from the sale of land. Therefore, I do not want to have a situation where land disposal, effectively, is passed through into operational debt.

174. Clause 35, borrowing and granting of securities—the existing Acts provide power to borrow money for the purposes of the specific Act. If you look at those Acts, they are linked specifically to land acquisition and require the Secretary of State's approval. What this Act does, because it merges and modernises, is that that power to borrow is now framed against the entirety of the Bill. Whereas, in previous Bills, it was specific, now we have a borrowing power that is relevant to the entirety of the Bill.

175. As the Bill consolidates the various functions of the Trust, the same borrowing language now operates across all Trust activities, rather than being primarily associated with land acquisition. The Bill introduces new powers allowing borrowing to be secured against a much wider category of assets without external approval. In particular, the borrowing may be secured against land acquired after commencement of the Bill, existing ancillary land held by the Trust, and the revenues of the Trust, including levy income.

176. I seek clarification, but my understanding is that Secretary of State approval is only required where borrowing is secured against the Malvern Hills themselves. How I see this is that this provides the Trust with quite considerable extra autonomy in terms of borrowing. I do not disagree with that autonomy, but what I would ask is that your Lordships consider whether it is now appropriate that the Trust can continue to have the power to borrow against existing relevant land. Existing relevant land is that inalienable

land that forms the ridge of the Malvern Hills. With these additional powers to borrow against ancillary land and against the income of the Trust, why are we still in a situation where the Trust can borrow against the inalienable land? It is quite simple to change that clause and take out the scope of that land.

177. Clause 58, car parking—a bit of a Cinderella subject is car parking, but I think it is relevant to many of the powers and the concerns. The promoter will remind you that this is an existing power, and it was introduced in the 1930 Act, but how it is framed in the 1930 Act is a power. The Trust can designate areas of land as car parks. There are car parks, and we need car parks, but the parking income represents something like 35% of the Trust's income. I alluded to it when I did my standing. It results in quite a significant number of vehicle movements. That impacts upon levy payers. The Malvern area pays the levy, and it also is impacted by the commercial activities of the Trust.

178. Many of us are happy with those impacts, but, ultimately, when we look at the amount of income that the Trust receives from car parking, it is something like 66,000 vehicle movements a year to generate that income. I pay the levy. I also suffer the environmental impact of the car parking. I think—and I put it to you, my Lords—we have enough car parks. I am sure the Trust and Ms Lean will say, "There is no intention to increase the number of car parks". Why not put it on the face of the Bill? I think, if there is a need to move capacity around, so be it. Existing car parks can be put back to a natural environmental condition, and that parking capacity can be moved around, but we should not be looking at a situation where the Trust seeks to have the power to continue to increase the number of car parks.

179. Clause 63, licensing activities—I would like to point out there is a word I got wrong in the version of the Bill that you were sent online. In paragraph 117, the version that you have in front of you is right, but the version online is wrong. I would like to replace the word "absence" with "introduction", so just bear that in mind if you are reading the online version.

180. Again, this is a clause that indicates that a policy is to be written. As I have said, my concern is not about the introduction of a control mechanism. I think there is value in having the ability to license activities. It is how a nature of an organisation might behave in response to being able to license activities. I must say one of the clarifications

that was given last week probably made me a bit more concerned, because we were told last week that things such as birthday parties would be licensable. I personally had read this as being sponsored walks, runs and those sorts of things, but birthday parties imply a far larger number of licensable activities than I would have ever imagined.

181. It raises concern about the administrative burden that such a system generates. I cannot guess how many it would be, but it sounds like it would result in a little industry of administration within the Trust administering licences. Unless all those licences were going to be charged for and, therefore the cost defrayed, which, again, talks to other petitions about licensable activities, that cost will fall on the levy payers. I think the Bill should be much clearer in terms of what licensable powers and the level of licensing should be around.

182. I think the aspect of the amount of licensing that is given by the birthday party example also gives rise to the issue of liability. If the Trust is taking upon itself the ability to license activities, and people are reliant upon those licences, then they become implicitly liable for conflicts and errors associated with those licences. For example, if two sponsored walks clash, or if two birthday parties clash, the Trust will make itself implicitly liable for disappointment. Failure to manage such conflict would expose the Trust to claims from event organisers who have relied on the licences.

183. As I have also set out in my paper, given the historical and environmental importance of the hills, I believe—and again, it comes back to representation, accountability and scrutiny—that, in being able to grant licences, the Trust should be able to make them available for historic review. As I have set out in my paper, I think we have to amend the Bill to allow a clear record of exercises of the licence to be made and for it to be kept permanently. If you are licensing people against the historical objects and the right to free access to the hills, then you need to be able to justify why that licence was justified.

184. Clause 79, notice of quarrying—I do not think anyone is expecting quarrying to proceed, continue or start on the Malvern Hills. There has been a tremendous amount of work, effort and investment by the people of Malvern in the form of a levy. Remember, the Malvern Hills have been paid for by the levy payers of Malvern, and car parking, so why, in Clause 79, do we continue to have the power to give notice of quarrying?

185. Clause 79 establishes a consultation process that must be undertaken before the application of quarrying. As the Bill is presented by the promoter as consolidating and modernising, the future quarrying of Malvern is neither anticipated nor proposed. The approach of the Bill should be to prohibit this outright rather than retain the procedure governing its potential excise.

186. The final clause, Clause 81, is the power for the Trust to use materials. I think I am the only one who petitioned against this. I understand the intention is to allow the Trust to utilise materials from the hills for conservation or maintenance purposes. The clause refers to extraction of loose natural material. Maybe I am wrong, but I do not see a definition of what "loose natural material" is. Does it include wood, soil, bracken and cut grass? I believe it relates to existing broken stone and soil.

187. My petition talks about reducing the amount of material. The original Bill, I think, mentioned 50 cubic metres. It is now being reduced per year, with a carryover period of 50. It is now being reduced in the filled Bill to 25 cubic metres. I would seek an amendment to say that it should be limited to 10 cubic metres. That is confirmed by the comments by the promoters last week, where they said that they would expect to be having to use a shovel and a wheelbarrow to exercise their extraction requirement. I think 10 cubic metres, without carryover, is a more than sufficient amount of material.

188. One of the aspects of this clause is the phrasing of it. The clause gives the Trust the power to extract such material from the Malvern Hills—that is in the Bill—but to utilise it within the Malvern Hills or other such land in its ownership. What we have of potential there is that material from the Malvern Hills can then be used both in the Malvern Hills or other such land in its ownership. I do not see a definition of "other such land in its ownership", but I guess that could mean land that is acquired, improved, developed and then sold on. I personally do not think that material that is sourced from the Malvern Hills should find its way out of the Malvern Hills.

189. Finally, I think extraction and quarrying is quite—and I do not want to use the word "emotive", but, to the people of Malvern, the issue of quarrying is the inalienability of it. I think we should take this clause and the power to use material and make it transparent. There should be a permanent record retained of material that has been extracted, how much has been extracted, why it has been extracted, and where it

has gone to. That should form a permanent part of the Trust's record so that it can be scrutinised.

190. That covers the 12 clauses that I intend to cover.

191. THE CHAIR: Thank you very much for such an orderly presentation. Thank you, indeed. Ms Lean.

Response by Ms Lean

192. MS LEAN: I am grateful, my Lord. I will take matters in the same order as in Mr Myatt's note and presentation. Can I say we were grateful to receive Mr Myatt's note and documents on Friday afternoon so we could consider them in advance of the hearing?

193. The first point to pick up is just a brief point on historical matters, the purposes of the 1884 Act and what happened at the time. We have touched on this briefly in our previous submissions, and you have a couple of notes from the Trust that cover these matters.

194. To highlight—and this is apparent from the extract from the *Times* that Mr Myatt referred to about the principles of the 1884 Bill, as it were, that you have at page E19—a core point that emerged there was not necessarily about the right of levy payers per se but about rights of common that were enjoyed by people in the area being protected. That is reflected in the newspaper clipping that the rate payers of all parishes contributing common land be fairly represented on the board of conservators.

195. To bring that back into the historical context, as we have picked up in the note from 10 February in particular, the 1884 Act was not something that just stood alone in a sea of, "Let's do something about the Malvern Hills". It sat against the backdrop of things like the Commons Act of 1876, which made provision for schemes of regulation and management of common land to protect against encroachments, including within it, for example, the power to levy.

Again, you will have, in the note of 10 February, some of the traversing of points about who might end up being appointed to the board of conservators and how it might be financed, which illustrated that they are mixed. Sometimes it will be landowners and

commoners. Sometimes it might be local authorities. It might depend on if the focus is protection of commoners' rights or if it is on amenity values. Although there is reference to ratepayers and to representation, that does need to be looked at and understood in the context of what the 1884 Act was doing. It was trying to protect, in particular, the rights of freeholders, tenants and commoners. The way that the body was going to be funded to carry out its work—the only power that was given to it to do that was the levy.

196. My Lord, that comes on to a secondary point about the nature of the conservators and representation. Again, as we have set out in that note, conservators, in the text from the 1960s, fall under that heading or category of trustees. They are not identified as being a local government body or a quasi-local government body. They are grouped under a heading of trustees: people who are responsible for managing and protecting land on behalf of the commoners and for the benefit of the public as a whole. "Trustee", of course, carries with it connotations of acting in the interests or the objects that you hold the land for and acting impartially as between beneficiaries.

197. That is where perhaps the concern would come in about the suggestion from Mr Myatt that there be an amendment to Clause 6 to somehow bring in, as part of the objects, that the Trust should be required to have regard to the levy payers who finance, now in part rather than in sole, the Trust's work because that does start importing that concept of, "Well, this particular subset of beneficiaries, this particular sub-group of the public, for whom the Trust is required to protect and manage the land, should be given this particular, special or preferential consideration as part of the Trust's objects". That comes up against that direct point that trustees are expected to act impartially as between beneficiaries.

198. The third point to pick up on is when this shift happened to it being a charity. Yes, it is entirely correct. You will not find in the note, "Well, there was a specific event in 1942 or whatever it was that fundamentally altered everything that was happening around the Malvern Hills". My Lord, as we have identified in another note, the note on charities matters, which is the note of 2 February 2026, charitable trusts of even things like common land existed as a matter of general law, historical principles of charities and charitable law, even before the Charities Act 1960 or anything else hove into view.

199. There is reference in the note to one case, for example, where a fishery of some

sort with the ability for members of the area to go and take oysters at certain points of the year was deemed to be held by the authority as a sort of charitable trust for the inhabitants. It was not a registered charity of any sort, but it was recognised that it had those qualities. In the sense of looking for a change, the change that really came in was essentially the Charities Act 1960, which said, "If X, Y and Z and A, B and C, you are required to be registered as a charity". What changed was the obligation to register, not necessarily any fundamental change to the nature of the body and what it was doing.

200. THE CHAIR: In very simple terms, the change I have detected is a change in attitude to the way people can express views at meetings of the board. It is quite disturbing to think that people are being unable to attend board meetings because their views are at variance with the majority. These things have been going on. I am not expressing myself very clearly, but there are many references in the evidence we have heard, and from Mr Myatt today, to trustees' personal views, where they are thought to be at variance with the charitable purpose, are being excluded. It is a change of tone and a change of emphasis, which is, as it were, putting forward the idea that charity trumps everything.

201. MS LEAN: Indeed, my Lord. I appreciate the question. Forgive me; what I was focusing on in that submission was some sort of shift that might have occurred somewhere in the middle of the 1900s, for example.

202. In terms of the position that has been referred to in the 2019 onwards period, which I think was the document you saw, you have the full minute from the 2019 meeting in front of you. When you read that sentence in the full context, it is clear it is not so much about a personal view, i.e. what a trustee might think. It is about the focus being on, "There are criteria in the Act about the granting of an easement". There is guidance set out in the Trust's adopted guidelines on easement applications. Those are the things that the Trustees should be focusing on when they are considering an easement application, not something like whether they think development in an area should generally be stopped or is not a good thing. They have to direct themselves properly to the right decision-making criteria. It cannot just be whether they think it is a good idea or not.

203. I am paraphrasing horribly, but it might be worth looking at the minutes of that

meeting in full because I can see, when it is put as a single sentence on the screen, it does look a little bit odd. When you understand it in the context and the context of the guidance that we went to earlier on in the proceedings about, "Well, you cannot be there to advocate for a particular view of a particular beneficiary or a donor or a funder", it perhaps makes more sense.

204. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Having read that, admittedly not in any great depth, I thought how typical that Mrs O'Donnell was asked to leave and then her husband because he was married to her, not the other way round.

205. MS LEAN: I am told from behind that Mr O'Donnell is Mrs O'Donnell's son. If I can just find the document, my Lady, forgive me. Thank you. I am grateful.

206. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It is page E57. E56 and E57, the meeting on 19 March 2019.

207. MS LEAN: Yes, my Lady, E56. From recollection and skimming it quickly, it looks like what happened was that the issue was firstly raised about whether Mr O'Donnell had a conflict about the relevant development because he was an elected member for the ward relevant to the development on the Malvern Hills District Council. He then had to leave, and the issue then was that—

208. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: He also says he did not believe he had a direct interest, given that he was a member of the town council.

209. MS LEAN: Indeed, my Lady. From the procedure here, although he made his view clear that he did not think he was conflicted, what then had to happen was a decision by the board on which he could not sit, because it was about him, as to whether he was conflicted, and Mrs O'Donnell could not vote on whether or not Mr O'Donnell was conflicted because she was a connected person.

210. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: She had to leave first, and then they looked at Mr O'Donnell and said he could not vote, so therefore he had to go as well.

211. MS LEAN: Forgive me, my Lady. I think actually—E56, the third paragraph up is

Mr O'Donnell's position, and then it says, "Mr O'Donnell left the meeting". Then there is the consideration about Mrs O'Donnell, and then Mr O'Donnell returned to the meeting after there had been the vote about his conflict of interest. That is on E57. Mr Freeman then confirmed that Mr O'Donnell would be required to leave the meeting for the vote about the easement application. Then there was a question of whether Mrs O'Donnell separately had a conflict of interest so she left the meeting while there was a vote taken on her conflict of interest.

212. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: It all seems ludicrous.

213. MS LEAN: My Lady, this is one of the issues that has arisen historically, which Ms Satchell has talked about, about having appointed members, for example, from Malvern Hills District Council. There may be an institutional conflict there, for want of a better word, because, if they are on the planning committee meetings for the district council, it puts them in a conflict situation when people are voting on whether there should be a grant of an easement to enable that development to go ahead. Unfortunately, there are procedures within the Trust's governance document about when conflicts may arise. Of course, a trustee may raise it themselves or may say, "Yes, I agree I have a conflict" or, "No, I don't think I have". If they do not agree then there has to be a vote on it, so people do have to leave the meeting.

214. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: This kind of thing happens all the time in very rural areas, where it is the same people who sit on the parish council, the Trust, the church council, all the organisations. It is the same people who are involved in the community and so they are bound to have interests because they are related in some way. It is really difficult if you then start excluding people because of that.

215. MS LEAN: My Lady, that is noted. The Trust is fully aware of the difficulties that can arise because of those relationships, that somebody may sit on one body and also another body. I believe Ms Satchell explained in her evidence that is one of the reasons why the Trust sees the benefit in moving to the model that is being proposed, where you have the appointed members who are appointed by the Trust through this nominations process rather than having people who are nominated or appointed by some of the other

bodies. It gets rid of that potential instant conflict because of, potentially, dual loyalties to institutions. There is that look to move to hopefully simplifying the process.

216. Returning to Lord Hope's point about it, I hope that contextualises it slightly. It is not so much about the personal opinion of somebody. If that personal view on something or a view that has been expressed very strongly by a certain group of people to that trustee were to stand in the way of or displace their consideration against the objective criteria or requirements that had to be considered, that is when it would become problematic.

217. It is not about somebody disagreeing. If somebody said, "I actually think this is really harmful to the Trust" or, "I do not think the harm to the Trust's land could be mitigated", that is an entirely valid position for a trustee to take as part of the decision-making on the easement. There is not a suggestion that, because somebody disagrees with the views of the other trustees, they should be excluded from the meeting or their voice should not be heard. It is that more specific thing about saying, "I don't really care about the individual merits or the criteria of this particular application. I just don't think there should be any more development anywhere else in the parish of X". That is when you run into that conflict situation. In essence, my Lord, that is what that passage on the screen, I think, was directed at.

218. LORD INGLEWOOD: Just briefly, I have two points. Just so I am clear, my understanding—I have no expertise in this area—is that organisations such as the conservators of the Malvern Hills probably, according to a strict reading of the law, have been charities ever since they were established. The thing that has changed is the way in which that sector is regulated. In the 19th century there was a charity commission, but it did not operate like the present one. It was really only in 1960 that suddenly the form of regulation evolved and, in terms of the way the wider world looks at these things, charities became a much bigger deal.

219. MS LEAN: Yes, my Lord. I think it is probably fair to say that there have been greater regulations, governance or expectations around what is required of charities, what is required of charity trustees, what is good administration of a charity, than there probably was laid down pre 1960.

220. LORD INGLEWOOD: The enforcement and the regulation was much less hands-

on until more recently. In a lot of cases, the further from London you get probably, it was less of an issue.

221. THE CHAIR: The 2011 Act, which was an enormous measure, changed everything, really. The 1960 Act was relatively hands-off, but the 2011 Act really introduced a lot more scrutiny and control. The Charity Commission has been building on that very effectively ever since.

222. MS LEAN: My Lord, I am mindful as well that there was the intervening 2006 Act, so I am afraid I would have to refresh my mind on what might have been in 2006 and the extent to which 2011 was part consolidating as opposed to wholly new regulation, but there has certainly been a moving-on.

223. My point, going back to it, is that, ever since its inception, the body has been there to act to manage and conserve the hills in the interests of the public. That is still what it has to do as a charity today, and really it is not immediately apparent why the requirements of good governance of the sort that are set out in that Charity Commission guidance on what you should do, how you should conduct yourself as a trustee, are really at odds with what you would expect of a commissioner of a statutory body who is also carrying out functions for the benefit of the public under the Malvern Hills Acts.

224. My Lord, in my submission there is that there has not really been that sort of epic moment when things change. I can see why the concerns have come in in more recent times about how this is playing out in terms of people being in meetings or not being in meetings, but, my Lord, what I do come back to there as well is that, of course, part of what generated the whole process of moving forward through the Section 73 scheme and the Acts was a problem that happened in the early 2000s when decision-making was perhaps taken in a less structured or informed manner, and it ended up in the situation with St Ann's Well where something happened that should not have happened and there had to be an inquiry to look into that.

225. Picking up on Lord Inglewood's point, it is probably fair to say that there has been a greater awareness of the sort of obligations and requirements that are expected of charitable bodies in more recent years.

226. THE CHAIR: Time is moving on quite significantly.

227. MS LEAN: Indeed, my Lord.

228. THE CHAIR: You have a lot of amendments to deal with. I wonder how we should tackle that. Some of these points are going to come up when we are discussing amendments with you later this week and next week.

229. MS LEAN: Indeed, my Lord. What I have been proposing to do, being mindful of time, is to maybe take some headline points rather than going through each and every specific of the amendments sought.

230. THE CHAIR: Yes, please.

231. MS LEAN: My Lord, on the constitution, organisation and levying, I think you have heard a lot from us on that and I was not proposing to touch on that.

232. On the appointed members, firstly, in terms of criteria, you do, of course, have criteria specified for appointed members. It is not just that they are appointed. There are the qualifying criteria in Clause 14 itself.

233. On the suggestion about moving to a situation of a nominations committee of three elected trustees, essentially giving a majority to elected trustees, in terms of the nominations committee, the balance of trustee and independent members is to ensure there is that slightly objective scrutiny of who is the best candidate for the role against the published recruitment criteria and the other criteria in the Act.

234. Of course, the risk, if I could put it in those terms—forgive me if "risk" is the wrong word—is that, if you shift that to a body that is majority elected trustees, you are essentially in a situation of the appointment or the identification of appointed trustees being determined by the elected trustees. There have been concerns as Lord Inglewood raised about, "Well, has there in the past been this perception of a mates' club?"

235. One of the reasons for moving to this idea of widening the electoral area and having the appointed trustees is to try to broaden the categories of people who are able to or who may feel they can add something or wish to stand for being a trustee of the Trust, be it elected or nominated. Of course, if you have a structure that says that there is a majority of elected trustees, and actually then, basically, the decision on who the appointed trustees are is driven by a nominations committee that has a majority of

elected trustees and it is a 50% vote by elected trustees, that does start very much looking like there is a group of people who then select the rest of the people. Does that go against the ethos of trying to open up and make this seem a more accessible organisation that more people can get involved in?

236. LORD EVANS OF GUISBOROUGH: If I may, I may have made this point before—we have had quite a few sessions—but it is not unusual for public bodies to have an independent nominee to this type of committee, but they are there less to balance out the votes and more as an HR expert and a public law expert to make sure that the appointments are carried out in accordance with good standards. It is quite unusual to see more than one independent person being proposed, as in this case.

237. MS LEAN: Indeed, my Lord. I think we may have touched on this previously, but the idea with the nominations committee is that the independent members are not there in an advisory role to check that procedures are being followed correctly and in accordance with good process. They are active members in assessing and deciding who the right candidates to put forward as appointed trustees are. That means it does not become a wholly internal Trust issue. You do have people who are brought in objectively, who are involved in that way, in essentially assessing the candidates against the published criteria. Again, it is part of that issue of avoiding a situation where it becomes entirely a self-selecting body by reference to the fact that a number of people are elected, but then otherwise they are able to select who the appointed trustees are.

238. LORD EVANS OF GUISBOROUGH: It is quite unusual to give someone from outside an organisation a vote on appointments in that way. I do not think I have seen it before.

239. MS LEAN: My Lord, I am hearing "the National Trust" from behind me. I would have to check into their specific provisions, but, of course, this is moving from a system where there have been external appointments to the Trustees directly by other bodies. It may be specific to the Trust, but it is also a product of what is there at the moment and how to try to take that forward, retaining some element of that input from somebody who is external in the sense of being independent of the Trust as opposed to an employee or a trustee themselves.

240. My Lord, the next point on, I think, four-year cycles we have touched on

previously, as to the point of that. Just to highlight, of course, in terms of term limits it is two consecutive terms. It is not that you can do eight years and that is it—you can never stand again. It is just putting in that one-year or two-year period for an enforced break between candidates being able to stand again.

241. I bring to mind what Councillor Owenson said about the benefit of being an incumbent when it comes to an election. This, to a degree, is one way of addressing that same point. If it is the same person who has been doing it again, that cooling-off period does avoid the situation of somebody just being able to roll over for four, eight, 16 and so on.

242. LORD EVANS OF GUISBOROUGH: Again, term limits are something that is quite unusual in this country when it comes to elected bodies. It is something that is very common in the United States. You cannot be the President of the United States for more than two terms, but it is quite foreign to our own culture of democracy here.

243. MS LEAN: Indeed, my Lord, but it probably reflects the nature of this body. Again, it is part of that. It is a statutory body that in part has its trustees directly elected, but it is also a charity, and it is in accordance with general governance that it is good practice to keep the board fresh and to look at where anybody is on the board for longer than nine years, which I think is what is in the Charity Commission guidance. That is just part of, I think, the recommended idea for ensuring that people do not necessarily become—sorry, forgive me. I would have to go and see exactly what it is the Charity Commission says about it, but it does reflect perhaps the particular nature of this body. It is not a local government body where everybody is purely elected as a democratic representative body.

244. LORD EVANS OF GUISBOROUGH: Is that how the Wimbledon example, which we hear about, works?

245. MS LEAN: I will have to go and check whether or not there are term limits on the Wimbledon and Putney Conservators, my Lord.

246. LORD INGLEWOOD: You say it is not a local government body, but it is not merely a charitable body.

247. MS LEAN: No, indeed, my Lord.

248. LORD INGLEWOOD: It is a hybrid of two, a slightly strange child. There are not many around. That is one reason for our struggling.

249. MS LEAN: Indeed, my Lord. It sits slightly in a special category of its own, perhaps, with the Wimbledon and Putney Conservators, in that it is a statutory body that is also a registered charity; it has a levy-making power; and it has some trustees who are directly elected and some who are appointed. I do shy away from the local government analogy because, of course, one of the themes that has come through in some of the petitions in particular is the sense of, "Well, it is like the town council".

250. LORD INGLEWOOD: Some of the provisions that apply to it are definitely local government legislation. We are in a slightly odd spot.

251. MS LEAN: Indeed, my Lord. As I said, the arrangements in the Bill have been put forward to try to reflect the particular nature of this body, drawing generally on things around good governance and ideas from elsewhere. I am very mindful of time. I think I could pause that point here and perhaps pick up on—I am sure we will come back to some of these issues in the unopposed clauses tomorrow.

252. Clause 24, rules and dealings with—the only point to flag on that is that I am instructed that the timescales come from the council that runs the elections on the Trust's behalf and mirror the timescales for district councillor elections. Of course, what the Trust will be able to do under the Bill, if it receives Royal Assent, is to set the periods in which nominations can be open, when things have to happen and that sort of thing. It does give the Trust greater flexibility to work out what is the right approach for a body like the Trust operating in an area like the Trust's area, as opposed to having to fit itself within provisions and regulations that apply to different types of bodies.

253. I think that brings us on to the money powers. If I can do a headline point, I am conscious that I did touch on the borrowing powers in particular on 10 February 2026 in the afternoon session. We also provided the note on financial provisions, which touches on powers of borrowing, in response to some of the particular concerns raised by Mr Myatt. "Use of capital, money and income", paragraph 95. It is unclear about the existing land purchase fund. My understanding of the concern there is that, "Well, could

you say that you are going to use money from the land purchase fund tomorrow to pay off some operational debt?" Clause 34, in my submission, is quite clearly prospective. If that money is currently in one of these restricted funds today, it stays in that fund. You can use it for the purposes you can use it for. What Clause 34 is really about is going forward. I hope that provides some comfort.

254. Similarly, on paragraph 96, the clause should not apply to money received in special funds from the disposal of existing relevant land. Again, in my submission, Clause 72(2)(b) is explicit on that. Consent may not be given by the Secretary of State to adjust boundaries of the Malvern Hills—that is the Clause 72 power—unless, for a sale, the Secretary of State is satisfied that all money received in respect of it will be paid in a special fund and used or set aside for use in the future by the Trust only for the purchase of other land in the vicinity of the Malvern Hills. I hope that provides some comfort there. There is also a query at 97 about whether the clause could be used only in relation to capital released from the sale of ancillary land. No, it is not limited to the sale of ancillary land. It would, for example, cover granting of easements because it applies to disposals of interests. There are a number of protections and safeguards there, and Ms Satchell has explained in her evidence why this power is potentially needed.

255. On borrowing and granting securities, these are quite detailed provisions. We have set them out in the note previously on 10 February, but, if I can highlight two points in particular, at paragraph 102 of Mr Myatt's written submissions it says that the powers to borrow have not historically always been tied to land acquisition powers. Section 10 of the Malvern Hills Act 1995 says that the conservators may borrow with the consent of the Secretary of State any such sums of money as may be required for the purposes of this Act and the Act of 1930. Since 1995 in particular there has been that wider power to borrow.

256. In terms of being able to borrow against revenues of the Trust, including levy income, as we have set out in the finance note, the Trust has been able to borrow on security of contributions to be raised under levy since Section 11 of the Malvern Hills Act 1909. Essentially, as we have said in opening and in submissions on this, Clause 35 does largely consolidate the existing borrowing powers and retain safeguards.

257. My Lord, on car parking, that is an existing power. The Trust will have to decide

in the future whether or how it falls to be used. The power has been there. In my submission, there is no good reason to remove the power to do something that may well be necessary or appropriate to manage the hills.

258. On Licensing Act activities, we have already covered that off in some detail in submissions. In terms of the specific amendment that is proposed by Mr Myatt, of course, all functions and powers have to be done in accordance with the objects and for the purposes of the objects. It is not a freestanding licensing power. If the Trust decides to do it, it has to be in connection with the objects for those matters.

259. On quarrying, we have touched on this, I think, briefly, but this is really about notification provisions. It is not a ban on quarrying. That is something that falls to be looked at by the minerals planning authority. It is just saying that you have to consult the Trust before you put a planning permission in. That is all it is doing. It is a protective provision for the Trust so it knows something is potentially going to come forward for an application.

260. The power of the Trust to use materials—Ms Satchell has touched on this, but, of course, technically it would enable materials to be used on ancillary land, which may or may not fall within the definition of Malvern Hills in Clause 4, depending on whether or not the public have access to it, but the question is why that is problematic. If the Trust has acquired land for the keeping and management of livestock, or to provide an office building or something like that, what is so inherently problematic of using some of these materials that it has on land within its jurisdiction as opposed to having to get them from somewhere else? Of course, it is difficult to envisage circumstances in which the Trust would be acquiring ancillary land very far removed away from the land within its jurisdiction because it would have to be to facilitate or be incidental to its objects.

261. I am sorry, my Lord. I have tried to do a bit of a whistlestop tour, but I hope I have covered off most of the headline points that were raised this afternoon.

262. THE CHAIR: We may come back to some of these points later in discussing amendments.

263. MS LEAN: Indeed, my Lord.

264. THE CHAIR: Thank you very much. Mr Myatt, you have an opportunity to reply, but very briefly.

265. MR MYATT: Yes, I will try to be. My assistant here has been helping me. I think the first headline thing is the discussion about the obligations of charity. It all makes sense, but we are an unusual charity in that we have this statutory coercive power to levy people. I think we have to listen in context with that. I do not think the justification given actually provides the reason for the Bill.

266. I agree with Lord Hope in terms of the change of tone and emphasis in relation to the charitable aspect of it. Based upon my experience of being on this board over 22 years ago, the tone and emphasis is entirely different. If I was being harsh, I would say that the charity legislation is being used to weaponise the control of trustees. That is a strong thing to say, but I see it.

267. In terms of the Charity Commission guidance, I believe that where we are now is that Charity Commission guidance requires trustees to think about money in terms of the charitable objectives rather than the broader good. I think this goes down to the easement thing. I do not have standing in terms of easement, but seeking the best interests of the Trust, of the organisation, of the charity, is to a certain extent driven by the need to generate cash for it.

268. The process of nominations as suggested allows the executive or those in power to control, to influence. As I have said, I seek to have a representative organisation without undue control. I would hope that your Lordships would consider that as a guiding principle. It can go both ways, but it is a representative organisation and it is a levy-raising organisation.

269. The final thing is, really, when we look at it, is this Bill fit for purpose? As you look across it, it is a very large Bill and it does a lot of things. Will it stand the test of time for the next 35 years? Hopefully with amendment it will, but I think, as it stands at the moment, it will not. I ask you to amend it appropriately. Thank you.

270. THE CHAIR: Thank you very much indeed, Mr Myatt. We are very grateful for the way you have presented your case this afternoon. We are going to adjourn proceedings now and we will meet again at noon tomorrow.