

MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 10 January 2024 (Morning)

In Committee Room 15

A video of the proceedings can be found [here](#).

PRESENT:

John Stevenson (Chair)
Keir Mather
Angela Richardson
Karl Turner

FOR THE PROMOTER:

Christopher Katkowski KC, Counsel, DLUHC
Richard Turney, Counsel, DLUHC
Robbie Owen, Parliamentary Agent

Exhibits referred to by the promoter during the hearing can be found [here](#).

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(At 9.45 a.m.)

1. THE CHAIR: Good morning. This is the first public meeting of the Holocaust Memorial Bill Select Committee. I will just read out a short statement.
2. The Committee is bound by the instruction from the House, which is as follows: that the Committee treats the principle of the Bill, as determined by the House on the Bill's Second Reading, as comprising the matters mentioned in paragraph 2 and those matters shall, accordingly, not be at issue during proceedings of the Committee. The matters referred to in paragraph 1 are: (a) the Secretary of State may incur expenditure for, or in connection with, a memorial commemorating the victims of the Holocaust and a centre for learning relating to the memorial; and (b) section 8(1) and 8 of the London County Council (Improvements) Act 1900 are not to prevent, restrict or otherwise affect the construction, use, operation, maintenance or improvement of such a memorial and centre for learning at Victoria Tower Gardens in the City of Westminster.
3. As the Bill does not remove the need for planning permission and all other necessary consents being obtained in the usual way for the construction, use, operation, maintenance and improvement of the memorial and centre for learning, the Committee shall not hear any petition against the Bill to the extent that the petition relates to (a) the question of whether or not there should be a memorial commemorating the victims of the Holocaust or a centre for learning relating to the memorial, whether at Victoria Tower Gardens or elsewhere; or (b) whether or not planning permission and all other necessary consents should be given for the memorial and centre for learning or the terms and conditions on which they should be given.
4. We will now hear the opening statement from Counsel. I would ask them just to introduce themselves formally and we will take that forward. Mr Katkowski?
5. MR KATKOWSKI KC: Thank you very much indeed. My name is Christopher Katkowski – if you cough in the middle you will be fine – and I am King's Counsel. I am acting for the promoter and to my right sits my learned junior, Mr Richard Turney, and we are, in turn, instructed by Mr Robbie Owen, who is sitting to my left, who is parliamentary agent and my instructing solicitor from Pinsent Masons.
6. So, sir, if it is appropriate, I would like to work through an opening briefing, if you

like, and there will be some submissions, as part of this, that I would wish to make on behalf of the promoter.

7. You should have already received, I hope, a slide pack.

8. THE CHAIR: We have.

9. MR KATKOWSKI KC: Indeed, that is wonderful and they are going to be on the screens as well. You might find it easier to actually use the hard copy pack because, if you wish to at least, you can scribble on those and make notes.

Department for Levelling Up, Housing and Communities

Opening Statement by Mr Katkowski

10. MR KATKOWSKI KC: So, if I just begin, there is an introductory slide, which just explains the structure of this. I don't think I am going to be a great length of time but because of the nature of the Bill, and because of the nature of this stage of the Bill's process, there are some particular contextual points that I need to make on behalf of the promoter.

11. If I just start with the first substantive slide, which is the next one, please. Thank you very much indeed. So, as you will almost certainly know from your reading into the Bill, a planning application was submitted by the promoter of this Bill, the Secretary of State for Levelling Up, Housing and Communities, to the local planning authority, Westminster City Council, as long ago now as December 2018 and that was to build a Holocaust memorial and learning centre in Victoria Tower Gardens and that application was called in by the Housing Minister in November 2019.

12. So just to elaborate, there is a process in planning where you make your planning application to the local council, the local planning authority. There are certain cases of particular stature, if you like, or interest, where central government can call in the application so it is determined at central government level rather than local government level and that is what happened here. Now, because of the unusual nature of the case, if you like, where the Secretary of State has made the planning application and the Housing Minister has called in the Secretary of State's planning application for consideration by Government, there need to be special handling arrangements, if you

like, or, in modern parlance, ethical walls put in place to ensure that there was absolutely no way in which one part of the Secretary of State's Department, the application part, in any way communicated behind the scenes with the decision-making part of the Department, and those special handling arrangements referred to in the second bullet point here – and although it is not on the slide, I should mention that there was actually a legal challenge to the structure and the High Court approved the handling arrangements, with some amendment, which were made to them, directed by the High Court.

13. So as a result of all that, in October through to November 2020, there was a planning inquiry. Because of Covid restrictions, which were in place at the time, it was conducted entirely via Teams, so online, and an independent inspector, appointed by the Planning Inspectorate, chaired that inquiry. The inspector, as you can imagine, heard evidence from basically everyone who wished to participate and have their say on whether or not the Holocaust memorial and learning centre should be permitted in the form in which it was proposed and in the location in which it was proposed. And that inquiry, on which I was leader for the Secretary of State, for the applicant, so I was in effect acting for the proponent of the scheme, sat for over 20 days. There was oral and written evidence and I think I can say, in all fairness, every conceivable point that one could possibly imagine might have been made vis-à-vis a memorial and learning centre, whether in favour of it or against it, and many more points beside, were made during that process.

14. Following that inquiry, the independent inspector prepared his report. It is over 200 pages long. I think you might have access to it amongst your papers. The inspector identified the main issues in the case and, in effect, he saw the case coming down, as far as he was concerned, to a balancing process between harm, on the one hand, and harm in particular to what are described in the clunky planning language as 'heritage assets' – so for example listed buildings, conservation areas, here where we sit, Parliament, which is a world heritage site – any harm to heritage assets and of course the open space of the gardens themselves, as against the public benefits of the proposals, and the public benefits of the proposals, patently and very obviously, were to memorialise the Holocaust and to have a learning centre in relation to it.

15. The inspector weighed all of the competing pros and cons, if you like, and he

recommended that planning permission should be granted. His report was issued in April, and was dated April 2021. As I have already said, it was over 200 pages long. There are some 60 pages or so of analysis of all of the competing arguments. The way these reports work is there are reams of pages setting out everyone's arguments for and against and then the inspector rolls his sleeves up, as it was in this case, and grapples with all of the arguments, and over some 60 pages he set out all of his conclusions in relation to the various points that had been made and he recommended that consent should be granted and the Minister in due course, a few months later, agreed.

16. There was then a High Court challenge. I am going to come to that in more detail but for a particular reason, and a very focused and narrow reason, the decision of the Minister was quashed, as the legal languages goes, so wiped from the record. The inspector's report remains as a document which is not quashed by the High Court. It needs to be read, though, bearing in mind the High Court's particular point, which I am going to come to in a little while.

17. On the next slide, here are just some key conclusions that the inspector reached in relation to heritage assets. So as you will all know – because of the location of the site, I am sure you are all very, very familiar indeed with the gardens – there are the magnificent trees, plane trees, and he obviously had to consider the effects of the proposals, which include an extensive underground facility, the learning centre, on the various trees, and he found that there was some potential for some harm to a section of the trees on one side of the gardens.

18. The Buxton memorial, which we are going to come to in a little bit more detail, an important memorial – it is Grade II* listed – this is really the only heritage asset that the inspector thought there would be any tangible or particular harm to by way of harm to its setting, because the memorial is going to be close to, or very close to, some would say, the Buxton memorial. The Holocaust memorial would be very close to the Buxton memorial, so he found that there would be some harm through that. And you can see in the quotes here, second bullet point or second dash as we now are, he found that harm to be below the threshold of substantial. So that is a bit of planning jargon. When you look at heritage assets, there is a threshold of considerable harm, if you like, which is the bar of substantial harm. He found the harm would be below that but he still said that it should be given considerable weight in the balance.

19. He then found that there would be preservation of the setting of all the other memorials and structures in the vicinity of the site. 'Preservation', again, is jargon. In this context, 'preservation' means no harm. That is the legal definition of preservation, so no harm to the settings of the other memorials and structures in the park.

20. He found there would be some harm to the gardens. They are a registered park so that makes the gardens themselves a heritage asset in their own right but he found that that harm would be moderate. That is middling harm, if you like, a middling degree of harm.

21. He found that any harm to the conservation area – the site sits within a conservation area, plainly – should be a little less than moderate, a little bit below middling, if you like, that the setting of this magnificence building that we are in here today, the Palace of Westminster, Grade I listed, of course, would be preserved – in other words, would not be harmed. He found that there would be no harm to/would not result in a compromise to the outstanding universal value of the world heritage site, again Parliament, and the proposed development would preserve, so again not harm, the settings of various adjacent listed buildings. This area is heritage rich, of course, and the inspector had to work his way through all those points. And then there is a neighbouring conservation area, Smith Square, and he found that there would be no material harm to the setting of that conservation area.

22. So that is the heritage negatives that he had to work through. He then looked at the public benefits – next slide – and, in relation to the first bullet point, he found that there would be clear fulfilment of the recommendations of the Holocaust Memorial Commission. We are going to look at those slightly later on and I won't ask you to flick through the slides but perhaps just for your note, later on we are going to see what that first recommendation was. It is on slide 28. I will just read it: 'The Independent Commission recommended that there should be a striking new memorial to serve as the focal point of national commemoration of the Holocaust. It should be prominently located in central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust and the memorial should be co-located with a world-class learning centre'.

23. So that was what the Commission recommended and the inspector found – first

bullet point on this slide here at slide 5: the project that he had in front of him would fulfil that recommendation and he considered that to be a public benefit of great importance and considerable weight, as the first bullet point captures. He then decided the educative approach set out for the memorial and the learning centre – he said ‘authoritatively endorsed’, and that is because there was a lot of support for it; there was opposition to it, of course, as well at the inquiry – and he found that that approach was of great importance. He found that the content and purpose of the memorial and learning centre, again, would be a public benefit of great importance and then, very controversially, the location of the memorial and learning centre is put forward by the proponents of the project as being fundamentally important, the idea of locating this memorial right next to Parliament, in the lee, so to speak, of Parliament, was seen by us as phenomenally important, to ensure that we attach, as a nation, the right degree of significance to the memorial to the Holocaust.

24. There were competing arguments. Obviously, many people said, in opposing us, ‘It’s a fine project but it should be somewhere else’ and that argument had to be debated, and it was debated at length, at the inquiry, and the inspector came down on the side of the location in the gardens being absolutely spot on. We can see here the location of the memorial and learning centre, adjacent to the Palace of Westminster, can rightly be considered a public benefit of great importance, considerable weight etc.

25. And then he went on to make a point, which, as we will see, had particular resonance when this case ended up in the High Court so we will just look at the next bullet point. He attached significance to the proposition that we put forward, promoting the project, that we really need to get this memorial open, if we possibly can, while there are Holocaust survivors there to be able to witness this. Achieving the memorial within the lifetime of survivors, so as to honour the living as well as the dead, has a resounding moral importance that can legitimately, he considered, be seen to be a public benefit of great importance, considerable weight. And he also found, in relation to the design of the scheme, that it was of ‘exceptional quality and assurance’ and he thought that was a significant public benefit as well.

26. You will understand, of course, in the planning debate, the design of the proposal was controversial. Many spoke in favour of it; many spoke against it. He had to make a ruling, so to speak, on that. He had to make his mind up about it and he found it to be of

exceptional quality and assurance.

27. We move to the next slide. Another controversy, which had to be tackled at the planning inquiry, was, ‘Okay, if you have a memorial to the Holocaust, and if you do end up having it in the gardens, why should there be a learning centre there? Why shouldn’t the learning centre be somewhere else? Do you need the two things to be together?’ The proponents, those who were proposing the project, argue that there was a great deal of significance in having the two together – I would say for very obvious reasons but not so obvious for our opponents – and that had to be dealt with by the inspector. He concluded – second bullet point – that the integration of the memorial and the learning centre would have its own power, if you like, in relation to the experience of memorialisation in what he thought to be profound and meaningful ways, which you could not achieve by disaggregating the memorial on the one hand from the learning centre on the other. So he attached considerable importance, or great importance, to that co-location of the two aspects of the project.

28. We then come to slide number 7. So far, and I am cantering through this, I have touched on the inspector’s conclusions vis-à-vis all the heritage interests on the one hand and the public benefits, as he saw them, of the memorial and learning centre being in the gardens, on the other. There were, of course, all sorts of other points he had to deal with and we have captured some of them here on slide number 7. He thought there would be what he described as ‘a modest loss of open space and functionality within the park’. I mean, it is obvious, if you put a significant structure in the park with an entrance courtyard, then you are going to have an impact on the amount of open space in the park. You are going to have an impact on its functionality because part of it will be the memorial and learning centre, but he considered that in overall terms to be modest as a harm, if you like.

29. We had to deal with flooding, the consequences should the embankment wall give way, and he found that the chance of that occurring was extremely remote and that we had met all relevant tests in relation to flood risk etc.

30. And then security, again, was another matter. As I said, every conceivable issue and many more besides were dealt with at the inquiry. Security was another matter we had to tackle. Objections were made on the basis of the security implications of having

a memorial to the Holocaust beside Parliament and he considered that we, the promoters, had been through all the relevant processes and so on, and none of the relevant expert bodies had objected to the proposal on the basis of security concerns. And then finally, on this slide, there were issues about traffic and so on, and they were all dealt with to his satisfaction.

31. We move then to slide 8. The inspector drew all of these points together. At the top of slide 8 you can see that his overall conclusion was, ‘When the measures of harms and benefits are respectively accounted, it is clear to me,’ he said in his report, ‘that the significant range of truly civic, educative, social and even moral public benefits the proposals offer would demonstrably outweigh the identified harms the proposals have been found to cause’, and so he recommended that permission should be given. A classic planning balance, albeit about an extremely unusual, indeed unique, project in a unique location.

32. His conclusions run, as I have said, to some 60 pages. They are almost poetic, to be quite frank, most unusually for a planning inspector, in the way in which he wrote his conclusions, given the nature of the project. If ever you were to turn the pages of any of the other documents, of those that you have access to, then I would say a page turn of his conclusions would be no bad thing, because you would see there the range of issues he had to deal with and the way in which he dealt with them.

33. Everything so far was going swimmingly for the project until we get to a legal challenge. That is slide number 9. This High Court challenge gives rise to the reason why we are all here today so I need to spend just a few moments on this. Some of the opponents of the project, so the London Historic Parks and Gardens Trust, applied to the High Court for what is called a statutory review. In colloquial language you might think of this as a judicial review, so a legal challenge, asking the High Court to quash, to expunge, the Minister’s decision for various grounds and there was a process by which these grounds were whittled down. We ended up going to the High Court for the High Court to grapple with three particular grounds and they are set out here on the slide.

34. The first was that the inspector and the Minister, who, in effect, just agreed with everything the inspector had said, applied the wrong legal test when they looked at how much harm would be caused to the Buxton memorial, the listed structure that is closest

to the project. I should say, as we will see, that ground was rejected by the court but that was the first ground.

35. Then ground 3 is the one that leads us here and that is that there was some legislation from 1900 – we will be looking at that shortly – which set out that the gardens were to be laid out and maintained as a garden open to the public and the argument in court under ground 3 was that the memorial and learning centre, being a substantial structure, above ground in the case of the memorial and below ground in the case of the learning centre, and everything that came with them, the entrance courtyard etc, were incompatible with maintaining Victoria Tower Gardens as a garden open to the public. It was said in the ground, ‘Well look, the inspector and the Minister just haven’t really grappled with this point’ and the court in due course agreed with that, as we will see.

36. And then the fourth ground, alternative sites, you will recall that I said that many of our opponents were saying ‘right project, wrong location’, and argued that it should go somewhere else, and the inspector, in relation to alternative sites, had found that an advantage of the Victoria Tower Gardens proposal was that it was ahead, in the sense there was a planning application already there in front of him; it stood a better chance of being open in time for Holocaust survivors still to be alive, whereas if you picked up the project and tried to do it somewhere else, you would have to start all over again and the chances of having a memorial in the lifetime of any Holocaust survivors would be very small, if any, and he saw that as a point of importance. And the ground 4 here was, well, in looking at that balance, the inspector did not take into account, and the Minister did not take into account, this 1900 legislation, which, if you like, put a brake on locating the project in Victoria Tower Gardens so, really, the playing field was not as perceived.

37. So those were the grounds. If we move to slide 10, there was a hearing in the High Court. As the first bullet point captures, the heritage ground failed. That was the end of that but the court did hold that installing the memorial in the gardens would be contrary to the statutory purpose of section 8 of the 1900 Act – we are going to look at this in more detail shortly – and that that was an impediment to delivery; it was something that the inspector and the Minister should have thought about and grappled with. In my planning world, we have this concept of a material consideration. That

simply means something that is relevant, that someone has to deal with and has to think about, and it was decided by the High Court that the Minister, and the inspector in his report, had not grappled with the implications of this legislation and that that also undermined not only delivering the project in the gardens, but also the comparison of the gardens with other locations and, because of all of that, the Minister's decision was quashed.

38. Now, I said earlier on that all of the inspector's conclusions still stand. They are all on the record. The only caveat to that is that anything that he said in terms of deliverability within the lifetime of Holocaust survivors, and the issue of starting all over again in an alternative location, has to be read in view of the High Court saying, 'Well, wait a minute, section 8 of the 1990 Act stands in the way, obstructs the delivery of the project in the gardens'.

39. With no further ado, if we come to the next slide, we will see there the key parts of the 1900 Act; that is to say, section 8 of the 1900 Act. This is the London County Council (Improvement) Act 1900. It authorised all sorts of works across London, amongst which, in section 8, were the Thames embankment extension and improvement, so the embankment beside the gardens that you can see now is the result of this 1900 legislation, and also new roads on the other side of what are now the gardens. And so there was land in between the new embankment wall and the new road and that land in between is what we now know as, and was also then known as, Victoria Tower Gardens, or 'garden' singular, as it was then.

40. And so if you look at section 8, which is on the screen and on slide 11, as you have it in front of you, these are the parts of that legislation that led to our downfall, if you like, in the High Court and you can see in subsection (i) of section (a) that the lands, and they're then described, so lying between the widened and new road and the embankment and the new embankment wall, 'should be laid out and maintained [...] for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden'.

41. As we will see in a little while's time, there was a smaller garden already in existence. Because of these works, a much larger garden came into existence and this legislation provided that that land was to be kept as a garden open to the public and that

subsection 8, 'the commissioners shall maintain' – that is the commissioners of works; it has all changed hands obviously since – but that the garden was to be maintained as laid out.

42. What the High Court held – and we tried to go to the Court of Appeal but the Court of Appeal said there was not an arguable case against the High Court's decision – was that these parts of the 1900 Act were an obstacle to the delivery of the Holocaust memorial and learning centre in Victoria Tower Gardens. They provided a statutory restriction, which meant the project could not proceed all the time section 8 was in place in relation to the gardens, and that is exactly why we are here, because the High Court, endorsed by the Court of Appeal, decided that this legislation, which is on the screen, meant that the project cannot be delivered in the gardens, compatible with these statutory provisions. The whole point of the Bill, which you have before you, is to remove that obstacle in relation to the memorial and learning centre, as we will see. This is all tremendously important to your business here today and on subsequent days.

43. We can flip through the next two slides. Slide 12 is the deposited plan. You can just glance at that. You can see, obviously you will know very well, that Victoria Tower Gardens is the extruded triangle as it is today and, at the time of the legislation, there was a smaller garden adjacent to Parliament, and the rest of what is now Victoria Tower Gardens had various structures on it. That was all cleared as part of these works and these wider and bigger gardens were formed. You can see the next slide is a signed plan, slide 13. It is not of any great significance to your business today.

44. And so we then come at slide 14 to the Bill itself, the Holocaust Memorial Bill, and as, sir, you read out in your opening statement, as we know, the clauses in the Bill are such that they authorise the Secretary of State to incur expenditure in connection with the memorial and learning centre – that is clause 1 – and the real substance of the Bill, and that which you will be hearing petitions about in due course, really is clause 2 and that is the legislative provision here, which would remove the impediment that I have just spoken about that section 8 places in the way of delivering the project in the gardens.

45. So the provision is, as you know, that section 8, subsections (1) and (8), the very provisions we were looking at just now, of the 1900 Act, does not prevent, restrict or

otherwise affect the carrying out of any of the activities described in the Bill and those activities are the construction on, over or under any land of a memorial commemorating victims of the Holocaust and a centre for learning relating to the memorial, on, over or under the land, and the land described is Victoria Tower Gardens.

46. So, basically, the whole purpose of the Bill is to say the High Court decided section 8 stands in your way and the Bill is there to remove that impediment in relation to the Holocaust memorial and learning centre, not anything else, but to the Holocaust memorial and learning centre.

47. With that in mind, if we go to slide 15, please, thank you very much indeed. When the Bill was introduced, it was found to be *prima facie* hybrid. It was referred to the Examiners of Petitions for Private Bills, and the various memorials were submitted and, as a result of that process, as the slide captures at the bottom of the slide, the conclusion was reached that the Bill was hybrid and the reason given by the examiners for that conclusion was that, although the public generally had a private interest in being able to access the gardens, to walk around them, look at the memorials etc – that was a private interest of everyone – that there were particular private interests of those who lived close to Victoria Tower Gardens.

48. So, in easy language, local residents had a greater interest, if you like. They were more affected than the general public and it was found that the interests of local residents are clearly affected in a manner different from the interests of members of the public who live far away from the gardens. Because of that particular private interest in local residents using the gardens, that was the reason why the Bill was found to be hybrid and it is no bad thing, I would say anyway, to keep that in mind. We are here with this special stage, this particular Committee stage, because of that finding.

49. Then if we go to slide 16, please, thank you so much. Following that, the various Standing Orders needed to be complied with and so on and so forth and third bullet point, the Bill was given an unopposed Second Reading on 28 June of last year and committed to a Select Committee and here we are. The House agreed an instruction relating to the principle of the Bill and, sir, you read that out at the beginning of this morning's proceedings. There was an amendment proposed but that was defeated.

50. If we then go to the next slide, please. That is number 17. Yes, so here we have

the instruction set out and, as it has been recently read out, you can just see at a glance that it is there to state that various matters fell within the principle of the Bill. Understandably, within the principle of the Bill, of course, is the notion that money can be spent by the Secretary of State on the memorial and learning centre and, understandably, within the principle of the Bill is the very notion that section 8 of the 1900 Act should not stand in the way of delivering the project. It is all unsurprising really, I would say. And so then the House instructed your good selves not to hear petitions relating to the various matters that you have already drawn our attention to: whether or not there should be a memorial and learning centre here or anywhere else and whether any consents and planning permission should or should not be granted.

51. So then at slide 18, in relation to the various petitioners, on 4 July the Secretary of State published a note in relation to challenging the rights of petitioners to be heard and, to cut a longish story short, third bullet point, it was decided by the Secretary of State not to bring any right to be heard challenges. So just to cut through all of this, to be quite frank, we wanted to move on. We did not want to spend time challenging people's rights to be heard and so on and so forth. What is more important is what is within the scope for you to consider.

52. And then we set out, at the bottom of slide 18, our position in various correspondence in October of last year to the petitioners.

53. And then at slide 19, I am going to have to spend a few moments more on this and elaborate a bit more in relation to this slide because, in my submission to you, it raises important points for you to consider. As far as we are concerned, many of the points made by the petitioners that you are going to be considering, as the days go by, fall within the principle of the Bill and are therefore outside the scope of this Committee's business; that is to say, whether there should be a learning centre, whether there should be both a memorial and learning centre, whether it should be this memorial and learning centre and similar such points.

54. I have given a great deal of thought to this and I would like to just express the point in a particular way. If you think about what this Bill is all about, it is to remove a statutory obstruction, which stands in the way of delivering the memorial and learning centre that the Secretary of State proposes in Victoria Tower Gardens. Now, any point

made by a petitioner which in any way would lead to a result that the project that the Secretary of State proposes for a memorial and learning centre in Victoria Tower Gardens would still be obstructed, could not happen, could not take place, obviously goes to the principle of the Bill and obviously, with great respect, is not a matter for consideration at this Committee.

55. My acid test is, to the extent that any of the petitioners either have or will propose any form of amendment to the Bill that is in front of you, if the result of any such amendments would mean that there would still be a statutory obstruction to building the proposed memorial and learning centre in Victoria Tower Gardens, obviously that would defeat the whole principle of the Bill. It goes to the whole principle of the Bill. It goes to matters of public policy, which are not, with great respect, for this Committee. So that is my acid test. One always needs to ask oneself, ‘Well, wait a minute, this is all very interesting but would it actually mean that the Secretary of State could not actually build the memorial and learning centre in Victoria Tower Gardens?’ And if the answer to that question is that any of the points made by the petitioners would lead to the Secretary of State not being able to build the proposed memorial and learning centre in Victoria Tower Gardens, then it is out of scope. It cannot be a matter, with great respect, for this Committee.

56. And there are then all sorts of other matters – returning to the slide; sorry for that digression – put forward by the petitioners which are for the planning process. We have highlighted some of these: the design of the memorial; the impact of it on the Buxton memorial and other memorials in the gardens; security issues; did we consult properly; would the gardens’ functionality be spoiled; would the landscaping of the gardens be spoiled or improved; would the character of the gardens be spoiled or improved? There is a playground in the gardens; what would be the impact on the playground, pedestrian traffic issues, etc? That is all for the planning process and, with great respect, not for us here in this Committee process because they all go to whether or not planning permission should be granted for the project.

57. I suppose another way of looking at all this is to ask oneself the question, ‘Well, what does this Bill do?’ And the first answer to that question is to remind oneself of what the Bill does not do, and the Bill does not authorise the building of the memorial and learning centre in the gardens. This Bill will not give any form of consent to the

building of the structure in the gardens, and that is an important point to bear in mind. All these arguments about, ‘We don’t like the memorial. It doesn’t look right. We don’t like its design. We don’t think the two things should be located together. They should go somewhere else etc’, goes to whether or not planning permission should be granted for the project. It does not go to anything that the Bill was doing because the Bill is not authorising the building of the memorial and learning centre. It is the other way round. What the Bill is doing is removing an obstruction. It proposes to remove an obstruction to the building of the memorial and learning centre, if that memorial and learning centre is given planning permission in due course. At the moment, we do not have planning permission because it has been overturned by the High Court.

58. It is very, very important to realise, on the one hand, what the Bill is not doing – forgive me for starting with a negative but it is important to do so; it is not doing a certain thing; it is not authorising the building of the memorial and learning centre – and to then appreciate what the Bill is doing, which is removing an obstruction, getting out of the way an obstruction to the building of the memorial and learning centre, should it be granted planning permission again in due course. So that is slide 19. I am sorry to have taken some time on that, but I regarded it as important. It is important anyway that I got those matters off my chest.

59. Slide 20 now, redetermination of the planning application. You might have been wondering, ‘Well, whatever has happened to the Secretary of State’s planning application?’ The permission was quashed. In our funny planning world, when planning decisions are quashed, what that means is that the planning application is still there to be considered, to be given permission, or to be refused planning permission; it is just at the end stage. The actual planning permission has been expunged from the record and so we still have our planning application—it is in front of the Minister for determination. Obviously, there has not been a great rush to redetermine that planning application, because it is known that there is a statutory obstruction to delivering the project and there is a Bill seeking to remove that obstruction.

60. We, the Secretary of State, have been writing to the decision-making part of the Department, just over time, asking ‘What are your intentions for redetermining our planning application?’ We wrote in October; we wrote in December and then we received a letter on 20 December, and it is the next slide, slide 21, almost illegible in

that form, and this is what is described in our planning language as a rule 19 letter, so it is under the various rules which govern making these planning decisions. The Minister has written to the parties, including the Secretary of State, asking – paragraph 2 – for a written statement to be submitted to the Minister and a written statement is to cover the items set out in paragraph 3. I will just read them out in case you are struggling, as I am, to read them from the slide. I have got a more legible copy of the letter.

61. Paragraph 3, the Minister has asked for representations on two things: (a) the Holocaust Memorial Bill, including the effect of the Bill on (i) the appropriate timing of the redetermination of the called-in planning application; and (ii) any procedural implications arising from the introduction of the Bill and the findings as regard its hybridity. And then (b), this is the second topic he has asked for written representations about: in the light of the judgment of the High Court, the likely timing of the delivery of the application proposal, in comparison with alternative sites.

62. So those are the matters that the Minister has asked everyone who has been involved in this on the planning side to write to him with their submissions about. Paragraph 4, we are to do that by Valentine's Day, 14 February, and at the end of paragraph 4, the Minister explains that once he has considered all of those letters, whatever they might say, he might then issue another letter requiring written statements on other matters.

63. So, at the moment, I can't sit here and say anything to you at all, sensible or otherwise, as to when the planning application is going to be redetermined. The Minister has, if you like, reactivated the process by writing to the parties in this letter that is on the screen. All those who wish to do so will write back to the Minister by 14 February and then the Minister will decide what to do next. Somewhere along the line, obviously, the Minister will have to redetermine the planning application, either granting planning permission or refusing planning permission. I don't know because I am not acting for the Minister so it is not within my remit and it is nothing I can take instructions about. But common sense would indicate the likelihood is that we might very well get a decision from the Minister as to whether permission has been granted or refused after the Bill has finished its progress through Parliament, but we will see. As I say, I have no instructions on that because the Minister is behind an ethical wall, away from the Secretary of State who I act for.

64. So that is where the planning process has got to. If we move on to slide 22, this is just a little bit of history. I expect you probably all know this very well indeed but the area that is now the gardens, in the 1500s, was occupied by a mill and a slaughterhouse and some open land. Then by the 1700s and into the 1800s there were wharves and a horse ferry and that continued well into the 1800s, and then, as the slide captures, the embankment was authorised in an Act of 1867.

65. You can see the way in which the gardens have evolved on the next slide, slide 23, and on the left-hand side, that map is from 1878 and at that stage, there was a very small open area immediately adjacent to Parliament and buildings and structures on the rest of what is now Victoria Tower Gardens. You can see that, come 1896, the original gardens had been laid out – pretty much the square that you see adjacent to Parliament in the middle slide. That is 1896 and, come 1915, which is the right-hand image, that shows the outcome of the 1900 legislation that we were looking at a few minutes ago, which enlarged the gardens to what you see today. The slide also notes – we’re going to look at this in more detail shortly – that the wonderful sculpture, the Burghers of Calais, was installed in 1914.

66. Then if we move to slide 24, you will know very well indeed, because I am sure you are extremely familiar with the gardens, that there are various memorials and structures and uses within the gardens, and this slide just records that the playground was added in 1923. That was supported by Mr Spicer, commemorated by the Spicer memorial, which is towards the bottom end, the point of the triangle. There is the Pankhurst memorial; that is 1930. There was damage to the embankment that was repaired after the war. Then there was some reworking of the gardens, reopened in 1959 and the Buxton memorial, which featured large in the planning process, was relocated from Parliament Square, its original home, to Victoria Tower Gardens. That happened in the 1950s, as we are going to see soon, and as a result of that, the Pankhurst memorial was moved further north. The gardens feature various memorials, various sculptures, and they have come and gone over time. They have moved over time but we are where we are today with what we have.

67. Then at slide 25, as you will very well know, I am sure, the gardens are extremely well used, a range of visitors, local residents, office workers and tourists, Members of Parliament. There is a busy pedestrian link. All sorts of activities are regularly held. I

think my favourite of the slides is the bottom left here with the annual dog show and, of course, the gardens are used for all sorts of other purposes. For our late Queen's lying in state, the queue of mourners passed through the gardens. You all very well know that the gardens are often used for interviews of Members of Parliament for TV and broadcasting purposes, so they are very, very, well used indeed, no doubt about that. We are not seeking to hide from any of that.

68. Slide 26, which is the next slide, the gardens are on land held by Ministers, now managed by the Royal Parks, which is a charity. We know that they are right next to Parliament. Important monuments – and there are the key monuments, the listed structures, so the Buxton memorial. The slide says 1957. The fountain itself, the memorial itself, is 1866. It was moved to the gardens in 1957. It was originally in Parliament Square and commemorates Mr Buxton, a Member of Parliament, and others who were important in the abolition of the slave trade and the emancipation of slaves. It is a Grade II* listed monument and, as I said earlier on, of all the monuments, it is the one, as we will see, which is closest to the proposed Holocaust memorial and learning centre and we will hear from the descendant of Mr Buxton, in due course, as one of the petitioners.

69. Then the Pankhurst memorial, 1930, suffragette – of course, Grade II*. Burghers of Calais 1914 – Grade I. These are important heritage assets, to use the planning language, and that is all summarised on slide 27. As I said earlier on, this is heritage rich here so no wonder the inspector at the planning inquiry had to devote reams of pages to heritage. The gardens themselves are Grade II registered gardens and that makes them a heritage asset in their own right, regardless of any of the structures. The gardens themselves are a heritage asset of special interest in their own right and the various sculptures and statues, memorials, we have already been through but they are listed in the way in which I have already mentioned.

70. The embankment wall itself is a listed building – Grade II. Tree preservation orders on all the plane trees, as you can imagine, and of course the statutory restriction, which I have already drawn attention to, in section 8 of the 1900 legislation.

71. With all of that in mind, if we move to slide 28, how did this idea of having a Holocaust memorial and learning centre, in these gardens, come to be put forward?

Well, this slide refers to the then Prime Minister's Holocaust Commission, a cross-party commission appointed in 2014 to investigate the idea of whether or not Britain should have a more fitting and permanent memorial to the Holocaust and more meaningful and educational resources for future generations. That went through a process of call of evidence. The commission reported. In its report, Britain has promised to remember – and you will recall earlier on that I said that the inspector had found that meeting what comes next on this slide was a public benefit of particular importance, and here is what the recommendation was – that there should be a striking new memorial to serve as a focal point of national commemoration of the Holocaust. It should be prominently located in central London and make a bold statement about the importance that we as a nation place on preserving the memory of the Holocaust and that should be co-located with a world-class learning centre.

72. Those recommendations were accepted by the Government and the Holocaust Memorial Foundation was established to support the implementation of that. That commission did not say, 'and this memorial and learning centre should be in Victoria Tower Gardens'. That came later, as we will see.

73. At slide 29, you will all be very familiar with this but there is extensive cross-party support for the memorial and learning centre sum. We could have gone on and on with these quotes but some quotes are set out here from our current Prime Minister and our current Leader of the Opposition and others in wholehearted support of the project and its location, and that will not come as any news to you at all.

74. At slide 30, how did we land at Victoria Tower Gardens? Well, the Holocaust Memorial Foundation conducted an extensive site search. They looked at all sorts of sites and at the end of this process – and I will say very openly to you, late in the day, in relation to the process – the foundation proposed Victoria Tower Gardens as the most fitting location for the memorial and learning centre and that was their recommendation, which was made. That was accepted. The Secretary of State launched a design competition to find suitable architects and others for the scheme. That process was gone through. At the bottom of the slide, at slide 30, 2017, we find various firms of architects, Adjaye, Ron Arad, and then landscape architects as well, selected to take forward the design of the memorial and learning centre.

75. The memorial itself, the above-ground, very striking memorial we will see images of in a few moment's time, is designed by the middle of those firms, Ron Arad Associates, and designed by a remarkable architect who very sadly died a few days before the Minister's decision was issued. I carry a photograph of him in my breast pocket.

76. Slide 31, so the scheme itself, a national memorial to commemorate the millions of Jewish men, women and children and many others murdered in the Holocaust. That is to be accompanied by a learning centre and we are going to see the fins in due course in a bigger slide but bottom left, you can see that visitors to the learning centre will descend between what are called the fins – and you can see on the right-hand image there the above-ground fins, bronze – down into the learning centre. There will also be landscape improvements to the gardens and security arrangements of the type that we will all be familiar with at public buildings generally.

77. And at slide 32, there is an image, immediately nearest to us, so in the foreground is the courtyard – so this is the area immediately in front of the memorial, slide 32 – and the fins, as they are called. The memorial itself is directly in front of you in this image and for those who wish to visit the learning centre, you would go down between the middle few of these fins, into the learning centre. The Buxton memorial is the structure immediately to the right that you can see there, very well lit in the particular weather of this photograph. The Buxton memorial is there beside the Holocaust memorial.

78. And then at slide 33, the top-left image is of the entrance pavilion, as we call it, so the way in which people will enter the courtyard, then go to view the memorial close up and the learning centre beneath ground. Bottom-left is one of the paths that will be newly laid and improved in order to take one to and from the memorial, and on the right-hand side – again, you can locate this because the Buxton memorial is to the left of the Holocaust memorial – you can immediately see from this that, as we are going to see in more detail in a moment, the fins are obviously raised above ground and the gardens themselves will be raised into a slope, which culminates – comes to its peak – at the top of the memorial fins, as you can see there.

79. There is a way of putting all this together at slide 34. So at slide 34, again, Houses of Parliament would be to our left here. The Buxton memorial you can see there on the

image and just to go through the various key elements of this, the memorial fins are very clearly apparent there in the image. The courtyard is the open area to the right-hand side of the fins. One would enter by going down, in effect, the middle fins. One would come out between other ones of the fins. The path we were just on, so to speak, in a previous image, is shown there at number 7 on the slide. You can see the layout and the way in which the ground would be raised so that it comes to the top of the fins you can see there in the sweep of the gardens.

80. We are almost there, you will be pleased to hear. Slide 35 is just taking the imagery off and just showing you the overall layout, and so the underground learning centre you will enter by descending between the fins, you can see there is a dashed rectangular line in the middle of the image. That just picks out where the underground learning centre would be. The memorial is very obviously shown there. There are other things that we are doing, though, and so there are new paths; there are improved paths that are shown here. The entrance pavilion is a triangular building, which is shown on this image, and to the left-hand side we will be improving, changing the layout of the playground and extreme left, right at the tip of the triangle of the gardens, there would be a new café kiosk. You will know, of course, there is a café kiosk structure at the moment in the gardens. That would all be changed. So that is the overall layout.

81. That then takes us to slide 36, this one here, and this slide shows in pink the extent of the memorial, its courtyard and its associated building, which is the entrance pavilion. The red-dashed line, sort of rectangular line, shows the underground that would be the extent of the learning centre and then, to the left-hand side of this layout plan, you can see the new kiosk and the area of the playground. So that gives you an overview of what is going where.

82. Then if one wanted to understand the construction phase, and indeed the box underneath, the learning centre, that is on slide 37. Obviously, for a project of this scale, during construction, much of the gardens would be required for construction purposes. You can see on this slide, though, that the intention is that the riverside walk will be kept open throughout construction. You can see that at the bottom of the slide. That is all controlled by the planning process, I should add.

83. And then at slide 38, just a few words about the learning centre. The learning

centre, audio-visual exhibition, it would set out the events of the Holocaust. There would be a particular British perspective but, as the second bullet point stresses, and at the planning inquiry we went to great lengths to stress this point, this is not going to be a celebration that Britain led the way and has an entirely unblemished record, so to speak. It is going to address the complexities of our ambiguous responses to the Holocaust, as is said here, and we would encourage visitors to critically reflect on what more could have been done, whether by policymakers or by society as a whole. You might have seen, in some of the petitions, a particular description of the learning centre which we contest hugely. All of that was dealt with through the planning process.

84. Plainly, the Holocaust will be set within its context of the history of antisemitism, including the antisemitism experienced by Jewish communities in our country over many centuries. It will also deal with and memorialise and have learning centres in relation to subsequent genocides, and the intention is to work with other institutions across the United Kingdom supporting Holocaust commemoration and education.

85. Then at slide 39, there are just some images of the learning centre. It would be, as far as we are concerned, very powerful. The concept of descending between these fins, descending down and then, top-right image, the first thing that you will see as you enter into the learning centre is this huge curtain wall upon which there would be words inscribed. The current intention is the words inscribed would be a quote from Winston Churchill and the current intention is that the words would be, 'There is no doubt, this is the greatest and most horrible crime ever committed in the whole history of the world'. So you enter; you have this visceral experience; this is right in front of you and you work your way through the learning centre and you can see there is an overall layout there of the learning centre.

86. And then finally, well, what about the gardens in which this memorial and learning centre is intended to be located? Slide number 40, our final slide here. Outside the project itself, so the entrance pavilion and the courtyard, the whole rest of the gardens would be open to the public as now. Plainly, to get to the entrance courtyard you would need to go through some form of security, as we are all used to at public buildings, because once you are in the entrance courtyard, you can then enter the learning centre. So that part will not be a recreational part of the gardens. It would be there for the courtyard and the memorial and learning centre but, otherwise, the gardens

would remain entirely open to the public as now.

87. We have landscape improvements, including new planting for the gardens; better drainage and improved pathways; boardwalks along the riverside and new benches etc; playground retained and improved; coffee kiosk moved; and a nicer coffee kiosk would be there. All the current uses would be able to continue, although, remember, the inspector found there would be a small degree of harm, and if planning permission is granted in due course by the Minister, there would be all sorts of conditions and restrictions, placed on that project in relation to how it is to be constructed, how it is to be managed. I say 101; it would almost certainly literally be 101 restrictions that would be placed, in planning terms, on the way in which the project is brought forward.

88. And our very last bullet point on the very last slide just needs a few words of elaboration from me. Separate commitments to petitioners relating to the construction period are proposed. Now, we, the promoter of the Bill, have been considering whether there are any non-planning commitments that could be made, because obviously the planning process will capture a great deal of restrictions on the way in which the project is to be brought forward, if it is permitted. We have written twice to the petitioners, in October and December, suggesting that there may well be non-planning commitments that could be put forward in relation to, for example, consultative arrangements and engagement during the construction of the memorial and learning centre, formalised complaints processes for local residents and others.

89. We have written; we have had various responses. I am trying to find a neutral and unprovocative way of putting this. I think it would be fair to say there has not been any great or marked enthusiasm for engaging in any of these discussions with us, because as far as I can see, the petitioners' target is a quite different target. It is not those sorts of things; it is the other things that we will be hearing about in due course.

90. We are plainly here to wait and see what transpires through this Committee's proceedings. We hold ourselves open to discussions with the petitioners for non-planning commitments to be made. They can either be secured by assurances given or by undertakings given but that is all a matter which we will just have to wait and see, to be quite frank, what arises and whether the Committee itself suggests that there is anything that we should explore with the petitioners.

91. So that is the very last bullet point and the very last slide. Those are the points I wanted to draw to your attention in this opening. Key to all of that, to be quite frank, are the submissions I have made to you, and they are submissions, about the scope, the purpose, the principle of the Bill, what is within your remit, so to speak and with great respect, and what is not, and that clarity which I hope is there as to what this Bill does do and what it doesn't do.

92. Those are the submissions I wish to make to you. Thank you very much indeed for allowing me to do so.

93. THE CHAIR: Okay, thank you. I will just ask if members of the Committee have any questions. Can we start with Karl?

94. MR TURNER: Thank you, Chair. Thank you very much indeed for that very instructive presentation. I think what you said in your submission is that, if we hear from petitioners who seek to prevent the building of the memorial and learning centre within Victoria Tower Gardens, that is effectively outside of the scope of this Committee. Was that your submission? You were effectively saying we should be ignoring any petitioner who submits to us that this should not be built within Victoria Tower Gardens.

95. MR KATKOWSKI KC: Yes, not within the scope of this Committee – I say this with great respect of course. It is a submission, but yes is the short answer to your question. Absolutely bang on. Indeed so. There are matters which are within scope but anything which would in any way inhibit, let alone prohibit, the construction of the memorial and learning centre in Victoria Tower Gardens goes to the principle of the Bill. That's what the Bill is there to remove. So if anyone says, 'Well wait a minute, there shouldn't be a memorial and/or learning centre here. It shouldn't be this memorial' etc, all of that goes to the principle of the Bill.

96. THE CHAIR: Can I just take you up on that point?

97. MR KATKOWSKI KC: Of course.

98. THE CHAIR: Going to slide 19, can you tell us what bits of the petition you'd regard as falling within the scope of the Bill?

99. MR KATKOWSKI KC: That is a question which I anticipated I'd be asked, and I would put it this way. To be quite frank, there's very little in the petitions which falls within scope. There are some aspects of the petitions which do potentially fall in scope, and if I just run through what I would submit to you are plainly matters which would be within scope, which would be for you.

100. I'm going to describe these under two headings, sub-headings, 'territorial' and 'temporal'. 'Territorial', most obviously, the Secretary of State has a project: Holocaust memorial and learning centre. It's of a certain size and extent and if it is permitted, if this Bill becomes an Act and the memorial and learning centre are built in the gardens, it would take up a certain amount of the gardens, but it won't take up all of the gardens.

101. So I would certainly regard as within scope for the Committee to consider whether the lifting of the restrictions which the Bill seeks to secure should apply, once the memorial and learning centre are built, across the entire gardens or whether they should be in some way territorially restricted so that the lifting of these restrictions only applies to the memorial and learning centre as in this eventuality would have been built in the gardens.

102. So, query, is there some way in which, territorially, the extent of what this Bill seeks to achieve should be drawn in, if you like. And an obvious way of doing that, to be quite frank, would be to have a plan which shows the extent of the project, and everything that's within this, the extent of the project plainly needs to have the section 8 1900 Act restrictions removed, and everything that isn't within the extent of the project, on the face of it, doesn't. So that's the end result, imagining that we're in the Victoria Tower Gardens and there's a memorial and learning centre there.

103. What about the construction period? The construction period is more difficult because the truth of the matter is that we will need most of the gardens, over time different parts of the gardens, to build the project. And so although in principle the idea of saying, 'Well, could you have a territorial restriction on the lifting of the 1900 Act's obstacle? Could you have a territorial restriction on the extent of that during the construction period?', in principle you could if we get to considering this, or if you get to considering this later in these proceedings – I'll need to call evidence on the subject from Mr Downie – but we will need, as I'm instructed, over time to use all sorts of

different parts of the gardens to construct this project. So it would be very, very difficult, as far as we would see it, to map out the gardens during construction and say, 'Well, the lifting of the restrictions during construction applies to nine-tenths of the gardens but not that tenth'.

104. Once the project is built – assuming it's permitted, assuming the Secretary of State goes ahead with it, etc. – I can certainly see a way in which one could map out a territorial restriction on the lifting of the 1900 Act so that it fitted with the project itself and didn't impinge upon the rest of the gardens. So that's the first thing which is potentially in scope.

105. THE CHAIR: A time limit on it as well?

106. MR KATKOWSKI KC: The second thing which is potentially in scope is temporal and some of the petitions have raised this, in all fairness and in credit to them of course. I'll break this down into two steps.

107. Step number one is the project which the Secretary of State has been proposing for a number of years. Now we had a planning permission for it. We hope to get another planning permission for it in due course, and you won't be surprised to hear that planning permissions come with restrictions on them, so they don't just sit there forever. You have to get on and start your project within a certain period of time and that's all controlled through the planning legislation and the planning permission.

108. And on the face of it – and I'll explain why I say 'on the face of it' in a few moments' time – one could certainly imagine as a matter of logic saying, if the Secretary of State continues with this particular memorial and learning centre and that memorial and learning centre is granted planning permission, at least in principle we could see how you could say, 'Well, the Bill's restrictions are going to be lifted for a certain period of time, a number of years, to allow you to get underway with this project, and if you don't get underway with the project within that period of time then the 1900 Act restrictions come back into place'. So there's a 'temporary lifting of the restrictions' and the permanent lifting of the restrictions is only triggered if you get on with the project. So I can see certainly that's within scope, of course.

109. The wrinkle in all of this – and again I'd need to call evidence in due course as

and when we roll our sleeves up and consider the detail of this – is of course that's all based on the particular project the Secretary of State has been promoting for some years. Certainly, the Secretary of State is continuing to promote that particular project. He's written to the Minister asking for the planning process to be reactivated. The planning process will be reactivated, and permission will be granted or refused.

110. Assuming it's granted, at the moment all the intentions are to get on with that particular project. If it's refused, of course then that's not to say that there wouldn't be some other memorial and/or learning centre in the gardens. And even if it's granted, that's not to say that the Secretary of State and the Government of the day might not decide that they want to do something else to memorialise the Holocaust. So there are those little wrinkles, and we'll need to discuss those in due course.

111. But certainly in relation to the project as it's been promoted over recent years one can certainly see the logic of saying that it's within scope to consider whether, in effect, the Secretary of State should be given a period of time, dating from the grant of any new planning permission, to get on with that project. One can understand that. But beyond that, I'll just put my cards face up on the table obviously.

112. THE CHAIR: From your perspective you think those are the limitations from your view.

113. MR KATKOWSKI KC: Absolutely, because cards face up on the table – I'll just say this very openly – I've spent a long time thinking about this because it's all very easy for me to say, 'This isn't in scope'.

114. THE CHAIR: That's fine; I know where you're coming from.

115. MR KATKOWSKI KC: Yes.

116. THE CHAIR: Do you have any more follow-up?

117. MR TURNER: No, I'm fine thank you, Chair.

118. THE CHAIR: Keir.

119. MR MATHER: Thank you. Just along Karl's question slightly, I appreciate your comments about not hearing aspects of petitioners' cases which lie outside of the

instruction as is contained in the Bill, but we've also discussed what lies within the Bill, what lies outside of it, but also the function of a Hybrid Bill Committee, as it were, in its role to have a duty to listen to petitioners and their concerns.

120. MR KATKOWSKI KC: Yes.

121. MR MATHER: I suppose I'd be interested in your perspective on a situation in which a petitioner would put forward their views, a certain percentage of them lie outside the content of the Bill and are therefore discounted, but in that space, as you were saying previously, around concessions and undertakings, it might be better to tease it out in that context rather than, in a sense, not hear it at all. I was wondering what your view is on that.

122. MR KATKOWSKI KC: Thank you. So we're here because it's been decided the Bill's hybrid. That's to say that there are private, directly affected, specially affected, differently affected local residents and so they can make their points, whatever they might be. It's obviously for you to decide the extent to which and how you're going to go about hearing the petitioners. But I've said what I've said about scope, what's in and what's out of scope.

123. Should any petitioner who has a private, directly affected, specially affected local interest, etc., raise a point which is within scope then of course you'll consider it, and I wouldn't in any way wish to get in your way, so to speak, in you carrying out your role. And certainly, yes, within that context we'd be very open to discussions about any non-planning commitments that we can make.

124. But there's obviously a difference between someone legitimately being able to say, 'Well, yes, I have this special local interest here and therefore I'm within the very reason why this Bill has been found to be a hybrid'. There's a difference between that and what that person then says. And if that person then says all sorts of points such as, 'I don't like this memorial. It's a horrible thing. It shouldn't be here. It should be somewhere else,' then I'm afraid that is not within scope.

125. I don't know whether one has to be of a certain vintage to recall this expression but I'm going to sound like a broken record I'm afraid, because I'll be repeating the acid test which I set out earlier on, which is, if the outcome of any petitioner's point would

be an outcome which stands in the way of delivering this project in the gardens, it's an outcome which isn't for this Committee. And I say that with respect, genuinely.

126. MR MATHER: Thank you, Chair.

127. THE CHAIR: Touching upon that, you mentioned non-planning requirements. What exactly do you mean by that?

128. MR KATKOWSKI KC: That is the most difficult question of all, to be quite frank, because so much is within the realms of planning. I mentioned two points earlier on to you, and in my characteristic way I probably went through them at a canter. They were, if you like, special consultative and engagement arrangements with local residents during the construction process and formalised complaints processes. Those were particular aspects that we have given thought to as non-planning commitments.

129. There will be extensive code of construction conditions should planning permission be granted, and I have to say, we have been applying our minds to 'Is there anything that falls through the planning process and falls out the other side of the planning process – something which you're not going to get through planning restrictions and conditions?' That's what we've come up with to date. But we're very, very content to apply our minds again to this and we're very, very content of course to discuss this with petitioners.

130. But, yes, one would be looking for gains, if you like, for local residents that could not be obtained, or wouldn't necessarily be obtained through the planning process. Yes, and I'm just being shown by Mr Owen the correspondence that we wrote to the petitioners, one of the letters providing commitments to petitioners relating to how Victoria Tower Garden users will be affected during the construction stage and how the promoter will engage with them during that time. So that's just capturing what I've just said to you.

131. But I've said, again very openly and straightforwardly to you, that, yes, this is a very difficult question to answer because so much is caught by the planning process, but we will be able to find certain aspects which won't be caught, and those aspects are the ones that could be made the subject of commitments, separate commitments.

132. THE CHAIR: I take it you'll be taking a constructive approach to undertakings and assurance where appropriate.

133. MR KATKOWSKI KC: Yes, most certainly, most certainly. Absolutely.

134. THE CHAIR: Okay thank you. Any other questions from the Committee? Do you want to move to the next stage, Mr Downie?

135. MR KATKOWSKI KC: The next stage, Mr Downie, isn't a stage really because our opening to you is what I've just set out, and although I'm very, very happy to call Mr Downie to verify any factual matters I've referred to, they're all set out. They're all a matter of record. I've been reciting things which have come from an inspector's report, a Minister's decision letter, a High Court judgment; they're all documents of record.

136. And so at this stage in making our opening briefing to the Committee, I don't actually see the need to call evidence per se. The need to call evidence might arise later in the proceedings. Again, being very straightforward about this, I think it's been said it's been hard to find a precedent, if you like, for this particular Bill. It's an unusual Bill dealing with a unique set of circumstances, much of which involves getting one's mind around exactly what is here for you to consider and exactly what isn't. And so this isn't like a planning inquiry where I would call a witness and say, 'Well, what a wonderful scheme this is.'

137. THE CHAIR: Fine. In that case, I've just one probably last question from me, which you may or may not be able to answer. Why didn't they just put on the face of the Bill the fact that it was going to be constructed in Victoria Gardens?

138. MR KATKOWSKI KC: My fault entirely, I didn't catch the beginning of that question. I'm so sorry.

139. THE CHAIR: I'm asking why did the Government or the promoters not just put on the face of the Bill the fact that it had to be built in the Victoria Gardens.

140. MR KATKOWSKI KC: That's a matter I can't answer off the cuff; I would have to take instructions. I think it's an art, as well, of drafting the legislation of this nature and consideration would have been given to exactly how to do it. The provision is set

out in a very wide way to remove an obstruction to the building of this particular project. Can you just give me one moment?

141. Mr Turney, my learned junior, is just reminding me that in a way this comes back to the point which I made earlier on: that, of course, the purpose of the Bill is to remove the obstruction to the building of the memorial and learning centre. It isn't in any way to authorise the building of the memorial and learning centre. The planning process is there to authorise or to refuse consent for the project to actually take place.

142. So I think the answer to your question lies in again getting one's mind back to exactly what this Bill is trying to do, which is to remove an obstacle rather than positively promote an outcome.

143. THE CHAIR: Can I have confirmation that Mr Downie will be available for the petitioners to cross-examine at the appropriate stage?

144. MR KATKOWSKI KC: Yes, he'll certainly be available. In due course I may very well have to make submissions to you as to what it's appropriate for him to be cross-examined about. I'll just put my cards face up on the table again.

145. THE CHAIR: It's up to the Committee what we do ask individuals, as well as the right to cross-examine.

146. MR KATKOWSKI KC: Of course, absolutely, and I was simply going to say that I'll in due course make submissions potentially to you. Obviously, it's for you to decide. I just wanted to flag up that, of course, Mr Downie will be available to answer questions in cross-examination, by or on behalf of petitioners, but I would just make that point about what is within scope and what isn't.

147. THE CHAIR: You will also appreciate that we did give you a fair degree of flexibility on the point about planning, which technically is not part of the scope of the Bill.

148. MR KATKOWSKI KC: Yes.

149. THE CHAIR: We will obviously give the same consideration to the petitioners.

150. MR KATKOWSKI KC: Yes, but the flexibility you've given me on planning is

for me to recite what's happened. Everything I've done in relation to the planning process is fact, pure and simple. Of course there were cases made for and against, and I've tried to be perfectly fair, if you like, in acknowledging that there was considerable opposition to the proposal on all sorts of grounds. I've made that point and that all had to be dealt with through the planning process.

151. With respect, we should never find ourselves in the position, but if we ever are even contemplating evidence in relation to the merits or demerits of the memorial and learning centre – patently out of scope as far as I'm concerned in my submission – but were we ever to get to that –

152. THE CHAIR: I'll just respectfully say we're completely aware of the instructions we have from the House.

153. MR KATKOWSKI KC: I should shut up.

154. THE CHAIR: Have you got anything further to add?

155. MR KATKOWSKI KC: I've nothing else to add. Thank you so much.

156. THE CHAIR: Colleagues, have you any? Okay, thank you very much for your presentation this morning. It's appreciated. That's all for today.