

MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 6 February 2024 (Afternoon)

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

In Committee Room 15

PRESENT:

John Stevenson (Chair)

Keir Mather

Lia Nici

Angela Richardson

Karl Turner

FOR THE PROMOTER:

Christopher Katkowski KC, Counsel, DLUHC

Richard Turney KC, Counsel, DLUHC

FOR THE PETITIONER:

1. The Thorney Island Society and Residents of Westminster

- Brian Doctor KC
- Clare Annamalai
- Dr Donald Peck

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

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(At 2.15 p.m.)

1. THE CHAIR: Good afternoon, everyone. This is the eighth public meeting of the Holocaust Memorial Bill Select Committee. As I have done in previous meetings, I will read out 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 the 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 (i) a memorial commemorating the victims of the Holocaust, and (ii) 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.

2. 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.

3. We will now hear from counsel representing the petitioner, Mr Doctor.

The Thorney Island Society and Residents of Westminster

Submissions by Mr Doctor

4. MR DOCTOR KC: Thank you very much, Mr Chair. I am going to start by just calling today's petitioners, which is representatives of the Thorney Island Society, and they will, as I have done in the past, be allowed to tell you what they have to say and then I understand, after that, you're going to have a brief adjournment for 10 minutes and then we will come and back and I will address you on everything that has happened.

5. So can I start by calling Clare Annamalai? She is one of the petitioners.
6. THE CHAIR: Would you like to cross there?
7. MS ANNAMALAI: Whichever you prefer.
8. MR DOCTOR KC: It is probably easier for her to sit there so that she can see our opposition as well as the Committee. I know Mr Katkowski prefers that. Right, thank you. Ms Annamalai, will you please tell the Committee who you are? I see you have brought some slides, which you will speak to and explain.
9. MS ANNAMALAI: I have.
10. MR DOCTOR KC: Right.

Evidence of Ms Annamalai

11. MS ANNAMALAI: Hello. My name is Clare Annamalai. I have lived half a mile from Victoria Tower Gardens for the last 15 years and have been a frequent visitor to the park. I am a member of the Thorney Island Society. I am involved with the Save Victoria Tower Gardens campaign and I work as an arts manager.
12. I am going to focus my evidence on item (a) of our petition, namely that the Bill should be amended to require the learning centre to be built outside Victoria Tower Gardens.
13. I am lucky enough to have a very special backyard. It is the backdrop to Parliament and an instantly recognisable postcard view of London. As local residents, and no doubt just like the residents of the New Forest, the Lake District or the Heart of Bath, I and my neighbours feel a sense of responsibility for our unique surroundings and the people who live there, including those in social housing with no garden. We see what goes on here. We see how the area is used and how it benefits multiple communities, not just the local residents. Let me illustrate a few of the ways that Victoria Tower Gardens is used and the range of people who enjoy it.
14. Next slide, please. Here you can see the Spectra art installation from 2014, commemorating the start of World War I. Then clockwise we have a very recent farmers' protest, which had ranks of scarecrows; people enjoying the snow; the

Westminster Dog of the Year show; and preparations for last year's coronation.

15. Next slide, please. On the left, another temporary art installation; visitors strolling through the park and enjoying the playground; politicians recording their TikToks; queues for the lying-in-state; and just last year, the air ambulance landing in the gardens in response to an incident at Westminster tube station.

16. Next slide, please. At the top, you can see people enjoying the sunshine including, in the foreground, office workers on their lunch hour. On the right-hand side, a couple of school groups, one of which decided to practise their dance while they were waiting for the parliamentary education centre. At the bottom, another protest and, bottom left, wildlife. People like to watch that sort of thing.

17. Next slide, please. Here is another protest, this time about violence against women and girls; the Luna outdoor cinema, which sometimes pops up in the summer; and dogs running free, which incidentally they cannot do in St James' Park because of the wildlife. Again, you can see people relaxing in the sunshine and it is worth noting on that picture that the Holocaust memorial will wrap right around the Buxton memorial, so just where those people are sitting. And, finally, bottom left, you have got people just enjoying the peaceful riverside view.

18. This is what we are trying to safeguard: a multi-purpose green space that is used for a huge range of activities, all of which co-exist quite happily. And yes, of course, it is a local park but it is much more than that and it is used by people from far beyond Westminster.

19. In February last year, Felicity Buchan MP sent a pamphlet to her fellow MPs as context for this Bill. Next slide, please. She said, 'The objective is to make sure that all current uses can continue after the memorial is constructed'. I would ask members of the Committee to think about the various uses that I have just illustrated and consider which of those could continue; which would be possible, desirable or palatable on top of or adjacent to this learning centre and courtyard for reflection. It seems obvious to me that Ms Buchan's statement is based more on wishful thinking than common sense. Perhaps that is why she used the word 'objective' rather than the more binding 'commitment' or 'assurance'.

20. It is also interesting to note that Ms Buchan refers to 'the memorial', even though what you can see here is the memorial and learning centre. It is quite easy to slip into that kind of shorthand because 'UK Holocaust memorial and learning centre' is quite a mouthful. But referring to the memorial obscures the fact that this is actually a collection of buildings. This is not a memorial on the scale of the cenotaph or Bomber Command memorial. It is an entrance pavilion, a large overground courtyard, an array of fins the size of a substantial building, 13 metres from top to bottom, and then behind and beneath it, an underground building.

21. Next slide, please. To illustrate that point, on the left-hand side here you can see an aerial view of the park, and I apologise because I have used an image of the old design, so it is not quite accurate but it still makes my point. The image is serene and the park is unruffled, other than by the crescent of fins. On the right-hand side, you can see a plan of the entrance pavilion. It contains ticket check, bag drop, lockers, loos, bag collection, information desk. That is just the entrance pavilion and this is much more than just a memorial.

22. Turning then to the playground and back to 1923. Next slide, please. This was the scene in Victoria Tower Gardens in May 1923. In June of that year, the first commissioner of works wrote to Henry Spicer, who had funded the sandpit, 'Both you and Mrs Spicer must feel, in some measure, compensated for your generosity by the masses of poor children who frequent the pit, apparently obtaining incessant and endless joy therefrom'. That is what we had then. What do we have now?

23. Next slide, please. We have a playground of 1,185 square metres. It was thoughtfully designed in consultation with users and it is responsive to its surroundings. It is screened from the road by shrubbery and is distinct from, but not separated from, the rest of the park. It is well used by locals but also by visitors whose children need to let off steam after a day of sightseeing. From the Lambeth Bridge steps on the top left there, you can see the whole of the playground and, from there, all the way down the length of the park. And from the playground, the children have a clear view of the Palace of Westminster, just as their predecessors did 100 years ago.

24. And what are we being offered instead? I will not get into square meterage here, because others have covered that, but whether it is Baroness Scott's 945 square metres

or our own 815 square metres, we can all agree that the playground will be smaller. As you can see, the view from the playground to Parliament will be obscured by the entrance pavilion and the fins. From the Lambeth Bridge steps, there will be no more view down the length of the park. Children and families will have to contend with coaches parked on the road outside, the presence of security guards, queues around and possibly through the playground and, potentially, a very different, more sombre atmosphere. The playground and the park overall will be a less inviting place to visit as it becomes the setting for the Holocaust memorial and learning centre. Even the planning inspector acknowledged that that was likely to happen.

25. Many people will know Sir David Adjaye's statement that 'disrupting the pleasure of being in a park is key to the thinking', but fewer people have heard the first part of that quote which is, 'We have the opportunity to activate the entire site', or indeed what he said at JW3 in 2022. Next slide, please. 'There has been a kind of picture painted that this is a public garden... It moves from being just a kind of public park to being much more ceremonial, much more kind of ordered'.

26. I would suggest to the committee that the designers and promoters of this proposal are well aware of the extent to which the memorial, but particularly the learning centre, will change the nature of the whole park, not just the area shaded on their plans and not just the infamous 7.5%. I would suggest that this is possibly even the intention and, if so, they should admit that, so we can have a debate on the facts.

27. In August '22, the Department for Levelling Up, Housing and Communities, which is the Department of the promoter but also, of course, the Department of the decision maker, published a document called *Levelling Up Parks Fund: Prospectus*. This included guidelines for developing good parks and it is instructive to compare those guidelines with the promoter's vision for Victoria Tower Gardens.

28. Next slide, please. They suggest that we try to ensure a 'healthy, natural environment that supports and enhances biodiversity'. On the left here, you can see a healthy, natural environment. On the right, hardstanding.

29. Next slide, please. 'We should have spaces open and accessible to all local communities'. On the left, a space which is open and accessible to all communities. On the right, a fenced-in enclosure that runs through the middle of the park.

30. Next slide, please. 'Attractive open spaces which are easy to access'. On the left, just such a space. On the right, steps, paving and a gradient as steep in some places as 1:6.

31. Next slide, please. 'We should create the conditions for people to feel safe and secure...' On the left, you can see that we currently have clear sightlines all the way down the park and all the way across. On the right, you can see high walls and blind spots where vulnerable park users will struggle to see or be seen. 'And well overlooked'. On the left, you have a clear view into and well beyond Victoria Tower Gardens. On the right, you have a wall.

32. Next, slide, thank you. I will finish with a few last words from the Levelling Up Parks Prospectus. 'As each community has its own needs and requirements from their green space, we would strongly encourage you to engage with your communities whenever you can. We would certainly welcome such consultation'.

33. The current proposal for Victoria Tower Gardens is inconsistent with the Department's own recommendations for park design and, as I have outlined above, would make it a less welcoming, less safe, less natural and less versatile space. And so, to return to our petition, I would suggest that all of these difficulties could be solved by locating the learning centre elsewhere than Victoria Tower Gardens. Thank you.

34. MR DOCTOR KC: Thank you.

35. THE CHAIR: Thank you. Do you have any questions right now, Mr Doctor?

36. MR DOCTOR KC: I have no further questions.

37. THE CHAIR: Mr Katkowski?

38. MR KATKOWSKI KC: I have no questions. You will understand, of course, and I will be closing on this later that, as far as the promoter is concerned, the amendment which is sought is out of scope, so there is no point in me taking time asking questions about the evidence which underpins an out-of-scope amendment.

39. THE CHAIR: Thank you. Well, Mr Doctor, you have got nothing further.

40. MR DOCTOR KC: I have nothing further.

41. THE CHAIR: Any members of the Committee? Okay, thank you very much.

42. MS ANNAMALAI: Thank you.

43. MR DOCTOR KC: I am now going to call Mr Donald Peck, who is also from the Thorney Island Society. Mr Peck, will you tell the Committee who you are and why you are here?

Evidence of Dr Peck

44. MR PECK: Well, good afternoon, ladies and gentlemen. It is very nice to be here again and I hope I can provide some more facts and some figures. My name is Donald Peck. I am a member of the Thorney Island Society. I apologise for no slides. I am sorry, this is not meant to be the boring bit, but I do have a PhD in economic history and a finance background, and I do charitable work. I am, of course, a park user. My chief use of VTG in the 25 years since I moved to a flat in this area has been as a grandparent, since I became one 10 years ago and a bit.

45. TTIS is an official consultee on planning in this part of Westminster and was a rule 6 party at the public inquiry. TTIS represents the interests of the park users who live here and the many others who work in this area. VTG's ordinary park users – there are many kinds: residents, families, office workers and tourists – will bear the brunt of the disruption, not only during the memorial's construction but in perpetuity.

46. TTIS does not object to the concept of – as the Bill has it – a Holocaust memorial and a centre for learning relating to the memorial. Our position, in line with other petitioners, is that it would be entirely appropriate to locate, within VTG, a Holocaust memorial of a size and nature in keeping with the park, but without the learning centre and the attendant buildings and infrastructure. This can be done, perhaps, by a simple amendment to either clause 1 or clause 2 of the Bill, which would have the effect of limiting the lifting of 1900 Act restrictions to such a memorial only, not for the centre for learning, which I shall from hereon call the 'LC'. To be clear, we wish to have tight limits on the lifting of those restrictions, the 1900 Act restrictions.

47. First of all, I would like to remind the Committee that VTG is a grade II registered park and that there should be no building construction in parks. This principle was

supported at and before the public inquiry by every statutory consultee involved, bar none, including Westminster City Council, Historic England, the Royal Parks and UNESCO. UNESCO has sternly warned the Government, this Department, several times – sorry, DCMS, in fact – the last time, only four months ago, about the threat that the proposed development of the LC would pose to the world heritage site of the whole Palace of Westminster. The LC is simply much too large and intrusive for VTG.

48. In 2016, the promoter asked for proposals, a tender brief, both for a combined memorial and LC and for a standalone memorial. It was the designs for the LC, of course, that caused the problem, particularly the specification for an underground learning centre which they included. The promoter has, however, recently, rather reluctantly, in fact very reluctantly, admitted in writing that there was none at all of the required prior consultation on the choice of VTG as the site for this project. No public meetings at all were conducted until the competition designs, on the basis I have just indicated, had been submitted and the underground option offered by David Adjaye, his version of it, had already been chosen.

49. I will now talk about visitor numbers, something we have heard very little about, both at the planning inquiry and not at all during this hearing. So I hope it will be of interest and possibly instructive to the Committee. The LC is projected to attract lots of visitors. The promoter has never disclosed any kind of business plan for the LC so there are few figures to illustrate the LC's numerical impact on the ground. However, in the promoter's January 2019 planning application – that's the old one, five years ago – the promoter said that peak usage would be more than three times the current peak usage of VTG. See the inspector's report paragraph 15.206.

50. The promoter went on to say that he expected 1 million visitors a year entering the LC – this is in the planning application as well – and in addition to that, over twice that number of additional visitors who would view the outside of the LC but not enter it. That makes a total of 3 million new visitors to the park. The number of VTG park users today has been estimated at close to, but less than, 1 million and, even now, space is sometimes at a premium in the park. Clearly, if there are, and let us be conservative about this, not even 3 million but say 2 million or so, 2 million or more, new visitors attracted by the LC, as the planning application stated, VTG will be completely swamped at all times of heavy usage, not just at times of peak usage, as those figures

were only about peak usage.

51. As the planning inspector's key conclusion said – that is paragraph 15.211 and 213 – ‘With VTG no longer a space primarily offering quiet relaxation, local residents and users would perceive a distinct change to the form and function of VTG. The addition of security and visitor management facilities would alter its current relaxed and informal character and also the playground area’ – which you have heard about already and which I will come back to – ‘would be separated from the wider park’. So those were key conclusions in the planning balance, which the inspector made. I can answer questions on that if there are doubts.

52. Another special concern for VTG park users, as we are now coming to understand, is that whenever parliamentary restoration and renewal gets underway, much of our park is highly likely to be taken away altogether for a very long time, as all the Committee will understand, about Parliament. That is clearly another strong reason for not filling the rest of the park, which would not be occupied by R&R, with the LC. When we raised this matter last week, only last week, with the promoter, we were told that it has now consulted sufficiently with the relevant parliamentary authorities and it, the promoter, now thinks that both the LC and parliamentary R&R can proceed at the same time. So that means all of our park is gone.

53. My next issue is security, not from the perspective you have heard about already from Lord Carlile, very powerfully; not the perspective of terrorism and anti-terrorism, which is a matter outside my remit, clearly; but simply because of the major effects security will have on park users like me and my grandchildren. From the beginning, as the inspector realised – see his para 12.151 – there will be uniformed security staff whom the inspector euphemised into ‘security operatives’, patrolling the park 24 hours a day. Our big concern as park users is that, whenever the threat level increases, this initial intrusive security around VTG will actually increase significantly further. So either intermittently or even perhaps permanently – we have no idea – there will have to be security checks, not just at the entrance pavilion as there are now for visitors to the LC, but for all park users whenever they come into VTG.

54. I turn now to another new unfrequented area, which is the governance arrangements for the LC, including funding. This is important for two reasons to VTG

park users. First, management decisions made by whoever would be running the LC are bound to have a major impact on the experience of ordinary park users, for example, security checks. Another example is the management of visitors to the LC who access the LC through VTG – all of them. It is important that the governance arrangements for this are constructed so as to give proper representation to park users' interests and so that VTG does not end up being turned simply into an adjunct to the LC.

55. Secondly on governance, there are real concerns about whether the entire LC project is in fact viable. It is not just the building costs which have now, if you include contingency, risen to over £150 million, most of which is public money. It is also the running costs: £6 million a year we are told they cost, but there is a lot of flexibility around that number, which we will hear more about at some point, not yet. The LC will not charge for entrance and therefore will not generate any revenue of any significance. The planning inquiry was told it was £6 million a year; no breakdown was given, but that will also have increased and it will continue, of course, in perpetuity. So very robust governance and financing arrangements are essential to manage all this. That, of course, is not something that can be addressed in the planning process at all but it should be a central concern for Parliament.

56. If you, the Committee, are not prepared to recommend that the LC should not be permitted to proceed at all, we ask you to recommend an amendment that will ensure that the LC does not proceed until proper governance arrangements and a business plan have been published and approved by Parliament. On this, also we ask you to recommend that governance should at least involve clear separation of the management of the park from that of the LC, as the two have quite different interests in what is going on here, plus an overarching body of some sort in which the public will have some say.

57. I now come to my final, most direct concern, Mr Chairman, which is for children. The promoter has said recently that it wishes to be pragmatic. It said it last week. So here is something pragmatic. One of TTIS's amendments, if the LC is built, relates to mitigating changes to parts of the park outside the LC. So, for example, the space for the children's playground, the space of the playground must remain unchanged in size from its original size. The playground is a material part of the park. It is 1,185 square metres, as Clare said, and that is in the plans submitted to you by London Parks and Gardens Trust and that is 83% of the size of the proposed LC itself. It is not small.

58. If the LC is built, the playground is actually going to be reduced by 370 square metres. That is by 31%, not about 15% as noticed and remarked on by the inspector, or 10% in the figures given by Baroness Scott in her 2023 parliamentary answer, or even zero reduction, as stated by David Adjaye, misleadingly, to the inquiry. A 31% loss cannot possibly be said to be an enhancement or a reconfiguration of the playground. That is what Chris Pincher, then briefly Minister of State, said in support of his 2021 planning permission approval for this project. Pincher actually ignored the playground's loss of size completely; see his decision letter para 5.6. This reduction, of course, amounts to a material change in the planning balance, when that comes to be relevant once more.

59. The playground would actually therefore be scaled down and also moved further into the furthest corner of VTG and located right next to the crowds of visitors entering the LC. For obvious reasons, we petition that the playground must be separated from those crowds very clearly.

60. We have a pragmatic enhancement proposal, which TTIS and other petitioners proposed to the promoter, in writing, last week, to absolutely no avail. That would be that we remove the café entirely from the park altogether. Today, it is very little used and usually shut. So then, giving the café area back to the playground, we could help restore part, almost half, of the lost area of the playground. I now request the Committee's help to restore the lost part of the playground. I do realise that restoring the full playground may require amendments to the promoter's five-year-old planning application but I request this Select Committee not to take too seriously what the promoter has had to say about planning and 'non-planning' issues and instead report back to the House on this particular matter, as well as others. That is all I wish to say. Any questions.

61. Thank you. Mr Doctor, do you have any questions to start?

62. MR DOCTOR KC: I have no further questions.

63. THE CHAIR: Mr Katkowski?

64. MR KATKOWSKI KC: Thank you, Chair. For the same reasons as I said earlier on, I have no questions for Dr Peck. All the matters are, as far as the promoter is

concerned, out of scope and I am not, at the very last petition, going to break my own self-imposed rule of talking about planning. So I have no questions, thank you.

65. THE CHAIR: Thank you. Any member of the Committee? Thank you very much. That concludes the witnesses for this afternoon so we are going to have a short break of about 10 minutes. Can I suggest we start at five to?

Sitting suspended.

On resuming—

66. THE CHAIR: We will now resume the session and we will now hear the closing remarks. We will start with Mr Doctor. I will take your comments and remarks and then an opportunity for any member of the Committee to ask a question and then we will cross to Mr Katkowski. Mr Doctor?

Closing submissions by Mr Doctor

67. MR DOCTOR KC: Thank you, Mr Chair, members of the Committee. Just briefly, since the last hearing, we wrote to the promoters proposing some amendments and a meeting. The Committee itself wrote to the petitioner asking a series of questions. Unfortunately, we did not receive that letter so we were unaware of it until yesterday. The promoter then replied to us on 31 January. We held our meeting, I think, on 31 January but no agreement was reached. The main reason for that is that the promoter takes the view that most of our suggestions and so on are matters outside the scope, as they call it, and so no area for compromise. They did, however, propose two amendments, which I will come back to in a moment. There was no agreement on them. They were not amendments as such; they were undertakings.

68. Yesterday, we received the letter you had sent out on 26 January, together with the response from the promoters. We have had less than 24 hours to study and understand the implications of both the letter and the response, and I have tried to take instructions but, as I mentioned to Ms Kurt a bit earlier, it may be that on reflection, after hearing what happens today, I might require or ask you for permission to send you a written note arising out of that exchange and our own comments on it.

69. I point out that our exchange – that is the note on scope that I sent to you in

response – that was sent to the Committee and circulated to the promoter, I think, on 1 February and the promoter has had an opportunity to respond to that and, in fact, has mentioned it in the letter to you yesterday. So they have had the opportunity to respond, which they have taken an opportunity to do.

70. THE CHAIR: For your information, Mr Doctor, I do not think we would have any problem in accepting either letter.

71. MR DOCTOR KC: Thank you. On the question of scope, I have dealt with that in our note and I am not going to repeat anything there, although I am obviously available after this to give you any answers that I can to any questions you may have. Another legal point has arisen out of the exchange between the Committee and the promoter, which I think I will need some time to respond to, which is that the Committee cannot consider any amendments to clause 1 of the Bill because, so it is said, only clause 2 was ruled to be hybrid.

72. I do not want to go into that now, just because there is a way of answering it, but just briefly, the examiners who looked at the Bill did not rule that clause 2 was hybrid; they ruled that the Bill was hybrid. They expressly said that they took one argument based on clause 2. They found that local residents had a special interest, different from that of the special interest of the public at large, and they said that, ‘Given that it is only necessary for us to find one special interest to make a Bill hybrid, we do not deal with all the other submissions we have had and the other petitioners – or would-be petitioners – who have put in comments’ and they left it at that. So there is no ruling, as it were, that clause 1 is not hybrid or that somehow or other, by ruling that a Bill is hybrid, you cannot make suggestions which would affect an amendment to some part of it, even the part that the examiners did not look at or did not expressly look at, but I can deal with that later.

73. The practical effect of this is actually very little because my primary suggestion is that whether you make amendments, as we suggest, to clauses 1 or 2 or add another clause, which is neither 1 or 2, it will have an effect on both clauses and that is well within your scope for the reasons I have already given you. The exercise here is not to make a clever legal point but to try and see if the Committee can be persuaded by the interests which the petitioners have put before you, whether they can accommodate

those concerns in either an amendment to the Bill one way or the other, or by requiring undertakings and assurances from those who promote it.

74. Having got that out of the way, I want to turn to, as I have very little time – it has been ruled I have 15 minutes – and I want to mention the amendments that we have suggested and go through them very briefly. And I just repeat this point: I am dealing with them as if they are amendments. I fully accept that, on consideration, or if looked at in the round and in the context of how the Committee sees all of this, it may be that the Committee would feel that an amendment as such is difficult to draft or perhaps not necessary, given that the Committee can insist on or request some sort of assurance or undertaking from the promoter which would achieve the same object; that is to try and meet the particular concerns of the legitimate petitioners.

75. As you know, our primary concern is the existence of the learning centre in the park. Whether this can be excised, as I have suggested, by an amendment to said clause 1, or whether you do it by an amendment to clause 2, making the lifting of the 1900 Act relate only to a memorial and not to a learning centre, or whether you put in some other clause or whether it is done by way of an assurance, that I am not concerned with at the moment, though I could if you wanted to address all of those details, but the learning centre.

76. I am going to here just list out the numerous – I am not going to argue them – I am just going to list out the high points of all the evidence you have heard about the learning centre and it goes like this: the learning centre was an afterthought; it was squashed in to fit under the memorial, which itself was located in the park by a moment of genius. It was not a site chosen by the property consultants employed by the Holocaust Foundation, who had been set up to implement the Holocaust Commission's vision. It was identified by Lord Feldman and put before the commission, which simply decided that it would be suitable to locate it there, without asking the consultants to study it with the other 29 sites that were identified.

77. The promoter has admitted, most recently, as Dr Peck said, that there was no consultation with anyone before the decision to locate the memorial and the learning centre in the park was taken. The consultation only came after the design had been evoked by the competition and people were then asked, as it were, to comment on a fait

accompli. That is a very different thing from consulting before the design has been finalised and perhaps inputting some of the problems into the design. All the things you have heard might well have been dealt with if that had been undertaken.

78. The inspector found that the structures themselves, the learning centre and the Holocaust memorial, would harm the park and the enjoyment of the park, but the public interest in building a Holocaust memorial during the lives of some of the survivors outweighed that. Well, as we will see, all the delay has arisen as a result of the decision to put the learning centre in the park and it no longer makes any sense to say that this can all be achieved during the lives of some of the survivors. The Holocaust memorial and learning centre are intended as a destination for tourists, schoolchildren and so on. It is intended to disrupt the park, not enhance it as all the other memorials do. We have heard that evidence today.

79. According to our leading historian of Germany and the Holocaust, the learning centre, such as it is, will add nothing to existing learning and teaching already carried out by dozens of institutions and memorials in the UK. Indeed, he described the UK as being one of the leading countries in the study and teaching of the Holocaust. The learning centre does not meet any of the details of the vision of the commission, which I read to you in my original slides, as originally understood by the foundation, that it was their task to implement. That is why they were set up. They drew up criteria. You can see immediately – it is on my slides – what their criteria were, as they understood. They ignored all that on a moment of genius: ‘Oh, it would be nice to just put it over there’.

80. It takes up the bulk of the space. It causes the maximum disruption of the park during building and operating for all time. It results in the mound, thus affecting even the parts it is not supposed to be in. Parts of the mound are going to be inaccessible. Parts of it will not be accessible to people who cannot climb heights. It increases the need for fencing the area off. It causes the problems in relation to the Buxton memorial. As you have seen on the plan, even the most recent one that has come to you yesterday, the fencing of this memorial and, in particular, the learning centre goes right up to the Buxton memorial. The fence has to bend in order to make a space for a two-metre path between the Buxton memorial and the fence of the learning centre.

81. It is going to cost the overwhelming bulk of the public money that is going to be

used on this. It is going to require increased security and the ongoing costs associated with this project will mostly be spent because of the learning centre. It is going to take up the bulk of the building time. To build an above-ground memorial to the Holocaust can be achieved without the huge excavation and so on that has to go on.

82. A key point is, of course, that the 1900 Act would not even have been in play or in issue if all that had been decided was to build a suitable memorial, appropriate to this park, because if it enhances the park, it does not in any way attract the prohibition under the 1900 Act. It takes space from the playground and, in fact, stepping back from this, the existence of the learning centre is the total cause of everything that is being discussed, since the day that discussions were first called for once the design had been accepted.

83. It has caused the delay. It has caused the objections from local residents. Local residents might well not have had very much to say about another memorial, a serious and meaningful memorial which enhanced the park. It is to do with this learning centre and my submission, as you have already heard, is that the learning centre must be excluded from Victoria Tower Gardens. That is our primary submission to you and we hope that you are persuaded by that.

84. Now, in the alternative, on the assumption that that does not find favour with you, or you find it difficult to find a way of somehow influencing amending the Bill, or requiring the Secretary of State to give an undertaking, we have a number of alternatives, which, of course, by putting them forward, does not, I need hardly say, detract from the force of the argument that we put forward in relation to its total removal.

85. I can summarise – I am grateful to Mr Katkowski and his team for producing that list of amendments and suggestions and proposals by the petitioners. It is extremely useful and I have made use of it, which we got yesterday.

86. If I can then just deal with the topics, rather than the individual. I might deal with one or two individual items, given the time. The first question is, of course, size. The promoter agrees, or in our view concedes, that it is within your scope to cut down the size of the land in VTG which is to be excluded from the operation of clause 2 of the Bill, so that the 1900 Act would continue to operate in that area. Effectively, what the

promoter is saying, that it is within your scope of your functions to consider excluding from the operation of clause 2 92.5% of the land from both the Holocaust memorial and a learning centre but not just the learning centre from 100%.

87. You have heard our arguments and I will not repeat them but, if you agree with the promoter, then we say that you can recommend provisions which will deal with the size of this thing and the effect it will have on the rest of the park. Let us start with the size that has been put forward. It has been said that there is an area of 1,429 square metres and it was that area which the Government's representative told the House would constitute 7.5% of the park. Now you will find that reference, if I can go to that, I think it is schedule 2 to the letter from yesterday and I have numbered the pages of this very helpful scheme, 1 through 12. So if you would not mind, at some stage, numbering them and then I will give you the references to the page, which will make it much quicker.

88. On the second page, or page 2 of this summary, second from the bottom, there is a reference to our request in the letter of 26 January – and it is set out, what we said – that the 1900 Act restrictions shall be lifted to a limited and defined area of such a maximum of 1,429, as will appear on a plan, which the Secretary of State should provide, such area to include all the items referred to in the answer by Baroness Scott of Bybrook on 12 April 2023 in response to a question by Baroness Deech and the diagram supplied by her. And that, the promoter says, is within the scope of your authority to either formulate an amendment or some sort of assurance.

89. I point out that, on page 7 of the same document, that list of petitioners' requests, on the last item, that is another reference to the same letter and this is said not to be in the scope, although it is essentially the exact same request. The reason why they do not write it is because this lists out all the items which Baroness Scott told the House would be there, plus an additional three items. So Baroness Scott told the House and we say the 1,429 will include items A, the entrance pavilion, the courtyard, the ramp, the hardstanding, service access. We leave out the new access path that we are prepared to drop, that these paths should be in the 1,429, but, for the rest, we simply quote from Baroness Scott, 'the parts of the mound which will not be accessible to the public', that also should be in the 1,429; the areas to be enclosed to ensure the security of the learning centre; the generator attached to the café – that's an extra one but it is obvious

it should be included; the fins as they appear on that diagram; and the reduction in the size of the playground certainly should be investigated and should not be allowed. Now, whatever size it ends up as, that should be included in the 1,429, we say.

90. Just with regard to the fins, it is difficult to see it on the actual plan which was sent to us. If I can just briefly divert on to that because it is part of the suggested undertaking. There are now two drafts of the undertaking but the plan apparently remains the same. If you put the plan on one screen, this is the one which shows that it goes right up to the Buxton memorial with just two metres in between them. You will actually see when we say that the fins must be in the 1,429, we mean that because on the plan that they have suggested that we should accept an undertaking for, two of the fins, and a tiny bit of one of them at the other side, fall outside the area edged in blue. So two of the fins will be outside the 1,429. We say the whole thing must be in it.

91. In fact, what we really say is that this plan is quite unsatisfactory because it contains no dimensions at all and one cannot really discuss an undertaking which does not contain any dimensions of where exactly this is, what these distances are. If they were to say, 'Well, we meant to include the two fins', what else did they mean to include but did not? So the plan itself is unhelpful and we would say that the Committee should require from them a proper plan setting out what the 1,429 actually consists of with measurements and to ensure that all of those items in page 7 are included in it.

92. While I am on this, I can refer to the undertaking that they have undertaken in relation to this. They have offered, which is in the letter from yesterday, and it is in paragraph 4, they say – I will not go into it completely, because I do not have time, but the offer that is made to us is that all the structures and permanent buildings will be contained in the blue plan – even though the blue plan does not contain it but assuming that can be sorted out – proposed by the current planning application awaiting redetermination or they reserve the right to include – in other words, their undertaking is one to retain the control of the 1900 Act outside of this area, but they add 'that the 1900 Act would also not apply in respect of any permitted planning application for any other, i.e. modified or replacement, scheme for a Holocaust or learning centre for the siting of the permanent elements'.

93. So the offer really says nothing. It says, 'Well, for the moment we will agree that the 1900 Act will not apply to the area outside the area marked in blue but it also will not apply in respect of any further planning application we might make. So we could actually apply for a planning application in respect of the rest of the park and the 1900 Act will not then apply'. It will not protect the rest of the park from being transformed from a park into a million-visitor tourist centre.

94. We cannot agree to this because, if we were ever to agree to it, it would be said against us when we objected to these future plans that we had agreed to them. So we cannot agree to them and they do not add anything to what we already have. What we already have is that, if they were to try and change it, they would have to apply for planning permission and if the Bill is currently limited to 1,492 then the 1900 Act will continue to apply and we would have the protection of that. That is why we cannot reach agreement on that.

95. So I have given you what we want which is, one, as an alternative, we will take 1,492 to cover everything that we have mentioned and that they have mentioned, I should say. We did not invent these things. And it has to be properly laid out on a proper plan which has measurements and can be understood, and that would be something and certainly that could not be changed without a further Act of Parliament, not just another planning application which would dispense with the whole thing.

96. So that is the size. If I can now move on to the next matter, the Buxton memorial, I am not going to belabour this but you have heard the evidence from Mr Buxton and Mr Fannon. There is no question that it is not just as the inspector found, that the Buxton memorial will suffer harm. It is now going to be, as it were, with a space of two metres, next to a security fence for the learning centre. We say that the Buxton memorial is a venerable and important memorial and should not be treated in this way, dishonouring, as it were, the campaigners for the abolition of slavery.

97. We have suggested in the list, which is on page 8 of that list that the promoter has prepared, two ways of dealing with this. One is certainly to ensure that the Buxton memorial is not moved, that the Committee should provide that it is not to be moved, and, secondly, that whatever is built, including the fences, the fins and whatever else, should not be nearer than five metres. It may be that, in fact, eight metres is more

appropriate but we are trying to be conciliatory and we say certainly not closer than five metres to the Buxton memorial so that one will be able to, as it were, gather round it. As you have seen from the pictures, people can sit around it, all around it, and it will be a distinct memorial, separate from the other memorial in the garden and the learning centre.

98. We also hope that the Committee will stress to the House and the promoters that any proposed scheme must not overshadow or detract from the Buxton memorial if, in fact, these specific proposals we have put forward do not satisfy you that you should accept them.

99. Next, governance. For the reasons given by Mr Peck this morning, it is imperative that the Select Committee require undertakings, or even an amendment, that the governance of the park and the Holocaust memorial be separated, so that the park is not thought of as a setting for the Holocaust memorial but as an independent and valuable asset in itself. There is a proposed amendment at page 5 of the list, which was put forward by the Thorney Island Society – you will find it on page 5 – which sets out how that is to be achieved by an amendment and it is extremely important. One can see that the moment that there is one authority governing both of them, the interests of the memorial will take precedence over those of the park, which will be seen as simply a setting to be used at any time to achieve the objectives of the memorial.

100. The playground. The amendment is on page 8, the last one, and page 9, the first one of the list and we say that, essentially, it should not be reduced in size and it should be kept separate from the crowds who will gather to move into the courtyard leading into the learning centre. There will be crowds there waiting to get through the security and this is quite unsuitable for a playground to be situated right there. So they have to be separated but the playground should not be reduced.

101. And I would add, we suggested to the promoters that one way of dealing with this would be to allow no vending in the park, which would mean the closure of the café, which would, if that were incorporated in the playground – it is right next to the playground – would at least go some way to restoring some of the land of the playground but they take the same view: that is something for planning and so we must be left to that. We say that the Committee's duty is, as its interest will be, to ensure that,

in the interests of the users of the playground and their parents, the Act will be amended or undertakings given that, if the scheme goes ahead, it will achieve what is set out on page 9 of that list.

102. And, finally – I may have exceeded a little bit but anyway – the last item on my list is that the learning centre must be restricted to the Holocaust per se. Baroness Deech has addressed you on this. They fear that the learning centre will be used to advance controversial viewpoints and propaganda for numerous other causes and that there is no reason at all why, if public money is going to be spent on a learning centre, Parliament should not specify how the money should be spent. And one only has to think about the implications of this. The question of genocide is, of course, currently in the air. Leave aside that example of what some may and some do not consider to be a genocide. Can one imagine what would happen if some smart Alec in the Holocaust learning centre management decided to commemorate the alleged genocide by Turkey in relation to the Armenians?

103. Do not think it ends there. The United States Government hesitated for almost 40 years before it signed the Genocide Convention in 1988 because of fears it would lead to the usual lawfare contending that the United States had and was continuing to commit genocide in relation to its black population and its American Indian population. And I should add that, when it eventually entered the Genocide Convention, it did so with the reservation that it could only appear before the International Court of Justice if it agreed to do so specifically.

104. This is an area which would just completely destroy the whole purpose of this Holocaust memorial, which is stated in the Act to be a memorial to the victims of the Holocaust. Everyone knows what means and it is important that the Committee should stress to the promoter, either by an amendment or an undertaking, that the money will be used for that purpose and not for controversial purposes in the future.

105. It is pointed out – I have made this mistake consistently since day one – I keep saying 1492, no doubt because America was founded in that year or something, but it is, in fact, 1429, so it is 1429 that has been in discussion, and it has nothing whatever to do with Christopher Columbus. Mr Chair, members of the Committee, those are my summary submissions and I'm ready at any stage to answer any questions.

106. THE CHAIR: Thank you, Mr Doctor. Just on the Buxton memorial, again just out of curiosity, why would you not want to ask for it to be moved because you could find a better location for it?

107. MR DOCTOR KC: Because I am taking instructions from the Buxton family, and they would feel that if it were to be moved, they would need to be consulted about it, and they simply do not want to contemplate at the moment that it should be moved, that there should be freedom to move it in order to accommodate this memorial, because it might be moved to a place to which they have objections as well. That is certainly something that, at the moment, they do not want to envisage. And they state that now so that it should not be thought that they would automatically give their consent to some proposal which has so far not been made to them.

108. THE CHAIR: But they could have asked for that as a possibility, subject to a consultation.

109. MR DOCTOR KC: The Committee may take that view. With either this consultation or their consent, it might be but –

110. THE CHAIR: That is not something that has been asked for. That is fine, just out of interest. Would you also agree that many of the comments that have been made by petitioners have been on planning issues and that, as a general observation, this Committee is not meant to have a remit relating to planning issues?

111. MR DOCTOR KC: Mr Chair, the position I take on this is that, just because something could be the subject of a planning application, does not mean that it is not within the remit or scope of the Committee because the Committee is not sitting as a planning inspector or planning authority. It is sitting to hear objections. And just because something could also be dealt with somewhere else does not, as it were, detract from the Committee's scope and, we would say, duty to consider these objections.

112. I understand that there was an argument put forward by the petitioner that the instruction to the Committee means that, if it is something that could be subject to a planning application, the Committee should not consider it and it is outside of its scope. In the scope document I sent you last week, I have recast what they are actually saying, how the Bill should have been worded. The Bill should have been worded to say –

sorry, not the Bill – the instructions should have been worded to say, ‘The Select Committee will not consider any issue that could be raised in a planning application’. It most certainly does not say that. It says, ‘You shall not consider whether or not planning permission should be given’. In other words, it is not for you to give advice to the planning authority, or to pre-empt any decision they might make. But you might consider that these issues are serious enough that they should not be subject to the vagaries of the planning permission, bearing in mind that, as we know, planning in this context is not just a case of, ‘Is this a good idea?’, and, ‘Does it fit in?’, and so on and so forth.

113. In this context, as the existing planning exercise showed, no matter what the harm to the park, to the memorials in it, to the users, to their enjoyment, no matter what the harm – and the planning inspector found that there was harm to just about every one of these items – it is all outweighed by what is perceived to be the public benefit, as he put it, of enabling the Holocaust memorial and learning centre to be built within the lifetime of the survivors. Even if you take out those last words, any planning issue will stand a good chance of being outweighed, no matter how weighty it is, including the Buxton memorial. This may appear to you very weighty.

114. There was material harm found to the Buxton memorial. It is totally outweighed; it has now got a fence going two metres away from it. And this is why this is not your duty to consider what could happen in a planning application. It is, I respect, within the scope of your responsibility to ensure that proper objections that you have heard, and which you believe should be catered for, should be catered for by the Minister before it goes to planning. Once it has been catered for, the planning inspector or planning authority can do as they please.

115. I also mentioned, of course, there are some items which obviously are trivia and detail. These can be dealt with by a planning committee, and you could legitimately take the view, ‘We cannot consider every item of that sort; we are concerned with important items, and if this item is important, it can be dealt with in any event by a planning committee’. But I would hope that the arguments, the submissions and the evidence you have heard would not lead you to the conclusion that everything can be dealt with in planning. Effectively, you are saying, ‘Well, none of this will have any effect because all of it, no matter how damaging it is, will be outweighed by the

advantage of the national interest of building a Holocaust memorial and learning centre’.

116. I have finished answering your question but there was one thing I forgot to say. I just wanted to point out the three items we are not persisting in; in other words, although it appears in that list, we are not asking for it any longer. We are not asking you to deal with, in so far as there was a reference to how the planning decision ought to be made, or the nature of the planning decision. We accept that that is not within your remit, that you cannot determine how it is going to be made and whether it consists of a full inquiry, a call-in or whatever. So we do not persist in that.

117. I also point out that I have said nothing about security. We do not add anything to what Lord Carlile has said and we just associate ourselves with what he said. So in so far as there were previously any suggestions made by us that there should be special provision or amendments made for security, we are not persisting in them, but we are aligning ourselves with what Lord Carlile asked for.

118. And, finally, there is the London Parks and Gardens. One of the petitioners wanted a provision made for the entrance to HMLC, whether it should be from Millbank or from the northern end of VTG, and we are not persisting in that, so that is off the agenda. Thank you.

119. THE CHAIR: Thank you. Any other members of the Committee?

120. MR TURNER: No, thank you.

121. MS RICHARDSON: No, thank you.

122. THE CHAIR: Thank you, Mr Doctor. We will now hear the closing remarks of Mr Katkowski.

Closing submissions by Mr Katkowski

123. MR KATKOWSKI KC: Thank you very much indeed, sir. You have our letter of 5 February, which sets out in writing many of the points which otherwise I would have said to you orally, so I will not repeat them now. These are our closing remarks subject, I imagine, to reserving any ability to consider and, if necessary, respond to anything that we hear subsequently in writing.

124. THE CHAIR: That would be agreed as well.

125. MR KATKOWSKI KC: Thank you so much, thank you. In closing, I just want to return to where we started really, which is to ask that seemingly existential question, ‘Why are we here?’ Once one understands the answer to this question, everything else follows on from this, that is to say with regards to what is in scope and out of scope. We are here for one reason, and one reason only, and that is because the High Court ruled that section 8, and two particular parts of it, of the 1900 Act, stands in the way of building, not any old thing in the gardens, but the proposed Holocaust memorial and learning centre in Victoria Tower Gardens.

126. The fundamental purpose of the Bill, its underlying principle and the public policy it expresses, is to remove the statutory obstruction of section 8. As I said earlier in these proceedings, but I will just say again briefly, it is all in paragraph 8 of the explanatory notes to the Bill. It is only a sentence so I will read it out, ‘The Government intends to disapply the relevant sections of the 1900 Act so that they do not constitute an obstacle to construction and operation of the Holocaust memorial and learning centre’. It could not be clearer.

127. That is why I formulated my acid test, as I called it, in opening, namely if any amendment sought by the petitioners would result in section 8 in any way still standing in the way of building the proposed Holocaust memorial and learning centre in Victoria Tower Gardens, then you know at once that the amendment is out of scope for this Select Committee, as it goes against the very purpose and principle and public policy of the Bill. And that is because at the Hybrid Bill Select Committee stage in parliamentary proceedings, in contrast to other stages of a Bill’s progress through Parliament, the purpose, principle and public policy of the Bill are not up for grabs.

128. The instruction is clear and any reading of it which would lead to a different outcome to the one I have set out would be to misread it in a fallacious manner. Even without an instruction, this Committee would not have had the ability to roam widely or at all over the purpose, principle and public policy of the Bill, because there is a fundamental principle that a Hybrid Bill Select Committee cannot do anything destructive of the principle of the Bill.

129. Another way of testing this is to consider that part of the instruction which, in

effect, says to you, ‘A Select Committee is not a planning authority, it should not act as if it is’ – I do not imagine you would want to for one moment – ‘and so keep away from arguments which relate to planning’. Think about it this way. Many – I would say nearly all – of the various petitioners’ various proposals for amendments to the Bill would stymie the promoter’s ability to obtain planning permission for the proposed Holocaust memorial and learning centre. Take an easy example: many of the amendments put forward would mean that the learning centre we propose, or indeed a learning centre more generally, could not be built in Victoria Tower Gardens because section 8 would remain in its way.

130. The arguments put forward to support such amendments are all planning arguments. They are the ones that have already been considered through the planning process to date, and doubtless they will be raised again in the planning process yet to come. Last time round, for want of a better way of expressing the point, the promoter won all of these points as the independent expert planning inspector found in our favour on all of them. Yet, in the event that planning permission is granted again for the Holocaust memorial and learning centre, if the petitioners had their way, the promoter would not be able to take the benefit of that planning permission and build what he is being permitted to build, that permission only having been granted in this situation after all the competing harms and benefits, all of them, have been weighed one against the other and considered, and an overall conclusion reached.

131. In fact, even worse, if the amendments are made along the lines of no learning centre and so on and so forth, then we would not be able to obtain planning permission at all for the Holocaust memorial and learning centre because it would be said against us, ‘Section 8 is a statutory prohibition which means you will not be able to build this proposal, and thus permission should not be granted for it’. Exactly the point made in the High Court – we would have come full circle.

132. It is also important to bear in mind that because we, the promoter, have stuck rigidly to the proper scope of this Hybrid Bill Select Committee’s remit, we have very deliberately not replayed our side of the planning narrative, of the case for the Holocaust memorial and learning centre in Victoria Tower Gardens. The result of the petitioners straying far and wide outside scope is that you have heard only one side of that narrative. Literally, every single point in Mr Doctor’s narrative where he summarised

the evidence you've heard, literally every point, was considered at the planning inquiry, and the arguments against them were considered, and the inspector ruled on all of them.

133. Now, I do wish to say a few words, sir, with regards to the Holocaust survivors you have heard. Having heard them, who could fail to be moved, and who could fail to question, 'Why is the Government so determined that the Holocaust memorial and learning centre should be built in Victoria Tower Gardens, why?' One has to pause and keep in mind that at the planning inquiry testimony was heard from several Holocaust survivors, some against and some in favour. Those who spoke in favour gave very powerful testimony too, in their case explaining why, as far as they were concerned, the Holocaust memorial and learning centre is the right thing to do, and Victoria Tower Gardens is the right place to do it.

134. All of the survivors' testimony – because there is nothing new in any of this – whether in support or in opposition, literally is transcribed word for word in the inspector's report, all of it. And unusually he actually annexed their testimony to the report, which I have never come across in 40 years of doing my job in planning. In saying this, I am not straying into planning, but rather explaining that everything you have heard falls within the planning process, everything. The planning process must be left to perform its role of weighing all of the arguments for and against.

135. As you know, I have said that there are some things in scope, and that is territorial matters and temporal matters. I have said that those are in principle in scope for this Committee. That is not to be confused with a different question, a very different question, which is, even though something is potentially in scope, has it been demonstrated by the petitioners that it is necessary to do something about the point, whatever it might be? As you will know, the sequence of consideration is, if there is something in scope, if it is thought that something should be done about it, then the sequence of consideration is, first, would an assurance be sufficient? If not, would an undertaking be sufficient? And only then, only then, is an amendment required?

136. It is for the petitioner to satisfy you that, going through that sequence, we reach the point of amendment. Our case is that an amendment regarding territorial issues, or indeed timing issues – temporal issues – have not been shown to be necessary for the following reasons. All of this will be dealt with via the planning process. We will not

be able to do anything in Victoria Tower Gardens, which is territorially beyond our planning permission, assuming we get one. In terms of time, the planning permission will control when we have to start by, and the planning system has the power to force us to complete building the structure within a certain period of time if we drag our feet. All of that is controlled via planning.

137. Also, the construction of the Holocaust memorial and learning centre would be tightly controlled under a construction management plan which would be secured, just as it was last time round, by any planning permission we obtain. In any event, and as far as we are concerned, it has not been demonstrated that an assurance or an undertaking would not suffice even were you, the Committee, to consider the petitioners had a point about any of those issues.

138. I am almost there with my submissions. I just want to add that if, in any way, the Committee is at all attracted by restricting the lifting of the 1900 Act in some territorial way, I would put my plea in, which I have made many times at this Committee: that has to be done, with great respect, by reference to a plan, and the plan has to show the full extent of the project which the promoter is proposing. Please, please, do not consider doing it by reference to any square meterage, because each and every square meterage which is put forward is controversial. I have said before – I know it seems unbelievable, but it is the reality of the situation – there was seemingly endless argument at the planning inquiry about how big this was, how big that was, how much of the gardens were we taking, etc, etc. Areas simply will not work because they are all controversial. It has to be done by reference to a plan and the plan has to show the full extent of our project.

139. We have tried to discuss a way forward in terms of an assurance in these matters, not because we think any such assurance is necessary, but rather as a sign of our good faith, literally to be reassuring, to demonstrate our bona fides, if you like. But the petitioners have not been interested in any such because, with the exception of Mr Brown, the first petitioner you heard from, the other petitioners' targets are by and large matters which are blatantly out of scope, and so we have not been able to have any constructive engagement, I am afraid, with the petitioners on assurance. However, as you know from our letter, there is an assurance which we are more than happy to offer to this Committee, should that be of any interest to you. Doubtless, in due course, you

will let us know whether it is.

140. As our letter says, the assurance obviously would only operate in the event that the Committee is not considering an amendment to the Bill. If the Committee does that, then there will not be any need for an assurance, let alone an undertaking. Those are the submissions I wish to make. I have no idea whether I kept within my time limit; I think I might have been there or thereabouts. Those are my submissions, and I am obviously very, very happy to answer any questions.

141. THE CHAIR: Thank you very much. In parliamentary terms, some time limits can be flexible at times.

142. MR KATKOWSKI KC: Yes, I wish I had the benefit of that in other parts of my career.

143. THE CHAIR: Just a couple of questions from me and then I will open to the Committee. You have mentioned temporal and territorial issues on several occasions. You seem to have implied that in principle they are in scope.

144. MR KATKOWSKI KC: Yes.

145. THE CHAIR: In reality, they seem to be out of scope.

146. MR KATKOWSKI KC: No, no, no. There are two different questions there. Number one, in scope or out of scope? We are seeking to remove the restrictions of section 8 from the gardens. It is patently in scope to ask oneself, ‘Do you need to remove the restriction across the entirety of the gardens?’ That is the territorial point. And it is patently in scope to ask yourself the question, ‘Well, if there is to be a removal of these restrictions, a lifting of them, should that be limited in some way in time terms?’ It is patently in scope, as I said myself in my opening submissions, however long ago they were,

147. THE CHAIR: On territorial then, are you saying that, if there was a suitable plan identifying the area that ‘the’ planning permission would be within, you would accept that?

148. MR KATKOWSKI KC: May I just answer the second part and then I promise

you I will answer the question that you have just asked me? I was about to go on to say that the issue of in scope and out of scope is not to be morphed into the different question of whether, even if something is in scope in principle, is it necessary to do it? And my answer to, 'Is it necessary to do it?', is, 'No, it is not', because planning will actually control all of this. In principle, it is in scope. The idea, the notion, if you are to lift section 8, shouldn't you only lift section 8 so that it fits with the thing that needs section 8 to be lifted? In principle, that is in scope, but one doesn't really have to worry oneself about it, with great respect, because we are not going to be able to do anything in these gardens beyond the extent of the planning permission, if we get one.

149. THE CHAIR: That is only on the basis of 'the' planning permission.

150. MR KATKOWSKI KC: Or any planning permission.

151. THE CHAIR: If it was lifted for the whole area, a subsequent different planning application could come along and do something entirely different.

152. MR KATKOWSKI KC: Well, obviously, the restriction would only be lifted so as not to stand in the way of building a memorial to the victims of the Holocaust, and a centre for learning relating to that memorial. So obviously it would only ever be a Holocaust memorial and learning centre.

153. THE CHAIR: I understand that the petitioners are asking for a limitation, or a territorial limitation, on the basis of 'the' planning permission that you are promoting. My question to you is, if you are promoting 'the' planning permission, why would you not accept their proposal?

154. MR KATKOWSKI KC: Let me take a step back. If there is to be a territorial restriction – we would say an assurance or, failing that, an undertaking is perfectly good enough to do it – but if there is to be a territorial restriction, it has to do two things, with great respect. Number one, it has to entirely respect the project which we are taking through the planning system currently. That is the point about the plan, and that is the plan that the Committee has, and that plan literally draws a line around every part of the project that we are putting forward. That is the first thing it has to do. Otherwise, this Bill would be pointless.

155. The second thing we say it should do is to deal with this eventuality: what if we don't get planning permission for that project? We got it last time round. Our good friends who opposed us will be rerunning all of their arguments all over again on the redetermination of that planning application. I cannot sit here and say we are definitely going to win the second time round. I sincerely hope to heavens we do but I cannot say that we will. Therefore, there has to be some catering for the eventuality that we do not get permission for this particular Holocaust memorial and learning centre. In those circumstances, obviously we would consider the decision letter. If the decision letter said, 'Well the problem is' – I do not know – 'the memorial is too big', then obviously we would have to consider a project memorialising the Holocaust in a different way.

156. We have to, with great respect, have the ability to do something else and not have to go through all of this all over again because we will be here in 20 years' time.

157. THE CHAIR: Just throughout our several meetings, it has been very much 'the' planning permission.

158. MR KATKOWSKI KC: Absolutely, but I said right at the outset that one has to cater for the possibility – I hope it is no more than that – that we will not get planning permission.

159. THE CHAIR: As a general question from me before I open it up, do you think it was a mistake not to have had an initial consultation on location prior to the planning application?

160. MR KATKOWSKI KC: Obviously, I am sitting here acting for the Secretary of State, so I shall –

161. THE CHAIR: What would the Secretary of State say?

162. MR KATKOWSKI KC: What would the Secretary of State say? I suspect the Secretary of State might say, 'If we could have our time again, heavens knows what we might have done'. We would all be much the wiser, having been able to look into a crystal ball and see the future.

163. THE CHAIR: I think I know the answer. Angela?

164. MS RICHARDSON: Just a very quick question on any amendments to do with territorial considerations. You asked us not to consider particular square footages. If the Committee was minded to put an amendment down, what sort of measurements should we use?

165. MR KATKOWSKI KC: Do not use any measurements at all; just refer to a plan. That is what our assurance does – the draft assurance that you have at appendix 5 to the letter. Just refer to a plan. The plan is measurable, obviously – you can scale it – and the plan shows the extent of our project. Every element which is part of the project that we are asking for planning permission for is shown on that plan and little lines are drawn round. For example, the couple of things that my learned friend is not sure about, there's a little line drawn around those.

166. MR DOCTOR KC: No, Chair, they are outside.

167. MR KATKOWSKI KC: Anyway, never fear.

168. MS RICHARDSON: Thank you.

169. MR KATKOWSKI KC: It is all shown on the plan, so I would say that is why I put my plea in: only do it by reference to a plan because we will be arguably probably for the rest of my life about the square meterage.

170. MS RICHARDSON: Thank you.

171. THE CHAIR: Any other member of the Committee?

172. MR TURNER: I do not have anything, thank you.

173. THE CHAIR: In that case, that concludes matters today. Can I, on behalf of the members of the Committee, thank counsel, the petitioners, and obviously the witnesses for coming over the last few weeks and attending? We appreciate the time that everybody has taken, particularly to hear their presentations, etc. So thank you all. Obviously, the Committee now has to deliberate and submit our report, which they will do in due course. Thank you all.