

MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 19 November 2024 (Afternoon)

In Committee Room 4A

PRESENT:

Lord Etherton (Chair)
Lord Faulkner of Worcester
Lord Hope of Craighead
Lord Jamieson
Baroness Scott of Needham Market

FOR THE PROMOTER:

Christopher Katkowski KC, Counsel, MHCLG
Jacqueline Lean, Counsel, MHCLG
Robbie Owen, Parliamentary Agent, Pinsent Masons

FOR THE PETITIONER:

Brian Doctor KC
Lord Carlile of Berriew

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(At 2.05 p.m.)

1. THE CHAIR: Good afternoon, everybody. This is the sixth public meeting of the Select Committee on the Holocaust Memorial Bill. We have now concluded the hearings on standing and we have announced our findings. They will be elaborated upon in the special report that we will be making in due course to the House.

2. At the end of the last session, counsel for the promoter, Mr Katkowski, opened his case on the general principle of the Bill and the scope of what we are allowed to take into account. I will, in a minute, ask Mr Doctor, on behalf of various petitioners, and Lord Carlile, who wishes to speak on this, to make any response they want to those at that opening statement. The opening statement, which you will have seen, is of a general nature, which is what we want at this stage. So far, we have not dealt with individual petitioners.

3. Once we have heard those who wish to speak, either represented by Mr Doctor or not, on general principles in relation to scope, the committee will go into private session briefly to see whether I should make a short provisional statement on the principle of the Bill and scope. The only reason that this will be provisional is because there are petitioners who are unrepresented and have not been able to make their submissions so far, and will not be able to do so today. We want to give them an opportunity of dealing with the general points in relation to scope, if they wish to speak on them.

4. I am going to repeat my usual statement about the fire alarm system. In the case of fire, bells are not used in the parliamentary estate. Instead, a two-tone siren followed by a series of taped messages is broadcast. If evacuation is necessary, please follow the instructions of the clerk. Anyone not in the committee room itself should find the nearest security officer.

5. The proceedings are being broadcast, and a full transcript will be taken and will be placed on the committee's website.

6. Before I invite Mr Doctor to make general submissions on behalf of whom he speaks, we have at least one question from Lord Hope, directed to Mr Katkowski's latest written statement.

7. LORD HOPE OF CRAIGHEAD: Thank you, my Lord Chairman. Mr Katkowski,

this note is a very helpful summary of what you told us last time we met. I wanted to ask you a little bit more about paragraph 4, if you can have that in front of you.

8. MR KATKOWSKI KC: This is our paper of 18 November, which has become PRO 009, I imagine.

9. LORD HOPE OF CRAIGHEAD: That is right. In that paragraph, you, of course, make the point that, after the proceedings in the House have finished, there is a question of what happens about the planning permission. The Secretary of State will then be tasked with looking at the existing report and any representations that may have followed after that. I am interested if you could just expand a little bit more about what the Minister's options are.

10. MR KATKOWSKI KC: In relation to process, my Lord?

11. LORD HOPE OF CRAIGHEAD: Yes, indeed.

12. MR KATKOWSKI KC: The options are as follows, my Lord. The Minister in question could decide to reopen or have another public planning inquiry to consider what everyone and anyone wishes to address. It would be a new inspector. The convention is that, if there is a reopened inquiry, it is never the same inspector as conducted the first inquiry. There is not a law to that effect. That is the way it always works. That new inspector would write a report to the Minister, who would make the determination. That report would be in similar structure to the report that you have before you of the first inspector. The Minister, in those circumstances, would have two inspectors' reports, with recommendations made to the Minister in those two reports. The Minister will then decide what to do. That is option number one.

13. LORD HOPE OF CRAIGHEAD: Can that break itself down into two possible alternatives? One is to have a complete start from the very beginning, or the alternative is to direct that there should be a fresh inquiry directed to particular issues.

14. MR KATKOWSKI KC: My Lord, yes. I mentioned this in my opening submissions—it seems like quite a long while ago now—on the first day of these proceedings. My Lord, yes, it is, I think I can safely say, inevitably going to be the case that, if there is a new public inquiry, some form of guidance will be given by the

Secretary of State as to the issues which the Secretary of State would wish that second planning inquiry to consider.

15. The practical issue which arises from that is what the new inspector should do, should someone come along and say, “I want to address you on matters which are not in that list”. That has caused practical issues in a number of cases in the past, where there have been second inquiries held, very often following, for example, as it would be here, the quashing of a planning permission by the High Court. A new inquiry is held and, for want of a better word, directions are given as to the scope of that inquiry, but then people come along to the inquiry and say, “I am sorry, but I want to go back to first principles. I want to argue about all these things that were argued at great length the first time round”. I have to say, to be quite straightforward about this, how that issue is dealt with would very much depend upon the particular inspector who is appointed to conduct that second inquiry.

16. LORD HOPE OF CRAIGHEAD: Is it a matter for the inspector to decide?

17. MR KATKOWSKI: Yes, indeed.

18. LORD HOPE CRAIGHEAD: Sorry, I have broken option one into two bits, but you have cleared my mind on that.

19. MR KATKOWSKI: Thank you. That is option one. Option two is simply for the Minister to invite everyone who wishes to do so to write to the Minister—so there is not another public inquiry and there is not a new inspector—to submit whatever anyone wishes to submit to the Minister, who will make the decision whether to grant the planning permission or not.

20. Again, the Minister may well consider it to be sensible to issue some guidance as to the scope of those written submissions, but, once again, it is going to be extremely hard to stop someone writing and in saying, “I know you have said you are interested in changes of circumstances since the time of the first decision to now, but I want to write in about all sorts of other things as well”. There is nothing that you can do to stop someone writing such a letter. It would all come down to what the Minister does when he or she receives such correspondence.

21. LORD HOPE OF CRAIGHEAD: In this option, it is in the hands of the Minister. Is that right?

22. MR KATKOWSKI KC: Yes.

23. LORD HOPE OF CRAIGHEAD: There is no independent inspector.

24. MR KATKOWSKI KC: There is no independent inspector in that set of circumstances. To be quite frank about this, I cannot conceive that this would be the case, but there is another mode which is used for determining called-in planning applications or planning appeals against refused applications, and that is to have what is called a hearing, which is a middle structure in between a full-blown inquiry and written representations.

25. A hearing is best described as a roundtable discussion led by the inspector, so there would be a new inspector. The inspector would set an agenda—"These are the things which I wish to discuss". The parties would be invited, one by one, by the inspector to say whatever they want to say about the point, and the inspector would literally go around the table, collect together everyone's comments, and then say, in effect, "Let us move on to the next point on my agenda".

26. Although, as a mode, that is possible, I have to say I cannot imagine that that would arise here. I think, to be quite straightforward about this—and I can only say this on the basis of my experience doing the job that I do—this seems to me to be very much it is an inquiry or it is written representations, but there is that yet third mode.

27. LORD HOPE OF CRAIGHEAD: Thank you very much indeed. That is extremely helpful.

28. MR KATKOWSKI KC: It is my pleasure. Thank you.

29. THE CHAIR: On that basis, then, I am going to call next on Mr Doctor to make general submissions on behalf of those for whom he acts in relation to scope and principle.

Various Petitioners

Submissions by Mr Doctor KC

30. MR DOCTOR KC: Thank you, my Lord. My Lords, my Lady, a note of what I am about to say is just being circulated to you, which I hope is helpful. Perhaps I can just introduce it. I am making these submissions on behalf of the four petitioners that I represent—the London Historic Parks & Gardens Trust, the Thorney Island Society, the Buxton Family and Thomas Fowell Buxton Society, and Baroness Deech and the six Holocaust survivors who have petitioned you.

31. Each of these has lodged one petition in opposition to parts of the Holocaust Memorial Bill and seeking amendments thereto. May I just summarise my submission at the outset, which is straightforward and simple? Each of the amendments sought does not seek nor have the effect of destruction of the principle of the Bill. That is number one.

32. Number two, it falls within the scope of the Bill. That is it falls broadly within “the reasonable limits of the Bill’s collective purposes, as defined by its existing clauses and schedules”. That is a direct quote from *Erskine May*, to which I will return when I deal with scope.

33. I am going to start with principle first. I just would refer to the fact that counsel—that is my learned friend, Mr Katkowski—has made some oral submissions on this topic at least twice and has supplied, either by himself or through solicitors, I take it as six documents. There is the original promoter’s note on the principle and scope of the Bill, dated 16 October. There is the promoter’s objection by Pinsent Mason to the petitioner’s rights, which covers some of the topic. There is the table attached to that, which I call the objection table. There are counsel’s slides presented at the hearing. There is the promoter’s bundle of authorities. There is also the Pinsent Mason letter of 31 October.

34. I should also add that there is a note, which I did not include in the list, but it is just for the sake of completion. There is also the note of 31 October, which I think I have mentioned. The last one is the Pinsent Mason letter, and there is a note dated 31 October from my learned friend, which I will call the note on the scope of the committee’s consideration. I will update that note overnight and give you a complete list. There were others as well.

35. In any event, most of them say the same thing. Then they make various points, but, before I deal with that—and I need to deal with it fully—let us go back to the

principle of the Bill. The concept of principle and scope is dealt with in *Erskine May* at 28.80 and 28.81. I do not know if you have that with you, but I will just read the parts that I want to refer to. The general powers of the committee and the limitations by which it is bound are being “bound by the decision of the House, given on Second Reading, in favour of the principle of the bill”. A Select Committee “should not, therefore, amend the bill”, in the words of *Erskine May*, “in a manner destructive of its principle”.

36. Secondly, “An amendment which is outside the ‘scope’ of the bill is out of order and cannot be entertained”. Scope is dealt with in the following paragraph—that is paragraph 28.81.

37. However, it can be seen from 28.80, in the third paragraph of *Erskine May* that, “in spite of these limitations a committee has, in practice, considerable power over a Bill”. I draw attention to the passage in the middle of the third paragraph, which is this: “Again, notwithstanding the rule which forbids the moving of an amendment which is destructive of the principle of the Bill, there is nothing to prevent a committee from negating a clause or clauses, the omission of which may nullify or destroy the Bill, and reporting the Bill, as amended, to the House; a committee may also negative every clause of which the Bill is composed, and substitute for these clauses new clauses, if within the scope of the Bill as read a second time, and otherwise in order”.

38. The committee’s powers are extensive, and whatever I urge you is in keeping with those two essential principles. It is not destructive of the Bill, although you even have the power to deal with individual clauses by omitting them in a way which is destructive, and you also will be astute to see that whatever is being advanced is within the scope of the Bill, and I will come to that later.

39. THE CHAIR: Do you have copies of those quotations from *Erskine May*?

40. MR DOCTOR KC: I can have them made overnight and I will give them to you.

41. THE CHAIR: We have a large bundle of authorities here.

42. MR DOCTOR KC: It may be in that. I cannot remember if this particular paragraph is in it.

43. MR KATKOWSKI KC: It is not, my Lord, and the section is about public Bills as

well.

44. MR DOCTOR KC: I will deal with that as well. The significance of determining the principle of the Bill is because of the conventional practice—

45. THE CHAIR: Mr Doctor, just wait a moment. Just to be quite clear, Mr Katkowski says it is a section about public Bills, and that raises the question of whether it is relevant to what we are dealing with in this Bill.

46. MR DOCTOR KC: It is relevant, because there is another provision in *Erskine May* which provides that what applies in public Bills also applies to private Bills, with certain amendments to take account of the consequence, but I will find that section in a moment. Let me find the particular section. I will find it later. I have a feeling that Mr Katkowski has himself referred to it, but I will come back to that later.

47. Let us deal with the first question—the principle of the Bill—and the purpose of that is to determine what would or would not be destructive of that principle, and the primary approach, which is that you cannot move amendments which are destructive of the principle, although it appears you can omit certain clauses, even though that would be obstructive, but that is the purpose of this exercise.

48. The first point to make, which I make in paragraph 7, is—and I will come back to this—that it is amendments that are destructive of the principle of the Bill that are disallowed, not, as the promoter has it in several parts of his notes, issues that relate to the principles of the Bill. Indeed, they must, by definition, relate to the principle of the Bill, because otherwise they would not be within the scope of the Bill, but I will come to that later.

49. The rule is amendments are disallowed that are destructive of the principle of the Bill. This Bill has only two clauses. Clause 1 authorises the spending of public funds on the construction, et cetera, of a) a Holocaust memorial, and b) a learning centre related to the Holocaust memorial so constructed. There is nothing here which refers to, let alone determines, where either is to be built or, indeed, if they should be built.

50. The constraints on the use of the funds inherent in the words of Section 1 are that the buildings must be designed for and intended to be used for the purposes mentioned,

and that such buildings will be lawful. It implies no commitment to the size, shape, height, location or any other attribute of a memorial and related learning centre. It is submitted at the outset that an amendment which directs or limits the use of the funds in some way is not destructive of the Bill. Indeed, it might be said to enhance the purpose of the Bill by making the construction of a memorial or learning centre more cost-effective, more efficient, more achievable, more quickly, at lower cost, less intrusive, more attractive and so on. That is point number one about Section 1.

51. There is nothing, I point out, though this is obvious, to suggest that it is a principle of the Bill that the Secretary of State's current plan must be built, or built anywhere, or, indeed, built at all. It is not mentioned. Given the background to the Bill—that is arising out of the decision of the High Court—that is not, I submit, a neutral fact. The House has not indicated in the wording of the Bill any attitude at all to the Secretary of State's plans, let alone endorsed them.

52. Clause 2 of the Bill contains another object or principle of the Bill. Any activity of constructing such a memorial or learning centre, or carrying out work ancillary thereto, or using, operating, maintaining or improving them, is not to be prevented by Sections 8(1) and 8 of the 1900 Act. Just to recall, 8(1) of the 1900 Act provides an enduring protection afforded to Victoria Tower Gardens under the 1900 Act as a garden open to the public and as an integral part of the existing Victoria Tower Garden. Under 8.8, the commission of works shall maintain the garden so laid out, and the embankment wall and curb and railings enclosing it, forever.

53. Given the background of the High Court's decision that work of the kind envisaged in the plans, which were the subject of the planning decision made by the Minister, would contravene the protection given to the park by Section 8 as a garden open to the public, it is significant that the promoter of the Bill did not seek to repeal the 1900 Act to remove its statutory protection for Victoria Tower Gardens as a public garden entirely, or repeal it in relation to the promoter's specific plan, which was the subject of the planning decision that the High Court set aside.

54. He could have done both. He is the promoter. He chose not to. It is therefore inherent in the present wording of Section 2 of the Bill that, insofar as any part of the park is not used for the purposes set out in Section 1, the 1900 Act will continue to

provide for the protection of the park as a garden open to the public, with an obligation on the commissioner of works to maintain it as such. Indeed, that is as much part of its principle as the principle of disapplying the effect of Section 8 in relation to the works for and subsequent use of the park for the purposes of a memorial or a learning centre.

55. It follows that amendments seeking to limit the extent, timing and consequences of the removal of the statutory protection for the park are not destructive of the principle of the Bill. Such amendments might seek to limit which part of the garden can be used for a memorial whilst ensuring which part will continue to be protected as a garden open to the public, very much in keeping with its principle.

56. The extent of the limitation on the removal of Section 8's protection is, therefore, something which this committee can consider and, if persuaded, amend the Bill accordingly. That is the very purpose of a Select Committee considering a hybrid Bill such as this.

57. This would include such questions as the exact extent of the part of the park which is to be used for the purposes of a memorial and its ancillary services, the extent of the part which is to be used as a learning centre, the extent of the part which is to be preserved as a garden open to the public, the location in the park of the memorial or learning centre, the use of the park for a memorial with or without a learning centre, the height of any buildings or the use of any underground space, their relationship both physically and thematically with the other memorials in the park, and so on.

58. It also means that petitions seeking to limit the area of the garden which is to be lost to the memorial and will no longer have the protection of Section 8, either during construction or thereafter, are not destructive of the principle and can be considered by the committee. I say that this has been conceded by the promoter in any event, and it is not really in dispute, but I will come back to that when I deal with his submissions.

59. Moving on to the scope of the Bill, the function of the committee is to consider the Bill clause by clause and, if it wishes, word by word, and to approve the text or modify it to reflect the committee's legislative intention. That is to be found in paragraph 28.80, which I have referred you to. Then, in 28.81, it includes this: "Any amendment (or new clause) proposed to a Bill must be within its scope. The scope of a Bill represents the reasonable limits of its collective purposes, as defined by its existing clauses and

schedules”. That is it. That is the scope of a Bill—“the reasonable limits of its collective purposes, as defined by its existing clauses and schedules”.

60. It then goes on to say, “In particular cases, difficult questions of judgment may arise. The scope of a Bill, particularly of a Bill with several purposes, may be wider than its long title”, although there is no long title here, “although the long title may help to determine the scope. Conversely, a Bill with a single purpose may have a narrow scope even though the long title is apparently wide”.

61. In this case, Clause 1 authorises the Secretary of State to use public funds on the construction and maintenance of a memorial to the victims of the Holocaust, and a centre for learning relating to it. Anything relating to the expenditure of such funds is within the scope of the Bill—the reasonable limits of its words.

62. Clause 2 proposes the suspension, in the case of the construction period, or the removal thereafter of the obligation under Section 8 of the 1900 Act to preserve the park for all time as a garden open to the public, which I call the disappication. Anything relating to the extent of the withdrawal of that protection or the terms and conditions on which such disappication should be allowed in this case would fall within the reasonable extent of this purpose—that is within the scope of the Bill.

63. Those are, effectively, my submissions. When it comes to dealing with the individual petitions, I am able to say that nothing in that is either destructive of the principle of the Bill and is well within the scope of the principles. They all deal with Victoria Tower Gardens and the money to be spent on the construction of a memorial and a learning centre, and they deal with nothing else. With great respect for my learned friend’s submissions, they all, therefore, are not destructive of the principle and fall within the scope, and can be considered by your Lordships. In due course, we will come to what is to be done about any of this.

64. Why are we labouring on a point which, in my respectful submission, is completely obvious? That is because of the promoter’s submissions on principle and scope. In my respectful submission, these are confused and confusing. They seek to disqualify large sections of the petitions on the grounds that they relate to or are against the principle of the Bill, or relate to planning issues or relate to public policy and are, for that reason, to be excluded. It is important to analyse what the promoter is saying in

order to avoid this confusion and provide the petitioners' response to these contentions.

65. The right to be heard note is dated 16 October and was attached to a letter from their instructing solicitor. It was handed up as part of the bound volume on that date, which looks like this, and it begins, "The right of petitioners to be heard by the select committee". It is PRO 004. They use the phrase "scope of the Bill" as well as the phrase "beyond the committee's scope". They are used quite interchangeably, as if they were the same thing, but they are not.

66. The other document which was handed up, I think, on that date and came in a small single page in a binder, which I have called the scope note, was PRO 003. That is the document which, in paragraph 2, submitted, "This note is provided in the context of the well-established convention that select committees on hybrid Bills should not consider matters which relate to the principle of the Bill". That is just wrong, and my Lord, Lord Etherton, pointed out on that occasion, immediately, that that seemed too wide. Indeed, my learned friend changed it to "should not consider matters which were contrary to the principle of the Bill". In fact, even the words "were contrary" do not adequately reflect the rule or convention set out in *Erskine May*, which is "amendments which are destructive of the principle of the Bill", but, if "contrary" is understood in that way, I am content with "contrary".

67. In any event, the very same note in paragraph 7.2 repeats the point, and that was not corrected. That was the conclusion. "Accordingly, the promoter submits that any matters raised in petitions that relate to either of the matters raised in paragraphs 4.1 or 4.2 do not directly relate to the scope of the Bill, and are not matters which may be considered by the committee". This includes, 7.2, "any issues which would be relevant to whether or not planning permission and all other necessary consents should be given". That is just wrong. Just because something is relevant to a planning issue is neither here nor there. It certainly does not follow, just because it is relevant to a planning issue, that it is contrary or destructive of the principle of the Bill. As I say, if it relates to a planning issue, it does not tell you whether it is relevant to the scope of the Bill.

68. I would, however, draw attention in that scope note to the second part of paragraph 2, which is where my learned friend corrected the error of saying, "Select

committees on hybrid Bills should not consider matters which relate to”, now substituted with, “were contrary to the principles of the Bill, particularly matters that would be, in effect, destructive of that principle, or matters which are not relevant to the scope of the Bill”. The second part of that sentence is correct.

69. That is not, however, an illustration of the convention—that is the second part, or the matters which would be destructive of the principle. It is a statement of the convention. Yes, you would not consider amendments which are destructive of the principle, or matters that are not relevant to the scope of the Bill. That is perfectly correct, but, as I say, just because it is relevant to the principle, or relevant to planning or something like that, it says nothing about whether it is destructive of the principle and whether it is with or without the scope of the Bill.

70. The major ground of objection—all this is leading up to having seen the confusion—to the petitions, as one can see from the objection table and the rest of these submissions, is that, insofar as the petitions relate to planning, they are outside the committee’s scope, outside the scope of the Bill or, in some way or other, not to be considered by the committee.

71. If you look now at document PRO 004, which is the document that came in a bound volume like this, and if we start with paragraph 21, this paragraph contains the various summary of what the promoter is contending. In 21, the heading is, “Petitions which challenge the principle of the Bill or are outwith the scope of the Bill. The promoter’s grounds of objection to petitioners being heard by the committee set out in the promoter’s notes of objection include the following three grounds. Beyond the committee’s scope”—so here we are now dealing with beyond the committee’s scope. “Points against the principle of the bill. Beyond the committee’s scope, points relating to planning. Beyond the committee’s scope, points relating to public policy”, and they then deal with these three items.

72. If “against the principle of the Bill” means and includes destructive of the Bill, I have no quarrel, but the points relating to planning, which are said to be beyond the committee’s scope, are then repeated or set out at some length in 25. “Planning matters are not relevant to the Bill and should not be heard. The matters which are relevant to planning include, for example, the design and appearance of the memorial and learning

centre”.

73. What is odd and what I call a concession is then set out in paragraph 28. It has to be a concession in terms of my learned friend’s argument, because, if anything which could relate to planning is somehow or other beyond the committee’s scope, whatever that means, then nothing can be dealt with by this committee, because just about everything is something which could be dealt with at a planning inquiry. Indeed, the only examples, I think, my learned friend has come up with are what the nature of the planning inquiry should be. That would not be dealt with at the planning inquiry, but I think that is one thing which he says cannot be dealt with here either. That would not be something that could be dealt with at a planning inquiry.

74. In any event, what he does say in paragraph 28 is this: “The promoter was challenged in the Commons committee as to what, if anything, in the promoter’s view, remained within the remit of the select committee in the light of the above points”. That is correct, because the same point arose there, and you will see why it arose there. It arose because of the instruction.

75. The argument that we advanced there was, “If what he says regarding anything relevant to planning cannot be dealt with by the committee, what can be dealt with?” Then he said, and he says now, “The promoter’s view is that a petition which contends that the extent to which Section 8 of the 1900 Act is overridden by Clause 2, either in terms of the spatial extent of the land affected, or as to the temporal extent of the right to construct, would be likely to be within the committee’s scope”.

76. I have contended in the House of Commons select committee, and I contend now, that that must be some concession he is making, because the two items which would certainly be within the scope of a planning inquiry, or a planning authority’s range of consideration, would be the territorial aspects of the plan—how large a part of the park this is going to take and where it will be situated, or the spatial extent of the land affected—or the temporal extent—how long it is going to take you to build, or it must be done within a certain amount of time, or you must exercise this right within a certain amount of time.

77. All of that would be relevant to a planning inquiry. If you cannot deal with anything relevant to planning, you could not deal with that, but, by a concession, which

the promoter makes, the committee is, as it were, allowed to get on with its job by way of some concession that is being made to you.

78. If you look at paragraph 7.2, that is where it is set out again. That is of the scope note. I have referred to this already, but I go back to the bottom paragraph on PRO 003. These are two of the things which you cannot deal with. Paragraph 7 includes all the things you cannot deal with—any issues relevant to whether or not planning permission or all other necessary consent should be given for the memorial and the centre for learning.

79. The question arises, “Where does that come from?” It is not explained in this committee where that comes from. I can tell you where that comes from. It comes from the instruction which was given by the House of Commons to the House of Commons select committee. It is literally lifted from that and put in this scope note for yourselves. Because they cannot refer to the instruction—there is no instruction in this House—they have simply argued it as a matter of what: principle, law? Where does it come from? This House has received no such instruction, so how can this possibly be justified, and why are some planning issues—spatial and temporal issues about the removal of any protection—open for discussion and debate, but others are not?

80. We have to go then to the instruction to see its significance in what has happened. The instruction, set out in paragraph 27 of the note I have given you today, was contained in motion 6 of the House of Commons committal of the Bill on 28 June 2023. It sought to define the principles of the Bill in paragraph 2, which was unobjectionable, and it then went on to provide—and this is what it said in paragraph 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”. Does that ring a bell? It is 7.1 of the scope note.

81. Secondly, “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”, and that is 7.2 of the scope note.

82. The submission was made to you in the scope note PRO 003, in paragraph 7, that, accordingly, following the argument that is set out in paragraphs 1 to 6, you are somehow bound by the instruction. You are bound not because the Lords gave you such an instruction, but because it is submitted that you are bound by it. What the promoter is really seeking to do is to introduce the instruction so as to confine your activities and your powers.

83. You will note that the instruction itself, which I set out there, was not based on the wording of the Bill. It is not something which arises out of the Bill. I have underlined the reason that was given in the instruction itself, and the underlined part is set out in paragraph 27. Given paragraph 2, and that is the principles, “As the Bill does not remove the need for planning permission and all other necessary consents in the usual way for the construction, use”, et cetera, “of the memorial and learning centre, the committee shall not hear any petition”. In other words, it was justified as a matter of argument.

84. My submission is just because something is not referred to in the Bill does not, logically or otherwise, lead to the conclusion that you cannot, therefore, mention it. Planning is not mentioned in the Bill. Therefore, no one here can deal with any planning issues. This makes no sense. It is not a legal principle, it is not a logical principle, and this is simply an attempt to introduce the instruction, which itself did not arise out of any wording of the Bill, but was nevertheless an instruction which was given to the Select Committee.

85. At the invitation of the promoter, the House of Commons select committee accepted that paragraph 3(b) of their instruction meant that no issue which could or might be the subject of a planning application or raised before a planning inspector or planning authority could be considered by the select committee. Accordingly, they declined to deal substantively with any issue, including any issue which could be raised in a planning inquiry. They also refused to deal with any of the issues which the promoter had conceded they could deal with—the spatial or temporal issues—because they said it was all against the instruction. They complained about their role and that they were constrained, but they felt bound by the instruction that they were given.

86. What makes this doubly ironic is, as I set out in paragraph 30, that this was contrary to what the promoters themselves had represented to the Commons discussion on the instructions to the select committee. I set out here two passages where the Minister responsible and the Secretary of State had explicitly assured the Commons that the issue of whether the centre for learning should or should not be allowed in Victoria Tower Gardens could be debated in the select committee.

87. Here are the passages which I would like to read out. Felicity Buchan, who was the Parliamentary Under-Secretary in the Department for Levelling Up, Housing and Communities, said, “If the House agrees to pass the motion”—that is including the instruction—“the select committee would still have a good deal of scope to consider matters relating to Clause 2 of the Bill—notably, the extent to which the restrictions in Section 8 of the London County Council (Improvements) Act 1900 should be removed, and whether there should be any conditions on that removal”.

88. Sir Edward Leigh then asked, “It is accepted that there is a principle to memorial, so what about my point on having an overground memorial—like other memorials—but not an underground learning centre? Will the committee still be able to consider such a detail?” Answer from the Secretary of State: “The committee can consider the extent and any conditions on the memorial in Victoria Tower Gardens, so yes, that can be considered”. That is what the promoter had told the Commons this meant.

89. In addition, the Secretary of State himself, Michael Gove, had confirmed that stance in the same debate in answer to a question from Sir Peter Bottomley. Sir Peter said, “I ask this explicitly: can either the Secretary of State or the Minister stand up and tell me now that, if someone wants to argue in front of the committee that it would be better to have the basement box somewhere else and just have the memorial, would that petition potentially be heard by the committee?” Mr Gove said, “I think it would be a matter for the committee”.

90. That was what was represented to the Commons when they passed the instruction. I sought to argue to the select committee below, but they did not seem to accept the argument, that what the committee must have meant by their wording was that you should not sit as a planning inquiry. It cannot possibly mean that you cannot consider any issues that could be—I said, “What it was meaning is that you should not sit, as it

were, as a planning inquiry and try to balance things out and look at harms and stuff’, but the committee did not accept that. The instruction was very straightforward. Nothing relating to any issue that could be the subject of a planning inquiry could be considered. You will note that that is exactly what the promoter is now urging this committee to adopt as an approach to its functions. He cannot rely on the instruction, which is what he did in this House of Commons, so he has relied on what he says is an argument that that is the case. I ask this committee to reject that argument, because it does not follow from anything.

91. THE CHAIR: Could I just ask you this, Mr Doctor? What do you say would be going too far? What would be destructive of the Bill? What would be outside the scope? At the moment, you seem to be saying everything is within the scope—any amendment, whether it is there or not there, or where it should be.

92. MR DOCTOR KC: My Lord, all of that is within the scope. The Bill is extremely wide, in the sense that, by design, it is not related to any particular plans. Anything that concerns the spending of the money on a Holocaust memorial and learning centre, and anything which relates to the removal of the disapplication of Section 8 over the part of VTG, is within the scope of the building.

93. THE CHAIR: Sorry, I just want to understand this. Are you saying that it is within the scope of this committee’s power to say there should be no Holocaust memorial or, for that matter, learning centre—one or the other, or both—on this site?

94. MR DOCTOR KC: My Lords, I am submitting that, but I just want to qualify that slightly. We are not sitting in a court here. We are sitting in a part of the legislative function of Parliament. We are trying to be as realistic as possible. We understand that your Lordships’ report and submissions and arguments and advice, whatever form it takes, will eventually be directed at Parliament.

95. If we were to urge you to disallow the building of the memorial at all in Victoria Tower Gardens, I would submit that it is well within your scope to do that, but, politically, from our point of view, it would be unlikely that the House would accept that, and so we are not going to spend any time on urging you. There are one or two petitioners who want to, but we are not going to spend time on urging that the memorial should not be in it. When it comes to the learning centre, we say you should consider

that seriously.

96. THE CHAIR: I go back to my original question to you—I think you did answer it—which is to say, because any question of expenditure can be questioned by the committee, leaving aside politics, there is really nothing within the Bill that cannot be challenged.

97. MR DOCTOR KC: With great respect, that is correct, but we—

98. THE CHAIR: The committee is faced with, on the one hand, you saying there is nothing that is outside the scope of this committee’s powers and, as you put it, Mr Katkowski’s case, which is everything to do with planning is out, apart from the two issues that he has raised. You are both taking quite extreme positions.

99. MR DOCTOR KC: Can I deal with that, my Lord?

100. THE CHAIR: I have another question.

101. BARONESS SCOTT OF NEEDHAM MARKET: In your “It should all be out, but I am going to be realistic” scenario, what weight should we put on the words of the Minister when he introduced and summed up the Second Reading debate in the House, and also the explanatory notes, which make explicit a link which is not explicit in the Bill?

102. MR DOCTOR KC: The point I am about to make is that it is, essentially, up to your Lordships and your Ladyship as to how you view your function here, and what is feasible and what is not feasible. We would say that everything is within scope, but that does not answer the question of whether the committee should, in fact, take it up. That is very much up to you. I am dealing with this argument about, “You can exclude something by simply saying, ‘That is a planning issue. Out it goes’”. I am not suggesting that this committee should either sit as a planning inquiry or go into the greatest detail, because the Bill is very short.

103. After you have heard what evidence we give—it is not unduly long and it will not take a long time—you may be moved to consider that these points are points of great importance and interest and should be drawn to the attention of the House for consideration as to whether there should be assurances, an amendment, or some form of

undertaking.

104. There is the constraint of time. There is the constraint of your Lordships' and Ladyship's availability. All of that is practical and would, no doubt, colour or determine, should we put it this way, the remit of where the committee wants to go. I am trying to get as far away as possible from any automatic, "That is out. We cannot deal with that". Even the question of whether there should be a learning centre or not—I cite that not because it binds you in any way or is determinative in any way, but the promoter has put it on record that the Commons select committee, even despite the instruction, could have determined that question. If you are persuaded by the evidence that that is something which ought to be thought about again, you will act accordingly. If, on the other hand, you are not persuaded by what we have to say, you will draw whatever conclusions you want to.

105. At this stage, we are simply dealing with the question of, "What are we allowed to say to your Lordships?" As long as we talk about the Holocaust memorial and the learning centre, and not about some other memorials or general principles of park maintenance and so on, it is within the scope of the committee. We are not suggesting anything which would destroy the Bill. With regard to the disapplication of Section 8, that is something which your Lordships, we say, will be particularly interested in, given the history of Section 8, how it came about, what its purpose is, and why the gardens should be preserved, at least in a substantial way, as a public garden.

106. If we talk about that, it is all within scope, and there is nothing which will destroy the principle. Your Lordships may say, "We cannot deal with individual trees", and we are not seeking to ask you to do that—not because it is a planning matter, but because we are being practical, and we do not want to waste time. That is what we say.

107. Can I just make one more point, first of all, finishing off on the concession, and then I want to come to a point on planning as well? The concession, as I say, which I call a concession—my learned friend does not call it a concession, but I call it a concession, because it is a concession from the totality of his argument. Anything relating to planning, spatial and temporal, must be a concession. The concession has no basis at all, and it should not govern anything here, but I want to deal with this argument.

108. Even if there were some merit in an argument that, because an issue might arise in a planning inquiry, therefore this committee should not deal with it because the committee might say, “This is going to be part of a planning inquiry, and that is the sort of issue which is almost certain to be dealt with and is best dealt with in the balancing exercise which the planning inspector or the planning authority carries out. They balance public harms, public benefits, private harms and so on”, even if there were some merit in your deciding not to go into certain details, not because it is planning but because it would be, in due course, dealt with in a planning inquiry, that particular argument should not be given too much weight in this particular case, for the very reason that Lord Hope explored at the beginning.

109. The committee has no idea of what form the planning part or planning procedure is going to follow henceforth. We have no idea whether it is going to be a new public inquiry. If you knew that now, you might say, “Obviously this is going to be dealt with in a public inquiry. We do not need to deal with it because it will be dealt with there”, but you do not know that and you do not know whether it is going to just be a matter of written representations which the new Minister will receive. You have no idea.

110. It goes a little bit further than that, because you have no idea either whether the Minister’s plan is going to be advanced as part of a new inquiry, because the Bill enables him to advance any plan, not the one he has already put forward. There are obviously going to have to be some changes to that plan because—we will see this later, and this is just an example; there are many—the environmental impact statement prepared for this plan mentions that there are going to be an additional 10,000 people per day visiting the park. That is in addition to whoever now visits it. There are going to be an additional 10,000 per day. That is 3.6 million extra people coming to the park once this is built.

111. Now, whatever the position may have been with regard to security six years ago—the environmental impact statement was, I think, prepared in 2018; it is now 2024—it is obvious—and I think in due course Lord Carlile will probably deal with that—that there is going to have to be some serious reconsideration in the light of present circumstances concerning the possible visit of an extra 3.6 million people a year coming to this park, so that plan may well have to be amended, and there are other examples of things that have changed. You do not even know that.

112. We have written to the current Minister, who is calling for submissions at the moment about how the matter is to go forward, to say to him that the question of the form that the planning procedure should take is dependent on how the Bill eventually emerges as an Act from Parliament. That might depend on something this Committee might have to say and it might depend on, if there are suggestions in your Lordships' report, the response of the Lords and then the response of the House of Commons and so on.

113. Depending on what that has to say, you cannot really make a decision on either what plans are going to be advanced or how the plans should be dealt with in a planning environment. What the promoter is asking you to do now is to just assume in his favour that it is all going to be as he says: "It is going to be this plan, and you can make submissions to the Minister. You can make them all then, so you can ignore anything that is related to planning".

114. I say, even if you were tempted by that argument, you should bear in mind that you cannot form any conclusions as to how the Bill is going to proceed, let alone which plan is going to be put forward, and you cannot assume how the planning aspect of whatever is put forward is going to be dealt with. In short, therefore, you should consider in due course our petitions. As I say, nothing in those petitions goes outside the scope of the Bill.

115. THE CHAIR: That is because you said nothing is outside the scope—absolutely nothing.

116. MR DOCTOR KC: Yes, nothing that we have put forward.

117. THE CHAIR: I did ask you to give an example of something that would be destructive—

118. MR DOCTOR KC: If we said that the money should not be spent on a Holocaust memorial; it should be spent on memorialising something else. Yes, if we said that or made what I might describe, in American terms, as pork-barrel provisions: "If you are going to have a Holocaust memorial, you should also have a memorial to the Armenian genocide", or something of that kind. If somebody would come here and say to you, "You should consider that", we would say, "That is not within the scope of the Bill and

it has nothing to do with this Bill”.

119. If we were to say, “There should not be a memorial to the Holocaust at all. You should delete Clause 1”, “There should not be anywhere in England a memorial to the Holocaust”, for whatever reason, or, “There should not be a learning centre anywhere”, that would be destructive of the principle of the Bill, and we do not urge that. All of the petitioners support the use of public funds for these purposes. They do not urge you not to allow such expenditure to take place. If we said, “Well, there could be expenditure, but it should not exceed £10,000”, that would probably be destructive of the principle of the Bill, in effect.

120. Apart from that, anything to do with the memorial and to do with the lifting of restrictions in the park is within your remit. We urge you to listen to our evidence on that and to see whether you are persuaded and, if you are, to make the appropriate suggestions.

121. LORD HOPE OF CRAIGHEAD: Do you have the Bill in front of you?

122. MR DOCTOR KC: I can get it. I have got it, yes.

123. LORD HOPE OF CRAIGHEAD: I would like you also to look at paragraph 19.2 of your note because there you are dealing with Clause 2 and what would be contrary to Clause 2, and in the last sentence of paragraph 19.2 you say, “Anything relating to the extent of the withdrawal of that protection”—that is in the 1900 Act—“or the terms and conditions on which such application should be allowed in this case would fall within the reasonable extent of this purpose”.

124. I wonder how that fits with the wording of Clause 2, which says that the sections will not prevent, restrict or otherwise affect the carrying out of any of the activities. Would the principle that we get out of that clause not be that anything that would prevent, restrict or otherwise affect the carrying out of what Clause 1 is talking about would be contrary to the principle of the Bill?

125. I am putting that to you because I think that was a point made by Mr Katkowski at the very beginning of our hearings. He was directing our attention to those words, which he said were crucial to understanding of what the Bill is talking about. That suggests to

me that your wording in 19.2 is too wide, although it would be all right if you were to put in the words “so long as it does not prevent, restrict or otherwise affect the carrying out of what Clause 1 is talking about”. Would you accept that qualification?

126. MR DOCTOR KC: My Lord, I would accept that qualification, but I stress that Section 2 does not simply disapply Section 8 of the 1900 Act from the park. Just repeal it and there would be nothing left. The very fact that it envisages, as Mr Katkowski has conceded, that it will continue to apply to the part that is not used implies that the part that is not used is entitled to the protection of Section 8 and will continue to be entitled for all time and that there is a sort of balance between the two, and it would be well within the remit of the committee, and certainly not destructive of its purpose, if the committee were to say, “It should not take up more than X% of the park because by doing so it would preserve the part of the park which is subject to the 1900 Act and allow the building of whatever it is that the Minister proposes”.

127. The precise area is something which this committee might well take up as an amendment to the Bill, which would be more precise than what is there currently. At the moment, it does suggest, on the wording, that the Secretary of State, the promoter, could decide, “This is all too much trouble. I am closing the park because all of it needs to be used for the purposes of the memorial. Given the present problems with security and so on, you cannot have people wandering around half of it”. He would be able to say, “I am entitled to do that”. I would say that that is not what Parliament intended by doing it in this way, by not simply repealing the 1900 Act, and your Lordships would therefore be entitled, if you feel it is justified, to propose a limit on which one can be done and not the other

128. LORD HOPE OF CRAIGHEAD: A short way of putting what you are saying is really that Clause 2 assumes that, subject to the qualification that it sets out, the protection in Section 8 of the 1900 Act will continue.

129. MR DOCTOR KC: Yes.

130. LORD HOPE OF CRAIGHEAD: That is one given. The other given is that whatever we consider about territorial limitation must not be so extreme as to prevent, restrict or otherwise affect the carrying out of what Clause 1 is talking about. Those are the two things.

131. MR DOCTOR KC: Yes.

132. LORD HOPE OF CRAIGHEAD: That is why I just wanted to be sure that you would accept that that qualification is something that we ought to bear in mind in considering whether we are contrary to the principle of the Bill.

133. MR DOCTOR KC: Yes, but I would ask you to give equal weight to the requirement that the rest of the garden must continue.

134. LORD HOPE OF CRAIGHEAD: Of course, yes.

135. THE CHAIR: That is for the future. I thought you were saying that this committee could limit now whatever is built there.

136. MR DOCTOR KC: Yes. We do not ask you to—

137. THE CHAIR: I think Lord Hope was talking about, or you were talking about, the future, once it has been erected, as to what is left. The restriction in the 1900 Act would continue to apply.

138. MR DOCTOR KC: Yes.

139. THE CHAIR: That was, if you remember, a point actually I put to Mr Katkowski right at the beginning. I described it as a question of the construction of the Act. I thought you were going a little bit further just now and saying you thought it was in our remit for us to say that whatever is put up there should not exceed a certain area.

140. MR DOCTOR KC: Yes.

141. THE CHAIR: You are saying that.

142. MR DOCTOR KC: Yes, I am saying that.

143. THE CHAIR: Have you got a proposal?

144. MR DOCTOR KC: We will have proposals. Can I just add Mr Katkowski has suggested a proposal? It is the 7.5%. That is what the promoter says.

145. THE CHAIR: I think he is talking about what will remain. I am trying to

concentrate at the moment on the proposition, which I have to say would be very challenging, for this committee to say, “It should not exceed so much square footage or square metres”. We are not a planning authority. We would be here for months if we had to go into that sort of thing and see what the implications are.

146. MR DOCTOR KC: My Lord, you would not have to be here for months because Mr Katkowski has opened the bidding. He says his plan—that is the Holocaust memorial and learning centre part of it—will only take up 7.5% of the park, and he says they could give an assurance to that effect.

147. THE CHAIR: Are you happy with that?

148. MR DOCTOR KC: No, because, for reasons we will show you, that is not correct. They have come to the 7.5% by excluding all sorts of things which should not be excluded. It may be that the committee might come to the view, following what we suggest, that perhaps there would be a way of defining it which meets the requirements of the offer and what we say, but it is not—

149. THE CHAIR: The general point of principle is you say that we do have the power both now to say what should be put up there, the maximum limit, and what would remain subject to the 1900 Act.

150. MR DOCTOR KC: Yes. We stress, of course, that Parliament is really the only body that can ensure the preservation of the 1900 Act.

151. THE CHAIR: All right, Lord Jamieson has a question.

152. LORD JAMIESON: Sorry, I am just trying to seek a bit of clarity and I am not as learned as some of my colleagues here. My understanding is you do not really have issues with Clause 1, i.e. funding for a memorial and a learning centre and so forthwith.

153. Now, if I understand, in layman’s terms, Section 2 is basically saying that Sections 8(1) and 8(8) of the London County Council (Improvements) Act should not prevent, restrict or otherwise affect the expenditure of those monies delivering whatever it is.

154. MR DOCTOR KC: Yes. My Lord, I go a bit further than that because I say that, if you read the clause in the Bill, you start, I say, particularly given the history of this

matter—the High Court set it aside on the grounds that the building of what was proposed was in breach of that Act. The Minister could have come back to Parliament and said, “This is in our way. Let us just repeal the 1900 Act”, but he did not do that. He not only did not do it; the promoter’s counsel has urged you to understand that the meaning of Clause 2 envisages—it is inherent in it—that Section 8 of the 1900 Act will continue to apply. In a sense, he is saying, “I am not going to use the whole of the park because, if I was going to use the whole of the park, then we would just repeal the Act”.

155. LORD JAMIESON: Sorry, I may not be being clear enough in what my question is. My question is you are accepting that funding for a memorial and a learning centre and so forth, all as outlined in Section 1—that is the principle of the Bill, and we are not here to go against and obstruct or destruct that principle. Section 2 is basically saying, in layman’s terms, “There is a 1990 Act which prevented that expenditure and that going ahead”. The principle of Section 2 is that it should not prevent the delivery of a memorial and learning centre.

156. MR DOCTOR KC: Yes.

157. LORD JAMIESON: That is the principle. It should not prevent it.

158. MR DOCTOR KC: I say it is the principle that it should not prevent it and that part of the gardens will continue to be governed by the 1900 Act.

159. LORD JAMIESON: For this committee, as per the Second Reading, we are not to obstruct or block the principle. The principle is we should not be doing anything that prevents the delivery of a memorial and learning centre as determined by Section 1.

160. MR DOCTOR KC: Yes.

161. LORD JAMIESON: Thank you.

162. MR DOCTOR KC: Bearing in mind that you want to ensure that the inherent part of Section 2 is also part of the principle and is also respected, i.e. that the park will continue, for the part not utilised, to be subject to 1900.

163. Therefore, given the evidence you will hear—

164. LORD JAMIESON: This is about not preventing. Obviously, we will have a

debate. I do not want to reach a firm conclusion, but I understand your point that, post the delivery of a memorial and a learning centre, there is still a role to protect the park as then exists.

165. MR DOCTOR KC: Yes, but I do want to qualify that because I want to get away from the idea that the Minister is free to just take the whole park and use it, the whole of it, so that in theory the 1900 Act would apply to nothing and that he did this to give the impression that Parliament had authorised the continuation of a park but effectively he was just repealing the Bill.

166. Once it is conceded or understood that part of the park must be protected, then he is not free under Section 1 to simply use the whole park.

167. LORD JAMIESON: It does not say that.

168. MR DOCTOR KC: It does by the mere fact that it does not repeal Section 8 of the 1900 Act. It was perfectly open.

169. THE CHAIR: I think we have gone as far as we can on this point. Have you finished your submissions? You have had two and a half hours now.

170. MR DOCTOR KC: I beg your Lordships' pardon, but I have finished, yes.

171. THE CHAIR: All right, thank you very much. Now, I am going to ask Lord Carlisle if he would like to add something.

Lord Carlile of Berriew

Submissions by Lord Carlile of Berriew

172. LORD CARLILE OF BERRIEW: Thank you, my Lord. I am grateful to your Lordships for the opportunity to be heard. As a Member of your Lordships' House, can I just take a second to express the thanks of many of your Lordships' House for the work that has been done by Mike Wright as legislation manager to the committee, who has kept us informed in a very, very important and useful way.

173. THE CHAIR: Thank you.

174. LORD CARLILE OF BERRIEW: My Lords, I adopt the essence of Mr Doctor's

arguments. At the end of what I have to say, I will turn to the last point that has been raised by a number of your Lordships.

175. My starting point is a question: what is the scope of this Bill? I would say that, whatever the scope of this Bill is, if it is very wide, nevertheless this committee is a microcosm of your Lordships' House and retains the discretion to determine what it reports on. I have no doubt that the committee will choose what is relevant and what is irrelevant, however wide the scope of the Bill.

176. I hope I do not say something that your Lordships think is inappropriate, but the House is awaiting your Lordships' report with great interest. Those of us who were there will recall that more than 90 Members of the House took an active part in one way or another, including voting, in the debate. They have expectations of the committee, which are reasonable, and they need to understand what has happened during the committee's deliberations. Most of them are not lawyers. They are going to have difficulties if this committee does not deal with what are regarded as significant issues.

177. I will argue—briefly, I promise—that there are examples of issues which are well within the scope of this Bill that might be considered by this committee. Those are the sorts of issues, or at least some of them are, that Members of this House would wish to hear about.

178. My starting point is at the very beginning, as it were, with paragraph 28.81 of *Erskine May*, which sets out the basic principle: “The scope of a Bill represents the reasonable limits of its collective purposes, as defined by its existing clauses and schedules”. Those of us who have the addictive but medically safe habit of tabling amendments to Bills in the Public Bill Office are very used to very capable clerks to this House saying, “That is not in scope, but I can bring it in scope for your Lordship if you change the wording to so-and-so”. Scope is something that is generally dealt with as being fairly wide to enable the House to debate issues which are of real, genuine and reasonable concern to Members of this House.

179. What I am going to suggest, my Lords, in my short submissions, is that nothing that I put forward is destructive of the principle of the Bill. There are some issues that might be raised in a planning appeal. Security, for example, which your Lordships know is of interest to me, could be raised and has been raised in a planning Bill in relation to

Victoria Tower Gardens. One could not reasonably argue that security is only a planning matter because national security is involved in this, which is plainly not a planning matter. Indeed, the security of this great site, which is the whole of the Palace of Westminster and its immediate environs, is not merely a planning matter.

180. LORD HOPE OF CRAIGHEAD: Would it depend on how far you are pressing the point, Lord Carlile, looking again at Clause 2? What you are asking us to consider or recommend in relation to security would be all right so long as it was not designed to prevent or restrict or otherwise affect the carrying out of what Clause 1 is talking about.

181. LORD CARLILE OF BERRIEW: Precisely, my Lord. I agree. If I may now, then, deal with Clause 2, the crucial words in Clause 2 are “on, over, under or otherwise in relation to the land described in Section 8(1)” of that Act, the 1900 Act. It does not specify any specific site.

182. Clause 2 could apply to sites other than Victoria Tower Gardens. There are plenty of sites in London which fall within the 1900 Act. There are plenty of sites where the Minister might, on reflection, choose to site what is described as a memorial commemorating the victims of the Holocaust and a centre for learning relating to the memorial. In those circumstances, Clause 2 would apply to all those sites. It would depend, my Lords, on the description of the site. If a site was designated as Victoria Tower Gardens, it would apply to Victoria Tower Gardens.

183. LORD HOPE OF CRAIGHEAD: Sorry, the last few words of Clause 2 refer to what is described in Section 8(1) of the Act, which brings us back to Victoria Tower Gardens, does it not?

184. LORD CARLILE OF BERRIEW: It does bring us back to Victoria Tower Gardens, but nevertheless, if it brings us back to Victoria Tower Gardens, the whole of Victoria Tower Gardens plainly is covered. If the Minister decided to designate a portion of Victoria Tower Gardens, then only that portion of Victoria Tower Gardens would be covered. That seems to me to resolve most, at least, of the discussion that was being had earlier. If it was decided to have another site, and the Government were able to obtain a similar provision, exactly that would apply. For example, if it was part of, to take something out of blue sky, Regent’s Park, they would no doubt describe, “That part of Regent’s Park that is nearest to”—and name a landmark.

185. If I can go back to the particular points that, in my submission, are properly within the scope of the Bill and not in any way destructive of the principles of the Bill, first, the Bill provides in Clause 1(1) for the Secretary of State to incur expenditure. I would suggest to your Lordships that within the scope are the rules for incurring expenditure, which might involve the introduction of standards that would dictate how that distribution of expenditure would occur. It might include national security. There might be an amendment to the Bill to say that there has to be a report that placing the Bill in any given site that is suggested is not contrary to national security.

186. It might involve something much broader than the two examples I have just given, the scope, conceptually and physically, of what is provided: that a centre for learning relating to the memorial should be of sufficient size to achieve certain ends, for example, in-house postgraduate study, as one example. It could include accessibility. It could include the cost of the structure related in proportionality to the site that is to be occupied. It could include the sort of value-for-money assessments that are routinely made by the Audit Commission, and it could, importantly, include governance of the memorial and the learning and education centre. In my submission, it would be completely in scope if the committee were to say, “This Bill is very short, but it is extremely vague on governance of this Holocaust memorial centre and rules for governance, or at least a code for guidance, should be included in the Bill”.

187. My second category relates to the words “under any land”, which appear in Clause 1(1)(a), the recital. The last words of (a) are “under any land”. Is it appropriate, on reflection, of the principle of the Bill, to place such a memorial to the Holocaust—the worst atrocity committed in wartime of any in the whole of modern history—underground? Above all, is it appropriate to place a learning centre underground? Should a site, whether it is overground or underground, have a certain site to achieve certain purposes? It is within the scope, I would suggest, of this Bill to consider whether having what is described as “under any land” is correct or whether it should be something that is discussed by this committee to draw the attention of the House to certain limitations.

188. My third example is the elision of “Holocaust memorial” and “learning centre”. There is an assumption made that they should be on the same land, but the reference to “any land” does not mean that they have to be on the same land. It is therefore within

the scope of this Bill for the committee and the House to consider whether the memorial and the learning and education centre should or should not be on the same land. Considerations that might determine whether they are on the same land would, for example, include security concerns. There might be a good reason for placing a sculpture on Victoria Tower Gardens but there might be very good reasons for removing the learning centre, for example, to a site at the currently vacant Puddle Dock, close by St Paul's Cathedral in the City of London—an available site, as I understand it. Within the scope should be whether the two items are conjoined or separate with the potential for removal of Clause 1(1)(a)(i) or (ii).

189. My next example of something that I would respectfully submit is in scope is Clause 1(1)(c), “The use, operation, maintenance or improvement of the memorial and the centre for learning”. It may be that that clause should be separated in two, partly for the memorial and partly for the learning centre. In my submission it is appropriate to set out some requirements for this clause in order that it would fully meet the purposes of the Bill so that the operation and maintenance, for example, would be described in more detail to meet the objects of the Bill to provide a suitable Holocaust memorial and a suitable learning centre.

190. My fifth example is the Edward Leigh point, if I can call it that, from the extracts from House of Commons Hansard quoted by Mr Doctor. Should such a centre be an exception to the generality of planning law? Is Clause 2 appropriate exceptionality for such a centre? Surely, my Lords, there is a potentially important point of principle as to whether a Holocaust establishment, as opposed to every other kind of establishment, should have exceptions from an Act of Parliament for the purposes described of the Bill. For some, that may be a much more controversial issue than many of us who support the erection of a memorial and a learning centre would say, but I can see that being a real possibility.

191. My final example relates to Clause 3, which provides in Clause 3(2) that, “This Act comes into force at the end of a period of two months beginning with the day on which this Act is passed”. My Lords, it would be well within scope. It frequently happens when Bills are debated in your Lordships' House that amendments are within scope, and tabled and voted upon, which require a report or an update within six months or a year, or, in criminal justice legislation, two years sometimes, and provides for such

a report to lead to an affirmative procedure resolution, a statutory instrument subject to the affirmative procedure, which would stamp approval, finally, on the legislation that had been passed. That kind of provision is well within scope and would indeed allow for all the issues that I have already discussed and those discussed by others in this committee's proceedings to be dealt with.

192. THE CHAIR: You are saying that it would be within scope to provide for a review within a certain period of time. Is that what you are saying?

193. LORD CARLILE OF BERRIEW: Yes, and we have often seen in this House that amendments have been tabled, at the report stage particularly, which provide for a review, in effect, determining whether we are ready for the legislation to come into force at a certain time and therefore for a report to be prepared. Indeed, there is a habit these days—and I have been one of them—for independent reviewers to be inserted to report on whether legislation is fit for purpose. It is a fit for purpose proceeding and it is not unique.

194. My Lords, without repeating anything else that has been said by my learned friend, those are my submissions on scope, unless there is anything that the committee would like to put to me.

195. BARONESS SCOTT OF NEEDHAM MARKET: Just very quickly, this committee, of course, is set up to examine the private interests of petitioners, the Bill and specifically what areas of remedial action and redress they might look at. That is for later and we are still determining the scope of those considerations. I just wonder, listening to what you said, where you see our role beginning and ending, “ours” being this committee, and what is the rightful preserve of the next stage of the Bill in the Lords itself, in the committee stage that takes place on the Floor of the House?

196. LORD CARLILE OF BERRIEW: There is quite a long answer coming up now, I am afraid. The role of the committee is to consider those submissions that fall within the purposes of the Bill and scope. From what I have read of the petitions by others, they deal with all the matters I have raised in one way or another, plus some specific points that relate to residents—I mean literally residents, and you have heard my argument already about the fact that “resident” is not the same as “an inhabitant”—who live within the area of Victoria Tower Gardens.

197. So far as the rest of your Ladyship's question is concerned, the committee is a special measure taken by the House by setting up a committee that is literally a microcosm of the House. It is a bit different for the House of Commons, where select committees replicate the party proportion within the other place, but otherwise this is exactly the same. It is a microcosm of the House that is set up to deal with issues that are of importance to the House and inform the House upon the importance of such issues, and to elevate some to being highly relevant and to relegate some to being possibly not considered at all. That is of course within the discretion of the committee, something which I hope the House would respect totally.

198. If, on the other hand, all the committee does is follow the strictures produced by the promoters, then the committee will not be regarded as having done its job for the whole of the House that is interested in this Bill.

199. Can I, in that context, make a comment that I might have made earlier but did not, which is I have been perturbed, as a Member of this House, by the question, "What is in the scope of the Bill?" Indeed, I had an interesting exchange of letters with Mr Wright, who was very helpful, when I asked, "Where is the promoter's version of what is in the scope of the Bill?", because everything I have read told me that nothing, or almost nothing, apart from two small exceptions, was in the scope of the Bill, so, "What was the point of the committee?" was the question I asked myself. That cannot be what the committee expects and it cannot be right, in my submission.

200. BARONESS SCOTT OF NEEDHAM MARKET: Thank you.

201. THE CHAIR: Thank you very much. Has anybody else got any questions?

202. MR DOCTOR KC: My Lord, the one point that I was going to tell you about later was that Mr Katkowski objected at one point that something I said, quoted from *Erskine May*, chapter 28.80, was related to public Bills. Do you remember that point he made? I said, "I have an answer to that but I will come back to it". I would like to come back to it, just to give you the information.

203. The first point is, in paragraph 46.1 of *Erskine May*, which is headed "Private Bills", it deals with how they are introduced, and then it says, "The subsequent proceedings upon private Bills in the two Houses are similar. These have already been

described, so far as they relate to the House of Commons, in the previous chapter, so the present chapter describes only those points in which Lords procedure differs from the Commons”.

204. That is one point, but I have another point. In Mr Katkowski’s own note, which I have called the scope note, PRO 003, in paragraph 2—that is the paragraph where he set out the principle—“This note is provided in the context of the well-established convention that select committees on hybrid Bills should not consider matters which relate to the principle of the Bill, particularly matters that would, in effect, be destructive of the principle”, he has a footnote. The footnote as support for that submission, in which he is dealing with the proceedings in this committee, is the *Erskine May* treatise, 25th edition, paragraph 28.80, so he himself relies on it.

205. THE CHAIR: Thank you very much. Mr Katkowski, can you reply as briefly as possible, please?

206. MR KATKOWSKI KC: Yes, of course. My Lord, before I do that, I had understood that Viscount Eccles, petitioner 10, wanted to address you on scope as well.

207. THE CHAIR: I understand he no longer wants to do so.

208. MR KATKOWSKI KC: He no longer wishes to do so. Thank you very much.

209. THE CHAIR: I should say, if there is any other petitioner here who is not represented, this is your chance to respond to Mr Katkowski on scope and principle. I do not know whether anybody else is here. Nobody else has taken that up. Yes, Mr Katkowski.

Submissions by Mr Katkowski KC

210. MR KATKOWSKI KC: Thank you very much indeed. If I could reply briefly, first, to my learned friend Mr Doctor’s submissions. Plainly, I am sure I would not be thanked if I went through each and every point. I shall deal with some main points, if I may.

211. THE CHAIR: Of course.

212. MR KATKOWSKI KC: There are going to be 11 of these. I will do them as

quickly as I can. First, it is my submission that my learned friend has fundamentally misunderstood the nature of the role of this special stage in the process of a hybrid Bill through Parliament. That is the first point. You can see that, secondly, from the heavy reliance that my learned friend places on Chapter 28 of *Erskine May*, which is dealing with public Bills in the House of Commons. Thirdly, my learned friend refers to a footnote—

213. THE CHAIR: That was point two, was it?

214. MR KATKOWSKI KC: That was point two, my Lord. That is the second point. Chapter 28, public Bills in the House of Commons. The third point is that in his footnote number three, he, my learned friend, Mr Doctor, refers to paragraph 46.1 of *Erskine May*. My Lord, in due course, I would invite you to read that paragraph, 46.1. I do not accept that it tells you anything of significance or anything of any particular interest at all in relation to the nature of this committee's scope in dealing with a hybrid Bill. I just do not accept that it carries the meaning that my learned friend suggests in his written and oral submissions it does.

215. My Lord, you might or might not want us to draw these points together in a short note. I will take your guidance on that, of course, but the fourth point is that *Erskine May*, paragraph 30.67, makes it quite clear. I will read it out: "The proceedings in a select committee on a hybrid Bill are conducted in the same manner as those in a committee on a private Bill, and not those in a select committee on a public Bill", in other words, making the point that I started with: that this stage in these proceedings is very different from what you might expect, for example, in a select committee on a public Bill. That was the point that was made earlier on: that in effect, this committee is looking at those elements of the Bill that make it a hybrid Bill—in very brief terms, a private element, so to speak. That is the fourth point.

216. Fifthly, in my submission, much and probably everything that stands between my learned friend's submissions to you and mine revolve around the fundamental submission that I have made: that this Bill, in Clause 2, relates to the specific Holocaust memorial and learning centre that is being proposed through the planning process, and not, if you like, to any old Holocaust memorial and learning centre, whereas my learned friend's submissions do not accept that. It is the point made that the Bill speaks of "a"

Holocaust memorial and learning centre and not “the”. It is a point that was raised with me right at the outset of this select committee’s proceedings.

217. You well know and have my submission that the explanatory note at paragraph 8, and, as has already been pointed out today, Lord Khan’s speech in introducing the Bill to the House at the Second Reading make it quite clear, beyond any doubt at all, that the Bill is addressing the removal of the obstruction of Section 8(1) and (8) from the particular proposed Holocaust memorial and learning centre that is the subject of a live planning application.

218. Therefore, sixthly, when my learned friend submits, as he does in paragraph 2 of his written submissions, and as he has submitted repeatedly orally, that none of the amendments sought by the petitioners he represents in any way are destructive of the principle of the Bill, that is because he adopts the approach he does to the principle of the Bill—that is to say divorcing the principle of the Bill from the Holocaust memorial and learning centre that is being proposed by the promoter.

219. I will just give you one example in each of the petitioners that he represents. In petition 12—that is the London Historic Parks & Gardens Trust—one of the amendments they seek is that there should be a memorial only, not a learning centre in Victoria Tower Gardens and that the memorial should be smaller than that which is proposed by the promoter. Now both of those are patently destructive of the principle of the Bill, if you accept my submission that the principle of the Bill is to clear the way, in terms of Section 8 of the 1900 Act, for the proposed Holocaust memorial and learning centre.

220. Petition 15 is the Thorney Island Society; that is to the same effect. They do not even want a memorial in the gardens but, if there is to be a memorial in the gardens, it should be smaller and there should not be a learning centre. That is petition number 15—the same point as I have just made.

221. Petition 13, which is the Buxton family, is a bit more subtle. They wish an amendment to the Bill that any memorial, et cetera, in the gardens should not cause harm to any other memorial or its setting. Now that, were that amendment to be made, would mean that there could not be the carrying forward of the project that we have proposed because the inspector, in his report, found that there would be a harmful effect

on the setting of the Buxton memorial. That was one of the factors he weighed in the weighing scales in deciding whether to recommend the grant or refusal of planning commission, and the Minister agreed with the inspector in that regard. That amendment would stop the project in its tracks.

222. Petitioner 11 is Baroness Deech. One of the many amendments that she seeks, but I will just give it as an example, is that the learning centre should be outside Victoria Tower Gardens and, if there is to be a memorial, it should be a smaller memorial in the gardens. Again, that is destructive of the principle of the Bill if you accept my fundamental submission that this Bill is all about ensuring that Section 8 does not obstruct, et cetera, the carrying out of the project that the promoter proposes through the planning system. That was my sixth and probably longest point. I am going to reduce my 11 points to 10, if I may.

223. Seventh, in relation to planning arguments, my Lords and my Lady will know from our note number 9 that the way in which we have sought to address planning arguments is to ask this fundamental question: “For these arguments which could be made in a reactivated planning process, where are they going? What point is being made in relying on the arguments which plainly are planning arguments?” Say, for example, all the arguments that can be made have been made already in the planning process—that the memorial is too big or it is ugly or the learning centre should not be underground. These are all planning arguments. Where are they going? They are going to this. They are going to a request that you should amend the Bill so as to preclude this memorial in the gardens, that you should amend the Bill so as to preclude the learning centre in the gardens.

224. That is my point about planning arguments. You always have to ask, “Why are these points being raised?” This is not, as I understand it, a place where one can come along and just get things off one’s chest. There has to be a purpose behind every point that is made. Where is it going? All of these are what I would describe—you might think very loosely or perhaps too loosely—as planning arguments, and all of them are going to request to you to do something to the Bill that would stop the proposed learning centre and memorial in its tracks and that cannot be within your scope, and is not within your scope, in my submission.

225. My eighth point relates to the concessions as they are described by me about territorial restrictions, for example. My ninth point—I can wrap them up together—relates to concessions, as they are described by me about timing issues. They are said to be concessions; they are not. They are submissions by me. Both of the submissions I have made about the territorial extent and the temporal extent, or the timing extent, relate to Section 8 directly, and that is why I am perfectly content to say they are matters that can and, if you wish to do so, should be discussed here in this committee.

226. They relate to Section 8 directly because, in the case of the territorial point I have made, they are seeking to say, rather than removing the obstruction of Section 8 across every square inch of the gardens, arguably, one could amend the Bill or have an undertaking so as to ensure that any removal of the obstruction of Section 8 related to the extent of the gardens that are required for this particular project. That relates to Section 8. It is not a planning argument. It relates to Section 8. It is saying, “Do not give us carte blanche in relation to Section 8. Restrict our ability to rely on the disapplication of Section 8 so it tallies with the project that underpins the Bill”. That is why it relates to Section 8. It is nothing to do with planning.

227. On temporal restrictions, again, no planning process is going to say, “You have to build this within X period of time”, a sunset clause, if you like. Again, it relates to Section 8 because, at least in principle, you might or might not wish to consider whether any ability on the promoter’s part to rely on the disapplication of Section 8 should be limited in time terms. That again relates to Section 8. It is not a broad-ranging or wide-ranging point that relates to planning.

228. Those are my eighth and ninth points and finally, the tenth: there was a submission made by my learned friend that the planning application in due course would need to be for some different project in some or other shape or form. Can I just make this crystal clear? If, as and when the planning process is reactivated by the Minister, on the other side of the ethical wall that has been erected between the promoter and the Minister, it can only relate to the planning application that has been made. We cannot say, “Put that one to one side. Here is a different learning centre and memorial”.

229. Through that process, we can only continue with the planning application that has already been made. If we wished to change a project, we would have to make a new

planning application and it would start all over again and the application would be made to Westminster City Council and whether or not that application would be called in and taken out of Westminster's hands would be a matter for future consideration by the Secretary of State in due course, so I just wanted to clear up finally, tentatively, that, to me, complete misunderstanding of the planning process.

230. Moving briefly to Lord Carlile's submissions, Lord Carlile submitted that nothing in his petition is destructive of the principle of the Bill. Again, Lord Carlile, within his petition, suggests that you should do something to this Bill such that the learning centre should be located somewhere else. In fact, his fundamental proposition in his petition, where the standard form asks, "What do you want to be done?"— I will make sure I do not misquote him—his proposition is that "a fresh start should be made on the project on a bigger site, more capable of protection". That is obviously completely contrary to the principle of the Bill because Clause 2 is only about Victoria Tower Gardens.

231. That brings me, secondly, to the only other submission I wish to make in relation to Lord Carlile's submissions, which is that it was submitted by him that Clause 2 does not specify the site, by which he meant does not specify Victoria Tower Gardens. I am afraid, with great respect, that is a complete misunderstanding of Clause 2. Clause 2 seeks to ensure that Section 8(1) and (8) of the 1900 Act do not prevent, et cetera, construction and so on and so forth of a memorial and learning centre to the Holocaust. Section 8(1) and (8) only apply to Victoria Tower Gardens, so of course it is site-specific, of course it is Victoria Tower Gardens-specific. Those provisions, (1) and (8), relate to Victoria Tower Gardens. That is how we got into this mess in the first place. That is why they have to be disapplied in relation to our project.

232. Those are my submissions that I wish to make in reply.

233. THE CHAIR: Does anybody have any questions? No. Thank you very much.

234. MR DOCTOR KC: My Lord, can I just point out the beginning of the explanatory notes that my learned friend has just relied on? I just would ask you to read the first point: "These explanatory notes have been prepared by the Ministry of Housing in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill, have not been endorsed by Parliament".

235. THE CHAIR: That is standard wording.

236. MR DOCTOR KC: Yes.

237. THE CHAIR: Very well.

238. LORD JAMIESON: Chairman, I have a small question for Mr Doctor.

239. THE CHAIR: Yes.

240. LORD JAMIESON: Mr Katkowski has just asserted that 8(1) and (8) relate specifically to Victoria Tower Gardens. I just want to make sure that you are not contesting that.

241. MR DOCTOR KC: Section 8 was introduced when Victoria Tower Gardens was set up.

242. LORD JAMIESON: That is fine. In effect, Clause 2 relates specifically to Victoria Tower Gardens.

243. MR DOCTOR KC: Clause 2 does. Clause 1 does not.

244. LORD JAMIESON: That is fine. I wanted to just make sure that everyone is on the same page on that.

245. MR KATKOWSKI KC: My Lord, just in case you are about to adjourn—I am so sorry, my Lord, forgive me. It is not the same as all of this. It is just we have been asked that I should say to you that we have submitted a plan in response to Lord Jamieson's request in relation to the part of the gardens that would remain freely accessible to the public. That has been submitted. You have it electronically. If you would like hard copies, we have them.

246. THE CHAIR: Can I put to you a potential problem that the Minister might face? If we were to limit the curtilage or dimensions of a Holocaust memorial and centre, as you would have us say—that is, by reference to the present planning app—and this committee amended the Bill to that effect, and then it transpired that for security or other reasons there would have to be perhaps other building on the site, how would that be dealt with in practice? It is possible that the planning permission might not be

granted, if it was granted at all, until after the Bill was passed.

247. MR KATKOWSKI KC: I have no doubt at all that there is no question of the planning permission being granted until after the Bill has become an Act.

248. THE CHAIR: Do you see my point?

249. MR KATKOWSKI KC: I do see your point. No, I see your point entirely, my Lord.

250. THE CHAIR: I have asked you for an amendment.

251. MR KATKOWSKI KC: You have.

252. THE CHAIR: To some extent, you are binding the Minister's hand. That is a matter for you but you are content with that.

253. MR KATKOWSKI KC: No, my Lord. If I may take a step back, this has all arisen from, in effect, the reverse question that you asked my learned friend, Mr Doctor. You asked my learned friend, "Is anything out of scope?" In the Commons, of course, I faced a similar question when I predicted this question would arise, which was on the basis of the submissions I was making, "What on earth is in scope?" I suggested territorial matters and temporal matters would be within scope. As you know, I am not positively advocating that you should amend the Bill in that regard.

254. THE CHAIR: No.

255. MR KATKOWSKI KC: You have asked that we provide an amendment and obviously that will be done. In relation to the point you have raised, plainly, my Lord, it is a perfectly good point, if I might say, that if any amendment was tied only and very specifically to the exact project, then if that project needed to be amended, for example for a security building—there is already the entrance pavilion, of course, but if there needed to be some other security building in the gardens—then, of course, we would find ourselves in a bit of a pickle because Section 8 would stand in the way of that security building and so the amendment would have to cover that potential eventuality.

256. THE CHAIR: No doubt you will cover that in your proposed amendment.

257. MR KATKOWSKI KC: Indeed so.

258. THE CHAIR: Lord Carlile, I wanted to ask this question of you. I think the committee would find it extremely helpful if you were able to propose either an amendment or an undertaking to be given by the Minister on the issue of security, on the assumption that you fail in your main point, which is it should not be there at all and it does remain there. You have a huge amount of expertise here, which is highly respected, in relation to anti-terrorism matters and security. If we came to the conclusion that it would be contrary to the principle or policy of the Bill, as it were, for the proposed erection or something similar to be put on Victoria Tower Gardens, it would be helpful to know what the minimum you think, at any event, is that needs to be done before the thing can start up properly. Is that something that you would be prepared to do?

259. LORD CARLILE OF BERRIEW: It is something that I have always intended to do. I have not yet drafted it.

260. THE CHAIR: No.

261. LORD CARLILE OF BERRIEW: There are two alternative ways of doing it and I think they may be mutually exclusive. One is to set out a series of criteria. The other is to set up a body that judges certain criteria. How long have I got?

262. THE CHAIR: You certainly have a few days.

263. LORD CARLILE OF BERRIEW: I can certainly do that. As I am on my not feet, as it were, may I just deal with a point that has been dealt with by Mr Katkowski, which is about my understanding of the Bill, which I believe replicates the understanding of many in your Lordships' House, which is that the Bill provides for a Holocaust memorial and learning centre? If the Holocaust memorial and learning centre, or part of it, is in Victoria Tower Gardens, Clause 2 applies. If it is not in Victoria Tower Gardens, Clause 2 no longer applies, because it is no longer relevant or necessary. That seems to me to be a completely clear and logical conclusion, which is based on the text of the Bill and answers Mr Katkowski's submissions completely.

264. THE CHAIR: Thank you very much. We are grateful to everybody. We are running slightly late, I am afraid.

265. LORD HOPE OF CRAIGHEAD: Can I make a suggestion? For your amendments, you could propose both. From my point of view, I would not want you to be tied to one or other of the routes that you are suggesting. Let us have them and see. We can decide which one, if any.

266. LORD CARLILE OF BERRIEW: The noble and learned Lord is wrecking my weekend, but I will do that.

267. LORD HOPE OF CRAIGHEAD: That would be helpful.

268. THE CHAIR: We will now go into private session. If we come to the conclusion that we cannot really usefully carry on this evening or late afternoon, we will let you know. For the moment, please remain outside on the basis that we will hope that we may be able to, at least to some extent, define the parameters of what people can say to us at this stage.

269. [Sitting suspended]

Decision on Scope

270. THE CHAIR: We are going now to state those matters which we consider are out of scope. There may be other matters in the course of the hearing which may lead to a refinement of these, but, for present purposes, these are the matters on which we will not wish to hear petitioners. I should add, as before, that this is a provisional statement if there are unrepresented petitioners not here today who wish to contribute towards this issue of scope and principle of the Bill.

271. The first of these is that the petitioners cannot raise a question as to whether there should be a Holocaust memorial and learning centre in Victoria Tower Gardens. The second is that petitioners cannot argue that the memorial should not be co-located with the learning centre. The third is that they cannot question that a learning centre may be constructed underground. Those are the three matters where we will not allow any further submissions to be made.

272. MR KATKOWSKI KC: Thank you, My Lord.

273. THE CHAIR: Now, there is one other thing, Mr Katkowski. We are working out

our schedule.

274. MR KATKOWSKI KC: Thank you.

275. THE CHAIR: We understand that you will be unavailable for two weeks altogether.

276. MR KATKOWSKI KC: As things stand at the moment, my Lord, yes. That is subject to the final timetable for something else that I am engaged to do.

277. THE CHAIR: I am afraid that we will have to continue with our hearings and your learned junior will have to take your place.

278. MR KATKOWSKI KC: I am sure she will do a far better job than I would have done anyway, my Lord.

279. THE CHAIR: Very well. Thank you very much. That is all for today. Tomorrow we will hear the three recreation societies, if you like to call them that, or local amenity societies represented by yourself.

280. MR DOCTOR KC: Thank you, my Lord. Is that at 2 pm?

281. THE CHAIR: 2 pm. That is it. Thank you very much.