

CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 16 October 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
Richard Turney KC, Counsel, MHCLG
Robbie Owen, Parliamentary Agent, Pinsent Masons

FOR THE PETITIONERS:

Brian Doctor KC

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(At 2.30 p.m.)

1. THE CHAIR: Good afternoon, everybody. This is the first public meeting of the Select Committee on the Holocaust Memorial Bill. The Bill, as I imagine most if not all of you know, is a hybrid Bill, and it is a hybrid Bill because it has both private and public elements to it. We are concerned, as a committee, to address the concerns of those who are directly and specially affected by the Bill—that is, private interests. When we have finished hearing the arguments and reached decisions on the Bill, whether it should be amended or not, and if so in what way, the Bill will continue its ordinary legislative course as a public Bill, so that it will then be recommitted to a Committee of the Whole House, in a Grand Committee, and it will have a separate Report stage and a Third Reading in the usual way, providing an opportunity for the House itself, should it wish to do so, to amend the Bill in the same way as any other public Bill.

2. Today, we are only going to hear an opening on behalf of the promoters of the Bill. After today, the committee will resume its next public meeting in November, Tuesday, 5 November, when we will hear the petitions against the Bill, the promotion of the Bill, first of all concentrating on which of the petitioners whose standing is challenged have a right of standing to challenge the Bill and bring their petition. Once we have dealt with the issue—and of course the petitioners who are challenged will be entitled to be heard on that challenge—once we have decided whether all or only some of the petitioners have standing, we will then continue with what I would describe as the more substantive challenges to the Bill itself, other than standing.

3. That is the general outline procedure that we are going to follow. I ought to just mention a point about admin, in particular the fire alarm system. In the case of fire, bells are not used in the Parliamentary Estate, but a two-toned siren is followed by a series of taped messages that are broadcast. If evacuation is necessary, will you please follow the instructions of the clerk? Anyone not in the committee room itself at the time should find the nearest security officer.

4. The proceedings will be broadcast, the public proceedings, and a full transcript will be taken of the proceedings. If we, as a committee, need to stop to consider particular points, I will ask you if you could clear the room, and we will then, if need be, go into a private session.

5. As I understand it, as part of the promoter's opening, we will be referred to various images on the screen. These will be visible to people in the committee room, but they are not visible immediately by those who are not in the committee room, but they can be found and will be found on the parliamentary webpage of the committee so that, in one way or another, both those in the room and the general public will be able to see these images.

6. As far as declarations of interest are concerned, I do not think there is anyone other than yourself, if you want to make a declaration, as to any possible interest.

7. LORD FAULKNER OF WORCESTER: Would you like me to declare that now, Lord Chairman?

8. THE CHAIR: I think so, yes.

9. LORD FAULKNER OF WORCESTER: Yes, I am a resident in a block of flats in Page Street. As one of the petitioners has put that down as reasons why he wants to be a petitioner, I felt it necessary for me to record that.

10. THE CHAIR: There are no other declarations of interest, adverse interest of any kind. On that basis, with that short preliminary, I call upon counsel for the promoter to make the promoter's opening speech. As you will be aware, the committee have been provided with and read openings and closings in the Commons.

Opening Statement by Mr Katkowski KC

11. MR KATKOWSKI KC: Thank you very much. I am obliged. My name is Christopher Katkowski KC. I am instructed, together with my learned friend Mr Turney KC, who sits immediately to my left, and we are jointly instructed by Mr Robbie Owen, parliamentary agent, of Pinsent Masons, who sits two to my left. As you have rightly pointed out, much of what I am going to say is captured on various slides, a booklet. Soft copies of these are available. As you rightly said, it will be available on the website as well. I will just ask for the first of the slides, the introduction.

12. By way of introduction, if you have available to you soft copies of the booklet of the slides, then you might find it easier to actually to use those than to look at the screens. We are on slide 2, or page 2, of the booklet, and this simply explains that I am

going to set out a few points concerning the planning application for the United Kingdom Holocaust Memorial and Learning Centre, the legal challenge to the grant of planning permission for that—the successful legal challenge to the grant of planning permission for that, which has led us here today—the Bill itself, its finding of hybridity, which has already been referred to, and progress through its parliamentary stages to date, a little bit about the gardens themselves, Victoria Tower Gardens, and some background as to how it was that the United Kingdom Holocaust Memorial and Learning Centre came to be proposed.

13. With that in mind, I will ask for the next slide, please, at page 3 in the booklet. This just explains that a planning application for the United Kingdom Holocaust Memorial and Learning Centre was submitted to the local planning authority—that is Westminster City Council—as long ago as December 2018. Now, the applicant for that planning permission is the promoter of this Bill—that is to say, the Secretary of State. In November 2019, the planning application was called in by the then-Housing Minister. The call-in process is a process where central government can take out of local government's hands the decision on a planning application and have that determined at central government level instead.

14. Unsurprisingly, because one part of the relevant ministry, or department, was promoting the project, and another part of the same department was, in due course, to decide the project's fate in planning terms, what are called special handling arrangements had to be put in place to ensure an ethical wall between the two parts of the department. In effect, there has been absolutely no communication between one side of the wall and the other. These handling arrangements were actually the subject of legal challenge and the High Court upheld the legality of the handling arrangements with a few small adjustments to them.

15. A planning inquiry was held in October through to November 2020. That was conducted by an independent inspector from the Planning Inspectorate, who heard evidence by way of—because of the time of the hearings during the various lockdowns, that was all dealt with online. It is all publicly accessible of course, and the inspector heard evidence from the applicant for planning permission, from the city council as local planning authority, and from many supporters and many opponents of the scheme. That evidence was heard over a space of some 20 days, and the written evidence that

was submitted remains available. Just by way of comment, or observation, the matters considered at that inquiry ranged far and wide, or very far and very wide, in fact.

16. Following the inquiry, the inspector prepared a report, weighing up all of the evidence, identifying the key points as he saw them, and coming to his conclusions on them. As we will see in a few moments, he recommended that planning consent should be granted, and that was in his report of April 2021. In due course, the Minister who had been appointed to determine the case agreed and granted planning permission in July 2021. Although the High Court, as we will see, subsequently quashed the Minister's decision, it is certainly our case that the inspector's report still stands as a perfectly valid assessment of all the relevant matters, apart from where the High Court ruled there had been a legal error.

17. LORD HOPE OF CRAIGHEAD: One of the features of the Bill, if you look at Clause 1, talks about "a memorial". It does not actually refer to the scheme as you are going to describe to us. But you are asking us, for the purposes of this inquiry, to assume that what we are going to be talking about is what was the subject of the planning permission.

18. MR KATKOWSKI KC: Absolutely, my Lord. Yes, "a" in my submission includes "the". This point unsurprisingly arose in the Select Committee stage in the House of Commons, at which I referred to the Explanatory Notes for the Bill, which are clear on the point. That is to say that it was explained in those Explanatory Notes that the purpose of, certainly, Clause 2 of the Bill is to remove an obstruction that the High Court had held stood in the way of the building of the Holocaust Memorial and Learning Centre. The statutory provision in the 1900 Act was the reason why the planning permission was quashed. The whole purpose of the Bill, which I will come to in more detail slightly later, is to ensure that that point no longer stands in the way of getting on with building the memorial and learning centre. Yes, I take the point. I have found the notes now. It is paragraph 8 of the Explanatory Notes for the Bill. I will just read it. It is a single sentence.

19. THE CHAIR: We all have the Explanatory Notes, and we have read them.

20. MR KATKOWSKI KC: I am very grateful indeed. Paragraph 8 is the relevant paragraph.

21. THE CHAIR: Thank you.

22. BARONESS SCOTT OF NEEDHAM MARKET: Could I just ask you to clarify for me the exact status of the planning decision?

23. MR KATKOWSKI KC: The planning application remains to be determined. The decision itself by the Minister at the time to grant planning permission has been quashed, so expunged from the record, by the High Court. That leaves a planning application which remains to be determined again.

24. BARONESS SCOTT OF NEEDHAM MARKET: Is it your understanding that a second inquiry would need to be held to deal with that, or would the inspector's report still apply?

25. MR KATKOWSKI KC: Two points in answer to that, my Lady. First of all, it is for those on the other side of the ethical wall, in due course, to decide whether or not there will be another planning inquiry. It is not for the applicant, the Secretary of State, the promoter of the Bill, to decide that. To be quite frank, it is anyone's guess as to whether or not there will be another inquiry, or whether it will simply be dealt with by written representations, in effect updating the decision-maker on changes of circumstances since we went through all of this a few years ago. It remains to be seen. That decision will be made in due course by the Minister as to how future proceedings in relation to the planning application will be dealt with.

26. As for the inspector's report, which is the other point you raised with me, the inspector's report has not been quashed by the High Court. It remains as a document of record setting out the previous inspector's summary of all of the evidence, his conclusions and all of the points that he considered, and it is there. As far as we are concerned as the applicant—here, the promoter of the Bill—all of those conclusions remain perfectly valid, apart from those that the High Court indicated in its judgment were wrong in law, and they all revolve around the effect of the 1900 Act.

27. THE CHAIR: Could I just follow on from that question and your answer? The inspector's report remains as an historical document.

28. MR KATKOWSKI KC: Yes.

29. THE CHAIR: But it carries no legal status as such.

30. MR KATKOWSKI KC: I would submit its status is that it is his report setting out a summary of all of the evidence that he heard and his conclusions on them. When the Minister comes to redetermine the planning application, depending on the process that he decides to follow, for example—it is binary, really—the process will either be a second planning inquiry or written representations. If the decision is made by the Minister to have a second planning inquiry, then in due course the Minister will have two inspectors' reports to hand. He will have the report of the first inquiry, the inspector who conducted the first inquiry and his conclusions, and he will have the report of the second inspector who conducted the second inquiry.

31. The important point to bear in mind here is the extent to which, if there is to be a second inquiry, the Minister would in any way seek to guide the scope of that second inquiry. For example, will there be some form of indication that the second inquiry is to concern itself simply with material changes of circumstances, developments in the relevant local plans for the area, and so on and so forth, as opposed to going around all of the issues all over again? That remains to be seen. If it is written representations, on the other hand, then the Minister will not have a second inspector's report. He will have the first inspector's report, and he will have whatever written representations are submitted to him.

32. THE CHAIR: This may have no bearing whatsoever on the outcome of what is before us, but just to clarify in my own mind, in any event, it will then therefore be open to those who may dislike the Bill, even after it has been through all its parliamentary stages, to bring pressure for a new inquiry, perhaps, or at least something more than mere paper representations. There may be a contest about whether that decision is correct or not. That may end up in legal proceedings. But you would say—is this right?—yes, all that may happen, but when we are looking at the Bill now, in conjunction with the Explanatory Notes, what we should be focusing on today is the application has been made that this Bill seeks to support.

33. MR KATKOWSKI KC: With a caveat, yes. Clause 1 is about expenditure. The controversial part of the Bill, so to speak, is particularly Clause 2, which seeks to remove that statutory obstruction that the High Court has held stands in the way of

building, well, anything really, but building the Holocaust Memorial and Learning Centre in Victoria Tower Gardens. The Bill does not, unlike other Bills of its type, seek in any way to grant planning permission or statutory consent for the project. That is a very, very important distinction that will lead me, in due course, to make submissions to you about what is in scope and what is not in scope for this committee.

34. Reverting to one of the earlier questions you asked me just now, my Lord, certainly, it would be entirely open to all those who wish there to be a second planning inquiry to make submissions to that effect to the Minister. It would be anticipated—and this process is already underway—that the Minister will give all those who might conceivably be interested in either supporting or objecting to the grant of planning permission the opportunity to say, “Yes, I would like there to be another inquiry”, “No, I would not like there to be another inquiry and here are my reasons for that”.

35. THE CHAIR: Including more recent developments, or whatever they may be, causes for concern that people are worried about where they were not worried before, all that sort of thing. That is all for the future and all contestable.

36. MR KATKOWSKI KC: Indeed, all for the future and all contestable, and sitting here I have absolutely no doubt will be the subject of considerable contest.

37. THE CHAIR: Thank you very much.

38. LORD JAMIESON: Sorry, I am just going to belabour this point, not particularly for our benefit, but for the benefit of others. Your contention is, very clearly, that if people have any planning-related issues related to this, then they will have the opportunity to raise that, either through a public inquiry, if one is granted, or through written submissions.

39. MR KATKOWSKI KC: Indeed.

40. LORD JAMIESON: Very clear that they will have the opportunity.

41. MR KATKOWSKI KC: Absolutely—and forgive me for submitting this—and the upshot of that: given the nature of the Bill, which is not to seek to grant planning permission or any statutory consents, but rather to remove a statutory obstruction, planning matters are patently not for the committee.

42. THE CHAIR: We will come to that in more detail when you deal with the principle of the Bill and how it fits in, because you will appreciate that we are in a slightly different position from the Commons, because although the Commons had the benefit—if that is what it is—of an instruction that dealt expressly with planning, the normal course in this House, which is taken by this House, is no instruction. Therefore, we have to work out, in conjunction with considering the principle of the Bill, how the planning issues come into play.

43. MR KATKOWSKI KC: Indeed so, of course, my Lord. Yes, to be frank, the instruction in the House of Commons Select Committee was a mixed blessing, because we seemed to spend as much time seeking to construe and interpret the instruction. To be quite straightforward about this, in large part, I, the promoter, simply reverted to basic principles. What is the principle of the Bill? What is public policy? What is not public policy, and so on? The instruction was helpful to an extent, as you have said.

44. This slide sets out the inspector's conclusions on heritage assets, to cut a long story short. Victoria Tower Gardens and its environs, particularly the Palace of Westminster in which we sit, unsurprisingly are the subject of a great many heritage designations to protect the special interests of the various buildings, structures and memorials. Because there was a challenge at the public inquiry, the inspector had to reach conclusions on whether or not the project, the United Kingdom Holocaust Memorial and Learning Centre, would cause any harm to the special interest of those various listed buildings, world heritage sites, conservation areas and so on, and, if there would be harm, what that degree of harm would be. This slide briefly encapsulates his various findings. He found some harm, which he then had to balance against the public benefits of the proposals.

45. To the next slide, please, this is page 5 in the book, if you are using the book. In relation to the public benefits, the inspector found very, very considerable public benefits in the twin objective of having a memorial to the Holocaust and a learning centre in relation to the Holocaust. He found very considerable public benefits in that of at least national importance, and he, in weighing those public benefits against the various harms he had found—to cut a relatively long story short—concluded that the public benefits clearly outweighed the harmful consequences as he found them.

46. On the next slide, one of the great issues for the planning inquiry was whether or not the memorial and learning centre should be—a rather clunky modern expression—co-located. Should they be next to each other? The learning centre is underneath the memorial in the proposal, and he reached very clear conclusions that it was a very good idea to co-locate the two for the reasons that are briefly captured on this slide here.

47. On the next slide, page 7, it was not all about heritage. It was not all about the public benefits of the proposal. There were a whole host of other issues that arose. No planning case would be complete without, for example, traffic being an issue. It was here as well, but also flooding, terrorism, security, crime, all points considered at the public inquiry and all points the inspector decided should not stand in the way of the project moving ahead.

48. Which then leads on—slide 8—to his overall conclusion, which is captured at the top of this slide, that, accounting for all of the pros and cons, it was clear to the inspector that the significant range of truly civic, educative, social and even moral public benefits the proposals offer would demonstrably outweigh the identified harms that the proposals had been found by him to cause. I should mention here, as I did at this stage in the House of Commons Select Committee, that the inspector's conclusions cover some 60 pages. For those of us, like me, whose life largely comprises of going from planning inquiry to planning inquiry, these reports are often very technical and, dare I say, a bit dry. This report is exceptionally evocative. It is almost poetic, to be frank, and if one ever has the opportunity to glance at his conclusions, they are well worth a read, I have to say.

49. Moving on, so with his report submitted recommending the grant of consent, the Minister, then, in due course, or very soon after that—

50. THE CHAIR: Just one small point. Is it detailed planning consent—

51. MR KATKOWSKI KC: Yes.

52. THE CHAIR: —or is it outline?

53. MR KATKOWSKI KC: No, it is detailed. Absolutely, yes, every detailed element is part and parcel of the planning application, hence why, for example, there was a great

deal of discussion at the inquiry about the material of the fins of the memorial. There was a great deal of discussion of the precise detail as to how it was that we would be able to insert a large box underground in the gardens to hold the learning centre. What impact would that have, as a matter of precise detail, on the roots of this particular tree, that particular tree, every tree that was anywhere near the project? The level of detail was intense, I have to say.

54. THE CHAIR: Thank you.

55. MR KATKOWSKI KC: Moving on to this slide, page 9, there was then a challenge by one of the petitioners here, actually. It is the London Historic Parks and Gardens Trust, who made an application to the High Court for a statutory review, equivalent of a judicial review, of the Minister's decision to grant consent. There were three grounds for that. They are briefly summarised here: that the inspector and the Minister, first of all, had applied the wrong legal test when looking at the extent of harm to one of the heritage assets, as they are described, the Buxton memorial, and grounds 3 and 4, the other grounds, were not given consent by the Court to proceed, hence, 1, 3 and 4. Ground 3 related to the 1900 Act, that the inspector and the Minister should have taken into account the 1900 Act as a material consideration but had not, and ground 4 was that the inspector and the Minister had taken the wrong approach to looking at alternative sites.

56. You might or not be aware that one of the main contentions made against the project was that, in relation to the learning centre, there was no need for it to exist at all, let alone in Victoria Tower Gardens, because it was argued and contended that there is a perfectly good, in effect, learning centre in relation to the Holocaust at the Imperial War Museum. That sort of alternative location argument was made at the inquiry. Moving to the next slide—

57. LORD JAMIESON: If I could just delve into your expertise in this area, to that final point about whether it is the right location, my understanding of planning is the planning inspector would only consider what is in front of them, and therefore, it would not actually be part of their remit to look at whether there was a better site or not. Therefore, the fact that they did not agree with that point is neither here nor there, because it was not actually what they were being asked to look at.

58. MR KATKOWSKI KC: I am afraid I am going to give a lawyer's answer to that. The answer is yes and no, and the reason I say that is, in part, you are right, my Lord, and in part not. You are right to the extent that the inspector had and the Minister had before him a planning application for a specific project in a specific location. He did not have applications for the same or a similar project, or half of that project, somewhere else. But in relation to a project of this nature, where it is within the setting, in some cases a very immediate setting, of a number of highly protected heritage assets, listed buildings, monuments, the Palace of Westminster and so on, it is perfectly open to an objector to a project of this nature to say, "The harm that you would cause by putting the project here is needless, because you can put your project somewhere else without causing harm to either heritage assets at all, or to these particular assets, or you might cause some harm somewhere else, but nothing like the harm that you would cause here".

59. That argument is a perfectly legitimate argument to be made as a material consideration to seek to persuade the decision-maker to refuse permission for the particular project. That is why at the public inquiry, there was actually a considerable amount of debate about alternative locations for either part of the project or both parts of the project, depending on which objector was the objector of the day. In a strict sense, patently, there was not an application for the project to be somewhere else in front of the inspector, but the argument that it could go somewhere else in whole or in part without causing the degree of harm this project would cause in this location was very much before the inspector.

60. LORD JAMIESON: Thank you, but not the relative merits of it? His conclusion would still be, as you were saying, that the merits, the positive points of this site, outweigh the negatives. It was essentially his decision, rather than saying, actually, this is the best site.

61. MR KATKOWSKI KC: Again, I am going to be slightly cautious in answering that, or slightly caveated in answering that, because it was part of the promoter's case, the applicant's case, in front of that inspector that the location of Victoria Tower Gardens is supremely appropriate. To have a memorial to the Holocaust and a learning centre to the Holocaust right next to Parliament, we consider to be exceptionally appropriate, a nationally and internationally important project in a nationally and internationally important location. We saw it as a very important part of the message of

the memorial and the learning centre that it should be where it was proposed. Others had a very different view. Certainly, one of the matters the inspector had to grapple with, and did, was whether what I have just said was right or not, and he concluded that it was. Obviously, others have a very, very different view.

62. LORD JAMIESON: Thank you.

63. LORD HOPE OF CRAIGHEAD: Perhaps to follow up on that point just one step further, you have said earlier that the issue of planning would remain open for further consideration after the Bill has passed. Would that mean the issue of alternative sites would be open to scrutiny again at that stage?

64. MR KATKOWSKI KC: Yes, my Lord, with this caveat. Much would depend upon whether the Minister, in deciding whether there should be another inquiry or in deciding whether it should be dealt with by written representations, decides to give guidance as to the issues that he or she wishes to be addressed on either at that inquiry or in those representations. I have to say, to be quite straightforward about this, that I would be very, very surprised indeed if any attempt to circumscribe the ability of those who object to the proposals to, for example, argue again that the proposal should be somewhere else—I would be very surprised if any effort to circumvent or stop that sort of argument in the planning sphere was successful. That would surprise me.

65. LORD HOPE OF CRAIGHEAD: That is speculation, but it would be open to discussion at that stage.

66. MR KATKOWSKI KC: It would be open to discussion, and it would certainly be open to all those who object in the planning process to make all of their points again. I have no doubt the points will be made again. We will come to it in due course, but in the petitions that are before you, the petitions here are by a large part raising matters that very comfortably fit into the planning world.

67. As you will be aware, and as is briefly summarised on this slide, the result of that legal challenge was the High Court dismissed the challenge on ground 1, the way in which heritage had been looked at, but did decide that putting the memorial and learning centre in Victoria Tower Gardens would be contrary to the statutory purpose of Section 8 of the 1900 Act and that that in itself is, in planning speak, a material consideration,

quote unquote, that was not considered by the Minister but should have been, so, therefore, the Minister's decision erred in law because he omitted considering something that he should have considered.

68. In relation to alternative sites, given that one of the points made by the inspector in his report was that it was perceived by him and by the applicant to be important to try to have this memorial in place while there are still Holocaust survivors alive, he used that as one of the reasons he gave for saying, "We really haven't got the time to be considering alternative locations through some form of planning process because there is a need to get on". But it was held by the High Court that that part of his reasoning was erroneous, and the Minister's reasoning in adopting what the inspector said was erroneous, because again, they had failed to take into account the implications of the 1900 Act for the applicant, the Secretary of State's ability to just get on and build in Victoria Tower Gardens.

69. It is not on the slide, but the High Court refused permission to appeal to the Court of Appeal, and subsequently the Court of Appeal refused leave to appeal, concluding that the case against was unarguable. As I said earlier on, the application for planning permission remains there with the Minister awaiting a redetermination after whatever process the Minister decides to follow.

70. Moving on to the next slide—we are on page 11—as I am sure the committee will know, the relevant provisions of Section 8 of the London County Council Improvements Act 1900, which included all sorts of works, but amongst the works that the Act included were works between what is now the Embankment and what was then the alignment of Millbank Street, included works to clear land of various buildings.

71. In Section 8(1), as you can see on the left-hand side here, it was set out in that statutory provision that the land in question was to be laid out and maintained for use as a garden open to the public as an integral part of the existing Victoria Tower Gardens. In short, at the time of the 1900 Act, "Victoria Tower Gardens north" was already in existence. This Act dealt with what one might describe as "Victoria Tower Gardens south". The two have morphed and merged together now, and one would never know that one was older than the other. In effect, the line in question is parallel to Great Peter Street, so this Act was dealing with below Great Peter Street, so to speak, and the

existing gardens were above, as we will see in a very few moments' time when we look at the slide. Section 8(8), right-hand side of the slide, is that the commissioners, as they then were, were to maintain the garden so laid out. Those provisions were held to constitute a statutory obstacle to delivery of something like the Holocaust Memorial and Learning Centre in the gardens.

72. Turning the page and slides, this is the deposited plan, and then the signed plans on the next slide for that Act. There are better images later on, rather than trying to decipher these particular plans, as we will see.

73. With all of that having happened to the project, and the High Court having quashed the planning permission on that basis, at slide 14, in the light of that, the decision was taken not only to proceed with the Holocaust Memorial and Learning Centre, but to introduce a Bill into Parliament to seek to resolve the issue that has arisen, the obstacle that has been found to stand in the way of the delivery of the project, hence the Bill.

74. Clause 1, as you very well know, authorises the Secretary of State to incur expenditure in connection with a memorial commemorating the victims of the Holocaust and a centre for learning relating to that memorial, and that provision relates to any land anywhere in England and Wales, so Clause 1 is not specific to Victoria Tower Gardens, whereas Clause 2 is very specific indeed to the site and area in question, because Clause 2 seeks to remove the statutory obstruction, so that one can carry out works and build the memorial and the learning centre.

75. LORD FAULKNER OF WORCESTER: Have there been other attempts to build on the gardens since the 1900 Act was passed?

76. MR KATKOWSKI KC: Yes. There is the parliamentary learning centre, which is immediately beside Parliament in the gardens, and there are various memorials in the gardens, all of which in the planning world would constitute structures or erections, buildings, therefore, which require some form of consent. The issue about the implications of the 1900 Act and Section 8, to the best of my understanding, arose uniquely for the first time in relation to this particular project.

77. LORD FAULKNER OF WORCESTER: Thank you.

78. MR KATKOWSKI KC: It is my understanding.

79. THE CHAIR: Although you discussed with us, very helpfully, the whole issue about the future in terms of planning, what might happen or what might not happen, at the end of the day, as I understand it, consistent with the Explanatory Notes, your contention is that the promoter wishes to erect this very same building with the same detailed planning permission that was granted in the past on this site.

80. MR KATKOWSKI KC: That is absolutely correct, yes.

81. THE CHAIR: And you would say that is what we should be focusing on.

82. MR KATKOWSKI KC: That you should be focusing, certainly, on the proposition that when the Bill refers to a Holocaust memorial and learning centre, “a” very much includes “the” particular Holocaust Memorial and Learning Centre. It would be, in my submission, a major failure of drafting if this Bill did not do what it was intended to do, which was to remove the statutory obstruction that the High Court held stands in the way of delivering the particular project.

83. THE CHAIR: Thank you.

84. MR KATKOWSKI KC: To put it in colloquial terms, that is why we are here.

85. THE CHAIR: Yes.

86. MR KATKOWSKI KC: Moving on to slide 15, as has already been pointed out, the examiners found the Bill to be hybrid, memorials having been submitted by various parties and hearings having been held into that, and concluded the Bill was hybrid.

87. Then to slide 16, the Bill moved through its various stages in the Commons, including a Select Committee stage, and if we go to slide 17, we can see there, second main bullet point, there were 10 petitions against the Bill submitted at the Commons stage. The Secretary of State made the decision not to challenge, not to issue any right to be heard challenges, and therefore, if we move to slide 18, of the 10 petitions, eight of the petitioners were heard by the Commons Select Committee, and their report—slide 19—was issued in April of this year. The committee decided not to amend the Bill, concluding that various points they had heard from the petitioners related to planning,

which was not a matter for them, and various points were seeking to undermine the whole principle of the Bill, again not something for the committee.

88. If I just sit back a bit at this point, the decision having been made, rightly or wrongly, to be frank, not to issue right to be heard challenges at this stage in the House of Commons, what then eventuated was that the Select Committee at the House of Commons stage heard a number of petitioners, and heard me, in effect, submitting that, because of the nature of the instruction and because of basic fundamental principles as to what was within scope for this sort of committee and what is not, the committee were then faced in due course with having to grapple with all of that and deciding that the vast majority of what they had heard was not within the scope of those proceedings. I have to say, having been through that process and having read the committee's report, which was not warm in its praise, shall we say, of the approach that had been adopted, that has led us to adopt a very different approach here.

89. LORD FAULKNER OF WORCESTER: When you say "the approach being adopted", you mean by you as promoters.

90. MR KATKOWSKI KC: By us as promoters, yes. The approach being, in effect, to say given the nature of what we are dealing with here, we had reached the conclusion that, at that stage, we would not challenge the right to be heard of any of the petitioners. Perhaps it should have been foreseeable, but the unforeseen consequence of that was that we had a series of sessions in front of the Select Committee in the House of Commons, at which we were repeatedly saying these points are simply not matters for the Select Committee. They are out of scope. They are planning. They attack the principle of the Bill. They are matters of public policy, which are obviously not for the committee, so on and so forth. I have to say, I can understand the frustration of the committee in that regard, and we are seeking to address that in our different approach here. Whether that different approach will frustrate this committee or not, we will wait and see.

91. LORD HOPE OF CRAIGHEAD: They may have been misled a bit by what happened in the HS2 cases, because in HS2, they were concerned with people whose land was affected along the line of the line. In all of the cases, they had a reason for saying they were especially affected by the way the proposal was being promoted. But

this is very different.

92. MR KATKOWSKI KC: This is very different. Racking our collective minds, what we have here is a Bill that is quite literally unique. We are not aware of any direct precedent for a Bill of this particular and peculiar kind. It is certainly extremely unusual in that it does not seek in any way to grant consent for the project in question. For want of a better way of putting it, one is feeling one's way as to how to deal with the various issues in the case, whether or not to adopt a pretty tough line as to, "Look, this really isn't for the committee", or not. Anyway, we are where we are. We are here, and we have made it quite clear that we do challenge the right to be heard of all bar two of the petitioners, but we will come to that.

93. Moving on, the Bill moved on in the House of Commons, and then turning the page to slide 20, as you will know, the Bill has had its First Reading and after the general election its Second Reading in this House, and then at slide 21, as has already been pointed out, because of established practice and convention, there is no instruction motion here in this House for this committee. But the promoter does submit that the principle of the Bill is clear, and that any petition that seeks to challenge the principle of the Bill is a matter that should not be considered by this committee.

94. On this slide, we briefly set out what we consider the principle of the Bill to be, and I will just read this out. It is very straightforward: the Secretary of State may incur expenditure for, or in connection with, a memorial commemorating the victims of the Holocaust and a centre for learning relating to that memorial, and the relevant provisions of the 1900 Act are not to prevent, restrict or otherwise affect the construction, use, operation, maintenance or improvement to such a memorial and centre for learning at Victoria Tower Gardens in the City of Westminster. At the bottom of the slide, the point I have already made on a number of occasions is that that applies to whether it is "a" memorial and learning centre or "the" particular memorial and learning centre that is the subject of the planning application, which remains to be determined.

95. At this point, I should mention that there is a separate note setting out our position on the principle of the Bill and, indeed, the scope of the Bill. It is a very short note. It is only a page. This one is fairly easy to digest. Soft copies are coming around. In due

course, I will go through this in more detail when we come to the right to be heard challenges, but this just encapsulates our position in relation to the principle of the Bill. It is well known that matters which relate to the principle of the Bill are not for this committee. At paragraph 4, we set out—

96. THE CHAIR: Is that not a bit wide, saying “which relate to”? What we are precluded from looking at or dealing with are those which are contrary to the principle of the Bill. “Relate to” is a very wide and ambiguous phrase. What we are concerned with is whether any of the petitioners complain about matters that are contrary to the principle of the Bill.

97. MR KATKOWSKI KC: Thank you. I am perfectly content to accept that, not least because, in the third line of the paragraph in question, we indicate that what we mean by that is “destructive of the principle”, which, in my mind, is your very point. I am perfectly content for “relate to” to, in the second line of paragraph 2, say “contrary to”.

98. Then, at paragraph 4, we set out the principle as we submit it is, and at paragraph 5 we indicate that we consider that that applies to the particular project that is being promoted. At paragraph 6, the obvious point, but it is in the note, nonetheless, that, as the Bill has received its Second Reading in this House, this House has confirmed the principle of the Bill prior to committing it for consideration by this committee, which is self-evident.

99. Then, at the bottom of the page, we move to matters that go beyond principle to matters of scope, as we would describe them. We indicate in the seventh paragraph here that we submit that any matters raised in the petitions that relate to either of the points made in paragraph 4 concerning the principle of the Bill or do not relate directly to the scope of the Bill are not matters for this committee. They include, first of all, anything relating to whether or not there should be a memorial commemorating the victims of the Holocaust and/or a learning centre, whether at Victoria Tower Gardens or elsewhere, and secondly, any issues that would be relevant to whether or not planning permission and so on and so forth should be given for such a memorial and learning centre. Those are matters that we submit—and we will come to this in more detail on another occasion—

100. THE CHAIR: It would be helpful for us, actually, to explore that a little bit further

now.

101. MR KATKOWSKI KC: No problem at all.

102. THE CHAIR: In a sense, this whole issue of the principle of the Bill and its relationship with planning issues is central to every single petition—not entirely. I appreciate there are residents who are exercising their dog or themselves in the park, or who are enjoying it with their children. But in broad terms, the overwhelming majority of the complaints that are made about the Bill raise the issue of the interrelationship between planning and principle. For my part, it would be helpful for me to understand a little bit more about why you say the planning issues—for example, the planning complaints—are destructive of the policy of the Bill.

103. MR KATKOWSKI KC: Yes. The way it is put in submission is, first of all, to reiterate the point that I have made already in submission, that, because of the particular nature of this Bill and the fact that it seeks to remove an obstruction as opposed to granting any form of planning permission or consent, that is the first major point in this, that planning matters are for elsewhere and are certainly not for this committee. That is a scope point. The way I put this in my submission to the House of Commons Select Committee is a way I am perfectly content to put here again, that there would be some form of acid test, which is to ask what the petitioners are actually seeking by way of amendment of the Bill, bearing in mind it is not for this committee to say the Bill should not proceed as a Bill. The only thing that you can do is to either decide that there should not be amendments to it or there should be amendments to it.

104. To the extent that petitioners, either in their petitions or, in due course, orally explain, as a number of them did in front of the Select Committee in the Commons, what amendments they are seeking, one can apply an acid test, which is to ask, ‘Would that amendment actually have the effect of continuing in some shape or form the statutory obstruction that currently stands in the way of building the memorial and learning centre in Victoria Tower Gardens?’, so to look at the consequence of what they are seeking, and to work back from that to then see whether or not the points they make in their petition are points that are now for this committee. It very much depends, to my mind and in my submission, on what it is the petitioners are actually seeking, because saying, “We don’t like the idea of a memorial and learning centre to the Holocaust at

all”, or “We don’t like it here”, or “We don’t like part of it here or anywhere”—

105. THE CHAIR: That is all at one end of the spectrum.

106. MR KATKOWSKI KC: Exactly.

107. THE CHAIR: But it is the rest of the spectrum that I am particularly interested in. If somebody says, “I don’t want that particular building here”, or “I loathe the design and you can’t have that here”, that is at one end of the spectrum. What about if people talk about something lesser than that, for example how much of the area is taken up by the memorial, either generally any memorial or the memorial for which planning permission was originally obtained, or that the playground would be interfered with, and all those sorts of issues? What do you say about all of those matters?

108. MR KATKOWSKI KC: First of all, I would say they are all planning matters. Secondly, I would say that, given that in my submission the Bill is there to ensure that there is no longer a statutory obstruction that stands in the way of constructing the proposed United Kingdom Holocaust Memorial and Learning Centre, any petitioner who seeks some form of amendment that would, in effect, pin the project down to a smaller part of the gardens than is needed for the particular project would be patently out of scope, because it would defeat the whole purpose, the principle of the Bill, and so on and so forth.

109. The indication that we gave to the committee in the House of Commons, similarly we would indicate here as well to this committee, which is that, of the various points made by the petitioners, in our submission, we only regard two particular matters as potentially being in scope for this committee. They are the same matters as we indicated to the House of Commons Select Committee, and they are, on the one hand, what I would describe as territorial matters and the other as temporal matters. Territorially, in some of the petitions, it is argued that the Bill should be amended so that the obstruction is lifted from no more of the gardens than is needed to build, operate and so on the particular memorial and learning centre that we propose. In other words, the obstruction should not be lifted across the entirety of the gardens because we don’t need the entirety of the gardens for this particular project. That is a territorial restriction on the extent of the removal of the statutory obstruction. It is something that, we have indicated before and we indicate again now, we consider to be in scope.

110. Temporal matters: some of the petitioners indicate here, just as they did to the House of Commons Select Committee, that the Bill should, in some way, have some form of sunset clause, as they are colloquially known. That is to say a provision that would, in some way, limit the time during which the obstruction is lifted from the gardens so that we could not just go around in circles for decades, so that, if we do get a planning permission for the project, that there would be a time period during which we would, in effect, have to get on.

111. LORD HOPE OF CRAIGHEAD: What you are saying, if I may put it this way, is that paragraph 7.2 of your paper is a little bit too wide, because you say you are excluding anything that would refer to the terms and conditions on which permission would be given. There could be, as a condition of permission, a territorial restriction of the kind you have described and possibly even a temporal restriction as well.

112. MR KATKOWSKI KC: My Lord, yes. This thought has occurred to me, and my answer to it is “yes, but”. The “but” is that, in the planning world, you are absolutely right, of course, my Lord, that a planning permission necessarily would restrict the scope of the planning permission to the project that is being permitted, and there would be plans indicating exactly what is permitted, and would have time restrictions at least for the commencement of the project. There might or might not be restrictions on the length of time that the project would take to be built. It is unusual, frankly, for that sort of restriction to be in place in a planning permission, but there certainly would be a restriction that is required by statute on the length of time, the shelf life of the planning permission. You have to implement it within a certain period of time.

113. LORD HOPE OF CRAIGHEAD: Are we entitled to have regard to the fact that the construction of the memorial will require perhaps more land to be used in the final result? Is that something we can consider as to whether some conditions should be put in or possibly some kind of undertaking given?

114. MR KATKOWSKI KC: Yes, indeed. This matter arose in front of the Select Committee in the Commons as well. We did discuss there the extent of land, which obviously is larger, for the construction period, as compared to the extent of land required for the project itself, once constructed. For example, throughout, we’ve said that we would need to keep the Embankment walk open through construction. But the

point I was going to make, my Lord, to bring my points together, in answer to your question of a few moments ago, is that whereas in the planning permission there certainly will be a restriction on the extent of the project that is permitted geographically, there will certainly be a restriction that requires the project to commence construction within a certain period of time.

115. Bear in mind that those relate to the permission itself. Here, in the Bill, the reason why we have indicated that it would be within scope for you to consider whether or not there should be a territorial and/or a temporal restriction is because the Bill is not granting a planning permission; the Bill is lifting a statutory obstruction. So it is perfectly logical to say—we regard it as perfectly logical to say, forgive me—that it is open to you to consider whether or not that obstruction should only be lifted over a certain amount of the gardens and/or that that obstruction should have some sort of temporal life—that it would only be removed for a particular period of time, obviously sufficient for us to get on and build. That is why we have made that point. It might be a fine distinction, but it all comes back to the fact this Bill is not granting planning permission; this Bill is removing a statutory obstruction.

116. THE CHAIR: Yes. Lord Jamieson, you had a question.

117. LORD JAMIESON: I am going to slightly belabour that point.

118. MR KATKOWSKI KC: Yes.

119. LORD JAMIESON: My understanding—contention—is this Bill is to remove an obstruction. I do have a concern that it's potentially giving carte blanche and you're actually confirming that. You only need enough in order to be able to deliver the project.

120. MR KATKOWSKI KC: Yes.

121. LORD JAMIESON: Therefore it is perfectly within scope of this Committee, in your view, to put any restrictions on it that do not prevent it being built—

122. MR KATKOWSKI KC: Yes, that's it.

123. LORD JAMIESON: —but could oblige you to build it in what I will call the most effective manner possible, to minimise the impact on the potential plaintiffs, or

whoever. So that could be, as you said, temporal or territorial, but it could also be things around a construction management plan.

124. MR KATKOWSKI KC: That's where I would part company with my Lord. Up until that last point, yes, in that it certainly would be in scope to, in some way, seek to ensure that the obstruction was lifted in such a way that we had to, if you like, be expeditious and efficient in getting on with it. Construction management plans really, really are—the home for such plans is the planning system. There is a construction management plan—well, there was—

125. LORD JAMIESON: I am probably exaggerating here, but what I am trying to get to is what I would call good neighbour clauses.

126. MR KATKOWSKI KC: Yes. Yes.

127. LORD JAMIESON: They are colloquial terms.

128. MR KATKOWSKI KC: Yes. I am only hesitating because that is so, so planning, to be quite frank. We had all of that. When we had a planning permission, that was all part and parcel of the planning permission.

129. LORD JAMIESON: But you are asking for an Act to be removed that is obstructing you at this moment.

130. MR KATKOWSKI KC: Yes.

131. LORD JAMIESON: Therefore, I am trying to delineate what is the minimum, i.e. the removal of the obstruction that we can have. Therefore, we also minimise the potential impact on any of those people who might be impacted, which is an overlap with planning, but planning does not necessarily fully cover some of the impacts on those who may be impacted.

132. MR KATKOWSKI KC: Yes.

133. LORD JAMIESON: Gosh, I'm getting a bit tortuous here.

134. MR KATKOWSKI KC: No, no, not at all my Lord. I would say that the overlap is not really a real overlap, for the reasons which I gave a few moments ago. That is to say

in the planning world any such restrictions would relate to the planning permission itself. Any narrowing, if you like, territorially or temporally, of what we seek in this Bill would simply relate to removing the statutory obstruction, for a particular period of time and/or over a particular part of the gardens. Yes.

135. THE CHAIR: Can I ask whether this can be approached in a slightly different way? I want to deal separately with the question of what you call territoriality, the extent to which the site is used in order to construct the Holocaust centre. I'm going to concentrate on the one that is referred to in the Explanatory Notes. Then there is the separate issue—that I see as a totally separate issue—about time limits for either starting, or continuing, or completing the work.

136. THE CHAIR: As for the first, is it not a necessary part of the interpretation of Clause 2 that you can only remove an obstruction to the extent that it affects the carrying out of the activities? So that contains, within it, the matter of statutory construction, but it is limited. You can't remove something by taking the most expansive approach. It is inherent, in Clause 2, that you should be able to carry out whatever you want to do so, but you cause the least possible effect in so doing.

137. MR KATKOWSKI KC: My Lord, I obviously completely understand the point that is being made.

138. THE CHAIR: Otherwise I have difficulty with what you are conceding to be consistent with the idea that planning matters are out of scope, because I would have thought that how much area is covered, the precise location of the Holocaust memorial, is determined on planning.

139. MR KATKOWSKI KC: It is. The reason I hesitate in answering your point, my Lord, is simply because amongst those who object to not only the proposals, but in particular who petitioned against the Bill, there are some who do express concerns that the clause is so wide in its potential effect that it could enable us, by removing an obstruction across the entirety of the gardens, to, if you like, lift part of our project and put it somewhere else that would be perceived to be, to their eyes, an even worse place for it to be. That is part and parcel of the approach that we have adopted in making the point.

140. THE CHAIR: We are talking, here, in Clause 2, about something that has otherwise obtained all the permissions that are necessary. The only thing that obstructs it is the 1900 Act.

141. MR KATKOWSKI KC: Yes.

142. THE CHAIR: That's the hypothesis we are working under. The issue of how much land should be taken and configuration of the building would have been dealt with at the prior stage of planning.

143. MR KATKOWSKI KC: Or in due course, at the post stage.

144. THE CHAIR: Here.

145. MR KATKOWSKI KC: It will be here, yes.

146. THE CHAIR: I am trying to simplify it.

147. MR KATKOWSKI KC: No, indeed, of course.

148. THE CHAIR: No. That is why I am slightly confused. The concession that I think you are making—because you can make whatever concessions you want and you can give them by way of an undertaking—

149. MR KATKOWSKI KC: Or an assurance, yes.

150. THE CHAIR: Or assurances. You can do all of that. You could even have an agreed amendment to cover this point. I want to try to understand what it is. Is it really a concession? I'm putting to you, just for your consideration, that actually it is a question of statutory interpretation. You can't take more than that for which you have obtained—or hope to obtain, will obtain—planning permission.

151. MR KATKOWSKI KC: My Lord, yes, what you have said is obviously right. Just to be totally straightforward about this, the concern that we are seeking to address, and what might fairly be described as a concession, is a concern that the petitioners well know the project that we seek to get on and deliver, and in relation to which we seek to remove the statutory obstruction. A number of them have expressed concerns, on an interpretation that my Lord may well not accept of Clause 2, but that on one

interpretation of Clause 2 it is drafted in such a wide way to, in effect—well, it would—potentially lift the restrictions anywhere across Victoria Tower Gardens, even though it is perfectly clear that we do not require anything like all of Victoria Tower Gardens for the project, for the memorial.

152. THE CHAIR: This is where it gets very confusing. Can we not just concentrate on that for which you obtained planning permission, which you still wish to implement. If you do that, then it has all been decided.

153. MR KATKOWSKI KC: Yes. Yes, and in that case the concession I have made in the Select Committee, and the concession which I have indicated here, would be redundant in those circumstances.

154. THE CHAIR: Well, that is why I am very confused about this. Maybe I am being a bit slow. I am sorry if I am.

155. MR KATKOWSKI KC: Not at all, my Lord. I'm so sorry; I didn't mean to talk across you.

156. THE CHAIR: No, not at all. I think, if you concentrate on what you have got, the only question is, 'Are the criticisms of this project which you seek to implement such as to give rise to taking more than you should be taking?' But you have been given planning permission for that. That is the obstruction that should be removed, to the extent that you have got the planning permission. That is what you would say, wouldn't you?

157. MR KATKOWSKI KC: Yes. To be frank, we have sought to assuage a concern, and it may very well be, given what my Lord has indicated, that we have gone too far in seeking to assuage a concern. But the concern that has been expressed—I am sorry to keep repeating it—is that we are seeking to remove the statutory obstruction in too wide reaching a way. I completely take the point and it is, if you like, my point that, in due course, if we obtain a planning permission, the planning permission would definitively define the extent of the project, because it has to. But it is the extent of the removal of the obstruction which is the point here. For those who have said against us, "Well why are you seeking to remove this obstruction across the entirety of the gardens, when we all well know that you do not need the entirety of the gardens to carry out this particular

project?”, it is to assuage that concern that we have previously made—including today—

158. THE CHAIR: I have dealt with that. Look, I am only one person, out of five. I am merely expressing my own concerns, and trying to work out exactly—

159. MR KATKOWSKI KC: Yes. No, exactly, but that is my frank response to my Lord’s point. I entirely understand the point. I take the point, but our concession, our approach, has been taken and put forward on the basis of the concern that has been expressed by some of the petitioners. It seemed to us that there was an antidote, if you like. There was a response to those concerns, which is a perfectly sensible response. You may well take a different view, of course. That is for you. All we can do is to make our submission.

160. THE CHAIR: Yes.

161. LORD HOPE OF CRAIGHEAD: There is something to be said for your position, because of the generality of Clause 1. As we pointed out at the very beginning of the hearing today, it uses the word “a”, not “the”. Therefore, as a matter of construction, this is open to—once it is lifted you could come along with a much bigger thing and say, “Okay, we’re not restricted any more. We want a memorial that is twice the size”.

162. MR KATKOWSKI KC: Yes. That is the very point, my Lord. Yes. That is the very point indeed. Given that my instructions are that the promoter, as applicant for the memorial and learning centre, has absolutely no intention of promoting any different project to the one which is being promoted now, and has been promoted for a number of years, that is what has led us to this recognition of the—

163. THE CHAIR: Are you saying that you would accept an amendment to the Bill then?

164. MR KATKOWSKI KC: Well, when this arose in the Select Committee in the Commons, we did proffer an assurance in relation to this. You will well understand, of course, the sequence. Would an assurance cover it? If not, would an undertaking cover it? If not, does an amendment need to be made? Our position was assurance was good enough. As it turned out, the Select Committee in the Commons ultimately was not

really interested in this, if you like, in moving forward with the assurance, let alone an undertaking or amendment. Obviously that was their position. It's open to this Committee to have a different position, of course.

165. THE CHAIR: Do you want us to look at an assurance, by you?

166. MR KATKOWSKI KC: My Lord, as I understand it, it is not necessarily the case for us to—we are perfectly content to proffer an assurance. We have one that we prepared earlier, so to speak, because it was there in front of the Commons committee. But if there is an indication from the committee that the committee would find it helpful for there to be such an assurance proffered, then of course we would do that.

167. LORD HOPE OF CRAIGHEAD: I think there is a point about undertakings and assurances. These are, in fact, a kind of contractual arrangement, to which there has to be another party.

168. MR KATKOWSKI KC: Yes.

169. LORD HOPE OF CRAIGHEAD: This committee will cease to exist, once we have performed our function. So there is a question to whom the assurance is given.

170. MR KATKOWSKI KC: My instructing parliamentary agent tells me, “Standing Order 130”, but I would have to look up Standing Order 130—

171. THE CHAIR: My understanding is the undertaking is given to us, as a committee, on behalf of Parliament. Yes, it is 130. Anyway, I have given you my point of view.

172. MR KATKOWSKI KC: No, thank you very much.

173. THE CHAIR: Not my point of view, sorry. Forgive me. My concern.

174. MR KATKOWSKI KC: Indeed.

175. THE CHAIR: I am still, I have to say, somewhat uncertain why we cannot treat this as some sort of implication, in Clause 2, not to take more space than is necessary to complete the project. That is what I am really putting to you on that.

176. MR KATKOWSKI KC: Yes. You can take that approach, my Lord. I do not resist that for one moment. I say, perfectly straightforwardly, that that interpretation of the

clause, if you like, is not an interpretation that has arisen or been made before. It having been made today, by you, my Lord, I fully accept the force of what has been said. I have also sought, though, to try my very best—and probably failed in doing so—to explain why we have found ourselves in the position that we are in, in indicating that this is a matter which we consider is within scope.

177. THE CHAIR: The next one then, and this, again, I do have some confusion over, is this question of timing, or you call it temporal or expediency, or whatever you like to call it.

178. MR KATKOWSKI KC: Yes. Time is fine, my Lord. Yes.

179. THE CHAIR: Timeliness, anyway. I am very unclear as to the wording that would go into any amendment or any undertaking, other than one of the most general nature, dealing with this: “Yes, we give an undertaking to the committee that”—or as an amendment—“all steps will be taken expediently”. I don’t see how you can be more specific than that.

180. MR KATKOWSKI KC: It may well help for this committee to see the draft assurance that we tendered to the committee in the Commons. We did go a little bit further than that, but not that much further than that, for obvious reasons. We did indicate, “Construction to be carried out in a timely and efficient manner, to a target programme of no longer than three years and six months”. Having taken instructions, that is the period of time that, my instructions are, would be required to construct the project. So we did go a little bit further than just quite generalised, “We will do our best to move on”, if you like.

181. THE CHAIR: It could be said that such a provision actually does offend the principle of the Bill, in the sense that how long a project takes is a matter dealt with either by planning or not at all, because it is something that might result in—perhaps, I do not know—planning permission being withdrawn. I don’t know what the consequence would be of that. What did you envisage as the consequence of a breach of a time limit?

182. MR KATKOWSKI KC: Well, what we put forward to the Commons committee was an assurance. So it probably would be of assistance for you to see the assurance we

tendered. It was just that: an assurance, in effect, that we would do our best, if you like, to move on in a timely and efficient manner. But we did set a target of three years and six months for the construction project, and that was the nature of it. Again, this has all arisen two-fold. First of all, it would be unheard of for a planning permission to set an end date for the construction of a project. That simply will not arise in a planning process. There is a very little-used statutory provision, which allows the issuing of completion notices. So if someone, I don't know, digs some foundations and just leaves the site derelict for years and years, there is an ability to issue a completion notice to require the building to either be built or, in effect, given up. But they are very, very rare indeed. They certainly would not be part of a planning permission.

183. So the idea of setting an end in some way, setting some parameters as to the length of time that we need this obstruction to be lifted for, seemed to us to be an assurance that we could give, again, to seek to assuage the concerns that had been expressed, the very concerns that we could just sit on this provision, if it received Royal Assent, for ever and a day, going round in circles, changing our minds and so on and so forth. We have absolutely no intention of doing that. If the Bill receives Royal Assent, my instructions are that the project will proceed, subject obviously to it obtaining planning permission.

184. THE CHAIR: You handed in a form of words.

185. MR KATKOWSKI KC: We did. We did.

186. THE CHAIR: I am speaking for myself here, but I hope that other members of the committee would express their own view. I think it might be helpful for us to see any assurances that you gave on these two points.

187. MR KATKOWSKI KC: Yes, of course.

188. THE CHAIR: At least we could see what it would be like. Perhaps you would reflect a bit further over the coming weeks, before we meet again, about the various points that have been raised on these two points.

189. MR KATKOWSKI KC: Yes, of course, my Lord. No issue at all, of course. Yes, sorry, again, in terms of procedure, is my Lord indicating that you would wish us to

formally write and set out that draft assurance? It is a page and a plan.

190. THE CHAIR: I am not taking you to have formally offered it yet.

191. MR KATKOWSKI KC: No.

192. THE CHAIR: I think we merely—certainly I—would like to look at it, to see what it looks like.

193. MR KATKOWSKI KC: Indeed, yes. That is how I had understood it.

194. THE CHAIR: So its consequences might or not be—

195. MR KATKOWSKI KC: Exactly, that you, on behalf of the committee, so to speak, are interested in seeing that which we put.

196. THE CHAIR: Yes.

197. MR KATKOWSKI KC: Of course, that will be done. Thank you.

198. THE CHAIR: Are we all happy with that? Yes. Everybody is happy with that. A long interruption, I am sorry.

199. MR KATKOWSKI KC: Not at all.

200. THE CHAIR: But I think this does go to the heart of points of substance on the Bill.

201. MR KATKOWSKI KC: Yes, yes. I welcome the points being raised, to be quite frank. The sooner they are raised and questions are made about them, the better, so I thank you. That was our short note, by the way, that led to that discussion. The longer note is coming.

202. Well, this will actually be the next note, so slide 23. In the Lords we have 18 petitions and this slide just briefly summarises our position in relation to where we are here in the Lords. We do have a more lengthy note in relation to right to be heard challenges and matters of scope, which I will just ask to be distributed now. We have soft copies for those who are here.

203. In your book, if you are using the slide book, slide 25 is the relevant slide for this. Just to set the scene, by letter dated 2 October to the private and hybrid legislation manager in the House of Lords Legislation Office we gave notice of our position in relation to challenges to the ability to be heard. On the same date we issued that letter, and the table that accompanied it, to all the petitioners. In the book that you have just been given copies of, the letter in question is at tab 1 of that book. That is just setting out our position that we intend to challenge the right to be heard of the various petitioners.

204. Attached to that letter, at tab A in this particular book, appendix 1, is an extract from notes in relation to objections to standing. Most pertinently, certainly in my submission, I hope, helpfully, at tab 1B, attached to that letter, which went to all the petitioners, you find a table. The table is numbered, paginated. In your book at pages 21 and 22 you will find all the 18 petitioners are listed. For each of the petitioners in turn, every point raised by each petitioner is summarised. Then, on the right-hand side of the table, we, the promoter, set out our position as to whether we regard the particular points as being in or out of scope. We also indicate, for each petitioner, whether or not we consider that they have a right to be heard.

205. The covering note, which is at the beginning of this book—the six-page note I think it is, from memory—sets out our position in relation to the right to be heard of the petitioners. As you will well know, and hardly need me to say, those who are entitled to be heard are those whose property or interests are directly and specially affected by one or more provisions of the Bill. We, the promoter, do not consider that any of the petitioners fall within that category. There are then in the note, as you can imagine, at pages 3 and 4, references to Lords Standing Order 117 and, over the page, at page 4, 118, which are instances where this committee has the discretion to allow certain bodies to be heard. We quote, or summarise, the relevant provisions and discuss that.

206. Then, at page four of the covering note, half way down page 4, and spilling over on to page 5, we set out the various matters which we consider to be out of scope for this committee. They relate to points about the principle of the Bill, points relating to planning, and points relating to public policy. That threefold approach, if you like, is what is found then in detail, point by point, for every point that is raised by the petitioners in the table that I drew your attention to at 1B in this booklet.

207. To just cut through this, so the committee is completely clear as to the promoter's position, if I can just summarise this—and we would, in due course, obviously go through this in detail—we challenge the right to be heard of all bar two petitioners of the 18. The two petitioners in relation to which the committee has a discretion to hear from them, and the promoter does not ask you to exercise your discretion so as not to hear from them, are petitioner 12, the London Historic Parks and Gardens Trust—in the table their entry starts at page 48 in tab 1B—and petitioner 13, which is the Buxton family and the Thomas Fowell Buxton Society. It is particularly the Thomas Fowell Buxton Society that would fall within the scope of your discretionary power. In the table, they start at page 51.

208. We do not accept that any of the petitioners have the direct interest that is referred to as giving a right to be heard. That is to say property or interests that are directly and specially affected by the provisions in the Bill. We do consider that two, as I have just indicated, fall within the remit of your discretion to hear petitioners. We, the promoter, are not asking you to exercise your discretion against hearing them. Sorry about the double negative there, but you will appreciate the way I put it, I hope.

209. Then, in relation to scope, as this House's guidance note on the right to be heard makes quite clear, on the second page of that guidance note, in considering whether to hear from petitioners it is within this committee's authority to set restrictions on the nature of the points which the committee will hear from the petitioners. I will just read. You will be very well aware of it, but page 2, second paragraph of that guidance note, and that is this House's guidance note on the right to be heard. Having heard the arguments from both sides, the Select Committee will decide whether the petitioner has the right to be heard on their petition. The committee can decide to set limits on the right of a petitioner to have their petition considered, for example if it decides that one aspect of the petition is appropriate to be heard but another aspect is out of scope.

210. You will understand that our position, as I have already summarised, but our position is that all the points, bar two, that are made by all the petitioners are out of scope. In relation to the London Historic Parks and Gardens Trust, as far as the promoter is concerned all their points are out of scope apart from where they ask for a territorial restriction, a geographic restriction, on the scope of lifting the obstruction, and where they ask for—their words, not mine—“a sunset clause”, otherwise all out of scope.

211. In relation to petitioner 13, the Buxton family and the Thomas Fowell Buxton Society, although they fall within your discretion to hear from them, all their points, we say, are out of scope—literally every single point. That is all set out in the table that we have given you. It is going to take too much time for me to read through all of that now, but it is all there to be read and the petitioners have had that for some time.

212. LORD HOPE OF CRAIGHEAD: Can I take you up on the two points within scope? I think you said it was numbers 12 and 13.

213. MR KATKOWSKI KC: Yes, 12 and 13 are petitioners who fall within your discretionary power to hear.

214. LORD HOPE OF CRAIGHEAD: Yes. What about 15? If you look at your table, at 15 there is one point they raise, which is paragraph 5, about the temporal issue. Now, of course, it's raised by other people, but you do concede there, in your table, that they raise a point that could be within the scope.

215. MR DOCTOR KC: Can I just interrupt, as somebody representing petitioner 15, my Lord? On the table, it expressly says that they do accept their standing. They are treated in the same way, in the table, as the other two petitioners, Buxton and the London parks, in the same wording. I thought there was, therefore, a concession that they have standing, though there is a question about the scope of some of the things they say.

216. LORD HOPE OF CRAIGHEAD: That is exactly my point. I am just questioning why he has not listed you amongst the ones that have issues that are within scope.

217. MR KATKOWSKI KC: It is a perfectly fair question. The answer, straightforward, is my mistake. Petitioner 15, on page 60 of the note, is indicated as a body where there is a discretionary power seeking to—so forgive me. I apologise.

218. LORD HOPE OF CRAIGHEAD: I just wanted to be quite sure, because it's quite clear on your paper that you do make that—

219. MR KATKOWSKI KC: It is entirely my mistake, my Lord. I apologise. They are in the same boat, so to speak, as the other two that I mentioned. Within their petition, you are absolutely right, at point 5, on page 62, the point made about a time restriction is

one that we accept is within the scope potentially for your consideration. I am afraid I had petitioner blindness when I went through this and made my notes. So it is 12, 13 and 15 who fall within your discretionary power—of the points raised by them, none in scope in relation to the Buxton group, so to speak, and a very small number of points potentially in scope for the other two petitioners.

220. LORD HOPE OF CRAIGHEAD: Does the same point arise in relation to Jardentome, number 16? I thought there was a point there that may have been in scope, but I am having difficulty in understanding which page relates to which.

221. MR KATKOWSKI KC: No, not in relation to 16, my Lord, so 16 starts in the table at page 63. All their points, we submit, are out of scope. The one that you might have in mind is petitioner 17; that is Sir Peter Bottomley and Baroness Bottomley. That is at page 65. We do not accept that they have the right to be heard and they do not fall within your discretion to hear. Of the points they make, there is one point, and that is noted at page 67 of the table, at item 4, that is potentially in scope. That is the restricting the lifting of the obstruction, the territorial way. That is item 4 on page 67. But, I would submit, there is no reason to concern ourselves about that, because that very point is made by other petitioners who fall within your discretionary power for you to hear from them. I hope I have got it now, my Lord. I apologise again—I apologise to my learned friend as well—for missing petitioner 15 when I went through this earlier on.

222. THE CHAIR: Does “N/A” mean out of scope?

223. MR KATKOWSKI KC: “N/A” is simply “not applicable”. It was just a shorthand for us to try to cut through the various points which are made and find points that were, if you like, the substance of the petition, and where a point related to the substance of the petition, for us to then say—obviously this is just our submissions—whether we consider them to be in or out of scope. So “Y” for yes here means out of scope, “N”, no, not out of scope, so therefore in scope.

224. MR DOCTOR KC: Can I just raise a point of information about that? At the heading of this table, that column, with the “N/A” or “Y” is headed, “Subject to right to be heard”. I understood the reason why Sir Peter Bottomley has an “N/A” next to him is because he is a Member of Parliament. I understood that he therefore has an absolute right to be heard, and that is why the question does not arise and why they used “N/A”.

But “Y” and “N” is whether they are challenging their right to be heard. Thorney Island, for example, 15, they are not challenging it, so it says, “Y”, yes. Sorry, the other way around.

225. MR KATKOWSKI KC: Forgive me. I thought Sir Peter had lost his seat.

226. MR DOCTOR KC: Right, okay.

227. MR KATKOWSKI KC: My Lords, that is a summary of our position. Obviously the detail is in our note, which you have. Moving on, if I may, then we summarise our position in relation to that on slide 26. We have done all of that. Moving to slide 27, this is all about the redetermination of the planning application. Basically, since the quashing of the planning permission by the High Court, the Minister has issued two letters. One was in place at the time of the Select Committee in the House of Commons. More recently, another letter has been issued; that is shown on slide 28.

228. Slide 28, please, the next slide. Thank you. Not especially easy to read on the screen, or even in the booklet, but basically the Minister has written to all the parties concerned, asking for them to write into him by 23 October—I understand that has recently been extended to a date in early November—to set out any observations they would like to make on the appropriate timing for the redetermination of the planning application, the implications of this Bill, and so on and so forth. That is in the planning process and that is, if you like, an early salvo, I suspect, from the Minister, in relation to deciding quite how to proceed in relation to the planning application and hereafter.

229. LORD FAULKNER OF WORCESTER: Who is the Minister who signed the letter, because I can’t make out from the letter itself?

230. MR KATKOWSKI KC: Yes. The signatory to this letter was authorised by the relevant Minister to sign this letter. The Minister who is responsible now for making the decision is referred to at the end of paragraph 1. That is Mr McMahon. Should the Bill receive Royal Assent and remove the obstruction, the handling arrangements are such that the Minister needs to be someone who has never before expressed a view, in Parliament, on the project. That has caused the other side of the ethical wall quite a lot of work, shall we say.

231. Moving on, the next few slides simply give you a potted history of Victoria Tower Gardens. I note the time, by the way. The point I was seeking to make earlier on, about the extent of Victoria Tower Gardens over time, is on slide 30. That is the slide that is on the screen now. The original extent of Victoria Tower Gardens—Victoria Tower Gardens north, if you like—is shown in the middle slide. The effect of the 1900 legislation is shown on the right-hand slide, where the gardens were extended considerably, southwards, in effect to Lambeth Bridge.

232. On the following few pages, there's just a potted history of the various memorials, which you will all be extremely familiar with, in the gardens, and three of particular note. On slide 33, the Buxton memorial is on the right-hand side. It says 1957. Obviously, the structure itself is much earlier than that. The structure itself is 1866, but it was moved to Victoria Tower Gardens in 1957, when the gardens were replanned and changed in various ways. It was moved from Parliament Square to Victoria Tower Gardens. The Pankhurst memorial is in the middle of the slide, 1930, and the Burghers of Calais, very famously there, date from 1914.

233. On the next slide we just briefly summarise the various protections that apply to those various memorials. They are all listed in some or other grade, and then a few words, at slide 35, about the then Prime Minister's Holocaust Commission, which led to the particular promotion of the project. That commission reported—middle of slide 35—that there should be a striking new memorial to serve as the focal point of national commemoration of the Holocaust; it should be prominently located in central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust; and it should be co-located with a world-class learning centre. That was the recommendation of the commission. That recommendation has been taken forward by successive Secretaries of State and Governments of the day.

234. Then, briefly, there is a screen capture on slide 36 of the cross-party support there is for that project, and at page 37 a very, very compressed summary of the process that led to the appointment of a team to design the memorial and learning centre and to locate it in Victoria Tower Gardens. Then there are a few images, at pages 38 and onwards, explaining the project itself. There is a now, I suspect, very well-known image of the project on slide 39, the slide that is on the screen. The various memorial fins are set out, as shown there. The courtyard for the memorial is, in this image, immediately in

front of the memorial. The Buxton memorial sits, in this image, to the right-hand side. You will be familiar with what is shown in the rest of the image.

235. On the next slide, we see, top left, the entrance pavilion to the courtyard, and the memorial is shown there. Some of the new pathways in the gardens are shown in the bottom-left image. To the right-hand side, walking along one of those paths, from Parliament towards the bridge, there is a view there of the side of the memorial. Because of the learning centre being underground, there is a raising of some of the gardens, which is shown well, I would say, on slide 41, the next slide. That is an overview, if you like, of the project itself.

236. The 23 memorial fins are shown there; the memorial courtyard—you can see, to the right-hand side, the image. The entrance to the memorial will be through, in effect, the central fins, and the exit from the memorial will be, in effect, through the fins on the side of the range of memorial fins. There is an overall plan, at slide 42.

237. For those who are interested in the extent of the project, at slide 43 the area to be permanently occupied by the Holocaust memorial and learning centre is shown on that slide. The above-ground buildings and fins are shown in a pink colour. The footprint of the basement, the learning centre part of the project, is shown by a red dotted line. There would be various improved paths through the gardens, as well. You can see, if you like, taking the memorial off the learning centre, the nature of the underground construction on slide 44, the next slide.

238. Then, in brief summary, at slide 45, there's a summary of the purpose of the learning centre. One would hope it would be fairly self-evident, but just to stress—because this is a point which has been controversial over the journey, over time, of this project—the second bullet point on slide 45 is that the learning centre very clearly has an objective to address the complexities of our nation's own—we say ambiguous—responses to the Holocaust. The concern has been expressed against us that, in some way, the learning centre will portray our nation as knights in shining armour. That is most certainly not the purpose.

239. There is an indication, on page 46, of some parts of how one would access the learning centre. If you look bottom-left, there is obviously disabled access as well, separately, but you can see the steps coming down from the courtyard, into the learning

centre, descending through the fins. To us it would be a very powerful experience indeed. The first thing that you would see is top right in this set of slides, in a fairly dark space, before you then enter the learning centre proper.

240. On slide 47, the next slide, we then set out some of the wider parts of the project: improving the landscaping of the gardens; better drainage of the gardens; better and more accessible benches along the riverside; improving the playground; a new coffee kiosk. The project seeks to carry out various improvements to the wider gardens as well. That, in very, very brief summary, is a drawing together of the various points that form the project.

241. LORD HOPE OF CRAIGHEAD: Can I stop you there for just a second? You don't say much in these slides about the construction stage, how long it's going to take and what part of the garden is going to be taken over for construction.

242. MR KATKOWSKI KC: Yes. For the construction stage—obviously one has to have a starting point, so once we are clear of all statutory consents and so on—we have indicated, in our assurance to the Select Committee in the Commons, that we consider that the programme of construction should take three and a half years. That is the construction period, as I am instructed. In relation to the extent of the gardens that are needed for the building the project, if you look back to slide 44, so if we just go back a little bit, you can see, in effect, the construction compound there shown. Basically, the short point is that it is our intention to keep open, during the construction period, the walk along the riverside, the walk along the Embankment, which is at the bottom of the slide, as you look at it here. To be quite straightforward about this, we would need a large part of the gardens, for obvious reasons, to construct the project. We would not need all of the gardens and we have always had a clear intention to keep the walk along the Embankment, the river, open through construction. That has been our clear intention throughout.

243. LORD JAMIESON: Just out of curiosity here, we talked about construction plans earlier, and I know that is planning.

244. MR KATKOWSKI KC: Yes.

245. LORD JAMIESON: But if you were to use the river as a delivery, particularly if

you are going to shift a lot of earth, then actually you would need more than that.

246. MR KATKOWSKI KC: You would need more than that. I would have to go back and check this or, to be frank, ask someone else to go back and check this. In the construction management plan that we had at the stage of the consideration of our planning application and decision to grant us our planning permission, my memory is that there were some provisions there about bringing in materials by the river. I am hesitating because I just can't, on the spot, remember how we dealt with that. I take my Lord's point. We will have to go back and check that.

247. LORD JAMIESON: Okay.

248. MR KATKOWSKI KC: Those, save for one point, are my opening submissions. The one point I need to make, which I didn't make earlier on, is that in the larger note that we gave you, concerned with the right of petitioners to be heard by the committee, I had referred to tab 1 and its sub-tabs A and B. I should also mention that at tab 2 of that there are some examples of rulings on the right to be heard, precedents if you will. They are summarised at tab 2. There is a separate book—again available for not only the committee but others as well—that then publishes the entirety of all of those rulings, rather than simply summarising them. So there is a book of what we call a bundle of authorities. It is, in effect, a book of precedents that, we say, go to support the position that we have adopted in our note. That draws together the submissions I wish to make in opening the case in front of this committee for the promoter.

249. THE CHAIR: Thank you very much indeed, Mr Katkowski. Has anybody got any questions they want to ask at this stage? We have no further questions at the moment. No doubt when you see the transcript you will want to take up further some of the discussions we had about various points. Should you wish to refine them in any way, or not, it might be helpful to let us know before our meeting in November.

250. MR KATKOWSKI KC: Indeed, my Lord, and I am grateful for that opportunity. "Refine", in my lexicon, would probably translate to "change". I shall certainly give consideration to that, with those instructing me. We will, of course, give serious consideration to the points that my Lord has raised.

251. THE CHAIR: Thank you. Now, Mr Doctor, we're not calling on you to say

anything today, unless you feel we have gone so catastrophically wrong we can't possibly go home to bed without you saying anything. But I am certainly not encouraging you.

252. MR DOCTOR KC: No. My Lord, the only thing I would like to ask for is just an indication of what you are expecting at the next sitting. I think you said that would be on 5 November. You started today by saying that Mr Katkowski would address you on the right to be heard of the various petitioners. He has done that, but there is also, of course, in a sense the separate, although in many ways linked, question of the scope of what they have to say. As I understand what he is doing, he is saying in relation to the four parties, or petitioners, whom I represent, he is not objecting to their right to be heard in the case of three of them—that is the Thorney Island Society, the London historic parks and the Buxton Trust.

253. It is not at all clear to me what their attitude is towards Baroness Deech. The system of “N/A” and “Y” and “N” has completely confused me, because I see that some of them it says “N/A”, some of them are just blank, and others say “Y” or “N”. So the first question is whether I therefore have to address you on Baroness Deech's right to be heard, although, as a Member of the Lords, I understand that she has got a right to be heard. I may be wrong on that. But, in any event, what is their position? Separately, then, there is the question of whether they do or do not object to the scope of some of what she has to say in her petition. In relation to that, what are you expecting us to address you on, or present, at the next hearing?

254. THE CHAIR: My understanding is that really, because Baroness Deech is a Member of Parliament, she does not automatically have a right to speak at this committee. This committee is concerned with people who are specially and immediately affected. If she is such a person, then she would have a right to be heard, not because she is a Member of Parliament, but because of her status as somebody who is immediately and specially affected.

255. MR DOCTOR KC: I seem to have read somewhere that Members of Parliament do have a right, but I am not an expert in this field at all.

256. THE CHAIR: Who are you representing, Mr Doctor?

257. MR DOCTOR KC: The three societies that I have mentioned, plus Baroness Deech and the survivors whom she represents.

258. THE CHAIR: Yes, my attention has been drawn to 117A of the Standing Orders, which is right of Members of Parliament to have petition considered. Those are Members of Parliament whose constituencies are directly affected by the works proposed by a Bill. That is the only category.

259. MR DOCTOR KC: Right, that is an MP, basically.

260. THE CHAIR: Yes.

261. MR DOCTOR KC: Right.

262. THE CHAIR: But of course, Baroness Deech, like any other Member of Parliament, has a full right to participate in all the public stages of the Bill that will follow after we have finished.

263. MR KATKOWSKI KC: If it helps at all just to set out our position clearly in relation to Baroness Deech, apologies if it was not clear enough, but her entry in the table, so to speak, begins at page 42. We acknowledge, obviously, the important significance of the various experiences and memories that Baroness Deech refers to. We do make it clear, for example, at the bottom of page 42—and it is something we repeat over and over again—that we do not consider that the petitioner’s property or interest is specifically and directly affected. That is the test for someone who has the right to be heard. We have specifically put in issue, challenged, Baroness Deech’s right to be heard.

264. Forgive me, the other petitioners you represent, the London historic parks, et cetera, the Buxton family—I’m shorthanding—and the Thorney Island Society, none of them have the right to be heard. They are all those who this committee can exercise a discretion to hear from them. I have simply indicated that I, on behalf of the promoter, am not inviting—sorry about the double negative—the committee to exercise their discretion against hearing those petitioners. I then made the point about the scope of their points. You will understand that we consider that virtually everything raised by even those who fall within the discretion of this committee to hear from them falls well outside the scope of this committee.

265. THE CHAIR: Let us not get involved in that detail. I just want to obtain confirmation from you, Mr Katkowski, of the Ys and the Ns and the N/As and so on.

266. MR KATKOWSKI KC: Yes.

267. THE CHAIR: They are a little confusing. I understand what you said was that “Y” means it is out of scope.

268. MR KATKOWSKI KC: Yes.

269. THE CHAIR: “N” means it is in scope.

270. MR KATKOWSKI KC: Yes.

271. THE CHAIR: “N/A” means “not applicable”.

272. MR KATKOWSKI KC: Yes, not applicable in the sense that the point made is not relevant to either the right to be heard or to scope. That was the shorthand. So, for example, I have this randomly open at Viscount Eccles, at page 41, who explains Westminster resident in 30 Smith Gardens, who regularly uses the gardens. Well, that, in our submission, is not pertinent to the right to be heard. Nor is it a point about scope, obviously. But if you then go down the page, when we come to his first point of substance, which is that he is concerned about the design of the learning centre, that, to us, is a planning matter, which is out of scope. So that is the way in which that works.

273. THE CHAIR: Thank you very much. Now, going back to you, Mr Doctor, what I currently envisage, but it will be a matter for the committee as a whole to decide, is that when we come back we will then go straight into the issue of standing. We will deal with that first. There will, inevitably, be some overlap between whether somebody is directly and specially affected, and the question of scope. It is inevitable, for some people.

274. What we want to hear is exactly why the promoters feel that the petitioner in question should not be heard or heard only in part. We will have done a lot of legwork before then, so I hope we can keep that to a minimum. What will then be critical will be your response. That will be the critical part. We will just expect you to deal with standing, but standing, we understand, will involve an overlap, in some cases, with

scope.

275. MR DOCTOR KC: Yes.

276. THE CHAIR: Does that make sense?

277. MR DOCTOR KC: Yes, it does, thank you.

278. THE CHAIR: Thank you all very much indeed. We have no further questions for the moment.

279. MR KATKOWSKI KC: Thank you.

280. THE CHAIR: I should tell you that we will be making our own site visit, but we will not wish to be accompanied by counsel.

281. MR KATKOWSKI KC: Thank you.

282. THE CHAIR: In the meantime we will try to catch up with quite a lot of material. Thank you very much indeed.

283. MR KATKOWSKI KC: Thank you very much indeed, my Lord.