

CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 12 November 2024 (Afternoon)

In Committee Room 4A

PRESENT:

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

FOR THE PROMOTER:

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

FOR THE PETITIONER:

Lord Strathclyde

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(At 2.00 p.m.)

1. THE CHAIR: Good afternoon, everyone. This afternoon, we have only one petition to consider, and that is the petition of Lord Strathclyde, who is representing, if I can put it like that, a series of other people. Lord Strathclyde, I do not know whether you have attended any previous sessions of the committee. No. We are very strictly only dealing today with standing. We are not dealing today with questions of scope and principle, but I understand that, in addition to the people in your petition, you are going to be also representing Lord Hamilton of Epsom and Lord Russell of Liverpool. Is that right?

2. LORD STRATHCLYDE: Yes, it is.

3. THE CHAIR: Right. Lord Strathcarron has withdrawn his petition. What will happen is that I am going to ask Mr Katkowski for the promoter if he has anything specific to say to your petition on standing, and then you will have the opportunity of explaining why you do have standing, and then we will give Mr Katkowski the opportunity of making any response should that be appropriate. If he raises a new point, we will ask you to comment on the new point. It is quite a narrow confine today so, on that basis, can I invite Mr Katkowski to say, by way of general introduction, what the promoter's view is about this petition?

Opening Statement by Mr Katkowski KC

4. MR KATKOWSKI KC: Yes. Thank you, my Lord. If I may, this will be very familiar to you, but there are a couple of points which I am going to elaborate given the earlier discussions today. First of all, as you will know, my Lord, the promoter does challenge the right to be heard—the standing of this petitioner and the co-petitioners in this particular petition. You will understand that it is our submission that, in relation to the actual right to be heard—that is to say, not cases where the committee has a discretion to allow someone to speak, but in relation to the right to be heard—it is our submission that there needs to be some actionable interference that could be litigated in private law were it not for the provisions of the Bill. As you will understand, we do not consider that any such actionable interference has been shown here.

5. You will know that we rely heavily on the most recent precedent which has had to

grapple with this whole issue, which is the HS2 rulings—the West Midlands Bill—and you will have seen the passage that I have relied on heavily on several occasions in our bundle of precedents—our bundle of authorities. It is paragraph 8 on page 12.

6. Just to elaborate a little bit though, because, as you will have seen in this petition, it is said on the second page of the petition, “NB each of us”—so that is each of the petitioners—“inhabits and either owns, uses or rents a property and/or an office in central Westminster”. I do just want to say one or two words about this issue of effect on property values, which, as you know, arose this morning.

7. I just wanted to address it in this way, if I may. You will recall that I have made the submission that this Bill does not authorise the construction of the project. It seeks to remove an obstruction which otherwise would stand in the way of its construction. That was referred to earlier on today as a fine distinction, and you will recall our exchange on that. Can I put it this way? Even in cases where a Bill does authorise works—even where a Bill does authorise the construction of a project, for example HS2—it has been consistently held that an effect on property values does not mean that the property owner in question is directly and specially affected. The reason for that is very simple: the building of a project, even if the building of the project has an effect on one’s property values, does not give rise to the right to sue anyone in relation to it.

8. There is no private law litigation that you can bring saying, “You have built this. It has taken £10,000 or £100,000 off the value of my property. I am suing you for diminution in value of my property”. There is not a cause of action. This issue troubled, if you like, the members of the committee in the HS2 hybrid Bill proceedings, and the ruling that I have referred to and relied upon repeatedly was followed in the rulings in that Bill by a further discussion on the point. I wonder if I can just take the committee’s time just for a few moments to go to our bundle of authorities at page 14. Our bundle of authorities—if you are using the numbered book, it is promoter 005.

9. THE CHAIR: One moment, please.

10. LORD HOPE OF CRAIGHEAD: Is it page 14?

11. MR KATKOWSKI KC: Page 14, yes. Forgive me, I did not see you had asked me that question. My apologies. Forgive me, Lord Hope. Yes, page 14. Shall I proceed or—

12. THE CHAIR: Yes.

13. MR KATKOWSKI KC: Thank you.

14. THE CHAIR: Page 14.

15. MR KATKOWSKI KC: Page 14. At the bottom of the page, paragraphs 4 through to 6. This is to set the scene. This is the chairman, Lord Walker, paragraph 4: “Two general issues arose frequently in the course of the hearings. They are both matters on which many petitioners have strong views. The first”—and it is the first which I am interested in here—“is the type or character of apprehended adverse effect which a petitioner must allege in order to be heard as of right and not merely as a matter of discretion so as to establish that the petitioner is, in the traditional words, directly and specially affected by the Bill”.

16. There is then this paragraph, at paragraph 5: “In this Committee’s first decision ruling”—that is the ruling which I have repeatedly relied upon—“we answered that question in these terms: the prospect of direct and material detriment to his or her property interests either by compulsory acquisition or by interference with his or her property rights, which amounts to a common law nuisance or some other interference which would be actionable if not authorised by Parliament”. Paragraph 6: “We have not been persuaded in the course of a further week’s hearings that that answer is too narrow. There is a more detailed discussion of this issue later in this ruling”.

17. In the proceedings on that Bill, a ruling was made. It is the one I have relied upon. It was heavily criticised by later petitioners in a further week’s hearings on this, and the chairman came back to the point. That, therefore, was the scene-setting, and a passage that comes back to the point, after the various arguments for and against are summarised in the ensuing pages, is found at page 16.

18. Having been through all the various petitioners’ submissions on that very point, it is the first sentence of paragraph 16 on page 16: “It is clear that nonstatutory blight”—I will come back to that language in a moment—“has never been treated as a ground for petition” —although it may in some case be relieved under particular schemes that promoters have. Non-statutory blight is the argument that, “My property values would be affected—would be blighted—by the project in question”.

19. Here is the ruling—again, we come back to here paragraph 16: “It is clear that nonstatutory blight”—as a diminution in property value—“has never been treated as a ground for petition”, and that is all in the context of as of right, my Lord.

20. Forgive me for taking your time and taking you to that, but the position is long and very well established. If this committee, in due course, takes a different position, then I would simply submit to the committee that I hope that I have done my best to make it as clear as I possibly can that that would be against a long, long run of precedent and practice.

21. LORD HOPE OF CRAIGHEAD: It is not dealing with property values though, is it?

22. MR KATKOWSKI KC: It is, my Lord. When I said I would come back to non-statutory blight, non-statutory blight would indeed be effect on property values, because blight in common speech, as my Lord will well know, would be, “Something that I own has been blighted. The value of it has been reduced by whatever it is that is being proposed”. There is a form of statutory blight that you are entitled to compensation for. Non-statutory blight is this whole idea of an effect on property values because of a project being promoted and so on and so forth. That is, in my submission, exactly what paragraph 16 is dealing with. It comes in the context that I gave you, my Lord, earlier on in paragraphs 4, 5 and 6 on page 14, that the ruling that I rely on had been criticised in subsequent hearing sessions on that Bill.

23. Lord Walker’s ruling had been criticised as being too narrow, the very point that has been made to me in making the submissions that I have made relying on that ruling. Here is that committee and Lord Walker coming back to those criticisms and saying, “I am sorry, but it has never been dealt with in this way. It does not give you the right to be heard”. That is the first of my short diversions, if you like.

24. THE CHAIR: When the reference is to non-statutory, what is the difference between non-statutory and statutory blight?

25. MR KATKOWSKI KC: In the town and country planning legislation, there is statutory blight. For example, if the route of a road project is reserved in various planning documents, and it can be demonstrated that one’s property values have been

harmed—reduced—by that safeguarding, for example, of a route, there is the ability in the planning legislation for a claim to be brought for statutory blight. Non-statutory blight is something standing outside that statutory scheme, and non-statutory blight conveys the notion of, “My property values have been affected by this project, and I am disgruntled because of that and I think, therefore, I have the ability to bring a petition in relation to a hybrid Bill”.

26. LORD HOPE OF CRAIGHEAD: The last sentence of paragraph 15 is really setting out what you are telling us, is it not, as an example?

27. MR KATKOWSKI KC: Exactly, yes.

28. LORD HOPE OF CRAIGHEAD: Diverted traffic and so on.

29. MR KATKOWSKI KC: Depreciated property values. Thank you, my Lord. If only I had taken a moment to look at the previous paragraph, that would be a much better answer, because it is said in terms at the end of paragraph 15: “depreciated property values, that is so-called nonstatutory blight”, et cetera.

30. LORD JAMIESON: Sorry, I am getting slightly confused here. Your example you gave was, if a route for a road was reserved, that is a statutory blight. If that impacted your house value, there is a mechanism to get money back. The fact that your house value goes down could be either statutory or non-statutory. It is the cause of that change in value that makes it statutory or non-statutory.

31. MR KATKOWSKI KC: It is, yes.

32. LORD JAMIESON: Which is slightly contradictory to what is in that paragraph 15.

33. MR KATKOWSKI KC: It is not quite, my Lord. Forgive me. In the town and country planning legislation, there are very narrowly confined instances of when you can bring a blight claim. They are very narrowly confined.

34. LORD JAMIESON: My point being that it is the causes of why the value is diminished. It is not, as I thought you were implying, anything that diminishes the value of the property is not within scope, so to speak.

35. MR KATKOWSKI KC: My Lord, it is my fault entirely; forgive me. I suspect I am losing the plot a bit here but, taking a step back, the point which I am seeking to deal with in my submissions is the notion that someone might have a right to be heard because they are a property owner and they assert, whether they can demonstrate this with evidence or otherwise—let us leave that to one side—that their property values would be harmed by the Bill and they wish to petition on that basis. Does that give them the ability to do so as of right? No, it does not. See this precedent. That is because that form of blight—it is blight in common speech; it is colloquial blight; it is non-statutory blight; it is not statutory blight. Statutory blight is completely irrelevant here. We are dealing only with instances that might potentially be described as non-statutory blight.

36. LORD HOPE OF CRAIGHEAD: Does paragraph 4 help us a bit to understand that?

37. MR KATKOWSKI KC: Paragraph 4.

38. LORD HOPE OF CRAIGHEAD: Sorry, paragraph 5, because what is being described in paragraph 5 is a direct and material effect, so that would be blight, but it is statutory blight. It is the effect of what is being proposed, is it, or am I misunderstanding it?

39. MR KATKOWSKI KC: The non-statutory blight part of this is if, for example—again, my Lord, if you go back to paragraph 15, the instances given there, if you like, where people are saying, “These things will harm my property value”.

40. LORD HOPE OF CRAIGHEAD: There is a sort of ancillary effect of what is proposed. It is not a direct effect of what is being proposed.

41. MR KATKOWSKI KC: Yes, that would be a fair way of putting it, my Lord, but ultimately the argument is, “Something will result from this project which in some way will have an effect on my property values. Therefore, I consider I have the right to petition”. Answer: “No, you don’t”.

42. THE CHAIR: Sorry, I am not clear. Which page are you on now?

43. MR KATKOWSKI KC: Paragraph 15 on page 16. Lord Hope was looking at paragraph 5 on page 14, I think, of our bundle of authorities.

44. THE CHAIR: I am just trying to understand what this is all about. I am conscious that Lord Strathclyde wants to be at the debate this afternoon by, I think, about 3 pm probably. The earlier paragraphs are simply a general introduction. They do not actually do much. They simply say, “There are two questions on which people have very strong views”, and then he repeats this thing about compulsory acquisition or interference with his or her property rights. This is the point where he aligns interests, in the phrase of *Erskine May*—affects specially and directly property or interests. He aligns that all as a property interest. He sweeps up the whole of that as concerning property interests. Then we go to 15, and I am just trying to find—there is nothing in 15 or 16 about diminution in value.

45. MR KATKOWSKI KC: Yes, there is, my Lord.

46. THE CHAIR: Where is that?

47. MR KATKOWSKI KC: It is in paragraph 15. The sentence begins, “Their houses”—that is, of these various people—“their main complaints”—except in the case of one particular gentleman—“were not of noise but depreciated property values, that is so-called nonstatutory blight”, and so on and so forth.

48. That was, apparently, their main complaint—depreciated property values. That is why I have drawn attention—forgive me; Lord Hope drew this passage to my attention—but the answer is given in the ruling at paragraph 16.

49. THE CHAIR: Then he goes on to say, “Rights to drive on highways, ride on bridleways and to walk on footpaths are public rights”.

50. MR KATKOWSKI KC: Yes. There are a whole bundle of points being made by those.

51. THE CHAIR: “They do not depend on ownership of land in the district, and their protection is the concern of local authorities”. What has that got to do with what we are concerned with?

52. MR KATKOWSKI KC: That bit is nothing, my Lord, because I am relying on the first sentence of 16, which is a response, or a ruling, on the depreciation of property values point.

53. THE CHAIR: Yours is the first sentence of 16 and the last sentence of 15. Is that right?

54. MR KATKOWSKI KC: The reference in the last sentence of 15 to depreciated property values.

55. THE CHAIR: He says it has never been. Proving a negative is quite difficult. What authority does he—where does he get that from?

56. MR KATKOWSKI KC: My Lord, we can look back to see the various authorities cited to that committee, but, my Lord, I imagine it would all be on a par with the authorities that we have put forward in relation to the self-same point.

57. THE CHAIR: Yes. All right, thank you.

58. MR KATKOWSKI KC: My Lord, forgive me. I am so sorry. That was meant to be the first, on my part, brief diversion. After that, in relation to the discretionary ability for the committee to allow a petitioner to be heard—this is moving beyond the right to be heard to the excise of discretionary powers—Standing Order 117 is not relevant here because it is not claimed that there is a society or constituted association.

59. Standing Order 118 is the nearest, perhaps. The first part of that is the local authority for the area. Patently, that is not relevant here, but, as you will know, because we have addressed it repeatedly with previous petitioners, Standing Order 118 does refer to the discretion potentially being exercisable for an inhabitant who can claim that he, she or they are injuriously affected by the Bill or any of its provisions.

60. You will know from our various oral and written submissions that it is our case that it is long established, and recently upheld, that, in order to be a discretionary petitioner of that type, one needs to be able to demonstrate that one is properly and sufficiently representative of the inhabitants of the area. I have been around and made that submission repeatedly.

61. The only thing I want to add is just to pick up on a point that arose just before the lunch adjournment from my Lord, Lord Jamieson, which was about the protection of the 1900 Act and local residents, if you like, knowing that the gardens are protected. Forgive me if this is another lawyer's point from a lawyer, but there you are. The

gardens are indeed protected by the 1900 Act. It is fair enough to describe the gardens as protected from built development by the 1900 Act. That does not, though, give any local resident the ability to enforce that protection by way of any private law litigation. It is not like a restrictive covenant where someone has the benefit of the covenant—the covenant not to build on something—and someone has the benefit of that and can bring legal action to enforce the benefit of that covenant.

62. The 1900 statute protects the gardens in the sense that they are to be kept as gardens. The High Court has held that means, therefore, not to have things built on the gardens, but there is no beneficiary of that statutory provision in private law, so it is not the same, if you like. The gardens are protected, but local residents do not have any legal recourse to enforce that protection by way of private law litigation.

63. LORD HOPE OF CRAIGHEAD: That is why the Act was passed, was it not—to give it statutory protection?

64. MR KATKOWSKI KC: To give it statutory protection. That is right. That statutory protection can be and has been enforced through public law litigation, as we well know. We are dealing here with a hybrid Bill and, at this stage, the role of this committee is simply to address whatever private aspects there are to this Bill. The public policy and principle and so on and so forth of the Bill are all for other stages of the legislative process, not for this committee. If one is to focus on—as you can and, with great respect, must—the private interests and aspects of this Bill, then the fact that the gardens are protected but no one has the ability in private law to enforce that protection is pertinent.

65. THE CHAIR: Anything else?

66. MR KATKOWSKI KC: No. Thank you, my Lord.

67. THE CHAIR: Lord Strathclyde, would you like to speak to your petition now?

Lord Strathclyde et al

Submissions by Lord Strathclyde

68. LORD STRATHCLYDE: Lord Chairman, first of all, thank you very much

indeed for inviting me to speak to you, or indeed to the committee. In the House of Lords, it is very rare to be able to do something for the first time, and it became a great surprise to be told that I would come here not to talk just about my petition but particularly to talk about whether or not I had a right to be heard. You will have seen in my petition that I am the chief petitioner, if I can call it that, but I represent and I speak on behalf of a whole range of Members of the House of Lords, who come from every party and none in the House of Lords. Why have I done that? Primarily, because I think it is, for all of us, a constitutional duty to appear and to say what we think about the Bill.

69. Specifically, on the right to be heard. I can tell you that my family have owned property within the immediate vicinity—a few hundred yards away from the Victoria Tower Gardens—since 1948, and I had lived in the area some 25 years before I even came to the House of Lords. I know the gardens intimately in every respect, having been brought up in it and played in it as a child, and used the playground and walked in it as I grew up. For an area where the houses and flats are, on the whole, overwhelmingly un-gardened, if that is a word, the Victoria Tower Gardens provide genuine relief from the urban landscape.

70. It is that interest that I believe gives me the right to be here and to make my case on behalf of all that have signed their names, because this is the only green space adjacent to the river on the north bank of the River Thames. Of course, in my experience and knowledge, it is not just about immediate residents. It is about visitors. It is about a whole range of people—tourists as well—who come to the site. The TV studios in 4 Millbank use the gardens regularly. You will have seen, undoubtedly, interviews take place in that space. It is a working site. It is a site for quiet enjoyment for residents and for everybody else. In a sense, it is a community space for so many, which is at the heart of the objection in this petition, but of course that is not the case that I am making now.

71. THE CHAIR: Can I just ask you this, if I may? We do not have your address here. We do not have the addresses, other than “House of Lords”, for the overwhelming majority of your co-petitioners. There are some individual addresses given, but, as I said, the overwhelming majority simply say “House of Lords”. Are you able to say which of the people who are your co-petitioners live close to the Victoria Tower Gardens or merely claim a right of standing—that is, the right to be heard—by virtue of working in the House of Lords?

72. LORD STRATHCLYDE: Yes. First of all, I think it is an oversight that I put the House of Lords down. I see later on in the petition—in the section marked petitioner’s details and main contact details—it does have my address down as 2 Cowley Street, which is just off Great Peter Street, a stone’s throw away.

73. I think the point is that in the second page it talks about why we are doing this. It says, “Each of us inhabits and either owns, uses or rents a property and/or an office in central Westminster”. I think that there are some names here who do not own property nearby, but their office is here. Therefore, they have a direct interest in what happens to the garden in the same way as the residents do. Of course, I am very happy to try to find out, for all these people, if they actually have a residence nearby, if that would help.

74. LORD HOPE OF CRAIGHEAD: Eaton Place is not very nearby, is it? Lord Roberts, for example, gives an address, and he is hardly—

75. LORD STRATHCLYDE: No, but he is a Member of this House. He does have an office of this House. I suspect when he wishes to think of a great speech, he will go for a walk in the garden itself.

76. LORD HOPE OF CRAIGHEAD: I am just trying to trace down people who reside close by, like Smith Square and some of the other streets—Tufton Street, for example. He is not in that category.

77. LORD STRATHCLYDE: He is not in that category, but you will have seen Lord Robathan—I am now looking down the list—the Viscount Eccles, who I think have given evidence to you already, Lady Nicholson and Lord Blencathra, Lord Howard and others. I suspect that there would be others if I had all their addresses with me, which I am afraid I do not.

78. THE CHAIR: For present purposes, apart from yourself in Cowley Street, which clearly is near enough—apart from that and the ones you have just mentioned now, who live in Maunsel Street, Smith Square and Lord North Street, you are really relying upon the combination of working in Parliament and, as an amenity to Parliament and to their work in Parliament, having the Victoria Tower Gardens.

79. LORD STRATHCLYDE: That is correct, and that is what I think their authority to

be heard comes from: the fact that they work next door to it and use the amenity value of the gardens for their own use and quiet contemplation.

80. THE CHAIR: Yes, all right. Do any members of the committee wish to ask any further questions?

81. LORD FAULKNER OF WORCESTER: Lord Strathclyde, it is a very impressive list of parliamentary colleagues and you ought to be congratulated on getting so many of them together for this purpose. Can you just give us a little bit of a clue as to how they came forward and how they were so ready to sign up?

82. LORD STRATHCLYDE: First of all, I think it is worth saying that the reason they have come together is to avoid each of them having to come here and argue their own case for the right to reply, which I think would have tired you and them. I think this is a vast improvement.

83. Secondly, news of this Bill has been around for years. It is perhaps hardly surprising that, in the corridors and other areas where Peers meet regularly, gradually there has come this feeling of, “We need to be heard”. Somebody suggested that I could front this group of people—distinguished Peers from every party and from none, as I have said—and I was very happy to do so and very glad to do so. I spoke, as you know, at the Second Reading.

84. THE CHAIR: Just going back to the question I was asking before about the basis for the right of standing, you have dealt with your co-petitioners. Is there anything you want to say about Lord Russell, who has come in at the last minute under your wings?

85. LORD STRATHCLYDE: No, I am very glad to have him.

86. THE CHAIR: Again, it is the same point. I do not see, I think, immediately in his petition any reference to living nearby.

87. LORD STRATHCLYDE: No, but I would put him under the ambit of working here and using an office here. Therefore, the character of the immediate environment next to Parliament is very seriously affected by the building works, by the security and by the traffic management of the idea behind the learning centre and the Holocaust memorial.

88. THE CHAIR: Is that true also of—

89. LORD HOPE OF CRAIGHEAD: Lord Hamilton is at Tufton Street.

90. LORD STRATHCLYDE: He is in Tufton Street, so he would pass what I think you call the residency test, or you might have called it.

91. LORD HOPE OF CRAIGHEAD: I wonder, Lord Strathclyde, whether it really matters and whether you need all these other people there, provided you have several, including yourself, who would be claiming a right on grounds of residence. Really, we are not going to hear from them individually. You are not going to call them as witnesses one by one, I take it.

92. LORD STRATHCLYDE: I think they wanted to have their existence marked, or even acknowledged. None of these people were bullied into attaching their names to this petition, but they did want people to realise that they had a point of view, so they were very happy to include their names in the document that you have had provided. Personally, I very much welcome their support and their contribution.

93. BARONESS SCOTT OF NEEDHAM MARKET: You spoke in the Second Reading debate. I was present for some of it and read the rest. What sort of points do you envisage raising in this part of the process that you could not raise as a parliamentarian during the normal—we will go on to a Committee stage and so on, so what I am getting at are the personal and private interests.

94. LORD STRATHCLYDE: When I did the Second Reading, I did not know that I was going to have to justify the case. I thought that the original reason of writing the petition would draw to your Lordships' attention that there were many parliamentarians themselves who were going to be severely impacted by any development in the gardens. That is the point of this. I know I put the petition in several months ago, but it was only fairly recently that I received this document from Pinsent Masons telling me that I really should not be speaking here at all.

95. THE CHAIR: Thank you. Anybody else got any questions? No. Mr Katkowski, do you want to say anything?

96. MR KATKOWSKI KC: Just very briefly indeed. Thank you, my Lord. My

response to the question that has been raised is that every single objection to the Bill, which is set out in section 2 of the petition—literally every one of the nine points made—were raised by one or other Member of this House in the Second Reading debate, and in many cases, several times over. There is literally not a word, not a point, which has not already been raised elsewhere at earlier stages in the proceedings on this Bill and which cannot be raised in later proceedings on this Bill.

97. That is all I wish to say, my Lord. Otherwise, you are very well aware of my case. You will make of it what you will, but you have my submissions.

98. THE CHAIR: Thank you. Very well. Thank you very much for attending.

99. LORD STRATHCLYDE: Thank you very much for having me, and thank you for dealing with things so speedily so that I can get to the next debate, which is of course on House of Lords reform.

100. THE CHAIR: I suspect you will be here until midnight on that one.

101. LORD STRATHCLYDE: Yes, it will be late. Thank you.

102. THE CHAIR: Thank you very much. For those who are present, that ends the business for today. We will resume on 19 November.

103. MR KATKOWSKI KC: No, my Lord. There is tomorrow.

104. LORD HOPE OF CRAIGHEAD: We are back tomorrow, on the 13th.

105. THE CHAIR: Yes, you are quite right. We have tomorrow, when we only have Lord Inglewood and Lord Carlile.

106. MR KATKOWSKI KC: Yes.

107. THE CHAIR: As I have indicated, we hope that we will be finished before 1 pm and we will then go into private session to consider who has standing or not, and we will announce that publicly later that afternoon.

108. MR KATKOWSKI KC: Thank you very much, my Lord. There is just one matter of clarification, if I might, so that I know whether I need to do something later on today or not. That is that we had had some sort of informal indication that you were

considering asking myself and my friend Mr Doctor, on behalf of the discretionary petitioners, if I can call them that, to address you after Lord Inglewood and Lord Carlile tomorrow on matters of scope, so that you could also consider scope tomorrow. I personally would welcome that, obviously, because, as you know, I have said that I would very much welcome the opportunity for there to be submissions made on that, to me, more important question than standing, but obviously if that is to happen tomorrow, then it would be extremely helpful if—

109. THE CHAIR: You are completely correct. If there is enough time in the morning then, after hearing Lord Carlile, we will invite you to make your opening submission on scope. We will still have the private session before announcing the ruling on standing. The answer is be prepared to open on that. Mr Doctor will not be present for whatever reason—a perfectly acceptable reason, so far as I am concerned, because none of his clients will be here, and so he will be able to do his opening having seen your transcript. He will have his opportunity first thing next Tuesday.

110. MR KATKOWSKI KC: Yes, my Lord. Would that be an opportunity to deal with scope as well on his part? If that is the case—who am I to say this?—I would question whether that is going to be the most elegant way, if you like, of dealing with matters, because, of course, there would be that time between my submissions and his. Obviously, everyone understands the promoter’s position on scope because we have written about it almost endlessly, and I have made some initial submissions on the matter in my opening on the first day of these hearings.

111. I must admit, when I heard the idea of my making submissions tomorrow and my learned friend, Mr Doctor, making submissions, so that you could then consider some form of direction on the matter of scope, that seemed to me to be an exceptionally good idea. I think the idea of me making submissions tomorrow—I am very happy to make them, of course, but the idea of me making submissions tomorrow and then waiting and hearing from my learned friend, Mr Doctor, in effect as part of his petition, without there being any indication from the committee as to what on earth the scope is of those, I think, if you do not mind me saying, would be not the best way of doing things, but, of course, I am just me and you are the committee.

112. THE CHAIR: No, that is fine, because what we are going to do is, once we have

heard him, it may be that we will call on you to respond to that.

113. MR KATKOWSKI KC: Thank you.

114. THE CHAIR: That will be followed by a private session where we will consider an announcement on the scope. Now, the problem here procedurally is that all the petitioners who are unrepresented—a double negative here—are unlikely to be here. Accordingly, any decision which we will announce after hearing you and Mr Doctor, and any other petitioner who happens to be present and wants to speak on general principles of scope—we will, following our private session, make an announcement of a provisional view on scope.

115. MR KATKOWSKI KC: Thank you, my Lord. I am very grateful for that because, as you will understand, what I am angling for is having some idea as to scope before we actually get to the substance of however many petitioners—

116. THE CHAIR: The idea will be that I will be saying to everybody, “We regard these points”—if we come to a conclusion that something is out of scope—“as being out of scope. We cannot hear you on those things”.

117. MR KATKOWSKI KC: Thank you.

118. THE CHAIR: That is how we will deal with it, but, so far as the unrepresented petitioners are concerned, who are the issue here, we will give them the opportunity to say why our provisional view is wrong.

119. MR KATKOWSKI KC: I understand. So it would be provisional in relation to those who are not represented. It will not be provisional—it would be some form of guidance or direction—for those who have addressed you on the matter, in other words Mr Doctor.

120. THE CHAIR: Obviously, you cannot have separate decisions on scope. At the end of the day, it would be one set of principles on scope.

121. MR KATKOWSKI KC: That is fine. My Lord, I am so sorry. I did not mean to talk across you. I understand. I am grateful, thank you. That would be very helpful indeed. Thank you.

122. THE CHAIR: We are hoping that the result of that, if I am strict enough on that, is that we may be able to concertina, to some extent, the hearings, because we are very keen to get on with this. There are a lot of people who have engagements, whose appointments have to be managed to fit in with our process, or we have to fit in with their commitments. I hope that you and Mr Doctor will show as much flexibility as you possibly can if we have to rearrange matters so that we can hear more than we originally intended.

123. MR KATKOWSKI KC: I understand, my Lord. Yes, thank you very much indeed. That is all understood. Thank you.

124. LORD JAMIESON: I am going to address a completely different point.

125. LORD HOPE OF CRAIGHEAD: Mine is relevant to our discussion, I think. I wonder if you could clarify your position about the Thorney Island Society, the London Historic Parks and Gardens Trust and the Buxton family, because, while you have agreed that they have, I think I am right in saying, a right to appear—

126. MR KATKOWSKI KC: No.

127. LORD HOPE OF CRAIGHEAD: Was it a discretion?

128. MR KATKOWSKI KC: It is only discretion.

129. LORD HOPE OF CRAIGHEAD: Yes, but nevertheless, that is not my point. My point is that not everything that they say, according to you, is within the scope.

130. MR KATKOWSKI KC: Nearly everything they say is not within scope. Sorry about the double negative. Yes.

131. LORD HOPE OF CRAIGHEAD: Your scope argument—you would have an argument with those people about other points as well.

132. MR KATKOWSKI KC: Very much so.

133. LORD HOPE OF CRAIGHEAD: They have their discretionary right on some points only, but the scope argument has to be embracing them as well, does it not?

134. MR KATKOWSKI KC: It does, yes. We know already that three petitioners have

been—that you have exercised your discretion that you will hear from three petitioners. Obviously, at the moment, we do not know how many other petitioners you will decide have either the right or, in your discretion, you will allow to be heard. Let us assume there are some more. However many there are in total, I have the self-same submissions to make in relation to all of them about scope. That is to say that, whoever it is who gets through the net, so to speak, or the sieve—and we know there are three already—the vast majority of their points, as far as we are concerned, are undoubtedly out of scope.

135. LORD HOPE OF CRAIGHEAD: I suppose the advantage is that Mr Doctor is representing all of them anyway.

136. MR KATKOWSKI KC: Exactly.

137. LORD HOPE OF CRAIGHEAD: He will be able to take their position into account when he replies to you then.

138. MR KATKOWSKI KC: That is exactly my point. That is why I was so keen to establish this earlier on, because he is appearing for those who you have exercised your discretion to hear from in due course. What I am interested in, obviously—and you will understand this; of course you will. I am very interested in quite what it is that you are going to be hearing from them in relation to, because, as you know, I am—I hope not forlornly—trying to avoid the situation that arose in the other House where we listened, I would hope very politely, to a whole series of points being made by, in that case, all the petitioners, only for me to say at the end of each petition, “That is all out of scope”. It would be much better to deal with it and to put the horse in front of the cart this time, I would say.

139. LORD JAMIESON: On a completely different matter, just looking through the plans for the development, it was not clear to me what the perimeter would be post construction, as in, “Where can the public freely access and where there is restricted access, i.e. only the people who are visiting it and they are ticketed?”

140. MR KATKOWSKI KC: In essence, it is the courtyard of the memorial and learning centre which would be ticketed. The public would even be able to go on the mound, so to speak, but we can either dig out an already existing plan or produce a plan. I am sure there is already a plan which shows that.

141. LORD JAMIESON: That would be most helpful. Thank you.

142. MR KATKOWSKI KC: We will submit that, my Lord.

143. THE CHAIR: Any other questions? Thank you very much. We will see you tomorrow morning at 10 am.

144. MR KATKOWSKI KC: 10 am tomorrow, yes. Thank you, my Lord.

145. THE CHAIR: Thank you.