CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Wednesday, 13 November 2024 (Morning)

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:

Robert McCracken KC
Lord Inglewood
Lord Carlile of Berriew

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(At 10.10 a.m.)

1. THE CHAIR: Good morning, everybody. This is the fifth public meeting of the Select Committee on the Holocaust Memorial Bill. At the moment, we are concerned only with the question of the right to be heard and not with the issue of scope or principle of the Bill.

2. The procedure we are going to follow today is as follows. After hearing the challenges to standing this morning—that is in relation to Lord Inglewood and Lord Carlile of Berriew—we will invite submissions from the promoters about the principle of the Bill and what lies within the scope of our consideration. We will then go into private session this morning and, at 2.30 this afternoon, we will announce our decision on those who do and who do not have standing. Submissions on scope will be heard from the petitioners when we reconvene next week.

3. I have to deal with the practical matter of fire alarms. In the case of fire, bells are not used in the parliamentary estate. Instead, a two-tone siren followed by a series of taped messages is broadcast. If evacuation is necessary, please follow the instructions of the clerk. Anyone not in the committee room itself should find the nearest security officer. The proceedings are being broadcast, and a full transcript will be taken of the evidence and of submissions, as it has been in the past.

4. With that brief introduction, I am going to invite counsel for the promoter, Mr Katkowski, to make the case for the promoters that Lord Inglewood does not have the right to be heard.

Opening Statement by Mr Katkowski KC

5. MR KATKOWSKI KC: Good morning. Thank you, my Lord. Before I do that, can I just very briefly mention that, as you will recall, at the end of yesterday's proceedings, Lord Jamieson asked about the extent of the gardens that would be freely available, so to speak, for public access after completion of the project, should it take place. We will be providing a plan, as indicated yesterday. There is no need for it to be looked at at the moment, but, in our slides that were part of my opening submission, PRO 002, slide 43 will perform that function for now. As and when you look at slide 43, the areas coloured pink or reddish will be the areas where one would have to go through

the entrance pavilion to get to the courtyard of the memorial and learning centre. Everything which is not reddish pink on that slide would be available freely to the public after the project is built. I just wanted to clarify that while it was in my mind, or at least written on my notes in front of me.

6. LORD HOPE OF CRAIGHEAD: Do you have any information about the extent of the use during construction?

7. MR KATKOWSKI KC: In the sense of the use of the gardens?

8. LORD HOPE OF CRAIGHEAD: Yes, that end of the garden.

9. MR KATKOWSKI KC: My Lord, yes, as mentioned in my opening submissions, the intention is that, throughout the construction period, the area next to the Thames, next to the river would be kept free for public access—the riverside walk, if you like. Otherwise, the rest of the gardens will be variously used for construction compounds as the project is built out.

10. LORD HOPE OF CRAIGHEAD: That suggests that the public can get access to the walk along the Thames from the public road at the north end of the garden.

11. MR KATKOWSKI KC: Yes, indeed. My Lord might recall that one of the documents that we were asked to provide, and which we have provided in our list, is the assurances that we proffered, which, in due course, were not taken up by the House of Commons Select Committee. One of the assurances related to the very point that my Lord has asked. That document is PRO 006, appendix 2.

12. With those preliminary clarifications made, if I can turn to Lord Inglewood and our challenge to Lord Inglewood's standing, I shall do this briefly. Lord Inglewood is represented by my learned friend sitting to my right, Mr McCracken, and so at the outset I need only briefly summarise my submissions; they will be well known to my learned friend.

13. I understand that the way it will be put in due course on Lord Inglewood's behalf is that, "To the extent that the dichotomy is valid, the petitioner contends that he has the right to be heard and, in the alternative, if that is not accepted in due course by the committee, that the committee should exercise its discretion to hear the petitioner", so I

would address those points now, in brief.

14. As you will know, it is my submission that, in order for there to be the right to be heard, there needs to be some interference with one's interests, property or otherwise, which could be enforced in private law litigation, were it not for the provisions of the Bill. If that submission is accepted in due course by this committee, then, plainly, this petitioner does not fall within that definition.

15. I want to just clarify, though, one point which has arisen repeatedly, or certainly on a number of occasions, during the course of the submissions I have made on this matter previously to this committee. That is the point that has been put to me that both Lord Walker, in the ruling in the HS2 Bill that I, as you know, rely on heavily, and me, on behalf of the promoter, in relying on Lord Walker's ruling, have, in some way, if you like, confined the interest which must be in play for there to be a right to be heard to a property interest.

16. I just want to say two things about that, if I may, briefly. First of all, I do not accept, on behalf of the promoter, that that is what Lord Walker's ruling says, in the first instance. Secondly, and I do not know whether I can say more importantly, but, in any event, it is my submission that I certainly do not confine my case to you to a submission that there has to be a property interest. Any legal interest which would be enforceable in private law, were it not for the provisions in the Bill, is an interest which, in my submission, would give the right to be heard. That does not need to be a property interest. As is well known, there are other private interests not related to property which can be enforced in private law. I just wanted to clarify that.

17. THE CHAIR: Are you right about that, so far as Lord Walker is concerned? Can we just have a look at what he said?

18. MR KATKOWSKI KC: Yes, of course. It is in our book of authorities and it is at page 12. It is the second part of paragraph 8 on page 12 of our book of authorities.

19. THE CHAIR: He is talking about there having to be "direct and material detriment to his or her property interests". That qualifies everything, and it is subdivided, "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".

20. MR KATKOWSKI KC: It is the latter words, my Lord, which, in my submission, broaden the scope of the ruling beyond property and property only. Plainly, because that is what is written on the page, I accept that the first part of the ruling which refers to "direct and material detriment to his or her property interests" is about property. The subclause after that, "either by compulsory acquisition or by interference with his or her property rights", et cetera is, plainly, still talking about property interests. It is the last few words, which, certainly in my submission, in the ruling here indicate that wider proposition—"some other interference which would be actionable if not authorised by Parliament". Certainly, in my reading of that, I do not read that as confined to some other interference with property interests.

21. THE CHAIR: I thought that is what you were saying up until today.

22. MR KATKOWSKI KC: No. I have repeatedly, constantly and universally said the exact opposite of that, my Lord. I have watched all the tapes back to make sure that this is the case. I have said throughout that those last words of paragraph 8 go beyond property interests. That has been my submission throughout.

23. LORD HOPE OF CRAIGHEAD: I think, when we discussed it at the very beginning, I said that one of the cases that Lord Walker had in mind was a Canary Wharf case called *Hunter*. In that case, the whole argument was whether the residents nearby had an actionable claim, not about property interests, but whether the disturbance, creating noise and so on, was sufficiently serious to give them a right of action. The House of Lords held that they did not have a right of action, but the underlying principle was that, if it had been grave enough, then it would have been actionable, even though it was not a property interest. That is exactly what is underlying those last few words.

24. MR KATKOWSKI KC: In my submission, yes. That is certainly my submission. That is certainly my reading, on behalf of the promoter, of the ruling. I just want to stress, if, in due course, the committee decides otherwise and considers that Lord Walker's ruling in that Bill was confining the as-of-right ability to petition to property interests and property interests only, it is and has always been my submission that some other interest, which is not a property-related interest, as long as it is enforceable in

private law, can found the right to be heard. That has always been my submission. That is why I have taken a moment or two to clarify, because I have become concerned that a submission that I believe I have made clearly, but obviously have not succeeded in making clearly, has been, perfectly innocently, if you like, misunderstood. I just wanted to clarify.

25. LORD HOPE OF CRAIGHEAD: If it is any comfort to you, I have always understood your position, because of the point you were raising about Canary Wharf.

26. MR KATKOWSKI: Thank you very much. That provides me with great comfort. Thank you. My Lord, that is the first submission I wanted to make. If, in due course, the committee accepts that submission, then, plainly, this petitioner does not fall within the category of having a right to be heard.

27. In relation to the discretionary Standing Orders, I assume that, in due course, my learned friend will be relying on Standing Order 118. Just to mention Standing Order 117, the petitioner is not an association or a society, plainly. Under Standing Order 118, the petitioner is not Westminster City Council and so does not fall within that part of the discretion.

28. That just leaves the issue that might have become quite knotty here, which is whether or not the petitioner can petition as an inhabitant who would be injuriously affected by the Bill or one or other of its provisions. You will understand and know that it is my submission that, for an inhabitant to fall within the scope of that discretion, the inhabitant needs to be properly and sufficiently representative of the inhabitants of the area more widely or generally. That is a submission which I spent quite a bit of time on yesterday. I will not go through all of that again, if I might.

29. The final submission I wish to make is that, beyond those categories—that is to say, "Does the petitioner have a right to be heard, yes or no? If not, does he fall within the scope of the discretionary provisions in Standing Order 118 in particular, yes or no?"—if the answer to both of those questions is no, there is not a wider general or residual discretion outside the scope of the Standing Orders. I have made that submission before. It is recorded in our papers. You will see it particularly in our paper PRO-008, at paragraphs 4 through to 6. It is a point which I have already addressed you on.

30. Those are the submissions I wish to make in summary. Obviously, I shall listen to my learned friend's submissions and reply to them in due course.

31. THE CHAIR: Thank you very much. Mr McCracken, would you like to respond?

Lord Inglewood

Submissions by Mr McCracken KC

32. MR MCCRACKEN KC: My Lords, my Lady, I am asking Lord Inglewood to distribute copies of two documents, both of which, I hope, will be fairly familiar to members of the committee, since they are, with one minor change, documents that were circulated either a couple of days ago or 12 days ago.

33. First of all, the first document is a summary of arguments on scope and standing, which has one revision, which revision is made in the way that, traditionally, amended pleadings were amended—that is with crossings out and underlinings to indicate where the change is. The change is simply in relation to the amendment which Lord Inglewood is seeking to persuade the committee to recommend to the House of Lords.

34. The second document is a statement by Historic Buildings & Places, formerly known as the Ancient Monuments Society, which body supports the case that Lord Inglewood wishes to present—in particular, paragraphs 18 and 19 of the summary of arguments, and the amendment to Clause 2 of the Bill, which Lord Inglewood now seeks to present.

35. I shall spend no time on the revision to the amendment, because that is not material to the question of standing. I shall turn straightaway to those parts of the summary of arguments on scope and standing that are germane to the question that arises this morning on standing, but I simply note, in passing, as it were, that, insofar as the committee is considering later today a provisional ruling on scope, it may find helpful the submissions that are made here, even if, in the event, it is not minded to give standing to Lord Inglewood, because the observations are broad and general and relate both to the scope of the committee's ability to act consistently with the long-standing practice that the principle of the Bill is not open for question and to the very live issue raised by Mr Katkowski, and that is the extent to which matters that are germane to

planning can also be germane to the committee's considerations, but I emphasise that is not for now. For now, I turn to paragraph 9 of the summary of arguments.

36. THE CHAIR: Just for clarification, Mr McCracken, we will give our provisional ruling on scope after we have heard counsel next week. It will not be done just on the basis of what we hear today from Mr Katkowski, but it will be before the individual petitioners, as it were, put forward their petitions. The process will be, next week, we will hear from counsel for some of the petitioners. If you are present, then you can make your submissions generally at that time in relation to scope. Any other unrepresented petitioners can also make their submissions generally on scope, and it is only at that point that we will give our provisional decision. It is provisional because there are, undoubtedly, going to be unrepresented petitioners who will not be present and will not have had an opportunity of having their say.

37. MR MCCRACKEN KC: That is very helpful, my Lord. I turn to paragraph 9, where, in my summary of arguments, I discuss the essence of the statutory restriction which the Bill seeks to lift. The essence of the statutory restriction is that Victoria Tower Gardens should be a garden, and I identify there three functions that are included amongst those which a garden performs: aesthetic—for example, the setting of surrounding buildings and the built environment; recreational—a place to walk, talk, smoke, sit, reflect, children to play; and natural places for wildlife within urban areas.

38. I turn from that to make certain general observations about parliamentary practice on standing and the underlying purpose of the parliamentary practice. I deal with that at paragraph 11 onwards. My submission is that the purpose of the practice of Parliament on standing is to facilitate, by useful exclusion, expeditious decision-making, but it also aims to give standing to those who have interests or, to use the contemporary term, stakes which need fuller consideration than is possible in general debate.

39. Certain fundamental principles must, of course, be recognised. The first is that the principle of a Bill is not for debate in committee. It has to be accepted.

40. The second is that each committee is master of its own procedure. There, I am particularly referring to this committee of the House of Lords. The committee of the House of Commons, which considered this previously, was subject to fairly restrictive instructions, which had a considerable effect upon what the committee was able to do,

but this committee is master of its own procedure and it decides, in its own context, on the interpretation and application of Standing Orders and the evolution of practice.

41. I have no hesitation in referring to the evolution of practice, because that is, indeed, one of the outstanding features, both of the common law legal system and our unwritten constitution: that practice and procedure can evolve. It is by evolution that we avoid revolution of a kind which usually delivers something rather different from what it promises.

42. The classic formulation of those who have a right to be heard—and Mr Katkowski set it out in his very helpful initial set of authorities—is that of *Erskine May*, "Property or interests directly and specially affected".

43. It is important to note, in relation to one of the great controversies that is, as it were, before this committee today, that that general, classic formulation is not set out in any House of Lords Standing Orders. It is a very general formulation which allows for flexibility in approach and evolution, and the types of interest that distinguish those with standing from those without it are not restricted to proprietary or commercial interests. The appropriate application of the principles in the 21st century is, not surprisingly, different from that of the 19th century.

44. I pause here to observe that, in the most recent, as it were, very generous supply of ancient authorities with which Mr Katkowski has enriched the reading of the committee, he has included textbooks from, I think, the early 1860s. It is worth reflecting on the fact that, shortly before that textbook was printed, your Lordships' House had endorsed the principle, that, today, would be regarded by most lawyers as iniquitous, of the doctrine of common employment. Just as things have changed in the common law of tort, so too things have changed in the practice of committees when it comes to standing.

45. THE CHAIR: Can I ask you to just pause for a moment? The context which we are dealing with matters quite a lot, does it not? I think I am right in saying these earlier authorities are all dealing with the acquisition of property to enable a railway built, a canal dug or whatever else, whereas, in this case, we are concerned with the use of the garden, and there is no acquisition of property at all. Does that matter in categorising the nature of the interests we deal with?

46. MR MCCRACKEN KC: One could, of course, as with so many points, look at it from two points of view. One point of view—the point of view that I would invite the committee to, as it were, take—is naturally, in the context of compulsory acquisition of property, the focus was on whose property was being taken. That is the approach that I would invite you to adopt. The approach which Mr Katkowski invites you to adopt is, "Looking at all those instances, they were instances where property was being acquired. Therefore, the committee cannot decide, in other contexts, to adopt a different approach to what constitutes a stake, which, as it were, entitles somebody to standing". It is for the committee, of course, to come to a view on that in contemporary circumstances.

47. I would, just as I am dealing with that point, make this point. No doubt, it will be a temptation for the promoter to say, "Be very careful, committee, because you will be opening the door to the floodgates of incontinent representations by busybodies in the future", but it is always worth remembering, when that floodgates argument may be invoked, how common the circumstances are of the particular decision that is to be made.

48. Because I have watched some of the proceedings, I noticed Mr Katkowski characterise these circumstances as being unique. Therefore, the worry that the committee might otherwise have about laying down a precedent that could be abused in the future, if it was misunderstood by later committees, is one with which the committee need not concern itself, in my submission.

49. THE CHAIR: Can I just ask you a question about the statement in *Erskine May* about the definition of the convention of giving a right to be heard? One would not want to take a false point, so I am putting to you a question that the introductory words, generally speaking, might assist your submission that, even within the rule as stated, there is a degree of flexibility according to the circumstances, and it is marked by those words.

50. MR MCCRACKEN KC: My Lord, yes. I think that is a very helpful way of approaching the matter. I move on, in paragraph 13, to reflect on the relationship between that classic formulation and the Standing Orders in the House of Lords. It is worth remembering that, quite often, the promoter has said, "Where does this fit into the Standing Orders in relation to claims by petitioners to be heard?" The Standing Orders

give some a right to be heard. They make clear that some may be heard, subject to the discretion of the committee.

51. When I drafted this, I said, "They do not prohibit committees from hearing anyone". I should qualify that to this extent: that Standing Order 115(1) does prohibit some members of corporations from petitioning, so it could be said that there is one prohibition, and that is that certain members of corporations cannot petition against those corporations, but I think that qualification is not one that works against the general proposition that I am making.

52. My general proposition is that the principle of expressio unius est exclusio alterius cannot apply, as the Standing Orders do not purport to be comprehensive. For example, the classic formulation is not included. If one were to take the view that expressio unius est exclusio alterius applied, then *Erskine May* would be wrong, and that, plainly, is not a submission which the promoter is wishing to make.

53. Parliamentary committees—paragraph 14—rightly attach importance to the extent to which putative petitioners have involvement, expertise and knowledge enabling them to bring out significant matters that might otherwise not be considered. They have the ability to recognise special cases and can allow standing as an exceptional exercise of discretion.

54. I have set out a number of examples in the original bundle of authorities that Mr Katkowski provided that demonstrate that. I am very happy to take the committee to some of those, but it may be that the committee has had an opportunity to look at those and does not need me to do it, but I will just take one by way of example from Lord Walker's ruling in HS2.

55. If we turn, in the promoter's original bundle of authorities, to paragraphs 14 and 16 on page 13, Lord Walker, on behalf of the committee, said that it had decided to hear three petitioners who did not fall within the terms of the Standing Orders—at paragraph 14, HS2 Action Alliance and HS2 Euston Action Group. They fell outside Standing Order 117 as previously interpreted. Then, at paragraph 16, Mr Williams of Chelmsley Wood, who also fell outside the Standing Orders as previously interpreted, and we see that, in relation, for example, to Mr Williams, he is described as a special case. On internal page 14, just before paragraph 17, we see that his petition was allowed as an

exceptional exercise of discretion under Standing Order 118, so the committee, at least as interpreted by Lord Walker's committee on HS2, has a very broad discretion.

56. LORD HOPE AND CRAIGHEAD: Can you just pause and explain Mr Williams' position a little more? He was petitioning as an individual, but he did have the support of various other people, and they were relying on him to speak for them. Is that right?

57. MR MCCRACKEN KC: It is true. Yes, indeed.

58. THE CHAIR: I thought that your proposition for which you were citing these passages was that the Standing Orders are not exclusive, as it were, and that, outside that, there remains a discretion. These are cases where the ruling, for example, under paragraph 14, is these two action groups you mentioned come within the terms of Standing Order 117. So far as Mr Williams is concerned, they exercised their discretion under 118. These passages do not show that there is a general discretion outside the Standing Orders.

59. MR MCCRACKEN KC: My Lord, in relation to that, if I can make two points, the first is that there is nothing to indicate that there is no general discretion, which is, of course, a separate point.

60. In relation to exceptional exercise of discretion under Standing Order 117 or 118, the same principle would apply, for example, in respect of Lord Inglewood in view of his relationship to Historic Buildings & Places, which was formerly the Ancient Monuments Society. That is a body which is a statutory consultee on applications in relation to listed buildings. It supports what he wants to say, and therefore it would be entirely consistent with what happened in the HS2 case for this committee, as an exceptional exercise of its discretion under 117, to permit Lord Inglewood to present his case.

61. It would be, in a sense, close to both of those, but, in particular, of course, Historic Buildings & Places is a body that, had it, as it were, got its act together in time, would have been able to petition. In fact, it did not. That is not a distinction of substance which ought to stand in the way of the committee hearing somebody who has expertise. We are putting the views of a body which has a statutorily recognised interest in listed buildings.

62. I think it may be instructive at this stage to reflect on the fact that the promoter does not object to four individuals from the Buxton family presenting their petition. The promoter, by not objecting to the four members of the Buxton family presenting their petition, has, himself, impliedly accept that the committee has a general discretion.

63. It is also worth, in this context, bearing in mind the inherent flexibility of committees illustrated by some of the practice. For example, the committee has felt able to raise, of its own Motion, matters which have been drawn to its attention by rejected petitioners. That was apparent in, I think, the Royal Albert Hall case, where I think Baroness Hale of Richmond was chairing that committee. That is at page 66 of the bundle, I think. At paragraph 248 of the hearing minutes, the committee says this: "In the course of the proceedings relating to this Bill, there have been drawn to the committee's attention matters that they feel should be drawn to the attention of the House and it is therefore our intention to make a special report to the House in due course".

64. THE CHAIR: Is this page 44 of the bundle?

65. MR MCCRACKEN KC: It is page 66 of the bundle, but page 44 of the minutes.

66. THE CHAIR: I have it. Thank you. What do you get from that?

67. MR MCCRACKEN KC: That the committee has a power to raise, of its own Motion, matters and to put them in the form of a special report to the House, which is a point of potentially some significance in the particular circumstances of this case.

68. I then turn to the Holocaust Memorial Bill and Lord Inglewood, at paragraph 16 onwards. The Victoria Tower Gardens are, plainly, directly affected by the Holocaust memorial and learning centre. Two of the three functions that I have identified gardens as performing are ones in respect of which Lord Inglewood has a special interest, different from those of the generality of the public.

69. First of all, he is a former government Minister with responsibility for architectural heritage and conservation, so he has a particular expertise. He is also a fellow of the Society of Antiquaries.

70. Most importantly, he is president of Historic Buildings & Places, previously the

Ancient Monuments Society. The statement of 8 November from Ross Anthony, who is the Historic Buildings & Places caseworker, indicates that the organisation supports the amendments to the details of the Bill which Lord Inglewood is proposing. The reason for that relates to paragraphs 18 and 19 of Lord Inglewood's summary. In particular, Historic Buildings & Places is concerned that what the Bill permits should not undermine the significance, the setting and views and experience of so many important historic buildings. It is particularly in relation to the setting, views and experience of important historic buildings. That is their particular concern and the particular, as it were, interest to which Lord Inglewood has a special expertise.

71. BARONESS SCOTT OF NEEDHAM MARKET: Clearly, Lord Inglewood is the president of the association, but is he speaking on behalf of it? Would it be his intention to speak on behalf of it?

72. MR MCCRACKEN KC: I think his intention would be to present the arguments that are set out in the statement but which are supported by Historic Buildings & Places, and he does so with the support of Historic Buildings & Places. I think, insofar as he speaks in relation to points 18 and 19 in his summary, then they will be, as it were, cheering him on, but if he speaks about, for example, the role of Victoria Tower Gardens for Peers and their suitors to walk around and reflect quietly, which is one of the points he makes, then he is not speaking on their behalf in relation to that. In other words, it is a limited, albeit, in my submission, rather critical element of his case that they support, but they are not, as it were, endorsing the other part. They are not expressing a view on the other part.

73. BARONESS SCOTT OF NEEDHAM MARKET: That is helpful. Thank you.

74. MR MCCRACKEN KC: It may be helpful if I now turn, as it were, to the other part of Lord Inglewood's interest. This is paragraph 17(iii). He works, of course, in the Palace of Westminster and has an office in No. 1 Millbank, which is opposite Victoria Tower Gardens. The gardens are important to him, his staff and his visitors. I draw the analogy to that of a don and his college garden, a hospital consultant and his hospital garden, a canon and his cathedral close, or a barrister and his inn's garden.

75. Those gardens are, to some extent, open to the public, but the riparian professionals have a direct special interest which is different to that of the general

public. Victoria Tower Gardens is important as a resource which is available for those occasions which call for calm reflection, discussion and a place to wait after long journeys. For example, many of his suitors come from Cumberland, so they have had a long journey. If they are wise, they do not rely on their train arriving on time. They arrive early, so that they can deal with any delays.

76. One might say, "Why not rely upon the governing body of the college to object?" Let us take an example. Suppose, for example, that a Bill for a high-speed rail link between Oxford and Cambridge is proposed, and it is envisaged that there will be a new depot, and that depot will be in the gardens of a college which happens to be very close to the station. It is a beautiful garden. Governing bodies, rather radical and progressive, with a red provost, as it were, decide, "We really ought not to object to a high-speed train link, even though it affects our garden", but there might well be a don who does not live in college but has worked there every day for 30 years, who does care about the loss of the garden and thinks that the Bill for the high-speed rail link between Oxford and Cambridge could be much improved if certain amendments were made which would protect the garden. Is it to be said that such a don does not have a special interest? The same argument would apply in relation to a cathedral close or a hospital or an inn garden.

77. In relation to historic buildings and so on, I just move on to draw attention to one particular matter which I think is germane. It is clear that what is proposed will have a massive impact on the setting of the world heritage site, the Palace of Westminster. It will also, plainly, have a massive impact on the Buxton memorial and, potentially, the Burghers of Calais.

78. Mr Katkowski says, "All these matters have been considered at a planning inquiry. Just look at the inspector's conclusions". In answer to a question, "Did he cover it?" Mr Katkowski's answer was, "Look at the inspector's conclusions". One of the things that the committee will find, if it does look at the inspector's conclusions, is that there is no discussion of the effects on the setting of St Thomas' Hospital, Lambeth Palace or the adjoining church on the South Bank.

79. That is very important because St Thomas' Hospital is not only associated with Florence Nightingale's struggle against corruption and incompetence, and her

innovative ideas about the design of hospitals for hygiene, but it also, of course, can be seen in juxtaposition with the Buxton memorial from Dean Stanley Street. That is a memorial to and a celebration of the struggle against vested interests, which led to the anti-slavery legislation. There are aspects of architecture and history that were not addressed in the inspector's report. I invite the committee to look at the inspector's report, and they will see that, in his conclusion, he did not deal with the setting of the South Bank, so that is one of the things that the committee might wish to be advised on before making whatever recommendations it makes to the House.

80. From Lord Inglewood's point of view, and from the point of view of Historic Buildings & Places, it is not simply a matter of looking at what is proposed here, but looking at the precedent effect of what is proposed here. It makes sense, when one is thinking about effects on settings of historic buildings and so on, to consider what is likely to follow and be difficult to resist.

81. There are many genocides and other crimes against humanity for which the Holocaust memorial and learning centre will be a precedent. The connection between the actions of or inaction of the UK Parliament and those will be as great or greater than the Holocaust, and it will be difficult to resist pressure for memorials and learning centres in relation to them in Victoria Tower Gardens. It is, therefore, very important that the scale of the Holocaust memorial and learning centre is limited in the way that Lord Inglewood's revised amendment seeks to do.

82. I could give your Lordships a list of genocides and other crimes against humanity that immediately spring to mind, but I think that it does not need me to mention Armenia, Rwanda, Holodomor, the Bengal famine and so on to indicate the large number of events in respect of which it might be said the UK Parliament should have taken greater action.

83. Lord Inglewood seeks to be heard in relation to the effects on the settings of listed buildings and in relation to the precedent effect. He also seeks to be heard in relation to the importance to him, his staff and visitors of a garden which provides all the opportunities that gardens provide.

84. It occurred to me, as I was reflecting on my submissions this morning, that the committee might, in a sense, categorise the putative petitioners in six groups. There are

the residents' group, there are the survivors' group, what I would call the gardens history group. There are the settings of buildings group, insofar as there are others beyond Lord Inglewood. There is the Buxton family, and there is what I would call the interest of those who are Members of Parliament for whom Victoria Tower Gardens is, as it were, the equivalent of their college garden.

85. THE CHAIR: That is a bit narrow. If you are saying that those who work in Parliament have a particular interest in the amenity value of the gardens, that is fair enough, but you cannot confine that just to Parliament. There are lots of other places in the vicinity where people work. Parliamentarians are not the only working people in the vicinity, so you have to talk about all those who work and use the gardens as an amenity.

86. MR MCCRACKEN KC: Whether or not that category is included in those from which the committee would like to hear is, of course, a matter for the committee. In a sense, from my perspective, it plainly is a matter for the committee to decide whether that is right. In my submission, there is a particular importance to those who work in the gardens, especially when one is looking at a statutory restriction which requires that the garden remains a garden.

87. It is a matter for the judgment, of course, of the committee, but it would be rather strange if those who want to make detailed arguments about the Holocaust memorial and learning centre should be precluded on the basis that the category of those who want to make those representations is one which cannot fall within the discretion of the committee.

88. THE CHAIR: I was just making a narrower point, really, which is, if there is a petitioner who relies upon the fact that they are working in Parliament and that the Victoria Tower Gardens is an amenity which is very close, which they can use for various parliamentary and non-parliamentary purposes, there are many workers in the area. This is neither a plus nor a minus point. It is just a fact that parliamentarians are not, in that respect, different from other working people in the vicinity who are used to enjoying the amenity. That is all.

89. MR MCCRACKEN KC: I understand the point, my Lord. The only thing that I would add is that perhaps the importance of the decisions that parliamentarians have to

make and the danger of heated controversy makes it especially important that they should have opportunities for calm reflection. One only has to think of what must have been going through the mind of Sir Edward Grey before he made his speech in which he said, "The lamps are going out all over Europe, and we should come to the defence of Belgium, whose neutrality has been violated in breach of international law''. Perhaps the need for parliamentarians to have the opportunity for quiet and calm reflection is greater than that of other people.

90. As to whether or not the statutory protection of the garden can give rise to litigation, of course it can give rise to litigation. If there is a proposal to do something in the garden that is prohibited by the London County Council (General Powers) Act, then people can litigate to protect the garden. It may well be that, in an earlier era, before recent developments in judicial review, they would not have been able to, but, as a result of recent developments in judicial review, people are able to take actions that they were not able to take in the past.

91. It might be said that the only person who would have litigated in respect of the garden until recently was the Attorney General in the interests of the public, but the law in relation to judicial review has moved on and, in my respectful submission, although it is not necessary to my case, the approach towards standing in this committee should itself move on and the decision here should reflect, above all else, two things. These are unique circumstances and there are particular groups who have expertise, and it would be helpful for the committee to have the benefit of that expertise.

92. THE CHAIR: Can I just take up the judicial review point? The case that is run by Mr Katkowski, and I am sure he will correct me if I am wrong about this, is that what is important—this is under the right to be heard, the *Erskine May* description to be heard. What is important is that there is an interest which gives rise to a cause of action in private law, not judicial review. That would be a distinction that he would make. I am not saying he is right or wrong about that, but I just wanted to mention that, because are you saying that, now that we have judicial review, there is no reason why it should be limiting this to people whose interests can be litigated in private law only?

93. MR MCCRACKEN KC: My Lord, yes, because, if one thinks about the test for judicial review, it is sufficient interest. Why should the interest today in relation to the

Erskine May test be one that is restricted in the way that my learned friend suggests?

94. To end, if I may, it just occurs to me, one of the most important cases on standing in judicial review in this century was the *Walton* case. It was a case from Scotland relating to a road scheme. In a memorable judgment, my Lord Hope said, "Who will speak for the osprey?"

95. Perhaps this committee should reflect on where Mr Katkowski's submissions would lead, because they would lead to this committee taking the view that it could not, as it were, allow somebody to speak, because their concern related to something such as an osprey, which is not a private property interest. With great respect to my learned friend, it would really be a most unfortunate swansong for the House of Lords if it were to say that private grouse shooting rights are ones that can be protected, but wildlife that has value to the community cannot be protected by a petition in circumstances where the petitioner is the person who is best able to represent that interest.

96. THE CHAIR: Again, if I can just press you a little on this, I suspect that what would be said against you is that the object of this committee is to protect private interests, whereas judicial review and the examples that you have given are concerned with a wider public interest. Of course, you must have sufficient standing, but judicial review is not something which protects the private interests which are the concern of this committee.

97. MR MCCRACKEN KC: I am sure that point will be made to me, but I would, with respect, say it is plainly not the approach which is now, in the 21st century, taken. If one looks at the Standing Orders, for example, that allow inhabitants to speak, plainly the inhabitants are not speaking only about private property interests. They are speaking about the well-being of their area generally.

98. If an educational organisation speaks under Standing Order 117, or an amenity organisation, it is plainly not there to protect private property interests. It is there to protect, as it were, common interests. I do want to emphasise that it does not follow from any of this that any busybody can come along here and, as it were, harangue the committee for hours. None of that follows from this. The real question, in my submission, on which the committee ought, bearing in mind the underlying purpose of the Standing Orders, to focus in the 21st century is, "What interests ought we to be

thinking about, and how best will they be safeguarded by our decisions on standing?"

99. THE CHAIR: Do any of the members of the committee want to ask any questions?

100. LORD HOPE OF CRAIGHEAD: Can I just be quite clear about the position on discretion? Your main case, as I understand it, is that Lord Inglewood is especially affected, for the reasons you set out in paragraph 17. You mentioned discretion. Are you referring to Standing Order 117 or 118?

101. MR MCCRACKEN KC: 117, because it is really in relation to Historic Buildings & Places. Under 117, Historic Buildings & Places would be in a position to petition. If you look at 117(2), "Without prejudice to the generality of paragraph 1, where any society, association or other body sufficiently representing amenity, educational, travel or recreation interests, petition against a Bill, alleging that the interests they represent would be as adversely affected as material interest by the provisions, it shall be competent to the Select Committee if they think to permit the petitioners". Our situation here is directly analogous to that of those who were permitted to present their petitions in the HS2 case.

102. LORD HOPE OF CRAIGHEAD: What troubles me—and it may be my fault—is how Lord Inglewood can bring himself within the words "any society, association or other body".

103. MR MCCRACKEN KC: I draw an analogy with the situation in HS2 of Mr Williams.

104. LORD HOPE OF CRAIGHEAD: He was 118.

105. MR MCCRACKEN KC: Indeed, but I think, in a sense, it does not matter whether one is exercising discretion on 117 or 118. The point is one can exercise discretion in a broad way. If one looks at, say, paragraph 14 of HS2, that was a case where HS2 Action Alliance and HS2 Euston Action Group were allowed to speak, even though they did not fall within the traditional approach to the definition of amenity group.

106. LORD HOPE OF CRAIGHEAD: Yes, but that was a 117 case, because they were a body. 118 is an individual.

107. MR MCCRACKEN KC: Then let me put it this way, my Lord. It would be somewhat strange that the promoter has accepted that four individuals who are members of the Buxton family can petition, and it has been accepted that they can petition, but to say that, although Lord Inglewood enjoys the support of a body which is entitled to petition, he cannot present his arguments, even though they are not otherwise going to be presented to the committee.

108. LORD HOPE OF CRAIGHEAD: All I am really driving at is: are you resting your case for discretion on 117 only, or are you invoking 118?

109. MR MCCRACKEN KC: 117 is the principal point, but 118, in a broad sense, might be said to apply, in that "inhabitant" does not necessarily have to be confined to those who live in an area. It includes those people who spend a lot of time in there—workers and such like.

110. LORD HOPE OF CRAIGHEAD: You are really indicating that he would not qualify as an inhabitant, because of where he lives.

111. MR MCCRACKEN KC: I am not claiming that he lives here. If it is 118, it is that inhabitants include those who work in an area, as it were. In terms of discretion, it would be predominantly 117. Of course, Lord Inglewood is an officer of Historic Buildings & Places.

112. LORD HOPE OF CRAIGHEAD: His petition is brought in his own name. That is my point.

113. MR MCCRACKEN KC: My Lord, yes. Here, I would simply submit this. The committee is master of its procedure, and it does not have to go back to, as it were, the kind of technical approach that was appropriate before the Judicature Acts in saying, "You have not followed the proper form". It can look at the underlying reality of the situation. The underlying reality is somebody lodged a petition in time, so nobody is taken by surprise that a petition has been lodged, and the substance of the petition is supported by Historic Buildings & Places.

114. LORD HOPE OF CRAIGHEAD: I take your point and I see your argument. Thank you.

115. LORD JAMIESON: For my own clarity, and I am not as learned as my colleagues here, are you seeking to say, “I should be heard because I am a representative of Historic Buildings & Places”, or are you saying, “I deserve to be heard as an individual because I use the park”, et cetera?

116. MR MCCRACKEN KC: Both, my Lord.

117. LORD JAMIESON: Are you looking to do both or one of them?

118. MR MCCRACKEN KC: Both, my Lord, but, of course, if the committee is against me on one point, then I am happy for the committee to admit Lord Inglewood on the other point.

119. LORD JAMIESON: I am just trying to get some clarity here. You have put the petition in your name. Your contention is, “Historic Buildings & Places could have put it in but did not meet the deadline. Please use your discretion to allow this to be heard”. I am trying to get to that point. Are you trying to have your cake and eat it, or are you prepared to jump one way or the other?

120. MR MCCRACKEN KC: I do not think, with respect, that we are wanting to have our cake and eat it. We think that we want to have a first course and then we would like to have a main course, but if all that we can have is one course, then we are happy to take one course, as it were. I put both cases, but they are alternatives. In a sense, if we satisfy you on one, then that is enough, but my submission would be that we ought to satisfy you on both.

121. THE CHAIR: Can I ask a follow-up question on that? Do you also rely upon the general *Erskine May* convention as well as the Standing Orders? In other words, are you also saying, “Lord Inglewood has a right to be heard”, not as a matter of discretion, “because he is directly and especially affected by the Bill”?

122. MR MCCRACKEN KC: My Lord, yes.

123. THE CHAIR: You are. Basically, you have three strings to your bow.

124. MR MCCRACKEN KC: Yes.

125. LORD FAULKNER OF WORCESTER: Mr McCracken, how widely do you

think the criterion of working in Parliament extends when it comes to an opportunity to be heard? There are 800 Members of this House, 650 Members of the House of Commons, and another 1,500 people who work there. Have they all got the right, using your criterion, to be heard on this?

126. MR MCCRACKEN KC: Yes, but, of course, just as the committee is master of its procedure in relation to who has standing, it is also master of its procedure as to how it conducts the hearing. It has no obligation to hear repetition of the same point, and it is quite possible for the committee to control the number of people who do make representation. Happily, in this case, of course, we know that there are a limited number of petitions and there is ample opportunity for the cases that are made to be co-ordinated.

127. The problem, in a sense, of there being potentially too many people arises just as much under the narrow property basis that the promoter advances, because it is very possible for a very large number of people to find that their property will be, in the promoter's sense, affected by a Bill, so the argument that there could be an unlimited number of people or a vast number of people would apply, even applying the test that my learned friend suggest that the committee should take.

128. THE CHAIR: Mr Katkowski, do you want to reply on anything?

129. MR KATKOWSKI KC: Yes. Thank you very much indeed. Certainly, it would be my submission that my learned friend is not only seeking to have his cake and eat it, but to take the crockery and the cutlery away with him as well. My learned friend's submissions go far too far, and I will just go through each key point in turn, if I might.

130. Can I just, first of all, make this contextual point? It is not right to adopt what I would characterise as an anarchic approach to petitions: that it does not really matter who puts a petition in; someone can write a letter later on saying, "We support that", and that should all be taken into account. Under Standing Order 111 in this House, a petition has to specify the ground on which the petitioner objects, and the petition should be considered only on the ground so stated. There is not some form of anarchic, wide-ranging, free-roving ability to say whatever you like and that it does not matter who said it originally. There is a specific and carefully confined role for petitions, and so I do not accept this "It does not really matter approach" to the petition, and what was

said and who said it, at all, for one moment.

131. I am going to resist the temptation, which is huge here, to make submissions now about scope. I am going to resist that and just deal with the points that have been made about standing, if I might. In relation to the right to be heard, the essence of the submission being made against mine by my learned friend is that I have relied on "ancient authorities". Of course, one man's ancient authorities are another man's wisdom of the ages. Even so, to characterise the authorities I have relied on as being, if you like, so last century, or even two centuries ago, does not reflect the fact, as it is, that the authorities are long established, but the principles have been consistently applied. As far as I know, forgive me, the Mersey Tunnels Bill of 2002 applied the same principles. That is this century. It is all in our bundle. The HS2 Bill of 2016 and the Royal Albert Hall Bill of this year, 2024, all apply the self-same principles which I have relied on.

132. If I might just say, in relation to a point raised by Lord Hope, forgive me but it is not quite right to say that all the Bills in the past, if you like, have been works Bills. Two of the three I have just mentioned were not works Bills. The Mersey Tunnels Bill was all about charging people to use the tunnel, nothing to do with works. The Royal Albert Hall Bill, again, was nothing to do with works to the Royal Albert Hall or elsewhere.

133. LORD HOPE OF CRAIGHEAD: The Royal Albert Hall Bill was not a hybrid Bill, was it?

134. MR KATKOWSKI KC: It is a private Bill, but the same principles apply, forgive me, in relation to standing, as I understand it, whether it is private or hybrid. That is the point.

135. As you will see, because I will come to this in a little while's time, I do not accept that it is fair or appropriate to characterise the submissions I have made as being wedded, if you like, to age-old authorities and, "We are now in the 21st century. Surely, things must have changed". The reality is that, yes, we are in the 21st century, but things have not changed, because there are three instances there that I have given you of 21st century Bills, where these long-established and clearly established principles have been applied in relation to the right to be heard.

136. The reason for that is very straightforward indeed. It is because this stage of the process of this type of Bill through its parliamentary stages has a very particular but very confined role. As I have repeatedly submitted, the role in relation to the right to be heard is to consider those private interests which would be adversely affected in the sense that, were it not for the provisions of the Bill, there would be some cause of action, not in public law but in private law. That is the purpose of this stage of process of a Bill like this through Parliament.

137. That does not mean that there would be no one to speak for whatever this Bill's equivalent of the osprey is—far from it. Every Peer in this House can seek to speak for whatever this Bill's equivalent of the osprey is at other stages of the Bill's progress through Parliament, and many of them have already done that in the Second Reading. The points made in the Second Reading range far and wide, and none of my submissions are in any way seeking to circumscribe—I could not if I wish to—the ability of those who can speak in those debates to say whatever they want to say, however wide-ranging it is.

138. It is just that this stage of the Bill's progress through Parliament is not the stage for those sorts of points to be made. So it does not found a right to be heard to say, "Look, I am speaking for this Bill's equivalent of the osprey". It is completely beside the point. It is utterly irrelevant. One either has the nature of interest which falls within the right to be heard or one does not. It would be completely wrong and fundamentally ill-founded to adopt some anarchic approach to that and say that anyone who wishes to say anything about the Bill in relation to the interest, with a small "i", that that person might have in the subject matter of the Bill has a right to be heard. It would be entirely against these long-established precedents, which have very recently been applied, three times in this century, by other committees of this nature, so I do not accept that the petitioner has the right to be heard.

139. As for the discretionary provisions 117 and 118, 117 is very much there for this type of Bill to ensure that wider interests than those who have the right to be heard can be allowed to address the committee in the exercise of the committee's discretion, but, as I have repeatedly submitted, one has to fall within the language of 117 or 118 in order to be a candidate for the exercise of that discretion. Plainly, and with great respect, the petitioner is not a society or association within 117. A letter post-dating the petition

from Historic Buildings & Places supporting what the petitioner has to say in very particular respects, not on a wide-ranging basis but in relation to a number of specified points, does not mean that the petitioner is, if you like, all of a sudden transmogrified into being a society or association.

140. Historic Buildings & Places could have petitioned. They did not. It would be completely wrong to make up on the hoof, if you like, some notion that the petitioner is now to be regarded as a society or association. He plainly is not.

141. That then brings us to Standing Order 118. Not a local authority obviously, and the petitioner does not claim, as I understand it, to be an inhabitant of the area who is injuriously affected by the provisions of the Bill. I understand that he, like many, many, many other people, work in the area, but that, in my respectful submission, does not qualify him as a candidate to fall within Standing Order 118 for the various reasons I have submitted ad nauseam, I am sure, over the previous sessions of this committee.

142. Just one or two miscellaneous points if I might—two in fact, unless I am reminded of others from my left. The first of those is the passage in the transcript in the Royal Albert Hall Bill that your attention was drawn to. So that is in our bundle of authorities at page 66, my note tells me, and you will recall, once you get there, at page 66, paragraph 248 of the transcript was drawn to your attention. That is where the chair, Lady Hale, stated that, "In the course of the proceedings relating to this Bill, there have been drawn to the committee's attention matters that they"—that is the committee—"feel should be drawn to the attention of the House", and they will make a special report about that.

143. Yes, a committee like this can do that. The context of the point though is on the immediately preceding page, at page 65, paragraph 247, where the ruling is found at paragraph 247 that the petitioners there—FanFair and the musicians' company—do not have standing to petition against the Bill, and the basic reason for that is the age-old: their interest would not "be adversely affected to a material extent"—the *Erskine May* formulation.

144. So all that these passages in that transcript are saying to us, if you like, are, first of all, on that case, on the time-honoured approach—and this is this year, by the way, 2024—to the right to be heard. That approach was applied this year by that committee.

Nevertheless, the committee felt there were some matters that had been raised by the putative petitioners that the committee felt it should draw to the House's attention in the special report. Fine. That does not help you in relation to standing. It is merely pointing out that, if you decide against exercising your discretion in relation to this petitioner but feel that this petition has raised something that you wish to draw to the attention of the House in a special report, you are free to do that. It has got nothing to do with standing.

145. That was the first of the two miscellaneous points. The second of the two miscellaneous points will be a point that I just need to check my notes in relation to, if you will just forgive me. Bear with me for one moment, if you would. It is the Buxton petition, if you like. It has been relied on that the promoter has not objected to that petitioner, or that group of petitioners, if you like, being heard by you. As you know, we have in effect adopted a neutral stance. I said to you in terms that I was not asking you to exercise your discretion against hearing those petitions. Nothing is to be read into that because you will recall that one of the petitioners—the lead petitioner, so to speak—is indeed a society or association falling directly within Standing Order 117, so I do not accept that there is anything that can be drawn from that.

146. If I said I had two miscellaneous points, I should have said three. The final point I wish to make is this. I have never used the language of "opening the floodgates" and so on and so forth. That is been no part of my submissions to you. I have recognised throughout that this Bill is unique. It is unusual—very unusual indeed—and nothing like it has been found in the various authorities to date. I am not making a floodgates argument.

147. If, in due course, this committee decides to exercise its discretion in a wider way than the previous authorities have shown the exercise of that discretion being undertaken, or—I would say heaven forbid—if this committee decides that some wider interpretation of the right to be heard should be applied, all that I would say is that I would ask, with respect, that the committee, in doing so, if it decides to do that, makes it quite clear that, in doing so, they are doing that because of the very unusual nature of this Bill.

148. In other words, I am not making a floodgates argument because I myself recognise and have always recognised this Bill is very unusual/unique, so I would just put that

plea in: that if any of my submissions are in due course rejected by or not agreed with by this committee, so be it, but I would put the plea in that any exercise of discretion or any approach to the right to be heard which is different from the time-honoured approach to those issues should be tied to the special nature of this Bill, for the very point of avoiding the precedent effect. I just make that point. I hope that is a fair way for me to make my final submission to you on this.

149. THE CHAIR: Right. I do not think that Mr Katkowski has raised anything new, Mr McCracken, but do you feel compelled to make some comment to what he said?

150. MR MCCRACKEN KC: With hesitation, my Lord, there are three brief points that I do feel compelled to make. The first is that what Mr Katkowski has said about the Buxton family is not that they were not within Standing Order 117, but that he did not invite you to exercise discretion against them. In other words, he did concede that they were within 117.

151. Secondly, that, in a sense, a broad general answer to all the points made by Mr Katkowski is quite simply that the Standing Orders are not a comprehensive code, and the fact that you do not fit within the Standing Orders does not mean that the committee cannot decide, in the particular circumstance of this case, to hear a petitioner.

152. The third point is Mr Katkowski's answer to what one might term "the notional osprey" is, "Well, that point can be raised in general debate". Any point could be raised in general debate, but plainly committees are the place for detailed points.

153. THE CHAIR: Do any members of the committee wish to ask any questions? We are very grateful to Lord Inglewood and Mr McCracken for your submissions. Please feel free to stay or go. It is a public session. It is your choice. You are staying; fine.

154. Finally, we come to Lord Carlile of Berriew. You are representing yourself.

155. LORD CARLILE OF BERRIEW: Yes, my Lord.

156. THE CHAIR: Although you have heard Mr Katkowski, on this occasion, set out his case, which he set out in every case, I will leave it to Mr Katkowski to say whether he wants to repeat it or rely on the assumption that you have heard it all. What do you want to do, Mr Katkowski?

157. MR KATKOWSKI KC: My Lord, I do not know whether uniquely, but I certainly can take a hint, and I have no wish or desire to repeat my submissions again. I am sure Lord Carlile is extremely familiar with them, having been here when I went through them earlier this morning. Thank you.

158. THE CHAIR: Very well. Lord Carlile.

Lord Carlile of Berriew

Submissions by Lord Carlile of Berriew

159. LORD CARLILE OF BERRIEW: I have also seen them on many occasions on that great organ, Parliament Live TV. My Lords, I would like to rebut any assumption that I come here as a lawyer. I will adopt the submissions made by Mr McCracken and my noble friend Lord Inglewood without repeating them.

160. I come here not as a lawyer, because I have two conflicts of interest which would prevent me from coming here as a lawyer. One is that I have a personal and very deep family interest in the establishment and nature of a Holocaust memorial and education centre through the experience of my very recent family.

161. The other is that I have a particular interest in national security and counterterrorism, which is an abiding interest of mine and in which I can make contributions, I hope, to this committee and certainly to debates in the House if necessary, which I think conflict with making any legal submissions, so please do not assume I am here as a lawyer.

162. I wanted to start with a point about whether I am an inhabitant or in some other category that falls within the exceptions. I have been a Member of one or other House of this Parliament for 39 and a half of the last 42 years. There was a time in my life when I spent more time in the other place than I spent in my home, and that applies, I think, to many Members of Parliament of the other place, particularly new ones. Over the years, I think I have laid a claim to be an inhabitant. The word “inhabitant” does not mean a resident. It is not limited to being a resident. That is why the two words are sometimes used as alternatives, and I think it is worth saying, from my point of view—and I am sure I share this with others—why I regard myself as an inhabitant.

163. There is realistically no open space within the immediate curtilage of the Palace of Westminster. College Green, across the road, is inhabited more or less 24 hours a day by broadcasters wishing to interview you or other people. The only open space, recreational space, for Members of Parliament of both Houses, apart from the gym—and there is a gym—is Victoria Tower Gardens, and I can put my hand on my heart and say that I have used Victoria Tower Gardens, like many Members of both Houses of this Parliament, and possibly people employed nearby, as the Lord Chairman suggested—for example, people working for Sky Television in 4 Millbank. I have used Victoria Tower Gardens extensively over all those 39 and a half years, and I have seen, and indeed sometimes arranged to see, some of my friends from this place there.

164. I have been interviewed by the media there. I can think of some legendary names I experienced the sharp end of. I have been out there to eat my lunch occasionally. I have arranged to meet guests there who I was bringing into Parliament for one reason or another. I have conducted parliamentary meetings there of people coming to lobby me on nice days, and I have seen many others doing the same kind of thing.

165. I also have used Victoria Tower Gardens as a place of respite. I do not know if any of the committee have ever been to see the casting of the Burghers of Calais in Calais, but the last time I saw it, it was very close to an extremely busy roundabout, and I believe that we see many people from France coming in to Victoria Tower Gardens to see the Burghers of Calais in the extraordinary and beautiful setting in which it is with the background of the spirit of democracy, the mother of Parliaments behind them, and I think many visitors coming here, who spend maybe a minute or two there, regard Victoria Tower Gardens as that kind of place of respite.

166. The other interest of mine is in national security and counterterrorism. I was for 10 and a half years the independent reviewer of terrorism legislation, coincidentally starting on the morning of the day of 9/11, and I have taken a close parliamentary and professional interest—and I should say that it is a professional interest from which I earn some fees—in ensuring that I am up to date with counterterrorism issues and public safety. I set out my broad position in a very short petition dated July 2023, which was before the previous committee that was dealing with this matter.

167. I should say that I think this Bill is quite perplexing for some members of your

Lordships' House because Clause 1 does not provide for a memorial centre in Victoria Tower Gardens. It provides a discretion to incur expenditure for the construction on, over or under any land of a memorial and learning centre, and one can see that there is room for very simple amendments to this Bill in Committee and on Report, for example the removal of the word "under", which would have an interesting consequence for the intention to build in Victoria Tower Gardens.

168. I mention that point, the very breadth of the Bill, because I believe, as a Member of your Lordships' House, that the House has real expectations, I am afraid, of this very distinguished and broad committee. Now, I am one of those—and I will use my words, carefully chosen, though with a little hesitancy—who has been bombarded with extremely lengthy submissions by the promoters, but those have been a bare disguise of an attempt to keep the debate in this committee down to parish notices, and I do not believe that the House will welcome a report from this committee in which the committee does not exercise what in reality is quite a wide discretion, rather than just dealing with a very narrow issue.

169. One of the shorter missives from the promoters I received on Monday of this week, which contained the following. I am sure your Lordships have a copy of it. It is only two pages. "Counsel for the promoter was asked whether the committee has a general residual discretion to hear petitioners who do not have a right to be heard and who do not fall within the discretionary classes to which Lords SO 117 and 118 are directed"—paragraph 4 that is.

170. Paragraph 5, "Where a petitioner demonstrates that they are directly and specially affected by a Bill, then they have a right to be heard by the committee. As counsel for the promoter acknowledged to the committee"—and here comes a contradiction in terms—"on November 5 2024, the definition of those petitioners who are directly and specially affected such as to confer a right to be heard is a narrow one. The narrow basis of standing as a right has been added to through Standing Orders which confer a discretion on the committee concerned to hear from, for example", and then some examples are set out.

171. I do not see how "definition" and "for example" have become recognised, and I fully adopt what was said earlier: that the committee has quite a wide discretion, and

will be expected to exercise that discretion to hear not anybody who cares to turn up to this committee—and I am very grateful for being allowed to come here today—but who may have a special interest or reason to provide some learning, if that is the right word, for the committee.

172. Now, I submit to your Lordships that I have a special interest or advice on security matters, and I emphasise that the advice that I would have given on security matters has changed since what we now call 7/10, the Hamas attack in Israel, and all that has followed since then, and I am going to just suggest some examples of evidence to you.

173. I do not know if your Lordships have seen or heard the security plans and had a security briefing for what is intended as a result of this Bill and other considerations. It is not this Bill alone. Lord Khan of Burnley, who is the responsible Minister, was kind enough to arrange for me a few days ago a full briefing, with seven officials, dealing with all the security issues, and it was a frank and open briefing. If you have had such a briefing, you will be aware that one of the consequences of current circumstances broadly, and of the intention to build this facility, will make a huge difference to the curtilage of the Palace of Westminster.

174. To put it very briefly, two sides of Parliament Square will be closed in due course. That means that traffic will come off Bridge Street, will go straight ahead towards Buckingham Palace, will then turn left across the front of the Supreme Court and turn right into Victoria Street, and the rest of Parliament Square will be closed. Parliament Square will be two-way on those two bits, those two quarters of it, which I have mentioned, so one can imagine the traffic congestion that will occur and the security issues.

175. The second major change is that the only access to the Palace of Westminster will be from the Lambeth Bridge end. The road alongside Victoria Tower Gardens, on the north side of Victoria Tower Gardens, will be closed from Great Peter Street up to the Palace, and anyone, including Members of both Houses, who wishes to approach the Houses of Parliament will have to come from the Lambeth Bridge end and go through a special securitised lane to get into even the gates to the car park of the House of Commons, and there will be high-level security of the quality that we have now for the Palace, including, presumably, fully armed soldiers or fully armed police officers for the

increased curtilage of the Houses of Parliament. Now, if that is not an important piece of information that should be considered by a committee like this, tell me what is. I come here as a person who is desperate, in a few years, not to be saying, "I told you so".

176. The changes around Parliament will make Parliament a much more secure place, which inevitably will place much greater security requirements on the proposed facility in Victoria Tower Gardens. One of the major buildings that is going into Victoria Tower Gardens if this plan is carried out is the security pavilion, which will be at the Lambeth Bridge end, and that is going to be a large and ugly edifice which will be highly securitised because nobody will be able to go into those four underground rooms without going through very full security. It will be at least as strong as getting into an airport and probably stronger, because of the broad nature of the people arriving, than the current security in the Palace of Westminster. The consequences will be congestion, securitisation of Victoria Tower Gardens, a poor experience for members of the public, who will not be able to come to the learning centre casually but will have to book online.

177. Now, in expressing my concerns, I refer to the growth of extremism in this country. Yesterday—Tuesday—and Monday, I chaired a conference for the Government's Commission for Countering Extremism, at which there were 70 experts talking about their concerns and the way they should approach them.

178. What has happened certainly since 7/10 has been an increase in security risks, the increased involvement of state actors—for example, the Government of Iran, who are demonstrably guilty—and I think the director-general of MI5 referred to this in his speech; I am sure he did the other day—who are actively concerned in disrupting national security in this country. For them, what more—I hesitate to use the word because it is so offensive—attractive an opportunity could there be than a memorial to the Holocaust cheek by jowl at the Houses of Parliament? I do not think that they would be quite so active on that front if there was merely a celebratory sculpture there and a learning centre of a much more meaningful kind was placed somewhere else, but there is a genuine concern about the increase in the prospect of extremism and terrorism.

179. Nearer to home, there are non-state actors, so-called lone actors. They, I would say to your Lordships, as a person who claims to be expert in these things, are the most

difficult people to detect because they take their inspiration online. Sometimes they communicate with others online, but they do so in a secret way, and they are liable to be the very people who will turn up on their bicycles and seek to disrupt the life of such a memorial and believe that they are doing something constructive for their cause, and the proximity of Parliament is a magnet.

180. Then there is the question of public disorder. The Southport incident and the issues of online harms are a real problem for those involved in counterextremism. Extremism is now monetised on advertising sites. They make money from taking adverts that encourage people to cause terrible events. That is exactly what happened in the reaction to Southport, when an organisation called Channel3Now in Pakistan issued advertisements which were believed and deeply misleading, and all this, in my view, leads to a real concern, and one that will grow so far as we can predict, about placing a memorial centre at that point, and I believe that I have a sufficient interest to be a petitioner for your Lordships.

181. I would like to take, if I may, the Lord Chairman's point about judicial review. Judicial review, my Lords, is quite a new thing. When some of us who are barristers here started the Bar, judicial review was becoming a big issue. Now it is a very major jurisdiction. What is judicial review? It is not separate from private acts. It is an accumulation of private rights which are taken by judicial review, so an organisation like, say, Liberty, to take an obvious example, will start a judicial review or will appear as an interested party in a judicial review case because it is representing the private rights of individuals who cannot afford to bring actions, just as, for example, class actions before the Competition Appeal Tribunal, a tribunal of which I have some considerable experience, frequently allows private rights to be rolled up in an action taken by some much bigger organisation.

182. I would suggest to your Lordships that, if the Bill is passed and if the Secretary of State uses his discretion to incur expenditure on a Holocaust learning centre in Victoria Tower Gardens, it would be possible to bring a judicial review case about the lawfulness of that decision, and I, as a person, would be able to be treated at the very least as an interested party in such an action or possibly be able to bring that action myself.

183. I think, if I may say so, with great respect to Mr Katkowski, that he and the

promoters are taking an anxiously narrow view of interested parties and petitioners in this matter, which is not appropriate given the role that the House of Lords expects of this distinguished committee. I think, my Lords, that will do as enough of a summary of what I wish to say, but I would be very happy to answer any questions anyone may have, as long as they are not too legal.

184. THE CHAIR: Thank you. Any questions at the moment from anybody? No. Mr Katkowski.

185. MR KATKOWSKI KC: Thank you, my Lord. Again, with respect, you will understand the promoter's submission and case is that this petitioner does not have the right to be heard. Having a special interest in security matters in particular—and a well-informed interest in security matters—does not fall within the nature of interest which gives the right to be heard for the various reasons and submissions that I have made to date, which I will not repeat because you have heard them so many times.

186. As for the discretionary orders, the petitioner is not claiming to fall within 117. I understand the petitioner to be claiming to fall within 118 as an inhabitant. Again, the committee has my submission—it will make of it what it will in due course, or this afternoon—that, in order to fall within the scope of that discretionary provision, that discretionary Standing Order, the inhabitant needs to be sufficiently representative of a wider body of inhabitants, and I do not see that here.

187. As for the alignment by this petitioner with the submissions made by my learned friend, Mr McCracken, I have responded to those. There is just one point, though, which I do just want to make so that my submissions are as clear as they can be. It is my submission, for good or ill, that the Standing Orders are a comprehensive code. They are a comprehensive code in relation to discretion, and the right to be heard rests on long-established and recently applied precedent, and the discretionary provisions are set out in the Standing Orders. There is nothing beyond the Standing Orders by way of some wider discretion. You have had that submission from me repeatedly. You will consider it, I am sure.

188. As for matters relating to security and so on and so forth, that there should be some different memorial, potentially, to the one that is proposed, that the Learning Centre should be elsewhere—all of those points go to scope, and I will not address you

on scope now. I will do that in a little while's time. You will understand that I do not accept that any of those matters are within scope, even if the petitioner is allowed in due course to address you, but I will make those submissions shortly.

189. For the record, I would characterise the description by the petitioner of judicial review as fundamentally ill founded, but I will not go into that in any detail. I do not accept that that was an accurate summary of judicial review at all and that it relates to, if you like, a bunch of private rights. I do not accept that for one moment. Public law is there to deal with matters other than private law interests, as I hope is well known.

190. My Lord, those are my submissions in a very, very brief summary, unless I can assist you further.

191. LORD HOPE OF CRAIGHEAD: What about Lord Carlile's deep and personal family history? You have not commented on that, but he started with that.

192. MR KATKOWSKI KC: Forgive me, my Lord, yes, and of course a number of the petitioners have made very similar submissions to you, and I acknowledge all of those, of course. They were made, I think, particularly acutely through the submissions made by and on behalf of Baroness Deech, who has amongst her co-petitioners a number of Holocaust survivors. My Lord, again, as you know, I say this wishing it were otherwise, but I do not accept that those deep personal interests fall within the nature of interests which give the right to be heard, and then we are back to do the petitioners in question—this particular petitioner in question—with that family history, fall within either of the discretionary provisions, and I am afraid that the answer to that is no, they do not. No, this petitioner does not, and no, the others do not either.

193. THE CHAIR: Can I raise a couple of issues that arise from what Lord Carlile has said?

194. MR KATKOWSKI KC: Yes.

195. THE CHAIR: The first is that he says that an inhabitant, for the purposes of 118, is not the same as a resident. What do you see as the correct meaning of inhabitant in this context?

196. MR KATKOWSKI KC: My Lord, my submission has been and continues to be

that “inhabitant” should be read as meaning resident. I do not mean by that, if you like, that this should be the person’s sole residence or main residence, but that they should have some form of home, some form of residence in the area. I do not accept that “inhabitant” extends as broadly as those who work in the area. That is my submission. Again, you will make of that what you will in due course, but that is the submission I make.

197. THE CHAIR: The second point here is that I do want to go into the question of judicial review, because it is true that that is, in parliamentary terms, a relatively recent development, going back to the 1960s, effectively, starting up then, and in the case of judicial review, it is not correct to say that both the cause in which judicial review is sought and the remedy is always for a wider group of the public than the individual seeking to bring it.

198. I give by way of an example, let us say, somebody who is an immigrant and says that his or her application for asylum has been dealt with in an irregular manner. Their cause of action would not be, if I may say so, to bring private law proceedings. They would proceed by way of judicial review, so there is a case where judicial review can apply to protect an individual’s rights to freedom, to due process and so on.

199. MR KATKOWSKI KC: Yes, but they are public law rights and not private law rights, my Lord. That is my point. So of course, forgive me, many, many judicial reviews and their equivalents, where statutes give similar rights to bring proceedings—their equivalent statutory reviews—many, many such proceedings are brought by individuals in their name who satisfy the extensive ability to have standing to bring such proceedings, but it is the nature of the rights, if you like, which are being enforced which is the all-important point, and they are things which sound in public law and public law only. They are not private law rights.

200. THE CHAIR: Well, in the case of judicial review, we are talking about holding public bodies to account. In that sense, of course, they have a public flavour to them, but really the point that I am trying to arrive at here is that judicial review certainly can be and is concerned with the protection of private rights, and that is what this committee is supposed to be for, the protection of private rights, and so why should we not, as it were, update the Standing Orders and the conventions to recognise the fact that a judicial

review, for example, in this case, without the Bill, would in effect be to protect the private rights of those who live nearby and who enjoy the park?

201. MR KATKOWSKI KC: My Lord, I say this first of all plainly with respect and secondly with some degree of trepidation, but, my Lord, I simply do not accept the formulation that my Lord has put to me. Judicial review has absolutely nothing to do with private rights—nothing at all. It is all to do with and only to do with rights which are found in public law. I simply do not accept the starting point, forgive me, of the question that has been put to me. There is a world of difference between the business of this committee dealing with this Bill, private in relation to the right to be heard, things which can be enforced by way of private law litigation, on the one hand, and, on the other hand, something that could be brought by way of a judicial review, which is entirely, solely and exclusively to deal with rights which are founded in public law.

202. LORD HOPE OF CRAIGHEAD: You cannot bring a judicial review to enforce a right under a contract.

203. MR KATKOWSKI KC: Exactly, or my property rights.

204. LORD HOPE OF CRAIGHEAD: Yes, so it is a question of against whom can you bring a judicial review, and of course, in this case, you could bring a judicial review against the Secretary of State if he was proceeding to grant planning permission in ignorance of the 1900 Act.

205. MR KATKOWSKI KC: Which is exactly what happened, yes. That was entirely a public law action, of course, and the foundation of it was nothing to do with, for example, the person bringing the action saying, "My property value is going to be devalued in some way and I am bringing this action to defend my private law rights of property", for example, or any other private law, any other right or interest which is enforceable in private law. The two worlds are very distinct, and they are very distinct for a very good reason, so, my Lord, forgive me but I do not accept the proposition, and I say that with trepidation.

206. THE CHAIR: We could have a debate about that, but I have got the flavour of what you are saying. I do not accept that the division is always clear, for example in relation to property rights where, for example, there might be the acquisition of property

by a local authority and there may be a question that arises as to whether the remedy of an individual is properly through judicial review or through a civil law claim some way or other, but let us leave that to one side. I have your submissions. I will certainly think about it further.

207. MR KATKOWSKI KC: My Lord, thank you. If I could just very quickly say, though, I am not doubting for one moment that someone who might bring a judicial review might bring that judicial review because they feel that, for example, their property might be affected by something. It is the cause of action. It is the nature of the action itself and that is entirely a public law cause of action. It has nothing to do with property rights.

208. THE CHAIR: That is a very, very technical approach to what we are trying to do, which is to protect private interests. We are not a court of law, and you are making that submission as if we were a court of law.

209. MR KATKOWSKI KC: No, my Lord. I am making the submission as part of my response to the proposition that was put to me earlier on, which, as you know, I fundamentally disagree with, albeit with great respect, as to the scope and nature of judicial review, but, my Lord, no. As you know, it has been no part of my case to talk about judicial review. I have simply made submissions about it because others have said, "Widen the scope of discretion. Come on; it is 2024".

210. THE CHAIR: I do not think it is a discretionary point. It is a right to be heard point.

211. MR KATKOWSKI KC: Forgive me—a right to be heard point.

212. THE CHAIR: You qualified it on the basis that it has been held by way of binding precedent that you can only have an interest which can be directly and specially affected for the purpose of a right to be heard if it gives rise to either an interference with property or gives rise to some actionable cause of action?

213. MR KATKOWSKI KC: Yes, in both cases, in a private law—

214. THE CHAIR: And you say in a private law context. Anyway, we have got the point.

215. MR KATKOWSKI KC: Thank you, my Lord. I have no doubt you have.

216. THE CHAIR: Do you want to reply on anything, Lord Carlile?

217. LORD CARLILE OF BERRIEW: May I very briefly? I am in danger of looking a gift horse in the mouth, I know. My Lords, I wrote down, as Mr Katkowski said it, that judicial review has nothing to do with private rights—those were his words—and I was just reflecting on my 14 years as an MP and my at least 10 years in which I sat as a deputy judge of the High Court in the Administrative Court.

218. As an MP, many people came to see me, as they do to MPs all the time, to complain about activities that affected their personal rights, usually by their council or some public authority, and invariably I would say to them, "You can either bring a private law claim or you can make a claim of judicial review. I promise you the judicial review will be far more effective because it takes less time and the council do not like them and they will settle it", and it is a very effective way of settling disputes about private rights.

219. Secondly, as a deputy judge of the Administrative Court, I used to do long days with boxes full of what were called paper apps—paper applications. I am sure that your Lordship may have done them at some point. Usually there were 12 a day, and at least 11 of them every single day turned on the enforcement of private rights via judicial review, so, with great respect to Mr Katkowski, that proposition was not acceptable.

220. Secondly, he has tied his colours to the mast, equating, eliding the word "inhabitant" and "resident". Even a quick search on the internet of the various dictionaries shows that yes, some elide "inhabitant" and "resident", but most do not, and an inhabitant can be a person of the sort I describe myself as.

221. Thirdly, on personal issues and the discretion that relates to personality, I had to think of my unfortunate sister, who is an 88-year-old Holocaust survivor in very difficult circumstances—this is my personal connection with this issue—who now, unfortunately, is very seriously suffering from dementia. Over years and years, she and I have sat and talked at great length—she wrote a book about it eventually—about her personal feelings as against what public administration, including the then Government of the United Kingdom, did to alleviate such circumstances, and I think we brush aside

personal considerations as being relevant and admissible as part of your discretion as a committee rather too lightly if we follow the submissions of the promoters.

222. THE CHAIR: Thank you. Does anyone want to ask any questions? We are very grateful to you, Lord Carlile. That, then, is the end of this morning's hearings. We had hoped to have finished a little bit earlier than we have, but I still think we are on track. We are on track, I hope, this afternoon, but probably not at 2.30 now, to make a statement of who is in and who is out, but we were going to go straight to you at this point for your opening on scope.

223. MR KATKOWSKI KC: Yes, and I am very happy to do it, my Lord. Obviously, the antidote to the issue that you have just raised is that I make these submissions when my learned friend, Mr Doctor, is here next week, and we revert to doing it that way so that you have the time that you had hoped to have to consider your rulings on standing. I personally would advocate that that would be a preferable course of action.

224. THE CHAIR: I am so sorry. Say that again. I was distracted.

225. MR KATKOWSKI KC: No, that is fine, my Lord. I was just saying that a way of dealing with the point that my Lord has raised—that is to say, that you and the committee should have time to consider your rulings on standing—would be for me to make my submissions on scope next Tuesday when my learned friend, Mr Doctor, will be here for the various discretionary petitioners. That might be a way, might it not, for you to have—

226. THE CHAIR: Can you just leave us for a minute to go into private session before we decide on our way forward today?

227. MR KATKOWSKI KC: Yes, of course.

228. [Sitting suspended]

229. THE CHAIR: We will proceed as we had indicated this morning, and we would like you, Mr Katkowski, as efficiently as possible, to deal with the issue of scope and principle. Can I ask you what your best estimate would be of how long you are going to be?

230. MR KATKOWSKI KC: A quarter of an hour—not that long, my Lord—would be my estimate.

231. THE CHAIR: That is very good. Will you proceed?

232. MR KATKOWSKI KC: Thank you, my Lord. There is no need to get these papers to hand for the sake of my submissions, because I will summarise the points, but, for the note, we have put two papers in which deal with the matter of principle and scope. The first of those is the short note, literally one page, which is PRO-003, and the second of those is the next paper, 004, and within that document, 004, the paragraphs which are relevant to my submissions are paragraphs 21 through to 29 inclusive. They are on pages 4 and 5 of document 004.

233. THE CHAIR: Will you just wait a moment while I get these up?

234. LORD HOPE OF CRAIGHEAD: Could you give the paragraph numbers again, sorry?

235. MR KATKOWSKI KC: No problem at all, my Lord, of course. Paragraphs 21 through to 29 inclusive on pages 4 and 5 of document 4.

236. LORD HOPE OF CRAIGHEAD: Thanks very much.

237. MR KATKOWSKI KC: Document 4 in the old days was the longer note, but it is now document 4, and 003 in the old days was the short note, but it is now 003. My Lord, that is where you will find, if you wish to do so now or in due course, a written note of submissions which I make on behalf of the promoter in relation to the principle of the Bill and therefore matters which are and are not in scope for this committee.

238. In relation to the principle of the Bill, as is known, the Bill has two substantive clauses. Plainly the principle of the Bill in relation to Clause 1 is that the Secretary of State is to have the power to spend money, to incur expenditure in relation to a Holocaust memorial and learning centre, and, by virtue of clause 3, that power to spend money extends to England and Wales. It is not geographically restricted to Victoria Tower Gardens, so the principle of Clause 1 is that the Secretary of State is to be empowered to spend money on a Holocaust memorial and learning centre in England and Wales.

239. The principle of Clause 2, in my submission, is very straightforwardly that Section 8 of the 1900 Act is not to prevent, restrict or otherwise affect—in more colloquial terms, stand in the way of or obstruct—the building and subsequent operation of a Holocaust memorial and learning centre in Victoria Tower Gardens.

240. LORD HOPE OF CRAIGHEAD: The words "otherwise affected" are very wide. I think you are accepting that it would be within scope, would it, to consider a sunset clause and possibly something that restricted the area?

241. MR KATKOWSKI KC: I have already accepted that. That is right, my Lord, yes.

242. LORD HOPE OF CRAIGHEAD: Would that otherwise affect the thing?

243. MR KATKOWSKI KC: Not in a direct sense. Perhaps I will come to the point as quickly as I can. My Lord, in my submission, as you know, it is the case that I have made and continue to make that a Holocaust memorial and learning centre in both the substantive clauses includes the Holocaust memorial and learning centre which the promoter proposes through the planning system, and that, if you like, is the whole reason for this Bill: to clear the path in terms of a statutory obstruction, to clear the path which the High Court has held stands in the way of the proposed project, and so, my Lord, the way in which I put the point about the principle of the Bill is that anything which would in any way preclude or curtail the ability to build the proposed Holocaust memorial and learning centre in Victoria Tower Gardens would offend the principle of the Bill.

244. I do not accept that the temporal sunset clause or the territorial restriction which I have referred to myself would have that direct effect, because the territorial restrictions that I have referred to would be tailored entirely and exclusively to the project which is being promoted as the Holocaust memorial and learning centre, and, in terms of the sunset clause, that is there simply to ensure that, if you like, we, the promoter and the proposer of the project, could not simply just sit on our hands forever and a day.

245. My Lord, what I am trying to get to, I am sure not very efficiently, is the proposition that the principle of the Bill in Clause 2 is to ensure that nothing would stand in the way or obstruct—Section 8 of the 1900 Act would not stand in the way of or obstruct—the building of the project which the promoter is proposing through the

planning system. That is the point put shortly.

246. BARONESS SCOTT OF NEEDHAM MARKET: Yes, could I just ask, because Clause 1 refers to a Holocaust memorial and learning centre, and in effect what you are saying is that it has to be this proposal—in other words, the one which has started going through planning and stopped—why it is that the Bill does not make that link specifically, rather than being left more generally here?

247. MR KATKOWSKI KC: Thank you, my Lady. I will answer that question as best I can. Can I just take a step back? My submission is that "a" includes "the" Holocaust memorial and learning centre, but, in direct answer to your question, as I understand it, the drafting of the provisions in this way has arisen on the advice of parliamentary counsel, not me. It is a parliamentary counsel point as to the way in which these clauses should be drafted to achieve the objective which is sought to be achieved.

248. BARONESS SCOTT OF NEEDHAM MARKET: It is just an interesting observation that, had there been an awareness of the provisions of the 1900 Act at an earlier stage, then we would have had a Bill first and then the planning process. That is how it would have worked, would it not? You would have to have cleared the way first because there would be no point in going through planning if we had not been able to clear this obstacle, so it is the link between the specific and the general and the chronology which is concerning me.

249. MR KATKOWSKI KC: In relation to the concern, my Lady, as you will know—I know this is obvious—we are here because of the High Court's ruling that the 1900 Act, Section 8, has the effect which the High Court ruled it has. You will understand, I am sure and I hope, that it is not actually a question of awareness or otherwise of Section 8 of the 1900 Act. There was actually a dispute about its meaning and effect. The promoter here and the proposer of the Holocaust memorial and learning centre did not accept that Section 8 has the effect that the High Court ruled against us that it does.

250. There is that slight quirk, if you like, in that it is not as straightforward as it might seem. It was not ignorance, if you like. It was rather a different interpretation, which we lost in the High Court, as you know, and so, in relation to the purpose of the Bill and the principle underpinning it, I have already referred, in my opening submissions, to paragraph 8 of the explanatory notes. I will not read out the very short paragraph there,

but that is entirely related to the Holocaust memorial and learning centre.

251. In relation to proceedings in this House, reference has been made already on a number of occasions to the Second Reading debate. I put it in this way: that literally every point that was made by those who spoke in that debate, both in support of and against the Bill, concerned the proposed Holocaust memorial and learning centre. I would ask that the speech of Lord Khan, the Minister responsible, in introducing the Bill to this House at Second Reading, is well worth a read or a skim-read, and you will see the explanation there of the purpose of the Bill is extremely clearly related to removing the statutory obstruction in relation to the proposed Holocaust memorial and learning centre, so I say that there can be no doubt at all as to the purpose of the Bill and its underlying principle in relation to Clause 2.

252. If that submission is accepted, the upshot of all of that in relation to scope is that anyone who seeks to argue for an outcome at this stage which in any way preserves the role of Section 8 in some way standing in the way of, obstructing, inhibiting the building of the proposed Holocaust memorial and learning centre are making points which are out of scope for this committee's consideration, and in the petitions that have been made, in each and every case, one or other of these points are made in the petitions, and I would submit that they are all out of scope.

253. For example—I am going to give a list which is more like i.e. rather than e.g.—points of this nature are made in the various petitions that the memorial should be separated from the learning centre so that the learning centre should be elsewhere—plainly out of scope because the Bill's very purpose is to remove the statutory obstruction which stands in the way of the proposed memorial and learning centre as a co-located proposal or project.

254. There are those who argue that the memorial should be of a wholly different type; it should be, for example, restricted to the size of the plinth of the Burghers of Calais—patently out of scope because the Bill seeks to remove the statutory obstruction to the construction of the particular project, which has a much larger size than the plinth of the Burgers of Calais, and so on and so forth.

255. There are those who say that the entire proposal should be removed elsewhere, both memorial and learning centre—out of scope for similar reasons. There are those

who say that there should be a memorial somewhere else but not a learning centre, because, for example, we have an excellent exhibition at the Imperial War Museum. Again, that is completely out of scope, and so on and so forth.

256. I have made this submission before and I am not entirely sure it got the warmest of receptions, but I am still going to carry on with it. On the opening day, I said that a very good way of testing—an acid test, if you like—whether points made by petitioners are in or out of scope is to actually look to see what, at the end of the petition, those petitioners are asking this committee to do, because it is all very interesting to say, "Here are my points I want to address to you'.

257. This is not some wide-ranging debate about the merits or otherwise of the project or any other project. This is meant to be, is it not, for those petitioners who you decide you are going to hear from in due course, them addressing you as to what they are asking you to recommend or to do in relation to the Bill? You will see that a number of the petitioners ask for Clause 2 to be struck out, which is plainly completely out of scope because that is simply something that you cannot, in any conceivable version of the world, do. It is no part of your role. You simply cannot amend the Bill by removing a clause.

258. As for those who argue, as many of them do, that the clause should be amended so that the statutory restriction is lifted, but only for a much smaller memorial—again, plainly out of scope. For those who say it should be restricted such that it would only allow a memorial to be built and not a learning centre—plainly out of scope. For those who say, "If there is to be a learning centre, it should not be underground'—plainly out of scope because the whole purpose of Clause 2 is to remove the statutory obstruction in relation to works over and underground.

259. If you work backwards from what the petitioners are asking for, it becomes extremely straightforward, in my submission, to see just how much of the various petitioners' submissions are out of scope.

260. LORD HOPE OF CRAIGHEAD: What they are asking for, of course, can be modified by the committee saying, "We cannot give you what you are asking for, but we could make a recommendation or we could ask"—of course you would have to agree that you would be prepared to give an undertaking about matters which are raised. I

think just to say, “Look at what they are asking for … ” You are quite right, if I may say so for myself, that these people are asking too much, but they are raising issues of considerable interest to us, and there are other ways of dealing with them.

261. MR KATKOWSKI KC: My Lord, my answer to that, with respect, is yes, but on a limited basis, because I have made throughout—and I am not sure I would regard it as a concession; I think it is just a perfectly fair and sensible submission to have made, which I do not seek to resile from, that, if needs be, if the committee regards it as in some way necessary in order to respond to points which the committee has sympathy with, made by petitioners, for there to be some form of geographical restriction on the lifting of the obstruction or a sunset clause.

262. I have made the point throughout, and we sought to give assurances to the committee in the House of Commons—whether they should be undertakings or not obviously is for you to consider, but yes, to that extent, I acknowledge my Lord’s point, but beyond those two matters, I am afraid, with respect, I would part company with there being some wider ability to, if you like, mitigate or ameliorate the concerns raised by petitioners.

263. LORD HOPE OF CRAIGHEAD: I am looking at paragraph 27, which says that we cannot look at things like safety, security and terrorism matters. You have not given any assurance about that and I know the planning permission examined that, but the point has been made that time has moved on a bit and it may be within our scope to say the matter should be looked carefully at or something of that kind.

264. MR KATKOWSKI KC: Let me take a step back. First of all, the reason why—and I was about to come to this but I will come to it now—we say on our note that matters such as security and safety and so on and so forth are not within scope is because they relate to public policy issues, but also and especially because they are all dealt with through the planning process.

265. As for the point that security matters have moved on, of course every year, I suppose, security matters move on in some or other regrettable way or some or other more and more horrifying way. Of course, if, as and when the planning process is reactivated, then whatever else happens and whatever mode is used—whether it is an inquiry or whether it is through written submissions—it is absolutely inevitable that the

decision-making authority will ask for any changes of circumstances since the previous decision to be raised and addressed, and so, for example, in relation to security, of course there would be other things to be said now when compared to all the security points that were made at the time of the previous inquiry and previous decision, but that would all be caught by the reopened or reactivated planning process.

266. LORD HOPE OF CRAIGHEAD: Obviously we would take that into account, but maybe we are not entirely prevented from expressing a view.

267. MR KATKOWSKI KC: My Lord, certainly I accept—of course I do—that, just as in the report of the committee in the House of Commons, various points were made in that report, none of them related to or led to amendments being made to the Bill—and of course I entirely accept that this committee here could decide not to amend the Bill, but to say in its report that we do recommend that the Secretary of State considers, reconsiders, considers again—however one wants to put it—matters of security, impact on tourism, traffic and so on and so forth. I say this with great respect, all of those matters would have to be looked at again anyway when the planning process is reactivated, but of course I would not suggest for one moment that if that is what the committee wished to write in its report, I would not seek to stand in the way of you doing that. My point is about amendments to the Bill.

268. LORD HOPE OF CRAIGHEAD: I do not want to prolong this discussion, but the House may say, "Look, we are a committee looking at this Bill, and they expect something of us on these issues if they are that important'.

269. MR KATKOWSKI KC: To that—which is a point which was made earlier on by Lord Carlile, was it not?— I would say, if that is the House's understanding, then, with great respect, the House has misunderstood this stage of the Bill's progress through Parliament, because all of those wider issues are for other stages of this Bill's progress through Parliament. If you look at the Second Reading debate, there is a lot about security; there is a lot about traffic; there is a lot about tourism; there is a lot about everything under the sun.

270. This stage has a very particular—and it is a very tightly defined—circumscribed role. For those members of this House who were expecting you, the members of this committee, to start writing things at large about the merits or otherwise of this, that or

some other aspect of the project, I am afraid, with great respect, they have misunderstood the task of this committee. They have already had their say, but they have other opportunities later to have their say again on all of those points.

271. THE CHAIR: Lord Jamieson has a question.

272. LORD JAMIESON: I am just trying to get some clarity. You are saying out of scope is anything that would prevent this or block this, et cetera. The implication of your comments about temporal and timing and so forth—things that might make it somewhat more onerous are potentially within scope, and, if I can do that by way of example, we have the play park at the end. You were talking about a three-and-a-half-year construction period where the promoter would like access to the whole site. Something that said, "No, hold on. This bit, get a move on. You have nine months to do something with the play park'—I use it purely as an example. I have not done the analysis. Something that would actually make it more onerous but does not prevent would potentially be in scope, if there is justification for it.

273. MR KATKOWSKI KC: First of all, if that point becomes a point which the committee is interested in due course, then I would need to take instructions about the practicalities, because if it was not actually practical to meet—and I know you gave it as an example, but just—

274. LORD JAMIESON: I grant, if that meant you could not—

275. MR KATKOWSKI KC: Exactly.

276. LORD JAMIESON: But if it just meant you had to work a different way, work a bit harder, whatever it is, then that would be in scope.

277. MR KATKOWSKI KC: In relation to timing, my Lord, I am hesitating to give the answer "yes" to that question, because I am rather nervous about the implications of it, and I would need to fully understand those before answering the question, but let me give a provisional "yes" to it, for the sake of answering the question and not appearing evasive.

278. My issue, as you will understand, is that the whole purpose of Clause 2 is to make sure that nothing in Section 8 in any way inhibits or stands in the way of the project that

the promoter is proposing, and I just need to put that marker down: that if the effect of that would be to in any way inhibit or obstruct building the proposed United Kingdom Holocaust memorial and learning centre, then I am afraid it would not be in scope.

279. The matters which I have said I accept are in scope, geographic and timing issues—we had this whole debate in the Commons as well—are all matters which are closely tied to the planning project as we have proposed it, and so the geographic limitation is no more than saying, "This is the extent of our project, and we do not want to gratuitously be given the ability to, for example, build a Holocaust memorial and learning centre somewhere else than where we envisage doing that". The timing restriction is again something which fits in with the construction plans that we had as part of the planning application.

280. BARONESS SCOTT OF NEEDHAM MARKET: Can I just follow on? Everything is predicated on everything being the same in, if you like, the new planning application as it was in—

281. MR KATKOWSKI KC: Can I interrupt you? I am so sorry. It is not the new planning application. It is the same planning application.

282. BARONESS SCOTT OF NEEDHAM MARKET: It is the same, but in terms of the size and the design and so on, it is all the same. At least in theory, is there anything to stop us saying, "You cannot come back and build something larger"? For example, the planning process coming up with something a bit different second time round, something larger, or are we in effect giving carte blanche? Once Clause 2 is agreed, are we then giving carte blanche to do what they like?

283. MR KATKOWSKI KC: No, I entirely understand. That question is the reason why I have said from the outset that I accept that a geographic restriction, a territorial restriction, would be within the scope to be discussed by this committee, because the whole point is that I am not here asking this committee to give us carte blanche and do whatever we please in relation to any old Holocaust memorial and learning centre, if you like, anywhere we like in the gardens.

284. We are here for one reason and one reason only, and that is because the High Court has held that Section 8 stands in the way of the project which we have been

promoting for years, and so, my Lady, that is exactly why I have made it as clear as I possibly can, that I accept, on behalf of the promoter, that the territorial extent of the lifting of the obstruction is something that can—this sounds terribly arrogant, but something that you can discuss—

285. THE CHAIR: It is more than we can discuss; we can have an amendment to the Bill in order to provide that, for example—somebody will have to draft an amendment—that a provision should go in to say that the protection ordered by the 1900 Act should only extend to the Holocaust memorial and learning centre for which planning permission has been granted, or is granted.

286. MR KATKOWSKI KC: It has been applied for.

287. THE CHAIR: Or we could say, "It should not be lifted beyond the footprint of the building as constructed in accordance with planning". There are ways of doing it.

288. MR KATKOWSKI KC: There would be a way of doing it, and obviously—I say "obviously"; forgive me. I hope it will not come as a surprise to you that we had thought about this when we were in front of the equivalent committee in the Commons, and to cut through this—as you will know, I am sure, but let me make the point by way of submission—before any question of amendment, the committee would have to consider whether an undertaking would be sufficient to deal with whatever the issue is. It is only if an undertaking is considered to be insufficient that the question of amendment would arise. If the question of amendment arose, and I took instructions on this—

289. THE CHAIR: Can I just stop you there? I think it would be very helpful, on the two points that you have mentioned, if we have something in writing from you. We have the one about the speed of carrying out the works. I think you have some very general statement of "as quickly as possible", or something like that, and I understand the difficulties of tying this down to more than that general statement, but in relation to this other point, which I have to say at the moment strikes me as entirely suitable for an amendment, because it is a limitation on the extent to which the 1900 Act protection is lifted, if you were able to do so, I think the committee would very much welcome a suggested amendment.

290. MR KATKOWSKI KC: My Lord, thank you. Can I just take a step back? You

already have the text of an assurance that could easily be converted into an undertaking. You already have that for the geographical point as well, because to the Commons we suggested having an assurance not only on the time point but also the geographic point, so you already have all that language. To convert it into an amendment to Clause 2—I remember all of this from the Commons—we would need to take that to parliamentary counsel. It would not be my drafting, for example; it would be parliamentary counsel's drafting, and so, if that is the request, then obviously—

291. THE CHAIR: That is my request.

292. MR KATKOWSKI KC: Then it will be done.

293. LORD HOPE OF CRAIGHEAD: A point, if I might, to just support my Lord Chairman. An undertaking is personal to the promoter, and our concern would be looking to the future. We have to have something in the Bill which deals with the future, as other people might come along and say, "Oh, that is fine. The thing has been lifted", on the very broad terms put out in section 1.

294. MR KATKOWSKI KC: My Lord, as I understand it, an undertaking would have future effect. I am looking to my left. This point arose, I think, on day one of the proceedings, and Standing Order 130 was referred to, so this is a point that arose before, so I am afraid we do not—

295. THE CHAIR: Can we just leave it there for a moment and move on?

296. MR KATKOWSKI KC: Yes, of course.

297. THE CHAIR: That is what I am requesting on behalf of the committee and we would be very grateful if it were produced. It is obviously quite a short piece, quite a short amendment. It is not a long one, I would not have thought, and I think that would help us. Whether or not we accept that slightly different language—an undertaking or an amendment—my own view is that that particular clause, that particular statement, is more appropriate for an amendment than an undertaking.

298. MR KATKOWSKI KC: My Lord, in due course, I would obviously wish to address you on that, but at the moment my Lord is requesting on behalf of the committee that we provide a draft amendment to Clause 2. Is that for the territorial point

only?

299. THE CHAIR: I am somewhat sympathetic to you on the question of—

300. MR KATKOWSKI KC: Time, yes.

301. THE CHAIR:—because we are not in a position to know how quickly it should be done, so like, I think, virtually all planning permissions, we are in the position of not being able to say, "You must complete it by X date".

302. MR KATKOWSKI KC: Yes, indeed. That is understood, my Lord, so it is in relation to the geographic extent—

303. THE CHAIR: That seems to me the most important one. Now, how are we doing on time, because you will probably want lunch as much as we do?

304. MR KATKOWSKI KC: My Lord, I would love lunch, and I was about to say, "Those are my submissions".

305. THE CHAIR: I do not think there is going to be a huge deal of problem, or there should not be, in understanding what is the principle or policy, if I can put it like that, of the Bill, and you have gone through that. I think what people will find very perplexing is how the issue of planning permission fits into that, because obviously most of the points that are being made, you yourselves, or the promoter itself—himself, or is it now herself?

306. MR KATKOWSKI KC: Herself now.

307. THE CHAIR: She has herself specified not within scope planning, things like that, and I think it would be helpful to have a very clear, crisp statement of why it is that anything for which planning is or could be obtained and addressed falls outside the principle of the Bill. I think that would be very helpful if we could have that. The Commons avoided that, the other place avoided that, because they had an express instruction in relation to planning. We do not, and therefore we have to, as it were, have a very clear idea of anything that could be in planning or has been in the planning for the current proposed development—is it out of scope?

308. MR KATKOWSKI KC: Understood, my Lord. Just again, briefly, because I do

not want to hold up the short adjournment, but the instruction in the House below, simply in relation to planning, was simply that arguments as to whether planning permission should or should not be granted were outside scope. My Lord, that is why you might recall on the first day I said the instruction was as much a hindrance as a help, because we spent a lot of time—the various petitioners and the promoter—seeking to construe the instruction which—I much preferred to, as I did in the House of Commons and as I have done here, go back to first principles, and the first principles which count are what this Bill is all about in public policy and in principle terms. Once one understands that, that is the key that unlocks everything, in my submission.

309. THE CHAIR: Yes. I understand your very broad submission. It is that we are talking about lifting the protection in the 1900 Act, to the extent that is necessary to accommodate the building for which planning permission was applied for and obtained, but I think it would be helpful for you to put that down on paper in a very short form of wording—

310. MR KATKOWSKI KC: In relation to the planning points?

311. THE CHAIR: —in relation to planning.

312. MR KATKOWSKI KC: Yes, understood. It is there on the notes already, but we will try harder and better. Thank you, my Lord.

313. THE CHAIR: I am sorry that we have held you up so long, but I am very grateful to you for the efficient way you have opened on the question of scope and principle. We will stick to our timetable and at 2.30 we will give you the results of our decision on who is in and who is out in terms of right to be heard.

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