

CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 10 December 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
Robbie Owen, Parliamentary Agent, Pinsent Masons
George Wilson, Solicitor, Pinsent Masons

FOR THE PETITIONER:

Brian Doctor KC
Sir Peter Bottomley
Baroness Bottomley of Nettlestone
Baroness Finlay of Llandaff

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(At 10.15 a.m.)

1. THE CHAIR: Good morning, everybody. This morning we will be hearing in this public session Sir Peter and Lady Bottomley. Following that, we will be hearing Baroness Finlay. We will give our conclusion on the Ram doctrine and its application to this case, and we will announce our decision on that. We will then proceed to deal with final submissions. We have received very extensive written submissions from counsel for the promoter, and rather shorter ones from Mr Doctor. It is the 11th public meeting of the Holocaust Memorial Bill Committee, and as before I shall repeat the usual safety information.

2. In 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. I must also remind everyone that these proceedings are being broadcast, and that a transcript will be taken.

3. I ought to mention before Sir Peter and Lady Bottomley make their submissions our provisional ruling of the committee on scope. That is that we do not wish to hear petitioners on the following matters: first, that the Holocaust Memorial and Learning Centre should not be located in Victoria Tower Gardens; secondly, that the Holocaust memorial should not be co-located with the learning centre; and, thirdly, that the learning centre should not be located underground. I will now therefore invite Sir Peter and Lady Bottomley to make their submissions.

Sir Peter Bottomley and Baroness Bottomley of Nettlestone

4. SIR PETER BOTTOMLEY: My Lord, my Lady, my Lords, thank you. I have decided not to try to ask you to change your provisional decisions on scope. I think that what I would say would overlap with what Lord Carlile had said, so I spare you and myself that, if that is all right by you.

5. THE CHAIR: Thank you.

Evidence of Baroness Bottomley of Nettlestone

6. SIR PETER BOTTOMLEY: Can I just ask my co-petitioner, my wife, two

questions? How long have you worked here?

7. BARONESS BOTTOMLEY OF NETTLESTONE: I have worked here for 40 years at the Palace of Westminster.

8. SIR PETER BOTTOMLEY: How long have you lived nearby?

9. BARONESS BOTTOMLEY OF NETTLESTONE: I have lived close by for 35 years.

10. SIR PETER BOTTOMLEY: Can I ask you another supplementary question? How many times have you been responsible for the Royal Parks?

11. BARONESS BOTTOMLEY OF NETTLESTONE: I was responsible for the Royal Parks. My first ministerial job was in 1988 with Nicholas Ridley, and then again when I came back as Secretary of State in 1995 until 1997.

12. SIR PETER BOTTOMLEY: If a colleague Minister had come to you with proposals like this, how would you have reacted?

13. BARONESS BOTTOMLEY OF NETTLESTONE: I would have said it is totally contrary to the spirit of the Royal Parks, which are virtually sacrosanct space. Any developments within the park must be totally in sympathy with their mission: statues, perhaps, but excavations, out of the question.

14. SIR PETER BOTTOMLEY: This is my last question at the moment. It may be the last question anyway. Have you ever heard of a junior Minister taking a decision to decline an application by their Secretary of State?

15. BARONESS BOTTOMLEY OF NETTLESTONE: I find that extraordinary.

16. SIR PETER BOTTOMLEY: Is that no?

17. BARONESS BOTTOMLEY OF NETTLESTONE: That is a no.

Submissions by Sir Peter Bottomley

18. SIR PETER BOTTOMLEY: Thank you. My Lord, before coming on to my slides, which will illustrate two or three major points, the first is that the idea of a prominent

memorial in Victoria Tower Gardens being seen by anybody outside the park is nonsense—well, perhaps one person—but if you stand on Lambeth Bridge in winter you can hardly see the Buxton Memorial Fountain, and you would not notice what is being proposed. If you stand on Millbank in winter, even without the leaves on the trees, you will hardly see even the Buxton Memorial Fountain, with its scaffolding and white cover at the moment, let alone its normal colours. You will also see from the illustrations when we get to them, which I will go through quite fast, that if you look from the children’s playground north towards the House of Lords, your view will be interrupted by the mound that is being proposed. It is not interrupted by the Buxton Memorial Fountain.

19. I will also illustrate, as a local resident, what happens to traffic. I do not know if any of you were walking around Great College Street and Great Peter Street yesterday. You will have noticed that the three roads to Millbank were all blocked, and buses were coming down Lord North Street, going round Smith Square, and trying to find their way around, and that is without the extra traffic which this present proposal will bring. When you consider what I shall be asking you, I think you can ask questions of the promoter, before or after their closing submission. You can ask Government for assurances and for commitments, and you could consider adding to the Bill amendments which other petitioners have put. I would like to concentrate on you asking the promoter questions and not releasing this Bill back to the House of Lords until they have given what to you might be satisfactory answers.

20. We are told there is no alternative. I have in my hand a letter from Eleanor Kelly, the chief executive of the London Borough of Southwark, to Diane Lees, then the director-general of the Imperial War Museums, saying. “On behalf of the London Borough of Southwark, I am pleased to give our strong support to your bid to accommodate the Holocaust memorial and learning space”. I interrupt this letter to say it is known that the Imperial War Museum was later told not to put in a proposal, so when the planning inspector says that there was no worked-up proposal from the Imperial War Museum, the reason for that is that the department told the Imperial War Museum not to do it.

21. I continue with the letter. “We agree that the Imperial War Museum and its setting in Geraldine Mary Harmsworth Park”, which incidentally is a peace park, “is the most

appropriate location for this. We have no objection in principle to the development of a facility below the ground, with the monument taking a prominent place in the park. There will be need for a further discussion on whether this should be on the basis of a 250-year lease at a peppercorn rent. Geraldine Mary Harmsworth Park is designated as Metropolitan Open Land (MOL), where planning policies require that the open nature of the land is retained and is put to appropriate uses defined in planning policy.

22. “I confirm there is no issue in principle with the proposed development being for an appropriate use, mainly below ground level. There would need to be further discussion about the surface treatment and relocation, whether temporary or permanent, of the play area that currently occupies this site. However, once again, these do not present any significant problems”. It goes on saying the whole thing will be straightforward, including the planning process.

23. If your Lordships look at the September 2015 specification by the UK Holocaust Memorial Foundation, they will see that one of the expectations is that the proposal for the learning centre and the memorial should have the support of the local authority.

24. Your Lordships have heard from the promoter’s advocate about the separation in the department of housing and communities, whatever it is called now, between the Secretary of State, the promoter of the project, and the changing junior Minister who will be the decision taker. When a previous Secretary of State and his junior Minister began to believe that Westminster City Council was not enthusiastic about the project, that Westminster City Council had good reason on officers’ advice to believe that the project was contrary to its planning policies—that is in contradiction to what Southwark Council was saying—it decided to take the application away from Westminster City Council and give it to an inspector.

25. Your Lordships will also have noticed that the inspector managed to produce a report within a very few months of the conclusion of that inquiry, something almost unheard of in major planning inquiries. Then, surprise, surprise, or no surprise, no surprise, the junior Minister agreed the project, flatly ignoring what had been said in public, which was that there was a statutory bar, a law, saying this project could not go ahead as planned. At every stage of this project, the promoters have ignored difficulties, ignored local people, and spent money trying to overturn popular opinion.

26. When the first consultation came out about using Victoria Tower Gardens, 95% of local people objected with reasons. What did the promoters then do? They then spent over £100,000 recruiting an agency to go to people away from the area, essentially saying, “Would you like to have a Holocaust memorial?” and they said yes without reasons, using form letters, and this was then seriously presented to the inquiry as though it was evidence of something. All it was evidence of is that you can recruit an agency to give you the views you want.

27. I then turn, if I may, from Southwark to an Early Day Motion in the House of Commons from May this year. That was when I was a Member of Parliament. It is not long, but I think it contains important information for your Lordships to consider. “This House notes the First Special Report of the Holocaust Memorial Bill Select Committee, HC121, on the problems with the current proposal and the restrictions faced by the committee considering the hybrid Bill; respects the conclusions and recommendations on page 20; agrees with the list of matters related to the current proposals for a Holocaust memorial and believes these need updated attention on deliverability from the Infrastructure Commission, from the National Audit Office on likely capital costs and recurrent annual costs, from the Chancellor on future funding control, and from the police and security services on maintaining unfettered public access for use of Victoria Tower Gardens while protecting the memorial; asks His Majesty’s Government and the Holocaust Memorial Foundation agency to commission the views of the property consultants on a comparison of the current proposal by Sir David Adjaye in Victoria Tower Gardens with viable alternatives, to commission the full appraisal and to hold a public consultation on the selection of site; and further asks His Majesty’s Government to commit to having this or an amended proposal considered first by the local planning authority before considering whether to call in the application, noting that an open-minded observer could doubt another Minister in the levelling up department should be asked to make an independent decision on an application by the Secretary of State”.

28. Local people have the greatest interest in a proper memorial. Local people have a proper interest in the best possible learning centre/education centre. Local people want something that works and is effective, and for that matter is cost effective. The September 2015 proposal, and been repeated by government, said the majority of the money should be spent on education.

29. A memorial charity has been set up that has spent £6,000 over the last seven years in leading up to the education. That is less than half the cost of what people in the Save Victoria Tower Gardens group, equivalent to a residents' association—and I do not need to remind the committee that the promoter's advocate has occasionally said, "Why don't you have an organised group with an AGM to represent local people?" Save Victoria Tower Gardens Group may not be incorporated, but it certainly represents local people, because it is made up only of local people, who contributed twice as much to trying to help this House and the House of Commons understand the proposal as the memorial trust set up by the promoters has spent on education.

30. Local people want something that works, and if what is being proposed does not work, there are only three ways in which that can be improved. One is by questions, requirements and assurances received by this committee. The second is by what is referred to as the normal planning process, mostly. The normal planning process in the mind of the promoters is that, when this committee has reported and this House has dealt with the Bill, assuming there are no changes—I hope there will be, but assuming that there are no changes—a junior Minister can then sign it off as though the intervention by the judicial review had not happened.

31. Everything has changed since September 2015, and many things have changed since 2017 when the Adjaye-Arad proposal was selected. The inspector, as the promoter's advocate occasionally reminds us, said that the idea is to have the memorial open in the lifetime of Holocaust survivors. If this present proposal goes ahead, that cannot happen for four or five years, after parliamentary procedures are finished. Let us say five years. A person who is 95 now would be 100, and the people who are 95, three out of four are expected to have died within the next five years.

32. If the most important issue is to have this memorial open within the lifetime of survivors, the promoters can within the scope of this Bill come forward with a proposal to use the money permitted in Clause 1 for a memorial which would be open within two years, preferably at a cost of not more than £20 million, and then sort out what the learning centre and education centre should be, because what is clear is that you cannot have the full horrors of the Holocaust in the learning centre as presently proposed if the primary school children who come round the Palace of Westminster are going to include a visit to the Holocaust Memorial and Learning Centre at the same time.

33. You cannot show the horrors of the Holocaust, of the death chambers, of the death camps to people under the age of 14. If we are thinking of freezing mobile phone use for people under 16, the piles of bones which my father's cousin, Dr George Woodwark, saw as one of the medical students at Bergen-Belsen cannot be shown to primary school-age children. We want to see what can be done to make things good, make them better, make them fast and effective. I think one of the questions that your committee can ask the promoters is that their commitment to seek the approval of the local planning authority should be reinstated. "Will you give that commitment?" you can say to them. If they say no, you can ask, "Why not?" and then we will hear what their answers would be to that.

34. They claim there is no alternative. That is seldom true in the Civil Service. When I was a Minister, I was responsible for a policy which we did not have. It was our policy not to have a policy on this area, and once a year a civil servant came along saying, "By the way, if you or your successors change your mind, we do have a skeleton policy available". They have alternatives; they just have not talked about them, so I think you could ask what they would do if the Government, the promoter or Parliament decided, for one reason or another, not to allow you to use this. Would you have no Holocaust memorial? Of course you would, because you would go back to the specification of 2015.

35. LORD HOPE OF CRAIGHEAD: Can I ask you a question? With regard to the proposal you have just been making, is it in the power of the promoter to give an undertaking as to how the planning process is going to be handled? Is that not a matter for the Secretary of State?

36. SIR PETER BOTTOMLEY: The promoter is the Secretary of State, Sir.

37. LORD HOPE OF CRAIGHEAD: I see. Yes, I may be wrong. I thought you were really talking about the body that would be promoting the project, but you say it is one and the same person.

38. SIR PETER BOTTOMLEY: I have not studied law, but my understanding is that the formal status of the foundation is the government agency. I think it is actually only an advisory agency rather than an executive agency.

39. LORD HOPE OF CRAIGHEAD: It is important. No doubt I will be corrected if I am wrong, but it is very important that we know what we are dealing with here to pursue the point you are making.

40. SIR PETER BOTTOMLEY: My Lord.

41. LORD HOPE OF CRAIGHEAD: Thank you.

42. SIR PETER BOTTOMLEY: I will pass over the National Audit Office report on what has been proposed. I want to say, not in passing but in plain English, that every government and foundation publication on this proposal, until the time of the allegations made against Sir David Adjaye OM, prominently used him and not other designers. I will refer the committee to the *Architects' Journal* of 4 December 2018: "Adjaye and Arad set to submit final designs for Holocaust memorial". It goes on to quote Sir David Adjaye. I think that those who would try to wipe him away from the past are wrong. For those who think I am awkward, I could quote a card from Eric Pickles, Lord Pickles of your House, after my contribution in 2018 in the Chamber of the House of Commons, saying, "Thank you for your contribution to the debate. You made an excellent point about how many were saved and how many were failed to be saved".

43. That reminds me that, in the September 2015 specification, on page 10, there is a map of acceptable parts of central London. That map illustrates from the west of Regent's Park to east of Spitalfields, and includes the Imperial War Museum and the park around it. The first time anyone suggested it was important that this memorial and the learning centre should be beside the Palace of Westminster came after they had picked Victoria Tower Gardens. It had not been mentioned before. When I put down a Question to the Prime Minister on that in 2017, it was referred to another department, and the answer as to how the decision was taken was very, very vague.

44. If the advocates for the promoters say that this was considered by the planning inspector, in plain English, the planning consultants who came forward with the best of the 50 projects were wiped aside in one day and Victoria Tower Gardens was substituted, with no justification, no comparison, so I think that is one of the questions your committee could put to the promoters: "Let us see the best comparisons there have been between this proposal and an alternative". This is not trying to overtake Clause 1, which gives authority to spending money. About £30 million perhaps has been spent.

Perhaps your committee could ask the promoters how much has been spent so far. We know that the cost went up a year ago by over £30 million, by over 30%. How much has it gone up since? I would suggest an extra 20% at least. These things matter.

45. It is not for the committee necessarily to say that the money should be limited, but I think it is possibly open to you to ask the promoters/the Government if they will give a commitment to how it is going to be spent. I could go on. I have mentioned the Holocaust Memorial Charitable Trust—£6,000.

46. I would like if I may to turn to the slides, and I will go through them quite quickly, and if there are any questions members of the committee want to ask, I will try to answer them. This is looking by the entrance from Great Peter Street. There are four entrances to the park. There is one up to the south, by the roundabout, coming in near the café. There is one that faces Dean Stanley Street, which is the one that has a straight view across to the Buxton memorial. There is one that comes in from Great College Street, and there is one that comes in where the Pankhurst memorial is. This I think is the one by Great College Street.

47. That view, which is probably the most commonly used entrance, of the Buxton memorial will be lost. If you have something of the same height as the Buxton Memorial Fountain in front of it, you will not see it.

48. I was going to ask some of those who were my witnesses before in the Commons to come, but essentially the evidence from Nickie Aiken, who has been leader of Westminster City Council, and from Councillor Louise Hyams, was that Westminster City Council was considering the application on merit, and then it was taken away against its wishes. You have heard from Dorian Gerhold before, and you have copies of his informative booklet.

49. This is yesterday, showing the three roads for local residents, because I am speaking as a local resident as well as someone who has worked here for 49 years. I now am an unpaid assistant.

50. The three entrances are blocked, which is why the traffic was coming down Smith Square, with St John's Church or concert hall.

51. This is a bus trying to find its way around, and we will have plenty of those, with satnav and with other blockages. If you go on to the next slide, you can see a lorry trying to reverse back from a blockage. It is trying to get to Dean Stanley Street, but every one of the routes to it was blocked. We will have more of that.

52. Buses will stop down towards the Tate, but they will not know that, so they will be pulling in opposite the Pankhurst family memorial.

53. This is just trying to give you an aerial view. If you look from Lambeth Bridge, the one for your Lordships' House painted red, at the trees on the edge of the gardens, you hardly notice the Buxton Memorial Fountain, and you certainly would not notice the proposed mound and fins.

54. This is again looking from Millbank. Can you see much there? No, you cannot. We will move on.

55. That is an aerial view. This prominent memorial might be visible if you were in a helicopter immediately above it. From outside Victoria Tower Gardens in summer it will be invisible.

56. I hope the promoters know what those are. They are part of the children's playground, the one that is going to be reduced in size. Incidentally, this is one question that I believe your committee could ask the promoters today: will they, with the petitioners, ask surveyors to work out how much of the park will be taken or affected by the present proposals. This idea of 7.5% is improbable. I think it is complete nonsense, but just ask someone. Just get the two parties together and say, "What do you think to the 7.5% measure?" This is the children's playground.

57. This is looking from the approach to the Lambeth Bridge north into the park, past the playground. Can you notice the memorial fountain from there? Not easily, is the answer, and would you notice the proposed mound and toast-rack? Sorry, fins. You would not.

58. Here you have a view with the present little café, which partly blocks the view of the south flank of the House of Lords, and would block the view of the proposed memorial with its fins.

59. This is looking from the other side of Millbank, just north of Dean Stanley Street, where you can see the memorial fountain. It is without most of the leaves on the trees. If you then saw superimposed in that the present proposal, would you recognise it as what is being put forward? The answer is that you would not. You would see some flat sides of the fins, you would see a bit of a mound, and that was it. The idea that that is a prominent memorial takes me back to what Anita Lasker-Wallfisch said, that what is being proposed is too large for the park and too small for its purpose.

60. This is a series of pictures with a police van coming out. Again, you will not see the gaps in the fins here. It will not give you a message that we are supposed to gain from the 22 countries where people were picked up and taken off to the concentration camps and to the death camps.

61. Again, this is a current picture I think, showing obscurely, in winter, without the leaves, what you can and cannot see of the Buxton Memorial Fountain.

62. This is a reminder of where we are.

63. This is looking at what is the proposed site for the mound and the fins, and looks across to the memorial fountain. You do not see it.

64. This idea of prominence is just wrong. The only way it is prominent is by interfering with the use of the park by the local people, and if you were with the people in Church House at the first consultation, where 95% said that there were things wrong with this proposal, they were the people who take their children. They are the people who are out at work. They are the people who take their sandwiches. They are the people who go for a walk around the park, whether in their wheelchair like Lord Blencathra or on feet like me, at the moment. That is where the disturbance comes from. That is where the prominence comes from. That is where the interruption comes from. It is where David Adjaye openly said he wanted to disrupt the use of the park.

65. Again, this is looking where above the Millbank sign you would have the proposed mound.

66. I have spoken for too long and I may have said some things that may have been too gentle. I actually feel really strongly that we should have something that will give to

others what I got when I first started reading about the Holocaust when I was 14. I said before that I should have waited probably until I was 16. I have talked about listening to my father's first cousin, George Woodwark, a medical student, about going into Belsen. I have spoken also about the extended family my grandfather had and lost. I am not sure he knew them well, but the education side has done much for me in understanding, which I will pass on to my children and grandchildren. This present proposal needs to be brought forward with alternatives.

67. If it has to go ahead, it needs to be improved, and if an alternative can be found that is better, you cannot require an alternative but you can ask the Government why they are going on, like an emperor with no clothes, with a project that has not been delivered and will not be delivered during the lifetime of almost any Holocaust survivor. I rest.

68. THE CHAIR: Thank you very much. Mr Katkowski.

Submissions by Mr Katkowski

69. MR KATKOWSKI KC: Thank you, my Lord. This is petition number 17, and in the same way as with previous petitioners, on behalf of the promoter I am particularly interested in what the petitioner is asking for, and that is in Section 3 of the petition. There are five asks, if you like, and the first of those is a point that Sir Peter has explained and elaborated in his submissions this morning. The first item is that there should be a requirement that the present scheme, or preferably a revised proposal, is considered as an application to the local planning authority. This is the matter that my Lord, Lord Hope, raised a question about.

70. Obviously, the idea of a revised proposal would fall out of scope, but let me come to the point about in effect starting all over again with an application to the local planning authority. Just to clarify the position, the promoter of this Bill, the Secretary of State, is the applicant for planning permission for the Holocaust Memorial and Learning Centre, and as with any applicant, if the Secretary of State wished to do so, the Secretary of State could withdraw her planning application. She could say, "For whatever reason, I am withdrawing this application", and that would be the end of that application being in front of the Minister for redetermination. It is right, in fairness to Sir Peter, that if the Secretary of State wished to do that, the Secretary of State could withdraw this

application and then, for example, make the same application or an amended application or some other application to the local planning authority, Westminster City Council. The Secretary of State has absolutely no intention of doing that.

71. The reason why the point is put forward, as I understand it, is to allow Westminster City Council to, if you like, have its say on the application, and that of course misses the point that when the current application was called in, was taken out of the city council's hands, it had and took the opportunity to consider the application and to pass a resolution as to its position in relation to the application. That resolution was to raise various concerns about the project: for example, and this is just an example, the impact of the construction of the underground learning centre on the neighbouring plane trees. Evidence was called by Westminster City Council—this is just an example—at the planning inquiry to explain its concerns that the project would face very real difficulties because of the risk of severing roots and the risk, therefore, of losing some or other of those magnificent plane trees. Evidence was given contrary to that on behalf of the promoter, and the inspector wrestled all of this and concluded that the likelihood is that the trees would be able to be protected.

72. That is just an example. Westminster City Council not only had the opportunity to have its say; it took it. It participated fully in the inquiry, and obviously with the current planning application to be redetermined in due course by the Minister, following whatever procedure the Minister decides to follow, Westminster City Council would have every opportunity to participate fully again to the extent it wishes to do so in that process. Obviously, I cannot speak for the city council. It would be for it to decide quite how it wanted to participate in that reactivated process. That is in relation to the first point.

73. The underlying purpose of the first ask in Section 3 of the petition is in effect to give Westminster City Council a voice. It has a voice. It has used that voice, and it will be able to use that again when this application is redetermined, but certainly the Secretary of State has absolutely no intention of withdrawing the application and starting all over again. In any event, even if the Secretary of State did do that, there would be absolutely nothing to stop the relevant Minister doing the same thing all over again, and calling in the new planning application and taking it out of Westminster City Council's hands, so we could simply end up with history repeating itself. That is the first

point.

74. The second, third, fourth and fifth points in Section 3 of the petition, apart from one part of the fourth item, which I will come to in a few moments, concern finding a different location, having a different proposal, going to the Imperial War Museum, having a new competition, looking at different locations. All are out of scope, obviously, because they all offend the principle of the Bill. That leaves the first part of item 4, which is that there should be restrictions on the parts of the gardens that can be blocked from use during construction. This is a point that has come up time and again—a perfectly valid and sensible point, if I might say—and as you all very well know, in your paper that you very helpfully issued to us and which was made public on Friday afternoon of last week, this is a matter that you canvass, and to which we have responded in our composite response, which doubtless I will come to when I make my closing submissions a little bit later today.

75. As you know, we have responded in a way where, in response to your request for an assurance on the subject, we have indicated that we are prepared to give an assurance and have set out the terms and outline of what that assurance would look like. I can come back to that later on, but most of what is asked for by this petitioner is just plainly out of scope because—let us not beat about the bush—for very passionately held reasons the petitioners object strenuously and strongly to the proposal, and a number of these requests made in Section 3 of the petition are seeking to ensure that whatever happens is not this proposal, and of course that is all out of scope. That is all I wanted to say. Thank you.

76. THE CHAIR: Thank you very much. Anything you want to respond to?

77. SIR PETER BOTTOMLEY: If I may, but briefly, I am grateful to the promoter's advocate being my patron. I think he has missed the point, if I can put it to him as politely as I can. It is the local residents who do not seem to come into the promoter's view at all. They have local councillors. They want to be able to put their views to what is now coming forward. I think the idea that the redetermination is a way of hearing local views from the councillors or the council or their voters/their residents is nonsense, and I would like the committee to say that you are unconvinced by the idea that you have any kind of independent redetermination in mind if the advocate, presumably on

instructions, keeps saying absolutely this, and absolutely the other.

78. This Bill is hybrid. The Government said it was not. This committee has decided that some of us have standing. Most of the standing was objected to by the promoters. They want a rigged system, if I can put it in polite language. I think this committee is one of the stages where that could be rectified. This Bill does not require the Government to go ahead with this proposal. It is perfectly open, as the National Audit Office did and the National Infrastructure Commission did, to ask whether the Government think this is still the right proposal and the best proposal and an effective proposal.

79. I have never opposed having a Holocaust memorial or learning centre/education centre in line with the specifications of September 2015. I would be really keen to have a memorial up within the next two years. The way of achieving that is with some of the proposals in the petition, which the advocate has now said should be ruled as out of scope. I am not going to argue with the scope point. I am saying that there is a way the promoters could get a memorial within two years, which could be seen by some Holocaust survivors, and have an education service and centre that works effectively. It is up to the promoters, and until they are willing to see that, they will find that judicial review, as in the past, and public opinion, as now, will say to their argument, “It is no good just sitting here and saying absolutely this and absolutely that. They have got everything wrong so far. Let us try to help them get it right”.

80. THE CHAIR: Thank you very much, Sir Peter and Baroness Bottomley. We will now turn to our next and final petitioner, Baroness Finlay. Baroness Finlay, would you like to now make your submissions on your petition?

Baroness Finlay of Llandaff

Submissions by Baroness Findlay of Llandaff

81. BARONESS FINLAY OF LLANDAFF: Thank you, Lord Chairman. If I may, I am speaking in two roles: one as a person who is a resident throughout the week in the area, but not most weekends, and as a parliamentarian who, as the Deputy Speaker, feels her sense of responsibility to other parliamentarians as well.

82. I want to speak again about security, but from a slightly different angle. There are three areas which I think need to be addressed in security. One is the security of parliamentarians anyway. The situation for us has changed, particularly recently. The other is the security of children, and the last is the security now of people in an underground facility and what can happen.

83. The situation in the Middle East has changed rapidly, and I think has made us less secure, not more secure. The debacle that occurred over Holocaust Memorial Day, and the profound upset that has happened with that, I think has contributed to a sense of unease, but certainly what has happened in the Middle East with Israel, Gaza, Syria and so on has made the whole security situation—I do not think it was stable before—even more unstable.

84. I will address the three groups. The first is parliamentarians. As a parliamentarian, I now at night locally take a taxi back rather than walk, simply because I no longer feel safe walking back, which is something that I used to do routinely. I know that recently somebody was held at knifepoint. Now, that was an ordinary mugging, but the muggings have gone up in the area, and I think we are basically sitting in an area that for a demo, for something happening, is potentially a tinder box. I really do think that parliamentarians are far more at risk now than they realised previously, particularly if Britain has any role in any of these disputes.

85. The next group which it is really important to think about is children. If we are educating children, what are we expecting them to learn by coming to an area that will be very overcrowded, where getting them off whatever transport they come in into a separate area will be difficult—controlling a group of children is not easy anyway—in an area where there really is not space for them? I do worry that this will also impinge on the education centre that we have here in Parliament. The park area will effectively be out of bounds for a long time, but even going to that, what are they learning? Are they going to be learning that the Holocaust is somehow part of Parliament? I think they are very, very mixed messages.

86. I think Sir Peter made a very important point about the absolute horrors of what went on, particularly some of the systematic medical abuses of people by the Nazis during the whole of the Second World War and the Holocaust, and it was not only the

gas chambers; it is what went on before people died. I really do not think that we can be exposing the children to those kinds of details in the environment in which they are, because I want to come on to the issue of underground.

87. I would question whether the risk assessment for the whole area has been redone recently in the light of political changes, and in the light of the changed behaviour of terrorist groups and those who are of malintent. Whatever security system and screening you put in place, with metal detectors and so on, for an underground area, I do not see how you are going to exclude somebody going in with a plastic cannister, possibly hidden in a body part, either rectally or in the vagina, which they then remove in one of the toilets there and release poisonous gas in an underground space. I do not want to give ideas to the terrorists by raising it, but I do think that one has to be aware.

88. It came to me when I was reflecting on a friend and colleague of mine who was the first person to crawl into the school in Aberfan following the collapse of the tip. He crawled in hoping to rescue children and found that they were all dead, including the teacher. Given the difficulty of getting people out from an underground space in an emergency and in a hurry, I am afraid I question the extent to which the risk assessment has been undertaken for all eventualities, not only externally but to people visiting.

89. I would just remind you of the difficulty of evacuating even from recent terror incidents. We have heard of the horrors that went on at the Manchester Arena and so on. I would really question the risk assessment and when it has been updated, and how it has been updated, in the light of the political changes that have occurred.

90. The other area of risk that comes to mind is the fire risk from this building and during R&R. I would just remind the committee of the extensive area that was sealed off for public safety after Notre-Dame's fire, and how during R&R many parts of this ground around Westminster will need to be sealed off. With that, in the event of a fire here I would question what would happen and therefore how that affects the deliverability of any project in the area.

91. In terms of my personal view, I value those gardens. I walk through them in the mornings. The other morning it was delightful to walk through there rather than along through the street, but certainly at night and in the early evening I do think that the area is becoming increasingly unsafe, and that would apply to visitors coming, particularly

children. If we want to teach children how to be terrified, that is one thing, but I am not sure that should be the role at all, and, as I say, my biggest anxiety is the risk to life and limb, at the end of the day.

92. THE CHAIR: The promoters say that security concerns will necessarily be updated when they are presented on the revival of the planning application. We have a planning application in, permission has been set aside, but you heard this morning that Mr Katkowski is saying that there is no intention to start a new planning application. They will simply revive the existing planning application and seek permission. We have been assured that, on that occasion, as part of that process, there will be updated security to be considered by planning permission. Basically, two points are being made, and I would be interested to hear your point of view about them. One is that this will be part of the planning process. That is the first point.

93. The second point that has been made, although it has not been articulated today by the promoter, is that all parliamentarians and anybody else can find out through the planning process, by being parties or otherwise, what is going on, what has been said, and make their own contribution, and I just wondered what you would say about those two points.

94. BARONESS FINLAY OF LLANDAFF: If I can address the second one first, yes, I suppose people can go and see what is happening in the planning process, but I have never seen a very comprehensive planning process that tackled some of the details of risk that we have been alerting on in the evidence that has come before this committee, and I do not know how it would be there. In terms of the risk and updated planning proposal, though, with all due respect I would just remind the committee that when the Manchester Arena was planned it was thought to be safe, but evacuating casualties from there was extremely difficult for many, many reasons. We know what happened with the football disaster in Liverpool.

95. Evacuating casualties from an area—I will just remind you about the King's Cross fire and various places—is exceedingly difficult, and I am worried that the risk assessment, unless it is really done thoroughly and is updated, including how people are being screened who will go into an underground facility, is ignoring something that might be staring us in the face.

96. THE CHAIR: Thank you. Mr Katkowski.

Submissions by Mr Katkowski

97. MR KATKOWSKI KC: Thank you very much indeed, my Lord. Well, the petitioner has raised various matters about security and my Lord, Lord Etherton, has in effect replayed to the petitioner some of the key points that the promoter has made in response to these issues. Can I just pick up on the two points that were made about security by my Lord, Lord Etherton? First, security is certainly a central part of the reactivated planning process, as I have previously explained and as is all documented in our written response to the paper that the committee very helpfully issued to us last Friday afternoon.

98. Secondly, though, in relation to the point that parliamentarians can participate in that process if they wish to do so, can I just draw to your attention our composite response, or omnibus note as we have described it, responding amongst other things to the committee's letter of last Friday? At tab 4 or appendix 4, there is a letter from the corporate officer of the House of Commons and the corporate officer of the House of Lords, dated 5 November, to the Planning Minister, asking that they be kept fully informed about future stages of the planning process so as to give the corporate officer of the House of Commons, and of the Lords, the ability, as they say in paragraph 6 of that letter, to make representations to the Minister prior to the redetermination of the planning application.

99. I just wanted to draw that to your attention—that Parliament, if I can shorthand it in that way, has already written to the relevant Minister asking to be kept fully abreast of the future procedural steps in relation to the planning application. Why? Answer: so that Parliament can make representations prior to the redetermination of the planning application. I just draw that to your attention.

100. THE CHAIR: How do you envisage, in practice, detailed analysis of the security risks actually being communicated to every parliamentarian? It is one thing to say, “We will keep these corporate officers informed”, but how is the House, and the individual parliamentarians in practice going to know about quite complex matters and have the time to consider them? I am just trying to be practical.

101. MR KATKOWSKI KC: No, I understand, my Lord. As I sit here today and address you, as the committee very well knows because we have been round this point several times, I do not know, and I am not in a position to influence, which process would be followed in future in relation to the planning application, so I have to do this in two alternatives. The first alternative is that there is a new planning inquiry in front of an inspector. In those circumstances, all the evidence will be public. If there is any form of assurance that you would find it helpful for us to give, I will have to take instructions on this, but I cannot see any difficulty at all in ensuring that all the evidence that we submit as part of that process in relation to security, or anything else that you would wish to be covered, was specifically copied over to the authors of the letter that I have just referred to so that it is available. It would be available publicly anyway.

102. THE CHAIR: Can I ask you this? I know we are both trying to work out a way forward, but we have to be pragmatic here, and one thing that is quite clear to the committee—there is no beating around the bush on it—is that everyone is concerned about security, everyone.

103. MR KATKOWSKI KC: Yes.

104. THE CHAIR: We cannot push it to the side.

105. MR KATKOWSKI KC: I am not asking you to do so.

106. THE CHAIR: No, but would you be prepared to give an assurance that you will make available for distribution to all parliamentarians any written material on security that is put forward on behalf of the promoter in any revived planning process?

107. MR KATKOWSKI KC: My Lord, I would take instructions on that. Speaking entirely in an instinctive response, I cannot see any practical difficulty with that whatsoever, but obviously I have to take instructions on the matter, as you understand.

108. THE CHAIR: It may be that other members of the committee do not agree with me or have something better in mind.

109. MR KATKOWSKI KC: My Lord, if I could just finish the point I was on earlier, obviously if the Minister in due course decides that there will not be another planning inquiry but it will all be dealt with in writing, there would still be written material about

security, of course. The same response I have just given you would apply to that as well. I will take instructions on it, but all that material would be public in any event.

110. THE CHAIR: I know. That is it.

111. MR KATKOWSKI KC: I am so sorry. That is all I wanted to say. Thank you.

112. LORD HOPE OF CRAIGHEAD: Do you have in front of you Baroness Finlay's petition? It is paragraph 3 in her petition.

113. MR KATKOWSKI KC: Yes. Of Section 3, do you mean, my Lord? Yes.

114. LORD HOPE OF CRAIGHEAD: I am looking at paragraph 3, which is potentially within scope in the sense that we are looking at the position of local residents, and she is saying that the views of Holocaust survivor families of those who have perished—I think she is speaking on behalf of local residents, and herself as a resident—will be taken into account in all aspects of planning a memorial and the results published. That takes me back to the question of what you are saying about the future process. If this is a public, open inquiry like the last time, that would happen, but you are saying that is not going to happen. You are saying that the Secretary of State is not willing to start all over again.

115. MR KATKOWSKI KC: As you say, she is not willing to start all over again, and with great respect, why should the Secretary of State start all over again? But, yes, she is not willing to start all over again.

116. LORD HOPE OF CRAIGHEAD: I understand your point, but, given the foreshortened process that you envisage, the question then is whether there is a way in which the views of local residents, and indeed of Holocaust survivors, may be taken into account.

117. MR KATKOWSKI KC: Oh, yes, undoubtedly. Undoubtedly, the views of everyone can be taken into account.

118. LORD HOPE OF CRAIGHEAD: How will they be given an opportunity to express views?

119. MR KATKOWSKI KC: Indeed, my Lord. First, I will rewind for a moment. I

hope you will forgive me. At the inquiry that did take place, as you would have seen from the inspector's report, a considerable number of Holocaust survivors spoke in favour of the project and against the project. Their testimony is recorded verbatim in the annexe to the inspector's report, all taken into account by the inspector when he formed his conclusions. In relation to a reactivated process, again I am afraid we are at that fork in the road. If there is another inquiry, the same thing could happen all over again, obviously. If it is dealt with in what I think my Lord means by the foreshortened process of written representations, everyone who wishes to write in as part of that process will be perfectly entitled to do so, including Holocaust survivors and their families, either in support or in opposition, and set out all their reasons.

120. LORD HOPE OF CRAIGHEAD: You are saying that there will be an opportunity to write in if it is foreshortened.

121. MR KATKOWSKI KC: Yes, in that foreshortened process, without any doubt ever, my Lord.

122. LORD HOPE OF CRAIGHEAD: You can give an undertaking to that effect, can you?

123. MR KATKOWSKI KC: I cannot give an undertaking on behalf of the Minister who will determine the process.

124. LORD HOPE OF CRAIGHEAD: It is just the point I was raising before.

125. MR KATKOWSKI KC: Oh, no, my Lord, but this is just the way the law operates. I am the promoter of this Bill. My client is the promoter of this Bill. I am acting for the promoter of this Bill and the applicant for planning permission. As applicant for planning permission, the furthest I can go is that we will take no steps whatsoever to in any way inhibit anyone who wishes to participate in the future planning process doing so, but obviously it is not within the applicant for planning permission's control as to how that process works through, whether by an inquiry or by written representations. Just as a matter of law, forgive me, but anyone who wishes to participate in whichever route is followed for the reactivated process—there is no doubt at all—will be allowed to do so. There is no way they can be prevented from doing so.

126. LORD HOPE OF CRAIGHEAD: They will be fully informed.

127. MR KATKOWSKI KC: Yes.

128. LORD HOPE OF CRAIGHEAD: They will be given an opportunity to make written representations.

129. MR KATKOWSKI KC: Yes, if the foreshortened process is followed. I am so sorry, my Lord. There is absolutely no doubt about that. That is just planning. There is nothing special about this project. It is just the way the system works.

130. LORD JAMIESON: If I can just elaborate a little bit on that, particularly picking up the point about an assurance, yes, people can take part. One of the frustrations with the planning process is that a large number of people who might have wanted to take part are not quite aware of the timings, the details and all of that. Now, it is not part of the planning process, but could you give an assurance beyond the planning process: i.e. that the promoter will endeavour to ensure that as wide an audience as possible is kept informed and given the opportunity? I cannot think of the exact—

131. MR KATKOWSKI KC: I understand the underlying theme, or concept if you like, of course. I can take instructions on that, but, in effect, just thinking out aloud, it would be some form of assurance that, whatever publicity the determining Minister gives to the next procedural stages, we the promoter would do our own publicity, so to speak, that the process has been reactivated and there is the opportunity to—

132. LORD JAMIESON: In effect, every MP and Lord, and local residents and so forth, would know, “I need to get my resubmission in by the 21st of whatever”—

133. MR KATKOWSKI KC: It is happening all over again.

134. LORD JAMIESON: —“This is what it needs”.

135. MR KATKOWSKI KC: I understand entirely, and you can see to my left that it is being written down at this very moment.

136. BARONESS SCOTT OF NEEDHAM MARKET: I just wanted to be clear that I had understood correctly that you cannot give an assurance about which of these two processes it will be, because that is a decision for the person in the department who is on

the other side of this ethical wall. Have I understood that correctly?

137. MR KATKOWSKI KC: You have understood that completely correctly.

138. BARONESS SCOTT OF NEEDHAM MARKET: Right, and that, within the two options that might be available for them to decide, there is one in which people could come and give evidence in person, as they did before, or another in which they would be limited to written representations. I just wanted to check that I had understood that all.

139. MR KATKOWSKI KC: You have understood that correctly. There are two points I wish to make briefly by way of additional caveats. In relation to the first point about the ethical wall, I am, on behalf of the promoter, extremely sensitive about the ethical wall, because the whole procedures and processes that have been put in place to ensure that we literally do not communicate with the other side of the ethical wall at ministerial level, civil servant level, any level, that whole process—. I am sorry. It really is distracting when people laugh during what I am addressing you about, so can you stop, please. That whole process was taken to the High Court, and a High Court judge went through the protocol that was set out and amended it in certain respects to make it watertight. So we live by that ethical wall, by that protocol. So, no, it is nothing to do with the promoter to say in any way that the process that is going to be followed in the future is an inquiry or written representations.

140. Secondly, by way of brief caveat, you may or may not remember that I indicated a long time ago now that there is a third way in which the matter could be redetermined, and that is by having a hearing rather than an inquiry. A hearing is in effect—this is the way it is described in our colloquial planning language—a round-table discussion led by an inspector, so there is an independent inspector appointed who will literally convene the participants and go around, a bit like this actually, asking each person to make their points. The inspector would then write a report to the Secretary of State, so there is yet a third way. I have expressed the view previously that I would be very surprised if that process was followed here, but that is just me expressing a view on the basis of 40 years of doing this job and nothing else.

141. LORD HOPE OF CRAIGHEAD: Can I come back to a question I asked at an earlier stage in these proceedings? The ethical wall prevents you from giving undertakings about the way the planning process is going to be—

142. MR KATKOWSKI KC: Yes.

143. LORD HOPE OF CRAIGHEAD: But is it open to us to make recommendations to the Secretary of State, so that the person on the other side of the ethical wall can know what we are recommending and can take account of it?

144. MR KATKOWSKI KC: I cannot see any reason why the committee could not in its report set out views about all sorts of matters that you wish the other side of the ethical wall to consider.

145. LORD HOPE OF CRAIGHEAD: Yes.

146. MR KATKOWSKI KC: I personally cannot see a reason why you cannot do that, and I should imagine that, to be frank, a number of things that you might want to write about are really aimed at the other side of the ethical wall rather than us.

147. LORD HOPE OF CRAIGHEAD: We have to aim to the correct target, as it were.

148. MR KATKOWSKI KC: Exactly, yes.

149. THE CHAIR: I am trying to understand this. I assumed—we are going to write a report—that the report will be seen by everybody.

150. MR KATKOWSKI KC: Exactly.

151. THE CHAIR: There should not be a problem about that.

152. MR KATKOWSKI KC: I have said there is not a problem about that, yes.

153. THE CHAIR: Anyway, look, I think we have discussed two important new assurances that we would like you to consider as soon as possible. One of them is the one that I put forward, which is that there is made available to all Members of Parliament—Peers and obviously MPs—any written submission about security made as part of this revived planning process.

154. MR KATKOWSKI KC: Yes. Can I just ask one question of clarification? Obviously, the only thing the Secretary of State would have direct control over is the Secretary of State's submissions on security. Is that what is meant to be covered by this?

155. THE CHAIR: Well, who do you envisage making the submissions?

156. MR KATKOWSKI KC: Just for an example, Lord Carlile appeared at the inquiry and made—

157. THE CHAIR: I understand what you are saying. No, we are concerned with what the promoter has to say about this.

158. MR KATKOWSKI KC: Yes, that is what I thought.

159. THE CHAIR: Everybody will want to see what has been done.

160. MR KATKOWSKI KC: Yes. Thank you, my Lord, understood.

161. THE CHAIR: That is in addition to keeping what you call the corporate officers informed.

162. MR KATKOWSKI KC: Yes.

163. THE CHAIR: Then there is this other issue about assurances of finding some way in which, at important points of the revived planning process, residents and parliamentarians are informed of any timetable, to enable their full participation.

164. MR KATKOWSKI KC: I understand, my Lord, yes.

165. LORD HOPE OF CRAIGHEAD: Might I add, Holocaust survivors?

166. MR KATKOWSKI KC: Yes. Forgive me for one moment. Yes, as a matter of principle, of course. I shall take instructions on that. Thank you.

167. THE CHAIR: Now, is there anybody in the committee who would like to explore further any of those points? You have a right of response, Baroness Finlay. You have a right of response now.

168. BARONESS FINLAY OF LLANDAFF: Thank you. I have listened with interest, and I would have to say with a degree of alarm, to the discussion. I am going to stay focused on the security risk. That needs scenario planning for every eventuality, and it needs consultation with all the emergency services that might be involved. It also needs an in-depth look at the design in terms of possible areas of isolation to create safety for

people, specifically if you are underground—the concept of refuges, safe areas and so on. I would go back to the fact that I do think that the risk has changed substantially in recent times, and I am somewhat alarmed that the emergency services have not yet been mentioned at all.

169. My last point is that there has been a lot of talk about the planners. At the end of the day, the duty of a Minister of State is to keep the population safe, and that must be the prime duty. After that come all the others, but my anxiety, from having looked at this, is that we are decreasing, not increasing, safety. I think that will be the last point that I would like to make. That decreasing safety applies to everybody, so residents in the area. This is not just the views, the memories and the experience of people, but it is also whether in the process we are increasing jeopardy. Thank you.

170. THE CHAIR: I think what the exchange is trying to produce is some framework within which residents, Holocaust survivors, parliamentarians can see what is proposed and whether it is sufficient and, if it is not sufficient, what opportunities may then be open to them to intervene in the process.

171. BARONESS FINLAY OF LLANDAFF: Thank you, Lord Chairman, and just to clarify, I would hope that the risk assessment involved scenario planning for different eventualities, and that those scenarios were available for people to look at, think through and work through for themselves. Thank you, Lord Chairman.

172. THE CHAIR: Thank you very much, everybody. We have now finished the oral evidence on the petitions. Now is the stage when we must make an announcement in relation to scope. We will ask you to leave for a very short time while we consider what we are going to say about scope, and in particular the representations by Lord Carlile about the Ram doctrine.

Sitting suspended.

On resuming—

173. THE CHAIR: Thank you. I am sorry you were kept waiting for slightly longer than I had originally thought you would be. We are now into final submissions. But, before that, on the question of scope and principle, the only unrepresented petitioner who has sought to challenge our provisional view is Lord Carlile of Berriew, on the

basis of the Ram doctrine. We have considered the Ram doctrine and the analysis in Lord Carlile's helpful written submission on this, but we reject the conclusion that this affects our original provisional judgment and decision on scope and principle.

174. We will elaborate further in a written report which we intend to write, and so it remains only for me to say on scope and principle that, in general terms, our provisional view is now our permanent view.

Final Submissions by Mr Doctor

175. THE CHAIR: With that short introduction, we now turn to final submissions. I think, Mr Doctor, that because you are representing the petitioners, it is you who are to take the start on this. Can I tell you what would most be helpful to us? There are really two points. First, what we would really like to concentrate on this morning is the list of recommendations, assurances and undertakings that we supplied to you and to Mr Katkowski on Friday, and the responses on behalf of the promoter. That is the first point.

176. The second point is that I had understood, and I think the committee had understood, that you were going to provide us with your own version on the territoriality point, and it may also be on the question of the extent to which the present proposed Holocaust Memorial and Learning Centre could extend on Victoria Tower Gardens, so those two points. We have received nothing from you. It is true to say that Mr Katkowski also promised a version on those points, but I thought that you had.

177. MR DOCTOR KC: I am quite taken aback, my Lord. We did produce a list of proposed amendments that dealt with the territoriality point and various other—

178. THE CHAIR: Do you mean in that document headed, "Four petitioners"?

179. MR DOCTOR KC: "Proposed amendments", yes.

180. LORD HOPE OF CRAIGHEAD: It is headed, "Four petitioners' submissions", is it, and dated 9 December?

181. MR DOCTOR KC: No. Yesterday, I sent in a proposed list of amendments to your suggestions, which I set out together with a covering argument. There was a

previous list, which Mr Katkowski has commented on in his response, which sets out the amendments we sought. The document is headed, “Four petitioners’ proposed amendments 26.11.24”.

182. MR KATKOWSKI KC: Sir, it is now numbered PET-14. That very document you are referring to is the last item in PET-14.

183. LORD HOPE OF CRAIGHEAD: I just want to be sure that I have the correct document. I am being a bit slow. I am sorry, Mr Doctor, but is it the track changes version? Would you like us to look at the version with track changes, with your proposed changes?

184. MR DOCTOR KC: No. I have printed it out. It had three columns. The left-hand column was our proposed amendments. When I used the word “amendments”, I meant “amendments”, “assurance”, “undertaking” or whatever. This contained 12 provisions. We went through it, because the one with R&R was changed. It had been the wrong way around. The intention was that the activities in building the memorial should not proceed until the effect of R&R on that was determined in some way.

185. This list, “Four petitioners’ proposed amendments 26.11.24”, PET-14—

186. MR KATKOWSKI KC: Brian, is he referring to your track-change document of yesterday?

187. MR DOCTOR KC: Yes, so that is one document, which I thought I had actually handed to you. As I say, one of them, it was pointed out on that day, was the wrong way around, so we changed that. The first amendment was headed “spatial”, and it said, “At the end of clause 2, add” some words.

188. THE CHAIR: We are slightly lost here. The one thing we have is in annexe 3 to the promoter’s omnibus note on information requests and so on. We have their responses to our note on undertakings, recommendations and assurances, and we have from you, I believe, your comments and alterations on that, so we have that.

189. We also have your “Proposed amendments 26.11.24”. I think we had all been expecting something a little more perfected than this, but perhaps that was our mistake; I am sorry about that if it was. Anyway, that is fine. We have that. Thank you very much.

190. MR DOCTOR KC: My Lord, can I just inquire? Yesterday we sent in this document called, “Four petitioners’ submissions on list of proposed amendments et cetera”. That is the proposals that the Select Committee had sent us, together with our track-changes amendments to a few of them, to suggest that you would consider those amendments to your own draft proposals from last week, or two weeks ago.

191. That was the one document we sent yesterday. Together with that, I sent a document headed, “Four petitioners’ submissions on list of proposed amendments”, which is dated 9 December, and that contained, essentially, our comments and explanations of why we had suggested the few amendments. It begins with the words, “The four petitioners welcome the draft proposed list of undertakings, recommendations and assurances. Attached hereto is the list with some amendments shown in track changes, which the petitioners request the Select Committee to make. The proposed amendments speak mainly for themselves, avoiding the need to motivate them at any length. Counsel will briefly explain some of the wording chosen. In so far as these suggested amendments are not accepted or opposed by the promoter, counsel for the petitioners will respond to whatever is said in that regard. However, the petitioners wish to make a few general points about the proposed list”.

192. The first point is about enforcement. The second point was about a plan, sales and security issues, and paragraph 13. Do you have that document as well?

193. THE CHAIR: We do. I do.

194. MR DOCTOR KC: Right. It may be, my Lord, my Lady, that we have, as it were, moved on from our original list of suggestions, which was the 26th of the 11th month, which deals, for example, with the spatial area by asking for an amendment limiting the disapplication of Section 8 to an area of 1,429 square metres and so on. We assumed that that had not met with your approval, because you came back to us with a proposed list of amendments and so on. We then welcomed that draft and worked from that, so that is where we are now. We have, as it were, accepted, for these purposes, the list you sent us of draft proposals, and we have suggested some small amendments to that, but otherwise we say we would welcome your making those changes and so on, or recommendations in your report.

195. I had proposed simply to briefly refer to that. I had not intended to go back to our

original list that I handed in on 26 November.

196. THE CHAIR: Right. I think what we would like to do, at least initially, and we will see how we are doing on time, is to go through your reaction to and responses to the comments made by the promoter to the list—whether you agree with it, whether you say that is sufficient or not sufficient.

197. MR DOCTOR KC: Yes.

198. THE CHAIR: That is what we would like to do.

199. MR DOCTOR KC: My Lord, that is the list we got from the promoters yesterday and it is summarised, from our point of view, in their annexe 3, because that is the part that deals just with our proposed—

200. MR KATKOWSKI KC: No. Annexe 3 is the committees.

201. MR DOCTOR KC: Sorry, that deals with the Select Committees.

202. MR KATKOWSKI KC: The letter of Friday, yes.

203. MR DOCTOR KC: So, in a sense, we have moved on. Annexe 3 is the promoter's response to the committee's list. We also have our response to the committee's list, and I can now briefly take you through my response to the promoter's response to your list.

204. BARONESS SCOTT OF NEEDHAM MARKET: Can I just be clear? This is the document, "Submissions on closing 2"—it says at the top—received yesterday.

205. MR DOCTOR KC: Yes. "Four petitioners' submissions on list of proposed amendments".

206. THE CHAIR: The trouble is that we have too much paper, about a foot and a half of it.

207. MR DOCTOR KC: My Lord, can I try to do it once more? On 26 November, we submitted to you a document which set out the amendments that we sought. This was before you had expressed any views at all. We were challenged by Mr Katkowski at some stage to make clear what exactly we were seeking, and I set out on 26 November our list of amendments. We abandoned some, we reworded some, but there was the list

of amendments. Mr Katkowski went through it on the day and pointed out, in particular, that one of them was the wrong way around, and I changed that. It was, I think, the one dealing with R&R. That was the list—26 November.

208. On Friday last, we received your Lordships' proposed list of assurances, undertakings and amendments that you would be minded to seek to apply or to report on in relation to everything you had heard.

209. THE CHAIR: That is correct.

210. MR DOCTOR KC: That document we then responded to on Monday—yesterday. We said, "We welcome that and we accept the wording", subject to a few amendments that we put out in track changes in the document headed, "Proposed list".

211. THE CHAIR: This is your document.

212. MR DOCTOR KC: Yes, the proposed list sent by the Select Committee to the promoter.

213. LORD HOPE OF CRAIGHEAD: Does that mean that we can now forget about, or at least put aside, the 26 November list?

214. MR DOCTOR KC: Yes, you can put it aside to all intents and purposes, other than that it informs the background of how we have arrived here. We say in our covering letter or note from yesterday that if the promoter does not accept your suggestions amended in the way we suggest, you should amend the Bill. If he will not give the assurances, you should just amend the Bill. We have moved on to that. We have done that in an effort to be helpful and co-operative and not to waste time, so yes.

215. THE CHAIR: Thank you very much for that. I would now like to go to annexe 3 of the promoter's general response. I would like you to tell me, looking at each of these in turn, whether you accept or you do not, or what your amendment is to it. I know you say that you have done that, but I would just like to go through it to make sure we are all at one.

216. On paragraph 1, the first one, we sought an assurance that "during the construction of the proposed HMLC interference with the children's playground at the south end of

VTG is kept to a minimum”. They came back and said, “We won’t give you that general one, but we will give you these specific assurances in relation to particular points”. I think we need to understand whether you think that is sufficient or not.

217. MR DOCTOR KC: My Lord, let me then do that. With regard to the first one, on the specifics of what is said here, we make the point, first, that you will notice that in the middle of it—this is an important point—it refers to the refreshment kiosk. We have asked, in response to another one of your Lordships’ recommendations, for the removal of the kiosk. We support that. I will come to that when I deal specifically with that, but, in this particular response from the promoter, we would certainly note that we are opposed, for example, to the construction of the refreshment kiosk, and we would ask you to persist with the other clause, which I will come to, where you ask for the removal of the refreshment kiosk.

218. THE CHAIR: Yes.

219. MR DOCTOR KC: My Lord, in the time that I have had since seeing this yesterday, I think I can say that if your Lordships are satisfied that this meets the concerns you have expressed about the playground during the construction, we would accept that, but we would say this: all the assurances that you have asked for, whether it be an assurance that the Minister will give special consideration, will give serious consideration, will consider, will look again, will take forward, are phrases that your Lordships and your Ladyship have used in your draft list.

220. In response to all of that, and it is a point I do not need to repeat once I have made it, we would say that there must be some mechanism for transparency and public record of whatever steps it is that the Minister or the Secretary of State—the promoter—is going to take. For example, your Lordships have asked for an assurance that he will give consideration. As you can appreciate, that may involve him simply saying, “I’ve thought about it and I’ve given consideration. I don’t agree”.

221. THE CHAIR: Let us start on 1. There are three substantive assurances on this: one, the playground will be kept open for as long as practically and safely possible during the construction of the Holocaust Memorial and Learning Centre; two, during the construction phase, while the playground is open, hoardings will surround the main construction work and care will be taken to avoid any mud or dust reaching the

playground from the construction site.

222. The next one I do not think offers anything. Then the next one is that level access will be maintained from the gate at the north, as well as access via the steps. I will come on to access later on, because there is a separate thing about that.

223. Then the promoter will require contractors to share with users of the gardens and the local community information about the progress of construction with the planned closures discussed in advance.

224. The question I am putting to you—I appreciate the shortage of time; everybody is operating under extreme pressure here—is whether those four points are sufficient. We would like to hear you first, and then we will make up our own minds.

225. MR DOCTOR KC: My Lord, in the time that we have had to consider this, apart from mentioning that it refers to the kiosk, which we do not agree with, we have nothing to add at this stage.

226. The problem is that, for example, one of my clients has referred to the detail of the northern end of the garden, the gate at the northern end, which refers to the gate closest to Parliament, so it is the gate by the memorial to Pankhurst. What they are thinking of is that level access is maintained by having to enter close to Parliament and then walking all the way down—

227. THE CHAIR: It is a long way to go.

228. MR DOCTOR KC: It is not ideal.

229. THE CHAIR: We deal with that under access. I suggest we wait until we get to the access one to deal with that.

230. MR DOCTOR KC: Yes.

231. THE CHAIR: Now, does any member of the committee wish to ask any questions about number 1?

232. LORD JAMIESON: I am not the legal expert here, so I am just asking for a legal comment here. The playground will be kept open for as long as practically possible. One

interpretation of that is you keep it open for as long as possible, but then it gets shut and you do not worry about when it gets reopened. So as long as that can be interpreted as it being kept open as much as possible, both, “Don’t shut it until the last moment and open it as soon as possible”—

233. MR KATKOWSKI KC: Yes. Forgive me. This is directed to me. My Lord, that is undoubtedly the intention of it, and I would certainly say that “kept open” would cover that.

234. LORD HOPE OF CRAIGHEAD: Mr Doctor, can I ask you to look at the third bullet point in number 1 and the reference there to the kiosk that you are asking us to take out.

235. THE CHAIR: Lord Hope, I think we are going to deal with the kiosks substantively elsewhere. We can ignore this here, I would have thought.

236. MR DOCTOR KC: Yes, one of your recommendations later on, which we will come to.

237. LORD HOPE OF CRAIGHEAD: Putting that aside, are you content with what the third bullet point is talking about?

238. MR DOCTOR KC: Yes.

239. LORD HOPE OF CRAIGHEAD: It is really qualifying the first bullet point and explaining that closure would be needed, obviously, for certain stages of construction and to ensure safety. I take it that, apart from the kiosk reference that we will come back to, you are you content with that as well.

240. MR DOCTOR KC: Yes.

241. THE CHAIR: Thank you very much. Does anybody else have any questions?

242. LORD FAULKNER OF WORCESTER: No, I am clear on this one. I hope we can keep that going.

243. THE CHAIR: Number 2 is where you raise the question of the close proximity to adults of children in the children’s playground and how to keep them separate, and we

ask for general assurance.

244. MR DOCTOR KC: Yes. Apart from the fact that there is another reference to the refreshment kiosk, I will not repeat myself. Obviously, if that is going to come out, it will come out here as well. That is in the third bullet point.

245. The only point I would make here is that the undertaking says: “will reflect the following points: visitors to the memorial would have no need to pass through the playground”. It is true that they may have no need to, but the only way is to walk round the playground. One knows that if a large number of members of the public see a short way through, by walking through the playground, they will do it. The fact that there is a nice path around will not stop them if they feel that it is a shorter way.

246. THE CHAIR: I think we have tried to deal with that in our request, because we talk about “close proximity”, whereas the response is about going “through”. I think the concern that we were trying to raise was the presence of people near to the playground, and all that that raises in terms of childcare and child protection issues.

247. MR DOCTOR KC: Yes.

248. THE CHAIR: I think you are echoing the same point. You are saying that “through” is not sufficient.

249. MR DOCTOR KC: Yes, correct.

250. LORD HOPE OF CRAIGHEAD: The first bullet point, to give credit to what is being suggested, is saying “clearer delineation than exists at present”, so that people have no doubt that there is a separate area being set aside for the playground, with planting and all the rest. That would have some effect.

251. MR DOCTOR KC: Yes. It should also reflect that the aim is to prevent people walking through the playground. It is not just saying, “We’ve provided a path or an entrance at the other end of Parliament, so there is no need to walk through the memorial”. Of course there is no need to, but, human nature being what it is, people will take the easy route.

252. LORD HOPE OF CRAIGHEAD: We cannot ask for a ticketed system, where you

can only get into the playground if you have a ticket to go in. That would really push it too far.

253. MR DOCTOR KC: No. We had no comment on your original suggestion in this regard.

254. LORD HOPE OF CRAIGHEAD: We are trying to find out what your response is to the promoter's suggestion.

255. MR DOCTOR KC: My response is that it should avoid, so far as possible, the entry of the general public, who have come to the park for the purposes of attending the memorial, from going through the playground.

256. THE CHAIR: You would prefer the original assurance that we were seeking. Is that what you are saying?

257. MR DOCTOR KC: Yes. I think the answer is yes, because, as you put it—"in particular how visitors can be kept separate from those seeking to use the playground".

258. LORD FAULKNER OF WORCESTER: This is a slightly naive suggestion, but is not one way to have the playground served by just one way in and the same way out? There is no point going into it, because you cannot get out at the other end of it.

259. MR DOCTOR KC: Yes. If there were hedges and all the rest of it around it, yes. I think on the plan it shows that you can just slip around the Spicer memorial. Even if it is a small path, people are going to do it. Particularly once enough of them have done it, there will be a dust path going through it.

260. THE CHAIR: We will ask Mr Katkowski further, but, just summarising, you would have been content with our original assurance. You do not think that the point is entirely dealt with by saying "no need to go through the playground". The question of need is neither here nor there. The question, you say, is the facility to be able to do that.

261. MR DOCTOR KC: Yes. It should say, "Visitors to the memorial would not be able to pass through", or "would not naturally be able to pass through", if one wants to soften it slightly.

262. THE CHAIR: Thank you. Members of the committee, do you have anything on

that? No. Then let us turn to 3.

263. MR DOCTOR KC: Yes. This is the kiosk one. You have said, “Unless there is some overriding necessity for the proposed relocated kiosk, we recommend that it should be removed”. Now, we very much favour that. In fact, we ask you to, as it were, demand an assurance that it will be removed, and we say this for this reason.

264. As you have identified, there must be some overriding necessity for a kiosk. It is not a natural thing when one thinks of building a Holocaust Memorial and Learning Centre. In the answer which the promoter has set out here, he does not deal with that. He does not say there is an overriding necessity. What he says is this: that it has always been their intention to build it and that there has been a kiosk in the past. They say, in my view rather cynically, “We are trying to preserve the park as it always was”. Of course, that is the last thing in their minds.

265. There was a kiosk, but it has not been used for at least five years, save for the summer season of 2020. That is it. Since 2019, the kiosk has not been used except for the summer months of 2020.

266. THE CHAIR: They say 2021.

267. MR DOCTOR KC: 2021. Since 2021, it has been closed. It has been closed now for three years continuously, and it was closed for approximately two years before that. The fact that it was there nobody would object to, because it was not being used, but even if it was being used and that was there, they are now proposing a new kiosk, which must serve, presumably, the extra 3.5 million visitors who will be coming to the park, not just a few children who are asking for an ice cream or a cool drink. They want a kiosk that is going to serve the purposes of the Holocaust memorial.

268. As you have identified, unless there is some overriding necessity for it, it should not be allowed. We say that they have not even dealt with that part of your proposal. What they say is, “It was always there”. This one was not there. Secondly, they say, “The Holocaust memorial in Washington and the Yad Vashem in Jerusalem have cafeterias”. Yes, in buildings where people only come for the purpose of going to that and where it was designed originally as a part of a building. This is not in a building. It is in the middle of a children’s playground. It bears no relationship whatsoever, and it is

available not just to visitors to the memorial, visitors to the ticketed memorial; it is available to anybody, so it is going to have an extra 3.5 million people who are going to be served by a kiosk. For what purpose?

269. LORD HOPE OF CRAIGHEAD: The inspector, we are told, did consider this, and a reference is given to his report. What did the inspector say about it?

270. MR DOCTOR KC: I cannot remember. Perhaps Mr Katkowski will find that. If you look at the plan, you will see that it is a round building. On the picture of the plan, it looks like 30% to 40% of that round building, which is new, is going to be their plant. It just says, “plant building”. If you get rid of the kiosk, you can get rid of that building, and the plant can presumably go somewhere in the entrance of the actual fenced-off area, since it is the plant for, presumably, the underground learning centre.

271. If we get rid of that kiosk and move the plant into the fenced-off area, the large part of the objection to the playground reduction has gone, because the playground will reincorporate that area. You will remember that the playground is being reduced on the other end as well, because the Spicer memorial is being moved into the area which was previously the playground. This would be the obvious answer: take away the kiosk—there is no overriding necessity—and move the plant, which is a smaller part of it, somewhere in the area. We say you should require that. That is our answer.

272. THE CHAIR: Thank you. Do any members of the committee have any questions about that?

273. BARONESS SCOTT OF NEEDHAM MARKET: We are coming back to the promoters afterwards, are we not?

274. THE CHAIR: We are going to go to the promoters and then back.

275. BARONESS SCOTT OF NEEDHAM MARKET: Yes, that is fine.

276. MR DOCTOR KC: It is in the report—15.210.

277. LORD HOPE OF CRAIGHEAD: Can you say what the report’s conclusion was? We have so much paper to carry around and I did not bring the report with me.

278. MR DOCTOR KC: Yes. “Whilst the playground facilities would be upgraded, its

use as an integral element of the wider park would be disrupted by its position behind the memorial, so that sight lines in the northern lawn would be lost. As it would be close to the memorial entrance, it would become busier, with significant numbers of UK HMLC visitors passing and perhaps stopping to make use of the seating, café and toilets. This would have an inevitable effect on perceptions of safety and security for the playground users and their families. Moreover, the juxtaposition of the sombre monument next to a play area with its activity and sounds of children at play would be apparent and may not, to some, sit comfortably together”.

279. Where is the actual conclusion? I am told that there is no conclusion. The inspector does not seem to have reached a conclusion. I have not looked for that myself. I think the inspector was pointing out that there were differences but did not—

280. THE CHAIR: We will listen to Mr Katkowski. We then turn to the next one, 4.

281. MR DOCTOR KC: They say that their policy is to ensure that queues do not build up outside the entrance pavilion. We have made the point in the past that, with an extra 10,000 visitors a day, of whom 3,000 will be queuing up to come into the memorial, they have based it on a 20-second search of each individual. Their modelling has allowed for 20 seconds. I must say that it took longer to get into Parliament this morning than 20 seconds, but that is their modelling. They say there are going to be no issues.

282. We say that you should get the assurance that detailed consideration will be given by the promoter to these issues. This is a good example of the point I made earlier. This is a point where we need public transparency. You should require the assurance to be given and you should also say that, for all these assurances that you seek, the Minister should publish a report of what representations he has received, what conclusions he has come to and why. We can then see whether he has done this properly or he has not.

283. It is going to be all too easy to say, “I have given detailed consideration to this”. If he has to write out—it does not take long—“I asked this person. I asked that person. In essence, they told me this, and I have come to the conclusion that these concerns are unwarranted”. It will not take very long, but the fact that he has to do it publicly and explain himself is a very powerful incentive to ensure that he does it properly. This is no reflection on the Minister, but this is human nature.

284. THE CHAIR: Who is he going to send this report to?

285. MR DOCTOR KC: We say that it should be laid before the House and everyone can read it. We also say that the House should approve it, but you may not want to go that far.

286. LORD HOPE OF CRAIGHEAD: The third bullet point refers to expected modelling, and that has produced projected numbers, as we can see: 7,000 per day entering the VTG to see the memorial and so on. Are you suggesting that we should ask that that modelling should be reviewed?

287. MR DOCTOR KC: Yes, because if you demand the assurance and he gives it, or you demand it anyway, he will be required to give detailed consideration, and his consideration will set out what he has done, whether he has reviewed it or he has not reviewed it.

288. THE CHAIR: They are prepared to give an assurance along the following lines. One is that there is no intention of closing any of the existing gates, so you will be able to enter at the southern gate. The whole thing is after the construction of the proposed project.

289. MR DOCTOR KC: My Lord, it begins with the words, “The precise text of the assurance will be given further consideration”.

290. THE CHAIR: I will come back to that with Mr Katkowski. The next one is that the assurance is that visitors to VTG who are not intending to use the playground or visit HMLC will be free to enter any of the gates from Millbank now. I think the last one is just an explanation that there should not be overcrowding. Again, I will take that up with Mr Katkowski with his 40-page visitor management document, if we allow that to come in.

291. MR DOCTOR KC: The first point does refer to entry from the southern gate.

292. THE CHAIR: Sorry. Can I just finish? Do you accept and are you happy with those two assurances? I assume you are.

293. MR DOCTOR KC: We are happy with them, but they are not the assurances he is

offering, because he is saying, “The precise text will be given further consideration but will reflect the following points”.

294. THE CHAIR: Are you saying you want to go back to the original one? These are much more precise. These are the sorts of things that I would have thought that you want.

295. MR DOCTOR KC: Yes.

296. THE CHAIR: So can we ignore the request in 4, in bold, and, subject to how definitive Mr Katkowski is able to be on behalf of the promoter, deal with 1 and 2?

297. MR DOCTOR KC: Yes.

298. THE CHAIR: And we can put that in the form of an assurance.

299. MR DOCTOR KC: Yes.

300. THE CHAIR: All right. Shall we move on? Do the committee have any more questions about that? That is fine. Number 5 is step-free access. We are now dealing with before and after and the playground.

301. MR DOCTOR KC: Yes.

302. THE CHAIR: And then what is offered is that, although the closure of the southern gate will be required at some points during the construction, the promoter will seek to maintain safe access through that gate for as much time as possible, and that there is no intention of permanently closing any of the existing gates, and so be able to enter VTG at the southern gate from Millbank directly into the playground. That is presumably after the construction. Is that sufficient or not for you?

303. MR DOCTOR KC: Yes, it is.

304. THE CHAIR: That is sufficient. Shall we move on, then, to number 7?

305. MR DOCTOR KC: I am being told from the side of me that there is an issue here with regard to whether the step-free access is from the north or the south. In other words, it is all from Millbank, but is it from the northern entrance, which is the closest to Parliament, or is it from the southern entrance? Elsewhere, they propose that step-free

access should go via the northern entrance.

306. THE CHAIR: I understand that was before construction. That was before the thing has been completed. That is my understanding.

307. LORD HOPE OF CRAIGHEAD: They are not proposing to provide step-free access from the south end. That is not practical.

308. MR DOCTOR KC: They do say that, my Lord, in 5.1.

309. BARONESS SCOTT OF NEEDHAM MARKET: There is a step-free gate at the southern end, which the promoter referred to some weeks ago, that would have to be closed at times during construction, and I think part of this is about making sure that that is minimised, so that people with pushchairs or in wheelchairs do not have to go all the way up to the north and back round.

310. MR DOCTOR KC: We are content with that, yes.

311. LORD HOPE OF CRAIGHEAD: That is what the second bullet point is dealing with.

312. BARONESS SCOTT OF NEEDHAM MARKET: Yes.

313. MR DOCTOR KC: Number 6 deals with during the construction period and the pathway: keep the footpath along the river open during the construction period”. The comment we have on our list of comments that we have made is that you should add the words “of a width which would accommodate at least two people walking abreast”. The reason for that is simply because a pathway or a footpath could be a very small single track, which is not suitable, we say, to achieve the aims of this.

314. THE CHAIR: Where do you want that inserted?

315. MR DOCTOR KC: If you look at your undertaking in 6, in the bold part it says, “open during the construction period”, and then, as appears on our document, “of a width which would accommodate at least two people walking abreast”. It is on our draft comment on your list.

316. THE CHAIR: Okay, so you are happy with our proposal but expanded to

accommodate—

317. MR DOCTOR KC: Footpath width is just defined. They say they are content to give this assurance, but it must also include some qualifications. That is not a problem.

318. THE CHAIR: Yes, and then there is this point about, “These measures are intended to supplement any actions required to be taken under conditions attached to any planning permission, rather than replace them”, and then, if there is a conflict, planning permission has priority. Do you have anything to say about that?

319. MR DOCTOR KC: No.

320. THE CHAIR: Then we have the next one, 7. Now, this is where we get on to how much ground is taken up by the existing memorial, because this is the only text that has been put forward. I do not think you have put forward anything on this, have you?

321. MR DOCTOR KC: We did. In our list of amendments, we put forward a reference to the plan that was lodged in the Lords Library, I think, which was coloured blue and so on. I think it was Baroness Scott of Bybrook who had said, “This is what the memorial will take up in the park. This is the amount of space”. Having told Parliament that that was what they were going to do, we asked for it to be incorporated as an amendment in your report, either as an amendment or to demand an assurance, and that is what we asked for.

322. You then came back and referred, in your proposal, to a plan, which is the plan that had been attached to a more recent document that the promoter produced, which is at the end of one of their letters. I do not know whether you recall seeing it. In fact, you refer to it; you described it as the plan “coloured blue on the attached plan”. That is your wording: “coloured blue and/or edged in blue on the attached plan”.

323. That is the plan. We were told yesterday which one it was. This is the one. The document was sent to us yesterday. We have had it previously, but we were not sure which one it was referring to.

324. MR KATKOWSKI KC: It is appendix 2 to PRO-6, promoter 6.

325. THE CHAIR: That does not mean anything to me.

326. MR KATKOWSKI KC: You might remember that we were asked to provide you with a continuous index, which you can click on to get to all these documents.

327. THE CHAIR: Appendix 2.

328. MR KATKOWSKI KC: Yes. We wrote to you, my Lord, and to the committee. You might recall—it is quite a long time ago now—that you asked us to table the assurances that we offered to the Commons, which we did, and one of those assurances has reference to this plan.

329. THE CHAIR: So you would be content, Mr Doctor, on this point, to adopt what was offered to the House of Commons, which we have reproduced in bold, for 7, but with your amendments, and the effect of your amendments are that if there is an extension, alteration or re-erection, it takes place within the original perimeter for which planning permission has been given.

330. MR DOCTOR KC: Yes, that is one point. There is another, but yes, that is the effect of the amendment. We would be content with that amendment. In other words, using the plan which you attached to your own proposal last week, which is edged blue, we say that, with regard to the above-ground structures, we are content that the assurance should be given—let us put it that way—that any above-ground structures should be built in the area coloured blue.

331. THE CHAIR: Then it goes on to say, “Or that is permitted by a planning permission for any other scheme”.

332. MR DOCTOR KC: Can I move on to that? I just want to finish this point. This is the plan that was sent to us. I do not know how far you can see it, but you will see that there is an area coloured blue.

333. THE CHAIR: Yes, we have that.

334. MR DOCTOR KC: And there is also an area edged in blue. The problem with the formulation that you sent us is that it allows building of the permanent structures on or under both the blue coloured area and the area edged in blue, so although there is no present intention to build above-ground buildings in the edged area, your formulation would permit that because of the way you have set out the clause. We say that the

above-ground buildings must be confined to the area coloured blue. The underground buildings can be extended to the area edged blue, because you will not see them, except for the mound.

335. We tried to formulate it in the document we sent yesterday, so we have changed your suggestion to read as follows. We have changed it to say, “The promoter will only site the permanent buildings and other structures comprising a Holocaust Memorial and Learning Centre in, on, under or over land coloured blue on the attached plan, and, in so far as any underground structure only is concerned, under the land edged in blue”.

336. THE CHAIR: Yes, I see. Okay.

337. MR DOCTOR KC: If I can just make one more point, there is another amendment, which relates to the word “extension” in the Bill. The word “construction” in the Bill is defined to include extension, and the way the Bill is set out is, “The Secretary of State may incur expenditure for or in connection with the construction on, over, or under any land of a memorial and a centre for learning”. In subsection 3, “For the purposes of subsection 1(a), ‘construction’ includes erection”—that is fine—“extension”—that is not fine—“alteration and re-erection”. Obviously, re-erection is that if an earthquake destroys it, they could rebuild it; alteration might be some minor alteration to the building; but extension means that what is authorised by Section 1 is not just the construction of the memorial but an extension of it into some other land.

338. That is important, because Section 2 disapplies the 1900 Act—“does not prevent, restrict or otherwise affect the carrying out of any of the activities described in paragraphs (a) to (c) under Section 1(1) above”. It is saying that, in so far as they build a Holocaust memorial, that is not contrary to the Act, but, because of the use of the word “extension” in the definition of “construction”, it means that they can say, “We have an extension to the memorial, which will now go somewhere else, and indeed might go even in the edged area”, and that is not forbidden because Section 2 says “any of the activities” mentioned in Section 1; Section 1 is the construction of the memorial, but that includes the extension of the memorial.

339. We say that, to make it clear that the Bill does not, as it were, permit an extension of the building outside the area that is presumably going to be covered by the undertaking, it must make that clear by the addition of the words as we have them here:

“The promoter will only site the permanent buildings and other structures of the Holocaust memorial, including any extension, alteration and re-erection, in, on or over land”, so it is clear that your request or demand from the promoter will apply so that he is bound by that plan, not just for the erection but for the extension.

340. THE CHAIR: I think we have to stop now, because we are having a lunch break at this point. Do you want to have a word before then in private? No. Then we will reconvene at 2.10.