

CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

HOLOCAUST MEMORIAL BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 10 December 2024 (Afternoon)

In Committee Room 4a

PRESENT:

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

FOR THE PROMOTER:

Christopher Katkowski KC, Counsel, MHCLG
Robbie Owen, Parliamentary Agent, Pinsent Masons
George Wilson, Solicitor, Pinsent Masons

FOR THE PETITIONER:

Brian Doctor KC

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(At 2.20 p.m.)

Final Submissions by Mr Doctor

1. THE CHAIR: Good afternoon, everybody. We are now continuing the public hearing and we are addressing the final submissions. Mr Doctor, I think you have said as much as you can about 7.
2. MR DOCTOR KC: Yes.
3. THE CHAIR: Shall we move on to number 8? You have just basically really used the words “path” and “will be widened”.
4. MR DOCTOR KC: Yes.
5. THE CHAIR: Otherwise, you are happy with what we have put forward and you see the promoter’s comments. They are prepared to give an assurance that consideration will be given to the question of how easily visitors will be able to pass by the Buxton memorial. Contrary, I think, to what was said by either you or those for whom you were acting, or others, rather than the distance between the Buxton memorial and any fencing, or the Holocaust Memorial and Learning Centre, being limited to, as at present, something under two metres at its narrowest, they say it is five metres.
6. MR DOCTOR KC: It is five metres on the other side—on the river side. It is two metres on the side of the Buxton memorial, which is closest to the memorial.
7. LORD HOPE OF CRAIGHEAD: We can see this in the plan, which is at the back of the bundle, is it not? The point is, I think, that on the river side you can pass straight by, leaving the memorial on your left, but if you want to go around and inspect the memorial, then you are limited to just over two metres. You are asking that that particular bit be widened, are you?
8. MR DOCTOR KC: Yes, it is that bit. Indeed, that is the proposal which this committee made in 8, which referred to “preferably to eight metres”.
9. THE CHAIR: Very well. Well, I do not think there is anything more you can say about that.
10. MR DOCTOR KC: Yes. They say that they are content to give an assurance that

consideration will be given to the question of how easily visitors be able to pass by, but, again, subject to everything I have to say about giving consideration, if that is eventually what you decide, there must be some public accounting for that, not just, “I have considered it and it is just too difficult for me. It would cost too much money”.

11. We say that this is an important point—perhaps one of the most important points that you have identified—because you asked that consideration be given. We say it should be an assurance, but it is to preserve the unique nature of the Buxton memorial and to enable it to be given its due respect as an independent memorial for its own purposes, to the abolition cause, and that it should not be, as it were, crowded out and overshadowed by this much bigger memorial, the security fence of which will simply come within two metres of it. Part of that two metres anyway is taken up by a bench, either a wooden or a concrete bench, going round. Yes, we support your own eight metres, which, as you say, is the path between the HMLC, or any security fencing, and the Buxton memorial.

12. THE CHAIR: Yes, and we have also referred to the ability to view.

13. MR DOCTOR KC: Yes, and indeed—

14. THE CHAIR: Let us move on, shall we, because we are rather short of time?

15. MR DOCTOR KC: Yes, I just mention that the promoter says nothing at all in its answer about the fence—the security fence. Number 9, if we can move on to that.

16. THE CHAIR: Yes, please.

17. MR DOCTOR KC: Yes, now on this point where you have suggested, I stress, “Security checks will take place only on visitors wishing to enter into the entrance pavilion”, as I understand it, the promoter is saying that he, or they, cannot undertake to the committee on these matters, because the issues relating to the wider parts of VTG are not within its control. He says, however, it is not his intention to carry out any security checks on visitors. This is all rather vague, and we say you should continue to seek the undertaking, as you said, to that effect.

18. We have just spelled it out in the amended part where we have inserted in track changes. We have suggested the addition of the words, spelling it out, “Namely, that

security checks will not be carried out on persons seeking access to the areas of the park not occupied by the memorial and learning centre after they are built”. The promoter may say he does not control the parks, but he certainly can undertake to ensure that that will happen. He may need to exercise whatever powers he can, but he should explain that.

19. THE CHAIR: Very well. Anyway—

20. MR DOCTOR KC: Can I just add, wherever the promoter says that he cannot do something, it is not within his powers, that is a good reason to amend the Bill? Then he has to do it, and the Bill can provide for that. I will move on to 10, if you would like me to do that.

21. THE CHAIR: I think—well, we will see what Mr Katkowski says. I think that really he is saying he cannot give an undertaking, but he will give an assurance.

22. MR DOCTOR KC: Right.

23. THE CHAIR: Right. Okay, now let us go on to 10.

24. MR DOCTOR KC: Number 10 concerns the limit to three days. You have referred to the limit and you recommend this be taken forward by the promoter. We actually are suggesting to you that you should refine your own proposal to what we have asked for, which is a closure of three days. That is in connection only with activities associated with Holocaust memorial, so this is the Bill in which to do that. If the park is going to be taken to a substantial degree for the purposes of building this, the Minister should either undertake to achieve that—the rest of the park will not be closed for more than three days for purposes related to this memorial—or he should undertake, give assurance, or amend the Bill.

25. THE CHAIR: As I understand it, the promoter is not offering anything on this.

26. MR DOCTOR KC: No, he says it is beyond his powers.

27. LORD HOPE OF CRAIGHEAD: He is offering something—that he intends to work with DCMS as the landowner to put in place practical information.

28. MR KATKOWSKI KC: Just to be clear, our position is that we would do exactly

what the recommendation says.

29. THE CHAIR: You are happy with that as promoter. The only difference really between you is that, when we make a recommendation, Mr Doctor, you want an assurance and you want three days specified, whereas what we required, and the promoter is willing to give, is an assurance—a recommendation that it be taken forward for consideration with Royal Parks. Is that right?

30. MR DOCTOR KC: Yes, that is a summary of what our positions are.

31. THE CHAIR: Very well. Number 11.

32. MR DOCTOR KC: This has partly been covered already in the submissions I made to you in relation to 7. You recommend that “consideration be given to amending the Bill to provide that the protection of VTG by the 1900 Act should continue to apply to any part of the garden not taken up with the Holocaust”—well, “museum” there is the wrong word; it is a memorial and learning centre—“including the current proposed project after it has been completed”. We, of course, would support that.

33. I should say that the promoter, as I understand it, is simply saying, “Well, that is inherent in the Bill”. There is the problem that the Bill talks about an extension, because the definition of construction includes extension. It could be some time in the future. It is not just going to be rebuilt if an earthquake destroys it—but they could decide, “Well, we need more space”, and they could build another learning centre, or another memorial next to it, contending it is an extension. It has now got to go into the garden itself because of the word “extension”. Either that word should be deleted from the Bill, or the undertaking that you have sought—that they amend the Bill, or consideration be given that they amend the Bill—just to make this clear in another way.

34. THE CHAIR: You are content with 11.

35. MR DOCTOR KC: Just to add to the point, I noticed that in the promoter’s comment on your recommendation it says this. It is at the very bottom of this page, 29.6, second last paragraph. “This is because the Bill as drafted already ensures that the protection of the 1900 Act continues to apply across the whole of VTG, except in relation to the construction, maintenance and operation of an HMLC”. That suggests, on

the face of it, it is just the construction and maintenance and operation of the HMLC. The problem is the word “construction”. Construction includes extension. They could construct an extension and say, under the present wording, “Well, that is authorised because the 1900 Act is disapplied in relation to any construction including extension”.

36. THE CHAIR: That is correct.

37. MR DOCTOR KC: Yes, that is our point, that, if the extension should go into the rest of the garden, they would say then, whatever area they take, “The 1900 Act does not apply to that extension because although it is in the rest of the garden, it is now being extended into the rest of the garden”.

38. LORD HOPE OF CRAIGHEAD: I think we have to give weight to the last sentence of the response to paragraph 11, do we not, because it takes us back to paragraph 7, which we have been discussing? Paragraph 7 is all tied into the provisions of the planning Act 1990. We may have to come back to discussion with Mr Katkowski as to what it all means, but it is all linked into that, so nothing can happen by way of an extension, except within what is available within the planning Act.

39. MR DOCTOR KC: Correct, but a planning permission might well be granted. In applying for the extension they would say, “The Act is no longer relevant because whatever we want to take—obviously, we have to generally try to persuade you that this is a good idea from a planning point of view, but don’t forget, Mr Inquirer, this is a matter of public importance, which, as it were, takes precedence or has great substantial weight in the balance against harms”, so they would say. “This time you don’t have to worry about the Act, because the Act is essentially disapplied, not just in relation to the original area, which was debated in Parliament and so on, but any extension we come up with. True, we need planning permission, but that is not too difficult, because this is a matter of such overwhelming public importance”.

40. THE CHAIR: I am not quite sure what we are getting to here, but the promoter says he considers that no amendment is necessary. He does not say that the recommendation is wrong. He says it is not necessary.

41. MR DOCTOR KC: Yes.

42. THE CHAIR: We will speak to Mr Katkowski about this, but basically you are happy with that too.

43. MR DOCTOR KC: My Lord, I am happy with that, yes, but I would like you to make it clear. I do not accept that it is inherent in the Bill, because of the word “extension”, but if you will make that clear, or if he will make it clear, that the Government will not use their powers to extend it into the park, then I am—

44. THE CHAIR: That goes back to the discussion under paragraph 7.

45. MR DOCTOR KC: I said it was linked to 7, yes.

46. THE CHAIR: All right, we will come back to that. Number 12.

47. MR DOCTOR KC: Yes, this is an important point. I would like to say some words in relation to the debate you had, before I started, with Mr Katkowski about what stage we have reached and what is possible under the Section 19 procedure. Mr Katkowski explained that, this having been a called-in planning application, and having been set aside by the court, there were now three possibilities. The Minister of State, who is the decision-maker here, can decide either to direct a new inquiry, or a hearing—a round-the-table hearing—or, as he put it, just have written representations, which the Minister can read. The Minister will say, “I have read them all”, and then act accordingly—give a decision.

48. I just interpose here. The reason why a separate Minister is dealing with it is because of the case the petitioners brought—the first case in the High Court—which was to object to the Minister and the promoter being, as it were, one and the same. As a result, this ethical wall was set up, and that is why they have it, because as a result of the decision of Mr Justice—

49. MR KATKOWSKI KC: Forgive me. Factually, we set up the ethical wall. You then challenged the legality of the ethical wall, so—

50. MR DOCTOR KC: Anyway, as a result of that, there is now an ethical wall. My learned friend produced, on Friday—no, yesterday—a letter from the officers. It is the corporate officers, they call themselves, parliamentary corporate officers, who say that they wrote to the decision-maker Minister to say that it was too early to make any

decisions about what should happen next until the Bill has been passed through Parliament. That is exactly the position we have been making, because we have also received these letters: “What do you say about this?” We say we cannot say anything until the Bill has gone through Parliament, been amended or not, and has come into operation, or is about to.

51. We say because of that—that is the basis for the submissions I made to you throughout—that it is too early to say what nature the planning procedure will take. The committee should not rely on a particular issue being fully dealt with in planning. We do not know what it is. We did not know that the corporate officers were taking that view—supporting our view—but we now do. We say that, against that background, there is one thing missing. Your Lordships debated with my learned friend this morning what would happen and what the corporate officers say, and so on. The one thing you have not been told is what the Secretary of State—the promoter—is saying to the deciding officer, the Minister who is making this decision. What is the promoter’s attitude to these letters we have been receiving as to what form it should take?

52. Remember that it is the Secretary of State who is the promoter, who is the senior Minister of the Minister who is making the decision. What is he being told is the attitude of the promoter? We have asked the deciding Minister, “What does the promoter say?” and we wrote earlier this year when we got one of these letters, “What does the promoter say?” That was not answered. We recently were asked again for our submissions about how this should go forward. We said, “It is too early to say. What does the promoter say? What is his attitude?”—now, of course, her attitude.

53. We have been told by the CPU—I think it is called—acting for the Minister, that we cannot be told at the moment, but of course, the Secretary of State, the promoter, could tell you what they are telling the Minister who is making this decision. If they were to say to the Minister who is making this decision, “In our opinion, the position has changed. There has been a change of circumstances and this must go to an inquiry”, then in all likelihood, there will be an inquiry because all the parties will be saying that. We are saying it.

54. THE CHAIR: Mr Doctor, you have lost me. We are dealing with Lord Carlile’s draft security amendments.

55. MR DOCTOR KC: No.

56. LORD HOPE OF CRAIGHEAD: We are dealing with 12, are we not?

57. THE CHAIR: I am so sorry. We are on 12, are we?

58. MR DOCTOR KC: Yes, so this is just by way of background. One of the reasons we are in this state of indecision is because we do not know what the promoter is telling the Minister to decide when it comes to how this should go forward. If the promoter told the Minister, “Hold an inquiry. The circumstances have changed”, then, of course, we could be fairly certain that the Minister would make that decision. After all, the Secretary of State is—

59. LORD JAMIESON: Sorry, if I understand what you are saying, you are saying there is not a proper Chinese wall between the Secretary of State and the Minister.

60. MR DOCTOR KC: I am not saying that at the moment. These letters are written to the promoter and these letters are written to us by the CPU. They say to us, “What do you say should now happen to the planning application? How should it be handled? Can we have your submissions?” We write back and say, “It is too early to say”. We learned yesterday that we are supported in this by the corporate officer. They have also written back to say it is too early to say. What has the promoter said to the CPU, to the Minister? I am not suggesting that there has not been—

61. THE CHAIR: I am sorry, but why does this matter?

62. MR DOCTOR KC: Because if you knew that there was going to be an inquiry, then it may be more appropriate to say, “Well, for example, the questions of security can be left to the planning inquiry because there will be an inquiry”. That is why it is important. Now you are in the position where you do not know how it is going to be held and you are being told, “We do not know what is going to happen”.

63. THE CHAIR: As I understand it, however it is going to be decided, there will be raised an update in relation to security. That is what we have been told.

64. MR DOCTOR KC: Yes, but—

65. THE CHAIR: This morning, in the exchanges with Mr Katkowski, three different

proposals were suggested—and I think in principle accepted, but he is taking instructions on it—as to, one, what any written instructions will say about updating; two, informing Parliament or parliamentarians about anything in writing that is said about this in submissions to the Minister; three, that publicity will be given to residents or residents associations, amenity associations, whoever it may be, to enable them to know what the programme is so they can make representations. That is what we are dealing with. Why is all this background helping?

66. MR DOCTOR KC: Because all these people are going to be given an opportunity, in so far as it eventually happens, either to take part in a further inquiry, that is one thing; or to sit around a table, that is another thing; or, more likely, just to make written representations to the Minister. That is all. It could be very important to your committee to know which of these is likely to happen, in so far as they are saying that they are going to publicise this, that and the other. If you knew that there was going to be an inquiry, you could take a more relaxed attitude towards these issues because an inquiry will go into them. If all you know is that the Minister is going to receive some written representations, my submission would be that you should then work on the proposition that that is all that is going to happen.

67. BARONESS SCOTT OF NEEDHAM MARKET: Mr Doctor, I understand that, in an ideal world, this committee and all of you would know what the process is, but we do not. That is a fact of life, and it is one which this committee is going to have to work around. Our recommendations are going to have to be option neutral, if you like. They are going to have to fit in with whichever of these three—I do understand what you are getting at, but what I am not sure is what on earth you think our committee can do about it. That is what is passing me by.

68. MR DOCTOR KC: I would ask you to work on the proposition that there will be nothing more than written representations. You should not understand that there is going to be another inquiry. That is quite important. All that is going to be afforded to petitioners, Members of Parliament and anyone else affected is that they will be able to write a letter to the Minister and ask her to—it is not going to go back to an inquiry, an independent inspector, who is going to look at these. If that is all you are going to—that is all you can expect. You cannot assume that there is going to be any proper further inquiry. There are going to simply be letters to the Minister. That is it. That should

affect what you therefore decide to do in relation to the Bill. That is my point. I say you could probably circumvent this and know a bit more if you asked the promoter to produce what he has written to the Minister, because whatever he has written to the Minister will probably happen.

69. LORD JAMIESON: I think we all know where we are. It may or may not go to a public inquiry. It may or may not be written representations. I will lean on the learned Mr Katkowski that it is probably not going to be the round table. Whatever decision we make needs to be on that basis. My question is: what are you trying to say we should do? What is your proposal?

70. MR DOCTOR KC: Yes, with that in mind—you have that in mind. Look at the undertaking which he has offered to give. Do you see that? Following reactivation by the Secretary of State under rule 19 of the plan in relation—and given the reference—“The promoter will make representations to the Secretary of State in relation to security considerations, and in doing so will provide updated evidence on security considerations with the aim of ensuring that the Secretary of State continues to regard security considerations as a main issue in determination of the application”.

71. In other words, in a sense, he is just making representations. We are not entirely clear, but it looks as if he is assuming that the Minister is just going to hear written representations. That does not go very far. All he is going to do is make representations to take security into account. That is not going to meet any of the things that you have suggested, which is an undertaking that the promoter will take detailed account in the preparation of its plans of any changes in security considerations since the matter was considered by the inspector at the public inquiry.

72. That suggests, as we read your suggestion, that the Minister should be, as it were, calling for a proper inquiry. Indeed, if that is going to be, he must take that into account in the preparation of the plans for any changes. He has to do that fully, and that can take place, we say, only at an inquiry because of these considerations. We suggest that you should continue to insist on that, and you should also ask him what he is asking the Minister to do. If all he is asking the Minister to do is to just receive written representations, it is very different from holding an inquiry into these matters.

73. THE CHAIR: Right, anything else on this one?

74. MR DOCTOR KC: On that one, no.

75. THE CHAIR: Number 13.

76. MR DOCTOR KC: Number 13, yes. You recommended that the Secretary of State give serious consideration to amending the Bill along the lines of Lord Carlile's draft security amendments, and we support that.

77. THE CHAIR: They say they have accepted this. They have said the promoter will give serious consideration to the recommendation. They have accepted that.

78. MR KATKOWSKI KC: Yes, our initial views, but we will give serious consideration to the recommendation, yes.

79. MR DOCTOR KC: Yes, well, I assume—I do not need to repeat it yet again—if the result of your recommendation is that he says, “I have given it serious consideration”, we want to see what he has taken into account, what evidence he has received, what decision he has made and the reasons for it. That must be made public; otherwise, your recommendation is ineffective.

80. THE CHAIR: Hopefully, all—I keep on repeating myself—all amenity societies, the residents, Holocaust survivors, parliamentarians, will receive a copy of any written statement which is made. If it is not adequate, then people will weigh in, and then they will be told how and when they can do that. We have to be pragmatic. That seems to me to go quite a long way along the path that you want.

81. MR DOCTOR KC: Yes, it does go along it, but it would be even better if you were able to direct the Secretary of State that he must ask for an inquiry—a proper inquiry—which he can do.

82. THE CHAIR: I do not believe that is within the scope of this committee.

83. MR DOCTOR KC: We would ask your Lordships to consider whether that cannot be elicited in some way, because that would put an end to a lot of the debate.

84. THE CHAIR: What you are actually asking for—if it is not there already—it is going to be all okay except we should be seeking an undertaking that the promoter will be pressing for an inquiry, yes?

85. MR DOCTOR KC: I did not get the last word. The promoter will be—
86. THE CHAIR: Will be pressing for an inquiry. That is the thing that is missing for you.
87. MR DOCTOR KC: Yes.
88. THE CHAIR: All right, we are there. Now can we go on to the next one?
89. MR DOCTOR KC: We are up to 14. Yes, again here the promoter says it is too early to commit himself to anything, but he will give an assurance broadly along the following lines. Yes, the point has been made now, and I think the committee has indicated, that there should be two different bodies: management of the garden, and when we see the eventual actual undertaking as formulated, we may be able to tweak it, if necessary, but otherwise we are content with that.
90. THE CHAIR: I think this is it. What we are proposing—
91. MR DOCTOR: He says, “The precise text of the assurance will be given further consideration”.
92. THE CHAIR: We are going to have to ask Mr Katkowski about that because we are not going to be waiting for that, but anyway—
93. MR DOCTOR KC: If this is it, then that is fine, but it is not necessarily it. Then finally, I think we are up to the last one.
94. THE CHAIR: Could you just wait a minute while I just read through that? All they are saying is that they have not yet appointed the body to take this on, but they recognise close co-operation. I suppose the thing is they are saying it is premature and we can decide. You say it is not premature to make a decision on this now.
95. MR DOCTOR KC: No, on the security issues.
96. THE CHAIR: We are on 14.
97. MR DOCTOR KC: Sorry. Yes, they can—
98. THE CHAIR: They say it is all premature because they have not actually

appointed anybody yet. You say it is not premature.

99. MR DOCTOR KC: No, the principle is very clear. There must be two different bodies.

100. THE CHAIR: Right. Then, finally, 15.

101. MR DOCTOR KC: Yes, this is the R&R. You had the words, “We recommend”, and we suggest that you should seek an assurance in this regard. We say that we support that. You should seek an assurance—at the very least recommend, but seek an assurance that, as you set it out there, “before any further planning is sought for the HMLC, detailed consideration is given”.

102. BARONESS SCOTT OF NEEDHAM MARKET: Could I just ask on that, Mr Doctor? There is an extent to which the R&R people—these Houses—are going to have to make up their mind about which option they are pursuing, and that could be quite some time down the road. Is there not a balance to be drawn between the general principle which this committee is seeking here, but also, they are not going so far that, in effect, you just delay the Holocaust Bill until Parliament has made its decisions on R&R? The exact interaction between the two is going to depend very much on exactly how restoration and renewal takes place.

103. MR DOCTOR KC: Yes, it is difficult to say exactly what is going to take place, and indeed R&R is another development which was not previously the focus of any specific attention at the previous inquiry. It is now moving on, as we understand it, and is coming closer, and it certainly is going to be an issue, as has been described in the evidence, of enormous impact; first of all, on the use of the park, because it might mean that the park is no longer a park.

104. BARONESS SCOTT OF NEEDHAM MARKET: Yes. Sorry, if I could just interrupt, we agree with you about the nature of these problems and the issue, and the committee has come up with a form of words to address that, but you want us to go further and seek assurances. I am asking you on whom these assurances would be binding, because the promoter could only answer for one half—that is, the promoter—and Parliament is not in a position to give assurances, because we are not that far advanced in our thinking. That is what I am putting to you.

105. MR DOCTOR KC: The promoter can give the assurances that that is how he will deal with the Holocaust memorial that he is promoting. If one of the problems he faces is that R&R cannot give assurances at this stage, or nobody responsible for it can give assurances, that is one of the problems he faces. He has to, as you say there, give detailed consideration to how the two are going to work together. If his answer is, “Well, it is very difficult to say for the moment”, that may have implications for his project.

106. THE CHAIR: The recommendation that we made, which you would like to see as an assurance, is that before planning approval is sought for the HMLC—not R&R, but HMLC—detailed consideration be given as to how the construction and operation of the proposed HMLC and R&R will interact with each other. I suppose the point is that the promoter will have to do that, will have to give detailed consideration as to how they will operate with each other and accommodate the use of VTG. I think that is the point that is being made: we cannot impose this on R&R—whoever that may be—because they are not parties to the Select Committee. We can ask for the promoter to do whatever he can to promote these things. You will be happy with that, would you not?

107. MR DOCTOR KC: Yes, we are.

108. BARONESS SCOTT OF NEEDHAM MARKET: That is why we have recommended rather than sought an assurance, because an assurance is one stage firmer. It is quite difficult to see how we could get an assurance from one half of the equation.

109. MR DOCTOR KC: Yes, I accept that, although I say he could still give his assurance, but assuming that does not meet with your approval, we will have to accept “recommended”, although the gist of it we agree with—that that certainly feature.

110. THE CHAIR: We can discuss assurances later.

111. MR DOCTOR KC: Yes, that must feature.

112. THE CHAIR: I think what is being said, but I do not think this is a problem, is that you cannot go for further planning until the promoter—we will have to change the wording slightly—has perhaps heard, or attempted to secure, or promoted, that consideration be given as to how it can all proceed. The focus will be on the promoter,

what the promoter does.

113. MR DOCTOR KC: Yes. I just want to make one thing clear. In that document we sent you yesterday, in response to your own suggestions, we set out just a few amendments; otherwise, we said we had no quarrel with it. In so far as you are now asking me to, as it were, comment on the promoter's responses to this, I have tried to do it in the short time we have had available. Many of them, as I have pointed out, say, "We will take this into consideration. We will formulate a more precise wording", and so on and so forth. I do not want to give the impression that we are arguing with you. We are arguing with them.

114. They could have come back and made it very easy and said, "Well, all you are asking for is a recommendation. We will take it. We stand recommended. You want an assurance. We assure you". We would have accepted all that. We do accept all that, but we would like some form—and we will not go into it again. You have obviously—with regard to planning, certainly, you have extended that and explained that. We would like some form of public accountability for the consequences of these recommendations, whether it be just requiring the Minister to state publicly on the website. If you do not like laying before the House a report, then just require the Minister to state publicly what he has done in pursuit of these recommendations, many of which he has agreed to, what he has done, what he has taken into account, and what his decision is. In fact, just to be polite, in this case it is what her decision is, because we are talking about the promoter, so what she has done, what she has taken into account, and what her decision is.

115. THE CHAIR: Thank you very much indeed. We have concentrated on the assurances because, in a sense, they reflect so much of the general response at the beginning of the promoter's document. Is there anything specific that you need to add on the general background? Obviously, we have made our decision on standing. We made our decision on scope, and now we are looking at the recommendations. That seems to us to be the most effective and efficient way of going about it.

116. MR DOCTOR KC: Yes. Just for the sake of my clients, who would just want me to reiterate to you the importance of what you are doing, that one stands back just a moment and reminds you of the—I will not develop any of them; I will just list the

headline points that we want you to take into account so that you never lose sight of the large picture of what is happening here.

117. An abstract design is being put in a park which was never designed to take it. It was never the subject of any official investigation. It arose out of a letter that Lord Feldman wrote to somebody: “That is a good place to put it”. It had never been identified by anybody as being a suitable place for this memorial. It is going to lead to 3.5 million extra visitors a year. There are going to be queues. As night follows day, there has to be only one ice cream stick—or perhaps something heavier than that—thrown over the ledge into the courtyard below and those responsible for the security of this thing are going to be confronted with a security crisis. Plainly, they are going to think that the easiest—the cheapest—way of dealing with the security is just to close the park.

118. It is true the Minister has no intention now—as he says—of closing the park; of course not. He is hoping that it is a perfect world and things will go on as they always hope they do. One incident is going to bring about the residents’, the Holocaust survivors’, everyone else’s worst fears. The park will be closed. We would ask you never to lose sight of that. Of course, it is a worthwhile and, indeed, project of national importance. That goes without saying, but it is in the wrong place.

119. I know that is not within the scope of your considerations, and you have to accept that, and we of course accept that, but it must, as it were, underline the efforts we hope you will make to enable as much protection as possible for the interests of park and its residents, and the Holocaust survivors who you have heard here.

120. THE CHAIR: I hope we have demonstrated that we are doing that.

121. MR DOCTOR KC: My Lord, I have no complaints about what you are doing, but we just would like to leave you with that message from the petitioners, who have come a long way in this. They have put a lot of effort into this over many years, having to go to court, at considerable expense. In the end, I hope, the project will be much improved, but we must not lose sight of any of this. We cannot just rely on ministerial, “Yes, I will give some detailed consideration to that”. We have to get this right.

122. THE CHAIR: Thank you. That is a very fair point.

123. MR DOCTOR KC: I am most indebted to you for listening to me at such length. Thank you.

Final Submissions by Mr Katkowski

124. THE CHAIR: Thank you very much indeed for them. Now, Mr Katkowski.

125. MR KATKOWSKI KC: Yes, my Lord.

126. THE CHAIR: Do you have any objection to proceeding in the way that we have done, which is to look at these undertakings and recommendations? Then if you want to pick up anything from earlier on, you can do so, but I think the recommendations, assurances, that are sought and are given really reflect all the substantive issues.

127. MR KATKOWSKI KC: Yes. My Lord, not only do I have no objection to that, I would positively encourage it. At any stage—and it may all be water under the bridge—if members of the committee ever wish to understand our detailed response to each and every point that has been made in the course of the hearing sessions, that is in our big omnibus book that you received yesterday.

128. THE CHAIR: We have been looking at annexe 3, in effect.

129. MR KATKOWSKI KC: Exactly, and it may be the rest of it is just water under the bridge because, of course, we were working on that before we had sight of the very helpful document—and I really do mean that—that we received from the committee on Friday afternoon, which we have responded to in annexe 3, Monday midday. You will understand, obviously, that we took the time that we had. It was not that much and we responded.

130. THE CHAIR: We are alive to the fact that a lot of people have been working over the weekend.

131. MR KATKOWSKI KC: Indeed, yes.

132. THE CHAIR: That is appreciated.

133. MR KATKOWSKI KC: The reason I make that point is because that explains why sometimes text in our response in annexe 3 is along the lines of, “Content to give an

assurance along the following lines”, and we have not yet had the time to completely formulate the detail. If you are content with what you have received here, then that is more than good enough from my point of view.

134. THE CHAIR: I think there are two preliminary points. One is that where you say in relation to some of these, “This is all subject to the precise text of the assurance, or whatever it may be, being given further consideration”, I am assuming that what you have put forward has been on instructions.

135. MR KATKOWSKI KC: Yes.

136. THE CHAIR: So we can proceed on the basis of what you have written here. I do not know that we really need to have it, as it were, more sophisticated than that. We are just going to proceed on the basis that, where you have put your points here, they are ones we can now rely on.

137. LORD HOPE OF CRAIGHEAD: Can I just ask for an opportunity to discuss one or two of the points, because obviously things have been raised? It is very helpful and self-explanatory, but one or two require an explanation.

138. MR KATKOWSKI KC: Of course.

139. THE CHAIR: Sorry, I was just saying two preliminary points before we go through them all. That was the first one. The second one is, in addition to what we have here, there were these extra assurances that you were going to take instructions on this morning.

140. MR KATKOWSKI KC: The ones that were raised this morning.

141. THE CHAIR: How long would it take you to get authorisation for those?

142. MR KATKOWSKI KC: I will have to take instructions on it. Would you give me one moment? Thank you, my Lord. We will be able to provide our response to those two additional points tomorrow.

143. THE CHAIR: That is very helpful.

144. MR KATKOWSKI KC: My Lord, in relation to the assurances, can we just take

the first page of annexe 3 as an example on your first preliminary point, if I may?

145. LORD HOPE OF CRAIGHEAD: Could I perhaps interrupt you?

146. MR KATKOWSKI KC: Yes, of course.

147. LORD HOPE OF CRAIGHEAD: I am interested in what we are going to publish as part of our report. Clearly, we would like to put in as an appendix to the report our request for assurances.

148. MR KATKOWSKI KC: Yes, and the assurances.

149. LORD HOPE OF CRAIGHEAD: We would publish a reply. Is the document we are looking at now the document you would like us to publish?

150. MR KATKOWSKI KC: No, my Lord. That is the very point I was going to come to, that our understanding—and forgive me, that is royal “we”—the understanding of those whose life is doing this sort of work is that there would be an opportunity for us to write this assurance up into a formal language. I was just going to take the first page of annexe 3 as an example of this. We say in our comments on the first assurance that we have been asked to give, which we are perfectly happy to give, “The promoter would be content to give—along the following lines”. There are then the following bullet points. Those bullet points will be found in the formal assurance. It is just that it would need to be topped and tailed as an assurance. It is the topping and tailing that needs to be done. That is the point. I have been told—

151. THE CHAIR: What we will say is—well, we will have to discuss that in committee.

152. MR KATKOWSKI KC: Indeed, if you could. If it helps at all, we will be able to do this for tomorrow again. We will be able to do the topping and tailing for tomorrow as well, if that helps at all.

153. THE CHAIR: Yes, we will deal with the exact form, but the important point is that we can take as assurance—either assurances or recommendations—or if we think it appropriate—I do not think you have offered any undertakings at all, but assurances or recommendations.

154. MR KATKOWSKI KC: We have made some undertakings, my Lord, yes.

155. THE CHAIR: Sorry.

156. MR KATKOWSKI KC: There are some undertakings, yes.

157. THE CHAIR: We will be able to set them out as in bullet point 1.

158. MR KATKOWSKI KC: You could do that, my Lord, but I suspect you will have our formal version of this before you put finger to keyboard, or pen to paper, so to speak.

159. THE CHAIR: Yes, very well. Right, shall we go through them?

160. MR KATKOWSKI KC: Yes, please, my Lord. I am going to try to keep an eye on my learned friend Mr Doctor's commentary about these to the extent that I was able to follow—my fault entirely. Number 1, you have asked us for an assurance and we are perfectly happy to give such an assurance. It just needs to be topped and tailed. My learned friend's point there was about the refreshment kiosk, which we will come to later on.

161. LORD JAMIESON: You are happy to clarify the point about “open as long as possible”.

162. MR KATKOWSKI KC: The “kept open” point, yes, we will say some more words about that. Indeed, my Lord, yes. As you know from earlier on, the lawyer in me is submitting that “kept open” is good enough, but we will add some words to make sure that there is no doubt about it. On the second, again, you have sought an assurance from us and we are content to give an assurance. We have sought to set out the bullet points that that assurance will contain.

163. LORD HOPE OF CRAIGHEAD: I think what was being asked was something a little more positive, in that people would be prevented from going through the playground. I am not sure you are saying that, but suggesting that it is rather difficult to do that given that there are steps coming down from the bridge and passing through the garden that way. I think we just have to accept that you could not stop people going into the playground unless you had a ticketing arrangement.

164. MR KATKOWSKI KC: Exactly. The nature of the assurance is that—as I hope one would expect—the project would do everything it can to make sure that people just do not wander into the playground when they have no business being there.

165. BARONESS SCOTT OF NEEDHAM MARKET: I do not approve of drafting on the hoof, but having said that, there might be something about reflecting that a design could discourage.

166. MR KATKOWSKI KC: Yes.

167. LORD HOPE OF CRAIGHEAD: That is really what we are talking about.

168. BARONESS SCOTT OF NEEDHAM MARKET: That is what we are asking.

169. THE CHAIR: You have given some specific statements about this. Do you have any objection to Mr Doctor's preference, which is to stick with what we have asked for?

170. MR KATKOWSKI KC: Stick with what—

171. THE CHAIR: In 2 he says his preference would be—because it talks about close proximity rather than people actually going in the playground. It is an assurance that detailed consideration will be given—“No doubt, in giving that, you will consider”—but do you have any objection to that?

172. MR KATKOWSKI KC: We would have no objection to giving an assurance that we will give detailed consideration to these various matters. Believe it or not, we were trying to be helpful by spelling out the design measures that could be—

173. THE CHAIR: Then we get into the—that is the trouble with drafting in a committee.

174. MR KATKOWSKI KC: Yes, for a lot of these—

175. THE CHAIR: I do not think the concern was so much people going through the playground as the fact that there are going to be literally, in the course of a day, thousands of people who are going to be passing very near it.

176. MR KATKOWSKI KC: We would do our best to discourage that, is the point, but, my Lord, having heard a lot of the points that have been raised—I was sitting here

thinking, “Well it might have just been easier for us to say we will give the assurances you have asked for”. We were actually trying to be helpful by being specific about various aspects of this—for example, on the design, the first bullet point of our response, “Very clearly delineated”, et cetera. We were actually trying to flesh out the point that we have been asked to deal with.

177. THE CHAIR: What we might end up doing—again, I do not want to start drafting but you could end up with a general statement and say, “And this would include”—

178. MR KATKOWSKI KC: Would include.

179. THE CHAIR: Would include.

180. MR KATKOWSKI KC: Those sitting to my left—

181. THE CHAIR: They have agreed, so you have a general statement.

182. MR KATKOWSKI KC: Yes, excellent. Thank you very much indeed. Then number 3. This is the refreshment kiosk. Of your 15 things that you have written to us about, this is the only one where we have slightly dug our heels in, to be honest, because everything else we have either said, “Fine, here is some language”, or, “We think it should be an assurance rather than an undertaking because we cannot control other people who are involved in this”. This is the only one where we have said—your recommendation is that the Secretary of State should remove it from the present plans. We have sought to explain why it is in the present plans. Our position on this—but, if you are not content, then you will recommend as per number 3 here, but—

183. BARONESS SCOTT OF NEEDHAM MARKET: Could I just ask a question on it, though? You have made the point here about the fact that you are looking for continuity and there has always been a kiosk somewhere.

184. MR KATKOWSKI KC: That is right.

185. BARONESS SCOTT OF NEEDHAM MARKET: That is, of course, true, that the kiosk has been there, but what has not been there is 3.5 million visitors. What I am surprised is why that fact—the number of people coming to visit or view the memorial—does not make a difference, why, as you say, you have dug your heels in.

186. MR KATKOWSKI KC: We have dug our heels in only because the other side of this debate is if we take something out of the gardens, then we would be criticised for doing that. There is no doubt at all, in my mind, that if our project had not included a replacement kiosk, we would have been criticised for taking away a facility.

187. MR DOCTOR KC: That is not correct.

188. MR KATKOWSKI KC: No, forgive me. The point that was raised at the inquiry about this was, as we said in the last paragraph on the bottom of this page—I remember Baroness Deech very clearly giving this evidence to the inquiry—it was the propriety of people being at a memorial to the Holocaust and/or going into the learning centre, and with other people nearby drinking cups of tea and having a Coke, or whatever it might be. One can understand that point. The point was made at the inquiry and the inspector considered it and did not think that it should lead to the removal of the kiosk.

189. Through the reactivated planning process, all of this would be looked at again. If, in that new decision process, it is decided that the kiosk should not be there, then it can be removed from the project through the planning process. That is the only point we are digging our heels in on, that we consider this is a point for the planning process to consider; that is to say, those who would decide the planning application can decide whether this is an appropriate or an inappropriate part of the project. Obviously, if you recommend that we should remove it, then plainly the Secretary of State, the promoter of the Bill, would give serious consideration to that. Of course they would.

190. LORD HOPE OF CRAIGHEAD: It would help if you actually were prepared to say that. I have looked at the paragraph in the inspector's report that you referred to and it is very brief and he just notes that actually—

191. MR KATKOWSKI KC: Some people were uncomfortable and the reality is that others were not. That is the point.

192. LORD HOPE OF CRAIGHEAD: It does not give a green light at all. He has noted the problems about it. That is why I suggest, really, with great respect, you might like to at least accept that further consideration might be given in view of our concerns about the playground and the effect—

193. MR KATKOWSKI KC: I would have no difficulty whatsoever in signing up to the proposition that further consideration should be given to it, and doubtless, in your report, there would be, I am imagining, quite a powerful passage on this subject. Of course, that would be given serious consideration.

194. LORD HOPE OF CRAIGHEAD: Digging your heels in, in some situations, is absolutely admirable, but I think, in this case, it might be better—

195. MR KATKOWSKI KC: I know, my Lord.

196. THE CHAIR: Can I put you down—

197. MR KATKOWSKI KC: You can put me down at any time you like, my Lord.

198. THE CHAIR: —that if it was left as a recommendation rather than assurance, that you would be content as it is?

199. MR KATKOWSKI KC: Recommend that the Secretary of State should remove it? Well, obviously, if you make that recommendation, the Secretary of State will have no option other than to consider it seriously and decide what to do, but the reasoning that you set out in your report doubtless will make a powerful case, I am imagining, for its removal.

200. THE CHAIR: Yes. We hope so.

201. MR KATKOWSKI KC: You are.

202. THE CHAIR: All right.

203. MR KATKOWSKI KC: Yes, I think I should pick my fights more wisely, should I not, really? Number 4. Where are we on number 4? This is an assurance. Again, we are content to give the assurance, and we had simply sought to set out the key points to flesh out the details. We are not arguing with the underlying proposition that is being put to us. I cannot remember—

204. BARONESS SCOTT OF NEEDHAM MARKET: For what it is worth, in this and in the other one, I think your bullet points are quite useful.

205. MR KATKOWSKI KC: Thank you. Those to my left and behind me will be very

pleased to hear that. Thank you. Number 5, an assurance about investigations.

206. THE CHAIR: Could you just wait one moment? I just want to—

207. MR KATKOWSKI KC: Again, we are content—

208. THE CHAIR: Could you just wait one moment?

209. MR KATKOWSKI KC: I am so sorry.

210. THE CHAIR: Yes, thank you very much.

211. MR KATKOWSKI KC: On number 5 it is the same point. We are content to give an assurance along those lines, and we have again sought to flesh out the key points of that. The southern gate from Millbank referred to at the bottom of the page is the step-free access. That is because it is Millbank, not from the bridge. The steps are at the bridge. There are no steps at Millbank. Over the page to number 6, again, you have asked for an assurance, and we are content to give that assurance as was proffered to the other House, the House of Commons.

212. THE CHAIR: You want to add to it about these being supplemental—

213. MR KATKOWSKI KC: Yes, that is right. Yes.

214. THE CHAIR: Mr Doctor—

215. MR KATKOWSKI KC: He wanted “two abreast”. I cannot imagine that language as quaint and charming as “two abreast” would ever find its way into such a document, but a dimension could easily be put into a document. The standard width of a footpath is between one and 1.5 metres, a bridleway two metres. I am sure we can find some measurement.

216. THE CHAIR: Which one are you doing—6 or 7?

217. MR KATKOWSKI KC: We are on 6. This was the footpath being kept open and my learned friend wanted “two abreast” put into it. I am simply saying that is rather charming and quaint, and probably rather antiquated language. It might be better to have a measurement if one was to do this at all. We can give thought to popping a measurement in there, I am sure, so that two people walk alongside each other. We do

want it to be subject, obviously, to whatever conditions—if we get another planning permission—

218. THE CHAIR: We have to be quick with Mr Doctor, because he is going to be halfway to Australia tomorrow.

219. MR KATKOWSKI KC: I did not catch that, my Lord. Oh, halfway to Australia. Right, okay. Number 7. You have asked us for an assurance.

220. THE CHAIR: This is important and different, and we do want to get your help on this.

221. MR KATKOWSKI KC: Yes, of course.

222. THE CHAIR: Essentially, what Mr Doctor is asking for is that within a predetermined area, or perimeter, all construction, reconstruction or extension will take place. That is the area where the 1900 Act is lifted, but as I understand—I hope—Mr Doctor will no doubt intervene if I have it wrong; but he wanted to have that by reference to an attached plan, and that is all based on the response given by Baroness Scott in a written answer, I think, where she refers to both of those. Have I got that wrong?

223. MR KATKOWSKI KC: That is not quite right, no. The written answer referred to particular square metreage, and I have always said to the committee, on behalf of the promoter, that we are simply not prepared to write anything in about square metreages because they are controversial. Every time we state, “The project needs X square metres”, we are always told we are wrong.

224. THE CHAIR: So her answer referred to a plan.

225. MR KATKOWSKI KC: Yes, and our assurance refers to a plan, my Lord. It is at the top of page 29.5. We do that.

226. THE CHAIR: As I understand it, Mr Doctor is content with an attached plan.

227. MR KATKOWSKI KC: We have one, my Lord.

228. MR DOCTOR KC: My Lord, it is the plan the committee appended itself.

229. THE CHAIR: Our plan.

230. MR DOCTOR KC: Yes. We asked Mr Wright, “Which plan are you referring to?” He said, “It is the plan attached originally to the letter from the promoter”, but it has nothing any more to do with Baroness—

231. THE CHAIR: Oh, I see.

232. MR DOCTOR KC: The committee itself referred to the plan, which happens to be the plan in the letter of 31 October. That is your suggestion and I said, “We will accept that, provided that what is overground will appear in the shaded area and the underground cannot—you cannot have an overground building in the edged area, because that is”—

233. THE CHAIR: As I understand it, these define the extent to which the 1900 Act, as it were, would be lifted. If there is any extension or rebuilding and so on, as referred to in the definition of construction in the 1990 Act, it is limited to that area.

234. MR DOCTOR KC: Correct.

235. THE CHAIR: That is your case.

236. MR DOCTOR KC: Yes.

237. THE CHAIR: Mr Katkowski, as I understand it, you are saying no, you could have outside that area an extension, and the effect of the Act as regards that extension—which is part of the definition of construction—will be relieved from the restrictions in the 1900 Act.

238. MR KATKOWSKI KC: Yes, with an important caveat, though, my Lord, because the way that our draft wording works, which starts at the bottom of page 29.4, and if you turn over the page to 29.5, we refer first of all to the planning permission—well, it is the application that we have made, so if it is granted planning permission—that would result from our application that has been lodged. We refer explicitly in that context to the plan, the self-same plan that Mr Doctor has referred to, because the note at the end of our draft says, “The plan referred to would be the same plan as was appended to the draft assurance”, et cetera. It is the self-same plan. It is the self-same planning application. So

far, so good. We have sought, in item B, to preserve the ability for—to be quite frank about this—what if we do not get our planning permission? What if we are refused? That is covered—we have sought to cover that by item B. Then we have our need to explain each of the statutory provisions that is referred to in paragraph 2 of the assurance.

239. LORD HOPE OF CRAIGHEAD: Would you just explain what paragraph 2 is really talking about? As I understand it, 96A permits changes which are not material.

240. MR KATKOWSKI KC: Non-material amendment. That is right.

241. LORD HOPE OF CRAIGHEAD: That is without further application.

242. MR KATKOWSKI KC: You do apply. It is just you are not applying for a new planning permission. You are applying for a non-material amendment—definition in the statute—to be made to the actual planning permission itself. If there was something—it would be something very modest, because it would have to be not material; in other words, not actually of any significance.

243. LORD HOPE OF CRAIGHEAD: I am just trying to think around the word “extension” in Clause 1(3), because in your 1(b) you are talking about “altered”, and that could include extension, could it not?

244. MR KATKOWSKI KC: It could include an extension, but obviously it would be only—and as I am being advised, that is indeed the intention—whatever it is that is granted planning permission. That is the point.

245. LORD HOPE OF CRAIGHEAD: Either full planning permission would be required on the first branch of paragraph 2 or it would come in on non-material.

246. MR KATKOWSKI KC: On sub 2, there are three statutory provisions that are referred to there, so 96A is to make a non-material amendment. You apply to the local planning authority—Westminster—for it to make a non-material adjustment, change to the planning permission, whatever it might be; a change in the colour of something, if it thinks that—

247. LORD HOPE OF CRAIGHEAD: It would not really cover an extension, would

it?

248. MR KATKOWSKI KC: No. It most certainly would not.

249. LORD HOPE OF CRAIGHEAD: Right.

250. MR KATKOWSKI KC: Under no circumstance could you extend this memorial under a non-material amendment.

251. LORD HOPE OF CRAIGHEAD: Yes, right, and 73 and 73A are dealing with conditions.

252. MR KATKOWSKI KC: Let us assume we get a planning permission. It will have lots and lots of conditions. If one wants to—and I am using colloquial speak here—vary those conditions, you have to apply under Section 73. You cannot change the description of development. It is the same description of development, the Supreme Court has held. You cannot interfere with the description of the development through such an application; you can only change the condition. For example—well, I do not know whether I need to give examples, because there would be so many conditions, and if we needed to adjust one in some shape or form, there is a statutory process that we can go through.

253. Section 73A—I hope that we would not ever need to contemplate using this—but if one builds something and, for some reason, it is slightly out of sync with the very detailed planning permission that you have been given, you can go back under 73A for a retrospective consent to authorise. If you have built something and it was meant to be exactly here, and you have built it a few inches or whatever in the wrong place, you can go back and get that remedied by retrospective consent. That is 73A. That is what we have sought to cover off in section 2 of the note. We are just seeking to preserve our statutory rights, because those are our statutory rights. We can apply to do these things, just like anyone else can, so that is that, really.

254. THE CHAIR: There is nothing to stop your promoter under (b) applying—

255. MR KATKOWSKI KC: For a new permission.

256. THE CHAIR:—under planning permission for a significant extension.

257. MR KATKOWSKI KC: Yes, or a different—that would be under the word “altered” or “modified”, I suppose, or a replacement.

258. THE CHAIR: Yes.

259. MR KATKOWSKI KC: Just to put my cards face up on the table, if you like, which I hope I have done throughout, this is to cover an eventuality where it is all very well, we have made our planning application, we hope we get a new planning permission, and if we do that is what we intend to build. What if we do not get that consent?

260. LORD JAMIESON: This is the bit I am trying to get to. We are ensuring that the development, as best as possible, minimises the impact on residents and so forth. My concern is that (b) there, potentially—and I accept it is not your intention—allows you to do something radically different, occupying twice as much of the park or something else. There is nothing in there that limits it.

261. MR KATKOWSKI KC: My Lord, we were asked to repeat the assurance that we gave to the Commons, and if you turn back a page that assurance had this clause in it.

262. LORD JAMIESON: I am happy with that, but just for clarity, you could turn around and go, “We are going for planning permission again and it is going to be radically different”.

263. MR KATKOWSKI KC: Yes, we could.

264. LORD JAMIESON: The clause does not prevent that.

265. MR KATKOWSKI KC: The direct answer to that question is, “Yes, we could”, but also if we go back to the Bill that you are looking at—and this is surely part of the purpose and principle of the Bill—the Bill in Clause 1 defines construction to include an extension. That is part of the principle of the Bill. That is where we are.

266. LORD JAMIESON: I understood Mr Doctor’s proposal was to enable you to do that but put some physical constraint.

267. MR KATKOWSKI KC: Indeed, and, if in due course, you recommend that, should there ever be contemplation of any changes, it should be kept within a colour on

the plan, then that is what you will write in your report. The trouble with all of this is that I cannot crystal ball gaze. I would love to say, “I am looking in the crystal ball. We are going to get our planning permission”. If we do, we are perfectly happy. That is what we want to build, but if we do not, we say we need to cover that eventuality; otherwise, we will be back here in a year or two or three’s time going through all of this all over again and, as much as it has been a delightful experience, perhaps we should consider avoiding that.

268. LORD HOPE OF CRAIGHEAD: I am wondering, if you do get around to an extension, which is significant, whether that would not be a situation in which you really ought to consult with various people before you proceed with it.

269. MR KATKOWSKI KC: We would have to. It would need a planning application and, by law, there is consultation as part of that planning process. You cannot just come along and say, “Here we are. We have decided we are going to extend this memorial or learning centre”.

270. LORD HOPE OF CRAIGHEAD: Yes. It is just to reassure people but reassurance is part of what we are trying to do.

271. MR KATKOWSKI KC: I understand.

272. LORD HOPE OF CRAIGHEAD: It would be helpful if it was spelled out a little more clearly in your undertaking that you would not engage in an extension without an application for planning permission. It is rather obscured by the very—

273. MR KATKOWSKI KC: That is the easiest assurance to give.

274. LORD HOPE OF CRAIGHEAD: We are looking at people who are looking at our report and wondering what is going on here, so it is a little more explicit, because significant extension is really something that is very material to the use of the gardens.

275. MR KATKOWSKI KC: I entirely accept that. I understand and accept that. There would be no difficulty whatsoever in giving that assurance. It flows, in any event, from the law but I need not say that. Of course we give the assurance.

276. LORD HOPE OF CRAIGHEAD: It is just a little bit more clarity as to what you

are really saying.

277. MR KATKOWSKI KC: Of course, so that is that one.

278. THE CHAIR: Hang on. I just want to ask something on that. Certainly, people would have to be notified about any new planning application.

279. MR KATKOWSKI KC: It is more than that, my Lord. One has to consult. There are statutory consultees and through the consultation process on a planning application, that would include all local residents.

280. THE CHAIR: Can you just give me an example? Of the people who have appeared here, there are three amenity societies that have been petitioners, we have had the Buxton society and we have had a number of people who are residents. It would be helpful if you could tell us whether the statutory provisions for consultation would cover all or any of those.

281. MR KATKOWSKI KC: Let us say, in this, I imagine, hypothetical world, were we first of all to get a planning permission and then make another planning application to extend what we have our permission for, the local planning authority, Westminster City Council, would have to consult all of the above.

282. THE CHAIR: Would it? Have you a reference for that, as a matter of interest?

283. MR KATKOWSKI KC: Not off the top of my head, no. It would be in the development management procedure order of—I forget which year it is now.

284. THE CHAIR: It is in the regulation, is it?

285. MR KATKOWSKI KC: It is in the regulations, my Lord, yes.

286. THE CHAIR: That consultation takes place when a formal application is lodged.

287. MR KATKOWSKI KC: When a formal application is made, that is the consultation process and there are certain consultees who are statutory consultees, again, who are listed in the order.

288. THE CHAIR: When you come back tomorrow—

289. MR KATKOWSKI KC: Whoever it is, it will not be me tomorrow, I am afraid, my Lord.

290. THE CHAIR: When you give the assurances tomorrow—

291. MR KATKOWSKI KC: I see, when we write in, yes.

292. THE CHAIR: —could you please just give us the reference for that?

293. MR KATKOWSKI KC: Yes, of course.

294. THE CHAIR: If you had time—and I do appreciate, like the rest of us, you have had to spend a lot of time on this—it would be useful if you could reproduce the relevant regulations.

295. MR KATKOWSKI KC: The relevant provisions.

296. THE CHAIR: That is for statutory consultations plus anybody else who would inevitably be consulted.

297. MR KATKOWSKI KC: Yes, that is right, and there is also an obligation on us to produce a statement that explains who we have consulted with and so on and so forth, so we will quote chapter and verse. You would like the provisions attached to the note, by the sounds of it.

298. THE CHAIR: As Lord Hope said, you are not going to get Members of the House of Lords—or Commons, I suspect—let alone individual residents rushing off and looking at Section 96A of the planning law.

299. MR KATKOWSKI KC: Indeed.

300. THE CHAIR: That is not going to happen.

301. MR KATKOWSKI KC: No, no, no. That is right. That is why I have sought to explain in the record what they mean.

302. THE CHAIR: We have to put it all in with simple language.

303. MR KATKOWSKI KC: You wanted us to attach 96.

304. THE CHAIR: No. Leave that aside. You have explained that.

305. MR KATKOWSKI KC: Yes. Thank you.

306. THE CHAIR: What I am saying is we can alter that without reference and describe what is there with reference to the planning Acts. So far as (b) is concerned, again, without having to refer to the planning Acts, we would like a reference to those people who, by regulation—and we can cite the regulation—have to be consulted.

307. MR KATKOWSKI KC: Yes.

308. LORD JAMIESON: If I recall planning correctly, you would not consult with all the residents. You would consult with people whose property is adjacent to.

309. MR KATKOWSKI KC: It is wider than that, my Lord, but we will produce the regulation.

310. LORD JAMIESON: Just for clarity—

311. THE CHAIR: The main thing is if the three—

312. MR KATKOWSKI KC: It depends by what you mean by adjacent. Certainly, all the local residents who we have encountered during this process would be consulted.

313. THE CHAIR: All right, that is very helpful. Thank you. Does anybody want to ask any questions about that? No, all right. That is really very helpful.

314. MR KATKOWSKI KC: Number 8.

315. THE CHAIR: Yes, number 8.

316. MR KATKOWSKI KC: So we have broken halfway through now. Assurance, consideration be given to widening the path, et cetera: we were content to give the assurance, but in our appendix 5 to our omnibus book, we have just set out the plan with the dimensions. As has been pointed out earlier on, the path on the river side of the Buxton memorial is just over five metres wide and, around the memorial itself, you will remember Mr Buxton said it was—I think he said it was a metre and a half.

317. THE CHAIR: Yes. I think he said 1.5 to two metres.

318. MR KATKOWSKI KC: I am not sure we ever got the two, but anyway, whatever we got, the tightest point between the Buxton memorial and the ledge of the stone bench, which is to the right and the left of the memorial, is 2.2 metres.

319. BARONESS SCOTT OF NEEDHAM MARKET: Sorry, could you just clarify for me—is that the edge of the memorial or the edge of the security fence?

320. MR KATKOWSKI KC: No. If you have the plan, it is the edge of the—

321. BARONESS SCOTT OF NEEDHAM MARKET: No, I do not have it and I am not going to start.

322. MR KATKOWSKI KC: Okay. The dimension of 2.2 metres is from the nearest edge of the bench, upon which one would sit if one wished to do so, and the memorial itself.

323. BARONESS SCOTT OF NEEDHAM MARKET: Right.

324. MR KATKOWSKI KC: Now the space between the two—this is the Buxton memorial, sorry.

325. BARONESS SCOTT OF NEEDHAM MARKET: Sorry. No, that is what confused me.

326. MR KATKOWSKI KC: Yes. The tightest dimension is just over two metres between the edge of the bench and the memorial. On the other side, on the Holocaust memorial courtyard side of the Buxton memorial, there is no bench and the closest dimension between the railings—that is to say, what will stop people jumping into the courtyard—and the Buxton memorial is 2.4 metres.

327. BARONESS SCOTT OF NEEDHAM MARKET: Yes. I have that. Thank you.

328. LORD HOPE OF CRAIGHEAD: The ground that is stippled beyond the bench, going in the northerly direction, is that just grass?

329. MR KATKOWSKI KC: That must just be grass.

330. LORD HOPE OF CRAIGHEAD: Right. You see, if the bench is there and people are sitting on the bench, admiring the fountain and so on, it is not giving a lot of people

who are walking round space to pass between them, is it?

331. MR KATKOWSKI KC: No. I understand that point, my Lord. Sorry, it is planting. Grass and planting is the stippling. My Lord, our only point on this is that this is the planning proposal that is in the system. Your request to us referred to preference for eight metres. We have put an eight-metre dimension on the drawing and I appreciate that one might not want to look at the drawing now, but if you just imagine drawing a semicircle following that eight metres around, you can see that would involve a major replan of our proposals.

332. LORD HOPE OF CRAIGHEAD: Yes. For myself, I would not expect that of you, going round the memorial, but just a little more space for people, because one of the things is to look at it, to study it and appreciate the design and read the notices, because there are notices around explaining what the memorial is all about.

333. MR KATKOWSKI KC: Yes. No, please do not get me wrong; I understand the point. Part of the consideration in all of this was that the decision was made relatively early on in this process of the planning proposals not to move the Buxton memorial. That point was raised earlier on in these proceedings. With that decision made, these are some of the consequences of that decision.

334. LORD HOPE OF CRAIGHEAD: Yes.

335. LORD JAMIESON: Sorry, as a point of clarity, on the map there is a dashed line, which goes a lot closer. I am not quite clear what that is. I cannot quite read it. It says “building” something.

336. MR KATKOWSKI KC: That is what is going on underground.

337. LORD JAMIESON: That is the underground.

338. MR KATKOWSKI KC: Yes.

339. LORD JAMIESON: My concern is the enjoyment of the Buxton memorial, which looks a little bit shoehorned in under this, and part of it, certainly from my perspective, was to give a bit more space around it—I appreciate the dynamics of the place—and whether that is something that we can ask for some reflection and assurance on, because

2.2 metres, which is, in colloquial terms, three abreast, is not that big a space to enjoy the memorial.

340. MR KATKOWSKI KC: Yes. I entirely understand the point. Please do not get me wrong and we are perfectly happy to give the assurance that you have sought. It is not digging our heels in. We are just explaining the practicalities in relation to the eight metres reference. That is the point, because that would involve a major redesign of our project.

341. LORD JAMIESON: The eight metres I understand but 2.5 metres and eight metres are distinctly different.

342. MR KATKOWSKI KC: No, I understand.

343. LORD JAMIESON: Also, what is the security fence? If it is a nicely designed—

344. MR KATKOWSKI KC: They are railings here, my Lord. This is not a security fence. These are railings here at the Buxton memorial.

345. LORD JAMIESON: No, between the Buxton memorial and the Holocaust memorial.

346. MR KATKOWSKI KC: We have this. It was on one of the slides. The treatment of this area was on one of the slides that we had. We can double check.

347. LORD JAMIESON: My point being—

348. MR KATKOWSKI KC: I understand the point.

349. LORD JAMIESON: You still have to do the detailed design and if we find it is a solid, very different thing from a nice cast-iron railing—

350. MR KATKOWSKI KC: No, I completely get the point. Yes, absolutely. No, I understand.

351. THE CHAIR: Anyway, you are content to give—

352. MR KATKOWSKI KC: We are content to give the assurance. We are simply saying that we are not going to be able to do eight metres without a major redesign of

the project.

353. LORD JAMIESON: No.

354. MR KATKOWSKI KC: I will discuss this with those instructing me but not now.

355. THE CHAIR: It says, “preferably eight metres”.

356. MR KATKOWSKI KC: Yes.

357. THE CHAIR: That is the preference, as long as the promoter considers it.

358. MR KATKOWSKI KC: Yes.

359. THE CHAIR: We will come back to what that means in a minute.

360. MR KATKOWSKI KC: Indeed.

361. THE CHAIR: All right. Anything else under 8?

362. MR KATKOWSKI KC: Not from me, my Lord. No. Number 9, you have asked for an undertaking. This is security checks, et cetera. We have simply said that we do not have the wider parts of the Victoria Tower Gardens under our control, so we can give an assurance.

363. BARONESS SCOTT OF NEEDHAM MARKET: Sorry, I wanted to ask a question about that, because, while, of course, it is true that you do not have control of the wider gardens, if it came to security checks, I can see no reason why there would ever be security checks, except in relation to the Holocaust Memorial and Learning Centre. There are not any now, so exactly where the checks take place is one thing, but an undertaking that they would not be required—that is what we seek. Someone who just wants to come and have a walk round the park in their lunch break or something is not going to suddenly find they are having their bag searched, and, in a way, just saying, “It is not up to us what happens up by the Pankhurst”—it would be required only by the memorial and learning centre, would it not?

364. MR KATKOWSKI KC: Yes. I am sorry. I did not mean to talk over you. I am so sorry.

365. BARONESS SCOTT OF NEEDHAM MARKET: No.

366. MR KATKOWSKI KC: We would not be at the gates into the gardens. That is the point. We would be at the entrance pavilion. That is our part.

367. BARONESS SCOTT OF NEEDHAM MARKET: Let me put it round the other way. What we would want to see is an undertaking or assurance that the people running the Holocaust Memorial and Learning Centre would not require security checks to be carried out on people who were not visiting said memorial, wherever it takes place.

368. MR KATKOWSKI KC: That is what we have sought to capture in our assurance.

369. BARONESS SCOTT OF NEEDHAM MARKET: Yes.

370. MR KATKOWSKI KC: Yes. The only sticking point here is just converting this into an undertaking in relation to a part of the gardens that will not be under our control. That was the sticking point.

371. BARONESS SCOTT OF NEEDHAM MARKET: Yes. No, that is fine.

372. MR KATKOWSKI KC: The essence of the point is—

373. BARONESS SCOTT OF NEEDHAM MARKET: Yes. No, that I understand. It is just such checks would not be required anywhere in the garden other than at the behest of the memorial and learning centre.

374. MR KATKOWSKI KC: Yes, but we are not the police, are we, my Lady?

375. BARONESS SCOTT OF NEEDHAM MARKET: They are not checked now. There are no security checks now.

376. MR KATKOWSKI KC: No, exactly. They are not checked now.

377. THE CHAIR: This sentence is lifted from one of Pinsent Masons' letters, word for word.

378. MR KATKOWSKI KC: Yes, exactly, and we have sought to play that back but as an assurance, rather than an undertaking.

379. THE CHAIR: It is a letter of 25 November.

380. MR KATKOWSKI KC: Indeed.

381. THE CHAIR: They say the current situation is that tickets free of charge will be required and security checks will take place only to access the entrance pavilion—

382. MR KATKOWSKI KC: That is right.

383. THE CHAIR: —in order to enter the HMLC. There is no intention to restrict—

384. MR KATKOWSKI KC: We are not reneging on that at all. We are just saying it would need to be an assurance, rather than an undertaking. If you consider otherwise, then doubtless you will tell us in due course.

385. THE CHAIR: Lady Scott, would you like some further wording in there?

386. BARONESS SCOTT OF NEEDHAM MARKET: No. I suppose I was just struck by an argument that says, “We can’t have an undertaking because this part of the garden isn’t under our control”, when, in fact, the driving force behind the security check would be the memorial and learning centre. Maybe we can discuss this among ourselves.

387. THE CHAIR: Okay.

388. MR KATKOWSKI KC: Yes. Thank you.

389. THE CHAIR: You would have no difficulty with this being an undertaking.

390. MR KATKOWSKI KC: An assurance.

391. THE CHAIR: No, an undertaking, if, as is being suggested by Baroness Scott, we restricted the opening parts to actions or decisions of the body that is managing the HMLC.

392. MR KATKOWSKI KC: Yes. I would have to take detailed instructions, but our off-the-cuff response is that that would seem appropriate, yes.

393. BARONESS SCOTT OF NEEDHAM MARKET: Yes. Thank you. My absolute concern is that people who live locally or who want to go and visit do not find

themselves subject to checks.

394. MR KATKOWSKI KC: We do not want that either, my Lady.

395. THE CHAIR: All right. We may add that back in. We will have to discuss it.

396. MR KATKOWSKI KC: Yes.

397. THE CHAIR: We may add back an undertaking but we will limit it to those who are managing.

398. MR KATKOWSKI KC: Yes.

399. THE CHAIR: We will have to work it out.

400. MR KATKOWSKI KC: My Lord, forgive me; we have no issue at all with that. If you like, in tomorrow's missive, we can include some words to capture the point that my Lord and my Lady have made to me.

401. THE CHAIR: All right.

402. MR KATKOWSKI KC: Where are we? Number 10.

403. THE CHAIR: Yes.

404. MR KATKOWSKI KC: What is this to do with? This is a recommendation on the amount of time that the garden should be closed. You recommend that it should be taken forward by us with the Royal Parks and so on and so forth. Yes. We are perfectly content with that. Your recommendation that we should take X, Y and Z forward as spelled out in your recommendation—yes, we will. We have no issue with that. We do not accept that it should be written in, if you like, that there should be some number of days because that is all for the future.

405. THE CHAIR: No.

406. MR KATKOWSKI KC: Number 11. Really, we refer back to our paragraph 7 assurance, which we have discussed earlier on, so that is really—

407. THE CHAIR: Yes.

408. LORD HOPE OF CRAIGHEAD: Again, you use the word “construction” there, rather than the word “extension”, which is in Clause 1.

409. MR KATKOWSKI KC: Yes, and we have used “construction”, forgive me, because it is defined in the Bill. We are in this loop again, I am afraid.

410. LORD HOPE OF CRAIGHEAD: Right.

411. MR KATKOWSKI KC: Yes. That is the problem as it is a defined term. Number 12.

412. THE CHAIR: Number 11, you have no objection. You just say it is unnecessary.

413. MR KATKOWSKI KC: We say it is unnecessary because, as far as we are concerned, it is covered by 7.

414. LORD JAMIESON: You are happy with it. You do not have an objection.

415. MR KATKOWSKI KC: Yes, and the recommendation was that consideration should be given to amending and our view is that—you will understand that, between Friday afternoon and midday on Monday, the very full process that we need, which literally takes weeks, if not longer, to consider amendments, et cetera, has not happened and so this is our initial view that there is no need for such an amendment; first, because it is covered by the assurance, and, secondly, because of the way in which the Bill works in any event. You do not need to amend the Bill because the Bill does not remove the protection of the 1900 Act from anywhere else other than where the memorial—

416. THE CHAIR: It is really 7 that has dealt with that.

417. MR KATKOWSKI KC: That is right.

418. LORD JAMIESON: In which sense—I do not know the formal title—would you be happy to issue a clarification note to confirm that that is the case?

419. MR KATKOWSKI KC: Yes, this is what we were discussing earlier on. It seems like a long time ago, but it is a point that was raised by Lord Etherton on the very opening day of these proceedings. This is all very interesting, this territorial stuff, but the Bill is self-regulating, because we can only ever remove the obstruction of the 1900

Act from a place where we have planning permission to build something.

420. Number 12, you have asked for an undertaking, and we are giving an undertaking. There seemed to be some confusion here on the petitioner's part, but item 1 of the undertaking refers to representations to the Secretary of State in relation to the security considerations, "and in doing so, provide updated evidence". That updated evidence would fit the bill for whichever process the Minister decides to follow. That is the point, because evidence is evidence, whether it is spoken to at a public inquiry or is in a written document or otherwise.

421. LORD HOPE OF CRAIGHEAD: Point 2.

422. MR KATKOWSKI KC: Point 2.

423. LORD HOPE OF CRAIGHEAD: This is, "Before submitting to the Secretary of State representations", and so on, "the promoter will consult various people".

424. MR KATKOWSKI KC: Yes. We have to do that.

425. LORD HOPE OF CRAIGHEAD: Then it says, "and will have regard to any comments they may make". Could you go further and say that you would transmit any such comments to the Secretary of State? I know that there is a Chinese wall that exists here, of course, but to an extent we are talking about the same person. It is quite important that those representations are not buried under just consideration by the promoter. The Secretary of State needs to see them too, does he not?

426. MR KATKOWSKI KC: They would not be buried, my Lord, no.

427. LORD HOPE OF CRAIGHEAD: Could you just clarify that point?

428. MR KATKOWSKI KC: If the Metropolitan Police says, in relation to our proposals, whatever it says, then that will all be in the public domain.

429. LORD HOPE OF CRAIGHEAD: It will be made known to the Secretary of State.

430. MR KATKOWSKI KC: Yes. I cannot see how it would not be, to be quite frank.

431. LORD HOPE OF CRAIGHEAD: It is a slight adjustment to the wording because at the moment it just says, "The promoter will have regard".

432. MR KATKOWSKI KC: Yes. No, I understand.

433. LORD HOPE OF CRAIGHEAD: The Secretary of State should have regard as well.

434. MR KATKOWSKI KC: Indeed, and the way these things work in practice, if I might, is that you consult with someone, the Metropolitan Police, for example, and it says, “We think you should make this adjustment”, or, “Your security plan needs that adjustment”, whatever it might be. The person who is promoting the planning application then says, “Yes, thank you very much indeed. We will make that adjustment or we will make some other adjustment”. Then there is another response. Sorry, this is my day job. Whenever you make a planning application, you consult with people. You explain how whatever has been said to you has been either taken on board or it has been developed in some different way. Then you have gone back to the parties, raised the point, and on and on it goes, and that is all documented. I cannot see any issue. This would not be secret.

435. LORD HOPE OF CRAIGHEAD: You are really saying there is a dialogue that takes place over some time.

436. MR KATKOWSKI KC: Yes, exactly. It is not frozen. It is frozen only when you get to the end of the process, if you like. These various bodies will say something and, if changes need to be made, then those changes will be made. Then you go back to that body and they say, “Well, thank you very much indeed. We are now happy”, or, “We are still unhappy and we want you to do something else”, and on and on it goes.

437. Where are we? Number 13. You have asked us to give serious consideration to a Lord Carlile-style amendment. We are happy to give serious consideration to it. We have set out our initial views. Forgive me; they are initial views because, in the time we have had, we have not been able to go through the full process in relation—

438. THE CHAIR: Some of the wind is taken out of this if you give an assurance.

439. MR KATKOWSKI KC: Yes, indeed.

440. THE CHAIR: With the assurances that we talked about this morning, at least one of the aspects of Lord Carlile’s concerns is taken away, which is that everybody will

know what is happening and will be able to see exactly what the Secretary of State is doing.

441. MR KATKOWSKI KC: That is right.

442. THE CHAIR: I am not by any means—and it is not for me to do—abandoning Lord Carlile’s matters, but the assurances, to an extent, soften the importance of it.

443. MR KATKOWSKI KC: Yes, coupled with the undertaking in the previous paragraph, paragraph 12, because that is all about security as well.

444. THE CHAIR: Yes.

445. MR KATKOWSKI KC: Yes. Thank you. That was number 13. Number 14 is about having an independent body to run the HMLC, et cetera. If you look at the last bullet point on page 29.8, the whole idea here is that there should be two bodies, one for the memorial and learning centre, and whoever it is who is managing the rest of the gardens, so we are content to give an assurance.

446. THE CHAIR: Why can you not give an undertaking? Just remind me.

447. MR KATKOWSKI KC: Because we can give an assurance only about our side of this. That is the issue.

448. THE CHAIR: I see.

449. MR KATKOWSKI KC: That is the point.

450. LORD JAMIESON: Can you not give an undertaking that you will not run the park? You are saying you cannot give an undertaking for the other half, but you can give an undertaking that you will do only your half.

451. MR KATKOWSKI KC: We will do our bit.

452. LORD JAMIESON: If you are doing only the memorial, by definition, someone else has to do the other bit.

453. MR KATKOWSKI KC: I take the point. Indeed.

454. THE CHAIR: That is the undertaking we have asked for. An independent body will be established to operate and run the HMLC, whose remit is limited to the area occupied by the HMLC.

455. MR KATKOWSKI KC: If one stopped just a few words short, the assumption that is made at the end, because who knows quite who is going to be managing the rest of the gardens, but I take the point entirely.

456. THE CHAIR: I think you accept you can provide an undertaking on that.

457. MR KATKOWSKI KC: As I understand it, we will be able to undertake in relation to our—

458. THE CHAIR: Orbit, yes.

459. MR KATKOWSKI KC: Yes.

460. THE CHAIR: Number 15.

461. MR KATKOWSKI KC: Bear with me. Your recommendation is one with which we agree. The only caveat is your wording, “Before any further planning approval is sought”. With great respect, that might be slightly loose language, because the planning approval is there in the system being sought. Obviously, as part of any taking forward of our planning application, once the process is reactivated, it is like security. Obviously, we are going to have to provide evidence on our position between vis-à-vis us and R&R, and so on and so forth. It is just like security. We are not going to be able to brush under the carpet the fact that there is this other project.

462. LORD JAMIESON: My concern in planning terms is that you can consider only what is on the table, so to speak. If R&R is an event that may happen and it is not clear what exactly it will require, then, frankly, it is ignored and R&R will then have to fit in with the memorial. One of our concerns is that that may have a massive impact that has not been considered thus far, and therefore a need to be somewhat more proactive than in a normal planning process in the sense that the promoter goes out and encourages, is more definitive in establishing exactly what R&R may need.

463. MR KATKOWSKI KC: We can use our endeavours, best or whatever, to tease

out of those responsible for the R&R project exactly what it is that is proposed or exactly as much information as they can give us, and that is what we would seek to have. The R&R is somewhat inchoate. Obviously, the planning process has to work on the basis of whatever can be found out about whatever future projects there might be, and you work on that basis. Conditions and planning obligations will seek to control the interaction of our project and R&R.

464. THE CHAIR: All we are asking for here is that consideration be given as to how.

465. MR KATKOWSKI KC: Yes. Indeed. We agree. We are not fighting.

466. THE CHAIR: You had a point there about “before further planning approval”. What is wrong with that?

467. MR KATKOWSKI KC: Because we already have our planning application in the system. There is no further planning approval. It might seem tremendously pedantic, but the language is not quite right, if you do not mind me saying.

468. LORD HOPE OF CRAIGHEAD: You used the words “taken forward”.

469. MR KATKOWSKI KC: Yes. This is all to do with the reactivation of the planning process, so patently, once that is reactivated, we will have to deal with all of it, of course.

470. THE CHAIR: Yes.

471. BARONESS SCOTT OF NEEDHAM MARKET: One of the things that have really been brought home to us in the last few weeks has been that it is clear that dialogue is taking place between the promoters and people in this place on R&R, but what this committee is looking at is something a little different, which is where the needs of the local people come into this. It is possible to imagine a dialogue taking place that is about moving earth around, but that no one is really going to be looking after the interests of the local people. Perhaps we need to reflect a bit more on how we can capture that, but that is really our point. We cannot expect the promoters to have a crystal ball as to what will happen with R&R, but what we do want to know is that people who use and value the park are not forgotten.

472. MR KATKOWSKI KC: I understand. Yes.

473. THE CHAIR: Can I change it to the following? Would this be appropriate? “We recommend that before any further planning approval is sought on the restoration of the current planning application...”

474. MR KATKOWSKI KC: No, I am really sorry to be—this must sound so pedantic. The planning application is there. It is with the Minister. If the Minister just blew the dust off it, whenever he blows the dust off it, he can get on and decide it, after he has worked out what process to follow. There is no further planning approval. There is a planning application, which is front of the Minister, waiting to be redetermined.

475. LORD JAMIESON: “Before the current planning application is reactivated”.

476. LORD HOPE OF CRAIGHEAD: “Taken forward”.

477. MR KATKOWSKI KC: “Taken forward” is probably—yes.

478. THE CHAIR: We are dancing on the head of a pin, I feel.

479. MR KATKOWSKI KC: We are on the head of a pin, my Lord, yes. I agree.

480. THE CHAIR: “Before any further planning approval is sought”.

481. MR KATKOWSKI KC: No. “Before the planning application for the Holocaust Memorial and Learning Centre is”—

482. THE CHAIR: “Before the current planning application”—

483. MR KATKOWSKI KC: Yes, “before the current planning application”—what was the wording?

484. LORD HOPE OF CRAIGHEAD: “Taken forward”.

485. MR KATKOWSKI KC: “Taken forward”. That is right. We are settling on “taken forward”. We do not like drafting on the hoof.

486. THE CHAIR: It is “taken forward”, “detailed consideration”.

487. MR KATKOWSKI KC: We will think about the exact wording overnight.

488. THE CHAIR: All right. That is fine. I am not sure it makes much difference but there we are.

489. MR KATKOWSKI KC: No. I like ending on a bit of pedantry, my Lord.

490. THE CHAIR: Right. That deals with these specific points. Do you want to add anything now?

491. MR KATKOWSKI KC: There is only one point I want to add. I am not going to go back over all the things that have been discussed over the previous weeks because—

492. THE CHAIR: It is my fault. Before you do that, there is one important matter that Mr Doctor raised and that is assurances and recommendations.

493. MR KATKOWSKI KC: Yes.

494. THE CHAIR: What he is concerned about on behalf of his clients is that, okay, without any publicity, public explanation or otherwise, the Secretary of State does give further thought to the various matters and you have given us the assurances, but how are they to be monitored? How is it to be enforced? An undertaking, as I understand it, is given to the Senior Deputy Speaker, and I am not quite sure who he will be and whether he will still be around, but it is given to someone.

495. MR KATKOWSKI KC: Yes.

496. THE CHAIR: Now, I do think we need to spell out what this means when we say an assurance is given. I am certainly not going to be around in years to come. It is no good you saying you gave it to me. I do not really wish to go down in history as the person who took these assurances and did nothing.

497. MR KATKOWSKI KC: No, exactly. This was the only other point I wanted to deal with, my Lord. This is the exact point I wanted to deal with, which is this notion that assurances and so on should be policed in some way by—actually, the suggestion is that there should be some amendment to the Bill, so there has to be a reporting stage and both Houses have to say, “We are happy with that”, before the clauses came into effect. We are not going anywhere near that, with great respect.

498. Assurances are long-standing in the system of private Bills and hybrid Bills. There

were hundreds of them on HS2 and the Elizabeth line and so on and so forth. The way they are “policed” or “enforced” is that, if at any stage a Member of either House wishes to ask a question in relation to them, then they ask a question and an answer is given as to what has happened in relation to that matter. In this particular case, where we are talking about the reactivation of a planning process, it would be apparent from your report that we have given various assurances and undertakings and—I will say it, but it goes without saying—that as part of our evidence to the reactivated planning process, obviously we will have to explain how we have dealt with all these various assurances and undertakings that we have given, because it will all be on the public record. We will have to deal with that, because otherwise it would be said against us, “Wait a minute, you gave an assurance to the committee in the Lords that you would do X, Y, Z. Have you done X, Y, Z?” We would have to explain how we have done that. This would be self-policing here, through the planning process.

499. THE CHAIR: You say it is through the planning process that we will see whether or not you have given effect, or the promoter has given effect.

500. MR KATKOWSKI KC: That is the failsafe, my Lord. That is the long-stop failsafe. Before that, normal parliamentary process for an assurance is that, if a Member of either House wishes to table a question in relation to, “You gave an assurance. Can you explain what you have done in relation to this assurance?”, that is the way it works. Those are assurances. It is just the Secretary of State’s accountability to Parliament. That is the way it works. You should not go anywhere near, with great respect, contemplating discriminating against this project by bringing in a statutory provision that would be—

501. THE CHAIR: I was not thinking of doing that.

502. MR KATKOWSKI KC: No. Thank you.

503. THE CHAIR: I was not thinking of putting it in the statute.

504. MR KATKOWSKI KC: That was what was being asked.

505. THE CHAIR: It was just a non-statutory way that we could—

506. MR KATKOWSKI KC: Fine.

507. THE CHAIR: It is all about reassurance.

508. MR KATKOWSKI KC: Those are the non-statutory ways, and indeed the undertakings have their own way of being enforced under Standing Order 130 in this House, but assurances would be policed, if you like, checked and verified, in the normal way for every assurance that has ever been given on any private or hybrid Bill, and that is through the accountability of the Secretary of State, or the promoter of the Bill who has given these assurances, to Parliament.

509. THE CHAIR: Ultimately, we will see whether they are incorporated in any submissions made on the planning process.

510. MR KATKOWSKI KC: I have no hesitation whatsoever in assuring you—this being my specialist field—that in our evidence to any reactivated planning process we are going to have to explain how we have carried through the assurances that we gave on security, on the playground, on whatever else it might be that we have given assurances about. If we do not, someone will say, “What about your assurance that you gave? How have you dealt with that?”

511. THE CHAIR: The same for recommendations.

512. MR KATKOWSKI KC: The same for recommendations, yes. It depends what the recommendation is, but, if the recommendation is something about the project, yes. Of course, if it is about amendments, then the Secretary of State will consider whether or not to have an amendment or otherwise.

513. THE CHAIR: Does any other member wish to comment on that? No. Right. Anything further?

514. MR KATKOWSKI KC: No, my Lord, and thank you very much indeed for listening to me for so long.

515. THE CHAIR: That is all right. Subject to the matters you are going to write to us about tomorrow, that means the end of submissions in this case, and we have already heard all the evidence.

516. MR DOCTOR KC: My Lord, can I just say one thing, so that you do not close

before I have said it? My learned friend has said that he is going to submit to you tomorrow a list of the more formalised assurances, undertakings, et cetera.

517. THE CHAIR: I think these are additional. They are all additional assurances he is going to give.

518. MR DOCTOR KC: Yes.

519. MR KATKOWSKI KC: They are, my Lord. There are two things. It is the extra assurances that were asked for this morning, but also do you recall where we put bullet points in our annexe 3? We will just write that up, top and tail them as proper assurances, so that they look in the right form.

520. MR DOCTOR KC: I will not be in a position to deal with that tomorrow. I would ask for permission that we can deal with this next week, when I have landed, as it were, and send you any comments we have—if we have any comments. We are not going to repeat ourselves, but it may be that we could point out that there are various aspects that we think you should take account of.

521. MR KATKOWSKI KC: When next week?

522. MR DOCTOR KC: Because of the time change, I arrive on a Saturday morning, so I would say by Tuesday or Wednesday.

523. MR KATKOWSKI KC: With the greatest respect, is this not now where you are, in effect, drawing a line? With respect, otherwise we will be commenting on the comments.

524. THE CHAIR: The assurances are new assurances you asked for.

525. MR KATKOWSKI KC: Two of them are.

526. THE CHAIR: They are not subtracting from anything that is already there. You will have to rely upon our good sense, Mr Doctor. If there is something that we feel we will be helped by you on, or we feel that you and your clients ought to know about, then it would be wrong to count out the possibility of contacting you, but if these are matters that we feel are clear and do not detract from, but rather add to, your protection, as is intended, then we have to draw the line at this point. We are drawing the line, but I am

just allowing for the possibility in our judgment as to whether or not we need to contact you.

527. MR DOCTOR KC: Thank you.

528. THE CHAIR: Are you content with that? Is everybody content with that?

529. BARONESS SCOTT OF NEEDHAM MARKET: Yes.

530. THE CHAIR: I am afraid I do not think that you will be hearing from us further, not in a public session anyway. You might hear something in relation to correspondence or emails or whatever, but this ends the public session. We now have to go away and decide what we are going to do. We will be writing a special report in relation to this matter. I would like to express my gratitude on behalf of myself and my colleagues on the Select Committee for all the contributions that have been made in what has been, quite rightly, a matter of great concern on both sides. That includes, of course, those who are unrepresented who made submissions as well. With our expressions of gratitude, you will see our full answers in due course.

531. MR DOCTOR KC: Thank you.

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