

MINUTES OF ORAL EVIDENCE

taken before the

UNOPPOSED BILL COMMITTEE

on the

MONKEN HADLEY COMMON BILL

Monday 14 March 2022 (Morning)

In Committee Room 4

PRESENT:

Lord Gardiner of Kimble (Chair)

IN ATTENDANCE:

Alastair Lewis, Agent for the Bill

Ché Diamond, Counsel

Mark Cooper

Christine Salmon Percival

WITNESS:

William Osborn Boyes, Clerk to the Churchwardens of the Parish Church of Monken
Hadley, in the County of Middlesex

IN PUBLIC SESSION

(At 10.30 a.m.)

1. THE CHAIR: Welcome to the Unopposed Bill Committee. I am Lord Gardiner, the Senior Deputy Speaker, and on my right is Ché Diamond, counsel. These proceedings are being broadcast and transcribed. The transcript will, as usual, be put on the parliamentary website in due course. May I ask Mr Lewis to introduce the Bill and to describe its main provisions?

2. MR LEWIS: Good morning, my Lord, and thank you very much. I am the parliamentary agent for the promoters of the Monken Hadley Common Bill, who are the Churchwardens of the Parish Church of Monken Hadley in the County of Middlesex. To my right sits Mr William Boyes, who is the clerk to the churchwardens. With your permission, my Lord, I intend to take you through a very short introduction to the Bill and then through the clauses of the Bill, describing them briefly, pausing where appropriate to introduce Mr Boyes to give us a bit more factual background behind the Bill, so as to ensure that you all the information that you need to satisfy you, I hope, in these proceedings.

3. I will start with a very short summary of what this Bill does. It allows for the transfer of Monken Hadley Common from the churchwardens to a trust called the Monken Hadley Common Trust. At the same time as that happens, the opportunity is being taken to modernise the legislation that applies to the common and that dates back to 1777.

4. I hope in advance you have been sent a very short pack of maps and photographs. You will see from the photographs that it is a largely wooded area. The size is about 74 hectares and it provides a vital habitat for flora and fauna, which is used for recreational purposes by the general public. You may be able to see from the plan that the common has public highways crossing it and that the east coast main line railway bisects it. There is a footbridge that crosses it, linking up the two parts of the common.

5. I will say a little bit about existing statutory protection. The common is registered as a common and is therefore afforded protection under the Commons Act 2006 and other legislation. For example, any works that have the effect of preventing or impeding access over the land require the consent of the Secretary of State. It also means that individuals who are registered commoners still have the right to graze their animals on

the common, but you might be surprised to learn that in north London there are not many cattle and sheep around. There certainly are not any on the common at the moment, I think, Mr Boyes. That does not mean that, in the future, the registered commoners are prohibited from doing so if they so wish.

6. Other protections include conservation area status, tree preservation orders and other local protections. The Bill does not affect any of these protections and rights.

7. The common is owned by the churchwardens as trustees in perpetuity for the benefit of the commoners. In practice, because of the statutory protection already afforded to the land, there is no monetary benefit in being a commoner. All income that the churchwardens gain is either reinvested in the upkeep of the common or kept in a fund to deal with extraordinary expenses, such as promoting private legislation, which is probably the most extraordinary expense that the churchwardens have had to incur for many years.

8. MR BOYES: Yes—ever.

9. MR LEWIS: I will deal with consultation next. The known and unknown commoners, local interest groups and others, including the Open Spaces Society, were all consulted in summer 2019, before the Bill was deposited. Of those who responded, the vast majority were supportive of what the churchwardens wish to do. The Charity Commission has taken an interest in the Bill of course. There have been constructive discussions with the commission, which have led to the promoter agreeing a number of amendments in the House of Commons, which are now included in the Bill.

10. Because the Bill affects charitable interests, this committee could not have considered the Bill until the Attorney-General had reported on it. The Attorney-General's report was contained in a letter of 27 October 2020 from the Solicitor-General to your predecessor. It said that there is nothing in the Bill that he wished to draw to the attention of the committee. The Bill was sent to all the other government departments in the usual ways, including Defra, and none of them has reported on the Bill.

11. I will give a very short bit of history. The Enfield Chase Act 1777, which I referred to earlier, divided up a former royal hunting ground into various parts of land, including the common. Ownership of the common was vested in the churchwardens by

the 1777 Act, on trust for the commoners, as I mentioned. The common was used for grazing until the middle of the 20th century, but since then has been used exclusively for public recreation.

12. It is now managed by a management committee on behalf of the churchwardens. There is an existing five-year management plan, which runs until this year. Mr Boyes can explain a little bit that the intention for this is that the management plan be kept in place until the trust formally takes over. Perhaps he can explain a little more about what will happen after then and maybe mention a little bit about the proposed membership of the trust as well, which will help to keep the management of the common going in perpetuity.

13. MR BOYES: One of the problems that we have been facing is that, certainly since grazing ceased, the commoners, of whom there are about 100, have taken no interest whatsoever in the common. They used to be actively involved in the management and have regular meetings with the trustees. There are two or three now who have taken interest. One of the objectives of what we are proposing is the charity will have a membership and we would very much hope to encourage local interest, which, as I say, disappeared when the commoners no longer had any real benefit from the common.

14. We would hope to have 100, 200 or 300 members, as many as we wish. It is very much our intention to bring in the local community, not to manage it but to oversee it and make sure that the management side is undertaken properly.

15. MR LEWIS: Are you able to say a little more about the local interest in the running of the common as well, over the years?

16. MR BOYES: We have about 30 volunteers at the moment who work in the woods or on the management committee. I am one of them. I do a bit of both. I like being in the woods, doing the practical side. That has built up over the last 20 to 30 years, because we used to get grants from the two local authorities. One was the London Borough of Barnet, as the common is within Barnet, but we also had a grant from Enfield. Those ceased in the late 1990s. The people involved then set up the Friends of Hadley Common as a charity. That has been a very significant source of income for the common and that will hopefully be absorbed into the new trust that is being established, so it will just be the one organisation.

17. Certainly, we have an active group of volunteers and we do as much work without charge as we possibly can. Felling of large trees is a professional job and we have a lake with a dam that occasionally requires professional work. Fundamentally, it is looked after by volunteers. It is fully intended that that will continue.

18. MR LEWIS: Thank you, Mr Boyes. We have dealt with finances and management there. My Lord, if you feel that there is anything that has not been covered by me or Mr Boyes, please ask any questions at the end. My intention then was to move on to describing the provisions of the Bill, introducing it clause by clause. While we are doing that, I may ask Mr Boyes to come in and provide a bit more factual background behind each clause.

19. Starting with Clause 2, interpretation, read together with Clause 13, appointed day, you will see that, in Clause 2, there is a definition of the appointed day. A number of the provisions, including the one that effects the transfer of the common to the trust, do not take effect until a day appointed by the churchwardens under Clause 13. In turn, Clause 13 requires that the trust be registered as a charity before the appointed day.

20. We are in a bit of a chicken and egg situation here. The trust applied to the Charity Commission some time ago to become a charitable incorporated organisation, but the commission has said that it wants to make sure that it knows what the final form of the Bill is before agreeing to register it. The commission indicated at the outset of the promotion of the Bill that, unless the Bill was amended in a way that it did not approve of, it would see no impediment to the trust being registered as a charitable incorporated organisation.

21. Mr Boyes can expand on this if required. I know from the correspondence that Mr Boyes has reminded me of that the Charity Commission has been kept informed of the progress of the Bill throughout, including the amendments that were made in the House of Commons Select Committee. It has expressed no indication that it is unhappy with any of the changes that have been made. The position of the churchwardens, as I am sure Mr Boyes will confirm, is that the Charity Commission is content with the Bill as it stands. A number of the amendments that were made in the House of Commons were in response to points that the Charity Commission had made. As I said, it has indicated that, if the Bill is in similar form to that in which it was introduced, it could see no

impediment to the trust being registered. Is that a fair summary, Mr Boyes?

22. MR BOYES: Yes. The hearing before the Commons committee was in November 2020. After that, there were discussions between Mr Lewis and the counsel for the committee. Amendments were agreed and I sent the revised Bill to the commission in May last year. It acknowledged it without making any comments. I have not been in contact since then because nothing has happened, but it raised no objection to the revised form of the Bill.

23. MR LEWIS: I can probably add to that. It is very helpful to add that in my recollection as well, before the Bill was deposited, there was quite a significant number of exchanges with the commission, in which I was involved and copied, with drafts of the Bill for it to look at as well. Throughout, there was no indication that there was any need for us to be concerned that, at the end of this process, we might end up with the Charity Commission saying, “That is all very well, but we are not going to register you”. That is not something that we feel is likely to happen at all.

24. I was not going to mention any of the other provisions of Clause 2, because obviously the appointed day provision is a very important provision in the way that this whole Bill works. Moving on to Clause 3, which is another important clause, the primary objects, you will see that Clause 3 sets out two primary objects that the trust must have on its incorporation as a charitable incorporated organisation and afterwards. I am not going to read them out. They are there for you to read, my Lord.

25. A number of amendments to this clause were made in the Commons to meet points raised by the Charity Commission, as I have just suggested. The Bill as deposited would have imposed a specific duty on the trust to use its reasonable endeavours to exercise its functions in a manner that ensures the primary objects are met. The Charity Commission’s concern was that this would clash with the trust’s general duties to comply with its objects under charities law, so, at its behest, we removed that duty and explained that to the committee in House of Commons.

26. One of the other amendments makes clear that any alteration to the objects of the trust would require the consent of the Charity Commission. Another one made in the Commons ensures that the trust will have the primary objects as its objects on the appointed day, which is the point that I have just raised in the chicken and egg situation.

That was something that the Charity Commission asked us to put in.

27. Moving on to Clause 4, transfer of ownership, this will effect the transfer of the ownership of the common to the trust on the appointed day, free from the trusts that I mentioned earlier. It makes clear that, while the common is in the ownership of the trust, it must remain a charity. Subsection (4) was added in the Commons. It will require a restriction to be entered in the Land Registry on any registerable disposition of the common, ensuring that any future transferee must be a charity as well.

28. Clause 5 would bring to an end the statutory incorporation of the churchwardens. It would not mean that the churchwardens would disappear. They would still carry on their ecclesiastical responsibilities.

29. Clause 6 disapplies the provisions of the 1777 Act, which are no longer required. For example, Section 60 of the 1777 Act is about the making of rules. It requires rules to be approved by the commoners, but the problem with it is, first, identifying who all the commoners are and, secondly, attracting any interest from them. It is far better if the people who are actually interested in the maintenance of the common, the trustees, are responsible for governing it.

30. That brings me on to Clause 7, management of the common, which gives responsibility for the management of the common to the trust as from the appointed day. It allows the trust specifically to do works to the common, including the construction of buildings and other structures. I should stress that this is all subject, as I have mentioned earlier, to the statutory controls under the Commons Act 2006. That is made clear in subsection (3) of Clause 7.

31. I am going to explain a little bit about how the Commons Act works, if that is okay with you, my Lord, because it is important to explain how inappropriate development is so unlikely to happen on this common and, in fact, on any registered common. Section 38 of the Commons Act 2006 says that a person may not, except with the consent of the appropriate national authority, in this case the Secretary of State, carry out any restricted works on common land. Restricted works is defined—and I paraphrase here a little—as works that have the effect of preventing or impeding access to or over common land and works for the resurfacing of land. Furthermore, works that have the effect of preventing or impeding access is further defined to include the

erection of fencing, the construction of buildings and other structures, the digging of ditches and trenches, and the building of embankments.

32. For any building or fences, the trustees or their successors are likely to require the consent of the Secretary of State. I would suggest that, in the unimaginable circumstances of the trustees requesting consent for, say, a housing development, the Secretary of State would be certain to refuse. That is because the Secretary of State has to have regard, under the legislation, to a number of things in making the decision, including the public interest. Section 39 of the Commons Act gives further guidance as to what the public interest includes. It includes nature conservation, the conservation of the landscape, the protection of public rights of access, and the protection of archaeological remains and features of historic interest.

33. In addition to that safeguard, any application for consent would have to be advertised and a public local inquiry could be held if there were sufficient objections as well. That is the Commons Act. In addition to the Commons Act, there is of course the requirement to obtain planning permission. Existing mayoral and borough policies, unsurprisingly, discourage development of public open spaces. On top of planning, there is the restriction in Clause 9 of the Bill, which I will come on to, on the length of leases that can be granted over parts of the common, which is seven years. There is Clause 12, which ensures that any future transfer of the common, as I have mentioned earlier, must be to another charity, which, in turn, must have the primary objects.

34. In summary, it is very difficult to imagine inappropriate development taking place with all those restrictions in place. Mr Boyes can perhaps answer the question as to, with all those restrictions in place, what possible buildings, for example, the trustees might need to construct on the common, perhaps with a bit of reference back to what has and has not been refused before. He could perhaps give you a bit more factual background to that.

35. MR BOYES: The current buildings are two sheds, one of which is for the volunteers to hold their tools. The other one is for the cricket club, which has been playing on the common on and off since about 1840. It gets a mention in one of Trollope's novels; if you are interested, I can give you the details. I started my cricket career in the mid-1960s and I was not involved because I spent my time in the pub,

being trained there, but I know that the club asked for permission to build a pavilion, a small one, and that was refused because it would have been on the common.

36. In fact, the two sheds at the moment are not on the registered common land. There are some very small areas that were leased but not registered under the 1965 Act and the two sheds are actually there. I cannot envisage the trustees wanting to build anything more than another shed, if it was necessary, or similar objects. One major purpose of the Bill is to keep the common as it is and there is certainly nobody I know who wants it to be any different. I am very comfortable that, legally and morally, there is no likelihood of any pressure to redevelop the common.

37. MR LEWIS: With that, I will move on to Clause 8, which is easements and other rights. I will deal with this briefly. Clause 8 would most likely be used only to grant a right of access from any new property built on land adjacent to the common in order to provide a right of access to the public highways that run across the common. Existing properties have a right of way of necessity. Subsection (4) of Clause 8 was added in the Commons at the request of the promoter, to ensure that the trust is bound by statutory restrictions on the disposition of land held by a charity.

38. Clause 9 is similar to Clause 8, in the sense that it preserves an existing power, but in modern terms. This is the granting of leases. It will apply only to very small areas of the common that are not actually registered under the 1965 Act. There are one or two very small bits of land, which are in the ownership of the churchwardens, that are not registered common land, I understand, Mr Boyes.

39. MR BOYES: Yes. As I mentioned, these were leased areas, which were leased in 1777 and continued to be leased thereafter, so they were not registered under the Act. They are still leased at the moment. It is probably not for me to say what we will do when those leases expire. It will be after my time as clerk. It has no practical impact on what is done and how the common is managed.

40. MR LEWIS: The power to lease does not actually apply to the vast majority of the common itself, which is registered. Even so, amendments were made in the Commons, again to ensure that the relevant provisions of charities law are complied with when the leases are granted, to give further safeguards. Clause 9 of the Bill was amended further in the Commons to reduce the maximum term of leases from 99 to seven years. This

amendment was put forward by the promoters voluntarily, after reflecting on the extent of the powers actually required, having regard to previous experience. As I said, it is worth noting that Clause 9 applies only to very small areas of land on the fringes of the main common.

41. Clauses 10 and 11 are all about the making of regulations. The effect is to replace the existing rule-making power, which I referred to earlier, with a modern set of regulation-making powers, which are in line with powers held by other bodies that manage open spaces. The regulations must have some bite, so there is an offence provision, which attracts a maximum fine of level 2, which is currently £500.

42. The trustees do not profess to be policemen. If any enforcement were needed, the Metropolitan Police would need to be called upon. It is more likely that the current situation would carry on, Mr Boyes, I think, where it is policing by consent in some ways. If someone is doing something on the common that they are not supposed to be doing, they are asked to stop doing it and usually they will comply. This will provide a little bit of further enforcement ability, which reflects the current position.

43. Amendments to Clause 10 were made in the Commons to meet points raised by the committee about the level of charges that might be made by the trust under its regulations for the use of the common for specified purposes. The amendment ensures that such charges must be reasonable. At that point, Mr Boyes, it might be a good opportunity for you to explain a little bit about what level of charges might be imposed and for what sort of activities.

44. MR BOYES: The church house is owned by the church and there is a very close link between the two. It is immediately on the edge of the common and, in fact, one of the leases is a part of the garden in front of the church house. The church house is just behind the church, so there are weddings and funerals there. We make a charge when parking is needed, £50 to £100, which, particularly in the case of a wedding, is a very modest sum these days.

45. MR LEWIS: That is not per car, I hasten to add. That is for the whole of the car park.

46. MR BOYES: Yes. It is quite a substantial area just beside the church house and

the war memorial. Another regular function would be the school fete. We might charge £50, depending how many people come. The more important charges are for commercial activities. Last week we allowed somebody filming an advert for Next on the common. It was only a day's use, but we charged £1,000 for that, which is critical income for us. We do not have a regular source of income apart from a few rents and wayleaves, so that is very important. Essentially, for commercial activities, we charge what the market will bear. I think my colleague who dealt with it asked them what they would be prepared to pay and they said £1,000. He took it immediately. Perhaps he should have bargained. For those sorts of activities, we need the money.

47. There are other activities. There is a lady who runs a small group for very young children in the woods. She comes once a week. She is charged £100 a year. She is making a living from that, so it is an extremely modest sum. I believe there is now a forest school being opened to do what forest schools do. I do not think there is any charge at the moment, because she is just setting it up. We will see what happens, but these are people who are making a living from it.

48. Another potential source of income would be commercial dog walking, which is a significant problem, because the council-run parks in the area all limit the number of dogs. Unfortunately, they come to our common and one can have as many as 10 dogs arrive in a van. We had a serious incident last year when somebody was injured. We would plan to limit and charge for commercial activities such as that. For what I perhaps can call public activities, if there is any charge it is a modest one. There are no plans to change the policy. We are very keen to encourage the use of the common for responsible purposes.

49. MR LEWIS: Further on Clause 10, to meet further points raised by the House of Commons committee, Clause 10 was further amended by the addition of subsections (3) and (4) to set out what are called specified purposes for which charges can be made under regulations made by the trust. Subsection (4) ensures that charges may not be made for the exercise by the public of rights of access that apply to the common under Section 193 of the Law of Property Act 1925, so an important safeguard there.

50. To use the terminology in the Bill, one of the specified purposes for which a charge may be made is the use of the common for what are called organised activities,

without definition. Mr Boyes may be able to explain what sorts of activities that might cover, unless he feels that he has explained it enough already, and the types of facilities the use of which might incur a charge. There we are talking about the car park probably more than anything else. Clause 10(2)(b) would enable the trust to make regulations to prohibit or regulate the use of the common for any particular purpose, including an organised activity that is incompatible with the primary objects. In the unlikely event of the trust permitting activities that were contrary to the primary objects, the Charity Commission could intervene. Mr Boyes has already provided some information about the level of charges and the types of activities that may be covered, but I am not sure if there is anything more.

51. MR BOYES: I think I have covered most. Actually, I have forgotten the cricket club, which does not pay, but looks after the ground. There is also a large lake on the common in the woods. There is an angling club there. Off the top of my head, I think they pay about £250 a year. They have a quite significant membership that pays fees to use the lake and we have a modest amount from that. The biggest structure on the common is the dam for the lake. Some years ago we had to do repairs, which cost £20,000. The income from it is minute in relation to what we had to spend. It is of a size that will come within the Reservoirs Act, which I gather is being amended. There is leak in it at the moment, so we are slightly concerned about the situation, but various environment agencies are looking into it. Charges are very modest in relation to potential expenditure.

52. MR LEWIS: Finishing off on Clause 11, the only amendment, other than printing type amendments, that is being requested today is to Clause 11 to correct a technical point raised by Mr Diamond relating to the application of local government legislation in respect of how the regulations are made.

53. Clause 12 is about further transfers of the common. This is one that has also been the subject of much discussion with the Charity Commission, resulting in a number of amendments in the House of Commons. The clause is intended to ensure that a further Private Bill is not required if the trust should ever want or need to dispose of the common in the future, by allowing the trust and its successors to transfer the common. There are safeguards that have been bolstered further by Commons amendments. First, the power can only be exercised so as to transfer the common to another charity, which

is a point I have made before. This is secured by subsection (2) of Clause 12.

54. Secondly, by subsection (3), all the provisions of the Bill that will apply to the trust will also apply to its successors. That includes the provisions for requiring the objects to include the primary objects.

55. Subsection (5) was included as a result of discussions with counsel at Committee stage in the Commons. This will require a restriction to be entered in the Land Registry, similar to the one I mentioned earlier, on any registerable disposition of the common, ensuring that any future transferee must be a charity again.

56. I will skip over Clause 13, because we talked about that when I was going through the interpretation provisions. This is the appointed day clause.

57. Finally, Clause 14 ensures that the existing rules that are in place under the 1777 Act continue to have effect until replaced by regulations made by the trust under Clause 10. That is the introduction to the Bill, my Lord. I am hoping that Mr Boyes or maybe I have answered most of the queries that you might have, but we are here to answer any further questions that we have not covered.

58. THE CHAIR: Thank you very much, Mr Lewis and Mr Boyes. That was a very helpful introduction. It is very important that the Monken Hadley Common and its conservation and preservation continue. One of the questions I would like to tease out a bit more is the confidence you have in applicants willing to come forward to be trustees. When I first looked at the Bill, one issue is the transfer from the churchwardens to a trust with trustees. It still begs the same question about the ability to attract trustees who will take their responsibilities seriously in the future.

59. One issue I was perhaps even troubled about was the appearance of not enough local interest from what would have been categorised as commoners, in that this is their common and therefore they have, in my view, a duty/locus in looking after it as well. It is not to do with the actual Bill; it is to do with the pragmatic issues of taking the custodianship forward. I have that general question, which I think is important for the future.

60. The other one, among others, is on the general approach that the trust will take to

the management of the common. I am delighted, Mr Boyes, you are one of the 30 volunteers. I cannot help feeling that perhaps the anglers might be a useful source of future support. My ears pricked from another life when you mentioned the dam and the potential, if it comes within the scope of the Reservoirs Act, of expensive work that would need to be undertaken, presumably because of the safety of people and properties if that dam was to burst. That is a very serious responsibility that the trust, in the inspections of the dam, would need to be confident of.

61. MR BOYES: I will try to deal with them all, my Lord.

62. THE CHAIR: Perhaps, in digestible bites, you might try to deal with trustees and succession planning and the general management policy. If you do not have graziers, the land potentially can become all scrub and then woodland, rather than open spaces, so you get the range of biodiversity from that open space and wooded areas.

63. MR BOYES: I will try to remember all the questions. Dealing with the trustees and getting people involved, the current trustees, the churchwardens, are actually reluctant ones. That is absolutely nothing against them personally, but, in the late 1970s the Bishop of Edmonton, I think it was, told the churchwardens, “You must deal with your ecclesiastical duties. I don’t want you running the common”. Up to then, they were quite actively involved and had been for 200 years.

64. It was restructured at the time, so that the churchwardens remained the trustees, because they own it and they had to be, but a management committee was set up that, in practical terms, took over the running of the common. There had been a committee, but functions were effectively all devolved to this committee of 10 or a dozen people. That was in the late 1970s. At the time, getting an Act of Parliament to modernise the common and the estimated cost of £4,000 was thought too much. We are paying a little more than that now.

65. There was a meeting in 1981, when new rules were adopted to bring in the management committee, and, ever since then, it has been run by the committee. The churchwardens are entitled to attend meetings. They sometimes do and sometimes do not, but they never have any involvement apart from signing legal documents. We have run it that way for 40 years or so now. As I said earlier, the commoners have long since ceased to be interested. One of the purposes is to get people in who are interested. We

have 30 or so volunteers, which is far more than there were many years ago, but we would hope, with a membership of hundreds, there would certainly be more physical involvement—keeping up the woods is a big job—but also financial. We would hope that members would be paying £25 a year or whatever and would greatly bolster the common's resources.

66. As for getting people to be trustees, I have set up a working group for the trust to have a governance policy and various things such as that. We are planning to have up to nine trustees. The current trustees are the two churchwardens and the chair of the management committee. One of the churchwardens will step down, but I already have five volunteers to join the two continuing trustees. The common is a simple business to run. We have very clear objectives, and we know what has to be done.

67. As far as I am concerned, we have plenty of volunteers for now. I can think of no reason why that will not be the case in future. It is a relatively wealthy area of Barnet, and we are mostly retired. There are people who have time on their hands. I am quite confident that that will not be a problem.

68. As far as finances are concerned, we have assets at the moment of about £200,000, which is less than it was, because of my colleague's involvement, but he is doing what he has to do and is, rightly, paid for it. We were almost bankrupt in the 1990s, because the grants from the two councils ceased. We might have had a few thousand pounds at that time. That was why the Friends was set up, to provide a reasonably regular income.

69. At that time, before I was involved on the administrative side, we were lucky that there were two developments just on the edge of the common that wanted access across the common to the public highways. I think we received £50,000 in respect of each of those accessways. That provided a major capital sum and the investments have been reasonably successful over the last 20 to 30 years. Increasing the membership of the charity is a very important part of it. Again, I have no reason to think that members will not be forthcoming.

70. I am confident. Who knows what the future will bring? I am absolutely certain that it is better than the present situation, where we are hamstrung by legislation that is totally out of date. It cannot continue like this. As I mentioned, our new rules were passed in 1981 and it is questionable whether those are legal, because the 1777 Act

required a majority at the meeting, but after that a majority of all the commoners had to approve the rules and I have never found any evidence that that happened. We operate absolutely by the book, except that we cannot comply with what the Act requires, so the present situation is untenable. We do our very best, but we prefer to be law abiding.

71. THE CHAIR: Yes, of course. That is reassuring. On the resourcing side, my ears pricked about the right of access. There is obviously the care that, in deriving income to provide to a right of access, one does not find oneself with a proliferation of either temporary or permanent roads going across the common. There is the balance of benign right of access compared with what might be seen to be contrary to the primary objectives.

72. MR BOYES: I can expand on that. Under the 1777 Act, the plots that had a right of way on to the common at that time have what is called a right of way of necessity. The vast majority of properties round the common have that right and, sadly, we cannot charge them for it. I believe it is a good source of income for many commons.

73. These two developments did not physically impinge on the common at all. In one of them, I think the access was a matter of yards to the public highway. It had no material impact at all. The other one is near the cricket ground at the west end of the common. There is a gravel drive of about 100 yards, something like that, to the public highway, so no material impact on the common at all. There are very few development sites around the common, so there is no likelihood at the moment of any further access being required, but it is something we would be able to charge for, because it is not an existing property.

74. THE CHAIR: That is helpful as well. At the moment, the churchwardens have to reinvest all the income that is derived in its upkeep or keep in a fund. Is that mirrored with the trust? Will it be exactly the same: that all the money will go into the trust and has to remain within the trust for those purposes, so your investment policy is all on that basis?

75. MR BOYES: Yes, absolutely. In the present arrangement, the churchwardens hold it in trust for the commoners. There are over 100 properties that have common rights, many of them in Barnet High Street, half a mile from the common. As far as I can ascertain, the commoners have never received any financial benefit since 1777. They

had their grazing rights, but I have found no record of any payment to them. We had to obtain counsel's advice under the Human Rights legislation that the commoners were not being deprived of anything. They are losing their trust interest, but they are losing nothing financially because they have never had any income from it.

76. The main railway line was constructed in the 1850s and that was through legislation. There was a compulsory purchase and I think the proceeds were a few thousand pounds. Most of that was spent on litigation between the commoners in deciding who got what, because they did not all have one common right. Some had three; some had one, so there was not much left. As I say, I have found no evidence of any income ever being paid to the commoners. It has always been used for the maintenance of the common and that certainly will continue.

77. THE CHAIR: Presumably the railway is responsible for the maintenance of the boundary fence that goes through the common.

78. MR BOYES: Yes, there is chain-link fence on both sides of the railway. It is actually more than a footbridge. There is a road bridge over the railway for obvious access reasons. They need to be able to get vehicles to each side. There is the railway line and what were called accommodation roads on each side, which lead from the railway and are owned by Network Rail. They visit occasionally, but it is physically sealed off from the common.

79. MR LEWIS: The railway runs through the common in a cutting, does it?

80. MR BOYES: Yes, it does. It is quite a deep cutting. If you know the line, it is just before you get into the Hadley Wood tunnel, after New Barnet station.

81. THE CHAIR: Thank you very much. On the issue of the trustees, is it envisaged that, potentially, the trustees may be paid to undertake their responsibilities?

82. MR BOYES: No. That is not envisaged at all, no.

83. THE CHAIR: It is a voluntary duty, as it were.

84. MR BOYES: Yes. Nobody involved with the common is paid. We are all volunteers and it is intended that that will continue. The possible alteration might be if

we get quite a large membership. Running the membership side would be a significant duty that we do not have at the moment. It might be that we would need to pay a membership secretary, if we had 300 or 400 members, or we might outsource it to a suitable body.

85. THE CHAIR: That can be accommodated in this legislation. If you had a large membership to service, you would be able to use funds.

86. MR LEWIS: Yes, it would be like any other charitable incorporated organisation or any other charity. Staff can be employed to ensure that the charity runs properly. These days, with the data protection legislation in place, it is particularly important that that legislation is complied with when you have a large number of members whom you are contacting frequently electronically as well. That is why Mr Boyes mentioned the possibility of that.

87. MR BOYES: I think it is very unlikely that the membership secretary would be a trustee anyway. We have the trustees of the common. In practice, we have two curators, who deal with the woodland management and discussions with people who want to use it for activities. I am the clerk. I deal with the paperwork and other things. None of us is paid and there are no plans to change that. It is very unlikely that we would be trustees as well. We would try to keep the officers away from the trustees. There is no intention to pay the trustees and we are very unlikely to pay the officers either.

88. THE CHAIR: Thank you. Are there any questions you would like to pose?

89. MR DIAMOND: Can I follow up on that last point? Throughout the time of the stewardship of the churchwardens, a couple of hundred years, is it the position that all the income that the churchwardens have received has been reinvested in the common or kept in a fund to deal with expenses? Is the position that, going forward, either under this trust or indeed under a trust to which the common could be transferred under the provisions in the Bill, there is nothing legally to prevent that changing?

90. It might be that the common finds itself in the hands of a trust, the running of which incurs more expenses - which would need to be paid from income received from the common - than the expenses incurred by the churchwardens themselves. As described, everything that comes in under the stewardship of the churchwardens is

reinvested in the upkeep or is kept in the fund for extraordinary expenses. Is it right then to say, going forward, that we could be in a slightly different position, where the trust's own costs of running the operation go up and therefore the power to levy charges might see charges go up for various uses of the common, not just to pay for the common itself but to pay for new costs of the trust itself doing the job?

91. MR BOYES: I cannot see it happening. Who knows what the future brings? As I say, running the common is a fundamentally simple operation. It is making sure as best we can that it is safe for public use, keeping an eye out for dangerous trees, although, from what I have seen over the years, there is no way you can tell whether a tree is dangerous. Our major expenditure, apart from the dam, is actually felling trees. It is £500 to £750 at a minimum. We have some huge oaks. We had one come down in the storms a month ago. We could spend £500 cutting it up, but we do not. We have taken off the top of it. It is actually on the LOOP footpath, which goes the whole way round London. We have cleared enough of it for users to get round it.

92. I cannot see any need to be paying trustees. There is not much for them to do. It is the officers who do the work. At the moment, we have three management committee meetings a year and an AGM. Essentially, the management committee supervises the officers, me and the two curators. We have no plans to change how it works and I do not see our jobs being very different. We know what we have and we do not want it to change, so we are preserving rather than becoming an empire.

93. MR LEWIS: I think Mr Boyes has just answered the question that I was going to follow up with, which is whether things will change much at all, in the way the common is managed, after this Bill becomes an Act. I do not want to put words in his mouth, but I suspect the answer may be no.

94. Also, the potential additional expenditure, for example on a secretary, which Mr Boyes raised, would be a mark of the success of the trust in bringing in new members and more income to cover exactly the costs that Mr Diamond was talking about then. I would be very surprised indeed if the trust brought in somebody who was going to be so expensive that it would eat away, if you like, the funds that were required to maintain the common in the future.

95. MR BOYES: I agree entirely with that, yes.

96. THE CHAIR: On the question of powers to construct, you have given some very good examples of how your intention is not to suburbanise, as I would call it, the common. How does the Bill deal with the powers to build, which the trust would have and the churchwardens currently do not have? I am satisfied about the protections, but it is in terms of the powers in Clause 7 and how that compares with powers that the churchwardens did not have.

97. MR LEWIS: My recollection of the 1777 Act, which I have here and is very difficult to read, as you can imagine, is that I do not think there was a specific power in there saying that the churchwardens may build anything on the common. I think that is right, Mr Boyes.

98. MR BOYES: Yes.

99. MR LEWIS: That does not mean that the churchwardens were not subject to exactly the same restrictions that will apply to the trust once it becomes responsible for the common. I think that the provision to enable the trust to erect buildings on the common was put into Clause 7 simply for clarity and certainty, to put beyond doubt that that power was there.

100. It is clearly something that the churchwardens have done in the past. Mr Boyes mentioned a couple of sheds that have been constructed. I also know that there are other structures, for example the gates and the existing fences, which are in place on the common. I am not sure that I can point to a specific power in the 1777 legislation that says that those structures can be put in place. I think it is more looking at it from the other end of the telescope, as it were, saying that, whether or not they had that power, those powers were restricted by the Commons Act and all the other legislation, planning et cetera, that I mentioned, in the same way that the trust will be now.

101. That does not directly answer the question about the difference between existing powers and the powers that we are proposing to take on. They are new. All we can say, really, is that the restrictions imposed on the trustees going forward are exactly the same as they were on the churchwardens before. Even though there seems to be an absence of a specific power for the churchwardens to construct anything, they clearly have in the past taken the view that it was appropriate for them to do so as necessary for the upkeep of the common. I would assume that putting in a shed to store the tools that are needed

for the upkeep of the common was generally seen as being acceptable, if not provided for specifically in legislation.

102. THE CHAIR: I suspect, like all these things, it would be the design of the shed that might be controversial, rather than a necessary shed or somewhere for the cricket.

103. MR LEWIS: If the design were controversial, assuming it did not fall within permitted development rights under the planning legislation, the local planning authority might have something to say about it too, depending on its size. I suspect they might get away with a small shed without needing planning permission at all.

104. MR BOYES: There are two sheds, of probably half the size of the space in front of you. One needs to bear in mind that the common was actively grazed until the 1950s. A ditch was dug the whole way round it. It must be a couple of miles, probably. There are fences to keep the animals on the common, and we have five white gates on the public highways that cross the common, which are listed structures. Two of them were rebuilt about 15 years ago. English Heritage paid half the cost of it. Apart from the dam, those are our biggest structures.

105. The great sadness to me is the public highways that were constructed in the 1920s, and traffic on the common is a nightmare. They are speeding roads, which the council refuses to do anything about. It is obviously not a problem that is unique to the common. There is no reason to build any structures. We come back to the primary objects, which are to preserve it as it is. There is less need for structures and fences now than there was when it was actively used. We would all be delighted to have animals back on the common, but the roads make it impossible.

106. THE CHAIR: Yes, I can understand that, absolutely. I am very grateful for your further explanations. I note that the Attorney-General is content with the Bill. At that point, are there any further points you would like to add?

107. MR LEWIS: No, thank you, my Lord.

108. MR BOYES: No, thank you, my Lord.

109. THE CHAIR: We wanted a pragmatic dialogue on the future of the common and we have had a good consideration on a number of points. I am grateful and I am content

that the Bill should proceed. We now move to the formal part of the proceedings. Can I ask you to prove the preamble?

110. MR LEWIS: First, I think Mr Boyes has to affirm.

111. MR COOPER: You are taking the affirmation, are you not, Mr Boyes? You have the text in front of, have you not?

112. MR BOYES: Yes. I, William Osborn Boyes, do solemnly, sincerely and truly declare and affirm that the evidence I shall give before this committee shall be the truth, the whole truth and nothing but the truth. That is not to the preamble, is it?

113. MR LEWIS: No. I will now ask you to swear the truth of the preamble, Mr Boyes. Are you William Osborn Boyes?

114. MR BOYES: I am.

115. MR LEWIS: Are you the clerk to the churchwardens of the Monken Hadley parish church in the county of Middlesex?

116. MR BOYES: I am, for the purpose of the common.

117. MR LEWIS: Yes, for the promoters of the Bill. Have you read the preamble to the Bill?

118. MR BOYES: I have, yes.

119. MR LEWIS: Is it true?

120. MR BOYES: Yes, to the best of my belief.

121. MR LEWIS: Is it true?

122. MR BOYES: Yes.

123. THE CHAIR: Thank you. That concludes our proceedings, and I will report the Bill to the House with amendments.