

IN THE HOUSE OF LORDS

SESSION 2023-2024

HOLOCAUST MEMORIAL BILL

PETITION OF LORD INGLEWOOD

SUMMARY of ARGUMENTS on SCOPE and STANDING 31x24

SCOPE:

Limitation on Derogation from LII(I)A 1900 sought by Petitioner:

1. The petitioner suggests the Committee impose the following limitations on the derogation from the London County Council (Improvements) Act 1900 (LCC(I)A 1900) s 8 (1) and (8). Clause 2 should be amended by the addition of the following:

‘provided (i) that the footprint above ground of the memorial and learning centre is no greater than that of the Rodin *Burghers of Calais* sculpture and (ii) that any underground works do not raise existing ground levels’

The Principle of the Bill:

2. The above limitation would be consistent with the principle of the Bill. The principle is set out clearly in the Preamble. It is for ‘a Holocaust Memorial and Learning Centre’ (‘HMLC’). The use of the indefinite article makes it clear that the Bill is not for *any*, or *any particular*, HMLC but for *some* HMLC. It is authorising the principle of expenditure for that use and works therefor.
3. Insofar as Clause 2 extends the principle to Victoria Tower Garden (‘VTG’) it does so by reference to Clause 1 which uses the indefinite article and should be construed in the same way as the Preamble. Insofar as Clause 2 extends the principle it is by removing the statutory prevention. It simply provides for a derogation from LII(I)A 1900 s 8 (1) and (8) to enable the carrying out of the construction and operation etc of ‘a’ HMLC.
4. The words which follow “*prevent*” in Clause 2 “.....[*does not*]....*restrict or otherwise affect the carrying out*” are details of the Bill and not part of the principle. If they were then the acceptance by the promoter that temporal and territorial measures would be within scope would be inconsistent with the principle of the Bill [Minutes Wed 16 Oct 2024 [109] & 115].
5. The effect of the Promoter’s submissions would be that the principle of the Bill effectively would include derogation from the LCC(I)A 1900 re *any* HMLC of whatever size or design within Victoria Tower Garden. The HMLC could cover the whole of VTG either at the outset (or at a later stage because of the inclusion of ‘extension’ within the definition of ‘construction’). It would be surprising if members

of either House had intended such an extraordinary outcome. The Committee should reject such a bold submission.

6. The Promoter ('PR') seeks to argue here that the whole purpose of this Bill is to permit the scheme of the quashed permission [Minutes Wed 16 Oct [108]] . That may be PR's motive. But it is not what the Bill actually provides. PR could have promoted a bill which derogated from LII(I)A s 8 for that scheme (with or without limits of deviation). References to the relevant details of the scheme could have been set out in an Interpretation section and Schedule. The Preamble could have referred to more than finance and to the Scheme. But PR chose not to do either. So members of both House have been able to support it even if they oppose elements of that scheme. Looking at the Bill members of both Houses could say "It is the principle of a HMLC for which I am voting (despite my reservations about details)". But PR now says to this Committee "You can do nothing about the details as the Houses have voted for the scheme of the quashed permission."

The Promoter's Argument that Considerations Material to Planning are Out of Scope:

7. The Promoter rightly asserts that this Bill does not seek planning permission. Considerations material to the grant of planning permission under the Planning Acts¹ are not therefore *as such* within scope. For that reason the Petitioner refrains from making many points material to planning decisions but not to the derogation sought by the Bill. However the Promoter is wrong to submit that therefore something which is material to planning *cannot* be within scope. In principle anything relevant to the derogation is within scope.
8. The LCC(I) A 1900 imposes an obligation to maintain VTG as a "*garden*". This is a constraint on its use which Parliament imposed for the benefit of society. It is a benefit which future generations are entitled to enjoy unless and until Parliament decides to remove, or derogate from, it. It is a constraint additional to the planning system as Thornton J ruled in The London Historic Parks and Gardens Trust v The Minister of State for Housing and Westminster City Council [2022] EWHC 829 (Admin) at [71], [76] and [128]. Decision makers in the planning system are at a lower level in the constitutional hierarchy than Parliament. So neither the Commissioners in 1900, nor their successor today, the Secretary of State ('SoS') can be relieved of the constraint except to the extent that Parliament so decides. The Committee is not bound to, nor should it, defer to the outcome of the as yet unknown process by which the Commissioners' successor (or any other planning decision maker) may make the planning decision.

¹ Which term includes the Planning (Listed Building and Conservation Areas) Act 1990 as well as the Town and Country Planning Act 1990

The Nature of the Garden Constraint:

9. The essence of the LCC(I) A s8 (1) and (8) is that VTG should be a *garden*. The functions of gardens include the following:
 - (i) Aesthetic (not only visual, but also auditory and olfactory): Gardens provide the setting of surrounding buildings and built environment (notably in this context the Palace of Westminster). They provide viewpoints which enable a range of different angles of view.
 - (ii) Recreational: Gardens are places to walk, talk, smoke, sit and reflect, and for children to play.
 - (iii) Natural: Gardens are places for wildlife within urban areas. (for all life forms including plants, birds and other parts of living creation).
10. Any derogation from the performance of the above functions by VTG is a matter for Parliament (even if it would also be consideration material to decisions under the Planning Acts). Planning permission is often only one of many consents which a developer needs before undertaking his project. A development project may be subject to non planning constraints which prevent a planning permission from being implemented.

STANDING: Parliamentary Practice and Its Purpose

11. The purpose of the practice of Parliament on standing is to facilitate, by useful exclusion, expeditious decision making. It aims nonetheless to give standing to those who have interests, or stakes, which need fuller consideration than is possible in general debate. Fundamental principles include the following. The first is that the principle of a Bill is not for debate in Committee. The second is that each committee is master of its own procedure. Each committee decides in its own context on the interpretation and application of Standing Orders and the evolution of practice.
12. The classic formulation of Erskine May “*property or interest ..directly and specially affected*” (Tab 3 p3). is not set out in any House of Lords Standing Orders (HL SO) . It is general which allows for flexibility in approach and evolution. The types of interest which distinguish those with standing from those without it are not restricted to proprietary or commercial interests. The appropriate application of the principles in the C21 is, not surprisingly, different from that of the C19.
13. It is instructive to reflect on how the specific HL SOs are phrased. They give some a *right* to be heard. They make clear that some *may* be hard subject to the discretion of the Committee. They do not prohibit committees from hearing anyone. The

principle of *expressio unius, exclusio alterius*² cannot apply as the SOs do not purport to be comprehensive. The classic formulation, for example, not included.

14. Parliamentary committees rightly attach importance to the extent to which putatively heard petitioners have involvement, expertise and knowledge enabling them to bring out significant matters which might otherwise not be considered. They have the ability to recognise 'special cases' and can allow standing as an 'exceptional exercise' of discretion. (eg re HS 2: Promoters Opening Bundle 'POB' Bundle of Authorities ('BoA') Tab 3 Mon 13th June paras [14] and [16] pp13 &14, Tues 21st June paras [32-33] p 18 Tues 28th June para [7] &[10]. p 20),
15. The inherent flexibility of the powers of Committees is illustrated by some of the practice in the ('POB'). They may decide even where refusing standing to raise of their own motion matters which have been drawn to their attention by rejected petitioners (eg Royal Albert hall Bill ('POB') p 66 para [248], Middle Level Bill POB p 74 para [99]).

Holocaust Memorial Bill and Lord Inglewood:

16. VTG is directly affected by the HMLC. Two of the above functions of VTG are ones in respect of which Lord Inglewood has a special interest different from those of the generality of the public.
17. Lord Inglewood differs from the generality of the public and is specially affected in the following respects;
 - (i) He is a former Government Minister with responsibility for architectural heritage and conservation
 - (ii) He is a Fellow of the Society of Antiquaries and President of 'Historic Buildings and Places' (previously the 'Ancient Monuments Society').
 - (iii) He works in the Palace of Westminster (Grade 1 Listed Building 'LB') (overlooking VTG from N) and no 1 Millbank (Grade 2*) overlooking VTG from W) (formerly the Church Commissioners' Headquarters). VTG is important to him, his staff and his visitors. His interest in VTG is akin to that of a don to his college garden, a hospital consultant to his hospital, a canon to his cathedral close, or a barrister to his Inn's garden. Those gardens are usually

² Succinct Latin encapsulation of the general principle of construction that where a provision applies to that which is included in a potentially comprehensive list which expressly includes some instances of a category then by implication any instances that are omitted have been deliberately omitted and are not subject to the provision. It does not, of course, apply (i) where the context requires otherwise or (ii) the words of the provision state otherwise (eg '[,,,x,y, z] and *any other* letter of the English alphabet')

to some extent open to the public but the riparian professionals have a direct, special interest which is different to that of the general public. VTG is important as a resource which is available for those occasions which call for inter alia (i) calm reflection (ii) discussion and (iii) place for visitors to wait after long journeys eg from Cumberland. This is an different interest from that of the tourists or other members of the general public who visit the garden on occasion.

Re Lord Inglewood 17 (i) and (ii) above:

18. the Petitioner seeks to give evidence about the importance of minimising the effects on

- (i) the settings of the Palace of Westminster (Grade 1 and World Heritage Site ('WHS')) and other important listed buildings and structures such as Rodin's 'Burghers of Calais' (Grade 1), VT Lodge and Gates (Grade 1), Lambeth Palace (Grade 1) Lambeth Bridge and Obelisks (Grade 2), VTG river wall (Grade 2), Buxton Memorial (Grade 2) and St Thomas's Hospital South (Grade 2),
- (ii) the views of such buildings, and combinations of thereof, from a variety of distances and angles
- (iii) the vista between the Rodin sculpture and the Lambeth Bridge obelisk through the tapered avenues of trees and cross river views

19. The Petitioner seeks to give evidence about the precedent effect. There are many genocides and other crimes against humanity for which the HMLC will be a precedent. The connection between the actions of, or inaction of, the UK Parliament and those will be as great, or greater, than the Holocaust. It will be difficult to resist pressure for memorials and learning centres in relation to them in VTG. It is therefore important that the scale of the HMLC is limited.

Re Lord Inglewood 17 (iii) above

20. The Petitioner seeks to give evidence about the importance to him, his staff and visitors of a garden which (a) provides opportunities for calm refreshment of spirit in the sometimes exceptionally stressful nature of parliamentary business (b) forms part of the outlook from the Palace of Westminster and Millbank House (including meeting rooms such as the Archbishops' Room)(c) is a place for those coming from long distances to wait before passing through security or to debrief after meetings.

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