

House of Lords and House of Commons
EXAMINATION OF PETITIONS FOR PRIVATE BILLS

HOLOCAUST MEMORIAL BILL

Monday 17 April 2023

Before:

The Examiners of Petitions for Private Bills:

MS CHRISTINE SALMON PERCIVAL, Clerk of Private Bills, House of Lords
MR TOM HEALEY, Clerk of Bills, House of Commons
MR JUSTIN LESLIE, Counsel for Domestic Legislation, House of Commons
MR CHÉ DIAMOND, Assistant Counsel to the Chairman of Committees, House of Lords

There appeared:

MR ROBBIE OWEN, of Pinsent Masons LLP, appeared on behalf of the Bill's promoter.

MR ALASTAIR LEWIS, of Sharpe Pritchard LLP, appeared on behalf of the London Historic Parks and Gardens Trust and the Thorney Island Society and Residents of Westminster.

MR RICHARD BUXTON, appeared on behalf of the Buxton Family and the Thomas Fowell Buxton Society.

MR MUSTAFA LATIF-ARAMESH, of BDB Pitmans LLP, appeared on behalf of Westminster City Council.

BARONESS DEECH & DR MARTIN STERN appeared on behalf of Baroness Deech and Holocaust Survivors.

(2:00 pm)

1. **MR TOM HEALEY:** Welcome back. A word of warning: the Division Bells will ring at 2.30 pm. They usually ring briefly and then a few minutes later, so if you hear a mechanical bell, that is a signal that the House is sitting; it is not a fire alarm or anything like that. Baroness Deech, would you like to speak next on behalf of this group of Memorialists?

2. **BARONESS DEECH:** Good afternoon, Examiners. I am asking that you judge this Bill hybrid. I am asking that the affected parties get the opportunity to speak at a Select Committee and have their views heard. My memorial includes the names of five Holocaust survivors, and I speak to you on their behalf, and on my own, to present the case that we have a particular private interest in this Bill: indeed, it is inherent in the title of the Bill under consideration.

3. Our case is a simple one: that our personal experiences, our intangible cultural heritage assets as defined by UNESCO, are affected, and that we should have the right to represent those in any forthcoming legislation. There is no precedent to call upon in *Erskine May* that helps to define our specific private interest, which is not limited to property, but it is self-evident that only we can represent ourselves and our interest is different from any others'.

4. For me, a simple starting point is that my parliamentary office in Milbank House directly overlooks Victoria Tower Gardens, and any disturbance or crowding there is inimical to the security and relative tranquillity needed for work there and the ability to cross the road to vote at very short notice. I note also how Victoria Tower Gardens was used for crowds during the funeral of the Queen and will be used during the Coronation of Charles. It has many uses.

5. I am also a member of the Jewish community and honorary president of the National Jewish Assembly, a direct membership body, unlike the Board of Deputies of British Jews, which includes only representatives of organisations. The assembly debated the details of this Bill and came out 82% against it. I am not the descendant of survivors but of victims. You will have noted that my memorial is also signed by five British-resident Holocaust survivors, one of whom is here today and willing to speak if called on.

6. In this room, there are also others, family members of refugees and victims, so it is clear that the Jewish community is split on this issue. Many more survivors might have been included today, but, as you will understand, they are difficult to track down, may not understand the precise purpose of this hearing and are far from mobile. Our distinct private interest lies in the lost opportunity, opprobrium and worse that we are likely to experience if the memorial is built as currently conceived on this piece of land.

7. Jewish community members, and especially parliamentarians will be blamed for the disturbance, loss of amenity, threat to security, invasion of the landscape, cost, litter, coach parking and perceived privilege. I wonder whether the government representatives will comment on consultations with the other minorities included in this memorial.

8. We are particularly affected by the overground design. It is meaningless in itself. The justification that was produced by the architects was that it represents 23 communities destroyed by the Nazis, but this has been shown to be inaccurate by Sir Richard Evans, former

regius professor of history at Cambridge University. The design is not conducive, nor is the location, to the wish to contemplate and mourn. Similar designs in other countries are vandalised on many occasions. Inaccuracy and vandalism are very hurtful to those involved.

9. The underground learning centre, if built, in VTG will destroy the wishes of many in the Jewish community who want a full educational centre as recommended in the Prime Minister's 2015 Holocaust commission report, which called for a central London physical campus bringing together Holocaust educational partners, including the Imperial War Museum Holocaust galleries, with room for lectures, workshops, offices, more teacher training, revised Holocaust education, a professorial chair and an endowment fund. All these have been sacrificed because VTG is too small for it, yet the proposed learning centre is too big for the gardens and only half of it will be useable for exhibition purposes.

10. Our descendants, we and they to whom we transmit our experiences and our memories, will never now benefit from what could have transformed Jewish and Holocaust education in this country. The contents of the planned learning centre will not make the connection to today's anti-Semitism, let alone explain it. The late Lord Sacks explained that the Holocaust could not be studied out of context and that, today, antisemitism is focused on Israel.

11. The location in VTG will reduce the Holocaust to genocide committed in the past, a self-congratulatory story reinforced by this placement near Parliament, claiming without evidence that democracy affords protection against genocide. It will cement only the story of dead Jews at the centre of London, not the living. Antisemitism is rising today despite more than 300 memorials around the world. Many Jewish people do not see a historical connection between the Jewish genocide and the tragedies of LGBT, Roma and others at the hands of the Nazis, say, by reducing it all to generalities.

12. To build this memorial in VTG will exhaust resources, distort history and put back education about Jews for generations. The desire of your Memorialist and the others she speaks for is for our specific Jewish history and existence to be recognised as separate, to be commemorated and to be brought up to the present, with meaningful consultation about how this is to be achieved.

13. There is a moral imperative that this Bill receive full scrutiny through hybrid procedure, enabling petitioning and constructive amendments. That way, we may have a decent Bill and a decent memorial, free of rancour, in the right place. We are not opposing the Bill as a whole, but we wish to be heard and to help to construct it properly through the hybrid process. Thank you.

14. **MR TOM HEALEY:** Thank you. Dr Stern, before we come to questions, would you like to add to what Baroness Deech has said?

15. **DR MARTIN STERN:** I will confine myself to the issue of the private interest of Holocaust survivors.

16. I am a Holocaust survivor. At the age of five, I was taken to Westerbork prison camp in the Netherlands and then to Theresienstadt to the north of Prague with my one year-old sister. My father died in Buchenwald, his brother was gassed in Auschwitz, and the man

who harboured me with his wife for two years in Amsterdam was murdered in Neuengamme. I have a personal interest. At the age of 16, I was given British citizenship. I had come from the Netherlands in 1950. Even though I lived there until I was 12, I did not have Dutch citizenship. Boy, am I grateful to be a citizen of the United Kingdom. My fellow Holocaust survivors are in a similar situation. British citizenship means more to us than you can imagine.

17. Many Holocaust survivors have worked intensely on Holocaust education. I started doing that two years after I retired from a medical career as a consultant in the NHS—normally I would have expected to carry on doing private practice, and I would be living in a bigger house now instead of one that does not have room for all my books—because it is that much of a passion to educate people about the Holocaust and about mass violence in general.

18. My Holocaust survivor friends are passionate on the same score. Many are disabled, and some, I am sorry to say, are not as sharp mentally as they were a few years ago, but what does that matter? We are a distinct and, I believe, important component of the British population. It is not for nothing that I had tea with King Charles and Queen Camilla a few weeks ago. We play an intense role in British education and consequently, I believe, in British democracy. The proposed learning centre is too large for the park, thus acting as a stimulus to anti-Semitism, which is of intense concern to all of us. It is rising rather than falling, despite all our efforts, and we do not want to do something that will aggravate it. It is bad for education, because it is too small to serve the purpose of a national education centre. There is a need for such a centre. There is one in Nottinghamshire, but it cannot serve a national purpose because of its location. It is wonderful, but it is too far away.

19. The Holocaust survivors have a special personal interest, because we are a distinct and yet integral part of the British population. I believe that this education is important not only for decreasing violence worldwide in the future but for understanding the importance and delicacy of democracy. My friends and I have devoted our lives to this and feel that we should be consulted.

20. **MR TOM HEALEY:** Thank you. Baroness Deech, you talked about the design and construction of the memorial and learning centre and its location in Victoria Tower Gardens. The Bill itself says nothing about the design and construction of the centre. Is your argument essentially that putting it in Victoria Tower Gardens constrains the design in ways that are unfavourable?

21. **BARONESS DEECH:** Yes. It is constraining, as Dr Stern explained. Everything has had to be altered to fit underground in Victoria Tower Gardens. The Bill actually says, “a Holocaust Memorial and Learning Centre”, which is not necessarily the one that the Government have been pursuing. Arguably, it could turn out to be something quite different. If that was the case, if there was something more fitting, we would like to be able to contribute to that.

22. **MR TOM HEALEY:** But, of course, Clause 1 would apply to a Holocaust memorial and learning centre anywhere in the country.

23. **BARONESS DEECH:** Yes.

24. **MR TOM HEALEY:** Clause 2 applies only to the use of Victoria Tower Gardens, but it does not in itself specify a particular design or layout.

25. **BARONESS DEECH:** No, it does not. I think it is implicit, but it does not actually spell it out. That gives me some hope, because it means that if the Bill passes—I hope that people like Dr Stern and I will be able to speak, make amendments and so on—we might get something rather better.

26. **MR TOM HEALEY** Thank you.

27. **MS CHRISTINE SALMON PERCIVAL:** To follow on from what you have just said, Lady Deech, the Bill is all about Victoria Tower Gardens. You said a moment ago that you did not object entirely to the Bill, so you could presumably envisage a Bill that is differently cast that you could support.

28. **BARONESS DEECH:** My own preference would be for a different location, an easier location, but I can see that there are many people—and I am prepared to compromise—who think, “Victoria Tower Gardens, yes”, but I think they are all of a mind, if they are on our side as it were, that there should be something small, graceful and dignified, and then a pointer, or maybe even a shuttle bus, to a nearby learning centre.

29. It is against Jewish law and ethics in particular to destroy greenery. In our religion we have a new year of the trees—we are all very keen on trees and greenery—and it is upsetting to ruin a park, as it will. So we are open to compromise, but no one has come forward to compromise, which is why we would like the opportunity to speak. Then, perhaps, we could all come together with something that is good. If it goes on like this, it will be divisive for years, but we think we could come forward with something that people agree on and say, “Yes, this is it”.

30. **MR JUSTIN LESLIE:** I have a question about how this Bill relates to any future planning process. We heard from the Government that, were this Bill to be passed in its current form, there would be a subsequent planning inquiry or planning process akin to the previous one. As a matter of fact, did you participate in that first planning inquiry?

31. **BARONESS DEECH:** I did. Westminster City Council was about to turn it down. It was called in overnight. There was indeed a public inquiry, and I participated. We felt that it was perhaps not fair play that the Minister calls it in and then a deputy Minister decides it. I know of no precedent where a deputy Minister has ever differed from a Minister. In the end, we felt rather let down by the process. Three years have gone by, and were there to be another public inquiry many different elements would have to be brought forward.

32. **MR JUSTIN LESLIE:** Thank you. Is it implicit in what you have just said that you would also participate in a future planning inquiry?

33. **BARONESS DEECH:** Yes. I was fortunate enough to have a barrister friend who acted for me pro bono. I do not know whether I can call on him again, but I would do my best to struggle through.

34. **MR JUSTIN LESLIE:** One of the limiting factors of this Bill is that at present it does not authorise any works to be done; it is just about removing a restriction in an old

private Act. The scope for amending the Bill, particularly once it has gone through its Second Reading, is up for debate, but it could be quite narrow. Would you be looking for particular kinds of amendment to the Bill?

35. **BARONESS DEECH:** If the Bill went forward like that, many amendments could be made, and certainly would be made, in the House of Lords that reflected the conditions laid out by the inspector who held the public inquiry, such as precautions relating to flooding and fire. I also think one would try for an amendment that maybe even removed the underground learning centre and put it elsewhere because of the risk of flooding, amendments that would ensure that there was room for storage when Parliament undergoes restoration and refurbishment, when Victoria Tower itself is covered in scaffolding, and would ensure that we have room for when VIPs come, for the Coronation or for similar royal events. There is scope for amendment. Whether they would pass I do not know, but we would certainly put them forward.

36. **MR JUSTIN LESLIE:** Thank you. I have no more questions.

37. **MR TOM HEALEY** Thank you. That brings us on to Richard Buxton on behalf of the Buxton family and others.

38. **MR RICHARD BUXTON:** Good afternoon, members of the committee. For the avoidance of doubt, I am not a parliamentary agent, but I am authorised to speak on behalf of the other three Buxtons and, we suspect, a lot of other Buxtons—there are a lot of us—although I do not have their specific authority, and the Thomas Fowell Buxton Society. My own connection today is as a Buxton, but as it happens, and for the avoidance of any doubt, I was in fact the solicitor involved in the litigation on behalf of the London Gardens Trust, which has slightly led to this. That is represented by Mr Lewis today, and I am here in a private capacity.

39. I have little to add on the general points. Others are far more expert than I am, and I will not trespass on what they have said or how they refute what the Secretary of State might say. I will mention one or two points arising from the Secretary of State's submissions.

40. Mr Owen rightly points out—at least, I think he does—that public policy does not necessarily mean that a Bill is not hybrid. In his submissions, he puts it as something of an also-ran, I think, and I strongly support the view that just because it is public policy does not mean that it cannot be hybrid. The HS2 railway is an obvious example that springs to my mind, although I have very little experience.

41. Moving on to our memorial, you have the detail set out in a written document and I am not going to repeat it. As I said, Dr Fannon cannot be here as a witness. He knows better than I do. If it would be of any help, I have a written document with some details of their educational work and so on, but I will not hand it out unless I am asked to.

42. As a novice, I trespass when I talk about *Erskine May*, but I see from that, and indeed from other materials from the Secretary of State, that hybridity situations seem to come in all shapes and sizes. Overall, however, hybridity seems like the proverbial elephant in the room: it is hard to describe, but you know it when you see it. I trust that the Examiners will agree that clearly we have that elephant here. Indeed, looking at the Secretary of State's

extract on page 547 of the Secretary of State's materials—I think it is *Erskine May*, paragraph 30—there is a specific suggestion that it is not an easy thing to work out. What I find difficult—others may have said something similar—is the concept of hybridity depending on how the Government choose to draft the Bill by not identifying specific interests in determining that it is not hybrid. It cannot be right that hybridity depends upon the Secretary of State's choice in his drafting.

43. The next general point is that the underlying objective, as I understand it, of the hybridity concept is to enable people who should have a say over something, as well as MPs and Peers, to do so. I would submit that the circumstances here plainly merit that. One member of the committee mentioned that it is a question of substance rather than form.

44. I also noticed at, I think, pages 612 and 613 of the Secretary of State's submissions—I think it was to do with the Aircraft and Shipbuilding Industries Act—that the Secretary of State himself objects to the concept of fine distinctions on this issue. He in fact supported hybridity in that case and thought that making fine distinctions was a “grotesque”—I use that word correctly, in quotes—procedure. He then referred to the constitutional right of the subject to plead his case. That is all that I and other Memorialists seek here to safeguard.

45. Related to that, and something which it would be helpful if the Secretary of State dealt with it in his response, with reference to paragraph 6.1 of his memorial, is to confirm that the matter will in fact go back to Westminster City Council and, if refused permission, to a planning inquiry, which is the normal planning process. He has touched on that, but he ought, please, to be precise as to what is intended to happen.

46. Even assuming that that is the normal planning process, which is what we expect, it is no substitute for the fundamental issue of where the building of the memorial in Victoria Tower Gardens can be permitted—in my family's case, as I have made clear in the memorial and I will mention again in a moment, affecting the Buxton memorial to be dealt with in Parliament in Committee, as the London County Council (Improvements) Act did in 1900, which is the Act that is sought effectively to be amended, if not effectively repealed. There were special interests then and there are special interests now. As Baroness Deech has submitted, it would at least be very helpful for Parliament to have oversight over what can and cannot happen as a result of any planning inquiry in future in Victoria Tower Gardens.

47. I shall make three points about what I might call our special interest. I hate using the word “private” interest, if I may say so, because it would be wrong to claim that.

48. First, the Buxton family and the Thomas Fowell Buxton Society have a special relationship with Victoria Tower Gardens that is a bit different from others'. We have annual gatherings there; the next is on 29 July, I was told. We have a highly specific interest in the monument to our ancestor, whom we admire. Its setting has been found to be harmed by the proposed Holocaust memorial and learning centre; I referred to some of the details of that in my written memorial, so I will not repeat them. The setting of a memorial, for its appreciation, is arguably as important as the thing itself, so we have a special interest in that sense. Of course, we are members of the general public as a class, but the issue affects us differently, so in that technical sense—what I call our special interests—I submit that we have technically a “private” interest, although I do not like using the expression. It is unsurprising

that we were not singled out as a special class in the Bill, but, as submitted, the Secretary of State's choice in the drafting can hardly be definitive.

49. Secondly, we cannot claim to own the memorial or claim somehow that it is held on trust for us, but it was given to the state by my family, so we expect the state to have all due respect to it and to look after it, and we feel that we should have something of a special say if in fact, as just mentioned, there is harm to its chosen setting. The general point, going back to my elephant-in-the-room point, is that although there may not be analogous situations in precedent concerning hybridity, every situation is different, and, looked at objectively, I would strongly submit that we fall on the right side of the line in terms of special interest.

50. Thirdly, as set out in my memorial, the Thomas Fowell Buxton Society, given its educational remit, is arguably entitled to petition, and for that reason alone I ask that the Bill be declared hybrid so that the society has an opportunity to do so. I think—this is where I definitely trespass on territory that I do not know—it follows from Standing Order 95(2). I noted with concern this morning that Mr Owen's submissions specifically referred to the TFB Society as an amenity society. It may arguably be so, but it has a specific educational remit, and he specifically did not mention the issue of education in his submissions.

51. Finally, and this is an observation that I trust the Secretary of State will accept in reply, one sees from the press release of 23 February 2023, which is on page 541 of the Secretary of State's submissions, that they are simply proposing that the Holocaust memorial will join other important memorials in Victoria Tower Gardens. Well, yes. But what they do not say is that it will be completely out of scale with any the others, and that, of course, is why we are here today. Mr Owen also said that the Buxton memorial was not there in 1900. That may be so, but interests change. It was irrelevant, and was not considered, in 1900. More importantly, its placement there, I think just after the Second World War, was entirely consistent with the character of Victoria Tower Gardens—in other words, as gardens—now being affected. Indeed, the proposals here, as the High Court found, will go directly against the concept of the 1900 Act.

52. In similar vein, at paragraph 5.13, the Secretary of State says that the HMLC would only impact the provisions securing the maintenance of the gardens as a public garden and, therefore, access to that garden by the general public. There is a similar argument at paragraph 5.18. I trust that the Secretary of State will accept in his response, and at any event the Examiners will find, that the Buxton memorial would in fact be specially affected, as set out in our memorial, given the finding of harm to us, so giving us the necessary private interest or locus equivalent to that to be heard about in Parliament. That is all I have to say. Thank you.

53. **MR TOM HEALEY:** Thank you. I have one question about the status of the Buxton memorial. Who owns it, and who is responsible for its upkeep?

54. **MR RICHARD BUXTON:** I think it is owned by the Government. It was given to the nation by Charles Buxton in the 1860s. I know that it was refurbished very thoroughly, because the Minister at the time, John Prescott, opened it in 2007, just before the abolition of slavery commemorative service in Westminster Abbey.

55. **MR TOM HEALEY:** Is the memorial itself an integral part of the gardens that are owned by the Secretary of State, or whoever owns and looks after the gardens?

56. **MR RICHARD BUXTON:** If you mean, “Does the Royal Parks and gardens service come and clean it?” or something like that, I anticipate that that is the case, but I do not know. I would not suggest that the Buxton family looks after it in the sense that some people tend their memorials, such as gravestones. We do not do that.

57. **MR TOM HEALEY:** Good. Thank you.

58. **MS CHRISTINE SALMON PERCIVAL:** You mentioned that every year the Buxton family has an event at the memorial. Is that a purely private event or something that has become a regular and more public event?

59. **MR RICHARD BUXTON:** The cousin who is mentioned in the memorial, Joe Buxton, tells everybody that it is going on and a percentage of people turn up. Unfortunately, as there are many descendants of TF Buxton now, it would not be difficult to inveigle yourself as a descendant, if necessary. If someone says—as, indeed, people have to me—“What’s going on here?” we say, “Come and listen”, or whatever, but essentially that bit of the gathering is a family event, and after the picnic, which is what it usually is, in the afternoon, we go over to a service at Westminster Abbey that includes a large number of people in the south transept who are members of the public.

60. **MS CHRISTINE SALMON PERCIVAL:** At the beginning of your presentation, you said that you thought the Bill should be hybrid so that those who have something to say would have an opportunity to say it. What would the Buxton family be seeking by way of an amendment to the Bill, for example?

61. **MR RICHARD BUXTON:** There are many ways of putting it, but I think we would suggest—I have not thought about this question, I am afraid—that any construction of a memorial in the gardens should be comparable with the other memorials. In other words, if there were another Buxton memorial, another “Burghers of Calais” or that sort of memorial, I do not think it would be controversial.

62. To answer your question in the negative, it would be most unfortunate if this Bill were to go through, effectively allowing carte blanche for any sort of Holocaust memorial and learning centre in the gardens. That, I think, is the unfortunate bit. It should be constrained to something that is consistent with the fundamental purpose of the gardens—namely, a public garden. At the moment, quite apart from the Buxton memorial, as I understand it, it will effectively become, among other things, a very dominant tourist attraction.

63. **MR JUSTIN LESLIE:** Are the constraints that might be attached to the memorial not constraints that would come through the normal planning process?

64. **MR RICHARD BUXTON:** Baroness Deech touched on the difficulties with the planning process. In normal circumstances, to be entirely blunt, we trust the planning inspector and the Secretary of State, but here, as Baroness Deech said, we have a proposal that was called in without even having the opportunity to go to Westminster City Council. There was then a planning inquiry, and although this is not the place to comment on that inquiry, it was done during Covid and largely remotely. Then it went to a deputy Minister, who at the time was Chris Pincher, to make a decision. It is very hard, as others have said, for the general public to see how that is an objectively fair planning process. We want to see

the process constrained so that what is proposed, and permitted if indeed it is, is consistent with the gardens being more or less what they are, rather than an extraordinary transformation.

65. **MR JUSTIN LESLIE:** One of the limitations of the Bill as drafted is that in substance it does not authorise the building of a memorial. It seems to have been a deliberate choice not to present a Bill that authorises the building of a memorial. As the agent for the Secretary of State said, there will be a subsequent planning inquiry. The question that I am interested in, given the tightly drawn nature of the Bill, is what constraints could effectively be put on any further memorial through it.

66. **MR RICHARD BUXTON:** I understand the question. I would have thought that a number of provisions might be added to say, effectively, “provided that the extent of the memorial does not extend to take up more than X percentage of the gardens”, or, “provided that it does not extend to a height greater than any other memorial”. This one does, I might say. Those are the sorts of constraints that need to be put on it. We are very close to Parliament here. The belief on this side of the table is that MPs and Peers may think that a Holocaust memorial is “a good thing”, but to give carte blanche, which the Bill does as drafted, would be very unfortunate.

67. I know that I have not completely answered your question, because you wanted to know what provisions I would like to insert. That would require some careful thought, but, as others have indicated, it could be done, and uncontroversially.

68. **MR JUSTIN LESLIE:** On a question of fact, was the Buxton memorial gifted to the nation on a completely unconditional basis, or did anything occur during that gifting that we need to be aware of?

69. **MR RICHARD BUXTON:** I have not researched the point, but I know it was originally put up somewhere in the middle of Parliament Square. I think it was taken away either before or during the Second World War, and then they decided to re-erect it in Victoria Tower Gardens. It was very carefully put there on a special axis, as I put in the memorial. I do not know on what terms Charles Buxton gave it to the nation. I suspect that in those days the sort of thing one did was to say, “Here’s a memorial and it’s yours”. That is my expectation.

70. **MR TOM HEALEY:** Given that the Memorialists have been here for some time, has anything occurred to any of you since you last spoke that you would like to add before we move on to hearing from Westminster City Council?

71. **MR ALASTAIR LEWIS:** I would simply add, on the last question, that it is quite right to say that the Bill does not authorise a design or the construction, but it potentially authorises the taking of the whole gardens. Maybe a new design will come forward that is even bigger than the one that is proposed now. We do not know. I suspect not, but it could. So, if I can put words into Mr Buxton’s mouth about the sorts of amendments that could be put forward by any Petitioner, I would go along with what he says. For example, the physical extent of the closure of the gardens could be put forward by Petitioners in a Select Committee as an amendment that it would be proper for the Select Committee to consider—assuming that the principle of the Bill is not what Mr Owen said it might be, which is that there shall be

a Holocaust memorial centre in Victoria Tower Gardens. It is rather more likely to be that land in Victoria Tower Gardens can be used for a memorial centre.

72. **MR TOM HEALEY:** Thank you. That brings us to our final Memorialist, which is Westminster City Council, represented by Mr Mustafa Latif-Aramesh. Please go ahead.

73. **MR MUSTAFA LATIF-ARAMESH:** Thank you for your time and consideration. I propose to go through a few matters: the background to Westminster City Council; the test of hybridity; the six interests that are affected according to that conventional test; what we call the Abraham formulation; the test concerning public policy; and, lastly, the interaction between the planning process and the process before us today. Where a matter has been raised by Mr Lewis or one of the other Memorialists, I will try to summarise it in the interests of time. Like Mr Lewis, I timed myself yesterday and I took about 25 minutes, so I should not keep you for too long.

74. The first aspect to touch on is the background. Westminster City Council is the local planning authority and the local highway authority, and it is responsible for the provision of open spaces to its local residents in the local area. It is also, distinctly, a successor to London County Council. It is also the successor to the Metropolitan Borough of Westminster. For reasons that I will go on to explain, that is particularly significant in this case.

75. On the question of the test for hybridity, we have heard at length about the test of Speaker Hylton-Foster. Specifically, that test is “a public bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class”. I shall briefly pause on that. The word “treatment” is not used. Mr Owen referred to a potential distinction between “affect” and “treatment”, but that is nowhere to be found in the text.

76. On the question of what a private interest is, our view is that it must be read in line with the definition of a private Bill itself, which is a Bill that affects a local area or an individual or some particular interest. “Private” in this sense is not a narrow conception of proprietary interest or a very specific legal interest; it is much wider than that. Mr Lewis referred to the Cabinet Office’s own guidance, which makes clear that it extends to, for example, the interest of a local authority in the administration of its area. I will come back to that point when talking about the interest of Westminster City Council.

77. It is also worth bearing in mind that paragraph 5.2 of the Secretary of State’s own representations accepts that it extends to private or local interests. I will deal with the Abraham formulation separately, because I know it gives rise to a specific issue that you will have to consider.

78. Moving to the application of the test, we have identified in our memorial six separate interests. The first three of those are specific to Westminster City Council. No other local authority has those interests that are engaged in this Bill. They are the interests of Westminster City Council as the local planning authority, as the local highway authority and, specifically, in its capacity as the body responsible for the laying out of open space and general amenity of its local inhabitants. In our view, that very clearly falls into the definition that is anticipated in the Cabinet Office guidance of local authorities having an interest in the administration of their area.

79. I understand that it is not the job of this process to consider the merits, but it is worth saying that in the planning process that preceded this process it was clear that Westminster City Council had a concern about the reduction of open space in its particular area. I will return to the question of the planning process at the very end, if that is okay, but clearly you will have to consider the interaction between the planning process and this process, given that I have raised Westminster City Council's status as the local planning authority.

80. The next interest affected is that of the Secretary of State themselves. We have put forward two alternative arguments for why that interest is engaged in this case. The first is that the precedents that the Secretary of State relies on in their representations are very clearly nationalisation Bills. They are not the kind of Bill, as here, where a local area is affected. The specific precedent relied upon for the test that there has to be an adverse impact is a nationalisation Bill, a national Bill, that deals with bodies across the country. In those circumstances you can see why the adverse impact would be relevant, because if you can identify someone who does not suffer an adverse impact, it stops being a nationalisation Bill and the kind of Bill that engages very specific or local interests, which is the relevant test that we are applying here.

81. Alternatively, we have put forward the view that the interest of the Secretary of State must be objectively determined. It is not about the current wish or opinion of whoever happens to be in the Secretary of State's position. It is their legal interest—their legal functions as properly defined in the 1900 Act—that has to be considered. That is adversely affected here. There is a function of maintaining the gardens as public gardens in the 1900 Act. It does not matter if this particular Secretary of State does not agree with that particular function; it is adversely impacted.

82. On that question, I note that that is reflected generally in how hybrid Bills are dealt with. Under the HS2 Bill, for example, Crown lands were proposed to be acquired. It is not as though the acquisition was treated differently and notices were not served on government departments in connection with HS2, notwithstanding that it is clearly government policy to pursue HS2.

83. This is also borne out by the Epping Forest order. In that case, the Corporation of London, which was the landowner of the area where the restriction was proposed to be removed, supported the purpose of that order, but none-the-less it was considered to be hybrid. On that point, I emphasise that it is not an educated guess as to why that particular order was considered to be hybrid. Mr Lewis read the extract from the committee's report making clear the references to the rights of local interests. The subsequent Petitioners to that order were local residents who exercised their public rights over that land.

84. I turn to the question of the local community and who exercises those rights. It is worth saying that our view is that the test is whether there is an interest, whether that is of general nature or a specific interest, that is affected in a manner that is different from that of other people. Mr Owen made the claim that the class of people who are affected by this Bill is the public as a whole, and the representations made clear their view that that is too general in nature. However, the actual test is not that there has to be a specific interest but that the particular interests are affected in a manner different from all other interests in the same category.

85. In our memorial we make various references to the 1948 committee's comments on this issue. The specific point on whether a local or private interest is either a specific group or a specific body or a general class in which particular people were affected was tested during that committee. This is not a novel interpretation. The Clerk of Public Bills was specifically asked, "Do you mean one or the other?" and said, "It covers both".

86. So where you have a general right—say, the right to use public open space—and there is a particular subset of people who are affected, that was considered to fall within the definition. So what we are putting forward is not something novel; it is something that spans way back into pre-21st-century parliamentary practice.

87. Again, the Epping Forest order speaks to the point. The right of locals exercising a general right, as Mr Owen would call it, is engaged because it was considered to be a hybrid instrument. Mr Owen made reference to the fact that the process was different and that we do not quite know the reasons. For the reasons I have given, I do not think that is quite right, but in any event it is worth looking at the specific terms of Standing Order 216, which makes clear that the test for whether or not an instrument is hybrid is whether it would be considered a hybrid Bill.

88. We think that is persuasive authority, but I also draw your attention to footnote 11 in our memorial where other precedents are cited. This memorial does not rely on the Festival of Britain Act; it relies on a series of precedents. Where the rights of the public—even though they are general and extend to all people in the country—are adversely affected, they are considered to be hybrid instruments.

89. You will see references there to various orders that have been pursued in relation to the Tour de France. The rights in those cases refer not to public open space but to public rights of way. Again, I am sure someone could make the argument that public rights of way are for all the King's subjects and, therefore, no one is specifically treated in a different way, yet we have a series of precedents that support the proposition that where there is a general right but it affects particular people in a manner different from others, it should be considered a hybrid instrument.

90. I turn to the sixth interest that we have identified as being affected. Again, this is something specific to Westminster City Council. Section 8 of the 1900 Act is headed, "For the protection of the Commissioners of Works", but we have not put forward that Section 8 is an agreement; that was not the purpose of what was said in our memorial. Rather, it reflects a bargain, an agreement reached between the parties. It is like any other protective provision in that regard. Westminster City Council is the successor to the London County Council. The terms of Section 8 are clear. I am conscious that Mr Owen said, "If it had been intended to be an agreement, it should have said so". Respectfully, it does. It specifically refers to an agreement between the Commissioners of Works and the London County Council, and that agreement is that the works and everything else will be carried out in accordance with the provisions of Section 8 which follow.

91. The other point to make in this context is referenced at paragraph 4.11 of the Secretary of State's representations, wherein the Secretary of State's position is that the High Court case actually supports their reading. Annexe 2 of the Secretary of State's representations contains the High Court judgment, and I draw your attention to paragraph

101 of that judgment. It deals with an argument that seeks to argue a narrow construction of Section 8—specifically, that the protections in Section 8 were spent because, once the gardens were laid out, all the protections fell away and the commissioners could do as they chose with that land.

92. The High Court disagreed and said—I hope you do not mind my reading this out, because it is important—“Viewed from the perspective of 120 years later, this may seem unobjectionable”—referring to the argument that was attempted to be made. It goes on to say that it was “submitted that the future of the garden could be left to the good sense of the Commissioners. However, the context reveals that it was not just the Commissioners who had an interest in the use of the land as a garden. Westminster Vestry had donated £100,000 to the scheme conditional on the provision of a garden”. Westminster Vestry became the metropolitan borough, which became the Westminster City Council. So here we have the High Court plainly saying that there is an interest other than the Commissioners’ engaged in this provision. The Bill proposes to unilaterally vitiate the benefits and protections therein.

93. I note that the Secretary of State’s representations do not make this point, but let us say for argument’s sake that they wanted to put forward the argument that no one is adversely affected; the money was paid over and the lands laid out, and now we are in an entirely separate scenario. It is worth saying in that context that Section 8 protects the position that Westminster Vestry had. It was always the position of the London County Council, as is made clear in the High Court record, that it wanted the land to be laid out as a garden, and I think the suggestion that the Bill was introduced without that protection is mistaken.

94. What we have here are six interests that are specifically affected. No other local authority is in the same position, because no other local authority is the successor of a body mentioned in Section 8 and no other local authority is having the provision of open space reduced in its local area. We have a community whose rights are disproportionately impacted, and the 1948 committee confirms that that is a perfectly acceptable and accepted way of applying that test.

95. I turn to the Abraham formulation, and I shall start with its status. In our view, there is no conflict between Mr Speaker’s ruling, which many other Memorialists have referenced, and what we call the Abraham formulation. We know that is the case, because Mr Speaker Hylton-Foster’s ruling, which defined what a hybrid Bill was, was in fact based on wording in the 1948 committee report. I draw your attention to paragraph 23 of our memorial, which quoted that report as follows: “Since a Hybrid Bill, by definition, affects particular interests in a manner different from all the other interests in the same category ...”. It was not as though the 1948 committee was proposing one test and the Speaker’s ruling came along and superseded it; they were both the same test. Put differently and properly applied, both tests will lead to the same result. That is why both of them feature in the 1948 committee’s report.

96. Mr LA Abraham’s formulation is specifically that “if similar provisions had been contained in a private bill, preliminary notices would, under the standing orders ... have had to be given to parties whose rights are affected”. It is therefore clear that if you take our view that there is no conflict between the two tests, which is why they are both referenced in the same report, you cannot give a narrow reading to private or local interests. That fact is helpfully confirmed by the Cabinet Office guidance, but it is almost as if we do not need that

guidance because the test has always been applied in that way. That report was commended to the House of Commons, approved by a majority. During the course of its proceedings, not just the Clerk of Private Bills but the Clerk of Public Bills endorsed the same formulation. It is therefore, in our view, the right test to apply.

97. Mr Owen made the point that it does not refer to differential treatment, which is not how the test of hybridity has been considered. If you take our view that there is no conflict, you do not need to separately consider a differential effect because the results are the same. We have set out at paragraph 31 of our memorial the Standing Orders that would be engaged. The Secretary of State's representations confirm in the annex that, if it were considered to be a hybrid Bill, they would consider the Standing Orders to apply. In our view, that almost has the Abraham formulation the wrong way round. The fact that there are Standings Orders that are engaged is itself evidence of hybridity.

98. Turning to questions of public policy, in some of Mr Lewis's representations to you it is clear that a test of public policy is not determinative, and I think that Mr Owen, as Mr Lewis said, has rowed back from the position that appears in the representations. In our memorial, which I will not repeat, we have made clear that the test of public policy is not determinative. It is almost inherent in a hybrid Bill that there is some element of public policy. We would add, however, that the 1948 Select Committee report puts forward a topology of hybrid Bills. It specifically states that there are four kinds of hybrid Bills. In the first category are those related to the acquisition of land, although the 1948 committee report says that the number of those Bills would reduce, given the onset of compulsory acquisition powers generally, except where it will be necessary to remove statutory restrictions on the use of a site. In that first category we have what it would be fair to define as this Bill.

99. The fourth type of Bill, when you get to the end of the 1948 Select Committee report's typology, is the kind of Bill where nationalisation happens, where large areas of industry are proposed to be acquired or in some way charged. In our view, the attempt to rely on precedence in the fourth category is wholly inappropriate for the first kind. With the last kind, it is very clear why someone not specifically being named is a relevant test, because that is evidence that it is not classified as the fourth category. If it is a nationalisation Bill and specific people are mentioned, clearly the test will have to consider whether a specific body is mentioned. We do not consider that point for the first category, because it very clearly removes a specific restriction for a specific site on a specific local area where there is a successor local authority that has a particular interest in the section that is proposed to be modified.

100. It is worth saying again that, notwithstanding the general impact, the Epping Forest order was not considered to transgress the principle relating to public policy. I will summarise that case and then turn to the interaction between the planning process and the parliamentary process.

101. Applying the Hylton-Foster formulation, it is clear that there are six interests that are affected in a manner that is not the same as others in the same category, the same category in one case being a general public right of way or a right to public gardens. It affects particular people in a different way. Westminster City Council is affected in a unique way as the local planning authority, as the local highway authority, as the body responsible for the amenity and

well-being of its inhabitants, and as the successor to the Metropolitan Borough of Westminster as well as the successor to the London County Council.

102. The objectively defined position of the Secretary of State is affected. In our view, you should not consider whether there is an adverse impact, but even if you did we think there is an adverse impact on the objectively defined function of the Secretary of State.

103. I think it is mentioned in the representations that it is not private right. In this context, “private right” and “private interest” have to be viewed in the context of the relatively broader definition that we have put forward, so it is very clearly a local interest that is objectively affected by the Bill. The substance of the matter is that it is affected by the Bill. The Abraham formulation colours how we should apply the Hylton-Foster formulation, and it is clear under that test that this Bill would be hybrid. The 1948 committee puts forward a topology of hybrid Bills, as I said, which we think has two important implications. One is that this Bill falls squarely in the first category, and that should be sufficient evidence of hybridity. It should also cause some reluctance to rely on the precedents that the Secretary of State relies on.

104. Touching on the interaction between the planning process and the parliamentary process, Mr Leslie asked the Memorialists whether they would have the opportunity to comment and make representations when the planning process is restarted outside this Bill rather than making them in this process.

105. In the first place, it is worth emphasising the different nature of the protections that are engaged. All protective provisions provide some form of benefit or protection over and above the planning process. The HS2 Acts, or any other kind of hybrid Bill, include restrictions. Just because there is a separate process in which you are able to make representations specifically on planning matters does not mean that the statutory protections in the 1900 Act can therefore be ignored, because there is a separate planning process.

106. Indeed, the whole conclusion of the High Court’s judgment was that the existence was a material consideration in planning terms. Let us imagine a world in which it was not a material consideration in planning terms; it would still be a restriction. I therefore emphasise that just because there is a separate process to deal with the separate, distinct matter of planning policy compliance with national, local and regional policy does not mean that a protection included in an Act of Parliament should not be subject to the hybrid Bill procedure, which allows people to make petitions to put forward provisions like the ones that Mr Lewis and Mr Buxton have suggested. We are likely to make similar requests on the scope of the provision itself, because a statutory protection is separate from the planning process.

107. I have nothing else to add.

108. **MR TOM HEALEY:** Thank you. I have a couple of questions. The first is about Westminster City Council. In 1900, there was the Westminster Vestry and the London County Council. Westminster City Council is a successor to both. I can see that it is the successor to Westminster Borough Council. In what sense, and for what purpose, is it also the successor to the London County Council?

109. **MR MUSTAFA LATIF-ARAMESH:** The London Government Act 1963 started the process by which the London County Council was effectively abolished in favour of the Greater London Council. Parts of the GLC's functions were then transferred to relevant boroughs under a transfer order in the 1980s under the Local Government Act 1985. Some of those functions passed down to Westminster City Council and not just to the GLA, which was created under a separate enactment in 1999.

110. **MR TOM HEALEY:** So it was when the GLC was abolished that the boroughs individually became the successor bodies for their areas.

111. **MR MUSTAFA LATIF-ARAMESH:** In part, yes.

112. **MR TOM HEALEY:** Thank you. That makes sense. I also want to ask about the Secretary of State's interest in the garden. The Hylton-Foster formulation talks about a private interest. Can we reasonably regard the Secretary of State's interest as being private?

113. **MR MUSTAFA LATIF-ARAMESH:** In this case, the Secretary of State's interest is a local one, because it benefits a particular and specific area of land, with the same consequent effect that it has local residents in the local community as its beneficiaries. So the argument that we were making in the context of the local community almost transfers over. It is a private or local interest, because it is related to a specific parcel of land which they effectively have the function of ensuring is laid out as a public garden.

114. **MR TOM HEALEY:** I am trying to think about the distinction between the Hylton-Foster formulation and the Abraham formulation. Hypothetically, it seems to me that it is the existence of private interest that makes the Bill hybrid. If the Bill is hybrid, Standing Order 18 says that you have to serve notice on various people, some of whom may not be private entities; they may be government departments. You talked about the Government serving notices on other government departments in relation to railway legislation and so on. Is that a possible distinction: that a private interest has to be engaged for the Bill to be hybrid, but, once you have established that it is hybrid, public authorities could require notice to be served on them under the Standing Orders?

115. **MR MUSTAFA LATIF-ARAMESH:** I think they are two different ways of getting to the same result. For example, a local authority has a private or local interest, as explained in the Cabinet Office guidance, and Standing Order 18 is engaged specifically because of the protection that exists in Section 8 rather than the status of the local authority. The reason why these two tests are in the same committee report is because it is difficult, unless you take the narrow reading of "private interests", to come up with an example where they conflict with one another. So it is important to keep them separate, but I think Westminster City Council would be engaged for two different purposes under the different formulations.

116. **MS CHRISTINE SALMON PERCIVAL:** I would like to ask about the Cabinet Office guidance that you just mentioned, because all the Memorialists have referred to it, and earlier today Mr Lewis was asked what weight should be given to it. To what extent is it important to your argument that private interests extend to local authorities and their interest in the administration of their area? Is there any other source of authority for that?

117. **MR MUSTAFA LATIF-ARAMESH:** On the question of how much weight to give it, I agree with Mr Lewis that it is persuasive evidence for the position that we are advocating. The other evidence that would support that contention is twofold. One is how the Epping Forest order and the multiple Tour de France orders are or could be treated, where there is a purportedly general right that is open to the public but there is considered to be an interest that is specifically engaged. In the case of the Epping Forest order, a London borough—I cannot remember which one, but it may have been Havering—made a petition, which again is persuasive evidence for the proposition.

118. The existence of the Abraham formulation is also evidence of local authorities being engaged, particularly because, as we mentioned in our memorial, under Standing Order 5 there is a requirement to provide particular documents in a notice where you are not just acquiring open space but proposing to use that space, and in most cases that would almost lead to the same result. The weight of all those things—the precedents, the Abraham formulation, the Cabinet Office guidance and the definition of what should be in a hybrid Bill itself—points in the direction of hybridity, and in this Bill all four of those exist.

119. **MS CHRISTINE SALMON PERCIVAL:** This is a very small point and it features in a footnote, but I am just curious. I believe that each of the Harrogate stray orders was negative. I just wonder how it was known that they would be hybrid had they been found to be affirmative. However, if that is a point buried so deep in a footnote that it will take time to answer, we will move on.

120. **MR MUSTAFA LATIF-ARAMESH:** It would take some time to explain, yes.

121. **MS CHRISTINE SALMON PERCIVAL:** We will leave it there, then.

122. **MR JUSTIN LESLIE:** Just a few questions from me. One of the points that I have been putting to the Memorialists is about the limited impact of the bill, in that it tries to relax the restrictions in Section 8 for a particular purpose. Can you explain more about the impact of the actual legal effect of Clause 2 on your clients' private or local interests? I am a bit lost on quite what the effect is. You talked about the enabling the reduction of land for access, for example, but the Bill does not actually reduce access; it would just enable it, in your case. Could you talk about that?

123. **MR MUSTAFA LATIF-ARAMESH:** The use of the word “enable” was deliberate. Obviously we are mindful that there is no authorisation for the construction of works.

124. It is worth disaggregating the separate interests of Westminster City Council, in respect of your question. On the last interest that I mentioned, which is the city council's role as a successor to the London County Council as well as the metropolitan borough, the interest is specifically the “bargain”, as we refer to in Section 8, and that is very clearly affected. On the first three, which are the local planning authority, the local highway authority and the more general position where we have an interest in the administration and preservation of public space and amenity areas inside the local area, the Bill would effectively lift a restriction that is currently in place that preserves the current amount of open space.

125. Again, we think this really is a question of substance, not form. Everyone knows what the intention of this Bill is. We do not know exactly what form it will take, but, as Mr Owen said, the intention is to enable the construction of a Holocaust memorial and learning centre in the gardens. The practical substantive effect of that is that it will reduce the areas available for open space and amenity. In that way we have a clear interest, and that is the only context in which I have referred to what you might call the merits of the question, which is that Westminster City Council objected to these proposals because of the reduction of open space. The Bill does not automatically reduce the amount of open space, but it removes a restriction that would enable that. That is no less an interest in the administration of our area than a Bill that would authorise the construction of the works.

126. **MR JUSTIN LESLIE:** Can I talk about this “bargain” that you have spoken about? Am I right that your position is that the successors to your clients have some sort of contractual agreement?

127. **MR MUSTAFA LATIF-ARAMESH:** No. When we say a “bargain”, we mean as reflected in section 8 of the Act itself. The preamble to Section 8 specifically says that the provisions will follow have been agreed between the London County Council and the Commissioner for Works. When I use the word “agreement”, I am just playing back what the section preamble itself says. Effectively it says, “This is what has been agreed between these two parties, and here in the subsections are the restrictions and protections that the Commissioner for Works has to provide or carry out their functions in accordance with”. So the “bargain” is just the section itself. It is reflected in the clear wording, which—this is what I said when Mr Owen said that the section should have been drafted in a particular way—specifically refers to the bargain that is reached and which should subsist. As the successor to the London County Council, to have the Commissioner for Works or their successor effectively proposing to repeal or modify that provision is, on the face of it, a unilateral vitiation of the agreement that is referred to.

128. **MR JUSTIN LESLIE:** But you are clear the nature of this agreement is not contractual; it is something else.

129. **MR MUSTAFA LATIF-ARAMESH:** Correct.

130. **MR JUSTIN LESLIE:** Going back to footnotes, you intriguingly referred to the recent Supreme Court case of Day and statutory trusts. As a lawyer, that makes me very interested. I wonder if you could try to bed that out a bit, because I cannot quite see how that would arise in this case. Mr Owen dealt with this briefly, but could you just help me with that?

131. **MR MUSTAFA LATIF-ARAMESH:** We do not think the case that we are putting forward turns on the question of the existence of a statutory trust, which is partially why it is in a footnote—footnote 7, for anyone who wants to read it. The Supreme Court held in that case that, where a local authority uses powers conferred by an 1875 Act or the Open Spaces Act, the land is subject to a statutory trust. That is relevant, because the Open Spaces Act specifically says that there will be a statutory trust.

132. The earlier 1875 Act does not contain the same language, yet the Supreme Court held that a statutory trust arises in both cases. I say that our argument does not turn on this

question because the point we are making, which follows from the Epping Forest order, is that specific people who are the beneficiaries of a trust, a public right away or a public right to use public gardens are disproportionately impacted. That is why the case does not turn on it. The specific point here is that, notwithstanding that Section 8 does not say, “There is a public trust in favour of X body”, that does not mean that one does not arise, as is the case with the 1875 Act.

133. **MR JUSTIN LESLIE:** Something that has been slightly puzzling me about the Abraham formulation is whether it requires you to show us more. Are you actually making it more difficult for yourself by having to satisfy two tests—that is, the Hylton-Foster test and the Abraham formulation? A key thread in Mr Lewis’s memorial was the position of the differential treatment test. Am I right that you are not telling us that the differential test should be abandoned?

134. **MR MUSTAFA LATIF-ARAMESH:** That is right: it is not part of the city council’s case that that part of the test should be abandoned. The nuance there is the last point that I made. Where some of the precedents refer to someone not being specifically named or there being an adverse impact, those are very clearly because they are in the fourth category that I mentioned. We agree with the application of the test; it is just our contention that there are clearly people who are disproportionately impacted in the same category—that category being what Mr Owen refers to as a general right to use the public gardens—but there are particular people who are beneficiaries of that right who are disproportionately impacted. So that is correct.

135. **MR JUSTIN LESLIE:** In the case of the Epping Forest order that you have spoken about, were the local authority and the promoter—I think I am using the wrong terms here—in agreement that the hybrid Bill procedure should apply, or was it disputed, as it is here?

136. **MR MUSTAFA LATIF-ARAMESH:** It was not disputed, as far as I am aware. The committee report makes reference to two local authorities which then petitioned against the order itself. So if the question is, “Was there agreement on the question of hybridity?” I do not know, but to the question, “Did they consider themselves to have a local interest that was clearly engaged and capable of then forming the content of a petition?” the answer is yes.

137. **MR JUSTIN LESLIE:** Thank you. That is all from me.

138. **MR CHÉ DIAMOND:** Just one point from me. There has been some discussion today of the narrowness of the Bill. The argument has been put that the Bill does not directly affect private interests because it removes a restriction, and there might thereafter be steps taken by the Government resulting in a planning process, and so on. I want to tease out your response to that point a bit more.

139. Are you suggesting that the existing restriction itself is in a sense a private interest, and that the removal of that is itself affecting private interests by removing a protection? Is that your argument? You mentioned that the protective provisions provide protections over and above the planning process. Is that part of the same point? Are you saying, “Leave aside the idea that the gardens may in due course be changed from their current state - something of public benefit that affects particular private interests more than others is already lost once this Bill is enacted, before any shovel goes into the ground”?

140. **MR MUSTAFA LATIF-ARAMESH:** That is exactly right. On this point, I would add that Mr Owen made reference to the Epping Forest order and suggested in passing that it might have bestowed functions on the Metropolitan Police. It does no such thing. In fact, the specific wording of the order is similar to the Bill. It specifically says that, notwithstanding anything in the 1878 Act, which is the equivalent for Epping Forest, the particular uses can be progressed with. It does not confer functions. That is why the local interests were seen to be undone at that particular point, which I think is the question that you have asked me.

141. **MR TOM HEALEY:** I suggest that we take a 10-minute break before we invite Mr Owen to respond on behalf of the Government.

(The Examination was suspended from 3.30 pm to 3.40 pm.)

142. **MR TOM HEALEY:** Welcome back. I ask Mr Owen to respond on behalf of the Secretary of State.

143. **MR ROBBIE OWEN:** I will be pleased to do so. There are a number of points that I would like to make in response to what you have heard from the Memorialists, drawing also on the questions and answers that were given. I want to start with some general points that I hope will be of guidance to the Examiners.

144. The first general point is that some caution needs to be taken with regard to the weight to be given to various authorities. I can see that you are aware of that point, given some of the questions that you asked. I say that in relation to Cabinet Office guidance and in relation to *Erskine May*. I would say that those authorities are all of relevant background guidance, but I am not sure I would go so far as to say they were persuasive. I say that, because in this case the Examiners need to be guided by two factors. The first is instances where Speakers in the House of Commons have made rulings on whether or not Bills are *prima facie* hybrid, and we have given you a number of references to those in our written submissions.

145. Secondly, we think that you should be particularly guided, as the highest form of guidance, by previous decisions of the Examiners in relation to Bills that have been referred to them for being *prima facie* hybrid. Of course, this happens extremely rarely, as we know. The most recent example was the Local Government Bill in 2010. Although the memorials in that case were withdrawn before the Examination, it is fair to say that the examination proceeded as a proper Examination, so you can place quite a lot of weight on that.

146. Then, of course, there was the Aircraft and Shipbuilding Industries Bill in the 1970s. I think that was the last time there was a contested hearing in the nature of today's Examination. Given the rarity of these events, I suggest that you should be particularly drawn to what your predecessors have decided in a similar capacity. I remind you that in both those cases the Examiners took as their starting point, based their decision on, the Hylton-Foster definition.

147. Westminster City Council places reliance on the 1948 Cox committee and the so-called Abraham formulation coming out of that, which we say is an entirely novel take on these issues of hybridity and a novel interpretation of the hybridity test. There is no authority for it whatsoever. You do not see the 1948 Cox committee referred to in the cases that I have just mentioned. I have not seen it referred to anywhere either by Speakers or by your

predecessors as Examiners. That, therefore, needs to be borne in mind. We think there is a fundamental conflict between the Hylton-Foster definition and the Abraham formulation; they are not at all consistent, despite what you have been told by Westminster City Council.

148. In terms of weight, I shall deal with the Epping Forest order. This arises only in the House of Lords, because there is no equivalent process in the House of Commons.

149. Paragraph 1 of Standing Order 216 of the *Standing Orders of the House of Lords Relating to Private Business* from 2018 says: “Where in the opinion of the Chairman of Committees an affirmative instrument as defined by Public Business Standing Order 72 ... is such that, apart from the provisions of the Act authorising it to be made, it would require to be enacted by a private or hybrid bill, he shall report his opinion to the House and to the minister or other person responsible for the instrument”. The Standing Order goes on to provide that if the Chairman of Committees is of such an opinion, the order concerned is then referred to as a hybrid instrument.

150. A number of things follow from that. If petitions are then deposited against the hybrid instrument, it is referred to the Hybrid Instruments Committee and the committee then goes about its task and reports on the order. That is what happened in the case of Epping Forest. The Hybrid Instruments Committee did not make a ruling on hybridity. That was not its purpose or its job. That was done for it by the Chairman of Committees’ reference to the committee, so we just do not know why the then Chairman of Committees decided that that order was hybrid or not. No indication at all is given in the report of the subsequent sitting of the Hybrid Instruments Committee, so it is misleading to be referred to the report of the committee to indicate why that instrument was seen as hybrid in the first place, because it would have got to the committee only by a separate and prior process. I will come back in a moment to the relevance of the Epping Forest order’s substantive provisions. I hope that is helpful.

151. By the same token, I will refer briefly to the various precedents referred to by Westminster City Council. Footnote 11 of the council’s memorial refers to the various Tour de France, or Tour de Yorkshire, orders. It is said there that those orders “could have engaged Lords Standing Order 216 if they had been affirmative, not negative instruments”.

152. They were not affirmative instruments; they were negative instruments, as we have heard. Therefore, this is pure speculation. It does not assist you at all to be told about those orders, because they were not subject to the affirmative procedure and therefore were not considered by the Chairman of Committees. Therefore, everything else follows from that. I would suggest that you trouble yourselves no further with those Tour de Yorkshire orders, because they are not relevant.

153. My second general point is to re-emphasise the need not to confuse the tests in the Standing Orders in relation to the standing of Petitioners with the tests in relation to the Bill in question as to whether it is hybrid in the first place. They are very different tests. It is also of no assistance for you to be told that being able to petition is conclusive. There are many instances where government may decide not to challenge the standing of a Petitioner, so the fact that someone has or has not petitioned about something in the past does not really assist.

154. The third general point is in relation to the principle of the Bill. We touched on this earlier, and it might help if we return to it, because it is relevant, to an extent, to what you are tasked with deciding.

155. It is certainly the case, given what Clause 1 says, that the overarching principle of the Bill is that the Secretary of State is allowed to incur expenditure for or in connection with the construction of a Holocaust memorial and learning centre, the carrying out of works and everything that goes with that. It refers to Clause 1(1)(a) and “the construction on, over or under any land”. As Mr Healey said earlier, that could refer to anywhere in England and Wales, given the extent of the Bill in Clause 3.

156. Clause 2, dealing with the removal of restrictions in relation to certain land, says that Sections 8(1) and (8) of the 1900 Act do “not prevent, restrict or otherwise affect the carrying out of” anything done in relation to providing a Holocaust memorial and learning centre. So the second principle of the Bill that can be derived from that is that, should it be proposed that the Holocaust memorial and learning centre is located in Victoria Tower Gardens, that should be allowed to proceed despite the 1900 Act. That, I would say, is the second principle. Clearly, whether that happens or not is not dependent on the Bill; it is dependent on the planning process. The Bill absolutely does not second-guess the planning process, nor should it.

157. So I think the principle is, first and foremost, that money may be spent in relation to a proposed Holocaust memorial and learning centre and, secondly, that if conditions are such that—typically in planning permission, although it is obviously silent on that—the Holocaust memorial and learning centre should be located in Victoria Tower Gardens, that may proceed. That is a slight gloss on what I said earlier, but it is probably the correct way to look at Clauses 1 and 2 of the Bill.

158. That brings me on to the interaction between the Bill and the planning process. Whatever the principle of the Bill is seen as being, it does not and cannot replace or supplant the planning process. It is worth confirming as a matter of public record that in 2020, I am told, the London Parks & Gardens Trust sought a judicial review of the handling of the planning application. This was before the judicial review that found against the Government in 2022. This was a prior judicial review in 2020.

159. Mr Justice Holgate handed down his judgment on 2 October 2020, after a full hearing, and effectively required the Government to publish their handling arrangements for the planning application, and that was it. The court was otherwise satisfied by how the planning application was proposed to be handled, and I should say that it is entirely normal: local planning authorities do it all the time, central government does it on occasion. Central government in this case considers an application made to itself. There are standards and rules of propriety as to how these instruments should be dealt with. This was clearly not a successful ground for judicial review come 2022. The court was satisfied in relation to the propriety and the handling arrangements as such.

160. You are entitled to assume, and indeed should assume, as a key principle of public law, that, as and when this planning application is determined—it is now back with the Minister for redetermination following the quashing of planning permission last year—it will be carried out lawfully. That is a key principle of public law that is important. Therefore, in coming to a

decision on hybridity, you can be safe in the knowledge that the planning process will run its course. We do not know yet which process the determining Minister who is given the handling arrangements I referred to, ring-fenced from everyone else dealing with the memorial, will run for the redetermination. This, again, is entirely commonplace. It is not unusual for planning applications to be called in. Indeed, it is normal then to have a public inquiry, as has happened in this case.

161. The motivation of some of the Memorialists, particularly Mr Buxton, in wanting the Bill to be declared hybrid appears to be so that Parliament can exercise a degree of oversight on the conduct of the planning process. They want constraints, as you heard Mr Buxton say. They do not want the Government to have carte blanche. We say that that is entirely inappropriate as a motivation. It is also entirely irrelevant to the decision on hybridity. As I say, you must assume that the planning process will run its course lawfully. Again, if there are concerns about that, it will be open to the Memorialists or indeed to anyone else who has standing to apply for another judicial review of that decision.

162. Therefore, Clause 2 is entirely secondary to the planning process. The planning process will call the shots here in relation to the proposals for the Holocaust memorial and learning centre in Victoria Tower Gardens, and that will determine quite where in the gardens the work should be carried out, how much of the gardens should be taken up, and arrangements during construction. All those matters will be dealt with through the planning process, and we say that is how it should be. As has been noted today, the Bill does not specify design or location, and that is quite intentional; it would not be appropriate to do so. Parliament does not like to be a planning authority unless it cannot help it, as we know from years of experience here. In the case of this Bill, the Government are not inviting Parliament to be a planning authority, and rightly so.

163. Therefore, whatever the principle of the Bill is, the protection afforded by the planning process will apply whether or not the Bill is hybrid, as I say. That, we say, is the source of a lot of the Memorialists' concerns, and they should be aired during the remainder of the planning process and a resolution found for them.

164. My last general point is that you have heard quite a lot about different types of hybrid Bill. We are not sure that that is at all relevant. Depending on what you read and where you read it, people have different ways of slicing and dicing hybrid Bills into types, how many types, sub-types and so on. We do not think you need to trouble yourselves with that. You need to look at what this Bill does. That is the key thing for you in your deliberations.

165. I turn to the issue of these so-called or alleged private, including local, interests. Nothing we have heard today leads us to a different conclusion from what I said this morning: that we do not think there are any specific private and local interests.

166. I will deal first with the position of Westminster City Council. It seems to us, as with the Abraham formulation, that there is a lot of wishful thinking and wishful reading going on here that is just not borne out by reality. As a preliminary point, you were referred to paragraph 101 of the court's judgment by Mrs Justice Thornton, which is our annexe 2. That paragraph concerned a very different context and focused on an argument that was being put to the court, which the court admittedly did not accept, that the maintenance obligation fell away after a certain period of time.

167. The key point is that we should look at what Section 8 of the 1900 Act actually says. Yes, as you have been told, it says in the third recital: “And whereas it has been agreed between the Commissioners of Works and the Council that the said works shall only be executed subject to and in accordance with the provisions herein-after set forth”.

168. There is a fourth recital about plans, and then there are the substantive provisions of Section 8 over the remaining 22 subsections. They set out a number of obligations, and I shall read out a couple of them because they are relevant. The first is that, “The lands lying to the eastward of the new street described in this Act as consisting in part of widenings of Abingdon Street and Millbank Street which is in this section called ‘the new street’ and between the said street and the new embankment wall shall be laid out and maintained in manner herein-after provided for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden subject to such byelaws and regulations as the Commissioners of Works may determine”. There is an interesting reference there to a recognition of ongoing regulation through bylaws and other regulations by the Commissioners of Works.

169. Then the section sets out a number of obligations. Some of them are on the council and some are on the Commissioners of Works. Yes, it reflects what was agreed. For example, subsection (2) says, “The Council shall construct the new embankment wall”. Subsection (4) says, “The Council shall do all things necessary to vest the new garden land in the Commissioners”. Subsection (6) says, and this time it is the turn of the commissioners to do something, “The Commissioners of Works shall lay out as a garden the new garden land so vested in them and may also make such alterations in the paths bedding and turfing of the existing Victoria Tower Garden ... as they may think necessary to secure uniformity of design in the Victoria Tower Garden as extended under the provisions of this section”. Then there is an obligation on the council to pay money to the commissioners in subsection (7).

170. The key provision is in subsection (8): “The Commissioners shall maintain the garden so laid out and the embankment wall and kerb and railings enclosing it”. That is an obligation on the commissioners and, as the High Court found last year, it is an enduring obligation. There is no role there for the council, as I have said. It has other things to do under this section. It goes on to all sorts of other obligations on the council to do further things, from subsection (8) onwards.

171. I think that is highly relevant for you to understand the intent at the time. This was in 1900. We have heard about the Day case, which recently went before the Supreme Court, and its conclusion regarding statutory trusts arising under the 1875 Act or the 1906 Act. Parliament was clearly used to imposing statutory trusts at that time when it felt it appropriate. Did it do so in Section 8? No. There are no statutory trusts. Again, it is a wishful reading of the provisions of that Act for you to be told that it gives rise to a statutory trust. In any event, we are not sure that really helps, as I said this morning. If there is a statutory trust, it is for the benefit of the public at large, not for any smaller category or class.

172. The other point to make regarding Westminster City Council is that we do not see the adverse effect on the council by the Bill. There has to be an adverse effect. That is what the principle of hybridity requires you to find. Footnote 1 of the council’s memorial says, “It may be noted that planning permission is not deemed to be granted by the Bill”. That is entirely correct, but then it says, “Whatever the reason for this, it does not affect the hybridity

of the Bill as further considered below". We say that it absolutely affects the hybridity of the Bill. It means that quite clearly Westminster City Council has an interest in the administration of this area—that is why it exists—but the interests in relation to the memorial can and will be protected by the normal planning process, the highways process and so on through the exercise by the council of its functions in the normal way, which the Bill does not prevent, restrict or compromise in any way. That is an important point. So we would say that no effect on the council has been demonstrated to you.

173. We have heard a bit about local interests. We are not sure that you need to rule on the matter, as was the case with the Local Government Bill in 2010, because, as I will summarise in a minute, we see no differential treatment here between all those who are allowed to, and do, enjoy Victoria Tower Gardens, because it is a matter for the general public, so I am not sure that further inquiry into the definition of "local interests" gets us anywhere.

174. The final point about private and local interests takes us back to the fact that this is Crown land, as we have heard. We think it is a nonsense to regard this particular bit of Crown land as a private or local interest. That cuts across some essential and basic understanding of what Crown land is. This is very different from both the Festival of Britain Act, which involved Battersea Park, which was not and still is not Crown land, and the Epping Forest order.

175. It is helpful to dwell briefly on the Epping Forest order. I mentioned earlier in this response the weight to be given to it. Quite clearly, Epping Forest is owned by the City of London Corporation, so it is not Crown land. The order was a legislative reform order, to clarify that point. The Legislative Reform (Epping Forest) Order 2011 makes much more extensive provision than this Bill—in that case, for Wanstead Flats to provide for a muster, briefing and deployment centre—including, for example, a provision inserted by the order into the Epping Forest Act 1878 that in effect allowed the conservators of Epping Forest to grant permission to the Metropolitan Police Authority or the Commissioner of Police of the Metropolis in relation to that centre. So we think it is quite a different case from this Bill. As I said, we do not know why the Chairman of Committees considered it to be a hybrid instrument, but you can perhaps deduce from what I have just said that, given the difference between what that order does and what the Bill does, it did not involve Crown land at all and was doing a lot more in relation to substantive provisions.

176. We have also heard that the Buxton memorial was given to the nation. I think Mr Buxton referred to his expectation that it was just given, with no ties or strings attached and no conditions. That concludes what we wanted to say about local and private interests. We remain of the view, as I said this morning and as we said in our representations, that no private, including local, interests of the type relevant to hybridity have been demonstrated to you today.

177. The next point relates to differential treatment, if I can put it that way, because we say that that is a fundamental requirement of hybridity under the Hylton-Foster definition. Again, even if you think there may be one or more private local interests, we do not see any differential treatment. No special effects have been demonstrated to you, given how the Bill has been drawn.

178. I shall just dwell on that. Yes, it is entirely correct that, on the face of it, the Bill does not refer to a category or a class, but we think that the Examiners, who are entitled to look behind the Bill, should ask, “Can we infer a category or class?” Mr Buxton said that it could not be right that hybridity depends on the Secretary of State’s choice in the drafting in terms of what the class or category should be. We say that that is entirely right; it is exactly how Parliament has dealt with hybridity over the years.

179. I refer to annexe 9 of our written submissions relating to the Aircraft and Shipbuilding Industries Bill, which was the last time there was a contested hearing in relation to hybridity. In the result of the Examination, the Examiners refer to the Hylton-Foster ruling and the reference, which I referred to earlier, to the doctrine being designed to give the minority some defence against the legislature. In modern times, that means defence against the Crown. Unless it is that, it is nothing.

180. The Examiners go on to say, and this is of real relevance here: “Yet this defence has been eroded by two Speakers’ Rulings, the first given before, and the second given after, Mr. Speaker Hylton-Foster’s Ruling ... the answer to the question whether a Bill is hybrid on the Hylton-Foster definition depends on where you draw your category or class. The two Rulings we have referred to are that of Mr. Speaker Clifton-Brown on the Bill for the Iron and Steel Act 1949 and that of Mr. Speaker King on the Bill for the Iron and Steel Act 1967. The effect of both of them is that the category or class that is relevant is the one selected by the Promoters of the Bill”—that is, the Government. “In other words, the defences of the subject against selective ill-treatment can be turned by drawing a category or class that comprises him and his fellow victims and nobody else. We therefore conceive ourselves effectively prohibited by the Rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King from finding that the Aircraft and Shipbuilding Industries Bill is inherently hybrid, that is to say that we cannot in the light of those Rulings find that the class of companies whose securities are to be taken into public ownership is described with such particularity that it is itself a selection from a wider class of companies”.

181. There is all the authority you need for the proposition that we advance that you absolutely are entitled to—indeed, you have to—look at how the Bill is drawn and what selective treatment, if any, it gives to those who fall within its scope in terms of impact. That is a key point to make: in your deliberations, as we said earlier, you are entitled to ask yourselves, “What are the relevant classes and categories?” with reference to how the Bill is drafted and what it says regarding Clause 2.

182. Another point about differential treatment is that treatment in terms of the effect of the Bill is a different concept from the effect of implementation. As Mr Diamond and I discussed earlier, the distinction between “treatment” and “effect” is a helpful one, and I commend it to you.

183. The last point about differential treatment is the position of the Secretary of State for Culture, Media and Sport, of which you have heard some discussion today. If, despite what we say, you consider that that is a private or local interest of some sort, as Westminster City Council was encouraging you to consider, we still do not think that particularly helps, because you can then infer that the Secretary of State is in a category or class of their own, with no other private or local interests in the same category or class. Therefore, there can be no

differential treatment, and it falls down on that basis. So we think that, in essence, that is another red herring and does not assist you in your deliberation.

184. The final point that I need to address is public policy. We made it clear this morning with reference to our written submissions that we have never said or sought to imply that the public policy principle trumps the acknowledged test of hybridity, but it is relevant to understand that the Bill implements the current Government's manifesto, which was successful in the 2019 general election, so it is a manifesto in this current Parliament.

185. Surely, given that these issues of public policy are all in the context of hybrid Bills, you will always get into the issue of whether a Bill is government policy or public policy, but the authorities on hybridity are all in relation to Bills. Therefore, I say again that it does not really assist you to worry about whether it is government policy or public policy. We say that it clearly is public policy, because this is the policy of the Government who were elected at the last election, and the rest is plain to see. Even without Clause 1 dealing with expenditure, we would say that this was a Bill implementing public policy.

186. On Clause 1, those instructing me are very clear that legislative authority is required for expenditure on the memorial post Royal Assent. That is absolutely clear in accordance with *Managing Public Money*. The decision was taken about what the most appropriate legislative vehicle was to obtain that legislative authority, and, because a Bill was being promoted anyway in relation to the 1900 Act, the decision was taken that this provision would be added to that Bill. It could have been done another way, but, as a matter of expediency, that is the decision that was taken.

187. Again, for the reasons that I gave this morning, public policy does not trump the issues of private and local interests and differential treatment, but it is acknowledged that if a Bill implementing public policy deals with a class in the same way, it is conventionally not seen as being hybrid.

188. I will be delighted to assist the Examiners with anything else that you wish me to cover, but that is everything that I wanted to say in responding to the Memorialists.

189. **MR TOM HEALEY:** Do any of my colleagues have any questions?

190. **MS CHRISTINE SALMON PERCIVAL:** I have two. One of them is a result of my complete ignorance, but the first, I hope, is not. The Hylton-Foster test does not use the word "treatment". It says "affects". You commended the distinction that was drawn as the result of an earlier exchange that you had with Mr Diamond about the difference between effect and treatment. Throughout your reply, you have replied to differential treatment. Do you think that treatment and effect are the same? I suggest that they are different. I will give you an incredibly simple example: if I were to treat three people equally by giving them £100 to help them with their budgeting but it turned out that one owned £1,000, one owned £5 and one owned nothing, I would say that the effects were different. So I think there is a difference between treatment and effect, and I would like you to tell me what you think.

191. **MR ROBBIE OWEN:** I think in that case you are treating all three the same by giving them the same amount of money. The effect is different, because what they do with it differs. "Treatment" is a phrase that arose—there may be other instances, too—in the

Education Reform Bill in 1987-88, which I have referred you to in paragraph 5.7 of our submissions, which refers to a different category or class. That refers to what the Bill actually plans to do to them. “Effect”, as we discussed earlier, is the effect of implementation. As the Speaker said in the context of that Bill, any general legislation will probably affect different people to different degrees. So treatment is synonymous with how the Bill, on the face of it, proposes to affect a category or class and private interests within that category or class, whereas the effect of implementation is a different concept. That is how I would distinguish the two.

192. **MS CHRISTINE SALMON PERCIVAL:** My question is: do you think the word “treatment” is the one that best expresses what is meant by “differential treatment” when a Bill is hybrid?

193. **MR ROBBIE OWEN:** Yes. That is, when we refer to no special effects having been demonstrated, that is a reference to there being no differential treatment proposed by the Bill, compared to what the effect of the Bill is down the line once it has been implemented. That is a different concept, as I said, and I think that is relevant here.

194. **MS CHRISTINE SALMON PERCIVAL:** Briefly—and this is the question that is a result of my ignorance—if this Bill were to go through, the next step would not be a full-blown repeat of a planning inquiry. Is that right?

195. **MR ROBBIE OWEN:** Not necessarily. Following the quashing of the planning permission by the High Court last year, and permission to appeal was not given, the matter falls back to the Secretary of State for Levelling Up, Communities and Housing to redetermine the application—that is the correct phraseology—and it is down to the determining Minister concerned, who is acting in the name of the Secretary of State, to decide, on advice from their officials, what the process should be. It is possible that there may be a reopening of the inquiry.

196. Equally, it is possible that the determining Minister may decide, given what has happened, that further representations will be invited. That could be done in writing or through reopening the inquiry. There are all sorts of options, and that is a careful judgement, obviously not for the promoter of this Bill but, under the handling arrangements, for another part of the department to consider. There is a strict information barrier, as you would expect, and I and those instructing me have no idea precisely what will be proposed and when, because that is down to the deciding Minister.

197. So a number of options are possible. If we look at redeterminations following judicial reviews in the planning system, we see that there are quite a few permutations in quite what might happen.

198. **MR JUSTIN LESLIE:** I have a few questions to clarify some points arising. You dealt with the point made by the Westminster City Council about the Abraham test. You said very clearly that you think there is a conflict between them, but you did not quite say what that conflict is.

199. **MR ROBBIE OWEN:** When I was opening this morning, I referred to the fact that, in essence, the principle conflates the test of hybridity with the test of standing for petitioning, and in particular makes no recognition of the concept of differential treatment

within a category or class. That is why it is completely novel, and we do not find it at all persuasive, because we think it flies in the face of the established principles of hybridity.

200. **MR JUSTIN LESLIE:** Thank you. That is helpful. You made a point about the gardens being Crown land, but I am not sure I have got the point clearly enough. Are you saying that because the land is Crown land, there can be no private interests in relation to it?

201. **MR ROBBIE OWEN:** As a matter of fact, there are no private proprietary interests in Victoria Tower Gardens. The Land Registry is very clear that the Secretary of State is the registered proprietor. There is a lease, or possibly leases, to this building of a small part of it. There could be private interests in it in concept, but in this case there are not; there are no private proprietary interests in it. The fact that it is entirely Crown land with no private interests is a key issue when it comes to looking at what the effect of Clause 2 would be on non-Crown interests.

202. **MR JUSTIN LESLIE:** I ask the question, because I might have been reading too much into what you said when you said that there were no private interests in it because it was Crown land. Actually, I think you are saying that there are no proprietary interests and it is Crown land.

203. **MR ROBBIE OWEN:** Yes.

204. **MR JUSTIN LESLIE:** Lastly, Westminster City Council made a point in relation to the objective assessment of whether an interest is adversely affected. You did not mention that in your reply. Do we take that to mean that you agree with that point, or do you have anything separate to say about it?

205. **MR ROBBIE OWEN:** That point was made in the context of the Secretary of State point, was it not?

206. **MR JUSTIN LESLIE:** Yes.

207. **MR ROBBIE OWEN:** I dealt with that this morning in answer to a question that you asked me: we find it hard to conceive how reducing an obligation to maintain the gardens is an adverse effect. But that is clearly something for you to take an objective view on, as you will on everything else.

208. **MR JUSTIN LESLIE:** Right. Thank you.

209. **MR CHÉ DIAMOND:** Westminster City Council suggested that the provisions in the 1900 Act, which have been referred to as the protective provisions—the restrictions in relation to the land—provide protections over and above the planning process, protecting the space as garden space, which they say benefits people, including those who use the garden. What do you say to that argument? They suggest that interests are adversely affected simply by the removal of that protection. Before any shovel is put in the ground, the removal of the existing protection is affecting private interests because the 1900 Act contains provisions designed to protect the public right of access. What do you say to their argument on that?

210. **MR ROBBIE OWEN:** Again, that is wishful thinking or wishful reading, because that is not what Section 8 says.

211. **MR CHÉ DIAMOND:** But it is what it does, is it not?

212. **MR ROBBIE OWEN:** Section 8(8) provides that “The Commissioners shall maintain the garden so laid out and the embankment ... enclosing it”. So an enduring obligation to maintain is the key obligation here, and the Bill does not seek to repeal or amend that.

213. **MR CHÉ DIAMOND:** The existing law locks in that space as a garden space, but the Government are seeking to remove that lock to open up the space to be used for the purposes of the memorial and exhibition. It was suggested to us earlier that that is adversely affecting interest, because it removes a statutory protection for the benefit of the public generally, which particularly affects certain members of the public.

214. **MR ROBBIE OWEN:** I do not see how that can be. In effect, if one ignores the fact that the Bill is a disapplication only, you get back to the issue that this is an effect on the public at large and we do not see how that can count as any form of private or local interest. We just do not understand how you get from one to the other. Yes, the effect of the Bill is as you describe it—in saying that, despite what Section 8 says, if planning permission is given, the memorial can be built—but we do not understand how cutting across Section 8(8) can possibly give rise to the argument that you are cutting across a private or local interest. Again we say, and this is exactly how the High Court considered the interpretation of Section 8, that this is a provision for the public at large as a benefit. You have had rather contorted logic put to you that this means that, almost through the back door, some sort of private interest has suddenly been created by the Bill.

215. **MR TOM HEALEY:** If there are no more questions, that concludes the examination for today. I thank everyone for their contributions. Obviously we have a great deal of material and we have heard a lot of arguments today, so it will take us a while to reach our conclusions. It is fair to say that we will produce findings and a report as soon as we reasonably can, but that will almost certainly not be for at least a few days, if not a bit longer than that. When we are in a position to announce our findings, we will let you all know individually and by announcing it publicly, but I am afraid that we are not yet in a position to put a timetable on that. Once again, thank you all for coming. That concludes the proceedings.

(The committee adjourned at 4.29 pm.)