

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

HOLOCAUST MEMORIAL BILL

Thursday 18 May 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 Chairman of Committees, House of
Lords

Appearing on the Petition for the HOLOCAUST MEMORIAL BILL:

MR ROBBIE OWEN, of Pinsent Masons LLP, appeared as the Parliamentary Agent for the
Secretary of State.

There also appeared:

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.

BARONESS DEECH, appeared on behalf of Baroness Deech and Holocaust Survivors.

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

(2:01 pm)

1. **MR TOM HEALEY:** Good afternoon, everybody. Welcome back to this resumed examination of the Holocaust Memorial Bill, which we began on 17 April. At that hearing, we heard from Mr Owen, the Parliamentary Agent for the Secretary of State, and representatives of the parties who submitted memorials in relation to the Bill. The purpose of that hearing was to consider whether the Holocaust Memorial Bill should be treated as hybrid and whether the Private Business Standing Orders should apply to it.

2. We are now in a position to announce our decision on that point. We find that the Bill is hybrid. We consider that there are private or local interests, particularly those of local residents in Westminster, which are affected by the Bill and in a way that is different from the way in which other members of the same class or category—that is, the general public—are affected. We will give a fuller statement of reasons in a report to the House which will be published in the coming days.

3. As we found the Bill to be hybrid, we now need to consider which of the Private Business Standing Orders apply to it, and whether they have been complied with.

4. Accordingly, we are joined today by Robbie Owen, Parliamentary Agent for the Secretary of State, and the same representatives for the Memorialists as appeared before us in the first hearing: Alastair Lewis for the London Historic Parks and Gardens Trust and the Thorney Island Society and Residents of Westminster, Baroness Deech, Richard Buxton for the Buxton Family and the Thomas Fowell Buxton Society, and Mustafa Latif-Aramesh for Westminster City Council.

5. In advance of today's hearing, each of the parties submitted a written document outlining their views on the applicability of and compliance with the Standing Orders. These submissions have been published on the Bill's page on the parliamentary website.

6. We will proceed today in the following way. We will address each of the relevant Standing Orders in turn: that is, Standing Orders 4 to 68 in the Private Business Standing Orders of each House. As we do so, for each Standing Order I will ask Mr Owen to give the Secretary of State's view on whether, in light of our finding of hybridity, the Standing Order applies to this Bill and whether it has been complied with. We will then give the Memorialists the opportunity to add their views on applicability and compliance, if necessary, before continuing to the next Standing Order. I propose to take some of the Standing Orders en bloc, rather than going through each one individually.

7. After we have completed our consideration of each of the relevant Standing Orders, we will adjourn the hearing to enable us to deliberate in private, and we hope to be able to resume and announce our decision after a very short interval this afternoon; it will not be another month between hearings. If this is not possible, we will announce a further date for announcing our decision.

8. If all the parties are content, we will start with Standing Order 4. Mr Owen, do you believe that this Standing Order applies to the Bill, and if so, has it been complied with?

9. **MR ROBBIE OWEN:** Sir, thank you very much. Standing Order 4 sets out the requirements for the content of notices relating to a Bill, the purpose being to notify persons

interested or affected by a Bill of its existence and of the ability to petition against it. Given that the Bill has been found to be hybrid, this Standing Order clearly applies here, and it has not been complied with.

10. **MR TOM HEALEY:** Do any of the Memorialists wish to add anything? Thank you. Standing Order 4A.

11. **MR ROBBIE OWEN:** For all the same reasons as I just gave, Standing Order 4A is also applicable and provides that the promoter, who is not a local authority, must make available copies of the Bill at certain offices for inspection and sale at a reasonable price.

12. **MR TOM HEALEY:** Thank you. Standing Order 5.

13. **MR ROBBIE OWEN:** We do not consider that Standing Order 5 applies, contrary to the assertion by Westminster City Council in its Memorial and in its subsequent written statement. Standing Order 5 requires that where use of open space is authorised by a Bill, any notice prepared relating to the Bill shall contain a “description of ... open space or protected square ... in which it is situated, and an estimate of the area of so much of such surface as it is proposed to be compulsory acquired or used”.

14. However, this Standing Order cannot apply where Standing Order 27 does not apply. As we have said in our submission, we do not believe that Standing Order 27 does apply, because the Bill does not authorise the construction or alteration of works or the compulsory acquisition of land or rights over land, and therefore Standing Order 5 does not apply.

15. **MR TOM HEALEY:** Mr Latif-Aramesh.

16. **MR MUSTAFA LATIF-ARAMESH:** We consider that Standing Orders 5 and 27 do apply on the basis that what the Bill proposes is the effective extinguishment of a right to use public open space. In the compulsory acquisition context, the extinguishment of public open space is considered to be compulsory acquisition. I will not repeat what is in our written submission, but it is clear from a long list of precedents that, where we are talking about extinguishment, extinguishment is a subset of compulsory acquisition.

17. During the first proceedings, we noted the Supreme Court's judgment in the Day case where, notwithstanding that the Public Health Act 1875 did not include similar provisions as the Open Spaces Act 1906, there was held to be a statutory trust, which arose under the Public Health Act 1875 in respect of open spaces. What we have here is an equivalent provision creating public open space, and the Bill effectively permanently and irreversibly removes that status.

18. **MS CHRISTINE SALMON PERCIVAL:** Could I follow that up please? The Standing Order refers to “the compulsory acquisition” of rights to use land. The word “acquisition” suggests that somebody now holds those rights. How would you fit that with the situation of the Bill, which simply removes restrictions?

19. **MR MUSTAFA LATIF-ARAMESH:** The effect of those restrictions is to give the public a right to use the gardens. In our view, by extinguishing that right of the public, it is a form of compulsory acquisition. As I said, the extinguishment is a subset of compulsory

acquisition. In other secondary pieces of legislation, compulsory acquisition powers are drafted specifically to include extinguishment as a subset of acquisition, which supports that view. Clearly, the land parcel itself is owned by the Secretary of State. However, that does not mean that those are the only rights that are effectively being extinguished—ie compulsorily acquired.

20. **MS CHRISTINE SALMON PERCIVAL:** Could I just check what you mean by subset, because in footnote 2 of your submission you refer to extinguishment being in the same part of the development consent orders as those that deal with compulsory acquisition. That is slightly different, is it not? I can see that that part, as you say, has some headings that refer to compulsory acquisition and other headings that refer to extinguishment. That does not feel the same as calling an extinguishment a subset.

21. **MR MUSTAFA LATIF-ARAMESH:** In our view, it is a subset, and the reason why they are placed in that part of the order is reflective of that fact. It is not just the secondary pieces of legislation in footnote 2. In primary legislation, footnote 4 in our written submissions refers to the fact that compulsory acquisition of public open space is engaged, and the language that is used is rights, trust and incidents. Trust and incidents are, in our view, what are engaged when you are proposing to deal with special-category land. Open space is common land. Notwithstanding that the words “acquisition” and “extinguishment” are used separately, in our view that is substantively what is happening here.

22. **MS CHRISTINE SALMON PERCIVAL:** Are you making a point in law that extinguishment is recognised as a subset of compulsory acquisition?

23. **MR MUSTAFA LATIF-ARAMESH:** Yes, that is the argument we are making.

24. **MS CHRISTINE SALMON PERCIVAL:** In your view, is it an accepted concept that it is a subset?

25. **MR MUSTAFA LATIF-ARAMESH:** It is so consistently in secondary legislation and in primary legislation. I am not aware, for example, of development consent orders or Transport and Works Act orders proposing to extinguish public open space and then making the argument that it does not fall within the realms of compulsory acquisition. So I think it is accepted—is the short answer.

26. **MR TOM HEALEY:** Any more questions? Mr Owen.

27. **MR ROBBIE OWEN:** May I just come back on that, Mr Healey? It is important to differentiate between public rights and private rights in the sense of private proprietary rights. It is quite clear, in our contention, that Standing Order 27, which relates to whether Standing Order 5 applies, refers to the compulsory acquisition of any land or buildings or of rights to use any lands or buildings. As we discussed at the previous hearing, this land at Victoria Tower Gardens is owned in the sole name of the Secretary of State. There are no other private proprietary rights or interests in the land.

28. If you look at other Standing Orders—for example, Standing Order 13—it is quite clear that we are here concerned with conventional compulsory acquisition of interests in land or rights over land. These are all in the context of privately owned proprietary rights and interests.

29. Appendix A to the Standing Orders specifies the form of which notice has to be given under Standing Order 13. Again, it is all about notices to owners. It is important, therefore, to distinguish between the rights of the public to use Victoria Tower Gardens, which you referred to in opening, and privately held proprietary rights and interests, and there are none in that latter category. Therefore, in our view, Standing Order 27 cannot, on any analysis, apply, and therefore Standing Order 5 cannot apply.

30. **MR TOM HEALEY:** Any further questions on that? Thank you very much. That brings us to Standing Orders 6 to 9, which I will take together. Is it your view that these apply to the Bill?

31. **MR ROBBIE OWEN:** Our view is that, plainly, Standing Orders 6 to 9 do not apply, as the subject matter of the Bill is not relevant to any of the particulars that these Standing Orders relate to.

32. **MR TOM HEALEY:** Does anyone disagree? Thank you very much. Standing Order 10.

33. **MR ROBBIE OWEN:** We consider that this applies to the Bill.

34. **MR TOM HEALEY:** Has it been complied with?

35. **MR ROBBIE OWEN:** No, it has not.

36. **MR TOM HEALEY:** Do any of the Memorialists wish to add anything? Standing Order 10A.

37. **MR ROBBIE OWEN:** We do not consider that Standing Order 10A applies as the Bill does not authorise the construction of works to which Standing Order 27 applies or the compulsory acquisition of land or rights to use land or extend the time limited by a former Act for any of those purposes. So it does not apply, in our view.

38. **MR TOM HEALEY:** Does anybody disagree? Thank you very much. Standing Order 11.

39. **MR ROBBIE OWEN:** Standing Order 11, requiring publication of certain prescribed details relating to the Bill in the *London Gazette*, would also apply. It has not been complied with.

40. **MR TOM HEALEY:** Standing Order 12 relating to tramways and Standing Order 12A relating to stopping up of public footpaths and bridleways together.

41. **MR ROBBIE OWEN:** We do not consider that those apply.

42. **MR TOM HEALEY:** Does anybody disagree? Standing Order 13.

43. **MR ROBBIE OWEN:** As I covered a while ago, we do not consider that Standing Order 13 applies, because the Bill does not authorise the compulsory acquisition of land or rights to use land or extend the time limited by any former Act for any such purpose or

render any land or house liable to the imposition of an improvement charge. Therefore, it does not apply.

44. **MR TOM HEALEY:** Do any of the Memorialists wish to say anything? Mr Latif-Aramesh.

45. **MR MUSTAFA LATIF-ARAMESH:** We consider the Standing Order applies for the same reason that we have discussed under the previous Standing Order relating to the compulsory acquisition. That is, the extinguishment of a public right is substantively akin to compulsory acquisition.

46. **MR TOM HEALEY:** Anybody else? Mr Lewis.

47. **MR ALASTAIR LEWIS:** This is raised in the submissions. My clients and I agree and adopt the submissions of Mr Latif-Aramesh.

48. **MR TOM HEALEY:** Anybody else? If everybody is happy, I will take Standing Orders 14 to 17 together. Mr Owen, do you think that these Standing Orders apply?

49. **MR ROBBIE OWEN:** We do not consider that they apply.

50. **MR TOM HEALEY:** Does anybody think differently? Thank you very much. Standing Order 18.

51. **MR ROBBIE OWEN:** We do not consider that it applies, Sir.

52. **MR TOM HEALEY:** Does anybody think that Standing Order 18 does apply?

53. **MR MUSTAFA LATIF-ARAMESH:** I should just clarify that our written submissions refer to Standing Order 18, but they should refer to Standing Order 19, so we do not have any comments on this Standing Order.

54. **MR TOM HEALEY:** Which brings us neatly to Standing Order 19.

55. **MR ROBBIE OWEN:** We do not consider that Standing Order 19 applies for the reason given in our written submission, but, briefly, Clause 2 of the Bill does not constitute a repeal or alteration of Section 8 of the 1900 Act, so we do not think that Standing Order 19 applies.

56. **MR TOM HEALEY:** Does anybody take a different view? Mr Latif-Aramesh.

57. **MR MUSTAFA LATIF-ARAMESH:** We consider that Standing Order 19 does apply. As we made clear in our memorial, we consider Westminster City Council to be the successor body to the London County Council as well as the Westminster Vestry. The argument we put forward was that that provision reflected an agreement between the London County Council and the Commissioner of Works at that time. On that basis, the effect of the Bill is to remove that protection, which, again, in our memorial and in my submissions to you, I said was the equivalent of a protective provision.

58. I make three further comments to supplement that. First, the Secretary of State's representation initially submitted prior to the previous proceedings states that, "It could be said that Section 8 of the 1900 Act is a protective provision in favour of the Commissioners of Works", meaning that this Standing Order could apply if the Bill is found to be hybrid. We do not think there should be any argument about this Standing Order.

59. I will pre-emptively add two comments. Standing Order 19 refers to a body being named specifically for the reasons that we put forward in our memorial. Westminster City Council would fall into that category because it is a successor body, but I would also highlight the recent examination of the City of London (Markets) Bill, where Standing Order 19 was initially found not to be complied with, on the basis that notwithstanding that the councillors were not specifically named, their interests were substantively affected and notice had not been properly served. We would consider that the same set of circumstances applies here.

60. **MR TOM HEALEY:** In that case, the councillors were members of a statutory consultative body, which was a slightly different context, but I take your point. If it is a protected provision and it is a protection for the Commissioners of Works, does that mean that it is a protection for the Secretary of State, who is the successor to the Commissioners of Works?

61. **MR MUSTAFA LATIF-ARAMESH:** In our view, the protected provision, even though its heading is, "For the protection of Commissioner of Works", it also reflects the protection that is provided to the London County Council. The substance of the provision, the heading of the provision, is just a summary, because the main part of the Bill gives powers to the London County Council, but substantively it is a protection not just for the Commissioner of Works but for the London County Council. In the Secretary of State's relevant representations, they accept that it is a protective provision and that notice would have to be served on the Commissioner of Works, which would be the Secretary of State. Our argument is that, in addition to that, notice should also be served on Westminster City Council.

62. **MR ROBBIE OWEN:** There is a key point to make here. Even if one assumes that Section 8 is a protective provision, and you have heard our submissions on that before, you have to jump through a second hoop, which is whether the Bill proposes to alter or appeal that protective provision. Clause 2 does not have that effect. Clause 2 is a disapplication of it, which is a different concept in law and one that is not covered, we submit, by the scope of Standing Order 19.

63. **MR TOM HEALEY:** Any questions?

64. **MS CHRISTINE SALMON PERCIVAL:** Mr Owen, how is it that in your document you say that it could be said that Standing Order 19 applies, and now you are saying that it does not?

65. **MR ROBBIE OWEN:** To clarify that, we said in our previous submission that it could be said that Section 8 of the 1900 Act is a protective provision, but that, even if it is, that does not mean Standing Order 19 applies, because, first, Standing Order 19 applies only in relation to something that is a protective provision, and, secondly, the Bill proposes to alter or repeal that protective provision.

66. Our case is that even if you accept the argument that Section 8 is a protective provision—there is some doubt about this—it does not mean that Standing Order 19 automatically applies, because you have to get over the hurdle of whether the Bill proposes to alter or repeal that protective provision, and Clause 2 does not have that effect. It merely, in effect, disapplies that provision, which is a different concept. It does not legislate to change what the 1900 Act says.

67. **MS CHRISTINE SALMON PERCIVAL:** Mr Latif-Aramesh, on your specific point about Westminster City Council coming within Standing Order 19, Standing Order 19 refers to the protection of the owner, lessee or occupier of designated property, but Westminster City Council is none of those, so how do you argue that Standing Order 19 applies?

68. **MR MUSTAFA LATIF-ARAMESH:** The terms of Standing Order 19(b) provide an alternative where it refers to “or other person, specifically named in such provision”. Our view is that not only is the London County Council, to which Westminster City Council is a successor, specifically named in the provision, but substantively they fall within the scope of paragraph (b). The Bill proposes, as Mr Owen would say, to disapply it, but substantively that is altering its effect.

69. Again, I would just question the sharp distinction that is being made between disapplication and alteration. Funnily enough, the development consent orders and the Transport and Works Act orders, which are referenced in our footnotes, contain provisions that disapply pieces of local legislation. They do so on reliance upon Section 120 of the Planning Act 2008, which specifically uses the term “apply, modify or exclude”, and, substantively, there is no distinction. There is an alteration here. I think we would be dancing on the head of a pin if we made a distinction between alteration, modification and disapplication in this context.

70. **MR TOM HEALEY:** Any more questions or comments? Good. Thank you very much. Although they are not strictly related to each other, I will take Standing Order 19A and 19B together.

71. **MR ROBBIE OWEN:** We do not consider that Standing Orders 19A or 19B apply to the Bill.

72. **MR TOM HEALEY:** Does anyone disagree? Thank you. Standing Order 20.

73. **MR ROBBIE OWEN:** We do not consider that Standing Order 20 applies to the Bill, for the reason that the Bill does not propose to alter or repeal any express statutory provision relating to nuisance on any lands. Section 8 of the 1900 Act is not such a provision and, as I said, the Bill does not alter or repeal in a way that would engage the Standing Order, so we do not think it applies.

74. **MR MUSTAFA LATIF-ARAMESH:** In our written submissions, we drew your attention to this particular Standing Order. We thought it right to raise the point that nuisance and amenity are closely related to the provision of public open space. The argument is not as clear cut as Standing Order 19, so I would not want to say much more on that point, but I wanted to bring to your attention the potential indirect impact on nuisance and amenity.

75. **MR TOM HEALEY:** Any more comments or questions?

76. **MR ROBBIE OWEN:** I just emphasise that the Standing Order does refer to “any express strategy provision relating to nuisance”.

77. **MR TOM HEALEY:** That brings us to the final group of Standing Orders in this part, which are Standing Orders 21 to 24.

78. **MR ROBBIE OWEN:** We do not consider that Standing Order 21 applies, because this Bill does not represent an application for compulsory running powers. However, Standing Orders 22 to 24 would apply if your decision is that Standing Order 20 applies.

79. **MR TOM HEALEY:** Does anybody disagree? Thank you.

80. **MS CHRISTINE SALMON PERCIVAL:** Before we proceed to the next group of Standing Orders, can I just clarify, Mr Owen, that you said that Standing Orders 22, 23 and 24 would apply if Standing Order 20 applied, but also if Standing Order 13 were to apply.

81. **MR ROBBIE OWEN:** Yes, that is exactly right.

82. **MR TOM HEALEY:** That brings us on to the next block of Standing Orders, Standing Orders 25, 25A and 26.

83. **MR ROBBIE OWEN:** We do not consider that Standing Order 25 or Standing Order 25A apply. Standing Order 26 would apply in relation to requirements to deposit, which we will come on to discuss.

84. **MR TOM HEALEY:** Thank you. Standing Order 27.

85. **MR ROBBIE OWEN:** We do not consider this applies because this is not a Bill that proposes the construction of works, the compulsory acquisition of any land or buildings or of rights to use any land or render liable to the imposition of an improvement charge, any land or buildings.

86. **MR MUSTAFA LATIF-ARAMESH:** For the reasons we have set out in relation to Standing Orders 5 and 13, we consider that the Standing Order does apply.

87. **MR TOM HEALEY:** Thank you. Any more questions on that? If I may, I will take Standing Orders 27 to 36 together, noting that Standing Order 28 has been repealed.

88. **MR ROBBIE OWEN:** We do not consider that those apply, given the nature of the Bill.

89. **MR TOM HEALEY:** Does anyone disagree? Good. Thank you very much. Standing Order 37.

90. **MR ROBBIE OWEN:** We do not consider that that applies, given the nature of the Bill.

91. **MR TOM HEALEY:** Does anybody disagree?

92. **MR MUSTAFA LATIF-A RAMESH:** For reasons we have given in relation to Standing Orders 5 and 13, we consider that it does apply.

93. **MR TOM HEALEY:** If there are no further questions or comments on Standing Order 37, can I take Standing Orders 38 and 39 together?

94. **MR ROBBIE OWEN:** We consider that both of those would apply.

95. **MR TOM HEALEY:** Any more comments or questions? Have they been complied with?

96. **MR ROBBIE OWEN:** No, they have not.

97. **MR TOM HEALEY:** Thank you. Standing Order 40 is repealed. Can I take Standing Orders 41 to 47 together, noting that Standing Order 46 has also been repealed.

98. **MR ROBBIE OWEN:** We do not consider that those apply.

99. **MR TOM HEALEY:** Does anyone disagree? Thank you very much. Can I take Standing Orders 48 to 59 together, please?

100. **MR ROBBIE OWEN:** Those Standing Orders are applicable to Bills authorising particular works, none of which is relevant to this Bill.

101. **MR TOM HEALEY:** Thank you. Standing Orders 60 and 61.

102. **MR ROBBIE OWEN:** Standing Order 60 is not applicable as the Bill has not yet been read for a third time in the House of Lords. Standing Order 61 is also not relevant for similar reasons.

103. **MR TOM HEALEY:** Finally, Standing Orders 62 to 68,

104. **MR ROBBIE OWEN:** We do not consider that those apply to the Bill, because the promoter is the Secretary of State, and the Bill does not relate in any way to the status or constitution of a private company.

105. **MR TOM HEALEY:** Thank you very much. Do any of the Memorialists wish to add anything or raise any other points relating to the Standing Orders? I see that that is not the case, so that concludes today's Examination. Thank you very much. We will now adjourn, and, I hope, resume very shortly to announce our findings on which Standing Orders apply. Could I ask you all, please, to leave the room so we can deliberate in private, and we will call you back in, I hope, in a short period of time. Thank you.

(The Examination was suspended from 2.29 pm to 2.46 pm.)

106. **MR TOM HEALEY:** Thank you for bearing with us while we considered the arguments about the applicability of Standing Orders. We find that the following Standing Orders apply to the Bill: Standing Orders, 4, 4A, 10, 11, 38 and 39, and we find that those Standing Orders have not been complied with. As the Bill has been found to be hybrid, and there are Standing Orders that have not been complied with, the Bill will now be referred to

the Standing Orders Committee. A date for consideration by that committee will be announced in due course. As I mentioned at the beginning of the meeting, we will publish a report setting out our findings in more detail. Thank you all very much for your participation in this proceeding.

107. **BARONESS DEECH:** I am sorry to interrupt, could you repeat the numbers of the Standing Orders more slowly?

108. **MR TOM HEALEY:** Yes. Standing Order 4, contents of notice. Standing Order 4A, copies of the Bill to be made available. Standing Order 10, publication of notice in newspapers. Standing Order 11, publication of notice in the *London Gazette*. Standing Order 38, deposit of printed copies of Bills in the Vote Office and the Private Bill Office, Standing Order 39, deposited copies of Bills.

109. **BARONESS DEECH:** Thank you.

110. **MR TOM HEALEY:** Thank you very much, everybody. As I was saying, we will be publishing our report in the coming days setting out our reasoning in more detail. That concludes the proceedings on the Bill. Could I ask you all to leave so we can deliberate in private again? Thank you all very much.

(The committee adjourned at 2.53 pm.)