

CORRECTED MINUTES OF ORAL EVIDENCE

taken before the

MALVERN HILLS BILL COMMITTEE

PETITIONS AGAINST THE BILL

Tuesday, 3 March 2026 (Afternoon)

In Committee Room 2

PRESENT:

Lord Hope of Craighead (Chair)
Baroness Bakewell of Hardington Mandeville
Lord Evans of Guisborough
Lord Inglewood
Lord Ponsonby of Shulbrede

FOR THE PROMOTER:

Jacqueline Lean, Counsel, Malvern Hills Conservators
Alastair Lewis, Roll A Parliamentary Agent

FOR THE PETITIONERS:

Jessica Jones (Malvern Environment Protection Group)

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(At 2.01 p.m.)

1. THE CHAIR: Yes, Ms Lean. You are continuing your submissions, please.

Malvern Environment Protection Group

Response by Ms Lean

2. MS LEAN: Thank you, my Lord. I think I had nothing further to say on natural aspect, unless you particularly wish me to address you on the City of London Corporation (Open Spaces) Act 2018, which is referred to in my learned friend's submissions, which was merely to say, on that Act, that that was not a Bill like the current Bill that was trying to consolidate or modernise or wholly reenact a regime for open space in the city of London. What the provisions in question did there was to say the provisions of these sections of the Epping Forest Act, this Act and this Act, which refer to natural aspect, applied as much to the lands that were the subject of the 2018 Bill as they did anything else. It was merely a harking back to and a carrying on; it was not a Bill like the present where it was looking to essentially take a broader approach to altering the statutory framework.

3. My Lord, I think that then brings me on to constitution of the Trust and Clause 8. On that, this has been traversed in the promoter's submissions and evidence on 4 February, a little on 5 February, and more particularly on 10 February. If I can just highlight a few points as to the arrangements that are put forward by the Bill, from the evidence that has already been given, firstly, Ms Satchell has addressed in her evidence the need to reduce the size of the board, which is currently unworkable. I do not understand that to be disputed; it is just about how much you reduce it.

4. Secondly, the figure of 12 has not been arrived at because that is what Charity Commission guidance suggests; rather, Ms Satchell's evidence was that there are a range of views on the matter as to how big the board ought to be. Between seven and 14, essentially, was the range that the working group was looking at, and they kept ending up at 12 as a "happy compromise". That was specifically addressed on 10 February; I have a note that it was at paragraph 37 of the transcript. That is why, from the Trust's perspective, 12 has been arrived at. It was not just a wholesale importation because of the charity context.

5. Thirdly on this point, the split of the board proposed in the Bill, from the Trust's perspective, enables the board to strike the right balance between making sure it retains a connection with the levy payers and that historic connection of the funding and the involvement they have had with the Trust, but also ensures it can have the necessary skills on the board to take forward the actions and objects that it has to do in the 21st century.

6. THE CHAIR: Would it need as many as six for that purpose?

7. MS LEAN: My Lord, six is the view the Trust has arrived at to make sure it can cover the skillset it needs, also reflecting the fact that having six directly elected trustees of course does have the effect of bringing up the number of directly elected trustees on the board today from about 38% to about 50%. That is the Trust's view: that that keeps the balance in the right order, and that that means that it can ensure that it will have the range of skills and representation that it needs going forward.

8. It does also perhaps, as my Lord, Lord Inglewood, identified, highlight the fact that the levy payers are obviously a significant contributor to the Trust's income, but it is roughly in the region of about 40% to 50%. Even if it started as being a body that was wholly funded by certain parishes or by certain levy payers, things have moved on now. There has been the greater focus as well on the interests and the enjoyment of the public more widely. The 50-50 split is the one that is considered to maintain the historic but also the modern requirements of the Trust in this day and age.

9. Fourthly, on electing trustees, clearly by having 50% of the trustees as elected, that retains that sense of democratic accountability or accountability through the ballot box that MEPG referred to in their submissions—that it does retain the ability for those in the levy-paying area, if they are unhappy with how the Trust is being taken forward, to express those views when the elections come up every two years for three of the elected trustee members. That is not something that is there today and will be lost completely under the Bill arrangements, although of course it moves to a situation of everybody in the electoral area being able to vote for all of the trustees, as opposed to the levy payers in one particular parish or ward voting for one or more trustees.

10. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Given that currently, with the large number of trustees that you have, some trustees are fulfilling two or three roles, being the vice-chair of a committee and a chair of another committee and

then a vice-chair or chair of another committee, are you going to be able to fill all the roles that are needed with a reduced number of trustees? It would seem that, since you have such a large number of trustees, it would not be necessary for people to fulfil more than one role.

11. MS LEAN: My Lady, casting my mind back to Ms Satchell's evidence, there were two points that she drew out in particular on the first day of addressing this. One was that the issue with 29 is that, at the moment in practice, there do not tend to be 29, and there are often a number of vacancies. Also, with a very large board, there can be the tendency for some people, perhaps if they have other commitments elsewhere, to take a step back, and so for the burden to fall more heavily on other trustees who are more involved.

12. The product today of the fact that there are trustees who are serving more than one role may in fact reflect that in part, which is that there are some who are able to be more actively involved and to commit the time to being more actively involved, and there are other trustees—for example, those who are councillors who are appointed by Malvern Hills District Council—who have those other constraints on their time that mean that they are less able to give up the time to take on particular roles or functions within the board.

13. The second, my Lady, is that Ms Satchell referred to the fact that one of the reasons why there are so many committees is because the board of 29 is unworkable, and so the committee system has almost been driven by the fact that you need to have those smaller groups so that the discussions can happen about decision-making. It is hoped that it may be that, with the smaller board of 12, you will be able to do away with having to have a committee for this and for this and for this, and perhaps only have them for a very particular purpose; I think there was reference to if an audit committee was considered appropriate.

14. My Lady, what I have taken away from Ms Satchell's evidence is that it is not a fear that reducing the number will cause more difficulties in filling roles; rather the number of roles may well reduce, and having the ability to bring on people by reason of skills and appointments, in that sense, may bring in more people who are able to give that greater time and commitment.

15. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Can I just query that issue around the skills and experience? If you look at the website and look at those

councillors who have information about them, there is already quite a wide range of expertise available to the Trust. Your issue is around those who are councillors not having time, but the chair of the Trust is on—if I am not mistaken—Malvern Hills District Council already.

16. MS LEAN: Yes, indeed, my Lady. What I said was not meant to talk about any particular individuals, but more that that was something that Ms Satchell had said: that there may be some people—particularly councillors may have found this in the past—who have less time because they have quite onerous commitments in their other roles. It was not meaning to say that is categoric and it is always going to be the case, but that is one of the patterns or themes that has emerged historically.

17. On the skills, again, my Lady, I do not suggest that there are not people on the board who do not have particular skills or expertise in particular areas, but I was harking back to Ms Satchell's evidence, where she was saying that they have had situations in the past where they have had a need for a particular skill or experience. They have gone out to perhaps one of the appointing bodies and said, "Please, if you have somebody who has this skillset, we really need this". One of the reasons for moving to the ability for the Trust itself to appoint is that that gives the Trust perhaps greater control over the candidates who would come forward into those roles. Where they know they have three vacancies to be filled in appointments, for example, the Trust can really focus in on, "These are the particular skillsets that we are missing at the moment", or, "This is where we would really benefit from experience".

18. When it goes to the nominations committee and then comes back to the Trust, those are factors that would weigh heavily in the consideration of the Trust of, "We may have two excellent candidates, but this is the one who has the skillset we really need", whereas that does not necessarily play out at the moment or is not a process that would be gone through where the appointment is being made by one of the appointing bodies.

19. It was more trying to draw the distinction between—and I will probably come on to this in a moment—the Trust being able to appoint, and the greater control perhaps that that gives it over making sure it has the full skillset, or going out and looking for the skillset it needs, as opposed to today where it can ask and say to an appointing body, "We have a particular shortage here. Can you?", but there is no guarantee or control over the

appointment that comes forward apart from that.

20. That was, very briefly in response, why the Trust, from Ms Satchell's evidence, has said this is why it considers the arrangements in the Bill to strike the right balance or to be the right arrangement going forward.

21. To respond very briefly to the proposals put forward by MEPG, in the Trust's respectful submission, the arrangement that is proposed—the 16 with the 10 directly elected before appointed by other bodies, and the two appointed on a skills basis or for the skills spots—would not achieve the objectives it is seeking to do with the governance arrangements that it has put forward. Firstly, it maintains the skew for the part of the elected trustees that was referred to by my Lady, Baroness Bakewell, earlier. It does not do anything to address the fact that there will be some areas where there are 241 people who vote for one conservator, and somewhere where it is in the thousands.

22. Secondly, it retains the issues that there currently are with appointments sitting with other bodies that Ms Satchell has told you about, both in terms of sometimes the ability or otherwise of those bodies to be able to fill those vacancies, or the process or the criteria that they may be applying or have to apply when they do.

23. THE CHAIR: Would there be any objection to altering the balance a little bit and keeping your six appointed, but increasing the elected to eight?

24. MS LEAN: My Lord, I would have to take instructions on that. I am certainly happy to take instructions and come back on that.

25. THE CHAIR: It is a question of voting power on the board. I think that was one of the points made that of course, if it is six-six—I do not know whether the chair has a casting vote; I do not think that is provided for—it would reassure the levy payers if they could have more than the appointed. I think it would be helpful if you could take instructions.

26. MS LEAN: I will certainly take instructions, particularly if it is a six-eight proposal or if there may be another proposal that would allow for a majority in that sense, but my Lord, on the casting vote, from recollection—we will come to this when we get to the unopposed clauses—there will be provision for that in Schedule 1, which talks about the

sort of things there have to be rules and regulations about.

27. THE CHAIR: I see, yes. That is the place to look.

28. MS LEAN: Yes. My Lord, the third point was just going to be that by going for the 16—the 10, the four, the two—it does not allow—if the skills gap is greater than two—the same ability for the Trust as the proposals in the Bill to fill for the range of skills that may be required, and the range of skills perhaps you can see set out in the relevant clause in the Bill, which says it may be legal or charity or land conservation. There is quite a wide range of things that the Trust may wish to bring in expertise to the board on, given the myriad functions and powers that it has.

29. My Lord, that would be the Trust's response on the governance changes, save to flag also—forgive me, one point—there was a query perhaps to raise about, if the model were to move to not just appointed by the Trust and elected by levy payers, but to introduce or reintroduce appointments by local government bodies, whether that might potentially bring us back into additional provision territory, because it would be then directly and specially affecting those local government bodies. Although they today have appointment powers—or some of them have appointment powers depending on which ones they would be—those are not in the Bill, and they have not petitioned against the loss of those powers. It may be that they would have something to say if they were going to be put back under an obligation or a duty to become an appointed body to the Trust. That might potentially bring that back into additional provision territory.

30. LORD EVANS OF GUISBOROUGH: Do you mean that they would prefer not to appoint?

31. MS LEAN: My Lord, I do not think I can sit here and speak for the bodies today, save to highlight that none of the bodies that currently appoint—Worcestershire, Herefordshire or the Malvern Hills District Council—have objected to the Bill or, in their petitions against the Bill, objected on the grounds of losing their ability to appoint trustees or conservators to the board.

32. I believe Ms Satchell spoke about some of the difficulties there have been historically that one of the councils has found in particular with doing it. It may be that they see it as beneficial that this is one thing that they no longer have to do. I cannot speak

for them other than to say that they have not petitioned to object to the loss of their appointing powers.

33. LORD EVANS OF GUISBOROUGH: What you are suggesting is that they might object to us granting them back.

34. MS LEAN: My Lord, I am suggesting that writing an amendment to the Bill that placed back an obligation on those bodies to appoint to the board could give rise to a special and direct effect on their interests, because it would be placing a power or an obligation on them such that we could technically come into additional provision territory. It may well be that they say they were absolutely fine with it and did not have a problem, but it might be that, because of the nature of the change, it would be such as to engage those provisions.

35. It is something that we would have to check and confirm ourselves, but no doubt it would be advisable for us to seek the view of those authorities, in any event, if that was potentially something that was being looked at. We did just want to put a marker down from a technical perspective. It might be that that might be a change that tipped into, “Are these bodies that ought to be given an opportunity to petition against such a change?”, such that it would become, essentially, additional provision territory, because it is something that alters their obligations or powers and thus directly touches on their interests.

36. THE CHAIR: I think you were saying—that is my recollection—that at the moment they are not objecting on the ground that they are not being represented or not being able to elect people.

37. MS LEAN: Indeed.

38. THE CHAIR: Yes, so a change to that would open up the question.

39. MS LEAN: They might need to be given the opportunity to say. They do not object to what is currently in the Bill. The fact that something different might be proposed that directly affects them—there would seem to need to be an opportunity for them to have a say on whether or not they wish to object to that or not.

40. LORD INGLEWOOD: Even if they were going back to the position where they are

now, so there would be no change.

41. THE CHAIR: It is what is in the Bill that matters.

42. MS LEAN: I think I would probably have to go back and have a very detailed look at *Erskine May* on that one, my Lord, I am afraid.

43. LORD EVANS OF GUISBOROUGH: That would strike me as being a poor use of their council taxpayers' contributions.

44. MS LEAN: My Lord, I do not mean to suggest for a moment that they would petition or object; it is just a question of whether the nature of the amendment might be such as to trigger that process in principle.

45. THE CHAIR: It is raising an issue that is not there at the moment.

46. MS LEAN: Yes indeed, my Lord. Because the concept of additional provisions has already been raised in the levy context, it seemed right to draw attention to the fact that, if the amendment was to be made to that effect, that could potentially also be bringing us into additional provision territory.

47. With that, would it be helpful if I moved on to the levy? My Lord, I am conscious that we have already addressed this in some detail in our evidence. In particular, Ms Satchell gave evidence about it on 10 February; my note is it is paragraphs 32 to 50 of the transcript. I do not know that it is helpful for me to go back over the reasons that the Trust has already put forward.

48. THE CHAIR: No, I think it is all very clear. The suggestion to get around this—resorting to a provision that would open up the possibility of delegated legislation or some mechanism through the Secretary of State. There is a provision already we were pointed to, which is using that mechanism, and a suggestion we should pick that up for the levy.

49. MS LEAN: My Lord, in my submission, it is not necessary to include anything of that sort in the Bill, firstly because there is already a provision in the Bill that would allow for the levy-paying area to, in effect, be extended. That is in Clause 36 of the Bill, page 32 on the copy I have. This would not be the power for the Trust to extend its levy-paying power, but it would be an ability in practice for more areas to have to pay a levy that went

to the Trust, because this is the power that provides for Worcestershire County Council and/or Herefordshire Council to make contributions to the Trust.

50. It is subclause (2) that they may make those contributions either treating “the whole amount of any such contribution as general expenses”, or “treat the whole or any part of such contribution as special expenses to be levied upon such parish or parishes in their respective areas as the council in question thinks fit”. What is then made clear in subclause (3) is that they cannot raise a rate or a levy on a parish that is already directly paying a levy to the Trust at the moment, so Worcestershire would not be able to bring in any areas that currently pay the levy. My Lord, that power is not a new power. That power is carried forward from the 1909 Act. We touched on this.

51. LORD EVANS OF GUISBOROUGH: Has that power ever been used since 1909?

52. MS LEAN: To the best of my knowledge, my Lord, no, and particularly it was not used in the 1960s when there was the agreement for the three commons—Castlemorton, Newland and Powick—to pass from Worcestershire County Council to the Trust. The point remains that, if it is considered expedient for more areas that have land in the Trust’s jurisdiction to pay towards that through a levy, there is today and there is retained in the Bill a power for that to be done, but to be done through a decision of either Worcestershire County Council or Herefordshire Council.

53. That is separate to and sits in addition to the power in Clause 71 to potentially extend the levy-paying area on approval of the Secretary of State if land is bought in a parish that is not currently within the area.

54. THE CHAIR: Could you give the reference in the 1909 Act?

55. MS LEAN: Yes, my Lord. It is in Section 9 of the 1909 Act.

56. THE CHAIR: Yes, contributions.

57. MS LEAN: Section 9: “The county council of Worcestershire and the county council of Herefordshire or either of them may contribute to the funds of the conservators such sums as they may respectively fix by resolution”, and “each of such county councils may in its discretion either treat the whole amount of any such contribution as general county expenses or treat the whole or any part thereof as special county expenses to be

levied upon each parish or parishes in the county as the county council may think fit”.

58. I think I may have highlighted, when we looked at these powers back in early February, that the Bill goes slightly further in terms of protecting existing parishes, because the Bill just says you cannot levy if the parish is currently levied by the Malvern Hills Trust, whereas in Section 9 it can only be levied on a parish that was already paying the levy with a resolution of one of the parish councils.

59. THE CHAIR: Yes, the proviso at the end of the section deals with it a little bit.

60. MS LEAN: Yes.

61. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Can I just ask? I have lost the plot slightly. Are Worcestershire and Herefordshire about to be amalgamated? It is a separate council that is coming up for amalgamation, not these two.

62. MS LEAN: I am going to have to look behind me, I am afraid. I am told Herefordshire is not affected; the proposal is for Worcestershire to become a unitary, incorporating some of the districts.

63. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Thank you.

64. LORD INGLEWOOD: Are you suggesting that these two authorities should become, effectively, collecting and paying agents for a new basis for contributing?

65. MS LEAN: My Lord, I am saying that the power is there that, if it is thought appropriate, Worcestershire and Herefordshire can contribute and they can raise a levy from parishes in their area to do that—to contribute to the Malvern Hills Trust. Worcestershire currently makes a contribution; I understand it does not raise a levy to do that. Ms Satchell was saying that grew out of the 1960 agreement.

66. In terms of the suggestion, “Should there be some mechanism written into the Bill that would enable some change to the levy-paying area to happen in the future?”, I thought it was right for me to draw your attention to that clause, because it does not allow the Trust to change its levy-paying area, but it does allow, in effect, for a change or an extension of the levy-paying area. Also, that is in addition to the clause in Clause 71 that you have.

67. I should also mention that there is a power in general legislation—Section 303 of the Public Health Act 1875—which is a power that I think has been mentioned in the past as a means by which the levy could potentially be dealt with. I think it was mentioned in that context in the 1995 Act in very broad terms. The subheading of that clause is something along the lines of “power to amend local acts”, and essentially it provides that a Secretary of State may, on an application by a district council or other authority—

68. THE CHAIR: Why have the promoters not applied for that power to be used? If it is there, you could simply write a letter to them saying, “We would like this power to be exercised”.

69. MS LEAN: My Lord, I am aware there was some discussion about it or some consideration of that back, I believe, at the time of the 1995 Bill. I think there was a suggestion there would be conversations to happen with Malvern Hills District Council, but things did not get to a point of any application being made. Of course, it would be an application to the Secretary of State; it is not automatic.

70. My Lord, if you would like me to look into that a bit more, I can. I am merely saying that, because of the suggestion that something needs to be written into the Bill, I thought it was right for me to highlight where there are existing powers that could potentially be utilised or might be available if it was considered that a change to the levy ought to be made at some point in the future.

71. THE CHAIR: It just looks very odd if there are existing powers that, despite your very commendable feeling that the situation should be changed, nothing has been done to make use of them.

72. MS LEAN: My Lord, I would have to go back and trawl back through. I am aware there were some discussions about it at the time of the 1995 Act.

73. THE CHAIR: You would maybe just be told, “Sorry, we are not going to use them”, or simply they do not mean what you think they mean.

74. MS LEAN: I could go back and check, my Lord. I think there were some discussions that started to happen, but it may be that there were some reasons why it was not taken forward with other stakeholders at the time.

75. THE CHAIR: Yes. I think as a committee we need to be very careful saying there are existing powers without knowing they are actually available and usable.

76. MS LEAN: I recognise that, my Lord. Can I perhaps say I will bring a copy of Section 303 of the Public Health Act 1875 if it would be helpful for you to have that, and any information that we have as to whether it is definitely available or definitely not available?

77. THE CHAIR: That would be helpful. We can look at it on Thursday morning briefly. Thank you.

78. MS LEAN: My Lord, that was on the levy. The final point was Clause 83. I am conscious again that we addressed this in submissions in evidence on 10 February, and we have a note that we provided to the committee ahead of that on the general power. In terms of not wanting to repeat myself today, just to highlight that obviously there is a general power that was given to local authorities in the 1972 Act. The Government are currently proposing to give a more extensive general power to national park authorities and broads authorities through the Bill that Ms Satchell referred to in her slides.

79. There is also a general power that is contained in the Charity Commission model clauses. You have that in your bundle for reference. This was the bundle that came with Ms Satchell's large evidence. I think it is bundle 4 at page 264, just in case it is useful to have a reference to that.

80. Certainly, the National Trust itself has its own carefully tailored general power about things that it can do that was given to it in its 1971 Act. In a sense, the Trust is almost starting to look a bit like an outlier. An awful lot of other bodies established by statute—it is found helpful for them to have this general power. Why should the Trust not have some form of it? Of course, your Lordships and my Lady will have my submissions on how carefully constrained, restricted and drawn the general power is in Clause 83 about the things it cannot be used for, and that it cannot be used if you have an express power to do the same thing, and of course the overarching point that it can be done essentially in the furtherance of or to facilitate the objects.

81. THE CHAIR: As Ms Jones was pointing out, these things are rather interlocked. She is saying one might feel more comfortable about the general power if the objects

clause was correctly phrased, and if there was a balance in favour of the electors on the membership of the board. You recognise, I imagine, that there is some force in that point.

82. MS LEAN: Indeed, my Lord, but of course what I will come back to in terms of the exercise of any power—whoever the board is that comes to exercise the general power at some point in time will have to do so consistently with their obligations under the Act, and also separately, as charity trustees, to only do it exclusively in the interests of the charity. Hopefully one can approach it on the basis of having a bit of trust and confidence that the trustees will be aware and mindful of their obligations, both under the Acts and as charity trustees. If the concern is that this could end up with the power being misused, we work on the basis of the starting point that people will actually exercise the powers in the manner for which they are given, and in accordance with the terms with which they are given.

83. My Lord, on the point about enclosure, of course I would just highlight, picking up on the concern about the absence of the word “unenclosed” in Clause 6, that Clause 83(3) makes expressly clear that subsection (1) does not confer any power to “(c) erect any building, fencing or other type of enclosure on the Malvern Hills”. If the concern is that the general power might be used to do something that is erecting an enclosure of some sort, 83 makes it absolutely clear on its face that you cannot use the power for that purpose, regardless of whether the word “unenclosed” appears in the objects or not. You do not even get to exercising it in furtherance of the objects, because 83 just says, “No, you cannot use it for that purpose”.

84. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: The Charities Act in relation to the Malvern Hills—one of the things that is listed is how the charity helps provide buildings and open spaces. That contradicts what we have here in front of us.

85. MS LEAN: Forgive me, my Lady. Could I just ask where—

86. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I got that off the Charity Commission site for the Malvern Hills. It was a link from the Malvern Hills website.

87. MS LEAN: I am afraid I would have to go away and check that particular point.

88. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: I was surprised.

89. MS LEAN: As Ms Satchell referred to in her evidence—and I think it is included in the clip of slides that she produced—the correspondence that we had had from the Charity Commission was that they were satisfied that the objects as drafted did not change the objects of the Trust. Could I possibly ask to take that away and come back to you on it on Thursday morning?

90. BARONESS BAKEWELL OF HARDINGTON MANDEVILLE: Yes.

91. MS LEAN: My Lord, that was my submission in response, unless there were any points that you particularly wish me to address that I have not covered.

92. THE CHAIR: No. I think everything is covered. Thank you very much indeed. Ms Jones, do you wish to say anything in reply?

Evidence of Ms Jones

93. MS JONES: I do, my Lord, if I may. First, on Clause 6 and the unenclosed element of that, my learned friend took you to subsection (4), where the qualifier in respect of “unbuilt on” is provided for in that clause. I just wish to raise the point that, in fact, given that there is already a qualifier there, there seems even less rationale for the exclusion of “unenclosed” from that clause. It may not even need an additional qualifier; it may just be an amendment to sub-paragraph 4 itself so that where it now says, in subsection (1), “‘unbuilt on’ means unbuilt on except for”, that could become, in subsection (1), “‘unenclosed and unbuilt on’ means unenclosed and unbuilt on except for”, and then reference to the specific fencing provisions could be made there.

94. That would be consistent with the provision that my learned friend has just taken you to in the general power, Clause 83, where subsection (3)(c) confirms that the general power does not confer power to erect any building, fencing or other type of enclosure on the Malvern Hills, so, again, building and enclosing being dealt with together, as you also saw in the existing legislation.

95. With all of that in mind, we would say that a straightforward amendment to include “unenclosed” in Clause 6, with whatever qualifier may then be necessary in Clause 6(4), is an important amendment for this Bill to contain in order for the legislation to be

consistent with the founding purposes of the Trust and to maintain and protect the hills in their current form.

96. While I am here touching on the powers to fence that have been introduced by Clauses 48 and 49, it might be worth ensuring that the committee understands that these two provisions for the first time treat different kinds of land under the Trust's management differently. They draw out a distinction between the Commons, which fall within Clause 48, and then land that is not common land, which falls within Clause 49(a).

97. That is a development in how the Trust intends, through the Bill, to manage the land, because in the existing legislation, the hills and the commons are treated as one, and they are defined as one in the 1924 Act. I think it is Section 3 or possibly 5 of the 1924 Act, which provides that definition that references to the Malvern Hills mean the hills and commons, so where you see that phrase appear, in fact, the tracts of land are being treated the same. We do say that that division in how they are treated lends further support to the need for an overarching object that, in respect of all of the land, the duty to keep them unenclosed remains, and needs to be taken into consideration whenever the other powers are being exercised.

98. LORD INGLEWOOD: Is there not a clause about ancillary land? They are used for operational purposes, and you do not want that necessarily to be unenclosed because it is basically outside the traditional area of the Malvern Hills. Is that not right?

99. MS JONES: That sounds to me like that is right, my Lord, and it may well be that that would be something that would need to be part of a qualifier to ensure that that could be treated in the way that is necessary, but of course the primary concern is the land traditionally understood to be the Malvern Hills and Commons—the land within nine miles of the abbey and under the management of the Trust. My Lord, that is all I wanted to say in reply on Clause 6.

100. In respect of Clause 8, governance, the issue was raised about the split of the board, and the suggestion by My Lord, Lord Hope, of altering that split while still retaining some appointments for expertise, if we put it that way. I think that would provide some comfort because the essential interest at stake here, and the essential concern raised by the Malvern Environment Protection Group, is the interest in democratic accountability. You will be familiar with the well-known refrain that there should be no taxation without

representation, and that is precisely what underpins the objection that is raised in respect of this clause.

101. My learned friend said, again, something that we have heard from the Malvern Hills Trust before—that 38% of the board being directly elected is an increase, but that is an increase purely in the percentage of directly elected people. It is a statistic that has been relied on repeatedly by them, but which obscures the reality of the situation, which is that, at present, 28 of 29 trustees have some form of democratic accountability.

102. My learned friend raised whether retaining the local authority appointments would constitute additional provision territory. All of the precedents of which I am aware that deal with what constitutes being directly and specially affected is where existing legal obligations are altered, rather than where provisions in a draft Bill that are not in law are altered that would not change existing obligations but instead maintain existing obligations. I understand that that will, of course, be an issue that your Lordships and my Ladyship will want to get to the bottom of.

103. Other than that, just reiterating the points that were made in my primary submissions, the proposals currently by the Malvern Hills Trust do not increase democratic accountability. In fact, they undermine it in ways that are very troubling to levy payers and in ways that would not provide a board that was fit for purpose or adequate going forwards.

104. LORD EVANS OF GUISBOROUGH: On the numbers of directly elected conservators or trustees, the proposal that we have in front of us from the promoter is for six directly elected by election across the whole of the area, so they are not specifically attached to any of the parishes. The proposal we have from you is for 10 directly elected by the parishes. If we had a compromise proposal for eight, then probably the easiest way to do that would be to elect them across the whole area, because, if you were electing them for parishes, either two parishes would miss out or we would have to go into boundary review territory, which I suspect nobody wants to do.

105. If the number of elected trustees is increased so that they have a majority on the board, as has been suggested, would it be acceptable to not have the parish links in there, which would be a likely consequence of that?

106. MS JONES: My Lord, the proposal that we put forward of 10 trustees would be to retain direct elections from each parish, and that is because MEPG does consider that the individual parish link is important. Notwithstanding that, we recognise the issue as was raised by Lady Bakewell earlier today about the disparity in numbers of electors.

107. In an ideal world, what those who instruct me would have wanted to see was some—even putting to one side the broader issues about the levy-paying area itself, if you are just looking at the existing levy-paying area, some combination of the smaller parishes—that they formed a single electoral unit, but so that you still had geographical and parish-based representation. I think it might have been suggested that Guarlford and Mathon could be combined, for example, so that you would achieve some evening out of the current discrepancies in the numbers, but in circumstances where this committee might be considering increasing democratic accountability and democratic representation by a difference in the split of the board without engaging with the changes to the electoral area that are proposed, I think we would still consider that to be an improvement on what is currently proposed in the Bill.

108. LORD PONSONBY OF SHULBREDE: Can I ask about the point about the frequency of elections? In my understanding, the elections at the moment are every four years for each parish, but the proposal for the six elected is it would be every two years for three members; it would go forward on a two-yearly basis. You could say that local people have more frequent votes now rather than having a single vote for their own parish. Does that frequency of voting ameliorate the situation at all? It gives a more immediate opportunity to raise concerns with the elected representatives.

109. MS JONES: My Lord, I see the point. It is not something that I think the group has a specific stance on. Those who instruct me will correct me if I am wrong on that. I think much of the concern about the direct election of the proposed group of six not being adequate has been because it is necessarily intertwined with the fact that they would not command a majority of the board, and so in fact the voting power feels like an attenuation of the current power, because you cannot ever replace a majority of the board.

110. The schedule of voting in that regard, as you say, increases the ability of electors to make their views known by who they vote for through each cycle; it does not address the issue that at no point in the cycle would it be possible for disquiet or discord in how the

Trust is being managed to be expressed through the ballot box to replace or secure a majority on the board to change the direction of travel.

111. My Lord, one further point that I meant to reply on on that was in respect of the number of expert appointees that is necessary. The idea that this split needs to be even does rather suggest a point that I know the committee has thought about, because it has come out in questions. It assumes that those who are elected do not bring any relevant expertise to the board, that all they do is bring democratic representation. We would say that is not the case. One could alter the balance between directly elected and expertise without, in fact, having an overall lack of expertise in the Trust to manage itself appropriately.

112. My Lord, in terms of the levy-paying area, my learned friend took you to Clause 36. Our response on this point is essentially that it does not address the problem that in fact arises. It does not provide a route to equalisation between residents, and it does not share the levy-paying burden. What it does is it provides an alternative route for additional funds to be raised or contributed to the Trust. My learned friend recognised that it is not a power that the Trust itself has, and we say that it simply does not take the issue further in any positive direction.

113. Provision does need to be made in this Bill. In respect of whether the Public Health Act 1875 might provide a power through which future changes to the levy-paying area could otherwise be made, we understand that was a discussion around the time of the 1995 Bill. In fact, one of the ways that the controversy about the fact that the 1995 Bill was not going to address the issues with the existing levy-paying area was avoided at that point, in order for that legislation to pass, was by reference to that power and the fact that the Trust could go away and make the changes that were identified as being necessary through the use of that power. The reality is that, 30 years later, whether or not the power is sufficient, it has not been used.

114. We say that this Bill now provides the opportunity to properly engage with and address the issue, and it needs to do that. Whether that is by the provision of a power or indeed an obligation that the Malvern Hills Trust takes steps to regularise the levy-paying area through whatever mechanism might be appropriate to have inserted into the Bill, we say this is an opportunity that should not be passed up. The existence of other legislation

that has not been used, and the existence of other clauses in the Bill that do not take the situation any closer to an equitable distribution but just provide alternative routes around it, are simply ways of continuing to avoid the problem.

115. THE CHAIR: It is an interesting idea. It is a bit of a stretch under the existing Standing Orders because you are tied to what is in your petition. It is an interesting idea that we put in a new clause saying there is an obligation to proceed with whatever powers are available.

116. MS JONES: My Lord, it could be part of Clause 33 or it could be that the objections that we raise to Clause 33, and the way the committee considers it appropriate to remedy that, is through a Clause 71 amendment, as we discussed this morning.

117. THE CHAIR: We are going to be told what powers are available on Thursday. We can bear that point in mind. Thank you.

118. MS JONES: Then, my Lord, in respect of the general power, I think you have my submissions on that and the reasons why we, the Malvern Environment Protection Group, say that the precedents relied on by the promoter of other bodies who have general powers simply are not analogous to the Malvern Hills Trust, and that the case for a general power is not made out, particularly, as my Lord has alighted on, where Clause 6 and Clause 8 contain the problems that they currently contain.

119. THE CHAIR: Thank you very much indeed.

120. LORD INGLEWOOD: Does your group have any views, in an ideal world, on how widely spread the levy ought to be paid?

121. MS JONES: It does have some views, my Lord. In fact, perhaps it is worth turning up the map of the levy-paying area, which is at page 494 of what I am still calling the R bundle, but others may not.

122. THE CHAIR: It is at the very back of our bundle.

123. MS JONES: It is, almost the very end.

124. THE CHAIR: Yes. What do you want us to look at?

125. MS JONES: The blue hatched area shown on this map is the existing levy-paying area. If we look to the south-east of the area, you can see the village of Welland, and then directly below Welland, Castlemorton. If you look to the north-east of the area, right on the boundary of the levy-paying area, you see Newland, and then further north-east, if you follow the road, you get to Collett's Green and Powick.

126. Castlemorton, Newland and Powick are the three places that are currently covered by the 1968 agreement, so there is a recognition of a particular status that they have. Castlemorton contains 25% of the land under the management of the Trust. Those three places, we say, should be brought into the levy-paying area. Collett's Green and Welland abut those areas and are adjacent to land under the management of the Trust, and so essentially an extension that includes those areas would, in the view of those who instruct me, go a considerable way to achieving an equitable distribution of the levy-paying burden.

127. THE CHAIR: That would be an additional provision for these people, would it not?

128. MS JONES: I understand that.

129. THE CHAIR: No further questions. Thank you both very much indeed. We will adjourn now and sit again on Thursday at 10.30, when we will receive further evidence from the promoter.