

SELECT COMMITTEE ON THE MALVERN HILLS BILL [HL]

COMMITTEE'S INTERIM DECISION ON STANDING

1. We are now able to announce the Committee's interim decision on the right to be heard of those who have brought petitions against the Bill. There are, however, three points that we should mention first by way of background.
2. First, Committees such as ours are not able to question a petitioner's right to be heard unless their right to be heard has been challenged by the Promoter of the Bill. It is a fundamental principle of private legislation procedure that only parties specially and directly affected by the provisions of the Bill should be entitled to be heard. As was pointed out in the Report by the Joint Committee on Private Bill Procedure of 20 July 1998, more members' time will be taken up in private bill committees if the rules of locus standi are not upheld. The Promoter has therefore an important function to fulfil, which is to ensure that the time of the Committee is well spent. Its role is to draw the Committee's attention to any cases where it does not appear that the petitioner clearly has a right to be heard or the petitioner does not clearly fall within one of the Standing Orders where the Committee may decide to hear the petition as a matter of discretion. The time of the Committee should not be taken up by having to deal with petitions that do not clearly fall within these categories.
3. Second, petitioners are not entitled to be heard unless they are able to show that their property or interests are "directly and specially" affected by the Bill. Unlike some private bills which provide for the acquisition of, the creation of, or alteration of rights over someone's property, the issues which this Bill gives rise to are, for the most part, about the constitution and management of the Trust and the use of land, not the compulsory acquisition of property.
4. In that respect the subject matter of this Bill is closer to that of the Holocaust Memorial Bill than those which affect a petitioner's property interests. The Select Committee in that case did not accept that they were bound to follow the position that was taken by the Select Committee on the High Speed Rail (London-West Midlands) Bill as described by Lord Walker, that the petitioner must establish a direct and material detriment to their property which amounted to a common law nuisance or which would be actionable if not authorised by Parliament. It felt able to take an approach to standing which was more liberal and flexible than that specified by Lord Walker. But it is important not to press that analogy too far. The fact that standing was established in the case of the Holocaust Memorial Bill in the case of those petitioners who resided nearby and enjoyed the use of Victoria Tower Gardens has to be seen in the light of what that Bill was about. The consequence of what was proposed was that much of the garden area which they enjoyed would be replaced by the alterations necessary to accommodate the Memorial. The subject matter of this Bill is quite different. So the mere fact that people who live nearby walk over and enjoy the Malvern Hills does not give them a right to be heard in opposition to what the Bill provides.
5. So, leaving aside those petitioners who exercise rights of common or enjoy a legal right of access over land owned or controlled by the Promoter, we consider that a right to be heard in

the case of this Bill ought not to depend on the petitioner establishing the prospect of a direct and material detriment to his or her property interests. But it must be shown in some way or another that the petitioner's interests are affected both specially and directly before there is a right to be heard.

6. Third, it should be understood that a decision by the Committee that a petitioner or a group of petitioners do not have a right to be heard does not mean that the issues that they have raised will not be considered by the Committee. On the contrary, the burden will lie on the Promoter throughout these proceedings to establish its case for the passing of the Bill in each and all of its details. We bear in mind also that we are required to consider the four particular matters which were the subject of instructions to the Committee that were passed at Second Reading.
7. The Promoter has not challenged the right to be heard of local authorities or of commoners so far as relating to points pertaining to their rights and interests as commoners. There being no challenge in their case, we will consider the petitions of Malvern Hills District Council, Malvern Town Council and the two Parish Councils. The petition by Worcestershire County Council has been withdrawn. We will also consider those of Susan Windle, Barbara Wilkes and David Cameron who exercise rights of common over the Malvern Hills.
8. The Promoter has, however, challenged the right of all the other petitioners to be heard. Those whose petitions are under challenge fall into the following seven groups:
 - a. those who rely on their status, or former status, as conservators or trustees;
 - b. those who rely on their status as councillors or elected members of a District, County or Parish Council;
 - c. those who say that they are specially and directly affected by reason of being a levy payer or because they are entitled to vote in elections for conservators or trustees;
 - d. those who rely on their use of or enjoyment of the Malvern Hills;
 - e. those who say that they have an interest by reason of taking access over land under the management and control of the trustees;
 - f. those organisations or groups who may in principle be able to bring themselves within Standing Order 117; and
 - g. those whose grounds of objection are not distinctly specified in the petition as required by Standing Order 111.
9. The Promoter also submits, with respect to those petitioners who rely on their status as levy payers or electors, as owners of property which enjoys a legal right of access over land owned or controlled by the Promoter or based on their enjoyment of, or views of the Malvern Hills, that any right to be heard should be limited to certain clauses in or Parts of the Bill, but only in so far as it can be shown that they affect the petitioner's interest in a new or different way from provisions under the existing Malvern Hills Acts.
10. Our conclusions as regards the petitioners from whom we have heard during the past two days are as follows:
 - (i) Professor Malcolm McCrae
He appeared before us, first, on his own behalf as a levy payer and someone whose property is adjacent to and accessed over Malvern Hills Trust land. He did not seek to identify any respects in which he is specially and directly affected by the Bill as a levy payer, nor was he able to identify any respect in which access to his property over Trust land is impeded or otherwise affected by the Bill. It was plain both from the wording of his petition and the submissions which he presented to us orally that he

has more fundamental objections to the Bill and to the process which has brought it before us. But he was unable to persuade us that these objections are based on any provisions in the Bill itself. Furthermore, as his petition does not distinctly specify any objections of that kind to its provisions, his petition does not satisfy the requirements of Standing Order 111. For these reasons we hold that he has not shown that he has a right to be heard.

- (ii) Professor McCrae also appeared before us as representing Richard Spencer, who is a levy payer/elector and enjoys the Hills; Philip Stubbings, who is a levy payer; and Vernon Richardson, who is a levy payer and enjoys the Hills. We do not consider that the mere fact that a person enjoys the Hills provides them with a basis for saying that they are specially and directly affected by the provisions of the Bill. Their position is no different from that of the many people from all over the country and elsewhere who resort to the Hills for recreation, pleasure or enjoyment.

As for their position as levy payers, they are among the 50 or so other petitioners who claim that they have a right to be heard on this ground. That number has to be seen in its context. We have to take account of the fact that there are about 30,000 other levy payers who have not presented petitions against this Bill. So the position of the levy payers is analogous to that of ratepayers of an authority which is presenting a private bill. It has been held that electors have not been allowed to be heard, as such, against a bill presented by the local authority to which they pay a charge: *Erskine May*, 21st edition, 1989, p 854. This rule is of long standing. In the *Bristol Corporation Docks Purchase Bill of 1884*, a right to be heard was refused where the petitioners complained of the prospect of heavy rates if the bill were to pass. The principle on which this rule is based is not easy to identify, but it is based at least in part on the obvious point about numbers. If one ratepayer was held to have standing, the same privilege would have to be extended to all the others. As was pointed out in the *Greater London Council (Money) Bill 1976*, it would be different if a ratepayer's case differed from that of the other ratepayers as a class. But that is not the situation in the case of these petitioners. So they have no right to be heard just because they are levy payers.

- (iii) Jeremy Owenson

He appeared before us as an elected Deputy leader of Malvern Hills District Council and as Group Leader of the Conservative councillors of MHDC. We have decided to consider the petition of Malvern Hills District Council as its right to be heard as a local authority has not been challenged. The ordinary rule, as was explained in the case of the *High Speed Rail (London-West Midlands) Bill*, is that individual councillors acting without the authority of the council cannot claim the special preference that is accorded to local authorities. Mr Owenson does not have that authority. But we have decided to exercise our discretion under Standing Order 118 in his case as an inhabitant of the area because the group of which he is the leader is more representative of the interests of the outlying areas than the council as a whole. His presentation of the arguments which he seeks to raise will be of assistance to us in our consideration of the instructions that were passed at Second Reading.

- (iv) Cynthia Palmer

She is a levy payer and a Councillor of Malvern Hills District Council. She has not shown that she has a right to be heard as a levy payer. In her case we must apply the rule that individual councillors acting without the authority of the council cannot claim the

special preference that is accorded to local authorities. So she has no right to be heard on that ground either.

(v) Humphrey Bartleet

He was brought up in Guarlford and runs a business close to Malvern. He has not shown that he has a right to be heard, as he was not able to demonstrate that in that capacity he was in any way specially or directly affected by any of the provisions of the Bill. Furthermore, as he does not distinctly specify any objections of that kind to its provisions, his petition does not satisfy the requirements of Standing Order 111.

(vi) Humphrey Bartleet's co-petitioner, Mrs Mayner. It has not been shown that she has a right to be heard as a levy payer, or that she is specially and directly affected by reason of the fact that her property is accessed across a strip of Malvern Hills Trust land.

(vii) David James

He is a levy payer and lives in the Parish of Malvern. He is also chairman of Manor Park Sports Club, whose premises are adjacent to Malvern Hill Trust land. He has not shown that he has a right to be heard as a levy payer, or that he or the Sports Club of which he is chairman is specially and directly affected by any of the provisions of the Bill in any way by reason of where he lives or where the club is situated.

(viii) Dr Graeme Crisp

He is a levy payer and the owner of property that lies between Malvern Hill Trust land and a potential development site to which it abuts, access to which will require the agreement of the Trustees. It has not been shown that he has a right to be heard as a levy payer, or that he is specially and directly affected by any of the provisions of the Bill as regards what may happen should that site be developed at some time in the future.

(ix) Upper Welland Action Group

This is a group of local residents of the village of Upper Welland. It claims to represent over 100 households in the village and seeks to have its petition considered under Standing Order 117. We were told that only three members of the group were present when the decision was taken to present this petition. Their position is similar to that of the Camden Cycling Campaign whose application to be heard was refused in the King's Cross Railways Bill of 1989. We are not satisfied that the decision was sufficiently representative of the interests of the village as a whole to enable us to exercise our discretion under this Standing Order.

(x) Upper Welland Action Group's co-petitioners, Mrs JM Nash and Mr R Ceen. They are residents of Upper Welland and they are levy payers. It has not been shown that they are in any way specially or directly affected as levy payers by any of the provisions of the Bill.

11. We have described these decisions as interim decisions because every petitioner has a right to appear on the issue of standing and there are a number of petitioners from whom we have not yet heard on this issue. But it should be understood that the decision that we will take in each case, if a petitioner whose grounds for standing fall within any of the groups with which we have been dealing wishes to press his or her case, will be based on the rulings that we have just set out.