

Malvern Hills Trust
Governance Committee
Manor House, Grange Road, Malvern WR14 3EY
Thursday 25 April 2019 7.00pm

Present: Mr R Bartholomew, Dr S Braim, Mr S Freeman (non-voting), Mr C Penn, Prof J Raine (Chair), Ms S Rouse (left during item 5)

In attendance: Chief Executive Officer (CEO), Secretary to the Board, Mr M Davies, Dr P Forster, Mr D Hawkins, Mr C Rouse, Mr T Yapp, Mr P Watson and 5 members of the public.

Prof Raine welcomed everyone to the meeting.

1. **Apologies for absence**

Mr D Bryer, Ms H Stace.

2. **Chair's announcements**

The Board elections were scheduled to take place on 24 October 2019.

3. **Declarations of interest**

There were none.

4. **Public Questions**

See Schedule. Mr A McCulloch had also sent in some comments but indicated that he was happy for them to be dealt with as matters arose during the meeting, or by way of a written reply.

5. **Governance issues arising out of Chance Lane easement application**

Prof Raine went through the paper. He had listed 5 issues which had arisen from his discussions.

i. Preparation

Was attendance at a preparatory workshop or training a helpful pre-requisite to dealing with major applications? Prof Raine pointed out that no-one could sit on a District Council planning committee until they had attended training. Other comments were:

- The workshop held prior to the meeting was felt to have been useful. There were complex legal issues and a need to understand the process. It was suggested it might have been helpful to have an external expert present at the workshop.
- There could be reputational implications if Board members failed to attend and as a result did not understand what was required and there was also the question of whether Board members who failed to attend training were properly fulfilling their duties to the Trust and were possibly laying the Board open to legal challenge. It was part of the responsibility of being a good trustee.

- It should be made clear when people stood for the Board that there were obligations to undertake training.

It was agreed that it might be “expected” that Board members would attend, but could not be made compulsory. This requirement could be incorporated as one of the changes to the Code of Conduct.

ii. What steps might the Board take to ensure a balance of input at meetings?

- Because not everyone attended the workshop, a lot more had to be said by Officers at the meeting to explain the process and what was material. This had repercussions for the balance of Board/Officer input.
- Having an explanation at the meeting was an important part of public exposition.
- The presentation needed to be structured with pauses to allow Trustees to debate individual points.
- The meeting had been very long and Board members were tired and this contributed to the discussions were abbreviated.
- Could conflicts be dealt with at a separate meeting?
- Could the Chair do more to bring Trustees into the debate? Mr Freeman felt the role of the Chair went beyond simply chairing the meeting.
- At planning meetings the officers were able to give a compact summary and the accompanying papers were always in the same form.
- The Trust did not get many applications of this scale and complexity.
- Could the Trust learn from the way planning meetings were conducted?

iii. Standing Orders and Code of Conduct

It would be helpful for Standing Orders to be checked to see whether they needed to be more specific about action which the Chair could take in the event that the behaviour of the public was affecting the conduct of the meeting. It was suggested that a working group might look at this. It was **AGREED** to form a working group comprising Dr Braim, Mr Penn, Mr Bartholomew and the Secretary to the Board. If the proposed changes were minimal, the group could report back to the Governance Committee by E mail with a view to taking the matter to the June Board meeting. If they were more complex, they should report to the next Governance Committee meeting.

It was agreed the same group should look at the Code of Conduct (including the requirement to attend training). Mr Freeman had already done some work on the Code of Conduct and it was **AGREED** Mr Freeman should be included in the deliberations on the Code of Conduct. Mr Freeman agreed to circulate the draft he had worked on last year.

iv. Start time

There was a discussion about whether the start time was the issue, or the length of the meeting. It might be possible (where there were complex/multiple conflicts) to deal with conflict of interest at a separate meeting.

v. Public consultation and reputation

It was suggested a working group should be formed to look at reputation management. The group might in addition consider whether the Trust could adopt local authority planning type consultation procedures in relation to easement applications, where public comments were published. The working group should also consider how the web site might be improved to facilitate easier public access to information. The CEO said that some work had already been done on the web site. A system to publish consultations responses was a more major undertaking with cost implications. The web site manager's input would be required. It was acknowledged that local authorities dealt with a large number of planning applications and the group would need to look at whether an equivalent system be feasible for the Trust. It was **AGREED** the working group should comprise Mr Cordey, Mr Forster and Mr Bryer (if he was willing), with input from Dr Braim in relation to the web site. The group was asked to issue an interim report as soon as possible.

The Secretary to the Board agreed to circulate the comments that Mrs McCulloch had handed to Prof Raine.

6. Update on Charity Commission Scheme

The Secretary to the Board went through the paper. The combination of the failure of DCMS to address the question of the legal reasoning behind use of a s73 Scheme to consolidate the Acts and the vulnerabilities of the s 73 process had led her to pose the question should MHT run a public consultation at this stage, going through all of the issues in plain English without the solicitor's draft being completed. Her two concerns were the amount of work this would entail and whether the consultation would have to be run again when the draft was finalised. She had asked the Charity Commission about this point.

It was **AGREED** to recommend to the Board that MHT should proceed with a consultation on the basis set out above as soon as possible. The CEO to prepare a suggested timescale for the Board. The Secretary to the Board pointed out that the Board needed to approve the concept and the draft consultation document, and in her view it would be three months' work to put the consultation document together. Another problem was that it would be best to avoid having the consultation running over the election period.

There followed a discussion about MHT's use of the electoral roll and Mr Freeman agreed to look what amendments there had been to the Representation of the People Regulations 2001.

7. **Urgent business**

There was none.

8. **Date of next meetings**

Prof Raine would not be able to attend the proposed meeting on 25 July and there would be an issue with the October date if the elections were to be held on the same day. 26 September would be an option.

9. **Confidential item**

On the proposal of Prof Raine, seconded by Mr Penn, it was **RESOLVED** unanimously to exclude the public for discussion of item 10 on the agenda on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (Legal privilege).

The meeting closed at 9.10pm

Public Questions

Questions from Dr Crisp:

I remember some years ago board members were advised that the use of the s 73 process to amend their acts was a bargain not to be missed even though the legal costs were substantial. This was because the cost of alternative methods was said to be millions of pounds. Has the Trust changed its mind about this in the light of their enquiries about a private bill?

Just to make it clear, the assertion wrapped up in [all of] Dr Crisp's questions are not necessarily agreed.

The issue is to be discussed at the meeting, so the question pre-judges that debate. All options remain open in principle.

Why when the Trust has reassured the public that their intention is to consolidate but not to alter their acts (with a few exceptions relating to the need to reduce interaction of animals with motor cars) are they concerned, as stated in paper B, with "dealing" with the term "Natural Aspect"?

There is some wording in the Acts which requires clarification and modernisation. The phrase "natural aspect" has no clear meaning in law in the 21 century.

Why is the Trust being so coy about the status of the corporate body, a matter which is of public interest? Do they not recognise the value of transparency?

This has been the subject of legal advice, which is privileged. The outcome will be made public in due course.

Why has MHT ceased to publish attendance records for Board members?

Board members attendance at individual meetings of committees is published in the minutes of each meeting. The resources of the Trust are limited and time has not permitted these statistics to be collated and checked. It is intended to publish them on the website later in the year before the October elections.

Is the Trust aware that the elected Board member for Chase Ward has attended few if any Board meetings?

Yes, the Trust is aware.

If they are aware what action have they taken, if not how do they propose to ensure that such oversights cease?

No action has been taken as there is no provision in the Acts to remove a board member for failure to attend meetings.

Questions from Mrs Rosemary McCulloch

Usually when a review is made, evidence is sought from all sides. So, for his review of the Special Board Meeting (Paper A), why did Professor Raine not interview any of the hundreds

of members of the public also present that evening?

Thank you for the question. However, I think Mrs McCulloch misunderstands the nature and scope of the review exercise that I undertook. This was never conceived or conducted in the manner of a major public inquiry with evidence-gathering from all potentially interested parties takes place. It arose simply through comments from just two or three trustees who, in response to my question about how the meeting (on March 19th had gone) told me that they had found it a long and very challenging occasion. That suggested to me merit in talking with other trustees and staff to appreciate their perspectives on the meeting and, in my capacity as Chair of Governance Committee, to see what, if any, lessons might be learned from the experience about our approach to the conduct of any future significant easement applications. As Paper A explains, all board members and principal staff were invited to a 1-2-1 or paired sessions with me, and ten board members and seven staff volunteered to share their views and experiences on the occasion. It was merely an exercise to learn from those trustees and staff who were present of any lessons for next time, and as stated in Paper A there was a considerable degree of commonality of viewpoint on five issues in particular - which have now been presented for Governance Committee to consider further this evening.*

Will members of the public be given a 'right of reply' to statements made in Paper A?

I don't know quite what is in mind with the phrase 'right of reply'. Members of the public are of course at liberty to write in and to raise questions. The comments provided in Paper A simply sought to reflect the views of the issues raised by those with whom I spoke in the interviews.

*Six Trust staff and Paul Esrich from AONB, which is a completely separate organisation.