

Malvern Hills Trust

Ordinary Meeting of the Board

Gryphon Room, Malvern College, Thirlstane Road, Malvern.

Thursday 12 March 2020 7.00 pm

Present: Mr C Atkins, Mr D Baldwin, Mr R Bartholomew, Dr S Braim, Dr D Bryer (left the meeting during item 9), Mr M Cordey, Mr D Core, Dr G Crisp, Mr M Davies (Chair), Mr D Fellows, Mr R Fowler, Mrs L Hodgson, Mrs H I'Anson, Mrs C Palmer, Dr T Parsons, Mr C Penn, Prof J Raine, Mr C Rouse, Ms S Rouse, Ms H Stace, Mr J Watts.

In attendance: CEO, Secretary to the Board, 24 members of the public.

Mr Davies welcomed everyone to the meeting.

1. Apologies for absence

Mr M Dyde, Mr T Johnson, Mr J Michael, Mrs G Rees, Mr T Yapp.

2. Chair's announcements

- Sadly Margaret, the wife of Board member Dr Bryer had passed away suddenly and he extended the Board's condolences.
- A training event was planned for Monday 16 March at 7pm.
- The Staffing Committee meeting would not take place.
- He drew attention to the Government's current strategy in relation to Covid-19.
- Brewin Dolphin had advised the Trust that the investment portfolios had fallen more than 10% in value since the last quarterly valuation. It could be included as an urgent business item if required.

3. Declarations of interest

There were none.

4. Public Comments

See appendix.

5. To confirm the Minutes of the Board meetings held on 16 January 2020

It was agreed to insert the following wording in item 10 of those minutes:

Ms Stace said that the budget was based on the 5 year costed Land Management Plan and the Business Plan. The Board had given thought to what needed to be done and how to achieve it and there was a lot of strategic planning behind the budget.

On the proposal of Ms Rouse, seconded by Prof Raine, it was **RESOLVED** (17 votes in favour with 3 abstentions) to approve the minutes of the meetings held on 16 January 2020 as amended.

6. Matters arising

There were none

7. Governance Committee

7.1 A number of proposed amendments had been notified to the Secretary to the Board by Dr Crisp and Mr Fowler.

Mr Davies thanked both for forwarding their suggestions in advance of the meeting and explained that it was for the Governance Committee to approve the content of the minutes of their meeting. The minutes were not intended to be a verbatim report.

Mr Fowler had made a point in relation to item 10 of the minutes but had accepted in his comments that the wording was an accurate report of what was said at the meeting. Mr Fowler said that he thought what was said did not include all of the appropriate parts of the Act. His second point was that the minutes did not reflect his assertion that MHT was a public body and that legal advice should be sought from an expert in public law. The Secretary to the Board has listened to the recording again. There was one mention of the words “public body” but no discussion on that point. The minutes reflected the debate, which was about “representation”. The suggestion of seeking legal advice from an expert in public law was included in the minutes (in a comment from Dr Crisp). The Secretary to the Board said Mr Fowler’s final suggestion that the Governance Committee accepted that legal advice could be helpful was not correct, but notwithstanding, steps were being taken to obtain advice.

The following amendments to the draft minutes proposed by Dr Crisp were agreed:

Item 9

- “He wanted to see included in the report what precautions were taken to ensure...”
- In place of “He thought Worcestershire CC had made mistakes in the way the data had been handled” “Ms Rouse asked whether Dr Crisp was saying that the handling by Worcestershire County Council of the data was incorrect. Dr Crisp replied that he thought there were some mistakes in the way the data had been handled but that was not the crux of the matter”

Item 10

- In place of “Mrs Rouse suggested Dr Crisp clarify what he meant by “represent” “Ms Rouse suggested that those who claimed they were representatives should define what they meant by the term”
- “The CEO said there might be merit in having more training or information from appropriate experts on the decision making processes”

On the proposal of Ms Rouse, seconded by Mr Bartholomew it was **RESOLVED** unanimously by the committee members present to confirm the accuracy of the minutes of the meeting held on 30 January with the above inclusions.

7.2 Matters arising

Prof Raine went through the minutes.

7.3 Adoption of minutes

On the proposal of Mr Bartholomew, seconded by Ms Rouse, it was **RESOLVED** (with 7 abstentions) to adopt the following recommendation and the minutes of the meeting held on 30 January 2020:

Safeguarding

That the Board adopt the revised Safeguarding Policy

8. Adoption of report from the Charity Commission Scheme Working Group

The Secretary to the Board confirmed that this was the report circulated with the Governance Committee papers for the meeting on 30 January (and there had been one recommendation from the Governance Committee, namely to seek further advice on the break period for fencing for animal health reasons).

Dr Crisp asked if there had been any developments in relation to providing a statement from Worcestershire County Council on how the consultation was set up and carried out. Prof Raine said that Worcestershire County Council had responded to a request for information but it was not available at the meeting. The statement could be circulated. The provision of the information would not affect the Working Group's recommendations.

On the proposal of Ms Rouse, seconded by Mrs Hodgson, it was **RESOLVED** (15 votes in favour, 6 votes against) that the Board adopted the report of the Charity Commission Scheme Working Group.

Mr Cordey reported on behalf of the monitoring group that no further significant legal costs had been incurred (balance £110,990). The cost of the consultation was £18,098.

Mr Davies then read a statement (See Appendix II).

In answer to questions, Mr Davies said there were a range of options, and the Trust would take further advice and carry out further investigations after which the options would be put back to the Board.

9. Finance Administration and Resources Committee

9.1 Mr Watts raised a query on the wording of the minutes but amendment was not agreed. On the proposal of Ms Rouse, seconded by M Davies, it was **RESOLVED** (with 2 abstentions) by the committee members present to approve the accuracy of the minutes of the meeting held on 11 February 2020.

9.2 Matters arising

Mr Cordey went through the recommendations from the Committee.

9.3 Adoption of minutes and resolutions

On the proposal of Ms Rouse, seconded by Dr Braim, it was **RESOLVED** unanimously:

i. To adopt the minutes of the meeting held on 11 February 2020

ii. **Investment Risk categories**

That the Trust continue to apply Brewin Dolphin risk category 6 to both the Land Acquisition Fund and the Parliamentary and Lands Maintenance Fund.

iii. **Ethical Investments**

That the Trust update the investment policies for both the Land Acquisition and Parliamentary/Lands Maintenance fund portfolios to include the following statement on ethical considerations:

Malvern Hills Trust exists to protect the Malvern Hills and commons. Climate change poses a threat to the unique environment we care for. The Trust will therefore exclude any fossil fuel, mining and quarrying companies from its investment portfolio by 31st March 2021.

The policy will also exclude individual investments which are perceived to conflict with the charity's purpose.

iv. **Reserves Policy**

That

- The Board record that the assessment of the reserves position is satisfactory
- Continue with the quarterly reporting of reserves to FAR Committee and
- The FAR Committee carry out the next annual assessment of the Reserves Policy in February 2021.

v. **Transfers Back to General Fund**

That the following designated funds be closed and the balances transferred to the tree disease designated fund:

Thirds Wood (balance £4,529)

Mountain Bike fund (£948)

The balance in the Election Expenses fund be retained in that designated fund

10. Contingency plans for Covid-19

The CEO went through the paper. A contingency plan was needed to enable the Trust to operate if additional restrictions came into place, in particular if the Trust was unable to meet. He referred to the definition of urgent business in the Standing Orders and said that under that definition, if the proposals were adopted, the sub group of Board members would not be able to take strategic or general policy decisions including progressing the proposed changes to the Trust's Acts, but the preparatory work as discussed under item 8 would continue.

There was a discussion on how to decide when to implement the proposed temporary arrangements. It was agreed that all Board members should receive an E mail (a phone call to the Board member not on E-mail) asking them to vote whether to implement the measures. The requirement would be to respond within 48 hours and a failure to respond would be taken as agreement to the implementation of the measures.

The CEO confirmed that in his absence the Secretary to the Board was acting CEO and the Finance and Administration Manager had in relation to operation of the bank accounts.

On the proposal of Dr Braim, seconded by Mr Baldwin it was **RESOLVED** unanimously as follows:

That the following measures would be implemented in the event that either

- the Government, chief medical officer or Public Health England put emergency measures in place or
- In response to an E mail sent to Board members, a majority indicated their agreement to the measures being implemented. A telephone call would be made to any Board member not using E-mail. Failure to respond within 48 hours would be taken as agreement.

a. To suspend all meetings of the Board and Committees until further notice.

- b. To close the public desk at the Trust Office.
- c. A temporary increase in the CEO's delegated authority to authorise unbudgeted expenditure during any 'emergency period' to £20k in total (£10,000 for a single item).
- d. A temporary delegation of the exercise of Board powers to a sub group comprising the Chairs and Vice Chairs of Board, Land Management Committee, Finance Administration and Resources Committee, Staffing Committee and Governance Committees for the 'emergency period', the exercise of such powers to be limited to making any urgent decisions including authorising unbudgeted expenditure (in addition to the CEO's authority) of up to £40k in total. The quorum for this Subgroup is proposed to be 5.
- e. The subgroup to adopt its own administrative arrangements (for example to hold meetings by conference call, Skype or other online facility), or agreement by written communication.
- f. For this purpose, an urgent decision shall mean an item of business which if not discussed or decided upon might reasonably be expected to result in prejudice of an operational, financial, reputational or legal nature to the interests of MHT.
- g. The agenda for any meeting shall be posted on the Trust's web site at least 48 hours before the meeting takes place, and the minutes posted as soon as reasonably practical after the meeting

11. GDPR update

The CEO said that 3 or 4 Board members were not able to use the new E mail system. The proposed implementation date was now April 24th¹. The CEO had been in discussions with a view to employing consultants to assist with GDPR compliance and outsourcing the Data Officer role. He was taking up references for a suitable organisation and hoped to report back at the next meeting. The company would also provide data protection training.

12. Urgent Business

Mr Davies had noted the communication from Brewin Dolphin detailing the loss if value of the Trust's investment portfolio. He invited Board members to indicate if they felt any action should be taken, but no one did.

13. Information

There had been no reports in relation to the activities of the bodies listed below.

- | | |
|------------------------------------|--|
| 16.1 Malvern Spa Association | No report |
| 16.2 AONB Joint Advisory Committee | No meeting had taken place |
| 16.3 Wildlife Panel | Meeting on 4 March. Report at next meeting |
| 16.4 Recreation Advisory Panel | No meeting had taken place |
| 16.5 Management report | |

The CEO said that as a result of the wet weather certain of the Trust's programmed work had not been carried out. Work carried out by utility companies had caused damage to the commons and he was in discussions

¹ Because of the Covid-19 measures this deadline was not achieved.

with them about reinstatement. The Top Shed pit infill work had been completed. Mrs Hodgson thanked the Conservation Manager for organising the walk for Trustees.

14. Next meeting

11 June 2020 7pm Council Chamber, Avenue Road, Malvern.

15. Resolution to exclude the public

On the proposal of Ms Rouse seconded by Mr Cordey it was **RESOLVED** (unanimously) to exclude the public for discussion of item 16 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 (HR matter).

The meeting closed at 9.10 pm

Appendix I

Mrs K Harris

Malvern Hills Trust may be a registered charity, but it is also a public body with responsibilities to the public it serves. Whilst I accept that it did not have to have a public consultation, having decided to have one, it should have been carried out according to the Government's Code of Conduct for Public Consultations, transparently and fairly.

I would argue that this was not done. Firstly, two key issues were not even addressed by the consultation, there was no mention in the consultation document of MHT being a public body. Nor was there any reference to easements.

Furthermore,

1. The same group of MHT Trustees who put the consultation together are the same ones who analysed the data. ie. biased
2. Not all raw data is in the public domain, data to Qu 1 is unavailable
3. The methodology to be used in the analysis should have been stated at the outset, this was not done
4. 22 postcodes were identified in the consultation as giving a negative skew to the results. This in itself implies a bias
5. I believe that questions were designed to elicit response required
6. No details were given of other stakeholders other than the public and how their responses were included
7. No legal framework was published alongside the public consultation document as was originally promised
8. I would also be interested to know how was it established that every response was legitimate ie. from someone on the electoral role.

In addition to the aforementioned shortcomings of the consultation itself, there is the lack of consideration given to the precept payers of this area. Many of us have paid the precept willingly for many years without question on the understanding that every 4 years we have the opportunity to elect our own directly elected trustee to the Board. Now, despite the fact we contribute approx. £500 000 per annum to MHT, we will lose our directly elected trustee in the new governance changes and yet will still be expected to pay the precept. Implicit within these changes will be a lack of accountability and transparency. Taxation is inextricably linked to representation. To do otherwise is an unacceptable state of affairs. To coin a phrase from the start of the American Revolution in 1761: Taxation without representation is tyranny.

Mr I Jinks

Good evening board, trustees and members of the public.

My name is Ian Jinks. I am a local resident, precept payer and keen hill walker, both locally and nationally.

My comments relate to changes to the objectives or so called objects of the Trust. Since these will form the basis upon which existing and future trustees will act -- in the best interests of the Trust, I believe they must convey the intent of the existing objectives with the aim being consolidation and not change. "Preserve the Natural Aspect of the Hills" -- this is a key phrase and current objective of the Trust.

In the report in response to the public consultation, the Trust explained that "Natural Aspect" has no clear legal definition (as tested in previous legal proceedings) and is now regarded as Victorian language.

12 March 2020

Although outdated, I am sure many in this room would fully understand its meaning when compared to say a more modern phrase “urban sprawl” or “soulless urban sprawl” as coined by Oliver Dowden the new Head of the Department for Culture, Media and Sport in a recent speech in Parliament.

Many other modern organisations have replaced the “natural aspect” phrase with a suitable alternative, for example The Environment Agency: “Enhancing beauty, heritage and engagement with the natural environment.”

The National Trust: “Promote the preservation of places of historic interest and natural beauty for the benefit of the nation.”

And National Parks: “Conserve and enhance its natural beauty, wildlife and cultural heritage.”

I believe these are all based upon the “Sandford principle” -which promotes the “conservation of natural beauty” in land management issues.

Recent documents including the Glover’s Landscapes Review which included Malvern emphasize the benefits of our national landscapes.

In place of the natural aspect phrase the Trust used:

The objects of the Trust shall be for the benefit of the public

(a) --to protect, conserve and maintain the landscape character, habitats, wildlife, geology, archaeology and cultural landscape of the Malvern Hills and

(b) --to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public.

Should there be a conflict between the first object (a) and the second object (b), in the event that this cannot be reconciled -the trustees shall give priority to the first object.

This too is based around the Sandford principle.

Following the consultation the Trust have since suggested that the phrase cultural landscape should be removed and consideration be given to phrases used within the Glover report.

The Trust do not however make specific reference to preservation of the natural beauty of the area which I believe is an essential element contained in the Sandford Principle and within the Glover report. This should be included in the Trust’s objectives as it is closest in meaning to the current objective of preserving the natural aspect of the Hills.

The proposed object which would appear to give priority to conservation whichever meaning you wish to apply over keeping the Malvern Hills “unbuilt” would seem to me to open the door for the unchecked development of the Malvern area.

Returning to Glover’s Landscapes Review this states “our system of national landscapes should be a positive force for the nation’s wellbeing.” There is indeed growing evidence of the benefits to health and wellbeing, most notably in the Wildlife Trusts recent report produced by Essex University. The Malvern Hills and commons are not just parcels of land to be conserved but are a natural resource of national significance to be shared by future generations allowing them to observe the natural beauty of the surrounding countryside for the benefit of their health and wellbeing.

By making this statement I hope to reach out to both the working group and other trustees and members of the public present to seek their support in ensuring the natural beauty of Malvern is saved for future generations.

Mr P Watson

I would like to make sure that we have a basic understanding as to the basic purpose as to why the Malvern Hills Conservators was created and is it still relevant today. So a potted history – it started off with Thomas Cook back in about the 1850s. He was wanting to get people to go to church but people really wanted to get out of the cities and get out into the countryside or to the seaside. People living in cities want to escape and get some fresh air down their lungs. About this time the Malvern Water system was going – people were having their spa stuff wrapped up in nasty cold wet blankets but then the important thing was to go for a walk on the hills. So that was the headache that was happening that the local land owners were trying to take all the land and enclose it, stop people getting out on to it, stop the activities happening. So the Malvern Hills Conservators was created in 1864 and there had been several attempts before then to try to make sure the Hills were preserved for people to enjoy. And that's what happened. Also of course at that time there were people like Epping Forest and Wimbledon Common and a few other places were set up to make sure that people could get out and go and enjoy the countryside. Go and enjoy that natural aspect. Then bit by bit we had other things happening. The Open Spaces Society opened up in about 1900 and that was all about making sure that these open spaces were kept open for people to go and enjoy.

And then we had the mass trespass but that was again all about people getting out and enjoying the countryside –getting out and walking. Shortly after that happened the whole idea of the public's rights of way was made sure it was put onto maps so people could actually get out onto the Hills onto open spaces to enjoy walking.

Finally in 2000 the final bit that came in was the Countryside rights of way act of which the Malvern Hills was curiously not included but that was all about people getting out and walking on the Hills and that is what we are all about – walking on the Hills to enjoy the natural aspect.

12 March 2020

Appendix II

Position statement - Charity Commission Scheme

Last week we got from Department of Culture Media and Sport (DCMS) via the Charity Commission a long overdue response to our question about the process for achieving changes to our governing documents.

I'll quote from the Charity Commission email from last Tuesday:-

"...we have been advised by DCMS that a private bill would be the preferred mechanism for achieving amendments to the five Acts governing the Malvern Hills Conservators and not a parliamentary scheme pursuant to section 73 of the Charities Act 2011."

It seems that DCMS believe that a private bill would enable more public scrutiny and debate of the matters in hand.

We have asked the Charity Commission for a formal statement setting out the context of this new advice and it will be published on the website so that it can be seen by trustees and the Public

It is disappointing that DCMS and the Charity Commission are now advising that the S73 scheme is not preferred but the legal and consultation work that we've done over the past two years will stand us in good stead if we are to pursue the private bill route. Our task now is to understand the process that we must follow if we are to bring forward a private bill in terms of work content and cost and timescales and to understand the range of projected outcomes.

That task begins next Tuesday when we will meet with Bates Wells, our legal advisors, so that we can start mapping out the options for trustees to consider.

While the private bill route does bring with it some additional complexities, it could deliver several big advantages. It brings certainty to being able to consolidate the Acts; it potentially extends the scope to address some public concerns and it removes the possibility of the scheme being scuppered by a single MP. Additionally, we are advised that based on recent experience, it may be a much quicker route to a sensible destination.

For those reasons we are seeking to establish the projected outcomes, work content, cost and timescales of following the private bill route so that we have a basis for deciding how the Trust should proceed.

We'll reconvene to consider the options just as soon as we have that information to inform the Board's deliberations.