

10 September 2020

Malvern Hills Trust

Ordinary Meeting of the Board

By video/telephone conference and live stream

Thursday 10 September 2020 7.00 pm

Present: Mr C Atkins, Mr D Baldwin, Mr R Bartholomew, Dr S Braim, Mr D Core, Dr G Crisp, Mr M Davies (Chair), Mr M Dyde, Mr D Fellows (left after item 14), Mr R Fowler, Mrs L Hodgson, Mrs H I'Anson, Mr T Johnson (left during item 5), Mr J Michael, Mrs C Palmer (left during item 13), Dr T Parsons, Mr C Penn, Prof J Raine, Mrs G Rees, Mr C Rouse, Ms S Rouse (left after item 15), Mr J Watts, Mr T Yapp.

In attendance: CEO, Secretary to the Board, Finance and Administration Manager, Conservation Manager, Community and Conservation Officer, Mr I Burrows (Brewin Dolphin)

Mr Davies welcomed everyone to the meeting.

1. Apologies for absence

Ms H Stace.

2. Chair's announcements

- Mr Davies welcomed Ian Burrows to the meeting.
- The Charity Commission had alerted trustees to a dispute within the Trust. Mr Davies had reported on this at the last meeting and had suggested a meeting with Mr Watts to discuss a resolution to the issues he had raised in correspondence. Mr Watts had now replied, raising a number of additional points. Mr Davies was taking advice and would present this to the Board in due course in order that the Board could determine a response.
- All trustees had received a copy of the revised draft Code of Conduct. If committee meetings were reinstated, this would come to the next Governance Committee meeting.
- At the March Board meeting, Mr Davies had said that the Trust would investigate how to progress the proposed changes to the Trust's governing Acts. That work had been suspended but now needed to be re-started. It was proposed that the Governance Committee, supported by the CEO and Secretary to the Board, would:
 - Reconvene the Working Party to lead the process. Membership of the Governance Committee would be reviewed in November but for the time being the members had endorsed the Chair and Vice Chair's suggestion that David Core should step into the place on the Working Party previously held by David Bryer.
 - A number of workshops would be held to bring trustees up to speed and the Working Party then proposed conducting bilateral discussions with all trustees in October, better to understand current views on a way forward.
 - Reopen dialogue with the Charity Commission and DCMS to understand more fully the points that led to the Charity Commission's statement in March about the S73 scheme.

- Gather detailed information on the process for obtaining a private bill, including indicative costs and timescales, and ascertaining who might be best placed to act as the Trust's advisor/Parliamentary Agent. Any cost to be incurred as part of this process to be approved by the Board
- The Working Party would then report back to Governance Committee, which in turn would make recommendations to the full Board, probably early in the New Year.
- Mr Davies announced that Martin Cordey, who had been a trustee for 20 years, had resigned. He had helped the organisation through some very difficult times but he was finding it increasingly difficult to fulfil his role as a trustee in a calm and professional way under present circumstances. His insight and positive commitment would be sadly missed. Mr Cordey was the County Council nominee for Powick parish. Both Councils had been alerted of the vacancy.
- There was an item of urgent business. Instructions to Brewin Dolphin needed to be signed by the Chair and Vice Chair of Finance, Administration and Resources Committee (FAR). A temporary arrangement needed to be agreed, should instructions need to be given prior to the next FAR meeting.

3. Declarations of interest

Ms Rouse declared a possible conflict of loyalty in item 16. As Leader of Malvern Hills District Council she had been involved in discussions on the use of the Single Justice Process. Mr Davies, Mrs Palmer, Mr Michael, Mr Dyde and Prof Raine were also members of Malvern Hills District Council, but had not been involved to the same degree as Ms Rouse. The Secretary to the Board read out the relevant paragraph of the Trust's Conflict of Interest Policy and said the assistance on offer might not come within the category of a decision affecting the District Council, its operation or its agreed policies.

It was pointed out that

- The policy also covered the perception of a possible conflict and in this instance the same people sat on both bodies.
- Council members (although not the Leader) would not have been involved in the proposed arrangements between MHDC and the Trust – it would have been officer to officer discussions.

On a vote whether the District Councillors had a potential conflict of loyalty and should therefore abstain from voting on agenda item 16, a majority **AGREED** that the Councillors could take part in the discussion and vote. Ms Rouse was in a different position and agreed that she would not take part in a vote.

Prof Raine declared an interest in relation to item 13 as he lived in Brockhill Road and was part of the committee formed to oversee the resurfacing project.

Mr Rouse declared his interest as a commoner.

4. Investment Report (agenda item 7)

Mr Burrows went through the report that had been circulated and answered questions.

5. Public Comments (agenda item 4)

See appendix.

Mr Johnson left the meeting.

6. To confirm the Minutes of the Board meetings held on 6 August 2020 (agenda item 5)

Comments had been received from 2 trustees and these were set out in a table circulated by the Secretary to the Board.

Mr Watts said no mention was made in the draft minutes about comments made by Ms Rouse which he thought should be included. Ms Rouse said she was content with the amendment suggested by the Secretary to the Board.

A number of trustees commented that the Board should focus on the things that it needed to achieve. Disagreements over the minutes did not help the Trust's reputation and the Board should be focusing on caring for the Malvern Hills.

Mr Fowler said some trustees were being discriminated against for no good reason and the minutes did not always reflect what was actually said.

Ms Rouse suggested leaving the recordings of the meetings on YouTube for a time after each meeting. Mr Davies suggested Governance Committee look at how to avoid the acrimony that seemed to follow this item on the agenda.

On the proposal of Ms Rouse, seconded by Mr Bartholomew, it was **RESOLVED** (13 votes in favour, 3 against, 6 abstentions) to approve the minutes of the meetings held on 6 August 2020 including the amendments which had been circulated by the Secretary to the Board.

7. Matters arising (agenda item 6)

There were none.

8. Chief Executive's report and project progress update.

The CEO's report had been circulated. Since the report was prepared a new pick-up had been ordered for the Field Staff and the CEO had been in communication with the agent of the owner of the property served by Stowe Lane. It was proposed to resurface the lane using a method of reconstituting and stabilising the existing stone. The CEO said that he would be seeking tenders from further afield for the replacement of the sewage system at British Camp, having failed to generate a satisfactory response from local companies. The only tender received had been considerably in excess of the estimate. The CEO confirmed that it did not appear feasible to connect the toilets to the main sewer.

Mr Fowler commended the work which had been carried out at the community woodland. He asked if the providers of the car park ticket machines were under a contractual obligation to provide a certain level of service. The CEO said that the issues appeared not to be with the contractor but with the payment service provider or the payment facilitator. This was being investigated. New modems and aerials were being fitted. A second machine would be trialled at British Camp using a different payment service provider. Having a second machine at British Camp would be a good idea and a proposal would be brought to the Board in due course.

Mr Parsons asked if some of the paths in the Community Woodland could be upgraded.

Finance and Administration Manager's report

The Finance and Administration Manager said the management accounts continued to show a very positive picture. High car park takings had continued. 4,999 residents' car passes had been sold to date. Since the office re-opened, roughly 50 % of pass sales had been by E-mail, 12 % by visits to the office and the rest by telephone.

In relation to financial support linked to the Covid-19 pandemic, £11,300 had been claimed under the job retention scheme. The Trust was not eligible for any of the other business support grants.

9. Conservation Manager's report

A report had been circulated.

The consultation on the Land Management Plan had been concluded, with about 50 responses. There had been a long delay before the Trust heard back from the DEFRA agencies about its Countryside Stewardship applications. Site visits linked to applications had only just been reinstated and MHT was still awaiting an offer. The Conservation Manager confirmed that advice in relation to ash dieback was to leave affected trees standing unless they needed to be felled for safety reasons. This was in order to identify any trees which had the genetic make up to enable them to survive. The Trust did not remove dead wood unless there was a good reason as it provided valuable habitat.

10. To approve Risk Management Schedule

The Risk Management Schedule had been discussed in a workshop and some amendments incorporated into the document which had been circulated.

On the proposal of Ms Rouse, seconded by Mrs Palmer, it was **RESOLVED** (with 6 abstentions) to approve Risk Management Schedule.

11. To confirm the proposed regime for meetings

The advice remained that meetings should not be held face-to-face.

On the proposal of Mrs Hodgson, seconded by Mr Fowler, it was **RESOLVED** unanimously to adopt the following arrangements for meetings:

The Covid-19 Contingency Committee to continue in existence as a precaution, in the event of a "second wave"

Committee meetings to be reinstated in accordance with original programme.

Arrangements for the frequency of meetings, use of committees etc to be reviewed and considered at a future Board meeting.

The next Board meeting (Annual Meeting) to take place by video/telephone conference on 12 November 2020

12. Review of Drone policy

The Community and Conservation Officer went through the paper.

On the proposal of Mrs Rees, seconded by Dr Crisp, it was **RESOLVED** unanimously to adopt the revised policy.

13. Brockhill Road update and review of Board decision 08/11/18

Prof Raine left the meeting.

The CEO read out a statement from Brockhill Road Residents Association. (Appendix 2) and then went through the paper. The Trust had agreed to allow the residents to

tarmac the easement along the Trust's section of Brockhill Road upon certain conditions. Some of those conditions had been met, but not the requirement for the parties to enter into a binding legal agreement for the future maintenance of the surface. The CEO's concern was the Trust's position in relation to visitors to its land, should the easement be tarmaced and then fall into disrepair

The view of the meeting was that nothing had changed since the 2018 decision and the responsibility for repair and maintenance of any new surface should be on the householders. The following comments were made:

- Would an additional risk be created by adding a smooth surface which could become slippery in freezing weather?
- Would tarmacking create other unforeseen issues? For example water run off?
- Could the impasse be resolved by a round table meeting? The track was in need of remedial work, particularly the area by the junction with the main road.
- Because of its nature, the Residents' Association could not fulfil the requirement to enter into a satisfactory legally binding agreement.
- Should there be a requirement to keep the ditch clear, including and debris washed to the bottom of the slope?
- What was the legal basis for saying a s38 Commons Act agreement was not required?
- If the liability for maintenance was joint and several, not everyone in the road needed to enter into the agreement
- Had County Highways been asked what the best type of surface was for this location?
- Where did the services run?

On the proposal of Mr Watts seconded by Mr Bartholomew it was **RESOLVED** (with 2 votes against and 3 abstentions) to insist as a condition of agreement to the proposed resurfacing, that the parties commissioning the work enter into a legally enforceable arrangement with the Trust for future maintenance of the surface.

Prof Raine returned to the meeting.

14. Ash Dieback update

The Conservation Manager went through the paper. It became apparent in 2020 that a number of the Trust's ash trees were in poor condition.

The Conservation Manager thought the wet winter followed by the dry spring had exacerbated the problem this year. The CEO said that one of the problems was that trees with established disease became unsafe to climb and it was therefore cheaper to fell them before they became unstable. More extreme weather conditions would be likely to stress the trees and exacerbate the problem.

The budget for tree disease (particularly ash dieback) was separate from the tree safety budget.

Points made included:

- Would there be economies of scale in taking down more trees now? .
- Were the costings in the paper sufficient?
- Felled ash would regrow. The Conservation Manager said this would not add to the spread of the disease as it was already everywhere in the area – the issue for the Trust was health and safety.

- It was accepted that further funding might be needed should the problem become worse.

On the proposal of Mr Fowler, seconded by Mr Atkins, it was **RESOLVED** unanimously

- a) That ash surveys should be repeated every June by staff, in addition to the professional tree safety inspection in autumn.
- b) That the Trust's tree safety work should take a balanced and proportionate approach with Ash dieback.
- c) To continue with the policy of felling only those trees that absolutely must be felled due to an unacceptable risk to the people and property.
- d) That healthy looking Ash trees should not be felled in anticipation of the disease.
- e) To use field staff wherever possible to work on trees or assist contractors in more complex scenarios.
- f) To increase the tree disease budget for the year 2021/22 to **£22,000** by an addition of £12,110 (instead of the forecast £3000).
- g) To keep the situation under review.
- h) To be ready in autumn 2021 to review the 2022/23 tree disease budget.

Mr Fellows left the meeting.

15. Allocation of funds from Gift Fund – hedge planting

The Conservation Manager referred the meeting to the paper.

On the proposal of Mrs Rees, seconded by Dr Braim it was **RESOLVED** (with 1 abstention) to authorise the expenditure of £850 from the gift fund for the purchase of hedge plants and trees.

Ms Rouse left the meeting.

16. Use of Single Justice Process for byelaw enforcement

The CEO went through the paper.

Mr Watts responded that use of the process in SI 430/2016 was restricted to bodies defined as "relevant prosecutors" and that did not include Malvern Hills Trust. He was not clear that a body with this power could undertake a prosecution on behalf of another organisation. Mr Bartholomew suggested use of the single justice process might be something to consider including in the proposed governance changes. The CEO made it clear that prosecutions would only be brought against repeat offenders – the Trust's normal approach to byelaw breaches was to educate and inform. The trustees were responsible for enforcing the byelaws and the Malvern Hills Acts. If the Trust persisted in never enforcing its byelaws, it could be seen as toothless. Bringing a prosecution in the Magistrate's Court by the normal process was expensive. Although an order for costs could be sought following a successful prosecution, this was discretionary and dependant on the defendant's personal circumstances, so there was a significant risk that the actual costs of prosecution would not be recovered. Instances where prosecutions might be considered were swimmers in Gullett Quarry or people who repeatedly parked on the common, causing damage. Mr Davies thought the Council had made this offer in pursuit of their own public safety obligations. It was agreed to investigate the position further.

17. Governance Committee vacancy

David Bryer's departure left a vacancy on the Governance Committee. In accordance with Standing Orders, the Chair, Vice-Chair and Chair and Vice-Chair of the Governance Committee proposed appointing Mr Atkins to replace him until Committees were re-selected.

18. Urgent Business

The investment policy lodged with Brewin Dolphin required instructions from the Trust to be signed by the Chair and Vice Chair of FAR. Until FAR met again and appointed a new Chair, as a temporary measure on the proposal of Mr Davies, seconded by Mr Core it was **RESOLVED** unanimously that the Chair of Land Management Committee and the Vice-Chair of FAR be authorised to issue instructions to Brewin Dolphin.

19. Information

19.1 Malvern Spa Association	No report
19.2 AONB Joint Advisory Committee	No meeting had taken place
19.3 Wildlife Panel	No meeting had taken place
19.4 Recreation Advisory Panel	No meeting had taken place
19.5 4Cs	No meeting had taken place

20. Next meeting

12 November 2020 7pm (by video conference)

The meeting closed at 11.27 pm

Appendix I

Angus McCulloch

Question 1

We were promised that the information about members of the Board would be updated on the website making it easier to contact people, for example using new email addresses. Information is currently scant, so can I encourage Trustees to provide the office with photos, telephone numbers, email addresses and a pen picture please, so that the website can be better populated and we can get to know you.

The Secretary to the Board said there was no obligation on trustees to put their information on the web site. There was an obligation to provide the information in the office.

Question 2

I see from agenda item 17 that there is a vacancy on the Governance Committee and remember that, at the 21st November 2019 meeting of the Board, newly elected members Dr Graeme Crisp and Richard Fowler expressed a strong interest in being on this committee.

However, at that time Mrs Cynthia Palmer and David Core were elected to fill the vacancies and the meeting was told the maximum number was 7.

I subsequently wrote to the chairman suggesting the number on the Governance Committee might be increased by a minor amendment to Standing Orders, and I also spoke about this at the Governance Committee meeting at the Victoria Park Bowling Club on 30th January 2020. But I have heard nothing since, possibly due to the COVID emergency.

I hope Trustees will now be able to give serious consideration to the election of either Dr Graeme Crisp or Richard Fowler who were elected with large majorities and were very keen to take on the duties of the Governance Committee.

Appendix 2

Statement by the Brockhill Road Residents Association

The uppermost stretch of Brockhill Road slopes steeply downwards, and has therefore been heavily eroded by water over time. Repairs are simply washed away during a normal winter. Erosion will continue to degrade the road in the absence of a longer term and sustainable solution to the water problem. This can only be provided by a bound surface, configured to take water off the road into appropriate ditches and soakaways. That is what is proposed. We urge the Board to adopt your CEO's option 1 and allow residents to proceed with the resurfacing project that has long been needed.

First, nothing in our proposal changes anything in the existing division and definition of responsibilities between the parties, nor implies any basis for such changes. Maintenance of the road has always been undertaken by the residents; the Trust has never yet chosen to do so.

Second, no explicit legal obligation to maintain the road will ever guarantee an appropriate standard of work, even if this could be defined. The interests of Brockhill Road residents, however, can - as demonstrated by the financial commitment they are prepared to make.

Third, maintenance costs are likely to be less over the expected life of the surface (20+ years) than those currently being incurred (about £2k annually); and repairing a sound surface at some point in the future will be far cheaper than the work that is necessary right now.

Fourth, the potential for liabilities to MHT arising from claims relating to inadequate maintenance of the road by the Trust as owners, is already a live issue, and not just one for the future. Our proposal would solve this problem, and would do so at no cost to the trust.

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Fifth, this is not a case of granting a new easement for access to a defined population where the basis for doing so can be agreed with all parties from the outset. Brockhill Road (or 'New Road', as the early maps name it), including that part of it which crosses Trust land, has been an established right of way between Colwall and West Malvern for more than a century, serving more than just those who live at the West Malvern end.

Simply because the residents are collectively prepared to undertake maintenance in a way which also has the benefit of eliminating the Trust's potential liability, is no reason for requiring them, retrospectively, to accept an entailment on their freeholds while excluding other users and beneficiaries from the same obligations. This would be manifestly unfair, and arguably oppressive.

To summarise, the proposal: 1) provides for a much improved road surface on Brockhill Road which can be sustained cost effectively over the long term, 2) eliminates the Trust's potential liability, at no cost to the Trust, and 3) requires and justifies no change to the existing pattern and definition of responsibilities between interested parties. Our contractor is ready to start work before the oncoming winter. If the work is delayed further the condition of the trust's section of road will quickly worsen. Residents should be permitted to get on with the job immediately.