

11 November 2021

Malvern Hills Trust

Annual Meeting of the Board

Council Chamber, Avenue Road, WR14 3AF

Thursday 11 November 2021 7pm

Present: Mr C Atkins, Mr R Bartholomew, Dr S Braim, Dr E Chowns, Mr D Core, Dr G Crisp, Mr M Davies (Chair), Mr M Dyde, Mr D Fellows, Mr R Fowler, Mrs L Hodgson, Mrs C Palmer, Dr T Parsons, Mr C Penn, Prof J Raine, Mrs G Rees, Mr C Rouse, Ms H Stace, Mr D Watkins.

In attendance: CEO, Secretary to the Board, Conservation Manager, Finance and Administration Manager, Community and Conservation Officer (CCO), 5 members of the public.

Mr Davies welcomed everyone to the meeting.

1. Election of Chair

There was one nomination and Mr Davies was appointed unopposed.

2. Election of Vice-Chair

There was one nomination and Mrs Palmer was appointed unopposed.

3. Apologies for absence

Mr D Baldwin, Mrs H I'Anson, Mr J Michael, Mr T Yapp.

4. Chair's report for 2020/21

See schedule 1.

5. Chair's announcements

- Mr Davies thanked Gwyneth Rees, who was stepping down as a trustee from 30 November 2021, for her wise, respectful and positive contribution to the Trust.
- Trustees were reminded to send in their responses to the Governance Toolkit.
- Workshop: Revised Business Plan (by Zoom) 18 November 2021 7pm.
- Workshop: Governance Toolkit (by Zoom) 25 November 2021 7pm.
- Land Management Committee 2 December, United Reform Church, Malvern Link.
- The postponed Staffing Committee meeting would take place on Tuesday 7 December at Colwall Village Hall.
- Finance Administration and Resources Committee 9 December, United Reform Church, Malvern Link.
- Mr Davies thanked Sarah Rouse who had also resigned as a trustee for her work for the Trust.
- Mr Davies apologised for a faulty link to the information about this meeting on the Trust's website.

6. Declarations of interest

Mr Rouse – He had rights of common over Trust land.

Mr Penn noted that Mr Rouse had made a remark about the Trust's policy on trail hunting at a West Malvern Parish Council meeting which he considered to be misleading and indicated Mr Rouse's personal opposition to Trust policy. He felt that Mr Rouse should stand down any comment on the matter on the agenda. Mr Rouse said that the Trust could not tell other landowners what to do.

7. Public Comments

(See Schedule 2).

8. Appointment of committees

A table of the Chairs' and Vice-Chairs' recommendations for Committee membership had been circulated prior to the meeting.

Mr Fowler asked about the process for committee selection and whether it accorded with Standing Orders. Mr Davies conceded that the Chairs and Vice Chairs had not consulted the skills register or attendance record on this occasion and he apologised that that had not been done. Mr Fowler proposed that the documents should be circulated and the list should be recreated.

Points made included:

- At this stage in the life of the Board, trustees were familiar with the skills and interests of Board members.
- There was a lack of gender balance on Governance Committee.
- The Secretary to the Board confirmed that the proposed appointees to Finance Administration and Resources and Land Management Committees were all in accordance with the individual trustees' choices.
- The Skills Register and attendance records were available to trustees on request.
- There was a process for committee selection and there should be a record of the comparison of the skills available with the skills that were required.
- The best person for the job should be selected.
- Could the proposals for committee membership be circulated prior to the meeting?

Although Standing Orders had not been followed, on the proposal of Ms Stace, seconded by Mrs Hodgson it was **RESOLVED** (with two abstentions and 2 votes against) that the following Committee appointments be made:

<p>Land Management Committee Mr Atkins Mr Baldwin Dr Braim Dr Chowns Mr Fowler Mrs Palmer Mr Parsons Mr Rouse Ms Stace Mr Yapp</p>	<p>Governance Committee Mr Atkins Mr Bartholomew Dr Braim Mr Core Dr Crisp Mr Fellows Prof Raine</p>
<p>Finance Administration and Resources Committee Mr Bartholomew Mr Core Mr Davies Mr Dyde Mr Fellows Mrs Hodgson Mr Michael Mr Penn Prof Raine Mr Watkins</p>	<p>Staffing Committee Mr Baldwin Mr Davies Mrs I'Anson Mrs C Palmer Mr C Penn Prof Raine Mrs Stace</p>

Appointment of Board members to outside bodies

It was **RESOLVED** unanimously to make the following appointments:

4Cs	Mr Davies and Mr Fellows
AONB	Mr Atkins
Recreation Advisory Panel	Messrs Baldwin, Braim, Davies, Dyde
Wildlife Panel	Ms Stace, Messrs Atkins, Fowler, Michael.

9. To approve the minutes of the Board meetings held on 9 September and 7 October 2021

On the proposal of Mrs Rees, seconded by Mr Bartholomew, it was **RESOLVED** (with 2 abstentions) to approve the minutes of the meetings held on 9 September and 7 October 2021.¹

Matters arising

Para 22.6 of the meeting of 9 September: The CEO that Herefordshire Council were considering a single white line along Jubilee Drive and West Malvern Road (not double

¹ The Secretary to the Board confirmed that she had amended the draft minutes of the meeting on 7 October to include Mrs Hodgson's apology for not attending.

yellow as stated). Confidential minutes of 9 September: Dr Parsons repeated his observation that the hedge in Chance Lane had grown over the road.

The Conservation Manager reported that he had been notified by the RPA that payments under the North and Central Hills Countryside Stewardship Scheme would be reinstated for 2019 and 2020 to the amount of £76,000pa (the original agreement was for the sum of £79,000) and this sum would continue to be paid for the remaining 6 years of the Scheme. Restoration of the payments would have knock on effects to other operations.

The Conservation Manager and other staff were congratulated on achieving this outcome.

10. Governance Committee

10.1 On the proposal of Mr Bartholomew, seconded by Mrs Palmer it was **RESOLVED** (with one abstention) by the Committee members present to approve the minutes of the meeting of the meeting on 21 October 2021.

10.2 Updates since the meeting

There were none.

10.3 Adoption of minutes and recommendation

On the proposal of Mr Bartholomew, seconded by Mr Fellows it was **RESOLVED** unanimously to adopt minutes of the meeting of 21 October 2021 and that Standing Order 14.9.2 should be amended to read:

The Chair of the relevant committee invites officers to provide any updates since the meeting and invites questions and comments from trustees on the minutes or the recommendations.

11. Whether MHT should proceed with a s74 Charities Act 2011 application with a view to updating its Governing Acts using a Private Bill and how work connected with obtaining a Private Bill should be funded

Mr Davies reminder trustees that this was not a final decision to proceed with a Private Bill but a preliminary step to gain authorisation from the Charity Commission to expend charity funds on a private bill. Private Bills had to be submitted by November in any given year so this was a timely decision if the Trust was not to be perceived as “kicking the can down the road” for a further year. Trustees had had the opportunity to go through the Working Group Report and ask questions both in the Governance Committee meeting and in 2 workshops.

Points made included:

- Was the charity moving away from charity status to an extra public body or an independent business? Mr Core said the aspect of fundraising needed to be seen in the broader context of all the non-financial benefits that would accrue. There was nothing in the proposals that could not be seen in many other charities, and the changes were to give the Trust more flexibility in addressing future risk. The report was intended to address the trustees’ responsibility to demonstrate it had the resources to carry this through and that it was a reasonable way for the Trust to expend its funds.

- Mr Fowler made a number of points:
 - The Board had agreed to accept the Russell report, but this had stated the reconciliation of trustees should take place before implementing the governance changes. Mr Davies said that implementation of the Russell report was in process.
 - He had sent some notes to Mr Core, to which he had not received a response.
 - The reference to using the 3.5 % rate as recommended in the Treasury Green Book was not a correct application as this being used in a different context. The target rate of return for the investments which made up the Land Purchase Fund was 6 – 7 %.

Mr Core responded that he had received the information from Mr Fowler and some additional comments from Mr Rouse which he had put into the model. Even using 7.5 % as Mr Fowler suggested, it still produced a positive result within 12 years.

- A comparison should be made between using a s 73 Scheme and a Bill.
- The Trust was not in a position to make the choice referred to above as the Charity Commission had made it clear that a s73 Scheme could not be used to make the changes which the Trust had identified as required.
- The Charity Commission had said a s 73 Scheme could not be used to make all the changes which the Trust had identified. Could the controversial aspects of the changes be dropped?
- If the Land Purchase Fund was used, money might not be available if a parcel of land came up for sale.
- The proposition was to ask the Charity Commission to sanction the Trust spending the money on a Private Bill
- The CEO gave a costs estimate for the s 74 application of £5 – 10,000. The application would involve administrative costs plus possibly some external professional fees.

On the proposal of Ms Stace, seconded by Dr Braim it was **RESOLVED** (14 votes in favour with 4 votes against and 1 abstention):

To adopt the Governance Committee's recommendations that

- A. On the basis of the Governance Committee Working Group's report, the Board agree that it is expedient in the interests of the charity to proceed with a Parliamentary Bill to make the proposed governance changes (subject to a review as set out in 2 below).
- B. Governance Committee Working Group 2 proceed to:
 - i. Carry out further work identified in the Report of the CCS Working Group dated January 2020
 - ii. Consider any further issues that arose during the process
- C. The Officers in conjunction with Working Group 2 carry out any further work required to apply for s74 consent

And

- D. The application for s 74 consent should be submitted to the charity commission (provided the estimates for legal costs are within 10 % of the figures contained in the report on Costs and Benefits)
- E. The cost of funding the work on a Private Bill should be met from a loan from the Land Purchase Fund.
- F. To approve expenditure of up to £10,000 to prepare the application.

Mr Fowler and Dr Crisp asked for it to be minute that they had voted against the resolution on the basis that the Board had said that the Russell report would be implemented and this had not yet been done.

12. Fernleigh easement application

The CEO pointed out an error in the paper (page 20) – the easement was 75m long and not 55m as stated on that page.

He confirmed that in this case there was no prescriptive easement.

Points made included:

- In this instance there was no material impact on the “Natural Aspect” as the track was already present.
- What if a future owner was less careful as the present one? What if vehicles were parked on the easement? The CEO pointed out that the extent of and the materials for the easement would be specified in the deed along with the Trust’s standard conditions which included a covenant not to park on the easement. The Trust arranged for a warden to call on new property owners and remind them of their obligations.

On the proposal of Mrs Palmer, it was **RESOLVED** (with 2 abstentions) that: The conditions set out in s 7 MHA 1930 having been met and after having considered the impact on the natural aspect of granting the easement, the Board agreed to grant an easement providing vehicular access to Fernleigh subject to the conditions set out in Annex 2 of the paper in consideration of the sum of £20,000.

13. Trail hunting on MHT land

The CEO introduced the paper. The issuing licences for trail hunts was currently suspended. Trail hunting on Trust land was an event, like many other events organised by third parties over the course of a year. Because of the particular risks, the Board had approved a policy setting out the conditions on which trail hunting would be licenced by MHT. The paper set out the breaches of this policy which had occurred over the past 4 years. Monitoring the events was challenging and took up a deal of staff time.

Sometimes the hunt met on land adjoining Trust land and access was lawfully obtained across Trust land across easements or public rights of way.

The following points were made:

- It was evident from the information presented that the hunts had consistently failed to comply with the licence conditions and dealing with the events required significant input from staff.

- Monitoring was clearly quite stressful for the staff.
- If licences were suspended, the Trust would still have to be vigilant, and the hunt would have to be monitored when activities were taking place near to Trust land. The current policy asked hunts to give notice when they were meeting adjacent to Trust land. They would probably not give notice if the issuing of licences was suspended.
- If the hunts ignored the licence conditions they may well also disregard any ban. Hunt activity would still have to be monitored.
- There were effectively only 2 hunts involved. In circumstances where one was adhering to licence conditions and another was not, it would be possible to differentiate. However, the licence conditions would have to be revised in the light of the recent court case where it was found that hunts were being encouraged to use laying a trail as a smoke screen for illegal hunting.
- There was no evidence to believe that issuing licences containing additional restrictions would work
- Was it possible to request a bond? This was not thought to be a practical proposition.
- Thanks were expressed to the staff who had compiled the paper. The paper painted a clear picture of organisations which ignored any conditions on approvals that were given for their activities.
- Hunts were neither observing best practice for trail hunting nor the Trust's conditions for the grant of licences.
- Licences could be suspended until the end of the season to gain a clearer understanding of what other organisations were going to do.

On the proposal of Mrs Stace, seconded by Mr Bartholomew it was **RESOLVED** (with 1 vote against and 2 abstention) to indefinitely suspend the issue of licences for trail hunting on Trust land.

14. Information

14.1 Update on Risk Management Schedule

The CEO said that although there had been good news from the RPA, he did not feel it was appropriate to reduce the risk level until the money had been received.

14.2 Conservation Manager's Report

No further matters to report.

14.3 Malvern Spa Association

The Spa Association had produced Christmas cards and a calendar. They were supporting the Trust with funding to assist with rebalancing the trough at Barnards Green and repairing the pedestal at St Ann's Well.

14.4 AONB Joint Advisory Committee

John Raine had been appointed as Chair and the minutes of the last meeting would be circulated once they had been published.

14.5 Wildlife Panel

No meeting.

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14.6 Recreation Advisory Panel

No meeting.

14.7 Management Report

The CEO had no updates.

15. Urgent Business

There was none.

16. Date of next meeting

20 January 2022.

The meeting closed at 8.50pm

Schedule 1

CHAIRMAN'S REPORT TO BOARD 2021 11 11

The earlier part of the year following the last Annual Meeting was, for Trustees, dominated by the conduct of an inquiry into a number of concerns and by the consequences of that inquiry. The findings of the inquiry report were accepted by the Board and a process put in place to respond to a number of the associated recommendations. That process continues, albeit rather slower than many would have wished.

One of the consequences was election of a new Trustee and we welcomed David Watson on his return to our Board.

Work to support the Modernisation Agenda has centred on producing, at the request of the Board a cost/benefit analysis of the opportunities that would be created by a consolidation and updating of our Governing Acts. That process has created some lively debate focussed largely on the financial factors but the Board's resolutions from March 2020 stands as a measure of the support for the substance of the proposed changes; many of the benefits being less easy to quantify. Nevertheless, the essence of the proposals is to enable the Trust to carry out its statutory duties in an effective and sustainable way in the face of huge financial, regulatory and environmental challenges in an uncertain future.

Meanwhile, our resourceful and hardworking staff have completely revised our Land Management Plan which is the foundation for our conservation work for the next 5 years. The plan is ratified, and work is underway.

Our managers and staff have also kept us on a stable financial footing in spite of the difficulties getting proper and timely payments from our agreed Countryside Stewardship schemes. Those schemes, which are a major source of the income essential to our stewardship of the hills and commons, are a feature of the uncertainty that we face in future.

Once again, the audit told us that our processes and the 2020/21 accounts were well managed and clean and the accounts tell us that that we hold healthy reserves and that the surge in car park income had provided some comfort to help with our careful control in the face of rising costs. Prudent and careful management is a precious commodity for which we continue to be grateful.

Schedule 2

Statement from Katherine Harris:

(1) I do agree that consolidating the existing Acts of Parliament into one document was a point identified during the passage of what was to become the 1995 Act.

However, I do not agree that what is being proposed by the Governance Committee. To refer to the proposed changes as a consolidation exercise is a misnomer at best and misleading. Consolidation of Acts of Parliament is a technical exercise 'to prevent a complex form of cross referencing' and does not include increased powers or other significant changes.

(2) To say that 'those changes were consulted upon in 2019 and found broad approval' is incorrect. Not all changes proposed were consulted upon and as for 'finding broad approval', I cannot agree. There was no verification for the validity of the responses.

The consultation was only in respect of a Section 73 proposal and was not agreeing to a Section 74 application.

Mr Davies responded that the assertion that the 2019 consultation was only in respect of a s73 Scheme was not right. It was the proposed changes that were being consulted on and not the process.

Statement from Robert Baker

My wife and I attended the Governance Committee meeting on 21st October and have read the minutes of that meeting. The minutes suggest that Dr Crisp drew the committee's attention to a decision notice from the Information Commissioner's Office before the committee voted to make a recommendation to the Board to proceed with a Private Bill. This gives a misleading record of the events of the meeting. The vote to make this recommendation to the Board came before Dr Crisp's announcement, not afterwards.

Mr Fowler said he thought sufficient changes could be made under a S73 Scheme and the precept payers should be taken into account.

The decision notice implied that the previously proposed S73 Charity Commission Scheme was still being considered which raises the question why would the Board be considering a Private Bill, with the very significant additional costs involved, at this time?'

Mr Davies responded that he believed that the assertion that the minutes were misleading was unfounded. The minutes were not a verbatim record of the meeting and the sequence of events was as set out in the minutes.