

MALVERN HILLS CONSERVATORS ANNUAL MEETING OF THE BOARD

Priory Lodge Hall Avenue Road Malvern

Thursday 11 November 2010 7pm

Present:- Mrs S Adeney, Mr D Baldwin, Mr R Chamings, Mr C Cheeseman, Mr M Cordey, Mr R Hall-Jones, Dr T Hunt, Mrs J Kelly, Mr M Morgan, Mr A Myatt, Mrs B Nielsen, Mr A Phillips, Mr B Pilcher, Mr J Plant, Mr R Roberts, Mr C Rouse, Dr B Smith, Mr C Smith (Chairman), Mrs H Stace, Mr P Tuthill, Mr D Watkins, Mr P Watson, Mr P Watts, Mr W Watts, Mr B Wilcock.

In attendance:- The Director, Administrative Officer, Financial Assistant and 16 members of the public.

1. APOLOGIES FOR ABSENCE. Mr M Soley, Mrs S Thetford.

2. ANNUAL REPORT OF CHAIRMAN FOR THE PREVIOUS YEARS. Mr Roberts presented his report:-

My third and final year as Chairman has been interesting in many ways. We gave the electronic distribution for Committee documents a six month trial – I was a full supporter in the beginning – however it soon became apparent that printed documents still were the preferred option – I think this may change in the future with the advent and popularization of cheaper flat readers in the style of the iPad. At long last we can really see the completion of the up-to-date Land Registry records – the last few have proved very time consuming. The Higher Level Stewardship Scheme for Castlemorton Common has been successfully negotiated. The Earth Heritage Trust Champions Scheme is progressing well. The Recreation Advisory Panel is still well attended by all the represented groups of Hills users. The Three Counties Show was a success once again for the 26th year running. The new toposcope disc was installed before the Christmas visitors arrived – it is easily read in all weather conditions. There is much, much more, full details of which will appear in the Annual Report.

Every organization that is in the public eye has its detractors, needless to say that also includes the Hills Conservators. However it is very clear to me that we are generally a well respected organization in the locality. We work closely with most of the local groups who have a real interest in the future of the area. We enjoy excellent relationships with the local councils as well as organizations such as the Malvern Spa Association, Malvern Civic Society, High Street Malvern to mention a few. This co-operation saves a lot of misunderstandings and, of course, money. Our Director, probably as a result of his wide knowledge and experience, is also a Council member of the highly respected National Trust, giving a mutual advantage to both organizations.

I cannot say that being Chairman of the Conservators was a job I had dreamed of doing, as, on first becoming involved some 15 years ago, it was beyond my wildest dreams. I still feel humbled to have been given the honour of representing you all for the past three years. Being Chairman of the Board, a non-executive position, meant it was my job to represent, support and project, the consensus view. I have tried to do this to the best of my ability. I have been fortunate to have chaired a Board with many talented, expert and experienced members. The present membership includes a Cabinet member on Hereford Counsel, the Chairman of Malvern Hills District Council and of the Malvern Town Council. We also retain four ex-Chairmen of the Board as active members. One of them, Dr Bryan Smith, has just been re-elected Chairman of the NHS Worcestershire Primary Care Trust – for the second time – as well as Chairing the Joint Advisory Committee of the Malvern Hills AONB Partnership. These are all highly respected local figures elected by local people.

If anybody doubts the excellent work our staff do on the Hills, I think that the way the public vote with their feet proves a point. Each year over a million visitors walk our Hills with very few complaints. Many of them travel from outside the area, so many, in fact that they fund approximately one-third of our income. Put another way, without the visitors the local precept would increase by about 50%. It is often felt that much of our work goes unnoticed by the general public, however, there is one job that users of the Mathon track footpath cannot fail to have noticed. Due to considerable weather erosion in recent years the track had become almost unusable in certain conditions. Recently major work has been completed, transforming the track making it fully accessible at all times.

We have become very successful in encouraging the many Charity Walk organizers to liaise first with us to avoid unfortunate clashes. In the past year we have worked with 35 separate organizations. In addition the annual nine day Malvern Walking Festival now attracts walkers to Malvern from all over the United Kingdom, as well as a few from overseas.

The effectiveness of any organization can usually be measured by staff turnover. The Malvern Hills Conservators can rightly claim to be right at the top of this tree. We are lucky to have such a dedicated, hard working and enthusiastic group of people working for us – and staying with us – this says a great deal for the quality of the management.

One duty that gave me greatest pleasure in the past 12 months was being invited to join the MHC Volunteers at their 10th anniversary celebrations last December. It was very humbling to meet such an active and enthusiastic group of people. They had a wonderful sense of commitment as well as real enjoyment in the work they were doing. Over forty of these generally unsung, unpaid helpers attended, we all had a great time.

I cannot finish without mentioning St Ann's Well. The future running of the Café has focused a considerable amount of time and effort throughout this past 12 months. Keeping the public fully informed as to what was happening was made extremely difficult due to legal constraints in view of the strong possibility of a court case. I would have preferred to have seen this to a conclusion before the end of my term, rather than leave with unfinished business. However, whatever the result of the present negotiations I see one positive outcome, whoever eventually runs St Ann's Well will need to maintain a very high standard of service due to raised public expectations. This can only be good for its future.

Once again, thank you all for your support over the past three years.

3. MEMBERSHIP OF COMMITTEES FOR THE YEAR TO 31 OCTOBER 2011:-

Land Management

Adeney, Sue
Baldwin, David
Chamings, Richard
Cheeseman, Chris
Hunt, Terry
Kelly, Jennie
Phillips, Tony
Pilcher, Brian
Plant, John
Rouse, Chris
Smith, Clive (ex-officio)
Stace, Helen
Watts, Peter (ex-officio)
Watts, William

Administration & Resources

Cordey, Martin
Hall-Jones, Roger
Morgan, Mike
Myatt, Andrew
Nielsen, Beverley
Roberts, Ray
Smith, Bryan
Smith, Clive (ex-officio)
Smith, Jo
Soley, Mike
Stockton, Roy
Tuthill, Paul
Watkins, David
Watson, Pete
Watts, Peter (ex-officio)
Wilcock, Brian

4. ELECTION OF MEMBERS TO SERVE ON OUTSIDE BODIES FOR THE YEAR TO 31 OCTOBER 2011.

4.1 Malvern Hills AONB Joint Advisory Committee. Dr Smith re-elected .

4.2 Malvern Spa Association. Mr Roberts re-elected.

5. APPOINTMENT OF MEMBERS TO THE 4CS (CASTLEMORTON COMMONS CO-ORDINATING COMMITTEE) FOR THE YEAR TO 31 OCTOBER 2011. Mr R Chamings and Mr C Rouse

6. APPOINTMENT OF MEMBERS TO SERVE ON THE RECREATION ADVISORY PANEL FOR THE YEAR TO 31 OCTOBER 2011. Mr R Chamings, Mr B Pilcher, Mr R Roberts and Mr P Watson.

7. APPOINTMENT OF MEMBERS T THE WILDLIFE PANEL FOR THE YEAR TO 31 OCTOBER 2011. Mrs S Adeney, Mr C Rouse, Mrs Helen Stace, Mr P Watson.

8. CHAIRMAN'S ANNOUNCEMENTS. In taking his first meeting as Chairman, Mr Smith thanked his predecessor, Ray Roberts, for his sterling efforts over the last three particularly challenging years and stated that he felt his mission over the next three years was to ensure that the Board, both at member level and management level was in safe and competent hands. He pointed out that there were many talented younger members with the prospect of more talent to come at the elections next year and the Board must strive to ensure that the mechanisms are in place to make such a transition a reality. Mr Smith hoped that the issue of St Ann's Well Café that has preoccupied both the Board and the public over the last twelve months would soon be resolved. It had to be conceded that the Board should never have got into such an intransigent and confrontational situation and it was incumbent upon all parties concerned to take part in a procedure to ascertain how the situation arose. He therefore gave his assurance that with colleagues he would conduct an inquiry that would be as open as it was transparent to ensure that such a situation would never be repeated.

9. PUBLIC QUESTIONS. Mr Hall-Jones stated that bearing in mind that the questions and answers, as on previous occasions, were all written down and would not only be circulated but would be an appendix to the Minutes he moved that no discussion took place on the questions and that under Standing Order 8.8 the Board proceeded to next business. This was seconded by Dr Smith but on being put to the vote the motion was lost by 4 votes to 18.

Mr M Taylor on behalf of the Save St Ann's Well Facebook Group asked 26 questions . The questions and the Chairman's response are published in Appendix A.

10. DECLARATIONS OF INTEREST.

Mr C Rouse declared a personal interest in the Higher Level Stewardship Scheme and St Ann's Well

The Chairman declared a personal interest as a member of the Malvern Hills AONB Joint Advisory Committee as a nominee of Worcestershire County Council

11. CONFIRMATION OF MINUTES. It was **AGREED** that the Minutes of the meeting held on the 9 September 2010 should be **CONFIRMED** and **SIGNED** as a true and correct record.

12. MATTERS ARISING. None.

13. COMMITTEE REPORTS.

13.1 Land Management. Mr Rouse presented the report of the meeting held on the 7 October 2010 and moved its adoption. This was seconded by Mr Pilcher and **CARRIED**.

13.2 Administration & Resources. Mr Wilcock presented the report of the meeting held on the 14 October 2010 and moved its adoption. This was seconded by Mr Watson.

Arising.

13.2.1 6. Review of Governance Procedure. The Chairman stated that in his view the period of chairmanship for the Board and committees should be the same. He therefore moved an amendment to the report that the Chairman of the Board and committees should hold the post for not more than three consecutive years. This was seconded by Mr Chamings and on being put to the vote was **CARRIED** by 15 votes to 6 against with 2 abstentions. It was **FURTHER AGREED** on a vote of 15 for, 3 against and 4 abstentions, that this Standing Order would take effect from the 1 November 2011.

13.2.2 7. QinetiQ – Barrack Stores Site. The Director reported that he had not yet had a response to his letter. This was **NOTED**.

The report as amended was **CARRIED**.

14. URGENT BUSINESS SUB-COMMITTEE. The report of the meeting of the Sub-Committee held on the 7 October 2010 was **CARRIED**.

15. REPORTS FROM REPRESENTATIVES ON OUTSIDE BODIES.

15.1 Malvern Spa Association. Mr Roberts reported that three committee meetings had been held since the last Board meeting as well as the Annual Dinner attended by over twenty members and a Halloween Party. Plans were coming to fruition for the restoration and/or re-siting of Jacob's Fountain and for a new memorial for Dr Wilson, one of the original Water Cure doctors, on the site of the original Wilson's Well which was demolished in the early 1950s.

Members of the Association had been in the national press over their concerns for the artefacts, records, etc. that could be lost with the closing of the Schweppes Malvern Water factory. The Association would wish to see these remain in the area and ideally on display in a Malvern Water Heritage Centre and Mr Roberts drew attention to a building on the factory site in Colwall that was an almost exact copy of the Holy Well building which would make an ideal Centre.

15.2 Malvern Hills AONB Joint Advisory Committee. Dr Smith reported on a meeting of the JAC when a small working group had been formed to look into opportunities to work in different ways with the cuts in funding that would inevitably follow the comprehensive spending review. Suggestions where cuts could be made ranged from less work on planning to cutting off altogether the Sustainable Development Fund. The Annual Study Tour this year was to look at polytunnels on a farm near Eastnor where members met the farmer and landowner and had a very useful and informative visit. The tour also took in a visit to Cider Makers.

16. URGENT BUSINESS. None.

17. INFORMATION.

17.1 Management Report. The Director presented the report which was **NOTED**.

The Chairman moved that the press and public be excluded from the remainder of the meeting as publicity would be prejudicial to the public interest as the nature of the

information to be conveyed to members was exempt information under Schedule 12A to the Local Government Act 1972. Members would be discussing Higher Level Stewardship of Castlemorton Common that contained information relating to an individual and proceedings with the tenant of St Ann's Well that contained legal advice.

APPENDIX A

M Taylor on behalf of the Save St Ann's Well Facebook Group

1. What steps will be the Board take to ensure that public money will not be wasted again as it has been in relation to the St Ann's Well litigation?
2. Will you now be paying Mr Redman for his legal costs spent defending an action that should not have been brought by you and also compensation for the stress and damage to his business caused by it all?
3. At what point did you decide that it was a better use of public funds to move instantly to litigation rather than to start by discussing any issues with Mr Redman?
4. Did you misinform your solicitor as to the existence and/or materiality of the alleged breaches?
5. Your original intention was to refuse a new lease based on alleged (but non-existent breaches). Following advice from your solicitor you also alleged that you would use the café yourselves.

Have you suggested to your solicitor that he should have advised you of the limitations on your statutory powers? If not, why not? It is your duty as trustees of a charity to protect the assets of the charity. If charitable money has been wasted as a result of poor legal advice trustees have a duty to pursue their remedies against the solicitor giving the advice.

6. How many members of the Board have seen the legal advice (as opposed to a summary of it prepared by the Director or other third party)?
7. Given that Messrs Hall-Jones, Wilcock and Thetford all knew that the Board could not establish an information centre at the Café, did they mention that to the Board at any stage? If not why not? If they did, why did the Board not take any notice of them?
8. Similarly did your solicitor tell you that John Redman's solicitor had pointed out to him in October 2009 that you lacked the statutory power to implement your plans for the Café? Did he advise you to drop the case then instead of allowing you to pursue it pointlessly for another 12 months wasting £40,000?
9. Did any members of the Board express concern that Mr Redman's interpretation of their powers might in fact be correct and should be investigated?
10. Please provide evidence as to how the individual Board members in the course of this litigation demonstrated that they understood their legal duties as set out in their governing document, acted with integrity, evaluated costs and benefits of the litigation as it progressed, safeguarded the organisation's reputation, acted in accordance with high ethical standards, and operated in an open and accountable way (or even complied with any one of these trustees' duties).

11. Has this all along been in truth a personal vendetta against Mr Redman funded by the public money?

If you say it is not a personal vendetta how else do you explain the Board's conduct since November 2009 when Mr Redman himself alerted them all in public to the fact that they did not have legal power to implement their plans?

12. Do the Conservators now accept that tourism does not form any part of their remit/statutory powers?

I do not want to prejudice the ongoing discussions. You will have a written response to these 12 questions when these discussions are completed.

13. Please provide a copy of the trustee indemnity insurance policy paid for by the public which covers the Board. In particular any exceptions to the effect that they will not be covered by such insurance if they deliberately act in contradiction of their governing statutes.

The document is available at the office. However at no time has the Board deliberately acted in contradiction of their governing statutes.

14. How often does the Board carry out a performance review for Mr Rowat and when is the next one due?

The Director has an annual appraisal. The next one is due November 2011.

15. How many members of the public provide input into that performance review?

The Director reports to the Board not the public.

16. Please provide (via Martin Taylor) a copy of the current draft of the new Governance Document for the Board.

This is still a draft and has not yet been approved by the Board. Once we have it we will be happy to make it available at the office.

17. Please provide a copy of the legal advice that Mr Roberts said had been obtained as to the accounting treatment of the rent from St Ann's Well. It seems that under Section 8 of the 1930 Malvern Hills Act the rent should quite plainly be paid into a capital account yet it is equally plainly being paid into your general funds.

This is exempt information and I reiterate what was said at the last question time that the interpretation is that capital sums received on such transactions should be paid into a special fund and this cannot apply to rental income which is revenue not capital.

18. Section 15 of the 1995 Act gives some powers to regulate or prohibit access but Section 15.4 says that you may not regulate or prohibit access across paths except for fire or safety reasons. Despite that you have fenced or gated many paths. Gating is just as unlawful as fencing since it "regulates" access. You are not therefore allowed to gate or fence paths so why do you do this? (Any powers allocated to the Highway Authority do not override your own legal obligations.)

19. While it is understood that you no longer need consent of the Secretary of State, you do need to be able to show that you have a power to fence under the 1995 Act. Bearing in mind that you were expressly not allowed to fence "for the protection of depastured (grazing) animals" as this was requested for the 1995 Act, but refused by the House of Lords (as confirmed at the Board meeting in July 1998), which paragraph of Section 15.3 of the 1995 Act do you think authorises the fencing? It doesn't seem to fit within any of them.
(NOTE In your replies to the May meeting, you addressed only the point about the Secretary of State and failed to answer the big question which is "Which specific paragraph of Section 15 gives you the power to fence the hills for general grazing purposes?")

ANSWER TO 18 AND 19

We are not regulating access but containing the stock to carry out the management policy advised by Natural England and our legal obligations as a Site of Special Scientific Interest as well as complying with our statutory obligations. We have done nothing illegal to prevent the public having access to all the fenced areas.

20. Why do you not comply with Section 15.5 of the 1995 Act which requires you to put up notices explaining how long the fencing will be up for?

We already advertise the fencing positions in the local newspaper and on the website.

21. Which bodies have you consulted with to comply with Section 15.7 of the 1995 Act in relation to the recent expansion of the fencing?

We have sought advice from Natural England in respect of our legal duty to the SSSI.

22. Why do you not comply with the conditions agreed with the OSS when you first enclosed areas of the Hills?

We are in regular contact with the Open Spaces Society's local representative and have updated the Central Council for Physical Recreation.

23. Please provide a copy of the annual reports required in relation to the fencing under Section 15 of the 1995 Act.

The Annual Reports are available in the office.

24. In which newspapers have you advertised your intention to fence as required under Section 15.8 and 15.9 of the 1995 Act?

Worcester News, Malvern Gazette and Hereford Times.

25. Please would you add the May 2010 Board meeting minutes to the archive on your website.

We are required to make our past minutes available but not necessarily on the web. However we have found time to do this.

26. Is there any reason why the committee meeting minutes cannot be put on your website in the same way as the main board minutes since that is very helpful and is required under the Environmental Information regulations?

The minutes are publicly available as required and it is our practice to publish these on the website.