

Governance Committee

Charity Commission Scheme – Changing the precepted areas

26 October 2017

Background

The power to precept originated in the 1884 Act. The Conservators were entitled to raise money from Colwall, Mathon and Great Malvern out of the poor rate (at a maximum rate of one halfpenny in the pound). This was varied by the 1909 Act to add reference to Malvern Link, Malvern Wells, West Malvern and Guarlford and the amount which could be raised was increased to one penny in the pound. (It may be that these “changes” partly reflected changes to civil parish boundaries, rather than simply adding new areas - Mathon was divided into 2 parts in 1894 and over the course of a few years, one part of Mathon parish became what is now West Malvern. Malvern Wells was formed in 1894 from parts of the parishes of Great Malvern, Welland and Hanley Castle).

S33 of the 1924 Act created a separate power (the power in the 1884 Act was not repealed) to precept Great Malvern, Malvern Link, Malvern Wells, West Malvern, Guarlford, Colwall and Mathon at rate of up to three pence in the pound.

The rate was increased in 1981 to 5p in the pound by an order of the Secretary of State.

The Local Government Finance Act 1988 s117(6) abolished the power of levying bodies (of which MHT was one) to issue a precept as from 1.4.1990. Levying bodies were given an alternative power to levy under regulations made pursuant to that Act¹. The new levy was based on the limit in place under the old system, to be updated annually by reference to the RPI.

To complete the picture, s9 of the 1909 Act also provides that Worcestershire County Council (WCC) and what was then Herefordshire County Council could contribute to MHT funds either as a general county expense or as “special county expenses to be levied upon such parish or parishes in the county as the county council may think fit”

This power was probably not abolished by the 1988 LGFA but MHT would have to confirm the current position of the WCC and Herefordshire Council by taking advice. Given the reluctance of either Council to levy, it is probably academic.

Without having carried out a very detailed analysis, most of the land placed under the jurisdiction of MHT under the 1884 and 1924 Acts would have been in the precepted area. A notable exception is Little Malvern which was granted special status under the 1924 Act.

The main change to the landholding came in the late 1960s when MHT acquired Castlemorton Common and Old Hills. As I understand it, these areas had been maintained by Upton Rural DC with assistance from WCC. When MHT took over, its land

¹ Levying Bodies (General) Regulations 1990, superseded by the Levying Bodies (General) Regulations 1992

holding was virtually doubled and financial responsibility for the land was effectively passed to MHT, and (subject to other fund raising efforts) to the precepted parishes. WCC agreed to make a contribution to MHT funds but although this started at 100 % of the cost of managing the acquired land, in 79/80 was reduced to 60 % of the cost. WCC subsequently pleaded poverty and cut the contribution to a grant of £5,000. Since then it has been increased slightly and is now £9,750

How precepting works

MHT sets a budget each year and decide how much it wants to collect from the tax payers. A request for this sum is made to Malvern Hills District Council and Herefordshire Council who act as the collecting authorities. The precept is then divided between the number of households that are liable to pay. This number varies from year to year both in terms of additional houses being built, and the number of households that actually pay. (Houses in receipt of Council Tax Reduction come out of the calculation): As you will be aware, the sum is not divided equally between the households but is paid on a sliding scale depending on which council tax band the house is in. The number of households for the purpose of the calculation is referred to as the “Band D equivalent”.

Therefore the number of paying households makes no difference to the sum MHT receives:

For example:

MHT ask for £500,000. There are 10,000 houses liable to pay so, on average, they pay £50 each.

MHT ask for £500,000. There are 15,000 houses liable to pay so, on average, they pay £33 each.

How many band D equivalent properties are there in the precepted area?

For the 2017/8 year, the Council Tax Base (the number of properties paying, for the purpose of the calculation) was 13,735.

If you were going to extend the precepted area, who would pay?

The original CCS Working Group spent a lot of time considering how the precepted area might be extended. It was difficult to come up with a simple rule that fairly covered all cases.

Parishes where MHT either have a land holding or adjacent land but residents don't pay the precept:

	<u>MHT land holding</u>
Berrow	26.6ha
Birtsmorton	0ha

Bromsberrow	0.09ha
Castlemorton	297.5ha
Eastnor	128.7ha
Hanley Castle	0.16ha
Little Malvern	91.9ha
Madresfield	0.396
Newland	7.919ha
Powick	56.6ha
Welland	0ha

Hanley Castle and Madresfield have only a tiny amount of verge in the parish and Bromsberrow also only has a very small amount of MHT land.

On the other hand, there is no MHT land in Welland, but the village benefits massively from having Castlemorton Common on its doorstep.

Taking a selection of parishes above, the number of households in each parish (some of these will not be liable to pay) is:

Berrow	146
Birtsmorton	114
Bromsberrow	I have not approached Forest of Dean DC for figures
Castlemorton	269
Eastnor	I have not approached Herefordshire Council for the figures
Little Malvern	25
Madresfield	64
Newland	170
Powick	1428
Welland	556

There could be an outcry (although there are only 25 households in Little Malvern) if there was an attempt to include Little Malvern as William Berington paid £250 for Little Malvern not to be included in the precepted area at the time of the 1924 Act. It would be possible for this provision to be repealed in the Scheme but it is unlikely to prove popular and would have little or no benefit to MHT.

Current position

There is no doubt that the present arrangement whereby some parishes pay the precept and others do not is out of date, illogical and unfair. The maximum precept which MHT can raise under the 1992 Regulations is capped at £579,433 (for the year 2017/8) and will rise and fall in line with the RPI. The precept requested in 2017/8 was £482,325.

Arguments for extending the precepted area

BWB are of the view that there is no limitation on this issue being covered in the Scheme.

It would be “fair” that some or all of the other areas should be paying to maintain the land from which they benefit. MHT land is an important part of the setting of the parishes and MHT expend money managing the land, whether it is a large area of land such as Old Hills or the verges at Madresfield.

Adding other parishes in would benefit the current precept payers as their payments would go down. This might make it psychologically easier to increase the precept (although not in the new areas) because the payment per household would be less.

The loss of revenue from the sale of non-resident’s car park passes (if you brought the other areas into tax) would be minimal - a few £1,000.

Arguments against extending the precepted area

Increasing the precepted area would not make any difference to how much money MHT could raise by the precept under the 1992 Regulations.

Coming up with a “rule” which would be seen as fair to decide which parishes should pay would not be easy.

If the precepted area was extended, voting rights would also have to be given to the residents. Under the current proposals, a contested election for the precepted area would cost around £20,000 (provided it takes place at the time of another election, so that the entire cost of polling stations and staff will not be borne by MHT. The cost would be similar if the voting arrangements were changed to using a postal ballot run by Electoral Reform Service). The cost of any MHT election would be increased by each electoral area added. Extrapolating the current figures, this would amount to something in the region of £700 - £800 per extra polling station.

There would probably be a lot of opposition to a new tax on the residents of the parishes concerned. As a general rule, those who object do so very vociferously, and if there is any support for the idea from the existing precepted areas, it will be very muted. There are some elements of the Scheme which are critical to the future of MHT – in relation to the grazing and the fundraising. There is a considerable risk that a proposal to extend the precepted area would delay if not prove fatal to the implementation of the Scheme. Additional taxation is not just a policy issue which might engender debate but would hit people in their pockets and they may well consider it worthwhile to mount a significant

challenge. MHT have to carry out a public consultation, and take into account responses received before the Scheme goes to the Charity Commission.

It might be technically possible to increase the maximum amount of the levy in the Scheme. From a central Government point of view, this would single MHT out as being outside the 1992 Regulations and a provision to increase the maximum amount of the levy might well make the Scheme unpopular in the currently precepted areas as well.

The majority are likely to be indifferent to the most of changes proposed in the Scheme. The inclusion of an extension to the precept would in all probability taint the Scheme as a whole in the newly taxed areas and minimize the chances of it coming into law.

This would not be the first time the Board has looked at trying to extend the precepted area – I quote from David Judge from the early 2000s when the issue of extending the levy paying area was being debated, “You will recall that such a provision was not included in the 1995 Act because we were advised (by parliamentary agents) that opposition to this would not only add very greatly to the cost of the act but might well have prevented any of the other objectives contained in the 1995 Act being achieved”. I have also located a document written in the run up to the 1995 Act from an official on behalf of the Secretary of State for the Environment suggesting that the way to extend the precepted area would be through an order under s303 Public Health Act 1875² and not through the Bill.

The way a s73 Scheme to change a private Act operates is that the Charity Commission submit the Scheme to Parliament. It is then given effect by an order of the Secretary of State. The order has to be laid before both Houses of Parliament and is subject to annulment by resolution of either House. If no one objects it will pass into law without debate or revision.

The Policy Manager at the Department of Culture Media and Sport, Ben Harrison, made it very clear at our meeting that the Minister was likely to be reluctant to put her name to anything which would be controversial. Even if that were not the case, the Scheme could be derailed by MPs or member of the House of Lords. Ben Harrison also made it clear that amongst a particularly crowded parliamentary timetable in the run up to Brexit, it would be much easier to place a Scheme which would be likely go through without a problem.

Conclusion

There is an obligation on the Board members as trustees of the charity is to act in its best interests. The Board could attempt through the Scheme to change who pays the precept but it may not increase the funds available to MHT. Some of the elements of the Scheme are very important to the future operation of MHT and Board members should question how it would be in MHT’s best interests to jeopardise the Scheme as a whole on a matter of principle.

² This section covers amendment of local Acts but no research has been carried out to see whether this advice was correct or still applicable.

Other alternatives could be explored to go some way to achieving the same ends. If MHT are able to set up a membership organisation under the Scheme, this could engage the residents in the non precepted areas and raise some money from them on a co-operative basis. Parish Councils have the power to give grants and as far as I am aware MHT have not made applications for these in the recent past.

Recommendation

The issue of extending the precepted area has come up on a number of occasions and the Board should resolve whether they wish to pursue the matter or make a decision not to do so.

Susan Satchell
Secretary to the Board
15 October 2017