

Malvern Hills Trust
Land Management Committee
Council Chamber, Avenue Road, Malvern
Thursday 11 October 2018 7.00pm

Present: Mr D Baldwin, Dr S Braim, Dr P Forster, Mr S Freeman, Mr D Hawkins, Mr J Michael, Mrs G Rees (Chair), Mr C Rouse, Ms S Rouse (non-voting), Ms H Stace (arrived during item 8.2), Mr T Yapp.

In attendance: Chief Executive Officer (CEO), Secretary to the Board, Conservation Manager, Conservation Officer, Mr M Davies, Mr P Watson, approx 30 members of the public.

Mrs Rees welcomed everyone to the meeting.

1. Apologies for Absence

Mrs P Cumming, Mr A Golightly, Mr R Hall-Jones, Mr M Gardner.

2. Declarations of Interest

Mrs Rees declared an interest in the Stowe Lane easement.

Mr Freeman declared an interest in the Lake House easement.

3. Chairman's Communications

Mrs Rees thanked all the members who attended the site visits.

4. Public Questions

Questions had been received from 3 members of the public. See Schedule.

5. Matters Arising from the meeting of 12 July 2018

Lake House

Mr Freeman left the meeting.

The CEO had written to the owner but had received no reply. He understood that he was currently away, and as soon as he returned, the CEO would get in contact with him.

Mr Freeman returned to the meeting.

Bus shelter Poolbrook

The CEO had reported back to Worcestershire County Council (WCC) after the last meeting. WCC would agree to re-locate the shelter closer to the building line.

They were able to install a wooden bus shelter but these were more expensive and MHT had been asked for a contribution. The CEO had explained that this was not possible under the Malvern Hills Acts. WCC had asked whether MHT would consider a request to install a metal shelter at a revised location. It was pointed out that more attractively designed metal shelters were available. Mr Freeman asked if information of the usage of that particular stop was available. The CEO had no data, but anecdotal evidence was only one or two people used it. The CEO

was asked to request WCC resubmit the application with a more attractively designed shelter.

Walsh's Yard

The CEO said that a deed of easement had been executed, confirming a change of use from industrial to residential purposes (limited to 6 properties).

Gullet Quarry

The fire brigade and the police had run events on site early in the summer to raise awareness of the dangers which the quarry presented. This had been effective for a number of weeks but monitoring the quarry during the hot weather had been challenging for the wardens. The police had assisted on a number of occasions. There had been discussions on revising MHT procedures, and setting trigger levels for calling in police support. The CEO planned to review the fencing again. He was also in discussions with the police about collection of evidence and the provision of names and addresses of people entering the water in order to issue cautionary letters and/or bring charges. Mr Hawkins asked if other options besides fencing had been considered. The CEO confirmed that this was the case. He also confirmed that there were procedures for the wardens to follow for their own safety.

6. Fires

The CEO reported on the fires which had occurred on MHT land over the summer. There had been a major fire at West of England Quarry, and then a cluster of fires around Eight Oaks, Castlemorton. There was some evidence of attempted arson in relation to one of these.

An MHT tractor had also caught fire and the outcome of the insurance claim was awaited. A tractor had been hired, whilst a permanent replacement was found. MHT had been advised not to cut firebreaks during the hot weather.

7. Winter works programme

The Conservation Manager went through the paper. He suggested Committee members go out to see the work which had already been completed near to Hancock's Lane on Castlemorton Common. He confirmed that because of the restrictions on funding under the HLS Scheme, MHT had received roughly £16,000 less grant funding this year. The Committee **NOTED** the recommendations.

8. Easements

8.1 Surfacing easement Stowe Lane, Colwall

Mrs Rees declared that she had a potential conflict of loyalty as a Colwall Parish Councillor. Colwall Parish Council owned the land in question (which is under MHT jurisdiction). The Council had been asked about the proposal under discussion and had no views either way. It was agreed that Mrs Rees did not have a material conflict of loyalty in this matter.

The CEO had circulated some further points in relation to the application. There had been a second site meeting. It was clear that the access track across MHT land at Stowe Lane had been tarmacked throughout most of its length. There was no record of this being authorised. There were no distinguishing characteristics

which would warrant tarmacking. The applicant was not the owner of the Hall, but he had maintained the track for a number of years. The CEO said the Trust needed to consider the issue of long term maintenance. He suggested it would be desirable to enter into a deed with the owner of the property to record the maintenance obligations.

Points made in discussion were:

- Was patching a feasible option? The CEO said that it was, and if it was done properly, the patches should not break out.
- Would the Trust be any worse off if the road was resurfaced without a deed dealing with maintenance?
- What would the deed specify in relation to maintenance? The CEO said that deeds normally recorded that the easement user would pay for their share of any maintenance.
- This was an opportunity to try to formalise the arrangements for access.
- If an agreement was made with the tenant in relation to maintenance, this would be personal to the tenant and would not bind any other parties.
- The Parish Council would also have to be happy with any arrangement reached.

On the proposal of Mr Rouse, seconded by Dr Braim, it was **RESOLVED** (with one abstention) to recommend to the Board that:

On the basis that the track had already been tarmacked, the application to resurface with tarmac be approved, on condition that the owner of the Hall enter into a deed of easement which set out the dimensions of the easement and that the responsibility for maintenance lay with the owner of the Hall.

If that condition could not be fulfilled, then it was recommended that the Board give consent to patch fill the pot holes with tarmac.

8.2 Resurface easement Brockhill Road

The CEO had also circulated some further points in relation to this application, and there had been a further site meeting. The slope of the track and drainage considerations could warrant a departure from the standard loose stone surface treatment. The track had also been partly tarmacked in the past without consent. The stone washed away during heavy rain, exacerbated by run off from the tarmac section. Ten of seventeen residents supported the request to tarmac. Three had expressed no preference and one did not respond. Three residents had put forward an alternative proposal for a treatment which lifted the current surface, mixed it with cement and then re-laid it. This option would not last as long, but was permeable. The applicant and the supporters of the alternative proposal were agreed that the width of the made-up surface should be reduced to 3.5m, and recognised that the track needs some sort of hard surface. Where the track met the West Malvern Road, the top 15/20 metres was steep and had been tarmacked in the past. Tarmac would be the most secure and hardwearing surface to use in that location.

Discussion points included:

- Who would pay for the top tarmac section, and who would be responsible for maintenance. The CEO said that the residents were responsible.

- What was the lifespan of the alternative treatment? The CEO said that he understood in the best case, 10 - 15 years. Tarmac would last longer. This situation was not optimal, being on a slope with overhanging trees. The gradient was an issue.
- Tarmac was a proven substrate.
- Would all the houses agree to enter into a maintenance agreement? The CEO said that again it should be a requirement that the residents enter into a deed of easement, but they could not be forced to do so.
- What was the relative cost of the options?
- It was pointed out that the proper name of the surface in question was “bituminous macadam” (although “tarmac” would continue to be used to refer to this method of surfacing for convenience). Although it would stand out when first laid, it would weather to blend better into the landscape.
- The Trust was not responsible for maintenance of easements. This would be an opportunity to “tidy up” the legal arrangements but it was complicated by the fact there were so many residents who were not all in agreement.
- Could the residents have another attempt to reach agreement?
- As this was common land, if tarmac was used the residents would have to get s 38 Commons Act consent.

On the proposal of Mr Baldwin, seconded by Mr Rouse it was **RESOLVED** unanimously to permit the top 20m of Brockhill Road from the junction with West Malvern Road to be re-tarmacked using a non-slip surface. (subject as below)

There was a short adjournment of the meeting to resolve wording of the recommendations. The meeting then reconvened.

On the proposal of Mr Baldwin, seconded by Mr Freeman, it was **RESOLVED** (with one vote against) that the Trust would consent to the use of a hard surface treatment over the remainder of the track on MHT land on condition that if tarmac was used, the residents must apply for s 38 Commons Act consent.

Such consent to tarmac also to be conditional upon the applicant putting forward acceptable proposals for a binding legal agreement for the future maintenance of the surfaces and upon providing to the Trust for agreement by the CEO and the officers, detailed proposals for passing places, drainage and other associated works.

9. Wild Boar

The Conservation Officer went through the paper.

A brief discussion followed:

- Would the boar reach MHT land and if so when?
- The damage caused by boar in the Forest of Dean was significant. Would it be possible to work with landowners between the Hills and the Forest to cull the boar so they did not reach MHT land?

The content of the report was **NOTED**. The CEO said that the first priority was that the Trust should have a contingency plan in place.

10. Review of Easement policy

The Secretary to the Board went through the paper. Although the wording of the policy approved in 2014 had been tidied up, the only significant change from the old policy was, as a result of legal advice received, to take out any reference to consideration of the effect on any neighbouring property. Also added were 2 short sections, one on requests by the applicant for a decision to be reconsidered, and the other to cover the case of pre-existing non-standard surface treatments. The Secretary to the Board proposed a change of wording in section 10, 2nd sentence to read: "The document should set out in what way the Land Management Committee did not follow due process or what material facts were not properly taken into consideration".

Mr Freeman had some concerns about the process set out in section 10 and suggested it should not be considered as part of the draft for the time being, but be referred back to the officers for further consideration.

Mr Yapp asked if there should be something in the policy to deal with the situation where the easement might become an adopted road. The CEO said that there were specific Highways Department criteria for adopted roads. When the Trust agreed to grant an easement, the deed would specify the dimensions and surface treatment of the roadway and the Trust would have to enter into the adoption agreement if it were to be designated as highway.

Dr Braim asked whether section 9 was a back door route to achieving a non-standard surface treatment by claiming that it had already existed. The Secretary to the Board said there was a partially completed project to photograph all of the access ways over MHT land and it would be desirable to complete the record.

Mr Rouse suggested including in the policy that delegated decisions should be reported to the Board.

On the proposal of Mr Freeman, seconded by Ms Stace it was **RESOLVED** (with one abstention) that the Committee recommend to the Board that they adopt the revised draft easement policy, excluding section 10 and with the amendment set out above.

11. Project progress update

The CEO updated his written project progress report. He was due to attend a briefing on the new Lottery Funding conditions. The remaining works at St Ann's Well had been completed. The architect was preparing plans for the renovation of the donkey shed. The CEO had received a quote for over £3,000 for remedial work to Gardner's Quarry car park. He intended to seek more quotes. Tender documents had been issued for car park ticket machines. Five companies had indicated they would tender. The deadline was 5.11.2018. The chipper had been taken out of commission and quotes were being sought for a replacement. An additional item on the CEO's paper was a new tractor. The settlement proposal had not yet been received from the insurers. The Massey Ferguson tractor was 9 years old and was due for replacement in a few years' time but would cost around £35 – 40,000 to replace with a similar new model.

The visitor survey was completed and the CEO had received the first draft report. He highlighted 2 elements – the level of satisfaction from visitors was pleasingly high, but the level of understanding of the designations attaching to the land – eg SSSI, AONB was frighteningly low. There had been 462 spoken interviews. 50 % of the cost had been paid by the AONB. MHT had applied for a grant of about £40,000 for the community woodland and Mr Davies understood that it had been favourably received. The CEO thanked Mr Davies for his input into that process.

12. Graziers' Report

The Conservation Manager gave Mr Gardner's report.

Since the last Land Management meeting there had been 5 sheep killed by dogs on MHT land and another 7 seriously injured. In one instance the dog chased sheep off the Hills into their home field where the dog was shot by the farmer. No other dog owners had been identified, despite appeals. One cow had been killed by a motor vehicle at Castlemorton, in daylight on a straight stretch of road. The driver left the scene despite damage to his vehicle.

13. Conservation Manager's report

The Community and Conservation Officer had confirmed that the "medium" mountain bike route markers had been installed and the route cards would be publicised next week. She had arranged to have a stall at a mountain biking talk at Malvern Theatres and to attend the Malvern Cycle Sport AGM. Another 10,000 of the Mountain Biking Map and Guide leaflets were being printed as they had proved so popular. The Good Neighbours' Guides were 95 % delivered. There was a new memorial scheme available on the web site.

A number of volunteer tree planting days were arranged over the winter at Third's Wood. Further guidance on ash dieback had been issued and if Board members were interested, they could request a link to the video. With woodland management, scrub management and repairs to archaeology, MHT had a very busy winter ahead. Contractors would have to be used as the work needed to be completed to a deadline because of grant funding constraints.

The CEO confirmed that interviews for the new Field Staff member had taken place. He hoped the new member of staff would be able to start work within a few weeks. Robin Hill was off work following an operation. Andy Pearce had agreed to work an extra day per week to cover wardening duties.

14. Matters for future consideration

There was none.

15. Urgent business

There was none.

16. Date of next meeting

6 December 2018.

The meeting closed at 10.00pm

Schedule – Public Questions

The answers shown in italics were given by the CEO

Graham Cramp

1. Which members of the Trust have been involved in drawing up the draft amended Overground Easement Policy? If the members of the Land Management Committee received the draft policy only last week, might they be permitted more time to consider it?

The redrafting of the policy was officer led in consultation with various Board members. Board members have had the normal period of time (8 clear days) in which to consider the draft, which for a 11 page document with which they are already familiar, should be sufficient.

2. If the Trust decides not to adopt the draft amended policy, will it assess all current overground easement applications under the existing Overground Easement policy?

Not in so far as it refers to neighbouring property - this is contrary to legal advice.

3. If the Trust decides to adopt the draft amended policy, will it please ensure that the “Standard Conditions for Easements” are included in section 5, and not appended unreferenced on the final page, as is the case in the draft?

No, the standard conditions will remain in the appendix.

Katharine A Harris

In July residents were asked to make comments on the Rose Farm easements, and their answers were based on the present policy. Is it fair to change that policy at this late stage?

No new relevant factor have been added in the revised draft so members of the public who sent in comments with reference to the 2014 policy will not be disadvantaged.

Graeme Crisp

How often in the last 10 years have the Trust found themselves unable to proceed with land purchases because of inadequate reserves in the land acquisition and parliamentary funds?

There have been no such occasions, but no land has been available to purchase at a market price which the Trust wished to acquire.