CHARITY COMMISSION
FOR ENGLAND AND WALES

Sent by email to
[redacted]

Charity Commission
PO Box 211
Bootle
L20 7YX

Date: 08 August 2023

Dear Susan Satchell

Re: MHC re s.74 application

Malvern Hills Conservators (RCN 515804) – s.74 Charities Act 2011– Request to incur expenditure to prepare and promote a Parliamentary Bill

I write further to MHC's s.74 application received on 31 May 2023 and MHC's subsequent correspondence with the Commission in relation to it.

1. Decision

1.1 Pursuant to section 74 of the Charities Act 2011, the Commission hereby consents to the Malvern Hills Conservators (**MHC**) defraying out of money applicable for the purposes of MHC expenditure of **up to £306,000** in preparing and promoting a Parliamentary Bill to change and consolidate the legislation governing MHC as proposed in the application received by the Commission on 31 May 2023 and MHC's response to the Commission's further queries on 20 July 2023 (together **the Application**).

1.2 This consent is subject to:

(a) the cap on expenditure of £306,000 as explained below;

(b) the limitation set out in section 2 of this letter; and

(c) the condition set out in section 3 of this letter.

[redacted]

1.4 If MHC expects its costs to exceed this cap, MHC must seek further consent from the Commission under s.74 before incurring any additional costs.

1.5 In the Application, MHC requested s.74 consent for the following other costs for which consent has not been provided for the reasons set out below.

1.5.1 The sums requested relating to staff costs and consultation costs do not require s.74 consent to be incurred by MHC as they are internal administrative costs of the charity and so are a matter for the trustees and management of the charity.

1.5.2 Consent has not been provided for the sum requested for contingency costs because it is not known what such contingency costs may cover and so the Commission cannot consider whether it would be in the best interests of MHC to provide the requested consent.

1.6 The provision of consent as set out in this letter does not imply the Commission's approval of the proposals set out in the Application.

1.7 The Commission's reasons for providing the consent as set out in this letter are:

1.7.1 The changes proposed could not be made by a scheme of the Commission given effect under s.73 of the Charities Act 2011 and so promoting a Parliamentary Bill is the only way in which MHC can make the changes proposed in its Application.

1.7.2 The Commission considers that MHC's Application provides sufficient cogent reasons for seeking a Parliamentary Bill to make the changes proposed in the Application such that MHC's decision to prepare and promote a Parliamentary Bill appears to be a reasonable decision to have been made by the trustees in the best interests of MHC.

2. Limitation on the s.74 consent

2.1 The sum for which s.74 consent is provided must not be spent on incurring any costs relating to proposals to extend or materially change MHC's power to levy. The reason for this limitation is that MHC explains in its Application that, whilst MHC considers it would be fairer to extend the levy for the reasons set out in its Application, it is likely to prove acutely controversial. In addition, if the levy paying area is extended, the electoral area would likewise need to be extended, raising further complexities and controversy.

2.2 However, the reason for excluding any proposals to extend or materially change MHC's power to levy from the consent is not simply that any extension or material change to MHC's power to levy is controversial. The extent of the controversy and irreconcilable views on this issue are likely to mean that, if any such proposals were included in the private Bill, it would not progress, to the detriment of the other changes proposed.

2.3 MHC has now confirmed it does not propose to make any substantive changes to the current levy arrangements. However, MHC is expecting to seek advice on the advantages and risks of repealing and replacing the existing powers to levy, which are found in a number of places in its governing legislation, with one provision (subject to appropriate application of the Local Government Finance Act 1988 and subsequent legislation under which the levy is now raised).

2.4 It is agreed that it would be appropriate, as part of the consolidation exercise, for MHC to seek advice on the advantages and risks of repealing the current underlying powers to levy and replacing them with one provision when preparing the Bill, provided that the replacement provision does not extend or make any material or substantive changes to MHC's power to levy.

2.5 Therefore, this limitation on incurring any costs relating to proposals to extend or materially change MHC's power to levy does not preclude MHC from seeking advice on the advantages and risks of repealing the current underlying powers to levy and replacing them with a new consolidated power in the private Bill, provided that the proposed new clause does not extend or make any material or substantive changes to MHC's power to levy.

3. Condition

It is understood from the Application that MHC proposes to fund the private Bill by way of a loan from the Land Purchase (1992) Fund (the **Fund**). MHC has confirmed it needs to take advice on whether it requires the Commission's authority to borrow from the Fund as proposed. Therefore, this consent is subject to the condition that, before any funds are borrowed from the Fund, MHC confirms to the Commission in writing that either:

3.1 MHC has taken professional advice which confirms it has the power to borrow from the Fund and the trustees have approved a repayment plan; or

3.2 MHC does not have the power to borrow from the Fund without the Commission's authority and that MHC has either:

(a) obtained the Commission's authority to borrow from the Fund with an approved repayment plan; or

(b) has an alternative source of funding that it has the power to use for these purposes (and about which MHC must provide details to the Commission).

4. Issues on which MHC is to keep the Commission updated

There are a number of issues identified in the Application on which the Commission has regulatory interest and so MHC is required to update the Commission in relation to the following areas:

4.1 any change to the restated objects from the wording proposed in the Application;

4.2 the provisions in the draft Bill relating to the management or approval of conflicts of interest and/or trustee benefits;

4.3 any material comments from DCMS when consulted on the proposals, including whether DCMS confirms it will support MHC to use the private Bill to make the required amendment to the Representation of the People Regulations 2001 (2001/341);

4.4 any material comments from DEFRA when consulted on the proposals;

4.5 any material comments from Natural England when consulted on the revised proposals.

Yours sincerely

[redacted]

Aarti Thakor

Director, Legal and Accountancy Services