

Special Meeting of the Board

Application for Easements, Chance Lane/Jackpits Lane

20 November 2108

Background papers

Malvern Hills Acts particularly s8 MHA 1995 (Set out at Appendix 1)

Malvern Hills Trust Overground Easement Policy (2018).

Charity Commission guidance “It’s your decision” CC27

Application (Documents herewith)

1. Application for Overground Easement submitted by The Rose Farm Partnership (“RFP”),
2. Drawings: - 2212-09 Rev A
2212-10Rev A
2212-11
2212-12
3. Draft Heads of Terms
4. Landscape Mitigation report, PleydellSmithyman (“PS”), on behalf of the applicant
5. Comments on that report from Paul Esrich, Manager, Malvern Hills AONB Partnership
6. Report from Knight Frank on current agricultural land prices
7. Report on Heads of Terms from Bruton Knowles

Public comments

These will be made available to Board members on the members section of the web site¹. (Letters addressed to individual Board members have been sent out by post). Please note that details which could result in identification of any of the correspondents must not be made available to third parties in accordance with the General Data Protection Regulations.

Other background information available on request

Deed dated 27 July 2012 in which the right of the MS Wilesmith Settlement 28.5.1997 and their successors to use the agricultural access off the Guarlford Road is confirmed.

An application “in principle” was made for access for the purpose of development in 2012. The application contained no details and was refused. The application is not relevant to the current application but the following papers are available:

Application in principle for easement 24 August 2012

Land Management Committee paper for meeting 4 October 2012

Special Board meeting paper 1 November 2012 (application refused)

Statement relating to Guarlford Green and Rhydd Green Special Wildlife site.

Introduction

Rose Farm Partnership have submitted an application for an easement for the purpose of residential development of a 25 acre field which is currently farmland, lying between Hall Green /Jackpits Lane, Guarlford Road and Chance Lane. The site is landlocked by MHT land (subject to the outstanding issue about ownership of the verges at the northern end of Chance Lane).

The site currently has an agriculture access on to the Guarlford Road. This originally existed as a prescriptive right but was confirmed in a deed dated 27 July 2012. To develop the site, the landowners need an access which is suitable for adoption as a 2 way residential roadway, together with a separate access point for emergency vehicles.

The site sits on the edge of the Malvern urban area with the Hall Green housing development on its north west and west side. There is scattered housing around the other edges of site.

The land is not included as a development site in the current version of the South Worcestershire Development Plan (SWDP) – it is understood because of the lack of a suitable access. However the SWDP is now being reviewed and there has been a Call for Sites for the next phase of the Plan. Sites can continue to be submitted at least until 17 December 2018. SWC will publish a SHELAA (Strategic Housing and Employment Land Availability Assessment). This will inform the land use options which will be contained in a Preferred Options document which will be consulted on in 2019, with a view to suitable sites being identified and included in the revised Plan.

What are Rose Farm Partnership seeking?

1. An easement for a 2 way access road to the site from the southern end of Chance Lane, to be adopted as highway with pavements on either side.
2. A pavement from the access road along the west side of Chance Lane to join the pavement on Guarlford Road.
3. If Highways require it as part of the planning process, agreement to the widening of Chance Lane from the easement to Guarlford Road.
4. Emergency vehicle only (+ cycle) access across Jackpits Lane to join Hall Green Close.
5. Right to lay service media under the designated easement route.

Ancillary to this, the developers will need to be able to put up road signage and street lighting adjacent to the main access. (See drawing 2212-10 Rev A)

Legal position in relation to grant of easements

The 1995 Act (relevant part set out in full at appendix 1) substitutes a new s7A in the 1930 Act and confirms Malvern Hills Trust's power to grant easements over its land to afford '*vehicular or other access from any highway to land being land lying within or adjacent to any part of the Malvern Hills and appearing to the Conservators to lack satisfactory access*'.

The access being sought is from the public highway. There is no vehicular access to this site which would be suitable for a residential development, and the planning authority will require a second access for use in emergencies, should the primary access become obstructed. It would appear that the criterion of there being no satisfactory access is fulfilled and MHT have the power to grant easements as requested.

In making the decision the Trust, *'shall have regard to the effects of the works being so authorised on the natural aspect of the Malvern Hills and.....impose such terms and conditions as are necessary to ensure that any adverse effect is minimised'* (MHA 1930s7A(2)).

What exactly is the effect on the natural aspect?

MHT have taken legal advice to clarify how this phrase should be interpreted as there is no definition in the Acts. There is some relevant case law. The advice can be summarised as follows:

The “effect of the works being so authorised on the natural aspect” indicates that MHT should consider whether the appearance of the land *under their jurisdiction* will be altered or changed as a result of the works.

That effect has to be **significant or material**.

Complying with their duties under the Malvern Hills Act does not mean that the trustees have to “defend every blade of grass come what may”.

The trustees should take into account not just the effect on the site of the easement itself, but also the wider impact on their land and so can take into account the impact of any development which might result from the exercise of the power.

MHT Overground Easement Policy

Board members are asked to remind themselves of the content of this policy in the context of the objects of MHT, the Charity Commission guidance CC27 “It’s your decision” and the training which many Board members attended in November 2016.

The policy is intended to help identify what is relevant to the Board’s decision.

The key point to bear in mind is that MHT is not a planning authority. For example, whether this is a suitable site for development, whether Hall Green Close is suitable for emergency vehicles or whether the access off Guarlford Road is dangerous are matters for MHDC to decide should a planning application be made. They are not relevant to the Board’s decision on whether to grant an easement. Board members’ personal views, for example on the development of this site, or on the Government policy of making more housing land available must not influence the Board’s decision, nor can Board members take into account the effect of any development on the neighbouring properties or on the town itself.

The only relevant considerations when assessing this application are the Malvern Hills Acts and what is in the best interests of the MHT– that is to say what will best enable MHT to fulfil its charitable objects (to be referred to in this paper as “best interests of MHT”). Trustees have a duty to act in good faith and to act solely and exclusively in the best interests of the charity.

The recent site history and legal background are set out above. The other factors for consideration as highlighted in the policy are:

- Status of the land
- Details of any significant adverse impacts of the easement on MHT land and any proposed mitigation
- Details of any potential significant adverse impacts of any related development on MHT land and any proposed mitigation
- Details of any neighbouring easements - where some degree of shared use might be feasible
- Details of the anticipated capital receipt if the easement is granted and of any further benefits that have been/could be negotiated
- The recommendation. If the recommendation is to approve, it should also include any conditions to mitigate the impact on MHT land

The policy anticipates that normally decisions on granting easements will be considered first by the Land Management Committee, who will make a recommendation to the Board. Following discussions between the Chair and Vice Chair of the Board, the Chair and Vice-Chair of LMC and Officers of the Trust it is recommended that in this instance, given a considerable level of public interest, and the importance of the decision, the application should be referred directly to the Board. When the application was made in 2012, the LMC did not make a decision but referred the matter straight to a special meeting of the Board.

Conservation Assessment

The MHT Land Management Plan 2016 – 2021 finds this unit of MHT land to be of “low priority.”

Status

The land which is the subject of the application does not carry any legal conservation designations such as SSSI. (Site of Special Scientific Interest). It is not within the Malvern Hills Area of Outstanding Natural Beauty, although the development site itself is visible (in the middle distance) from the top of the Hills (which **are** within the AONB). The area over which the easements would pass is registered as common land (unit CL18) and is therefore subject to the rights registered.

Non-statutory designations – the land adjacent to Chance Lane is part of the ‘Guarlford Green and Rhydd Green Local Wildlife Site (LWS)’ (site no. S084/01) which covers 16.90ha

of verge. This is on account of its grassland habitat. LWS are selected against a set of locally and nationally recognised criteria. Worcestershire site selection criteria were developed by the Worcestershire Local Sites Partnership (which also approves the designation of sites), which is a group of specialists and experts drawn from conservation bodies, local authorities and landowner representatives. Identification of land as a LWS imposes no legal conditions on the owners as it is non-statutory. LWS are recognised as important features by Local Authorities and receive some limited protection through the planning system because of this.

Landscape

The local setting is of wide verges of near flat unimproved pasture that are predominantly free of suburban infrastructure (signage, tarmac, raised curbs, bus stops, etc) but punctuated by access tracks of varying ages and materials along the Guarlford Road. Veteran fruit trees and ancient pollards are characteristic features of the local area. Hedges with standards (typically oak) are commonplace as are planted ornamental trees including some exotics such as Red Oak.

The land falls within Natural England's 'Severn and Avon Vales' national character area which makes specific reference to 'unimproved neutral grassland survives around Feckenham Forest and Malvern Chase'. The landscape character type is 'Principle timbered farmland'.

Habitats

The National Vegetation Classification 2013 survey by RSK ecologists found two plant communities present on the land beside Chance lane:

MG5 [Cynosurus cristatus](#) - [Centaurea nigra](#) grassland makes up approximately 2/3 of the site. A mesotrophic, hay meadow type grassland, this is a national priority habitat (as identified in Section 41 NERC Act). This includes black knapweed and yellow rattle. MG1 *Arrhenatherum elatius* grassland makes up approximately 1/3 of the site. A mesotrophic grassland, typically unmanaged and species-poor. It is not a priority habitat.

At Jackpits Lane, the National Vegetation Classification 2013 survey found 4 vegetation communities present: 'MG1 *Arrhenatherum elatius* grassland', OV21 '*Poa annua* - *Plantago major*', OV23 '*Lolium perenne* - *Dactylis glomerata*' and MG7 '*Lolium perenne* leys'.

All four are commonplace throughout the UK and not listed as priority habitats.

No waterbody habitats (swamp/marsh/pond) are included in the easement areas.

Species

European Protected species – of all the European Protected species only Great-crested Newt and bats are relevant. Both are known to be present in the wider area and are most likely using the land in question as foraging habitat.

Protected species records – Smooth Newt are recorded in the area and these are protected under the Wildlife and Countryside Act 1981. Any change of use/development should be preceded by an ecological survey and undertake mitigation as necessary in liaison with Natural England.

There are two notable veteran pear trees present and two young fruit trees adjacent to the proposed route of the access off Chance Lane.

Both sites will be used by a wide range of common/local species, such as Common Blue butterfly, although, this usage would be a small part of a much wider mosaic of habitat that they require.

Cultural Heritage

These sites do not hold nor fall into the setting of any Scheduled Monuments or listed buildings. The areas are not within an MHDC planning conservation area.

No other archaeological features are known of (but the applicant will need to consult the County Archaeologist and Historic Environment Record).

The site is registered common land, (unit 18) and some of the parcel shapes and boundaries date back to at least medieval times. No local people currently exercise their grazing rights and the site has not been grazed regularly since at least the 1980s.

Access

Both easement sites are open access land under the MH Acts. There is one public right of way footpath MV879 which follows the route of Jackpits Lane. The land is used on a daily basis by walkers and occasionally by horse riders.

The adjacent hedgerow, farmland, water-bodies and mature trees are not under MHT jurisdiction and the applicant should ensure adequate ecological/archaeological survey and mitigation are undertaken as required.

Impact on MHT land

These factors below have been identified – there may be others which Board members may wish to consider.

Impact on the site of the roads and pavements

Inevitably all easements have a detrimental impact on the land over which they pass. There would be a permanent loss of approx.:

764.5m² of common to creation of the main access requested (including pavements),

156m² for a pavement along Chance Lane

An additional 58m² if Chance Lane has to be widened.

Total 978m²

It is believed that the use of grasscrete (Jackpits Lane access) is not considered to be engineering works for the purpose of s 38 Commons Act and would not be treated as “lost” common land.

Surfacing, lighting and traffic would change the character of the land over which the access from Chance Lane passes, but granting the easement would not result in a denial of access to the public.

The development would have an impact on traffic along Chance Lane and Guarlford Road and therefore potentially on MHT land in those areas, but Board members would have to take a view on whether that would be a significant impact in the context of the other traffic already using the road. There would be some urbanisation as a result of road signage and lighting as shown on drawing 2212-10A.

The roadway and signage would have a detrimental visual impact on this section of common, but because of the location of the access off Chance Lane it would have limited visibility to those travelling along Guarlford Road and not impact greatly on the setting which is viewed as an iconic approach to Malvern with its wide verges and avenue of trees.

The impact of the development itself on MHT land.

Looking at the issues identified in the easement policy, after construction there is likely to be limited noise nuisance from residential housing although noise and HGV traffic will be locally very significant during the construction phase. It is unlikely that a large scale self-contained housing development would lead to increased parking on the common. However, more houses would inevitably result in more users of the common in that area and a likely increase in byelaw infringements eg, cycling, dog fouling and litter. Other issues such as street lighting and internal landscaping cannot not be dealt with until the planning phase. If done sensitively and in accordance with best practice, light pollution could be kept to a minimum and internal landscaping could significantly mitigate the view of the site from the hills in the longer term. If done badly, they would increase the visibility of the development. Drainage is another aspect which cannot be addressed until the planning stage. Under the present proposals drainage could be effected under the access road. Any other drainage through a defined channel into MHT land would require a further easement. MHT will be a consultee in any planning application and able to submit comments on these details of the planning application in due course. (also see letter from Bruton Knowles)

Landscape mitigation

Because of the requirement for the Board to consider “the effects of the works being so authorised on the natural aspect of the Malvern Hills”, the landowners have been invited to provide their proposals for landscape mitigation.

RFP have through their Landscape Consultants put forward proposals to ensure the view of the site will be minimised from the adjoining MHT land. Board members can also consider, if they feel it appropriate, the effect of the development when viewed from the Hills. The easement itself will scarcely be visible but the associated development will be seen and Board members will have to assess whether they feel the impact is significant in the context of the wider urban area of Malvern. The development will be lit and therefore extend the urban area visible at night.

PleydellSmithyman's report ("The PS report")

The effect of the development is considered in some detail in a report from PS which has been considered on behalf of MHT by Paul Esrich (Chartered member of the Landscape Institute) of the AONB partnership.

The PS report starts with an analysis of the landscape character of the area.

Salient points include:

- The main proposal is to improve the boundary screening. Board members might like to view the extent to which the Hall Green development is screened from the road by a boundary hedge with trees.
 - The Jack Pitts Lane boundary hedge will be reinforced to restrict views of the development site.
 - The Guarlford Road hedge will be supplemented by a 10m wide buffer strip planted up with species common to the area (eg oak, hawthorn, crab apple etc). Although shown as straight, it is suggested that the shape will probably be more irregular depending on the eventual layout of the site. It will form part of the public open space requirement (see below).
 - The buffer strip is shown as extending around the adjoining properties Rose Barn and 3 Chance Lane. [It would seem more appropriate for the developers to canvass the views of these neighbours rather than for MHT to seek to dictate the landscaping treatment here].
- There is a proposal to plant trees along the access road to partially screen it. [Any landscaping on MHT land will have to be with the Trust's specific agreement].
- It is acknowledged that sensitive treatment of the access point off Chance Lane (where about 10 metres of boundary hedge would be removed) will be required to help screen the development to some extent at that point.
- There is a requirement in the SWDP to have 40 % green space in new greenfield developments over 1ha. It is suggested that the buffer zone will form part of this.
- It is acknowledged that planting and open space within the site would soften the view of the development from the top of the Hills over time, but no commitment is made about where this planting might be at this stage.

Paul Esrich's comments on the PS report

Paul Esrich was asked to offer a professional opinion on the validity of the contents of the PS report but not its conclusions. To put these reports context, PS submitted an initial

report, on which Paul Esrich commented on behalf of MHT. PS then amended their report (this being the version now provided to the Board). Paul has provided additional comments on the final report which are provided for Board members.

Paul comments that the photo montages (which are acknowledged to be illustrative) do not attempt to show any houses behind the screening (the explanation being that no work has been done on how the site will be developed). The photo montages also do not show winter conditions. Board members will be able to use their judgment on how effective the proposed screening will be, year round. The boundaries of the adjoining Hall Green development illustrate what screening a hedge and trees can provide.

Other neighbouring accesses

There are no relevant neighbouring rights of way which could be shared.

The potential capital receipt

The easement will only be granted and a payment made if the Board agrees in principle to permit a right of access and planning permission is granted. The consideration offered is calculated under the principle (which is advisory rather than a “rule”) in *Stokes v Cambridge* - one third of the increase in value of the site. A minimum payment has been offered to ensure that, whatever the economic climate at the time, if the development goes ahead, MHT will be assured of receiving not less than £2m.

Money received would be paid into the Parliamentary Fund. MHT can spend it on any item on which capital money can be spent – to purchase land, make improvements to land etc but not general fund items. However, the income from the money invested could be used as part of the general fund budget. Brewin Dolphin have confirmed that if £2m was invested, a realistic annual return after fees and other costs would be about 2.75 % - so should generate in the region £55,000 per year. This could fluctuate depending on economic conditions and movements of the Stock Market.

Knight Frank have provided a letter setting out current agricultural land values. This is indicative only, to give Board members some context of the value of the capital receipt in the current market conditions. There is a considerable acreage of land which the Trust could acquire, should it come onto the market, in pursuance of its charitable objectives and to secure access in future for the public. There are also about 140ha of land currently under MHT jurisdiction but not owned by MHT which it would be desirable for the Trust to acquire.

Other considerations

Comments of MHT staff

The Operations Manager confirmed that he had no concerns from an operational perspective with the easement being granted.

Neighbour comments

A number of neighbouring property owners have taken an interest in the progress of this application for well over 18 months. Neighbours sharing a boundary with the potential

development site were formally informed of the application in July and invited to comment on the effect of the access points on MHT's land. These letters were then more widely circulated and about 120 people have written in. Their E mails and letters have been provided to Board members. Board members should bear in mind the requirement to take into account the potential impact on MHT land only.

Adverse PR impact.

It is inevitable that the prospect of developing this site will be controversial in the local area, and with those who do not wish to see Malvern's urban area further expanded. There is some degree of public perception that MHT, because of its ownership of roadside verges, is in a position to defend Malvern against development but this is not part of MHT's charitable purposes and cannot be a consideration. Fear of adverse comment following proper consideration of the relevant factors to MHT's decision should not prevent the Board from making a decision in the best interests of MHT. Any decision will require a careful public justification and MHT should be ready to explain its position and its obligations as a charity.

The Heads of Terms (HoT)

This document sets out the basis of the proposed agreement.

If the Board agrees in principle to allow access, the HoT will be used as the basis for preparation of an option agreement and a draft deed of easement. The document has been checked by Bruton Knowles (Land Agents) on behalf of MHT. The draft has not as yet been checked by MHT's solicitors. The proposal is that if the Board agree in principle to grant the easement (with or without conditions), MHT's solicitors will check and comment on the draft and negotiate any necessary revisions with a view to the final document being confirmed by the Board prior to signature. There is no point in paying legal costs for formalising the draft if the Board refuses the application in principle. The HoT set out the principles of the agreement and is used as the basis to draft the option agreement but it is not in itself binding.

Board members are asked to read the HoT carefully and to note the following points:

5 Details the rights to be granted, including the right to lay services under the access routes.

5 (iv) There is agreement that RFP (or their successors in title) will endeavour to secure planning permission without having to widen Chance Lane.

7 The intention of this clause is to make sure that the Trust (as owner of part of the land which will be subject to the planning application) will enter into any agreements which are integral to the implementation of the planning permission. The solicitors will be asked to consider the wording to ensure it will not entail any onerous obligations. It covers, for example any adoption agreement so the access/pavements can be adopted as highway and if required to enter into wayleaves/easements for the services. MHT may (as landowner) have to enter into any planning agreement (Community Infrastructure Levy or

s106) but this will be on the basis that MHT will not have to do anything and it will be at the developer's cost.

8 The agreement will have to be implemented within 15 years or it will lapse. Although this is a much longer period than MHT normally agree, it is requested because of the circumstances. It is quite possible that no substantive action can realistically be taken in relation to any development until revision of the SWDP is completed in 2021 (and the aspiration to complete the revision by 2021 will not necessarily be achieved). There may well be a period of consultation prior to the formal commencement of the planning process and decisions on applications for large sites can take a considerable period - even longer if an appeal takes place.

9 In making a decision on what might be in the best interests of the charity, the Trust has to know what payment it might receive if the easement is granted. It is not possible to predict what might happen to land prices in the next 15 years so a minimum payment of £2m has been negotiated. Otherwise the consideration would be calculated in accordance with the formula set out. Bruton Knowles have confirmed that this is commercially acceptable.

10 Solicitors will be asked to ensure this clause is amended if necessary to cover all eventualities.

11 This is to provide for a situation where for example, the site is sold with planning for a certain number of houses, but there is a subsequent application which increases the value of the site.

12 Solicitors will check to see this provision accords with normal commercial practice.

13 Sets out the proposed boundary treatment to screen the site from Guarlford Road and Jackpits Lane. It contains a provision that should there be a planning requirement to alter the layout, MHT's consent to vary the screening requirements will not be unreasonably withheld. It is unlikely that MHDC will require that there is less landscaping than is currently proposed.

14 The signage and lighting to the easement would be as set out on the drawing but MHT agree not to object to minor variations to meet Highway requirements. The PS report refers to 2 street lights on the access road. In fact there are 3 shown on the drawing, which will override the PS report.

16 The developer will need to erect temporary fencing and signage around the site access whilst the access is under construction and would need a corridor in which to work during the construction phase (5m either side of the vehicular access and 3m along Chance Lane). Note that it is envisaged that the protections for MHT land will be expanded on the final HoT.

17 As there has been considerable public concern about the impact on Jackpits Lane, RFP have been asked to limit the duration of any work there, and to carry it out in a time window which should ensure the ground is not waterlogged and to avoid the nesting season.

19 RFP or their successors need to secure appropriate Commons Act consents. This can either be an application under s 38 for consent to engineering works on Common Land or an application under s 16 for deregistration of the area of common in question and the provision of suitable replacement land to become common. This will be dealt with by the appropriate Government Department (normally the Planning Inspectorate on their behalf).

It is not a matter with which MHT needs to be concerned, although MHT would be able to comment on the proposals during the process.

22 There is agreement if the application is successful and planning permission is obtained, that there will be no objection to any application by the Trust to register ownership of the strip of land in the northern section of Chance Lane which was the subject of the application for an agricultural access. (This is not to say that any application to the Land Registry would necessarily be successful)

23 RFP agree to limit the height of the buildings on site.

25 The agreement is intended to bind RFP's successors. Again the solicitors will need to ensure that the wording of this requirement is appropriate to protect the interests of the Trust.

26 MHT asked for a clause saying that RFP would pay its "reasonable" costs, but a cap was requested by RFP and this figure has been included on the basis of indications given by MHT's solicitors. Anticipated ongoing costs include the solicitors checking of HoT, drafting the option agreement and deed of easement, Land Agents agreeing figures as per clause 9, and completion of the deed.

Bruton Knowles recommended at the outset that MHT should be seeking a fee payable on entering into the agreement. However it was felt that this did not sit well with making an impartial assessment of the impact on MHT's land. Similarly it was felt that the protections for the Trust should be set out in the option agreement and it would not be appropriate for MHT to be involved in the planning process (other than as a consultee) or the selection of a developer.

What happens if the application is granted?

If MHT approve the application in principle (with or without conditions), the draft Heads of Terms will be sent for consideration and amendment by MHT's solicitors. The Heads of Terms (once the wording is agreed) will then be signed by both parties.

MHT's solicitors will then draw up the option agreement (to which will be attached the draft deed of easement) giving Rose Farm Partnership the option of serving notice on MHT requiring the Board to grant the easement once planning permission is granted. Depending on the terms, the option may only be exercisable if the planning permission meeting certain criteria.

The decision for the Board

If any Board member feels on reading this paper that they are lacking any information which might assist in making their decision they are requested to contact the Secretary to the Board to ask for this at the earliest opportunity.

Board members should re-read CC27 "It's your decision"

The legal requirements are that the Trustees:

- **act within their powers**

- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make

The CC27 guidance sets out the potential consequences of failure to follow these principles. Taking into account irrelevant factors would be a breach of duty.

The application has to be considered on its own merits. The fact that there has been a previous application for this site is not relevant, and neither are the considerations which may have been applied on that occasion.

The Board has to decide the application in accordance with the provisions of the Malvern Hills Acts and the requirements of charity law and best practice. The overriding consideration for the Board members must be what is in the best interests of the charity – that is to say what will best enable MHT to fulfil its objects.

The Board needs to decide first of all whether the land already has satisfactory access for the proposed use. The Malvern Hills Acts then impose a specific obligation to weigh up the impact of granting the easement on the “natural aspect” of the land under MHT’s jurisdiction. The case law states that this impact has to be significant or material, and can include the impact both on the area where the easement would be constructed and the wider impact on MHT land as a whole. The Board is not obliged to “defend every blade of grass” and should consider imposing conditions to minimise any impact. If the impacts are not significant, or can be mitigated, the Board has to weigh the impact on MHT land against potential benefits which MHT could secure and use to fulfil their objects. In summary, these are to preserve the natural aspect, to protect and manage the trees, shrubs, turf and other vegetation and to keep Trust land open, unenclosed and unbuilt on as an open space for the recreation and enjoyment of the public. The Trust has a specific power to acquire more land within a 9 mile radius of Great Malvern Abbey (the Priory) for the purpose of preserving it unenclosed and free from building.

In summary, if the application was granted, there would be the loss of a peripheral area of common (amounting to around 1000m² with associated urban infrastructure) but which is located close to one of the iconic approaches to Malvern. The creation of the access would result in a housing development for which some level of screening from adjoining MHT land will be provided but which will be visible on the urban fringe from the top of the Hills. The easement site is not in an area which attracts large numbers of the general public but is nevertheless an area which is clearly greatly enjoyed and appreciated by people living in the locality.

The Board has to weigh this against the impact that a capital receipt of not less than £2m would have on MHT's ability to carry out its functions and, in due course, either to secure ownership of some of the land under its jurisdiction or provide a significant acreage of additional public access land.

The Board should also consider, if it is minded to reject the application as it stands, whether there are any changes which RFP could make which would make the application acceptable.

SUMMARY

Board members need to weigh up all the factors set out above. Officers make no recommendation in this instance

Susan Satchell
Secretary to the Board
08.11.2019

Appendix 1

Extract s8 MHA 1995

s7A 1930 Act as amended

Access roads

(1) Subject to subsection (2) below, the Conservators may on such terms and conditions as they think fit (including terms and conditions as to the provision and maintenance of cattle grids and other works) authorise in writing any person to construct, maintain, alter or improve roads or ways over the Malvern Hills affording vehicular or other access from any highway to land being land lying within or adjacent to any part of the Malvern Hills and appearing to the Conservators to lack satisfactory access.

(2) In granting authorisation under subsection (1) above the Conservators shall have regard to the effect of the works being so authorised on the natural aspect of the Malvern Hills and shall impose such terms and conditions as are necessary to ensure that any adverse effect is minimised.

(3) The Conservators may, on such terms and conditions as they think fit, for the purpose of or in connection with the provision of roads or ways, grant licence to use and grant easements and rights in, under or over lands forming part of the Malvern Hills and on which roads or ways are authorised to be constructed pursuant to subsection (1) above.

The documents need to be added by the Community and Conservation Officer who is at present off sick. Board members will be notified by e-mail of a username and password to access the documents as soon as they are available.¹