

Meeting of the Land Management Committee

Manor House, Grange Road, Malvern WR14 3EY

Thursday 10 October 2019 at 7:00 pm

Members: Mr D Baldwin, Dr S Braim, Mr M Davies (non-voting), Dr P Forster, Mr S Freeman, Mr A Golightly, Mr R Hall-Jones, Mr D Hawkins, Mr J Michael, Mrs C O'Donnell, Mrs G Rees, Mr C Rouse, Ms S Rouse (non-voting), Mrs H Stace, Mr T Yapp.

Agenda

1. Apologies for Absence
2. Declarations of Interest
3. Chairman's Communications
4. Public Comments (prior notice to be given please)
5. Matters Arising (if any) from the meeting of 11 July 2019
6. Winter works programme
7. Hang gliding policy Paper A
8. Project progress update Paper B
9. Position statement on trees Paper C
10. To approve revised easement process Paper D
11. Graziers' Report Verbal update
12. Conservation Manager's report Verbal update
13. Urgent business
14. Next meeting 5 December 2019

Land Management Committee
Hang gliding and paragliding policy
10th October 2019

Background

The Malvern Hills offers opportunities for a wide range of activities including hang gliding and paragliding.

Hang gliders and paragliders (referred to as 'Pilots' in this policy) take off from a number of sites around the Hills and many are members of the local Malvern Hang Gliding Club. Pilots launching from the Malvern Hills have flown over 100 miles to both the west coast of Wales and the east coast of England.

This information provides a background to the Hang Gliding and Paragliding policy which can be found at the end of this document.

History of flying on the Malvern Hills

There is a long history of flying from the Hills, going back to the 1970s resulting in the formation of the Malvern Hang Gliding Club (MHGC) in 1975.

In the early days, the only gliders were hang gliders with aluminium frames and 'fixed' wings. Paragliders were developed later with flexible parachute wings and are now the most popular craft.

The original agreement between the Trust and the MHGC has been lost however a specific byelaw (1995) relates to the flying of gliders on the Hills.

11 (a) No person shall, except in the case of accident or other sufficient cause take off from or land on the Hills any glider manned or unmanned or any other aircraft, save that this byelaw shall not apply, subject to clauses (b) and (c) hereof

- a. To a glider weighing 10 kilograms or less*
- b. To a non-mechanically powered hang glider*

(b) No unauthorised person shall except in the case of accident or other sufficient cause take off from or land any hang glider on any part of the hills lying to the north of the Wyche Cutting or any part of the Herefordshire Beacon (British Camp).

(c) No person shall fly any glider or aircraft on or over the Hills in such a manner as to be likely to cause undue interference with the use or enjoyment of the Hills by persons or animals lawfully thereon.

Hang gliding here refers to both paragliders and hang gliders.

In the beginning, permissions were granted for pilots to launch from the Hills south of the Wyche Cutting (excluding British Camp). Land to the north of the Wyche Cutting was reserved for the flying of model aircraft.



In 1999/2000, permissions for pilots were extended at the request of MHGC to allow the use of the Worcestershire Beacon as a launching site and discussions relating to this are recorded in the Trust's minute books. This permission was granted with some conditions (including the number of permitted take offs per year) which were lifted following a successful initial trial period.

Current usage and information

Launch Sites

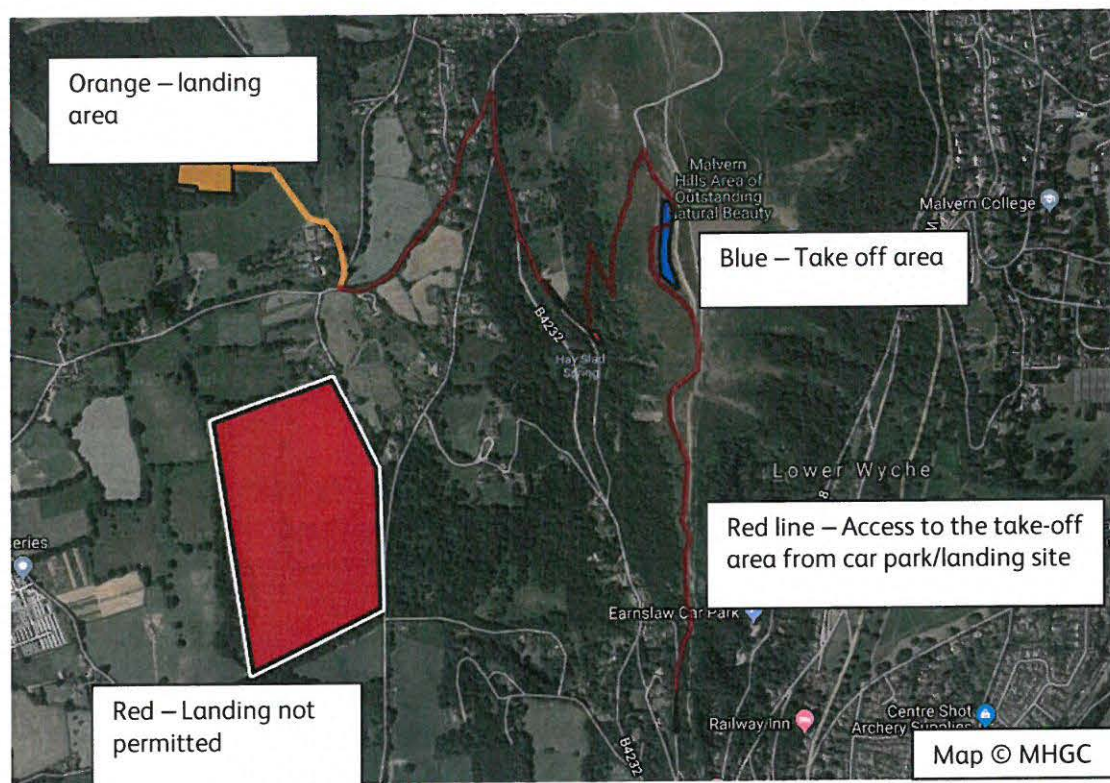
Over time, pilots have self-selected the best take offs from the ridgeline and these are some of the same launch sites used today.

These are:

- **Swinyard Hill** – A quieter site is used mostly by less experienced pilots largely due to the fact that there is a large expanse of open common to land on if the pilot is unable to catch a thermal. It is also a short walk back up to the launch site should the pilot wish to attempt another flight.
- **Kettle Sings/Pinnacle Hill** – A site mostly used with an easterly wind. Recognised by pilots as one of the best east-facing ridges in southern England and as many as 80 pilots can gather in good conditions.
Restrictions: Pilots must be Club Pilot (CP) rated (or foreign equivalent) and have at least 15 hours post-qualification flying experience to use this site or be under the supervision of club coaches.

- **Worcestershire Beacon** – A site used most in a westerly wind. A smaller launch site with no more than 20 pilots flying in suitable weather. Thermal opportunities can be limited and there are fewer options for landing sites in the west. Restrictions: Pilots must be Pilot rated (or foreign equivalent) to use this site.
- **Black Hill** – A launch site that is often preferred when the wind is stronger and because there is less of a climb to carry equipment. More technically difficult than the other launches, but continuing tree clearance by club members in collaboration with the Trust is ensuring it continues as a safe launch.

Once-popular launch sites at Pinnacle Hill (west side) and Black Hill are no longer regularly used. This is mostly due to changes in vegetation around the sites although clearance work is being undertaken to bring Black Hill back into full use.



Landing sites

Suitable landing fields around the Malverns are limited but the following are used with permission.

- **Castlemorton Common (MHT)** – Pilots are permitted to land on the Common directly below the launch site. Used from Swinyard Hill launch site.
- **Eastern fields (Private)** – MHGC has an agreement with a local landowner to allow for landing in these fields provided a donation is made to the air ambulance. Used from Kettle Sing's launch site.
- **Three Counties Showground car park (Private)** – Can be used when the car park is not in use. Mainly suitable for hang gliders due to its distance from the Hills. Used from Kettle Sing's launch site.

- **Western fields (Private)** – MHGC has an agreement to use fields to the west of the Worcestershire Beacon but these are becoming unsuitable due to tree growth around the site. Used from Worcestershire Beacon launch site.
- **Upper Malvern Common (MHT)** – Paragliding pilots are using the upper section of Malvern Common to land. Used from Worcestershire Beacon launch site.

Up-to-date maps are available from the MHGC website www.malvern-hang.org.uk of the agreed take-off and landing sites. An example of the map can be seen above.

Current MHT management of the activity

The Trust does little to manage hang gliding and paragliding activities on the Malverns as this is primarily undertaken by the local club – Malvern Hang Gliding Club.

There is a good record of MHGC's involvement and further management and intervention by the Trust is very rarely required.

Malvern Hang Gliding Club - The MHGC are registered with the British Hang Gliding & Paragliding Association as being responsible for the Malvern Hills launch sites.

A website provides detailed information on the club, launch sites and what is required by pilots wishing to fly from the Malverns <http://www.malvern-hang.org.uk>

MHGC do not insist that pilots are members of the club before flying but do ask pilots to sign up to the site rules and demonstrate that they have done so by buying a helmet sticker. A one off- payment of £5 covers the administrative costs of the MHGC.

MHGC has no legal power to stop pilots flying without a sticker but members may approach those who don't have one to ensure that the pilots are aware of the site rules and to discourage those that don't meet the training requirements. This is done for the safety of the pilots and other visitors.

The Trust provides little information for visitors wishing to fly from the Malvern Hills other than providing a link from the Trust's website to the MHGC website. This information and policy will be provided on the website for both pilots and others.

Although there is a legacy of good self-regulation by paragliders and hang gliders, the impact of this activity on the important features and special qualities of the Hills and Common should be considered.

With regard to this particular activity impacts include:

1. Access –

The byelaws provide information on the regulation of hang gliding and paragliding so therefore it is presumed that the activity is permitted. Access on foot is permitted across the land under the care of the Trust.

All of the launch and landing sites, site rules and further information are provided on the MHGC website. The Malvern Hills Trust are working with the MHGC to ensure this information is up to date and links will be provided to this information from the Trust's

website. This information is provided for both pilots and for other visitors to the Hills and Commons.

2. Safety –

Paragliding and hang gliding are potentially dangerous activities for both the pilot and for other visitors to the Hills.

Malvern Hills Trust and MHGC recognises that such activities are activities with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own involvement.

MHGC members are covered by British Hang Gliding & Paragliding Association insurance.

The MHGC website has detailed information about each of the launch sites including their difficulty and what training and flying experience is required for each site. MHGC members may also approach pilots new to the area with information and advice.

As the Hills and Commons are open access for walkers, members of the public could be anywhere at any time which could affect the pilot's landing (planned or unplanned).

Other activities by other visitors may impact paragliders and hang gliders, including drones. Drones or UAVs are not permitted without prior permission from the Trust and collision with paragliders or hang gliders could cause a serious accident. The Trust will alert the MHGC to the location and timing of permitted drone flights to reduce the risk of collision. Further information relating to drones can be found here:

<http://www.malvern hills.org.uk/media/1124/drone-policy-mht.pdf>

3. Habitats and species –

The open hillside and commons are home to a number of species including ground nesting birds which are susceptible to disturbance. The months of April to August are the times when it is most important that disturbance is kept to a minimum.

Due to the small number of flights throughout the year which are dependent on the right weather conditions, the impact on wildlife is a minimum. Where possible, landing sites on MHT land are restricted to minimise disturbance to ground nesting birds (e.g. Malvern Common).

4. Livestock –

Cattle and sheep graze the Malvern Hills and Commons and are essential in keeping the upper slopes open and suitable for flying.

Pilots should be reminded that temporary electric fencing is present on the Hills which may include some of the launch sites. The Trust provides a weekly Stockwatch update on the website www.malvern hills.org.uk/stockwatch/ which provides information on where the livestock are grazing at any time. Pilots should be aware of these locations but remember that the Hills and Commons are registered common land and that livestock could be found anywhere at any time.

When landing, consideration should be given to the cattle and sheep that can be easily disturbed. Landings should be planned to avoid causing the sheep to scatter to land, especially from December to March when the sheep are likely to be in lamb. In severe cases, worrying sheep could result in ewes aborting lambs.

Recommendations

To recommend adoption of the hang gliding and paragliding policy to the Board

Beck Baker
Community and Conservation Officer
11/09/2019



Hang gliding and paragliding Policy

Pilots do not have to be members of the Malvern Hang Gliding Club in order to fly any of the sites managed by the Club. However, to fly from anywhere on the Malvern Hills, they must:

- Hold at least a current BHPA Club Pilot rating (or foreign equivalent – IPPI level 2 for hang glider pilots, IPPI level 3 for paraglider pilots) – for all launches apart from the Worcestershire Beacon
- Hold at least a current BHPA Pilot rating (or foreign equivalent – IPPI level 4) if launching from the Worcestershire Beacon
- Have third party liability insurance (BHPA membership provides this, but if a pilot is not a BHPA member then he/she must obtain separate insurance of at least equivalent scope and value)
- Obtain and display a helmet sticker, acknowledging their undertaking to comply with the site rules which apply to the Malvern Hills as a whole and each part of them.
- Have at least 15 hours' post qualification flying hours logged, except:
 - if flying from Castlemorton (also known as Swinyard Hill), or
 - if a Club member and under coaching from one of the Club's BHPA qualified coaches
- Pilots must observe the following general rules:
 - No take offs or landings are permitted on the Herefordshire Beacon (also known as British Camp) or on Upper Malvern Common to the East of St Andrews Road (a Site of Special Scientific Interest).
 - All final approaches and landings must take place a safe distance from other users and livestock
 - No landings are permitted along the top of the ridge
 - If flying north of the Worcestershire Beacon, pilots must (except in case of emergency) avoid flying into the airspace reserved for the Malvern Soaring Association modellers, who fly their models from North Hill and Table Hill. For details of that airspace, see the relevant maps in the site guides.
 - The Malvern Hills Trust permits slope landings on the sides of the Hills, landing and ground handling on Castlemorton Common and on the parts of Malvern Common west of the railway line or between the railway line and St Andrews Road. Use of Malvern Common for landing is particularly sensitive; only the relevant parts of it may be used and particular care should be taken not to startle other users and animals when doing so.
 - Three Counties Show Ground. When there is an event of more than 1,000 people, pilots must comply with Air Law (summary: no overflight under 1,000 feet, no landing within 1,000 metres)
 - Bottom landings. Pilots must ONLY use the fields described in the site guides except in case of emergency. The Three Counties Showground car park can only be used if empty.

All permissions apply to both hang gliders and paragliders. Further information on individual sites and helmet stickers can be found here: <http://www.joomla.malvern-hang.org.uk>.

Land Management Committee

Project Progress Summary

10th October 2019

Report dated 27 September 2019

KEY	ONGOING	COMPLETED	DELAYED	NEW 2019/20	BROUGHT FORWARD
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Project	Approved Budget Actual Cst	Date Expcd (B. Plan)	2019/20				Update	Status
			1 st Q	2 nd Q	3 rd Q	4 th Q		
LMP Projects								
Restoration of access paths	£20,000 Gift Aid Grant	2017		Expected	Expected		2018 works complete. Lady De Walden Drive 2019 works added (ie Pinnacle Hills lower path)	Ongoing
Install Cycle Waymarkers	£1,200	2017/8	Finished				Works completed	COMPLETE
Mountain Bike Campaign	£4,000 (General) £3,052	2016/18	Ongoing	Finish Expected			Works completed	COMPLETE
Bridleway Link Common	£2,500	2018/19		Expected	Expected		ON HOLD pending WCC Rights of Way advice and decision.	Delayed
Improve Access Comm Wood	(Grant)	2018/19	Tender Process Open	Expected	Expected	Expected	Contractor Appointed. Works booked for November.	Ongoing
Marking Boundary's	£1,250 (General)	2016 to 2020			Expected	Expected	Volunteer surveys carried out over winter months	Ongoing
British Camp Repairs	£4,000 (General)	2017/18	Ongoing	Expected			Structural works complete. Effectiveness being monitored	COMPLETE
Restore Shire Ditch	£3,000 (General)	2018/19	Expected	Expected			Suspended pending evaluation of BC repair technique.	Delayed
Survey Veteran Trees	£1000	2018/19	Expected				Survey Completed.	COMPLETE
Pond Restore Castlemorton	Gift/grant	2019/20		Expected	Expected		Specialist pond works. Grant approved. Works planned Winter 19	Ongoing
Hedge laying	£5,000	2019/20			Expected	Expected		
Buildings and Infrastructure								
Manor House int	£5,000 (Parl Fund)	2017/8		Expected	Expected		Amended specification to be costed and finalised	Ongoing
Manor House Works	£50,000 (Parl)	2018/19				Expected	Dependant on above	Delayed
Top Shed Pit and storage	Est £12k	2017/8		Tenders out	Expected	Expected	Engineer instructed. Quote received over £10k. Contract issued. Works due November	Carried over 2019/20

Bottom Shed Review		2017/8			Expected	Expected	Pending completion of above	Delayed
Donkey Shed Restoration	TBC	EXTRA	Ongoing	Expected	Expected	Expected	Bat surveys complete. Planning application pending	Ongoing
BC & Wyche Toilets		2017/8		Expected	Expected	Expected	Renewal of cleaning and maintenance agreement.	Delayed
BC sewage system	TBC Est £40-50K	EXTRA			Expected	Expected	New sewage treatment unit required. Out to tender.	Ongoing
Implement BMS	£3,000	2019/20	Expected	Expected			Electrical, Fire and Gas certificates all updated.	Ongoing
Belvedere Repair	£7,500 (Gift Fund)	2019/20		Expected	Expected		Works Completed by W/E 6 th September.	COMPLETE
Repairs to Old Hills South C P	£4,500 (Parl)	2019/20	Ongoing	Expected	Expected		Regrading of surface and drainage works required. Part completed May, drainage culvert outstanding.	Ongoing
Repairs to B.C. path	£2,600	EXTRA		Complete	Expected	Expected	Patch filling required to tarmac path o summit. Works complete 23 rd Sept.	COMPLETE
Resurfacing Gardiners	£1500 (P) £3240	2016	Finished				Works completed	COMPLETE
North Malvern Wall repair	£4000 (Gen) £4,800	EXTRA	Finished				Works completed	COMPLETE
Repainting lines	£1,000 (Parl)	2018/19		Expected	Expected			Set Back to 2019/20

REBRANDING

Update Interpretation Boards	£15,000 p/a (Gift Fund)	2017/20	Ongoing	Ongoing	Expected	Expected	Blackhill complete and installed Gardner's underway.	Ongoing
Update location signage	£7,000	2017/18	Expected	Ongoing	Expected	Expected	All complete other than West of England (underway) and Swinyard	Ongoing
Update Car Park signage	£3,000	2017/18	Expected	Ongoing	Expected	Expected	All complete other than West of England (underway) and Swinyard.	Ongoing
Update signage St Ann's well	£400	2017/8		Expected	Expected		Roof sign replaced. Cabinet signs to do	Ongoing
Replace Access Signage	£2,500	2018/19		Ongoing	Expected			Ongoing

CAPITAL ITEMS

Car Park Ticketing	£33,000 TBC	2017	Delayed	Expected			Installation part complete – 9 of 10 machines in. Snagging underway	Ongoing
Field Staff Pickup	£18,500 (General)	2018/19			Expected	Expected	Replacement of pick up if required. If not, carry over. Vehicle inspected. Condition good. Retain further year.	Set Back to 2020/21
New tractor	£40k		Delayed	Expected			Delivered first week August.	Complete
Power tools	£4,000	2018/19			Expected	Expected	Replacement of chainsaws/ brushcutters	

LAND MANAGEMENT COMMITTEE

TITLE: A position statement on trees and tree planting on MHT land

DATE: 10.10.2019

BACKGROUND

Efforts to tackle global climate change and the media coverage of this significant issue have both increased substantially this year, both locally and across the world. MHT is often asked to host tree-planting efforts and is also questioned as to why the Hills are not being completely afforested.

This paper addresses both queries and provides a reasoned account of our situations and work with trees.

Trustees are asked to consider the draft position statement and its use by MHT.

Malvern Hills Trust: A position statement on trees and tree planting against a background of global climate change

Draft. September 2019

Relevant background documents:

Tree safety policy 2019

Land Management Plan 2016-2021

Suburban tree policy 2015

Malvern Hills Trust recognises the wealth of scientific data evidencing anthropogenic global climate change including recent reports from the International Panel on Climate Change. The Trust supports efforts to reduce the effect of climate change through many means including the planting of trees in the right place to sequester carbon dioxide.

MHT is actively managing woodland and expanding tree cover. However, the Malvern Hills and Commons have a limited capacity for tree planting for several reasons: firstly, our holding already has a high amount of tree cover including orchards, in-field trees, hedgerows, tree avenues and 340 ha (30 % of the holding) of native woodland.

This amount of tree cover today is in stark contrast to the Hills and Commons of the 1930's when less than 50 ha was covered in trees, that is a 7-fold increase. MHT has already overseen a huge afforestation process, that is now absorbing 2176 tonnes of CO₂ per year. Current tree coverage is also markedly higher than the national average of 10 % (England).

Secondly, much of the Hills and Commons are covered by conservation designations, including 3 Sites of Special Scientific Interest (SSSI), covering 633ha, and 3 Scheduled Monuments. These designations protect features and require parts of them to be kept open as acid grasslands with heath, mire, geological

exposures and archaeological remains. Tree planting here would degrade these features that are of national importance, losing irreplaceable wildlife and cultural heritage.

85 % of MHT land is also within the Malvern Hills Area of Outstanding Natural Beauty (AONB) and the Trust has an obligation to maintain landscape character including the open high hills and slopes and unenclosed open commons. These are grazed by low numbers of sheep and cattle.

We undertake practical work including tree felling every year to maintain and restore these designated features in partnership with Natural England. Details of where this work will happen is available in our Land Management Plan (LMP) here:

<https://www.malvernhills.org.uk/looking-after/land-management-plan/>

The conserving of priority open habitats or archaeology, and the conscious decision not to plant trees on them, is widely undertaken by conservation agencies and NGOs across the country including the Wildlife Trusts and the Woodland Trust.

Our Land Management Plan contains clear goals on improving the condition of woodlands and on expanding woodland where possible through natural succession and planting of site-native trees. Woodland creation continues at several sites including 1.4ha by Wells Road. Further opportunities for tree planting, including memorial trees, are considered every year.

The Trust can make land purchases within 9 miles of Malvern Priory and opportunities for new woodland creation, in the right place, will be considered.

MHT will:

- Continue to improve woodland condition
- Expand existing woodlands where possible
- Increase tree cover through in-field and hedgerow planting
- Continue to replace any trees removed for safety reasons
- Reassess our Land Acquisition Policy in light of climate change

RECOMMENDATION:

That the committee consider the position statement and any changes that should be made prior to approving the draft and recommending its adoption by the Board.

Jonathan Bills
Conservation Manager
Date: 30.9.2019

Land Management Committee
Revised overground easement process
10 October 2019

Background

MHT's overground easement policy was last revised in 2018. The content has been re-examined in the light of legal advice received, and the experience of dealing with the application for an easement across the verge in Chance Lane.

A working group comprising Messrs Braim, Cordey, Davies and Penn and Mrs Rees have prepared a revised draft which is attached for the committee to consider.

Recommendation

That the Committee considers the draft easement process attached and, subject to any changes proposed by the Committee, recommends its approval by the Board.

Susan Satchell
Secretary to the Board
1/10/2019



Overground Easements Guidelines

1. Introduction

The Malvern Hills Trust (MHT) has the power under the Malvern Hills Act 1930 as amended by the 1995 Act, to authorise overground and underground easements. An overground easement is a legal right to cross over MHT land with or without vehicles or animals to get to and from the highway. Easements are granted for the benefit of a property rather than an individual.

Underground easements are dealt with in a separate policy.

“Malvern Hills” in this document means any land under the jurisdiction of Malvern Hills Trust including the Hills, commons, verges and woodland.

“The Acts” means the Malvern Hills Acts 1884 – 1995.

“The dominant land” means the applicant’s land for which the easement is requested.

2. The power to grant an easement

All decisions made by the Board are subject to the overriding requirement to act in the best interests of fulfilling the Trust’s charitable objectives.

The criteria for granting easements are set out in s7 1930 Act (as amended):

- 7A (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.

3. Training for trustees

Because of the legal requirements, the likely public interest in cases where any significant development may result from the grant of the easement and the sums of money which can be at stake, applications for easements can be some of the most significant and high profile decisions which the Trust makes. For these reasons, potential conflicts of interest may also be very significant.

The Trust will provide training for trustees on this complex subject. Board members are expected to attend..

4. Delegated decisions

The Board has agreed that certain decisions should be delegated to the CEO.

Applications for confirmation by deed of pre-existing rights of access

To be determined by the CEO.

Applications for amendments to the route of existing overground easements

These are determined by the CEO unless there are significant complicating factors. The application should be reviewed by the management team to ensure it complies with the Malvern Hills Acts and to give consideration to operational, ecological, archaeological and landscape impacts. A Deed of Variation will be required for amendments to pre-existing legal easements, and in the case of variation of prescriptive rights, the easement must be confirmed by deed. This will be drawn up by MHT's solicitors at the cost of the applicant. Decisions of the CEO to grant such application should be reported to the next Board meeting.

Change of use of an existing overground easement

Changes of use includes, for example: agricultural to residential; agricultural to business; residential to business; business to residential. These applications are to be determined by CEO unless there are significant complicating factors or if they are likely to have a value of over £20,000. Whether an application should be referred to the Board should be decided by the CEO in consultation with the Chair of the Board and the Chair of Land Management Committee.

The application should be reviewed by the management team to assess any legal, operational, ecological, archaeological and landscape impacts. Applications will be referred to land agents for valuation and to solicitors to draw up the Deed of Grant/Variation, at the cost of the applicant. Decisions of the CEO to grant such application should be reported to the next Board meeting.

Temporary licences

These are determined by the CEO – for example temporary access for utility companies to carry out work or where access is required for a short period for a specific project on an adjoining property. The arrangements may be referred to a land agent for advice if complex or long term.

5. Determination of applications for new overground easements

These may be considered by Land Management Committee and then referred to the full Board or may be referred directly to the Board. Which route is taken will be determined by the Chair, Chair of Land Management Committee, CEO and Secretary to the Board, depending on the complexity of the application.

Considerations

The detail set out below is intended as guidance only. Applications must be determined in accordance with the Malvern Hills Acts, charity law and in accordance with any guidance issued by the Charity Commission.

No two easement applications will be identical; therefore each application should be considered on its own facts. In deciding whether to grant or refuse a request for an easement the following are always relevant but other factors may need to be taken into consideration:

- i. The overriding duty of the Board is to act in the best interests of fulfilling the Trust's charitable objectives.
- ii. The Board must be satisfied that the conditions in s7A(1) of 1930 Act are fulfilled:
the dominant land lies within or adjacent to the Malvern Hills
the access would connect the dominant land to the highway and
the dominant lane appears to lack satisfactory access
(for the purpose for which the application is made)
- iii. The Board must consider its obligations under s7A(2) of 1930 Act to have regard to the effect of the works so authorised on the natural aspect of the Malvern Hills and to impose such terms and conditions as are necessary to ensure any adverse effect is minimised .
- iv. Board members should consider the guidance set out in CC27 "It's your decision" which sets out general considerations for all decisions.

Note:

"Satisfactory access" has no definition, so common sense must be applied.

The "works so authorised" has been defined in case law as not only the physical easement itself but also any development that will flow from it.

The effect on the "natural aspect" is not defined in the Acts. It has been considered in case law. In summary, the impact has to be "significant" (and so a trivial effect is not

material) but the Trust is not obliged to defend “every blade of grass” when deciding what is in the best interests of the charity.

The “effect” to be considered is on the land under the Trust’s jurisdiction and not the effects on anyone else’s land or on Malvern in general. Any proposed development will require planning approval, which is separate from the Trust’s decision making process.

The overriding consideration of acting in the best interests of fulfilling the objectives of the charity is not an exact calculation. The trustees will need to take into account all the circumstances. For example, this will include weighing the public benefit which could be achieved by the Trust for purposes and initiatives that preserve the natural aspect and enhancing the public’s recreational use and enjoyment of the Malvern Hills as a result of receipt of a capital sum, against the effect of granting the easement after appropriate mitigation. A further factor to be considered is any possible reputational impact of a decision, how it might impact on the charitable objectives of the Trust and how that might be mitigated.

Process guidelines

This is for guidance only.

On receipt of the application, officers will ensure that sufficient information has been provided by the applicant, and if not request further details.

The Chairs of the Board and LMC Committee will be invited to consider with officers whether the application should be considered by the Land Management Committee or referred direct to the Board.

Officers will gather all the necessary information to enable the application to be properly considered including obtaining appropriate professional advice (in a complex case, in consultation with the Chairs of the Board and LMC Committee).

Once all the relevant information is available notice of the application will be posted:

- i. on the Trust’s land, by the proposed route of the easement.
- ii. on the Trust’s web site, with the relevant documentation.

Members of the public will have 28 days to submit any comments which they wish the Trust to take into consideration when deciding the application. These comments will be made publicly available on the Trust’s web site with the name and address of the person submitting them. The Trust reserves the right to edit or to refuse to display any comments which may be defamatory, unlawful or abusive.

In cases where, in the opinion of the Chair in consultation with the officers, a substantial development might result from the grant of the easement, notice of the application will be published in the public notices section of the Malvern Gazette.

Officers will prepare papers detailing inter alia

- Any relevant landscape designations

- Landscape considerations including possible mitigation options of any adverse effect

- Relevant conservation or archaeological issues

Relevant site history

Whether the easement can be shared with another existing user

Details of the anticipated capital receipt if the easement is granted (supported by professional advice) and of any benefits to the Trust that could result

Officer recommendations including appropriate mitigation

For applications where all relevant information on the impact on the natural aspect is available, if an application is approved by the Board, solicitors will be instructed to draw up a deed of grant.

6. Applications where easement will be associated with a planning application for development of the dominant land.

The Trust has taken legal advice on how to deal with applications where the impact of any development flowing from the grant of an easement on the natural aspect of the Malvern Hills cannot be ascertained at the time when the application comes before the Board.

In these circumstances the Board should consider adopting a 2 stage process:

1. To consider the effect of the construction of the easement itself. Examples of potential impacts include destruction of important habitat or species; a significant change to the appearance or character of the Malvern Hills.
2. Once full details are available, to consider the impact of any development which will flow from the grant of the easement. This might include a significant change to the appearance or character of the Malvern Hills, noise, lighting and drainage.

The process to be followed is outlined below:

- a) Consider the effect of the direct impacts arising from the construction of the easement itself on the Malvern Hills in accordance with the factors set out in 5 above and any other relevant considerations. This will include things like habitat destruction, visual impact, impact of any signage or lighting which will be required, whether these impacts are significant and if so what terms and conditions could be imposed to minimise the impact. Consider the best interests of the charity and any advantages that might be secured were the easement to be granted.
- b) If the application is granted in principle, agree Heads of Terms setting out the conditions on which the easement would be granted, including any mitigation required in relation to the physical easement, and that the landowner supply to the Trust full details of the proposed development in order that the Trust can consider the effect of that development on the natural aspect of the Malvern Hills. The Heads of Terms would also set out the conditions required in order to ensure that the Trust could enforce any conditions placed on the applicant.

- c) An option agreement would then be prepared in accordance with the Heads of Terms, incorporating the conditions which the landowner would have to fulfil before the easement could be granted, and annexing a draft deed of easement. The Option agreement would be signed by both parties.
- d) The Board would consider the second stage (the impact of the development resulting from the grant of the easement on the natural aspect) once full details were available and could either reject the application or decide what terms and conditions needed to be applied to mitigate any effect.
- e) If the Board was satisfied the conditions set out in the Option Agreement were met, the applicant could call for the grant of the easement

7. Following a decision on an easement application

- The applicant should be notified in writing of the Committee's recommendation and/or the Board's decision. If the easement has been refused, the reasons for refusal should be clearly explained.
- MHT Wardens should be made aware of the outcome of the decision so that they are able to monitor any subsequent activity.
- Deeds of Grant are to be signed by the CEO and sealed with MHT's seal.
- Responsibility for maintaining records of Deeds of Grant lies with the Secretary to the Board/Admin Officer. Deeds of Grant are to be securely stored and should be kept indefinitely.
- Where the Trust has been given, or believe it has been given, incorrect or misleading information in relation to an easement application, the Trust reserves the right to:
 - a) Where the easement has already been granted in principle, void the decision and decline any request to reconsider.
 - b) Where the easement has not yet been granted in principle, decline the request to consider the application.

8. Requests to review decisions of the Land Management Committee in relation to easements.

Recommendations of the Land Management Committee are referred to the Board for adoption at its next meeting (subject to any request for a review as provided in this clause).

If an applicant is dissatisfied with a recommendation of the Land Management Committee in relation to an easement on one or more of the grounds set out below, he/she shall notify the Trust in writing within five working days of receipt of the notification of the Land Management Committee's decision. He/she should specify the ground(s) for the review and the relevant facts.

The grounds for requesting a review are that the decision of the Committee:

- i. was unlawful and/or,

- ii. was irrational or unreasonable and/or,
- iii. has been reached without following due process and/or
- iv. has been reached without taking into consideration material facts

The review will be carried out by a panel comprising not less than three nor more than five Board members including:

- a) the Chair and/or Vice Chair of FAR (whether or not they were present at the meeting at which the decision under review was made)
- b) Chair and/or Vice Chair of the Governance Committee (provided they are not also members of the Land Management Committee and present at the meeting at which the decision was made)
- c) other Board members who are not members of the Land Management Committee who shall be nominated by the CEO taking into account any relevant skills and experience

The panel will consider:

- i. the original application
- ii. the paper prepared for the meeting
- iii. any other documentation produced for the meeting at which the decision was made
- iv. the minutes of the meeting (and the audio recording if necessary)
- v. the contents of applicant's request for the review
- vi. any other relevant material

The panel can either:

- Confirm that the decision of the Land Management Committee was properly reached
- Refer the matter back to the Land Management Committee for re-consideration

The Panel must submit a report either to the next Board meeting (where they have confirmed the decision of the Land Management Committee) or to the Land Management Committee (where the Panel has referred the matter back) setting out the reasons for their decision.

Part 2

The application process

Applicants should contact MHT to discuss their plans prior to submitting an application. This will enable Officers to identify relevant factors – in particular where legal and other professional advice (and therefore additional cost) will be necessary.

Where easements are associated with a development which is likely to require planning permission, applicants are strongly encouraged to submit their easement application before seeking planning permission.

Applications should be submitted to the Secretary to the Board using the easement application form and should be accompanied by the appropriate non-refundable application fee. Minimum application fees (which are subject to VAT) are listed below. They cover the costs incurred by MHT in processing the application. They may be increased for complex applications at the discretion of the CEO. Where MHT needs to obtain legal or other professional advice (for example valuing the rights requested, or on the impact on the natural aspect) the cost of this advice will be payable by the applicant in advance and will be non-refundable once the advice has been sought. If an easement is granted, applicants will also be required to pay any further professional fees incurred including drawing up the Deed of Grant, and the financial consideration required for the grant of the easement.

All applications must include a map showing the route and extent of the proposed easement together with details of any development associated with the easement.

Type of overground easement requested	Minimum application fee + VAT
Amendment to route of existing easement	£100 (plus legal/other costs)
Confirmation by deed of a pre-existing prescriptive right of access	£75 (plus legal/other costs)
New agricultural easement	£100 (plus legal/other costs)
New easement for single dwelling	£200 (plus legal/other costs)
Change of use of existing easement	£200 (plus legal/other costs)
New easement for small commercial development	£200 (plus legal/other costs)
New easement for >1 and ≤10 dwellings	£400 (plus legal/other costs)
New easement for >10 dwellings	£750 (plus legal/other costs)
New easement for ≥50 dwellings	£1,000 (plus legal/other costs)
New easement for large commercial development	£1,000 (plus legal/other costs)

Straightforward applications will take at least eight weeks to process. Additional time will be required for applications associated with large scale developments. All fees and costs must be paid before the application is considered.

Standard conditions for easements.

The Trust is empowered to grant easements 'on such terms and conditions as [it sees] fit'. Specific conditions may sometimes be required, but normally the conditions set out in the schedule will apply to all overground easements granted by MHT.

Surface materials

Construction methods and surfacing materials must be appropriate to the location. In most situations, the appropriate surfacing will be a loose stone of an appropriate grade, colour and depth. Materials to be used will normally be specified in any deed of easement.

MHT should be notified if the user of an easement wishes to re-surface or maintain the easement. Work on the easement must be carried out using the same type of material as agreed for the existing surface unless the Trust consents to alternative materials being used. The user is responsible for obtaining any other consents which may be required.

Requests for non-standard surface treatments.

Other surface treatments may be considered where special considerations apply, for example in urban locations or on steep slopes. If an easement is shared, the views of the other users should be sought and considered before agreeing to alternative surfaces. These requests will be considered by the Land Management Committee and referred to the Board for adoption. Where a request is made to re-surface a prescriptive easement which has a non-standard surface treatment which has not been approved by the Trust, the Trust will take into account the history relevant to the easement and factors relating to its location. It will normally be a condition of granting the request that the dominant owner(s) enters into a formal deed of easement with the Trust which includes a covenant in relation to the ongoing maintenance of the easement.

Dealing with breaches of easement agreements.

Use of easements and compliance with Deeds of Grant will be monitored by Wardens. Where breaches of agreements are noted, these will be dealt with as follows:

- a) Warden to speak to the resident, making them aware that they have breached the conditions of their easement/do not have permission to carry out the work concerned and asking them to rectify the situation. Where unauthorised work is taking place on an easement, every effort should be made to contact the owner of the dominant land immediately. In many instances this will be sufficient to resolve the problem.
- b) A letter will be written by the CEO confirming the breaches which have occurred and requesting that the land owner takes the necessary action. This request should include a timescale for rectifying the problem(s).
- c) Solicitors will be contacted for advice on appropriate action. Where legal action is advised the agreement of the Board will be sought.

Schedule

Overground easement – standard conditions

- The applicant will pay Malvern Hills Trust's (MHT) application fee, together with legal and other professional costs and disbursements associated with granting the easement together with any VAT thereon.
- The applicant is responsible for obtaining all other relevant consents, including *inter alia* planning permission and under s38 Commons Act 2006.
- The easement will be for the benefit of a specified number of properties only and for the specified use.
- The width of any track should not normally be more than 2.75 metres. Wider entrance splays or passing bays will be permitted where they are necessary at the discretion of the CEO/Board. The width of the easement to be specified in the deed.
- Where appropriate, if there is an existing easement nearby, there will be a presumption that its use should be shared, with a spur to serve the new user.
- Construction methods and surfacing materials must be appropriate to the location and must be agreed in writing by MHT. In most situations the appropriate surfacing will be a loose stone of an appropriate grade, colour and depth. Other surface treatments may be considered, depending on the circumstances, for example in urban situations or on steep slopes. Re-surfacing must be carried out using the same type of material as agreed for the existing surface.
- Future maintenance will be the responsibility of, and at the expense of, the easement holder. No work to be carried out on the easement without the prior written consent of MHT. Where a new easement will in part use an existing easement, responsibility for maintenance of the shared section will become the joint responsibility of all users.
- Liability for installation and maintenance of any culverts required to accommodate the easement will be the responsibility of the easement holder.
- The easement holder will indemnify MHT against any injury, damage or loss arising from the grant of the easement.
- Contractors working on land under MHT's jurisdiction to construct or re-surface easements must provide MHT with a method statement for approval and evidence of their public liability insurance prior to work commencing. Any damage caused to MHT land must be repaired to the satisfaction of MHT and MHT reserve the right to require a bond to enable reinstatement work to be carried out by MHT in the event of the easement holder failing to do so.
- The use of house signs, kerbs, posts or stones to delineate the easement will not be permitted.
- Parking or storage of materials on, or adjacent to, easements will not be permitted.
- Easement holders must not do anything on their easement which interferes with the public's right of access across the land over which the easement passes.

- Unless MHT agrees otherwise, where an agreement has been made in principle to grant an easement, the agreement will expire after 3 years unless a deed has been executed and all consideration paid.
- Where services are also to be laid, these must, where possible, be placed under the route of the easement.