Malvern Hills Trust

Special Meeting of the Board
Council Chamber, Avenue Road, WR14 3AF
Thursday 19 September 2024 7pm

Present: John Michael (Chair), David Baldwin, Richard Bartholomew, Robert Berry, David Core, Mark Driscoll, David Fellows, Richard Fowler, Lucy Hodgson, Charles Penn, John Raine, Felicity Robinson, Chris Rouse, John Stock, Mary Turner, Malcolm Victory, Mike Wilkinson.

In attendance: CEO, Secretary to the Board, Governance Change Officer, Conservation Manager, *Newsquest* staff member, 24 members of the public.

1. **Apologies for absence**
   Allan Cottam, Frances Victory, Duncan Westbury, Sheila Wren.

2. **Chair's announcements**
   - 2.1 John Michael thanked the Staffing Committee for reviewing how a Trustee might raise a complaint about bullying and harassment and for recommending that a statement be made at the start of each Board meeting to state the Trust's policy of zero tolerance of any bullying and harassment. Any abusive language or calling into question the integrity of Trust staff or trustees would not be tolerated, and anyone behaving in this way would be asked to leave.
   - 2.2 John Michael confirmed that the Trust would always try to respond to Public Comments at the earliest opportunity, answering any legitimate questions and rebutting any misleading information.
   - 2.3 John Michael reported that a video called *Songs of Malvern Hills* had been produced by a local musician who was inviting viewers to make a donation via JustGiving towards the Trust's Ash Dieback fund.
   - 2.4 John Michael referred to Richard Fowler's query under Matters Arising at the 12 September Board meeting, concerning the percentage of the Trust's income made up by the Levy. The Trust had looked into the figures and had updated the web site. John Michael confirmed that the Levy covered 60% of the costs of managing the land under the Trust's jurisdiction, which was *not* the same as the Levy making up 60% of the Trust's income. Over the past seven years, the Levy had averaged 45% of the Trust's income. The Trust accepted that the management accounts for April to June 2024 showed the Levy providing 65% of the income, but it was stressed that these were internal accounts only and it was not reasonable to compare them with end of year final accounts.

3. Declarations of interest

David Core suggested that David Fellows had a conflict of loyalty, due to his being a member of Guarlford Parish Council, which had strongly opposed all the Trust's proposals for governance change in their response to the Consultation. David Fellows said that he had taken no part in those discussions and did not feel that he had any conflict. He agreed to remain in the meeting and participate in the discussions, but not to vote.

4. Public Comments

There were none. John Watts had asked to speak but withdrew on account of the Trust not allowing one of his questions.

5. Discussion of Consultation Responses and proposals for a Private Bill

The Board received a paper prepared by the Governance Change Officer (GCO) on the results of the consultation. The GCO went through the paper, thanking all those who had responded and assuring the meeting that all feedback had been carefully considered. John Michael recorded the Board's thanks to the GCO and the working group trustees for the many hours of work they had put in to analysing the responses and forming them into different categories.

5.1. Land Management

The GCO reported that feedback on the Trust's land management proposals had been broadly supportive. There had however been some misunderstanding and confusion, for example regarding the Trust's proposals to fence grazed commons; the GCO assured the meeting that the proposals did not apply to ungrazed commons and in fact related to a very small area of the Trust's land. She confirmed that public access gates would be included in any fencing scheme. The Conservation Manager (CM) reported that, in order to make the Bill robust for the future, it would be necessary to avoid stating that fencing would have to be on the perimeter only, because there would be instances where this was impossible. The CM referenced other similar sites, such as Epping Forest, where some fencing and infrastructure had had be sited away from the exact perimeter in order to deliver a successful safe scheme. The GCO added that it was clear in the Constitution document that any fencing would be subject to s38 Commons Act 2006, in that it would require the permission of the Secretary of State; the Trust was not seeking to bypass this.

Questions were invited from Trustees. In answer to a question as to how the scheme had worked in Epping Forest, the CM confirmed that it had been successful in that it had achieved what it was designed to do. In answer to a question about commoners' access rights and risk to animals, the CM stated that this was not an exercise in making every animal safe – this was impossible given that there was a highway running through the Common – but rather to ensure that livestock grazing could continue on the Commons. The Trust was seeking a level playing field with every other common owner in the country, and graziers should benefit from this.

Mike Wilkinson pointed out that the Trust was only seeking a power and that it would not propose a scheme if it didn't have the backing of the commoners.

On the proposal of Lucy Hodgson, seconded by Malcolm Victory, it was *RESOLVED* with 14 in favour, two against and one abstention, to ask the Parliamentary Agent to amend the clause relating to securing the grazed commons to take account of Officer concerns that the most appropriate site for fencing would not always be on the exact perimeter of the common.

On the proposal of Richard Bartholomew, seconded by John Stock, it was *RESOLVED* with 14 in favour, two against and one abstention, to include a requirement that there should be a minimum break of six months following fencing to regulate grazing before the same area could be fenced again, but with a de minimis exception to enable up to 1 ha to be fenced again for the control of unwanted vegetation.

On the proposal of Mark Driscoll, seconded by John Raine, it was *RESOLVED* with 15 in favour, one against and one abstention, that the proposal to be able to fence for animal health reasons be removed.

5.2. **Leases and Licences of Land**

The GCO reported that the Trust as a landowner needed to be able to grant leases and licences; it had done so for years, and the Bill was an opportunity to formalise the arrangements. There was no question of leases or licences being granted for commercial purposes. The Trust's land needed active management beyond what the Trust's resources could deliver and so licences were granted to others for coppicing, hay making and conservation grazing. The CM added that three quarters of the Trust's estate was under some licence or other and that this was essential for effective land management.

The GCO reported that there were a small number of buildings licensed to individuals, with Malvern Hills National Landscape team licensed to share use of Manor House. The Trust also granted farm business tenancies in fields on the lower slopes of the Hills, through which the Trust could ensure that the land was managed in a nature friendly way and that public access was maintained.

The GCO said that the proposals had not been supported by a majority of respondents, but that there had been nothing in the comments to explain why. It appeared that the Trust needed to engage further with the public to explain the background to these proposals. There had been concerns in the comments about commercialisation and footfall; the Trust needed the power so that it could make sure that events didn't clash and that the land wouldn't be impacted. The GCO stressed that the Trust couldn't and wouldn't grant licences that went against the Objects of the Charity.

It was a requirement of the Trust's insurers that the Trust ensure that groups using the Hills for their activities should have their own public liability insurance. Otherwise the Trust risked being sued in the event of an accident. Concern was expressed that this might make events unviable for small organisations, but it was noted that in practice it was normally possible for a small group to be covered by the insurance of an umbrella organisation. The GCO confirmed that there would be policies to underpin the power to lease and license, and it was suggested that it would be helpful for these to be developed alongside the new Bill.

The GCO confirmed that the working group had recommended leaving the proposals unaltered. It was noted that the Trust would be required to consult Malvern Hills National Landscapes, rather than Malvern Hills District Council, regarding applications to run services overground; in practice the Trust had very limited powers to authorise such applications, which had to be in respect of buildings constructed before 1995.

On the proposal of Lucy Hodgson, seconded by Mike Wilkinson, it was *RESOLVED* with 14 in favour, two against and one abstention, to make no change to the Trust's proposals in relation to leases and licences of land (including buildings).

On the proposal of Lucy Hodgson, seconded by Mary Turner, it was *RESOLVED* with 16 in favour and one abstention, to make no changes to the proposals outlined in the Consultation Document in relation to licences for activities on Trust land (but to ask the Parliamentary Agent whether some of the concerns expressed might be addressed in the drafting).

On the proposal of John Stock, seconded by Richard Bartholomew, it was *RESOLVED* with 14 in favour and three abstentions, to make no change to the Trust's proposal to change the consultee in relation to licences for overground services.

5.3. **Modernisation of the Trust's Administration**

Online meetings

The GCO reported that the Trust wished to have the flexibility to make decisions online where necessary, although it was recognised that face-to-face meetings were easier. Lucy Hodgson queried whether the Trust could make this change, observing that in local government all decision-making meetings had to be in person. The GCO said that charities were permitted to make decisions virtually and so the Trust could choose to do this.

On the proposal of John Raine, seconded by Malcolm Victory, it was *RESOLVED* with 13 in favour, two against and two abstentions, to make no change to the Trust's proposals to be able to hold hybrid or online meetings.

Supporters' organisation

Concerning the power to set up a membership organisation, the GCO reported that the working group had recommended substituting 'supporters' for 'membership'. The term 'membership' appeared to have carried implications that were not intended. There was no suggestion that a supporters' group would be part of the governance structure, nor that it would have any direct influence on decision making. Rather the hope had been to engage people from outside the Levy-paying area. John Michael confirmed that the drafting of the Bill would make it clear that the Supporters' Group was completely separate from the governance structure.

It was suggested that the term 'Friends' be used rather than 'Supporters'. Mike Wilkinson responded that 'Friend' was a slightly dated term, observing that the Trust might want to have more than one kind of supporters' group at some point in the future. Charles Penn advised that there had previously been a 'Friends' group that had been troublesome to the running of the Charity.

On the proposal of Lucy Hodgson, seconded by Felicity Robinson, it was *RESOLVED* with 14 in favour, one against and two abstentions, to retain the provision to permit the Trust to set up a supporters' organisation, but to adopt the term 'supporters' instead of 'members'.

General Power

The GCO reported that there the proposal to include a general power had prompted much concern and suspicion that it would enable the Trust to do things that were against its Objects. She stressed that this could not happen and neither could the Trust run a commercial enterprise. It was not unusual for a charity to have a general power to do things in the interest of its Objects; this was not a way to get round restrictions. The Trust did not want to have to approach Parliament every time a new issue came up that was not covered by the Acts.

On the proposal of Richard Bartholomew, seconded by John Raine, it was *RESOLVED* with 13 in favour, two against and two abstentions, to make no change to the Trust's proposal to include a restricted general power in the Bill.

Power to Borrow

The GCO reported that much concern had been expressed about the Trust's power to borrow. She pointed out that the Trust already had three different powers to borrow, secured against revenue or land. The Trust wanted one power to borrow rather than three but didn't want to put itself in a worse position. The Trust needed the power to borrow in order to run its affairs. Due to capital reserves it hadn't previously needed to borrow, but should a large piece of land become available, the Trust would want to be able to do so in order to secure it for the public. The Trust would seek the views of the Secretary of State and Charity Commission as to whether Secretary of State approval would be required for the borrowing. The GCO reminded Trustees that they must act responsibly; they needed to be sure that they could service any borrowing and that such borrowing was in the best interests of the Charity. In answer to a

concern about pressure on the Levy, it was noted that the Conservation Manager set out how land would be maintained and where it would be paid from every time he proposed a land purchase. The Bill would give more flexibility for the Trust to fundraise, reducing pressure on the Levy.

Robert Berry asked whether there was any restriction against buying buildings for commercial enterprise. The GCO said this was not allowed. David Core said that, under the new powers, the Trust could set up a trading company, for example to run a visitor centre. The company would be a separate legal entity to protect the Trust against any losses it might incur. The company could buy or lease buildings, possibly from the Trust.

On the proposal of Malcolm Victory, seconded by Lucy Hodgson, it was *RESOLVED* with 12 in favour, three against and two abstentions, to restate the current power to borrow within the provisions of the Bill

- **Powers to borrow in furtherance of its purposes**
- **Powers to secure borrowing against land and revenues, but without any power of sale or to cut and sell timber in relation to its current purpose land.**
- **Powers to secure borrowings against ancillary land (e.g. office space) without third party consent, and any such loan agreement can include a power of sale; and**

To establish the view of the relevant Government department and the Charity Commission on any requirement for third party consent to secure borrowings against existing purpose land or new purpose land.

Change of Statutory Name

The GCO reported that the percentages for and against the change were similar. Comments from those against including the suggestions that it was a tax dodge and a waste of money; in fact there would be no cost. The GCO referred Trustees to a paper written by the Community & Conservation Officer in 2017, which had explained the reasons for the original rebrand. At the time, the Trust was struggling to get its message across; there was confusion about its status and misunderstanding of the meaning of 'conservator'. Malvern Hills Trust was now a well-established brand and was the name most people now used.

The CEO said that she understood the strength of feeling locally. She wanted to stress that the contribution of conservators in the past had not been and would not be forgotten; indeed, there was more the Trust could do to highlight its history.

Richard Fowler asked whether the Trust had any evidence that the change of working name had helped to get its message across. The GCO said that some large legacies had been received, and the CM noted that Cleeve Common Conservators had observed how MHT had benefited from the change and decided to change its name to Cleeve Common Trust. Robert Berry countered that it would be a shame to lose

the name, saying that he had found 14 out of 17 bodies called 'conservators' had opted to keep the name. David Fellows thought 'Trust and Conservators' might be an acceptable middle way.

On the proposal of Mike Wilkinson, seconded by Felicity Robinson, it was *RESOLVED* with 12 in favour, three against and two abstentions, to proceed with the change of the Charity's statutory name to Malvern Hills Trust.

5.4. **Objects**

The GCO noted that those Trustees who had attended the workshop with the Parliamentary Agent on the evening prior to this meeting had had the advantage of discussing these points with him directly. There had been a number of public comments in this section, from which the working group had picked out a number of points for consideration:

- The omission of the word *unenclosed* and the reasons for that
- Changing *maintain* to *enhance*
- Using the term *biodiversity* instead of *flora and fauna*
- Change from the term *natural aspect*

Very helpful responses to the Consultation had been received from Open Spaces Society and the Trust was most grateful for the trouble taken. The advice from both Trust Officers and the Trust's solicitors on their suggestions regarding the Objects, would *change* the Objects and the GCO advised that these suggestions should therefore be resisted. What was appropriate for National Parks was not appropriate for the Trust, which already had the power to fence off areas to protect SSSIs and flora/fauna as necessary. The clause prioritising conservation ahead of public access was only intended as a last resort, but the working group felt it was important that it should stay in.

There had been queries about the removal of the word 'unenclosed', originally used to stop landowners fencing off land. The Parliamentary Agent had advised that setting out the Trust's obligations in this respect as a Duty was stronger than including it in the Objects. The Trust intended to include the following text from the 1930 Act in the new Bill:
Except as in the Malvern Hills Acts otherwise provided they shall at times keep the Malvern Hills, unclosed and unbuilt on as open spaces for the recreation and enjoyment of the public.

Although not itemised for discussion by the working group, members had reflected on comments about the term 'unbuilt on' and had asked Sharpe Pritchard to consider whether those concerns could be reflected in the drafting. Mary Turner commented that Trustees had asked the Parliamentary Agent at the online meeting what he could do to make it clearer, and she was confident that he absolutely understood the issue.

The GCO said that there had been much concern from respondents about dropping the term 'natural aspect'. It had been used regularly in Victorian times but was not used now in legislation. The working group had recommended that the Board keep the proposed wording of Object 1 (a) as: 'to protect conserve and maintain the landscape, *natural appearance*, habitats, flora and fauna, geology and archaeology of the Malvern Hills'. She confirmed that the Trust's lawyers agreed that the idea of 'natural aspect' *was* covered in this sentence.

There had been a few comments suggesting that 'biodiversity' replace the term 'flora and fauna'. However, biodiversity encompassed the genetic diversity of domesticated animals and plants as well as wild. For the Trust's purposes, the working group considered 'flora and fauna' to be more appropriate and better understood.

There had been a few comments recommending the inclusion of the word 'enhanced', better to allow for changes in management in the future, for example in response to climate change. However, Sharpe Pritchard had advised that the inclusion of this word in s85 of the Countryside and Rights of Way Act 2000 had caused all sorts of problems. VWV advised that it was implicit in the phrase 'conserve and maintain' that the Trust could respond to climate change.

In summary, Sharpe Pritchard had advised the Trust to keep the wording of the draft Objects.

On the proposal of Malcolm Victory, seconded by John Stock, it was *RESOLVED* with 14 in favour, two against and one abstention, to make no change to the Objects as currently drafted.

6. **Dates of next meetings**
   Friday 27 September at 6 pm – Trustee Zoom meeting with the Parliamentary Agent
   Thursday 10 October 2024 at 7 pm – Special Board Meeting

7. **Confidential**
   On the proposal of Lucy Hodgson, seconded by John Stock, it was **RESOLVED** unanimously to exclude the public for the discussion of an item of urgent business on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (matters relating to individuals).

Robert Berry, the Conservation Manager and all members of the public left the meeting at 9.10 pm. John Michael thanked members of the public for attending.

The meeting closed at 9.23 pm