

## Malvern Hills Trust

Ordinary Meeting of the Board

Council Chamber, Avenue Road, Malvern.

Thursday 17 January 2019 7.00 pm

**Present:** Mr D Baldwin, Mr R Bartholomew, Dr S Braim, Mr Bryer, Mr M Cordey, Mr M Davies, Dr P Forster, Mr S Freeman (Chair), Mr Hall-Jones, Mrs O'Donnell, Mr C Penn, Prof Raine, Mrs G Rees, Ms S Rouse, Ms H Stace, Mr D Street, Mr Watson, Mr T Yapp.

**In attendance:** CEO, Conservation Manager, Community and Conservation Officer (CCO), Finance and Administration Manager, Secretary to the Board,

**No attendance:** Ms Bovey, Mrs L Hodgson, Mrs E Holton, Ms Stewart

The Chair welcomed everyone to the meeting.

### 1. Apologies for absence

Mrs Cumming, Mr A Golightly, Mr D Hawkins Mr J Michael, Mr O'Donnell, Mr C Rouse.

### 2. Chair's announcements

- i) This would be the last meeting in the Council Chamber for about 6 months and attendees should check the forthcoming agendas to see where the Board meetings were being held (the meeting on 14 March was at Welland Village Hall).
- ii) With regret, the Chair announced the death of the Trust's former Financial Officer John Taverner. Mr Taverner had worked for the Trust for 32 years until his retirement in April 2002.
- iii) At the Chair's invitation, Mr Street reported that former Board member Brian Pilcher had had an operation and was recovering well.
- iv) The Special Board meeting to deal with the Chance Lane easement application had been provisionally scheduled for Thursday 28th February. If the meeting went ahead on that date, a training workshop for Board members would be held 21 February. The Chair explained that the purpose of the session was to ensuring that Board members fully understood the content of all the papers, the issues which they were required by law to consider and those matters which they must disregard. It was also important to ensure the content of letters and emails received from members of the public were properly considered. There would be no discussion of the merits of the application itself.
- v) The Trust welcomed written questions from the public, whether under Standing Order 12 or otherwise. A considerable amount of staff time could be spent in preparing answers to these questions and it was unfortunate when questions were raised to which answers have previously been given or could be readily ascertained from papers and/or minutes of previous meetings. In such circumstances the questioner would be referred to the relevant paper/minute.

- vi) There would be a talk for Board members and staff on the Malvern Springs on 21st March.
- vii) There would be an informal meeting of Board members without officers on 14th March, prior to the Board meeting. The primary purpose was to review Board performance, and identify any areas for improvement. .

**3. Declarations of interest**

There were none.

**4. Public Questions**

See Schedule to the minutes.

**5. To confirm the Minutes of the Board meetings held on 08.11.2018 and 15.11.2018**

On the proposal of Mr Freeman, seconded by Ms Rouse, it was **RESOLVED** (with 2 abstentions) to approve the minutes of the meetings held on 8 November and 15 November 2018.

**6. Matters arising**

Appointment of Committees – Mr Golightly and Mrs O'Donnell asked to go onto the Land Management Committee and this was agreed by the Board.

**7. Land Management Committee**

7.1 On the proposal of Mrs Rees, seconded by Ms Stace, it was **RESOLVED** by the committee members present to approve the minutes of the meeting held on 6 December 2018.

7.2 Matters arising

Mr Freeman left the meeting. Ms Rouse took the chair. The CEO had met Mr Frost, the owner of Lake House. The CEO was awaiting a written response in relation to the use of the agricultural easement in the context of his planning application for commercial use of the adjacent building.

Mr Freeman returned to the meeting and took the chair.

The CEO confirmed that Worcestershire County Council had agreed to fund a wooden bus shelter in Poolbrook Road. The CEO would bring a paper to the March Board meeting to consider the request for a bus shelter on the common. The Board indicated that they would be likely to approve the application as amended, as it appeared that the concerns expressed by the Land Management Committee had been addressed.

Mrs Rees reported that there had been a meeting with the owner of Brockbury Hall in relation to the Stowe Lane access.

Mrs Rees went through the other matters reported in the minutes.

7.3 Adoption of minutes

On the proposal of Mrs Rees, seconded by Ms Stace it was **RESOLVED** unanimously to adopt the minutes of the meeting held on 6 December 2018.

**8. Finance Administration and Resources Committee**

8.1 On the proposal of Mr Davies, seconded by Mr Cordey, it was **RESOLVED** by the committee members present to approve the minutes of the meeting held on 13 December 2018.

8.2 Matters arising

Mr Davies went through the minutes. It had been agreed to have 4 scheduled meetings each year with Ian Burrows of Brewin Dolphin, but also to have a monthly written report whilst the markets were volatile.

The CEO reported that a further payment of £17,668 had been received from Mr Izzard's estate. (His gift now totalled £77,837)

The CEO said that discussion of future maintenance arrangements for the Wyche Cutting and British Camp toilets was on hold until after the Local Government elections. Herefordshire Council had agreed to continue the existing arrangement until after those elections. He also confirmed that he was awaiting quotes for the repair of the wall at North Malvern Road, and hoped to be in a position to appoint a contractor to carry out the work in the very near future.

#### 8.3 Adoption of recommendations and the minutes

On the proposal of Mr Davies, seconded by Mr Cordey it was **RESOLVED** unanimously to adopt the following recommendations and to adopt the minutes of the meeting held on 13 December 2018:

##### i) **Review of Reserves Policy**

To amend the reserves policy as follows:

a) The unrestricted funds within MHT's designated funds be included in the calculation of the reserves level for monitoring purposes.

b) The balance of £5,000 on the GDPR designated fund and £1,091 on the Development designated fund be transferred back to the General fund in the 2018/19 financial year.

##### ii) **Vehicle replacement policy**

To amend the Vehicle Replacement Policy as set out in paper D (FAR papers for 13.12.2018)

### 9. **Staffing Committee**

9.1 On the proposal of Dr Forster, seconded by Prof Raine, it was **RESOLVED** by the committee members present to approve the minutes of the meeting held on 3 January 2019.

#### 9.2 Matters arising

Dr Forster went through the minutes. The CEO confirmed that Robin Hill was about to return to work.

#### 9.3 Adoption of the minutes

On the proposal of Dr Forster, seconded by Prof Raine it was **RESOLVED** unanimously to adopt the minutes of the meeting held on 3 January 2019.

### 10. **Authorisation of execution of Funding Agreement with MHDC**

This related to grant funding for path improvement works at the Community Woodland. The Community and Conservation Officer went through the paper. On the proposal of Mr Freeman, seconded by Mr Penn it was **RESOLVED** unanimously to authorise Mr Street and Mr Bartholomew to execute the Funding Agreement on behalf of the Board.

### 11. **Authorisation of additional legal fees budget for 2018/9**

The Finance and Administration Manager went through the paper. On the proposal of Ms Stace, seconded by Mr Freeman it was **RESOLVED** (with one vote

against) to approve an additional £10,600 expenditure on legal costs in the 2018/9 year, in addition to the previously approved budget of £21,250.

## **12. Approval of General Fund budget and levy for the year end 31 March 2020**

Mr Davies said that the budget proposals were set out in the papers for the FAR meeting of 13 December. They included a 4% increase in the levy and an increase in car parking charges. The FAR Committee had recommended approval of the draft budget and to set the levy at £519,250 to the Board, together with a number of other recommendations.

On the proposal of Mr Davies, seconded by Ms Stace it was **RESOLVED** with one abstention:

- i. To approve the budget for the the general, designated and restricted funds as drafted
- ii. To set the levy for 2019/20 at £519,250
- iii. To increase the car park meter prices to £4.40 per day from 1 April 2019
- iv. To increase the cost of residents' parking passes for 2019/20 to £5.50 pa
- v. To increase the cost of annual parking passes to £37, plus £14 for a second vehicle at the same address from 1 April 2019
- vi. To approve a budget of £12,000 from the Parliamentary Fund for works at the Top Shed.

## **13. Charity Commission Scheme**

Prof Raine said the Governance Committee were due to meet next week and an update paper had been circulated to all Board members. An opinion was awaited on some technical point from the Charity Commission and from DCMS (Department of Digital Culture Media and Sport) and this was holding up the public consultation. These delays meant it was unlikely that the Scheme would complete its passage before the elections in November. Consideration had been given to either extending the life of the current Board or asking the nominating bodies to re-nominate the existing Board members in order to ensure that there was some continuity whilst the Scheme completed its passage.

Some further work had been done by the working group on the Independent Nominations Panel. The details would be considered by the Governance Committee.

The Secretary to the Board said that Wimbledon and Putney Common Conservators were also preparing a Charity Commission Scheme and many of the issues and considerations which applied to MHT, applied to them.

Mr Davies reported on behalf of the monitoring group. MHT had not received a further solicitors' bill, but he believed that little further work had been carried out at the end of 2018. Total expenditure on legal costs to date was £104,000.

## **14. Urgent Business**

There was none.

## **15. Information**

**15.1 Malvern Spa Association** No report

**15.2 AONB Joint Advisory Committee** A written report had been received

**15.3 Wildlife Panel** No meeting has taken place

**15.4 Recreation Advisory Panel** No meeting has taken place

**15.5 4Cs** A written report had been received

**15.6 Management Report** The CEO went through the report. He had inspected St Ann's Well prior to the release of the retainer to the building contractors. All but 2 minor points which had been identified had been remedied. Allards stone masons had been asked to carry out repair work to the bowl and the plinth in the well room, but they had not yet started work on site.

**16. Items for future consideration**

There were none.

**17. Next meeting**

14 March 2019 Welland Parish Hall

**18. Confidential item (agenda items 19, 20, 21 & 22))**

On the proposal of Mr Freeman, seconded by Mr Forster, it was **RESOLVED** unanimously to exclude the public for discussion of items 19 - 22 on the agenda 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 (19, 21, 22 commercially sensitive matter, 20 Staffing matter).

**The meeting closed at 8 27pm**

## Schedule

Submitted by Graeme Crisp on behalf of Mrs K Harris of Hall Green and Mrs R Barter of Chance Lane. Answers given by the CEO in italics.

1. At the close of the Land Management Committee meeting on 6.12.2018 reference was made to a meeting of the Board at which a letter from Mr Huskinson was considered. Was such a meeting held, and if so when and where was public notice given of the meeting?

*Mr Huskisson's letter has not been considered at a meeting of the Board. The letter was mentioned informally after the Special Board meeting held on 15 November, following delivery of a copy of the letter to all Board members.*

2. Is the proposed 15 year agreement term for the Chance Lane easement driven by the developers, or has it been suggested by the Trust?

*The 15 year term has been requested by the applicant*

3. What legal basis does the Trust have for suggesting in Paper A on the Chance Lane Easement, that interest from capital money such as income from granting easements, can be used to defray general expenses?

*A one off capital payment as consideration for the grant of an easement is not classified as "income". Capital monies received from the grant of easements are covered by Section 7.1 of the 1995 Malvern Hills Act. The Trust's auditors Crowe Clark Whitehill confirmed that such payments form part of the permanent endowment of the charity and in the absence of any express restriction, investment income from the fund can be used for general charitable purposes.*

4. Has the Trust entered into an agreement with Rose Farm partnership over the legal costs of considering the Chance Lane application?

*There is no specific agreement. It is a requirement (set out in the easement policy) that applicants for easements pay legal and other costs related to the application.*

5. How much of the newly identified legal costs associated with the Chance Lane easement will be paid by the applicant?

*None. They do not relate directly to the application.*

6. How much has the Trust spent so far on in-house costs associated with considering the Chance Lane easement application, and how much of this is to be paid by the applicant?

*Staff time spent on the matter is not recorded. Time spent on an application by staff is normally covered by the standard application fee.*

7. How much has the Trust spent in total on legal advice concerning the unresolved dispute over their land adjacent to Chance Lane?

*If this question is referring to the piece of unregistered land east of Rose Farm and adjacent to Chance Lane, £7,469.*

8. How much have the Trust spent on in-house costs associated with the unresolved dispute over their land adjacent to Chance Lane?

*If the question refers to the piece of unregistered land east of Rose Farm and adjacent to Chance Lane, the Trust do not record staff time spent dealing with individual matters.*

9. Was a cost benefit analysis carried out before the Trust's recent Land Acquisitions and what assumptions were made concerning the maintenance costs of the newly acquired land?

*Any parcel of land put forward to Board for consideration for purchase has a full evaluation undertaken in accordance with both the Trust's Land Acquisition Policy and Charity Commission requirements. Maintenance costs identified in relation to sites recently considered included boundary maintenance, tree inspections and any resulting work and in some instances, track maintenance.*

10. What assistance has MHT provided to the RFP to "secure the (Chance Lane) site" as described in the Background section of Playdell Smithyman report ref M16.164.R001 REV D August 2018?

*None. The wording is that of the Applicant's Landscape architect.*

11. How is it consistent of the Trust, who has asserted many times in the context of the Chance Lane easement application that planning matters are beyond their remit, to now consider HoTs involving a 15 year commitment to endorse a developer's S106 agreement?

*There is no "commitment to endorse a developer's s 106 agreement". The Local Authority can require all landowners whose land is the subject of the planning permission to enter into any s 106 agreement. You will note that the Trust's commitment under the Heads of Terms would be limited.*

Questions submitted by Rob Baker

1. What is the current total expenditure on the Charity Commission Scheme to date?

*The updated figure will be reported at the meeting. Legal costs are £104,000 approx.*

2. What is your best estimate of the final expenditure?

*It remains, as reported in the minutes of the last Board meeting, at £145,000*

3. Why was public consultation not carried out before this expenditure was incurred?

*It is not possible to consult the public until such time as there are some proposals to form the basis of the consultation. The review of the 5 Acts of parliament has been time consuming, and it has been necessary to obtain detailed advice on the possible content of the Scheme – to go out to public consultation on matters or options that may be outside its scope would be pointless.*

4. Why are you engaging consultants, with a budget of £20,000, to conduct the 'public consultation' after you have committed to this huge financial outlay?

*The sum of £20,000 is a contingency fund set aside to cover all costs of the public consultation including room hire, printing, publicity and additional staff requirements. Only a small proportion (£4k) of the budget is for the engagement of consultants.*

5. What purpose will a 'public consultation' serve other than to inform precept payers what you have already decided at great public expense?

*This question is based on a misunderstanding of the nature of a consultation. The consultation will gather public responses to the various options and proposals and these will be fully considered and the draft amended to reflect the ideas and concerns raised where appropriate. A public consultation is a normal part of a Charity Commission Scheme.*

6. What benefits will be gained by precept payers from the Charity Commission Scheme?
7. Why do you need to increase your powers to manage the hills and commons?
8. How will the scheme enable better management of the hills and commons?

*It is impossible to fully answer these questions as part of the public questions section of this meeting. Please refer to the minutes and papers of the Governance Committee and the Board meetings since October 2016. In broad terms, the Trust's ability to manage its land and to raise funds has been thwarted by the limitations of the governing Acts as identified over many years. To broaden these powers will enable the Trust better to fulfil its charitable objectives. The proposed changes will also enable the Trust to be managed in accordance with current best practice.*

*The public consultation will include full explanation of the reasons behind the changes to the powers which are being proposed, how the scheme will enable better management of the hills, and the benefits it will give both the precept payers and the wider public.*

9. How many years of fundraising do you anticipate it will require to recover the cost of the Charity Commission Scheme?

*There are no plans to fundraise specifically to cover the cost of the Scheme.*

10. Will you be allocating a further budget for fundraising?



*Further fundraising budgets may be set by the Board in the future.*

11. Why should you continue to receive a precept?

*The entitlement to precept is set out in the Acts. The Trust manages 1800 ha of land which is freely available for the use of the public and from which the residents of Malvern and surrounding parishes benefit.*

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