ANDREW MYATT

SUBMISSION FOR THE MALVERN HILLS BILL COMMITTEE

HEARING 17 MARCH 2026

Introduction

1. My petition raised a number of specific concerns in relation to clauses within the Bill. In response to the information presented during the progress of the Bill I have for certain clauses adjusted the remedy I seek with respect to that indicated in my Petition.

2. However, before addressing those individual provisions and associated remedy it is necessary to identify the constitutional question that sits at the heart of Clause 8.

3. The Malvern Hills Conservators were not constituted as a charity. The Malvern Hills Act 1884 established a representative body in which the governance of the Hills was deliberately shared between those with historic rights, those living locally and those contributing financially to their preservation. That settlement has evolved over time, most notably through the 1924 Act, which expanded representation to local authorities, it has never the less remained representative.

4. When the inland revenue agreed to treat the Conservators as a charity for income tax purposes in 1963, it commanded no more than a paragraph in a committee minute. However, in the last 10 years charity status of this levy raising public body has morphed such that it is represented to your Lordships committee that the Trust has always been a Charity and never representative or democratic.

5. Many of the concerns raised in my petition arise out of this issue. Whilst there are aspects of this Bill which could be beneficial, the flaws in the promoters understanding of their origin and the resulting drafting of the Bill mean that piece meal amendment is unsatisfactory.

6. I ask the Committee to return the Bill to the promoter for further public consultation and review.

7. However, should the committee take the view that the Bill should proceed I propose amendments intended to confirm in statute the representative character of the Trust, and to ensure transparency in governance, and to prevent an undue concentration of control.

<u>Clause 8 – The Constitution of Trust</u>

<u>The Foundations</u>

8. On day one of your committee sitting, Ms Lean for the promoter referred to the "*excellent*" book written by Pamela Hurle in the early 1980s, *The Malvern Hills: A Hundred Years of Conservation*, which traces the first 100 years of the Malvern Hills Conservators.

9. In referencing the book Ms Lean rightly celebrated the "*achievement of the promoters of that first Bill, the 1884 Act, as significant and remarkable, particularly given the background of, on the one hand, seeking to secure public rights to enjoy the Malvern Hills, and, on the other, doing so without depriving landowners and commoners of their customary rights*".

10. I think it useful if the committee are briefly taken to the immediate period leading up to 1884. My information comes from Ms Hurles book, a recent review of the Trusts archive and *The Times* newspaper archive.

    a. In 1858 a committee of freeholders, tenants and commoners was formed to respond to increasing encroachments on the Hills. The principal encroaching interest was the Manor of Malvern itself, under Lady Foley, the committee lacked the authority to challenge that power.

    b. In 1876 the Malvern Hills Preservation Committee was set up in a renewed effort to protect the hills.

    c. In 1882 the Preservation Committee drafted a Parliamentary Bill. This sought to set aside areas for recreation by focus on the rights of the Manor. It also proposed a constitution where representation was in proportion to taxation. In doing this it failed to adequately address the ancient rights of commoners and freeholders, and as a result, the bill failed and left considerable ill feeling among freeholders, tenants and commoners.

d. In November 1882 a new group led by Stephen Ballard and Robert Raper invited Freeholders, Tenants and Commoners to a public meeting, and published a document outlining the history of the Malvern common Land and the challenges that manorial rights in the form of Lady Foley and others presented to preventing enclosure. At this meeting a Commoners Committee that included Ballard and Raper was established.

e. The Preservation Committee had ill feeling towards their 'opponents' the Commoners Committee and they declined to become involved in that committee. However, at a meeting of the Commoners Committee of 10 September 1883, the Preservation Committee did provide a deputation and made suggestions for amendment of their draft Bill. The minutes of that meeting makes note of four proposed amendments, the second being[1]: "**That a larger representation on the Board of Conservators should be given to Great Malvern in consideration of the large proportion of expense to be borne by that parish.**"

f. At the Commoners Committees meeting of 20 September 1883, a formal decision was recorded "***that a committee be appointed to take the proposed steps for the passing of the Bill through Parliament***"

g. By the end of 1883 the Bill had been introduced to Parliament and there is an exchange in *The Times*, which provides its readers with the background to the new bill and the reasons for the previous Bill's failure. In a long piece 'A Correspondent' provides a clear history of the issues and comments [2] "***The inequality of the representation and the omission of the large, important, and valuable manor of Malvern were fatal.".." The proposal of the Bill had only to be understood to be rejected, not only by the freeholder and commoners of the rural parishes, but by the inhabitants of Malvern themselves, who most earnestly desired an***

[1] Exhibit Page E1-E5, Commoners Committee Minutes – September 1883

[2] Exhibit Page E6-E10, The Times – 16 January 1884 THE PRESERVATION OF MALVERN HILLS

authority to check encroachments within their own manor, it being found that what is everybody's business is nobody's."

h. A subsequent letter to the editor published a few days later from a member of the Preservation Committee highlight the earlier tax payer model and bemoaned the influence that the commoners will have.[3] "***Taxation and representation should, it is generally thought, be proportionate, and hence to Great Malvern was assigned a preponderating voice on the body of Conservators which the Bill proposed to constitute****.*"

i. By August 1884 the 1884 Act had received royal assent. The minute book of Commoners Committee of 2 August 1884, records the achievement and includes a newspaper cutting of the committees' report dated 30 July 1884 which is pasted into the minutes [4]. The report records the five main principles of the Bill, principle two states: ***"That the Ratepayers of all the parishes contributing Common Land be fairly represented on the Board of Conservators, which will have to make and administer bye-laws affecting the land contributed."*** In this they are highlighting the broader representative model, one that balances tax, and land under management and subject to by-laws.

j. The minute goes on to state: ***"The Committee propose to take immediate steps to procure the election and appointment of Conservators in accordance with the provisions of the Act. Also that the Ecclesiastical Commissioners, Mr Hornyold, Mr Bright and Mr Ballard be requested to appoint their representatives."***

11. It is my submission that this material provides clear evidence that Malvern Hills Conservators were constituted as a representative body, and further that the nature of that representation was consciously debated during the formation of the 1884 Act, with a clear linkage between taxation, land contribution and representation. Representation was not incidental to the 1884 Act; it was foundational.

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[3] Exhibit Page E11-E13, The Times 24 January 1884 THE MALVERN HILLS TO THE EDITOR OF THE TIMES

[4] Exhibit Page E14 – E20, Minutes August 1884 Malvern Hills Commoners' Committee

12. The Malvern Hills Act 1909 extended the levy paying area to cover Guarlford, Malvern Link, and Malvern Wells. Representation was adjusted accordingly. The representative character of the Conservators therefore did not alter.

13. The Malvern Hills Act 1924 introduced a further constitutional development. It enabled the purchase of manorial rights and lands previously held by ancient manorial and land-owning interests. As a consequence, the historic representation of these interests on the Board ceased to be necessary.

14. This change required the active support of the surrounding local authorities. This reflected their stake in the Hills and was resulted in a restructuring of representation on the Board. As Ms Hurle records in her book (p.83): "***The Board of Conservators was reconstituted in order to give proper representation to those who were actually going to pay for the Conservators' work - the ratepayers. This meant that two significant things happened. Firstly, there would be no separate representation for the traditional manorial interests, which would come into the hands of the Conservators once they purchased manorial rights. The only exception to this rule was the Ecclesiastical Commissioners who retained one representative on the Board, which seems no more than just in view of the fact that they had made over nearly three hundred acres to the Board for a nominal sum. Their voice on the Board was actually a fairly quiet one for the other significant thing to happen was that the number of Conservators was increased from the 18 of the 1909 Act to no less than 25, and of these only 10 were to continue to be directly elected by the ratepayers of Malvern, Guarlford, Colwall and Mathon. The other 15 were to be nominated: one chosen by the Ecclesiastical Commissioners and 14 by the local councils***."

15. This passage details that the restructuring introduced by the 1924 Act did not diminish the representative character of the Conservators. Rather, it updated the form of representation to reflect the changing basis of contribution. Representation shifted from landholding interests to civic representation through local authorities acting on behalf of ratepayers.

16. It is my submission that the later Acts did not alter the representative character of the Malvern Hills Conservators. They adapted to reflect changing patterns of contribution and governance, but the underlying constitutional principle remained the same.

Evidence of Charity – 1960's

17. I have reviewed the indexes on the Conservators minute books between the period 1884 to 1962 and have found no reference to charitable status.

18. In the minute of 12 November 1962, there is an entry[5] item 2(3), there is an item reported to the Board from the Finance Legal and Parliamentary Committee. It states: *"**The Financial Officer was in correspondence with the Inland Revenue over the designation of the Board as a Charitable Organisation.**"*

19. In the minute of 11 March 1963, there is an entry in a report to the Board from the Finance Legal and Parliamentary Committee. It states item 4(b): [6] *"**The Financial Officer advised the Committee that he had received confirmation from the Inspector of Taxes that the Conservators would now be recognised as a Charity for Income Tax Purposes. Mr Nash said the Committee appreciated the work which Mr Williams had done in this connection and asked to have the Committee's appreciation recorded.**"*

20. It is my submission that recognition as a Charity was only in the context of income tax designation, and it was not a considered constitutional redefinition.

21. The full Minutes of 11 March 1963 [7] are worthy of the Committees review in their entirety. They demonstrate the Conservators operated as a Board member-led organisation. Board meetings being held monthly (with the exception of August) and supported by regular committees. They had the services of a clerk. A high level of operational decision-making is made in committees, with authority flowing directly from resolution to implementation.

22. The minute records efficient and effective conduct of business. Business that takes place under essentially the same statutory constitution that Ms Satchell, in her evidence to this Committee on 4 February described as "messy". It also without the need for expert (Trustee) board members.

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[5] Exhibit Page E21, Page 217, Malvern Hills Conservators Board Minutes 12 November 1962

[6] Exhibit Page E30 Single Page Conservators Board Minutes 11 March 1963

[7] Exhibit Pages E22 - E33 Conservators Board Minutes 11 March 1963

Transition to a Charity first identity

23. The Minutes[8] of 10 November 2011 illustrate that despite increasing professionalisation, the Board remained the focus of sovereign statutory authority. At item 4 & 5 of the Inquiry Committee Report (Exhibit Page E37) there is reference to seeking support from the Charity Commission with regards to an inquiry into St Ann's Well.

24. As a Board member from 2003 to September 2011, I can confirm that during this time, whilst members were aware of the charity status - it was required to provide personal details to the Charity Commission – beyond this it was a secondary identity and was referenced no more than twice otherwise in my time on that Board.

25. However, the Minutes[9] of 19 March 2019 indicates (Exhibit pages E62 to E63) an inflection point where it is recorded that trustees are expressly reminded that they are not representatives of those who appoint them. "***The overriding duty was to act solely and exclusively in the best interests of the Trust and its charitable purposes and trustees were not the representatives of those who appointed them to the Board."***

26. The minute records significant contention regarding the application of Charity Commission guidance on conflicts of interest, particularly in relation to board members nominated by local authorities.

27. At the bottom of Exhibit pages E56 to E57 the chair (Mr Freeman) has an exchange of views with Mr Hall-Jones – who was Chair of the Conservators in the period leading up to the 1995 Act: **"*Mr Freeman pointed out that Mrs O'Donnell could not vote in relation to Mr O'Donnell's potential conflict of interest as she was a connected person. Mr Hall-Jones stated it was absurd to put district councillors in this position – there was no planning application. Had it been expected that district councillors would not be able to participate, the Acts would have so provided. Mr Freeman said that since the Acts were passed, MHT had become a registered charity and the meeting would be conducted in accordance with the recommendations and conflict's guidance of the Charity Commission."***

[8] Exhibit Pages E34 – E54 Conservators Board Minutes 10 November 2011

[9] Exhibit Pages E55 - E75 Conservator Board Minutes Tuesday 19 March 2019

28. The progression is clear. A representative statutory body, created in 1884, continuing in operational form well into the twentieth century, engaged with charitable recognition for tax purposes and has gradually been reoriented over the last 10 years toward an organisation that now presents itself to be a charity without regard to the anything other than its objects.

29. As postscript to this, the Trust in their 2023 s74 application to the Charity Commission[10], did implicitly acknowledge the representation settlement under section 7 (Exhibit page E 87) in that there was association between the levy payment with Electoral representation.

> 7.4.6 The trustees' view is that whilst it would be fairer to extend the levy, it is likely to prove controversial.
>
> 7.4.7 If the levy paying area is extended, the electoral area would likewise need to be extended.

Constitutional and Organisational Risk

30. Under the proposed Bill, even as amended, the practical role of elected Trustees risks becoming little more than a conduit for communication with electors. The governing framework would instead be defined primarily as a charity. In consequence, the representative character of the Conservators would become materially different from that envisaged under the Malvern Hills Acts of 1884, 1909, 1924, 1930 and 1995.

31. Your Lordships may therefore wish to consider if this shift is constitutionally coherent.

    (a) Can the Bill properly proceed on the assertion that the Trust is principally a modern charity rather than the representative public body that Parliament originally established?

    (b) If the Bill proceeds on that basis, should Parliament not first consciously address the implications of such a shift?

    (c) Can an organisation which is no longer meaningfully representative retain legitimacy when exercising coercive statutory powers, including the making and enforcement of byelaws and the levying of a statutory charge upon a defined area?

[10] Exhibit Pages E78 – E99 Application for Consent under s74 of charities Act 22 May 2023

(d) In practical terms, is it realistic to expect local elected trustees not to seek to represent those who elect them? If the constitutional framework declines to recognise that representative function, does it risk placing the Trust and dissenting trustees in a position of continual governance tension and reputational difficulty?

<u>Remedy and Amendment</u>

32. This Bill has brought to the head a clear tension between representation and charity, made more important as a statutory levy is involved. The Bill needs amending to clearly acknowledge and preserve the representative constitution.

33. It would be open to Parliament to amend the Bill so as to confirm the Malvern Hills Conservators as a public statutory body and to remove it from the Charity Register.

34. Alternatively, recognising that Charity Commission guidance is generally framed for the normal case of charities, the Bill could be amended to assist the Charity Commission in understanding the Trust's almost unique statutory and representative character. In that context, the objects under Clause 6 could be amended to make clear the pre-existing representative obligations arising from the current Acts and their relationship to levy payments.

35. Amend Clause 6 Subclause (1) Add (c) *in pursuing these objects, to have regard to the interests of those members of the public who contribute to the Trust through the statutory levy and who are represented in its governance under the Malvern Hills Acts.*

36. The Trust's elected and nominated trustees should therefore reflect defined constituencies and appointing bodies. This representative character should not, of itself, be treated as conflicting with the duty of trustees to act in the best interests of the charitable objects.

37. In either case, a body with the power to levy a statutory charge should not be reliant upon the availability of unpaid expertise in order to discharge its governance responsibilities. Professional expertise should instead be obtained through officers, advisory mechanisms, or co-opted advisers, without requiring the creation of unrepresentative appointed trustees.

38. The following Board composition is proposed, elections to be on a basis of one Trustee to one Electoral area.

Parish/Ward	No of Electors (2025)	Elected Trustee	Nominated Trustees
Chase Ward	5117	1	
Colwall/Mathon	2036 + 241	1	
Dyson Perrins	3509	1	
Malvern Link Ward	4992	1	
Pickersleigh / Guarlford	4461 + 207	1	
Priory Ward	3243	1	
Malvern Wells	2463	1	
West Malvern Ward	3196	1	
Worcester County Council			1
Malvern Hills District Council			1
Herefordshire Unitary Authority			1
Malvern Town Council			1
Total		8	4

39. Provision should be made to adjust representation in the event of levy area expansion. With Secretary of State approval where the levy-paying area is extended to encompass existing land holdings, the number of elected members should be capable of adjustment so as to maintain broadly comparable elector-to-member ratios.

40. Similarly, where new land is acquired within the existing nine-mile statutory radius, with Secretary of State approval, such expansion should be accompanied by a corresponding increase in the levy paying area and an increase in elected representation to preserve proportional accountability.

<u>Clause 9 – Trustees' terms in office.</u>

41. It is accepted that the Committee's consideration of this clause will be influenced by its view as to whether the Trust should properly be regarded as a representative statutory body.

42. It is submitted that statutory term limits for elected trustees are inconsistent with a representative model. Where there is a body exercises levy-raising and bye-law powers affecting defined electors, the electorate should remain free to determine who represents them without artificial statutory restriction, and therefore Clause 9 is not required. The same is true of nominated Trustees from local authorities in the proposed representative model.

43. Significant experience and knowledge built-up over years of service will be lost as a result of an enforced limit. Term limits also have the effect of increasing the power and influence of the executive.

Remedy

44. The Bill defines appointed members as trustees who bring special knowledge, experience or ability. It is not unreasonable to expect these experts to transfer their knowledge into the Trust. The Bill should be amended so that appointed members terms are restricted. A shorter period than elected members would counter undue influence, but sufficient time to provide knowledge and experience. A two-term limit, provides a total period on the board of six year for when an appointed member proves to be an exceptional expert.

Amendments

45. Given the scale of those drafting changes, the detailed wording is not set out here, but the principle as set out above. For a representative body the Bill should provide for:
   i. The terms of office for all Trustees be four years.
   ii. There be no limit to the number of terms that a Trustee may serve.

46. For a non-representative body, the Bill should provide for:
   i. The term of office for elected Trustees be four years.
   ii. The term of office for appointed Trustees be three years
   iii. There be a two-term limit for appointed Trustees, with a year's gap before being eligible for further appointment or election.
   iv. For appointed Trustee filling a casual vacancy the first term would not count if it is shorter than a year.

<u>Clause 14 – The requirements and process for appointment of trustees.</u>

47. It is accepted that the Committee's consideration of this clause will be influenced by its view as to whether the Trust should properly be regarded as a representative statutory body, if the arguments in relation to Clause 8 are accepted, Clause 14 can be dispensed with.

48. This Clause introduces a regime for appointing trustees. Whilst the clause requires appointments to be made on merit and in accordance with a published recruitment policy, subclause 3 provides that the trustees must have regard to the recommendation of the Nomination Committee and may only reject such recommendation by passing a special resolution. This elevates the status of the Nomination Committee beyond that of an advisory body and constrains the full Board's discretion.

<u>Remedy</u>

49. The Nominations Committees should advise. Requiring a special resolution to reject a recommendation effectively reverses the ordinary hierarchy of authority. It places practical control in the hands of the Nominations committee and makes Board rejection exceptional and procedurally onerous.

50. There is also a significant disparity between the eligibility requirements for elected trustees and those for appointed trustees. Elected trustees must satisfy several conditions before taking office. They must live or work within the Malvern Hills wards, they must be nominated by two individuals listed on the register of electors, and they must then secure election by the electorate in preference to other candidates.

51. No comparable requirements apply to appointed trustees. An appointed trustee could reside anywhere and need have no geographical connection with the Malvern Hills or be impacted by the Trust's decisions.

52. Appointed trustees should satisfy a similar geographic connection requirement to that applied to elected trustees, whether by residence, or place of work. This would not prevent the appointment of individuals with specialist expertise, but it would ensure that those appointed also retain an understanding of the local context within which the Trust operates.

Amendments

53. Replace at subclause (3): “may only reject a recommendation for an appointment by passing a special resolution” with: “may reject a recommendation for an appointment by resolution of the trustees”

54. Replace subclause (4)(b): “the Nomination Committee must make a further recommendation” with: “the Nomination Committee may make a further recommendation”

Add to subsection (2): “(c) the person is listed in the register of local government electors and their address in the register is –

i. in a parish or former parish area in which any part of the Malvern Hills is located, or
ii. (if not included in sub-paragraph (i)) within one mile of the boundary of any parish or former parish area in which any part of the Malvern Hills is located, or

(d) the person’s main place of work is in a parish or former parish area in which any part of the Malvern Hills is located.”

Clause 15 – The constitution of the Nomination Committee

55. It is accepted that the Committee’s consideration of this clause will be influenced by its view as to whether the Trust should properly be regarded as a representative statutory body, if the arguments in relation to Clause 8 are accepted, Clause 15 can be dispensed with.

Constitution

56. Clause 15 sets out the constitution of the Nomination Committee with authority to recommend candidates for appointment as appointed trustees and interim appointed trustees.

57. The structure adopted for the Nomination committee materially influences the balance of authority within the Trust. The Bill sets out a Nomination committee comprised of five members, only two of whom are trustees. Two are “independent members” who must not be trustees, former trustees, employees, or individuals entitled to vote in trustee

elections. The fifth member is the Chief Executive in an advisory capacity.

58. While the Board retains formal appointment power, Clause 14 requires that a recommendation of the Nomination Committee may only be rejected by special resolution. This elevates the status of the Committee beyond that of a purely advisory body and creates a procedural presumption in favour of its recommendation.

59. In a body exercising statutory levy-raising and bye-law powers it is constitutionally significant that the gatekeeping function for appointed trustees be placed in a structure insulated from the electorate and under the oversight of the executive.

Remedy

60. Additional safeguards are required to guard against executive influence. To this end the composition of the committee should be revised so that it contains no appointed trustees rather three elected Trustees.

61. Former employee and contractors working in staff replacement roles should not be eligible as independent members. Whereas the exclusion of the current electors, unnecessarily detaches the committee from the community an should be allowed.

62. Given the influence that independent members have there should also be a cooling off period before Independent Members become eligible to become Appointed Trustees.

63. Additionally, should the Nominations committee not be able to functional as allowed for in subclauses 9 and 10 appointed Trustee roles should revert to being elected.

Amendments

64. The following amendments are proposed.

    i. Amend subclause (2), There be six members of the Committee, the CEO in an Advisory capacity, three elected Trustees, and two Independent Members.

    ii. Amend subsection (4) The Independent members should not be:

        1. A Trustee
        2. A former Trustee
        3. An individual who has been elected or appointed and not taken up their post
        4. A current employee or contractor working under the direction of the Trust.

5. A former employee or contractor working under the direction of the Trust.

i. Amend subclause (4) Independent members are not eligible to become appointed Trustees for three full years after resigning from the Nominations Committee.

ii. Amend subclause (5) In appointing an independent members trustees must take account of the candidate's connection to the Hills and local area.

iii. Amend subclause (8) The chief executive or the person who holder that equivalent role.

iv. Amend subclause (9) should the Trustees conclude that they are unable to establish or maintain the Nominations committee then the vacant Trustee role must be filled as if an elected Trustee for that term.

Clause 20 – Ordinary Elections

65. It is accepted that the Committee's consideration of this clause will be influenced by its view as to whether the Trust should properly be regarded as a representative statutory body.

66. The Bill proposes staggered elections every two years, with three of the six elected trustees standing at each cycle.

67. This structure has the effect of dividing and diluting the electoral mandate of the elected cohort. At any given time, half of the elected trustees will not be subject to election, meaning the electorate is unable to express a clear view on the direction of the Trust through a single election.

68. For a body exercising levy-raising powers and regulatory authority over land, accountability is important. A single election cycle allows the electorate to determine the composition of the elected trustees in a coherent way.

69. A four-year cycle for all elected trustees would align more closely with representative local government practice, provide sufficient continuity of governance, and avoid the

need for perpetual campaigning and repeated electoral administration.

70. The Bill also proposes a list-of-candidates approach. While the Promoters seeks this to create a single electoral area to, it also creates a degree of electoral inertia. Candidates have frequent opportunities to be elected. In practice this means a candidate who has not been elected by voters may nonetheless stand again in two years through subsequent cycles.

71. There should be a single four-year election cycle for all elected trustees.

Amendment

72. Given the scale of those drafting changes, the detailed wording is not set out here, but the principle as set out above.

73. Bill should provide for:
    i. All elected trustees to be elected on a single four-year electoral cycle, with elections for all elected trustee positions held at the same time.
    ii. The provisions of Clauses 19, which provide for staggered elections, would also require amendment to give effect to this change.

Clause 24 – Methods and rule on conduct of elections

74. It is accepted that the Committee's consideration of this clause will be influenced by its view as to whether the Trust should properly be regarded as a representative statutory body.

Election Rules

75. Clause 24 provides the framework for the electoral arrangements for the Trust. It dispenses with elections under the provisions of the Local Government Act and provides for the Trust to defined their own rules using a combination of postal and electronic voting as they think fit.

76. The effect of the clause is that the core rules governing the Trust's electoral process are not defined in the legislation. Additionally, the electoral rules that the Trust defines will

not be subject to any external review or approval.

77. As the Trust exercises considerable statutory powers to by-law and raise a levy the legitimacy of those powers depends in part upon the integrity of the electoral (and appointment) process.

78. I submit that such matters should be defined in legislation and subject to statutory safeguards rather than left to internal rule-making by the body.

79. On the 10 February Ms Satchel for the promoter suggested that elections for the Trust go uncontested through lack of engagement. By way of example, and it talks to election process, the Committee may wish to consider the circumstances of the election through which I became a Trustees in September 2025.

80. The election was announced via the Trust's Facebook page on Wednesday 13 August 2025[11]. Nominations opened the same day. The announcement was subsequently published on the Trust's website on Friday 15 August 2025. Nominations closed on Thursday 21 August 2025, with the election itself held on 18 September 2025.

81. The period between the public announcement of the election and the close of nominations was five working days. This is insufficient for coverage or notice of the election to appear in the two local Malvern newspapers.

82. Whilst I do not seek to question the reasons why this timetable was adopted, it is difficult to rely on uncontested elections as evidence of a lack of public engagement where the window for nominations is so limited.

83. In my submission, the Bill should provide for a minimum period of one month between the public announcement of an election and the close of nominations. Such a period would allow potential candidates to reflect, seek nomination, and present themselves to the electorate.

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[11] Exhibit E76-77 15 August 2025 OPPORTUNITY TO JOIN THE BOARD…

84. The Bills should also require the Trust to defined election rules that take due regard of statutory principles of representation and conduct of elections. The defined rules might not import the entire framework of local government election law but would ensure that elections are conducted to an appropriate democratic standard.

85. Additional there should be provision for external body review and approval of the Trusts defined election rules.

Candidate Communication with Electors

86. A further practical issue arises from the geographical scale of the Trust's proposed single electoral area. Elections for the Trust, as set out currently in the Bill, will spans several wards and a significant geographic area. It will therefore become impractical for candidates to individually deliver printed election material to all electors.

87. Without an effective mechanism for communicating with electors, there is a risk that candidates will not stand and elections become disconnected from the electorate they are seeking to be elected by.

88. To ensure fair communication with electors, the Trust should be required to distribute a single election communication for each candidate. Candidates would remain responsible for producing and printing their material and supplying it to the Trust for distribution. This approach is consistent with practices used in other public elections where the electoral authority distributes candidate addresses.

89. The Trust should also be required to publish information about candidates, including:
    - the names of candidates;
    - brief information regarding their background or experience; and
    - links to further candidate information where available.
    - This information should be published on the Trust's website and through other appropriate channels.

90. With regard to the process for the September 2025 election, the Trust edited the candidate statement I submitted, on the basis that it disagreed with the content provided. The Trust also organised information events in the wards where elections were taking place. These actions raise an important question regarding the institutional neutrality of the Trust during elections.

91. Except where material is unlawful or defamatory, the Trust should not have the authority to alter candidate statements or refuse to distribute election materials submitted by candidates.

92. Maintaining this distinction is important to ensure that the Trust acts solely as a neutral administrator of the electoral process, rather than as a participant in it.

<u>Amendments</u>

93. Given the scale of drafting changes, the detailed wording is not set out here, but the principle as set out. Bill should provide for:

i. Elections to take place and conducted in accordance rules which have due regard for the principals set out in the Representation of the People Act, and the Local government Act, and should include:
    1. provision for both in-person and postal voting;
    2. appointment of an independent returning officer;
    3. clear and transparent nomination procedures;
    4. a defined election timetable;
    5. transparency of election expenses;
    6. the ability to challenge an election result (as covered already in clause 26); and
    7. a defined purdah period to ensure institutional neutrality.

ii. The Trust must distribute to electors one election communication for each validly nominated candidate. Candidates shall be responsible for preparing and printing their election communication and supplying it to the Trust for distribution.

iii. The Trust must publish on its website, and by such other means as it considers appropriate, the names of candidates together with brief information regarding their background or experience and links to further candidate information where available.

iv. Except where material is unlawful or defamatory, the Trust must not alter, edit, refuse to distribute, or otherwise interfere with candidate statements or election communications.

Clause 34 – Use of capital money and income

Clarification

94. Clause 34 allows capital receipts from disposal of land or interests to be applied to repayment of borrowing both capital and operational debt or any proper capital purpose.

95. It is unclear and should be confirmed if the existing Land Purchase (1992) fund, which hold the remains of the receipt from the 1992 land exchange, falls beyond the scope of capital from disposal of land and interest for the purposes of this clause.

96. It should also be confirmed that this clause does not apply to money received in relation to special funds resulting from Existing Relevant Land disposal, as set out in clause 72, subclause (2)(b).

97. It should also be confirmed if this clause can only be used in relation to capital released from the sale of Ancillary Land.

98. If it were permitted that capital money received from land disposals to be spent broadly, albeit by first incurring operational debt, the integrity and protection of the Malvern Hill is undermined. It also weakens the security of levy payers' historic investment in the land.

Clause 35 – Borrowing and Granting Securities

99. The current Malvern Hills Acts provide the Conservators with powers to borrow money for the purposes of the Acts or for purposes authorised by specific subsequent legislation.

100. Historically these borrowing powers were closely linked to land acquisition. In particular, borrowing was permitted in order to finance the purchase of additional land to be incorporated into the Hills, with the borrowing typically secured against the newly acquired land.

101. Importantly, the current Acts required approval from the Secretary of State for borrowing, providing an external safeguard in relation to the financial encumbrance of land held for public benefit.

102. The Bill alters this framework in two significant ways. First, the borrowing power is now framed more broadly as applying to the activities of the Trust generally. As the Bill consolidates the various functions of the Trust, the same borrowing language now operates across all Trust activities, rather than being primarily associated with land acquisition.

103. Second, the Bill introduces new powers allowing borrowing to be secured against a much wider category of assets without external approval. In particular, borrowing may be secured against:

- land acquired after commencement of the Bill;
- existing Ancillary Land held by the Trust; and
- the revenues of the Trust, including levy income.

104. Secretary of State approval is only required where borrowing is secured against the existing Malvern Hills themselves.

105. These provisions represent a significant liberalisation of the Trust's financial autonomy, allowing borrowing to be secured against assets and revenues that were not historically used for that purpose.

106. The Committee may therefore wish to consider whether it remains appropriate for borrowing to be able to be secured against Existing Relevant Land, which forms part of the historic estate held for conservation and public enjoyment.

107. The original Acts were framed on the basis that the Hills were to be preserved as a protected landscape, not treated as financial assets capable of being leveraged for borrowing. Expanding the scope of secured borrowing risks introducing financial pressures that could influence future land management decisions. For that reason, the Bill should not provide for borrowing secured against Existing Relevant Land.

<u>Amendment</u>

108. Amend subclause (4) to read: "The Trust's powers under subsections (2) and (3) do not apply in relation to Existing Relevant Land."

Clause 58 – Car parking

109. This Clause is an existing power to designate areas near highways as paid parking places and charge fees. It was first introduced in the 1930 Act.

110. In considering a Bill presented as modernising and consolidating the statutory framework, the Committee may wish to consider whether the scope of this power should now be more clearly limited in light of modern landscape management and conservation policy. The current wording of Clause 58(1) provides that. “The Trust may set aside any land so set apart…”. This wording places no effective statutory limit on the expansion of parking provision on the Hills.

Limit additional car parking

111. Parking income currently represents a significant proportion of Trust income. Whilst there is no official figure, the current car parking income suggests that there are approximate 66,000 out of area return journey vehicle movements per year, which generates 35% of Trust income. This level of visitor vehicle traffic represents a substantial environmental pressure on the surrounding communities.

112. While current parking charges seek to balance the use of designated car parks against informal verge and wild parking, which can damage the Hills environment, the Bill also introduces new powers elsewhere (including fixed penalty notices) that may discourage this type of parking and further reinforce the financial significance of parking management.

113. The Bill should recognise that there are sufficient car parking spaces, and the Trust should not be seeking to encourage additional people to visit the Malvern Hills by car via increased parking space provision. There is adequate train and bus connections into Malvern, and those seeking to cycle on the Hills should also be cycling between home and the Hills.

114. Where parking areas become under-utilised, the Trust should instead have the ability to restore those areas to their natural landscape condition and, if necessary, reallocate capacity within existing parking provision.

Amendment

115. Add sub-section, 58 (6) “From the commencement of this Act, the total area of the Malvern Hills set apart for parking places for vehicles shall not be increased. The Trust may vary the distribution of parking capacity between parking places within the Malvern Hills provided that any parking area no longer required is first restored to a natural conservation state.”

116. Amend subsection to add, 58 (1) “Subject to subsection (6), the Trust may set aside land for parking places for vehicles.”

Clause 63 – Licensing of activities

117. This clause has been substantially revised in the second version of the Filled Bill. The concern with Clause 63 is not the absence of control mechanisms, but the institutional incentive that the clause creates.

118. The clause establishes an explicit framework under which events may be licensed and fees charged. While this may be proposed as a means to regulate organised activities, it also has the effect of normalising and institutionalising event licensing as a function of the Trust.

119. Once such a framework exists, there is a natural tendency for licensing powers to evolve into a source of revenue. Where a body has both the power to grant permissions and the ability to charge for them, this can create a structural incentive to increase the number or scale of licensed activities.

120. The Malvern Hills are not venues for commercial event activity; the concern is that this clause creates a framework that may encourage the Trust to regard the Hills as a location for licensed events in order to generate income.

Administrative Burden and Implicit Liability

121. In their evidence the Trust indicated that the types of activities anticipated under the licensing framework would range from relatively small organised events to large ones, with birthday parties given as an example. If activities of this nature require formal

licensing, it follows that a potentially large number of small events may fall within the scope of the regime.

122. This raises concerns about the administrative burden that such a system would place upon the Trust. The need to process and oversee a high volume of licences risks creating a significant internal administrative function within the Trust, with the associated costs ultimately falling upon levy payers.

123. A further issue arises in relation to liability. If organised activities require formal licences from the Trust, the Trust may reasonably be expected to take responsibility for identifying and managing potential conflicts between events, or between organised activities and other users of the Hills. A failure to manage such conflicts could expose the Trust to claims from event organisers who have relied upon the licence granted.

<u>Remedy</u>

124. The exercise of this power should be tied to the Trust's statutory and charitable objects, such that licensing operates as a regulatory and conservation mechanism rather than a revenue-generating activity.

125. Given the historic and environmental importance of the Malvern Hills, the exercise of licensing powers should be transparent and capable of historic review. Licensing decisions may affect public access, landscape conservation and local communities. A clear record of the exercise of these powers is therefore be appropriate.

<u>Amendment</u>

126. Amend clause to read, 63 (1) "*The Trust may* ***with due regard for the objects*** *issue licences for the use of the Malvern Hills for specified purposes including uses which would otherwise be in breach of byelaws made under section 65.*"

127. Add sub-section, 63 (8) "*The Trust must publish notice of the license and keep a record of the exercise of the power in subsection (1) and the record must set out—*

(a) Date of License Issue
(b) Details of License
(c) Justification relative Trust objects
(d) Conservation impact assessment
(e) Levy Payer and Local resident impact assessment
(f) *License charge*"

128. Add sub-section, 63 (9) *“Records kept under subsection (8) must be retained permanently by the Trust.”*

Clause 79 – Notice of quarrying

129. This clause establishes the consultation process that must be undertaken before any application for quarrying on the Malvern Hills may proceed.

130. The Bill is presented by the Promoter as a consolidating and modernising measure. Future quarrying of the Malvern Hills is neither anticipated nor proposed. In these circumstances it is difficult to justify the continued inclusion of a statutory framework regulating quarrying activity. Retaining a procedure to commence quarrying implicitly preserves a power which is inconsistent with the Trust’s modern conservation role and with the protected status of the Hills.

131. If quarrying is no longer contemplated as an activity on the Hills, the appropriate legislative approach should prohibit it outright, rather than retain procedures governing its potential exercise.

Amendment

132. Amend the clause in entirety to read, 79 (1) “Quarrying is prohibited within the Malvern Hills.”

133. Alternatively, the committee might consider that a prohibition on quarrying should be limited to Existing Relevant Land, in this case add a new subclause (4) ““Quarrying is prohibited within the area of Existing Relevant Land.”

Clause 81 – Power for Trust to Use materials

134. This clause has been substantially revised in the second version of the Filled Bill. I understand the intention of the clause is to allow the Trust to utilise materials from the Hills for conservation or maintenance purposes, for example using Malvern Hills sourced stone in path repairs or landscape management.

135. However, the clause introduces several areas of uncertainty and potential risk. The clause refers to extraction of “loose natural material” this term is not defined. It is unclear if it includes lying wood, turf, soil, sand and stone. Given the sensitivity of the landscape and the scope of this power should be clearly defined in legislation rather than left to interpretation.

136. Regarding the quantity of material to be extracted, the Trust informed the Committee on 10 March that it expected that the material required could be removed using nothing more than a shovel and wheelbarrow. That description implies very modest quantities. A limit of 10 cubic metres per year, without carry forward, would therefore appear entirely consistent with the scale of need described.

Use of material outside the Malvern Hills

137. The clause gives the Trust the power to extract such material from the Malvern Hills, but to utilise it “within the Malvern Hills **or other such land in its ownership**”.

138. There is no definition of ‘other such land’, but this could be land which could later be freely disposed of. To protect again loss of such material, materials from the Malvern Hills should only be used on the Malvern Hills.

Record keeping

139. Given the historic significant of an organisation tasked with preservation extracting materials, the records of that extraction should form part of the Trusts historic archive and provide a clear justification for the extraction as well as being available for review by the mineral planning authority.

Amendment

140. Amend subclause (2)(b) to remove “or other such land in its ownership”.

141. Amend subclause (3) “The maximum amount of material that can be extracted or taken by the Trust under subsection (1) in a calendar year is 10 cubic metres.”

142. Delete subclause 4.

143. Add to subclause (5A) the sections:

"(c) the location of the extraction,

(d) the justification for the extraction,

(e) the location of use"

144. Amend subclause(5B) to "Records kept under subsection (5A) must be retained permanently and must be made available for inspection on reasonable request by the mineral planning authority"

Exhibit Pages

E1 to E5	Malvern Hills Commoners Committee Minutes, 10 September 1883
E6 to E10	The Times, 16 January 1884, THE PRESERVATION OF MALVERN HILLS
E11 to E13	The Times, 24 January 1884, THE MALVERN HILLS LETTER TO THE EDITOR OF THE TIMES
E14 to E20	Malvern Hills Commoners Committee Minutes, 4 August 1884
E21	Single page, Malvern Hills Conservators Minutes, 12 November 1962
E22 to E33	Malvern Hills Conservators Minutes, 11 March 1963
E34 to E54	Malvern Hills Conservators Minutes, 10 November 2011
E55 to E75	Malvern Hills Conservators Minutes, Tuesday 19 March 2019
E76 to E77	Trust Web site, OPPORTUNITY TO JOIN THE BOARD…15 August 2025
E78 to E99	Application for consent under s74 MHT May 2023 (Trusts own redaction)