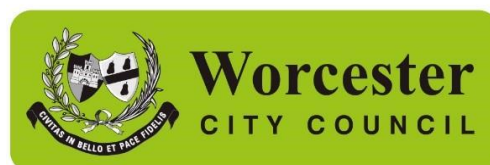


Briefing Note on the Malvern Hills Acts

South Worcestershire Councils

August 2024



1. Introduction

- 1.1. This briefing note has been prepared to provide an overview of the scope of the Malvern Hills Acts and their potential effect upon development and the provision of infrastructure as proposed in the South Worcestershire Development Plan Review.
- 1.2. By 1875 Malvern's development had encroached considerably on the commons at the foot of the Malvern Hills. Local residents and the Commons Society sought to preserve the Hills and Common land from further encroachment and fencing off by landowners. In 1884, the first Malvern Hills Act was enacted which provided for the appointment of local people to be guardians of the Malvern Hills, known as the 'Malvern Hills Conservators' (now called the Malvern Hills Trust) and placed approximately 500 acres (202 ha) of land under their jurisdiction. Today, some 2,965 acres (1,200 ha) of land is under the ownership and management of the Malvern Hills Trust.
- 1.3. The Malvern Hills Trust is a statutory body, created by an act of Parliament and reliant on that act, and subsequent acts, for its powers and duties. It is also a body corporate, meaning it is a legal entity identified by a particular name and separate from the individuals who make up the Board.
- 1.4. The legislative framework around development in the Malvern Hills is nationally unique and required consideration in the development of the South Worcestershire Development Plan Review. There are a few other Conservator bodies of similar age in England – Wimbledon and Putney, Ashdown Forest and Cleeve Common being the larger ones, but each has a separate act / set of powers regulating their activity.

2. The Malvern Hills Acts

- 2.1. There are five private acts of parliament relating to the Malvern Hills.

[Malvern Hills Act 1884](#)

[Malvern Hills Act 1909](#)

[Malvern Hills Act 1924](#)

[Malvern Hills Act 1930](#)

[Malvern Hills Act 1995](#)

- 2.2. The Malvern Hills Act 1884 established the Malvern Hills Conservators, placing about 200 hectares (500 acres) of land under their jurisdiction. The Conservators were given powers to protect, control and manage the land and were responsible for preserving the natural aspects of land and its use as an open space for public

enjoyment. They could also acquire other land within a nine-mile radius of Malvern Priory if they felt that it should be preserved in connection with the Malvern Hills.

- 2.3. As land under the jurisdiction of the Conservators had increased since the 1848 Act, the 1909 Act gave the Conservators increased powers to raise funds to pay for their work. It also allowed them to replant trees and shrubs and provide seats and shelters.
- 2.4. The 1924 Act gave the Conservators the authority to compulsorily purchase the whole or any portions of the lands, properties, quarries, manorial rights (including mineral rights) and interests of specified areas of land over the next five years to prevent further land use for quarrying.
- 2.5. The 1930 Act was needed because of the increased land area now controlled by the Conservators and the greater number of visitors to the hills. It gave powers to construct public conveniences, create parking areas, licence three refreshment stalls and make paths and ways, amongst other things. It also gave powers to fence off dangerous areas.
- 2.6. Crucially, s.7 of the 1930 Act granted the Trust the power to grant easements over or under the Malvern Hills for the purpose of the laying of drains.
- 2.7. This was expanded on in the 1995 Act. This Act gave increased powers to purchase and lease land, alongside limited powers to sell land, to restrict public access to protect ancient monuments, sites of natural beauty, trees and flora and fauna and in the interests of public safety, and to grant easements, both underground for services and over-ground for vehicular access to properties. It also allowed the Conservators to impose fines under the Byelaws based on Level 2 on the standard scale (at present £500.00 maximum). Of note is that power to sell are very limited: $\frac{1}{4}$ acre to correct a boundary, or sale of land within 2 years of its purchase. Offices may be sold, but otherwise the rest of the open land cannot be sold.

3. Easements and Wayleaves

- 3.1. An easement is a non-possessory right of use and/or entry onto the property of another. As detailed in 2.6 and 2.7 of this briefing note, the Trust have the power to grant easements under Section 7 of the 1930 Act as amended. Most of the easements across Malvern Hills Trust land have given access to a residential property.
- 3.2. Over 100 easements currently exist over Trust land, according to the Malvern Hills Trust. Applications for new easements are considered by the Board according to the

statutory provisions. An easement, once granted, is attached to the property it serves rather than a person.

The criteria for granting easements are:

3.3. *“7A (1) Subject to subsection (2) below, the Conservators may on such terms and conditions as they think fit (including terms and conditions as to the provision and maintenance of cattle grids and other works) authorise in writing any person to construct, maintain, alter or improve roads or ways over the Malvern Hills affording vehicular or other access from any highway to land being land lying within or adjacent to any part of the Malvern Hills and appearing to the Conservators to lack satisfactory access.*

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

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

3.4. A wayleave is a licence for a company or individual to install and retain their services and infrastructure such as cabling, piping or pylons across private land usually in return for annual payments to the landowner. For the Trust above ground infrastructure is not normally permitted.

3.5. Malvern Hills Trust state that hundreds of wayleaves are in existence mostly with utility companies. Malvern Hills Trust cannot grant over ground easements to run services but can grant wayleaves.

4. Allocations

4.1. The matter of easements is one between the adjoining landowner and the Malvern Hills Trust. Due to the extent of land under Trust control (shown on [this map](#)) landowners have been encouraged to apply for easements where necessary.

4.2. In terms of allocations in the South Worcestershire Development Plan Review (SWDPR) to date, the Malvern Hills Trust has not yet determined any easements for the proposed allocations.

4.3. The tables below set out the current status of allocated sites within the Malvern Hills.

4.4. Table 1 sets out sites in the area of concern that do not require easements from the Malvern Hills Trust to secure access.

Table 1: Allocations which do not require easements from the Malvern Hills Trust			
SWDPR 55	Land at Cales Farm	200 dwellings 12.44 ha	No easement required.
SWDPR 56	North East Malvern (Newland)	800 dwellings 56.84ha	No easement required. Nb. The Trust owns part of the island and verge).
MHPH05	Land off Mayfield Road	16 dwellings 0.77 ha	No easement required. Access can be achieved from Elgar Avenue.
MHPE01	Park Farm, Blackmore Park Road	14.05 ha	No easement required.
MHPE02	Land off B4208 between Hill View Area and Willow End Business Park	4.91 ha	No easement required.
MHPE03	Land off B4208 between disused railway track and Willow End Business Park	2.1 ha	No easement required.
MHPE05	Land adjoining Blackmore Park	5.52 ha	No easement required.

4.5. The following allocations can potentially source access from non-Trust controlled land if proposed easements were to be refused by the Malvern Hills Trust. This may not be the preferred route but does not undermine the deliverability of the sites.

Table 2: Allocations where the preferred access would require an easement but an alternative access can be secured.

MHPH01	Land south of Madresfield Road	180 dwellings 9.95 ha	<p>No easement application submitted at time of writing.</p> <p>Two potential access points, including the preferred choice of Hall Green and the secondary access onto Chance Lane, would cross Trust land.</p> <p>WCC Highways have indicated that failing the granting of an easement, access can be achieved through Teme Avenue and acceptable visibility splays could be provided, subject to the removal of some hedging.</p>
MHPH04	Land on the South Side of Guarlford Road	180 dwellings 9.84 ha	Easement application submitted circa November 2021. This is yet to be determined however the agent has indicated that the application is at an advanced stage in the process.
AIR02	Land forming part of Madresfield Estate off Jennett Tree Lane, west of Malvern	Area of Informal Recreation	Access to the AIR may be required through land controlled by the MHT (either existing access through car parks at Old Hills or potential new accesses that are yet to be determined). The SWC's will be discussing with both parties and an updated position will be provided within the SOCGs. It is hoped that AIR02 and the Old Hills Common will eventually form a connected GI network.

4.6. The following sites rely on easements being granted or existing easements being amended. It should be noted that while a site may be marked in the tables below as having access in existence, an easement in place for one purpose (ie agricultural access to a field or access for a single dwelling) does not give rights of access for other purposes (commercial or residential) or include right of access for other as-yet-unbuilt properties.

Table 3: Allocations which require amended or new easements to secure access.

MHPH03	Land at 186 Madresfield Road	18 dwellings 0.75 ha	No easement application submitted at time of writing. Access is already in existence but crosses MHT land and is not ideal. Either a new access would be required across Trust land or an amendment to the easement for the existing access would be required for the site to be viable.
MHPE04	Land at Mayfield Road, Malvern	9.71 ha	No easement application submitted at time of writing. Access is already in existence but crosses MHT land. A new access may be required across Trust land or an amendment to the easement for the existing access may be required.