

Worcestershire Minerals Local Plan Background Document

The Malvern Hills Acts

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*Contact: Minerals and Waste Planning Policy,
Worcestershire County Council, Economy & Infrastructure,
County Hall, Worcester, WR5 2NP*
Email: minerals@worcestershire.gov.uk
Tel: 01905 766374

1. Executive summary

- 1.1. There are five private acts of parliament relating to the Malvern Hills, three of which make specific reference to quarrying, with the express intention of the Malvern Hills Act 1924 being to control quarrying. There are also Ministerial planning decisions and House of Lords Judgements relating to these acts.
- 1.2. The legislative framework around quarrying in the Malvern Hills is nationally unique and will require careful consideration in the development of the Minerals Local Plan.

Contents

1. Executive summary.....	2
2. Introduction	4
Purpose of the report.....	4
3. Context	5
4. The history of quarrying in the Malvern Hills: legislation and case law	6
Malvern Hills Act 1884.....	6
Malvern Hills Act 1909.....	7
Malvern Hills Act 1924.....	8
Malvern Hills Act 1930.....	8
1953 Minister of Housing and Local Government - Decision Letter	9
Pyx Granite Co Ltd v Ministry of Housing and Local Government and Others (1959 House of Lords Judgement)	10
Malvern Hills Act 1995.....	11
5. Conclusion	13

2. Introduction

Purpose of the report

- 2.1. There are five private acts of parliament relating to the Malvern Hills, three of which make specific reference to quarrying, with the express intention of the Malvern Hills Act 1924 being to control quarrying. There are also Ministerial planning decisions and House of Lords judgements relating to these acts.
- 2.2. As such the legislative framework around quarrying in the Malvern Hills is nationally unique and will require careful consideration in the development of the Minerals Local Plan. This background paper summarises the relevant legislation and litigation and the factors which led to its development.

3. Context

- 3.1. The Malvern Hills run along Worcestershire's western border with Herefordshire and southern border into Gloucestershire.

Figure 1: Malvern Hills Area of Outstanding Natural Beauty



Source: Malvern Hills Area of Outstanding Natural Beauty Management Plan 2014-19

4. The history of quarrying in the Malvern Hills: legislation and case law

Box 1. Malvern Hills Act 1884

Malvern Hills Act 1884

This act 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 with a nine mile radius of Malvern Priory if they felt that it should be preserved in connection with the Malvern Hills.

Owners of the land retained the mineral rights over any land within the Conservators' jurisdiction. The Act did, however, give the Conservators limited jurisdiction over mineral issues. It gave the Conservators the right to refuse the extraction of gravel or sandstone by a surveyor of highways, highway board or turnpike trust, or to place conditions on its working and restoration. The Act also stated that the Conservators must be given notice of any new quarry and its intended position and that "every...new quarry shall be so placed as to cause as little injury and disfigurement to the hills as reasonably practicable". The Conservators' role was, however, limited to influencing the fencing around the quarry in relation to public safety.

- 4.1. Before about 1907 there was small-scale quarrying in the Malvern Hills, with stone usually hand-dug for local uses. In 1907 a commercial quarrying company called Pyx Granite obtained a licence to quarry on land in the Malvern Hills. From this point demand for Malvern stone increased, particularly for the construction of roads, with several companies, and Malvern Hills Urban District Council, quarrying the hills by 1909.
- 4.2. The Malvern Hills Conservators¹ sought to gain some control over quarrying activities in the Malvern Hills through a further Act in 1909, however there was much opposition from those with an interest in quarrying, including Malvern Hills Urban District Council. The Conservators were unable to convince the House of Lords that adequate compensation could be paid to those with minerals rights who would stand to lose them under increased Conservators' control. As such, the level of Conservators' control provided for in the legislation was less than the Conservators had sought².

¹ The Malvern Hills Conservators have used the working name of the Malvern Hills Trust since 2017. For the purposes of the Minerals Local Plan, they are referred to as the Malvern Hills Conservators to reflect their official name.

² Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 6 The Threat of the Quarries.

Box 2. Malvern Hills Act 1909

Malvern Hills Act 1909

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.

- 4.3. By the 1920s quarrying interests in the Hills were concentrated in fewer commercial hands, but the operations by these companies had intensified.
- 4.4. The Conservators again set about preparing an Act to control quarrying in the Malvern Hills. This Act recognised that the amenity of the Malvern Hills had been seriously interfered with by quarrying operations and that it threatened to destroy the value of the Malvern Hills as an open space for public enjoyment and to alter the state of the hills as they existed in 1884. It recognised that the existing powers of the Conservators were insufficient to preserve the Malvern Hills from quarrying operations. This faced less opposition than the 1909 Act, as the quarrying interests in the Hills were concentrated in fewer commercial hands. It also received greater support from the public and from the County Council of Hereford, the County Council of Worcester, and Malvern Hills Urban District Council, who all backed the Bill³.

³ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 6 The Threat of the Quarries.

Box 3. Malvern Hills Act 1924

Malvern Hills Act 1924

The 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. However, whilst the aim of the act was to save the beauty of the Hills and protect them from the threat of quarrying, quarry owners had vested rights of quarrying which they claimed should not be taken away from them without compensation and this was considered in the Act.

Pyx Granite owned freehold land and had quarrying rights to other land in the Malvern Hills and while the Malvern Hills Act 1924 was passing through parliament, negotiations took place between the company, Malvern Hills Conservators and Malvern Hills Urban District Council. These negotiations resulted in an agreement between parties that the company should continue to quarry on its own freehold land, should surrender its quarrying rights in certain other land, but should retain its quarrying rights in the areas of North Malvern and should have transferred to it additional quarrying rights in certain other parts of that area.

With the exception of the areas under the Pyx Granite agreement, the Act gave the Conservators the ability to make and enforce bye-laws to regulate quarrying in, upon or under the Malvern Hills and if necessary make an application to the Minister to prohibit quarrying upon any part of Malvern Hills.

In order to deal with local needs it also enabled the Conservators to grant licences for local authorities to obtain stone for the repair of roads situated within a radius of seven miles from the Priory Church at Malvern as long as this would not interfere with the natural aspect of the Malvern Hills.

- 4.5. During the five years that followed, the Conservators were able to purchase the minerals rights of considerable areas of land in the most important parts of the Malvern Hills, but they had insufficient money to eradicate quarrying entirely before the right to compulsorily purchase expired in 1929⁴.

Box 4. Malvern Hills Act 1930

Malvern Hills Act 1930

This 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 such as quarries.

⁴ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 7 The battle over quarrying – private rights and public interest.

- 4.6. By September 1953 there were only five established quarries in the Malvern Hills: Tank Quarry, North Quarry, Earnslaw Quarry, Gullet Quarry and Hollybush Quarry.

Box 5. Minister of Housing and Local Government – Decision Letter (1953)

1953 Minister of Housing and Local Government - Decision Letter

In a letter dated 30th September 1953 the Minister of Housing and Local Government determined planning applications relating to four of the five active quarries, having called these applications in (planning permission in respect of working at Hollybush Quarry was granted by the Ledbury Rural District Council in June 1947).

- Tank Quarry: Refused permission for part of the operations in order to preserve the skyline and to continue to screen workings from the highway, but permitted workings on the remainder of the site until 1966 subject to conditions.
- North Quarry: Refused planning permission, other than to stabilise the slip on site, in accordance with permission granted by the Minister in 1949.
- Earnslaw Quarry: Permission was granted, with the exception of a small area on the boundary where permission was refused in order to preserve the skyline.
- Gullet Quarry: Permission was granted for part of the site, but permission was refused for the rest of the site in order to preserve the appearance of the Hills and to safeguard the remaining length of the Shire Ditch (thirteenth century earthworks within the application boundary).

- 4.7. By the early 1960s Earnslaw quarry was largely worked out. The site was bought by Worcestershire County Council and leased to the Conservators⁵.
- 4.8. At Gullet Quarry the Minister gave permission for working to continue but in the expectation that quarrying would cease within about twenty years of 1953. The Conservators gradually extended their jurisdiction to include this land⁶.
- 4.9. The decisions relating to Tank Quarry and North Quarry were appealed by the operator.

⁵ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 8 The end of the fighting.

⁶ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 8 The end of the fighting.

Box 6. Pyx Granite Co Ltd v Ministry of Housing and Local Government and Others (1959)

Pyx Granite Co Ltd v Ministry of Housing and Local Government and Others (1959 House of Lords Judgement)

This case considered whether the granite quarries in the Malvern Hills, at Tank Quarry and North Quarry were unconditionally permitted by the Malvern Hills Act 1924.

Pyx Granite made a planning application in November 1947 to develop the land on which their quarries were situated. This related to activities which were ongoing but which would normally need authorisation under the new Town and Country Planning Act 1947 (TCPA) which was to come into force in July 1948. The application was "called-in" by the Minister. In 1949 the Minister gave permission to work the North Quarry, which had developed a dangerous fault, only to the extent necessary to ensure safety, and subject to certain conditions. In 1953 the Minister refused permission in respect of North Quarry and parts of Tank Quarry because he wished to preserve the skyline, but granted permission for the remainder of the Tank Quarry area subject to a number of conditions, one of which was that working of granite should be limited to a period ending June 1966. The company objected to conditions relating to plant machinery for the crushing of rock, arguing that this was being used in the same way as it had been before 1947 and appealed the decision.

The appeal was made on the basis that Pyx Granite did not require permission under the TCPA 1947. They argued that the General Development Order 1950 permitted development which was "authorised by any local or private Act of Parliament...which designates specifically both the nature of the development...and the land upon which it may be carried out" and the Malvern Hills Act 1924 did this, by setting out "terms of the heads of agreement" under which Pyx Granite could carry out quarrying operations.

The appeal was allowed at the House of Lords, with the decision that the Malvern Hills Act 1924 allowed extraction without the need to seek further permission under the Town and Country Planning Act 1947.

- 4.10. When the lease for North Quarry expired in 1960 Malvern Hills Urban District Council did not renew the lease and as such quarrying on the site ceased.
- 4.11. In May 1960 the operator of Tank Quarry estimated that the quarry could be worked for 20 – 25 years based on an annual output of 200,000 tons, with a total amount of 5,000,000 tons of stone left⁷. The Ministry of Transport was using large quantities of the stone on the motorways due to its non-skid qualities and the nearest alternative supply was 50 miles away⁸.

⁷ Note of Meeting held at the Shirehall in Worcester on Friday 13th May 1960 about quarrying in the Malvern Hills.

⁸ Note of Meeting held at the Shirehall in Worcester, on Friday 13th May 1960 about quarrying in the Malvern Hills.

- 4.12. Pyx Granite decided to sell the land at Tank Quarry to Worcestershire County Council who leased the sites to the Conservators in 1971⁹. Scar Rock Quarry closed in June 1960¹⁰ and the last quarry in the Malvern Hills was closed in 1977.¹¹
- 4.13. As it had been over sixty years since the last Act, in the early 1990s the Conservators felt that another Act was needed to allow them to manage the land in the 21st Century. As quarrying had ceased in 1977 and was no longer felt to be an issue, it is not a matter considered in this act.

Malvern Hills Act 1995

This Act gave increased powers to purchase, lease and 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.

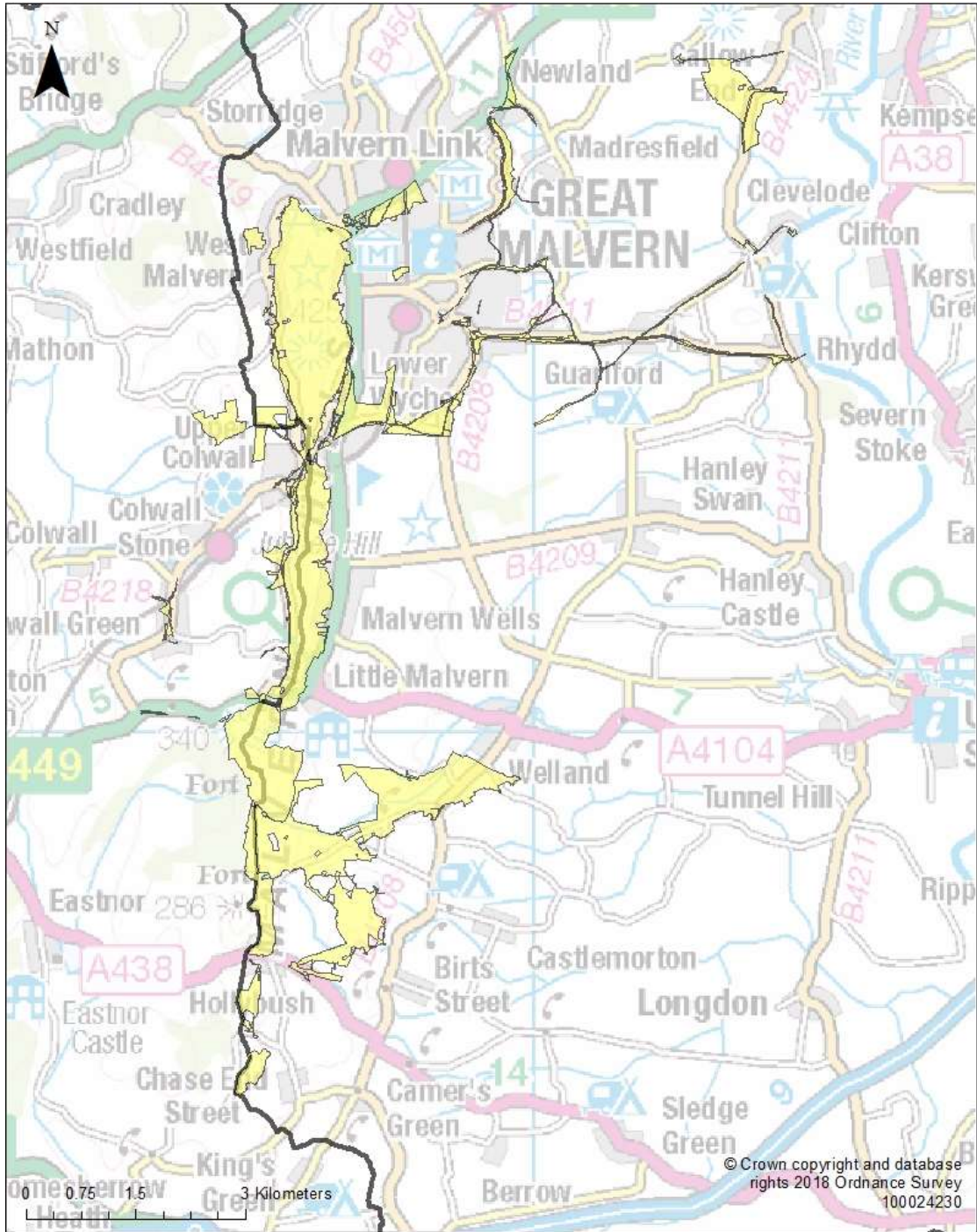
It also allowed the Conservators to impose fines under the Byelaws based on Level 2 on the standard scale (at present £500.00 maximum).

- 4.14. The land which now falls under the jurisdiction of the Conservators, and as such the land for which the Conservators own the minerals rights, is shown in **Error! Reference source not found.**: Land within the Malvern Hills Conservators' jurisdiction

⁹ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 8 The end of the fighting.

¹⁰ Note of Meeting held at the Shirehall in Worcester on Friday 13th May 1960 about quarrying in the Malvern Hills.

¹¹ Hurle, P (1984) *The Malvern Hills: A Hundred Years of Conservation* Phillimore & Co Ltd; Chichester: Chapter 8 The end of the fighting.



Legend

- Land within the Malvern Hills Conservators' jurisdiction
- County Boundary

5. Conclusion

- 5.1. The legislative framework around quarrying in the Malvern Hills is nationally unique and will require careful consideration in the development of Minerals Local Plan.