

BRISTOL CITY COUNCIL

Downs Committee 1st July 2013

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Charging scheme for Personal Training in Parks

Officer Presenting Report: *Peter Watts*

Contact Telephone Number: *0117 9223466*

RECOMMENDATION

That the Downs Committee agrees to charge personal trainers for the use of Clifton and Durdham Downs.

Summary

This report explores the background to Personal Training and the proposed new scheme to be launched by BCC Sports development.

The significant issues in the report are:

The pilot scheme co-ordinated via the Arts, Events and Film team has been placed on hold pending a review and adoption by BCC Sports. This report provides the committee with an update and seeks their consent to formulate a new charging scheme and possible review of the existing bye laws.

Policy

1. *N/A*

Consultation

2. **Internal**
BCC Sports
BCC Legal
Arts, Events and Film
3. **External**
FIA

Context

Personal Training in Parks

Background

The fitness trainer pilot has been running for approximately one year to license the increasing trend of fitness trainers in Bristol Parks. The scheme aimed to accredit fitness trainers and authorise them to provide lessons in parks.

The pilot scheme has had buy in from some fitness trainers and there has been a large variety between individuals providing fitness training and large companies such as British Military fitness who provide fitness training across the country.

One problem has arisen with the trainers either failing to engage with the permit scheme or refusing to pay the license fees as they have questioned that not all of the fitness trainers are paying the fee and how the license can be enforced to show they are getting value for money.

Downs Committee have been made aware that following a challenge to the scheme a need arose to review how BCC regulates such activity and the legality of charging.

As a result of the inherent weaknesses with the current Personal Training permit BCC sports development have starting drafting proposals for a new fitness trainer policy for all BCC owned and managed sites.

What are the aims of the proposals

These proposals will aim to challenge questions around why we are running the scheme by looking at other councils, the governing body UKactive and where the fitness trainers are operating within Bristol.

The legal side of the fitness policy will also be investigated, as much of the fitness training we could potentially regulate would be in parks which is public space and estates.

The policy will also look into who the trainers are and what Bristol City Council could potentially offer them in terms of promotion, availability of parks and promotional opportunities set up by Bristol City Council to offer an incentive for the trainers and companies to sign up.

Enforcement has been raised as a major question as to how the policy is policed and advertised across the parks and ensuring all those who pay the fee get benefits from doing it and feel able to report any organisation and individual who are not paying the fee.

UK active Outdoor code of Practice

Ukactive is the fitness industry's recent outdoor code of practice provides an ideal basis for the new policy to be formed, showing that this is a national concern for council's across England and is something that British military fitness has contributed towards.

The outdoor policy provides key basic requirements that should be in place for the fitness trainers to delivery but provides enough flexibility to create a scheme for individuals as well as requirements for larger companies to report to BCC.

The policy is broken down into clear sections that are appropriate for the Policy's requirements including operating procedures, Health and safety, risk assessments, staff, CRB checks and equality.

The legal background to fitness training in parks

The legal background varies across different sites for the permits due to the variety of land ownership and public access required at various sites.

On the Clifton and Durdham downs a bye law states "no person shall on the downs, without the consent of the downs committee, sell or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any commodity or article". This byelaw shows that all activities fro profit, which the fitness training would include, needs the consent of the downs committee. Therefore this report seeks Downs Committee approval to charge upon the downs land.

For public open space the legal position has been questioned in the past as to whether you can legitimately charge for activities in open space due to rights of way. As part of the UK active code of practice it had been suggested that if a fitness trainer or other sports professional puts down cones for activity then the trainer is cutting off public access to that area and therefore is a formal area for exercise that is not publicly accessible.

Benefits that BCC are able to provide to support the scheme

Free advertising for activities on the go places do things website.

Free advertising and awareness of company website through a BCC webpage promoting all accredited fitness trainers for parks, acting as a one stop shop for fitness trainers in Bristol.

Be a „BCC preferred provider“, proving to customers that they are working in conjunction with BCC.

Access to sporting activity days and to promote sessions at these opportunities, for example the Sportsjam taster days and Access to sporting activity days and to promote sessions at these opportunities, for example the Sportsjam taster days and promotional events at Millennium square.

To be promoted within BCC parks notice boards at set intervals with posters provided to the Park operations teams for this to happen.
Support from the public awareness campaign profiling that their company is supporting the scheme and operates in a safe manner.

Being part of a park sport programme in relevant parks to provide taster sessions to attract new customers to their business.

Proposal

4. *That the committee approve of the plans to develop a new policy / scheme, possibly revisit the existing bye laws to support such a policy and authorise the right to charge Personal Trainers that wish to conduct chargeable training on the Downs.*

Other Options Considered

5. N/A

Risk Assessment

6. *Failure to launch a more robust scheme will lead to unregulated activity taking place on the Downs.*

Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in

particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

Legal and Resource Implications

Legal

The Clifton and Durdham Downs (Bristol) Act 1861 provides that The Downs should remain as a place for the public resort and recreation of the citizens and inhabitants of Bristol, and that a committee should be appointed to manage them. The recommendation contained in this report is within the powers conferred by this statute.

A consideration should be made to amending the Byelaws to make it very clear that personal trainers are committing a trespass because they have no authority to use the Downs for the fitness boot camps in respect of which they make a charge.

Please also refer to Legal advice contained in Appendix A

(Legal advice provided by *Lynne Harvey – Solicitor*)

Financial

(a) Revenue

N/A

(b) Capital

N/A

(Financial advice provided by *<Insert name and job title>*)

Land

not applicable

Personnel

not applicable

Appendices:

None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None here



Corporate Legal Services

Appendix A

To: Richard Bevan, Park Estates, Play, Cemeteries and Crematoria Manager, Bristol Crematorium, Bedminster Down, Bridgwater Road

From: Lynne Harvey, Solicitor, Regulatory Team, City Hall, College Green

Date: 29 April 2013

Your ref:

Our ref: LJH/TG/GA1.76

Ext: 01179 - 222629

Fax: 01179 - 223436

RE: Charging for Use of the Downs/Enforcement of Byelaws

I must first apologise for the delay in getting back to you with a response. As you know, I was unexpectedly away from the office for several weeks and have only recently returned.

At your suggestion, I spoke with Pete Watts of the Events Team some weeks ago and we had a useful conversation about the ongoing situation with Bristol Military Fitness (BMF).

I understand they are refusing to pay for a parks permit on the basis that they have reservations about our current scheme due to:-

- (i) A lack of clear quality assurance and benchmarking;
- (ii) A lack of enforcement for those not buying into the permit scheme.

Although Pete was of the view that they may have a point and that the Council's Sports Development Team needs to look into the matter to make the scheme more water tight, that would not necessarily justify BMF carrying on regardless and not paying for a permit. The Council website contains clear information about applications for permits, the fees and conditions to be attached to the same. The Council as landowner should have the right to refuse or give permission for certain activities to take place on its own land which go beyond using the Downs for its normal purpose, i.e. recreational use.

I have considered several options but unfortunately have not been able to come up with a definitive answer but hopefully the following may assist you in deciding how to deal with this ongoing issue:-

As a starting point, I looked at the Clifton and Durdham Downs (Bristol) Act 1861 and the Clifton and Durdham Downs Byelaws.

As you know, the 1861 Act enables the Council to make byelaws as it shall think proper, and from time to time to alter or amend those byelaws for regulating, improving and preserving the Downs. The Act and the byelaws only relate to such part of Durdham Down and the portion of Clifton Down coloured pink on the plan attached to the legislation (which I have not seen).

Breach of the byelaws constitutes an offence which on summary conviction carries a maximum fine of £500. However, there are no byelaws that specifically deal with the issue surrounding BMF. Byelaw 6 came the closest to it in that it says, "No person shall without consent ... sell or offer or expose for sale or let to hire or offer or expose for letting

to hire, any “commodity” or “article”. This definition would only cover products as opposed to the provision of a service.

However, there is the possibility of amending the byelaw to cover the provision of services as well.

I also looked at the street trading legislation, as the definition of “street” is very wide and would cover open spaces to which the public have access such as the Downs. However, the street trading legislation only covers the sale of, or the exposure for sale of “articles” and therefore the activities of BMF would not be caught by this.

Another issue I considered was whether the activity in question would constitute a trespass to land. This is defined as wrongful interference with one’s possessory rights in real property, i.e. land. It does not need to be proved that damage had been caused in order to bring an action in trespass. “Interference” can cover any physical entry to land, as well as the abuse of a right of entry, where a person who has the right to enter land does something not covered by the permission.

Although the Downs is a public open space, the 1861 Act makes plain at paragraph (1) that the land shall remain open and unenclosed and as a place for the public resort and “recreation” of the citizens and inhabitants of Bristol. This does not include the right to run a business on the Downs or provide a service for a charge. It is therefore arguable that the use of the Downs by BMF goes beyond using it for its normal purpose and therefore this constitutes a trespass.

Although the above does not constitute a definitive advice, I hope it gives you some options to think about now.

If I am able to assist further please do not hesitate to contact me.

Lynne Harvey