

THE DOWNS COMMITTEE

Clifton and Durdham Downs (Bristol) Act 1861

Agenda

7. Public Forum (Pages 3 - 9)

To consider items of Public Forum sent to the Downs Committee. Interested parties can submit a written statement of approximately one side A4 to the Downs Committee by sending it to Democratic Services by no later than 12pm on Friday 2 July.

14. Terms of Reference (Pages 10 - 11)

Democratic Services Section

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Friends of the Downs and Avon Gorge

JULY 2021

FOD+AG welcomes the opportunity to update the Downs committee on our most recent activities and some of the events planned for the coming months.

FOD+AG remains committed to its core values to represent legitimate users of the Downs and to support the City Council and the Downs committee in the good governance of the Downs and Avon Gorge.

FOD+AG would like to take this opportunity to congratulate the Lord Mayor on his appointment and to welcome him to the chair of the Downs committee. The year ahead may prove to be a difficult year. The challenges are numerous as we all seek to recover from what will hopefully be the aftermath of the pandemic. As a volunteer organisation we commit to redoubling our efforts to ensure the continued preservation of our precious public open space.

Like many volunteer organisations the restrictions imposed by the pandemic has meant that many of our regular activities have had to be adapted or curtailed. However, we have not been entirely moribund during lockdown. We have managed to continue with assisting with the goat monitoring, refurbishing the dead hedges around Circular Road, deep litter clearance forays, developing our social media footprint and ongoing maintenance for the recently established bedding scheme at the Thomas Memorial. With the help of our junior volunteers, we have even managed to repaint the iconic White tree.

We are now in the process of rebuilding our extensive programme of planned events and activities with walks and talks plus a range of projects in conjunction with the Avon Gorge & Downs Biodiversity Education Manager Mandy Leivers.

The Downs have played an important part during the pandemic and continues to do so. Many citizens have turned to the Downs for physical and spiritual relief. Unprecedented numbers have flocked to the Downs to enjoy fresh air and the wide-open spaces. Disappointingly a few have abused the privilege of enjoying the Downs. The Friends group have received numerous concerned comments about litter and rubbish left by inconsiderate visitors.

Many have complained about the damage caused by indiscriminate use of portable barbecues. The resulting damage is long lasting and all too evident across the Downs.

As an organisation we have contacted local supermarkets and asked that they behave more responsibly and consider displaying signs about correct use and disposal.

We have also had numerous comments about a general and increased disregard of the Downs byelaws and in particular vehicles driving deep into the Downs to 'set up camp'

FOD+AG would support any initiatives to revisit how the Downs can be better protected and the byelaws more effectively enforced.

In the interests of better-informed representation FOD+AG has reached out to several neighbouring Society's and Associations who share our concerns and aspirations for the Downs. We have formed informal alliances to share information and support one another.

FOD+AG are pleased that the dispute with the Downs for People group has finally been resolved but remain disappointed that it needed a costly court case to bring it about. Time will tell if the financial burden resulting from defending the action brought by Downs for People will impact negatively on the Downs.

The Friends group would urge the Downs committee and the City Council to take a more holistic approach in the way that the Downs and Avon Gorge are managed going forward. Finance and income generation will be critical and it is our belief that the Downs and Gorge are eminently 'marketable' and perfectly able to sustain itself and even make a contribution to all our public open spaces.

Large events are plainly a part of the strategy but alternative visionary initiatives should be considered. Much could be achieved without compromising the conservation status of the Downs and Gorge.

Robert Westlake

Chair

FOD+AG

Public statement to the Downs Committee, 5 July 2021 – Suzanne Audrey

It seems to have required a Freedom of Information request to begin to uncover information about the way in which a 20-year licence was granted for zoo parking on the Downs. Since then a group of people (dedicated to ensuring the Downs “shall for ever hereafter remain open and unenclosed, and as a place for the public resort and recreation of the citizens and inhabitants of Bristol”) pressed for a judicial review of the matter.

In relation to the judicial review, my understanding is:

August 2020. Downs for People (DfP) lodged judicial review proceedings in the High Court to get the licence quashed. The defendants were Bristol City Council and the Downs Committee, with the Society of Merchant Venturers and the Bristol, Clifton and West of England Zoological Society named as interested parties.

27 November 2020. Bristol Zoo announced that it would be closing its Clifton site. Although closure would bring an end to zoo parking on the Downs, DfP remained very concerned because Bristol City Council and the Downs Committee would not agree that parking on the Downs was lawful only when related to activity on the Downs. They argued that they had a power to use any part of the Downs as a car park at their discretion.

January 2021. DfP submitted its grounds for challenge to the High Court. The defendants submitted reasons why those grounds should be resisted.

22 March 2021. His Honour Judge Cotter QC gave permission for the case to go to court to examine: the claim by DfP that the Downs Committee had no power to licence car parking for activities not on the Downs because such parking was contrary to the terms of the 1861 Act, and: the claim by the defendants that decisions by the Downs Committee were not subject to review by the courts.

15 April 2021. His Honour Judge Cotter QC listed the case to be heard on Thursday 13 May in Bristol’s biggest courtroom so that members of the public could attend.

12 May 2021. Agreement was reached on an out-of-court settlement. An order agreed by the parties was approved by the Hon Mr Justice Henshaw and issued by the High Court. In the settlement, the defendants – the Downs Committee and Bristol City Council – have given a legally binding undertaking that they will never again set aside land on the Downs for parking for activities taking place elsewhere. The defendants have also agreed to pay up to £72,000 towards DfP’s legal costs, twice as much as the maximum award if the case had gone to court.

If the above summary is correct, this whole saga raises important questions about the way in which The Downs Committee conducts its business. The finance update (agenda item 11) indicates a significant deficit and refers to the costs of the Judicial Review as a major contributing factor. Other than that, there does not seem to be a specific agenda item about this unfortunate series of events.

If possible, please can the Downs Committee prepare a report for the public outlining the processes and decisions that resulted in granting the licence, the legal proceedings and the out-of-court settlement.

Please can the Downs Committee also offer reassurance that there will be greater transparency of decision-making in future, and decisions will be taken on the understanding that the Downs “shall for ever hereafter remain open and unenclosed, and as a place for the public resort and recreation of the citizens and inhabitants of Bristol”.

Downs for People public forum statement: Downs Committee review

Summary

Observation over many years has shown that the Downs Committee is not fit for purpose. Its members do not understand its statutory remit, nor do they act in the open and accountable way expected of a public body. The Committee's failures led to our court case about parking on the Downs. This has probably cost Bristol City Council and the Committee about £250k.

To prevent more money being squandered and to safeguard the future of the Downs, the composition and operation of the Committee require urgent review. *Downs for People* would like to help with this. We would welcome an early opportunity to discuss the issues with some members of the Committee. (We are sorry that no one is available to present this statement on 5 July. But we know from experience that attendance would not lead to discussion)

Background

1. The Lord Mayor and some other members of the Committee may not be familiar with our court case against the grant of a twenty-year licence for the Zoo to park on the Downs. The background is given in our May news release, which is attached.

Problems

Failure to understand statutory remit

2. The court case revealed that the Committee did not understand its simple statutory remit under the 1861 Downs Act: to manage the Downs so that they "shall for ever hereafter remain open and unenclosed, and as a place for the public resort and recreation of the citizens and inhabitants of Bristol". Nor did the Committee understand that it was a statutory body whose decisions could be challenged in the courts. We infer from the generous offer made to us to settle out of court that the Committee will have received very clear advice from their barrister on both these points. ***We suggest that all members of the Committee ask to see this advice.*** (It is not clear from the minutes and papers for its meetings that the Committee has ever received information about the case other than its costs.)

Procedures

3. The Committee does not operate in the open and accountable way expected of a public body. Its procedures are defective in the following areas:

- **Consultation.** Consults very rarely and ignores requests for discussions.
- **Confidentiality.** Excessive secrecy. Failed to disclose basic information in our court case until ordered to do so by a judge.
- **Communication.** Because of excessive secrecy, decisions and discussions are not properly minuted and published.

- **Conflicts of interest/possible ‘cronyism’.** Under pressure from *Downs for People*, the Committee introduced the customary ‘declaration of interests’ procedure in 2013. The procedure apparently now applies only to councillors, even though Merchant Venturers have close links to many institutions, including the Zoo. This may have led to ‘cronyism’. For example, in 2009 and 2013, the Committee went through the motions of granting licences for zoo parking, even though short-term licences were unnecessary because a long-term licence was in force. The 2009 and 2013 licences do not appear to have been executed: the decisions to grant them were presumably just intended to support the Zoo’s planning applications, possibly as a personal favour to the Zoo’s then Chief Executive.
- **Committees.** Most effective discussion and decision -making now takes place ‘behind closed doors’ in the Events and Finance Sub-Group, chaired by the Master of the Merchant Venturers. Apart from the undesirable secrecy, it is not clear that the 1861 Act allows for delegation to sub-groups.
- **Council officer ownership.** While officers of Bristol City Council provide the Committee with various services, no one appears to ‘own’ the Committee, taking responsibility for its activities and ensuring it functions effectively.

Structure

4. Other problems arise because of the arrangements set out in the 1861 Downs Act:

- **Lack of councillor continuity.** The Lord Mayor, who chairs the Committee, changes annually. This makes it hard to grasp the issues. ‘Ordinary’ councillor members appear to change every three years. In contrast, as required by the Downs Act, two Merchant Venturer members change each year. Individual Merchant Venturer members can, however, stay on the Committee indefinitely. This is unbalanced: it leads to dominance by a few Merchant Venturers most of the time.
- **Lack of competence.** Members are not required to have any skills relevant to land management.
- **Costs allocation.** The 1861 provides for some costs to be met by the City Council, but none by the Society of Merchant Venturers. The Merchant Venturers can therefore exercise ‘power without responsibility’.

Solution

5. The procedural defects identified in para 3 can be easily remedied. The Committee can simply decide to adopt better practices.

6. The structural problems described in para 4 are more difficult. Change to the composition of the Committee would require amendment of the Downs Act. Before embarking on any legislation, careful thought would need to be given to what needed to be changed and the possibility of unintended consequences.

7. There are management structures elsewhere, such as the Malvern Conservators, that could provide a useful model for the future. There might also be advantages in not defining the composition of any committee in statute.

Way forward

8. We wrote last month to the Lord Mayor, the Society of Merchant Venturers, and the leaders of all four political groups on the City Council, pointing out that the Downs Committee required review. The Lord Mayor invited us to make a public forum statement, as we are now doing. We received encouraging responses from the leaders of the Green and Conservative parties. We have been invited to a meeting with the Society of Merchant Venturers.

9. We suggest that a group should be established to review the operation of the Committee in more detail and to produce options on which there would be public consultation. *Downs for People* would like to be part of the review group. We suggest that the Open Spaces Society, Britain's oldest conservation body (founded shortly after the 1861 Act), with a long history of campaigning for the protection of commons, should also be involved.

10. We would welcome an opportunity soon to discuss the issues raised in this statement with members of the Committee.

Downs for People

2 July 2021

Terms of Reference – Downs Strategic and Governance Review

Aim

To set out a high-level strategic vision for the use and management of the Downs in accordance with the 1861 Act, and to review the governance structures and practices which will deliver it.

Deliverables

Part 1 – Strategic Vision

A publication setting out the Downs Committee's high-level vision for the use and management of the Downs. The vision must have regard to the 1861 Downs Act and is intended to be a reflection and re-statement of existing principles rather than any significant change. It should not set out details of specific projects or events and is not intended to unduly bind future Downs Committees. Rather it should create a framework for future decision-making, and give committee members, Councillors, Downs users and the public some sense of the purpose and parameters within which the Downs operates.

Contents should include:

- **Background and purpose** – a (re-)statement of what and who the Downs are for and the protections that they enjoy under the 1861 Act and other legislation
- **Conservation** – setting out the Downs' role as a site for nature conservation in the context of declared climate and ecological emergencies, and balancing that against their role as a space for recreation
- **Events and trading** – guidelines for the use of parts of the Downs for closed / ticketed events, considering the number and type of events that should take place, the needs of Downs users, event customers and neighbours and the balance between the need to generate income for the maintenance of the Downs and the requirement to maintain them as open space for all. This is not intended to set hard and fast rules or to pre-empt decisions about any specific events, simply to establish a framework for future decisions.
- **Buildings and assets** – reviewing existing developments on the Downs (buildings, paths, play areas etc) and considering where it may be desirable to replace, extend or renew them in the future. Setting out what factors should be taken into account when considering any potential new developments. **Note – this is to guide the thinking of the Downs Committee as owner / custodian of the land, it must not seek to change or replace any part of Planning policy.**
- **Public involvement** – review the means by which Downs users, interest groups and the general public can participate in the governance of the Downs, including publication of meeting documents, attendance at meetings and the right to speak and ask questions. Note that the Downs Committee is not bound by BCC standing orders on public meetings.
- **Bye-laws** – reviewing the existing Downs bye-laws (made in 1998 and 2003) and considering whether they remain fit for purpose or whether it is desirable to make any updates

Part 2 – Governance Review

A review of the structures and processes by which the Downs Committee operates and makes decisions about the day to day management and longer term stewardship of the Downs. Any changes proposed by the review must remain within the terms of the 1861 Downs Act. Although the review could suggest aspirational changes which are not deliverable within the Act, amendment of the Act is not in scope.

The review should consider:

- **Roles of each party** – the roles of Bristol City Council, The Society of Merchant Venturers and the Downs Committee in the management of the Downs.
- **Finances** – to include:
 - clarity on the ownership and underwriting of Downs funds and mechanism to deal with deficits
 - clarity on what categories of expenditure are attributable to the Downs budget and mechanisms to deal with unforeseen costs
 - Expectation on the Downs Committee to generate income to fund the costs of running the Downs
- **Scheme of delegation** – clarity over the level and type of decisions (financial or otherwise) which can be made by officers at various levels, and which need to be made by the Downs Committee or sub-committees. To include operational decisions, land use, OpEx and CapEx commitments.
- **Committee structure** – review the sub-committees which report to the Downs Committee and consider what sub-committees are required, how they should be constituted, what business they should consider (with reference to the Scheme of Delegation above), how often they should meet and whether meetings should take place in public, private or some combination
- **Ongoing review** – propose a suitable timescale and mechanism for ongoing regular review of this part 2

Process

Actions	Responsible
Working groups of DC members and relevant officers to consider review content	Led by Chair and Vice-Chair Support from relevant officers
Public engagement on strategy and public engagement work	Chair with PR support from BCC
Working groups to consider feedback and produce final report	Led by Chair and Vice-Chair Support from relevant officers
Publish final report	Chair
Ongoing reviews	Downs committee