

# THE DOWNS COMMITTEE

Clifton and Durdham Downs (Bristol) Act 1861

## Agenda

### 7. Public Forum (Pages 3 - 20)

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 18 March.

Oliver Harrison, Democratic Services Officer

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#### Democratic Services Section

3rd Floor Deanery Wing  
City Hall PO Box 3399  
College Green,  
Bristol BS1 9NE

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[www.bristol.gov.uk](http://www.bristol.gov.uk)



## **Report of the Friends of the Downs and Avon Gorge.**

**March 21<sup>st</sup> 2022**

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

We remain committed to our core values to represent fairly all legitimate users of the Downs and to support the City Council and the Downs Committee in the good governance of the Downs.

The FOD+AG committee met last month and debated the Downs committee's announcement of a Strategic Review. Our committee reconfirmed in a letter its support for the Downs committee and looks forward to fresh and innovative ideas as to how the Downs might be managed in the future.

FODA+AG volunteers continue to assist the Downs operational team with regular weekend goat monitoring. During a recent weekend duty one of our monitors accounted for all the livestock gathered together near the boundary but also noticed that one animal was in fact the wrong side of the wire fence. Appropriate action was taken, the Downs supervisor was notified and the animal encouraged back within the compound. It is likely that the goat slipped under a damaged area of the stock fence.

Downs committee members have in recent months supported FOD+AG in an initiative to eliminate damage to the Downs caused by indiscriminate use of disposable barbecues. A letter from FOD+AG asking for the sale of these units to be discontinued and countersigned by numerous supporters including the Lord Mayor has been sent to local supermarkets, their relevant head offices and to schools and universities.

In response to comments raised by our members about the poor condition of the Victorian steps FOD+AG made enquiries with Public Rights of Way to see if they could be of any help. The steps form part of a public footpath leading from Circular Road, through the goat compound and exiting at the Portway. In

2014 FOD+AG, partly supported financially by the Downs committee instigated a complete renovation of the path and steps. Over time the loose stone exacerbated by the steep incline has been in part washed away. Public Rights of Way {PROW} officers have indicated that there are plans to carry out significant improvements to Downs footpaths and to create new routes to improve access to and along the Portway. A PROW officer has agreed to a site meeting to discuss the Victorian steps and other paths.

Long serving FOD+AG committee member Martin Collins has been recognised by the Bath & Bristol Parks Foundation with an award. The financial award acknowledges Martin's service to the Downs, in particular his work coordinating the volunteer goat monitors, organising the deep litter forays and gathering important butterfly data. Martin has generously donated the award to the Downs.

Earlier this month FOD+AG volunteers set to work to smarten up the Flower beds at the top of Whiteladies road. Beds have been weeded, edged up and plants dead headed and tidied. There has been an excellent display of spring bulbs this year.

This coming weekend the final Downs deep litter exercise of the winter will be undertaken. The volunteers tackle deep seated litter from more remote areas of the Downs. The target area will be Black Rock Quarry, The Gully Quarry and The Gully Goat Enclosure. This activity regularly attracts up to 40 volunteers and has proved increasingly popular especially as it could still be undertaken during Covid restrictions.

A big thankyou and Job Well Done to FOD+AG vice chair Robin Haward and his band of doughty volunteers who completed the annual restoration and maintenance of the dead hedges located along Circular Road. This important project is done each year to guide joggers away from rare plants and protected grassland. Strong winds severely tested the structures but they stood firm against the storms, a testament to the durability of the structures and to the skill of the volunteers.

Robert Westlake.

Chairman



## Downs for People public forum statement no.1: information on court case

### Summary

1. This is the last chance for the Committee to provide information about the *Downs for People (DfP)* court case. Otherwise, we will refer our requests for information to the Information Commissioner's Office. More generally, the financial information that the Downs Committee publishes is inadequate and compares unfavourably with the past. This should be remedied.

### Background

2. Our statement to the last Downs Committee meeting explained that *DfP* had made formal requests under the Environment Information Regulations 2004 on 27 September and 8 November last year. The Lord Mayor wrote on 14 December refusing information for the second time. We had asked the City Council to conduct an internal review, a necessary step before referral to the Information Commissioner.

3. We received the results of the review on 2 March (annex 1). The City Council's Data Protection Manager upheld the decisions not to disclose information. (She has, however, agreed to pursue an answer to our question about the licences supposedly issued in 2009 and 2013).

### Next steps

4. We do not accept the Data Protection Manager's reasoning. Squandering so much money on a hopeless court case has had an obvious impact on how the Downs will be managed in future. What has been spent and why seems very clearly within the definition of environmental information under the Environmental Information Regulations 2004.

5. ***We would remind the Committee that the regulations anyway specify the minimum that must be disclosed, not the maximum the Committee can reveal if they wish.*** We would at the least expect the Committee to make clear:

- **the costs of the court case.** Our estimate of the total costs of the case is £420k, £360k of which fell on the Downs Committee. This has not been disputed, so that we suspect the costs may have been even higher. There is a reference to the costs of the case in the notes of the January Events and Finance Subgroup:

“ Make the following amendments on the minutes of 22 November 2021:

- On item 2 'Finance Update' the first bullet should read 'total overspend £273k' change Judicial Review costs to £140k.”

We can, however, see no reference to Judicial Review costs in the November minutes presented to the last meeting, nor have we seen them separately identified anywhere else. The financial report for this meeting states that the Committee is likely to spend £590k this year, compared with an initial forecast of £350k. It attributes most of the excess to the costs of defending the court case. There will have been significant expenditure in 2020/21 too.

***The Committee almost certainly spent more than its usual total annual budget on the case: in accordance with the Nolan principles there should be a proper account of this expenditure.***

- **its legal advice.** The Data Protection Manager decided the Committee need not reveal its legal advice because: “the issues around the Downs land are still live and ongoing” and “disclosure of the information would adversely affect the Downs Committee’s ability to defend itself in any future legal action or inquiry”. This is odd reasoning. Our court case is not live: it was discontinued in May last year on the basis of a settlement which makes resumption unlikely. There have been suggestions of a challenge by others if the Committee decides to licence further rock concerts. We assume that the Committee would not take such a decision if it were contrary to its legal advice. It must be in everyone’s interest – except lawyers looking for more hefty fees – to share the advice for which council tax payers have paid dearly.

7. If this information is not provided, we will refer the case to the Information Commissioner.

## Financial information

8. As far as we can tell, the Committee is currently given almost no information on income and expenditure, just the overall totals. This contrasts with the years until 2018/19 (see Annex 2). Much more detail needs to be provided to achieve accountability.

### ***Peter Weeks, Downs for People***

**17 March 2022**

## Annex 1: results of internal review, email of 2 March 2022

Dear Ms Carter,

**Our ref 17211066**

**Internal Review – Environmental Information Regulations 2004 (EIR)**

I am writing in response to your concerns about the Downs Committee’s handling of your request for information (our reference: 17211066) which was responded to by Cllr Steve Smith of the Downs Committee on 14<sup>th</sup> December.

I have been asked to carry out an independent review of the Downs Committee’s response to you. It should be noted that BCC provides administrative services to the Down’s Committee and are not the data controller of the requested information.

In your request to the Downs Committee, you asked for the following information:

*“Downs for People seeks disclosure of any documents relating to:*

- 1) *Downs for People’s* public forum statements from 2017 onwards warning that zoo parking on the Downs could be challenged in the Courts;
- 2) the five year licences for zoo parking purportedly granted in 2009 and 2013. (The licences have never been produced, nor were they referred to in answer to a subsequent Freedom of Information Act request);
- 3) publicity for the July 2019 decision to grant a twenty year licence for zoo parking;
- 4) the then Lord Mayor’s statement on 24 July 2020 that the grant of the licence to the Zoo was lawful;
- 5) Bristol City Council’s statement in July 2020 that they were not involved in the issue of the licence;
- 6) the terms under which two QCs were engaged to deal with the High Court challenge;
- 7) the legal advice given to Bristol City Council and the Downs Committee at various stages;
- 8) the possibility of an out of court settlement once the Zoo announced it would close;

- 9) the decision of the Society of Merchant Venturers to be separately represented in court;
- 10) payments to the two QCs;
- 11) other costs incurred on this case;
- 12) financial contributions to the cost of the case from the Society of Merchant Venturers;
- 13) assessments of the financial cost of the court case on other activities on the Downs;
- 14) the costs of the input by Bristol City Council's legal officers;
- 15) the consequences of the court case for procedures for making future Downs Committee decisions.”

With regards to your questions 3, 6, 10, 11, 12, 13, 14, and 15 the Downs Committee stated the information requested was not environmental information.

Under the EIR 2004 Environmental information is **any information on: the state of the elements of the environment and the interaction among these elements; factors affecting or likely to affect those elements. Environmental information is any information on:**

the state of the elements of the environment and the interaction among these elements;

factors affecting or likely to affect those elements;

measures or activities affecting or likely to affect those factors or elements, or designed to protect those elements;

reports on the implementation of environmental legislation;

cost–benefit and other economic analyses and assumptions used within the framework of those measures and activities; and

the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by those elements.

Any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in the regulation will be environmental information. One of the elements listed under 2(1)(a) is land. Whilst administrative measures such as policies, plans and environmental agreements are considered environmental information there is no indication in the regulations that the costs of financing a legal case is environmental information. Legal costs information does not of itself affect the state of the elements of the environment, nor can it be a factor affecting those elements. I therefore find the Downs Committee were correct to conclude that legal costs are not environmental information and are therefore not covered by the EIR.

With regards to your questions 1, 4, 5, 7, 8, above the Downs Committee applied the following exceptions:

12(5)(b) – a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice....

Material covered by LLP maybe considered “in the course of justice”. For 12(5)(b) to apply to LPP it is necessary to demonstrate disclosure would adversely affect the course of justice.

#### **Legal Professional Privilege**

DCLG v Information Commissioner & WR: “Under this exception, a public authority can refuse to disclose information to the extent that disclosure would adversely affect “the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature”.

The Information Commissioner’s published guidance on legal professional privilege states the following: “Legal professional privilege is intended to provide confidentiality between professional legal advisors and clients to ensure openness between them and safeguard access to fully informed, realistic and frank legal argument, including potential weaknesses and counter arguments. This in turn ensures the administration of justice”.

Having viewed the withheld information and received assurances from the relevant lawyers involved I am satisfied it represents communications made for the dominant purpose of giving or seeking legal advice in the context of litigation. There is no evidence to indicate that the information has lost its confidential character and I find this exception has been engaged.

The public interest test must be applied to determine whether notwithstanding engagement of the exception the public interest lies with or against disclosure.

**Factors for disclosure:**

Disclosure would achieve accountability and transparency. This in turn can help to increase public understanding, trust and participation in the decisions taken by public bodies. It is recognised the information requested affects the environment and this adds to the public interest.

**Factors against disclosure:**

In the case of *Bellamy v Information Commissioner and Secretary of State for Trade and Industry (EA/2005/0023)*, the Information Tribunal described legal professional privilege as, “a fundamental condition on which the administration of justice as a whole rests”. Disclosure of the information would undermine the important common law principle of legal professional privilege. This would in turn undermine a lawyer’s capacity to give full and frank legal advice and would discourage people from seeking legal advice.

I understand the issues around the Downs land are still live and ongoing and that to disclose the information would be prejudicial to the course of justice.

**Decision:**

There will always be a strong argument in favour of maintaining legal professional privilege because of its very nature and the importance attached to it as a long-standing common law concept. The Information Tribunal recognised this in the *Bellamy* case when it stated that: “...there is a strong element of public interest inbuilt into privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...”

Whilst this does not mean that the counter arguments favouring public disclosure need to be exceptional, they must be at least be as strong as the interest that privilege is designed to protect it. Disclosure of the information would adversely affect the Down’s Committees ability to defend itself in any future legal action or inquiry. It should be able to defend its position and any claim made against it without having to reveal its position in advance.

On balance I am satisfied that it is more probable than not that disclosure of the information would adversely affect the course of justice and the public interest in disclosure does not equal or outweigh the strong public interest in maintaining the Down’s committees right to consult its legal team in confidence.

I am therefore satisfied that regulation 12(5)(b) has been properly engaged in respect of the relevant information and that disclosure would not be in the public interest.

**Internal Communications**

With regards to your questions 1, 4, 5, 7, 8, above the Downs Committee also applied the following exceptions:

EIR Regulation 12(4)(e) Internal communications Regulation 12(4)(e) states:

“12.-(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that— (e) the request involves the disclosure of internal communications.”

The EIR do not provide a definition of what is meant by ‘internal’. The Information Commissioner’s guidance on this exception defines a communication as encompassing any information which someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it. The communications have to have taken place solely within a public body.

The information that has been withheld from disclosure is contained in emails which have only been shared within the Downs Committee. Regulation 12(4)(e) is a class-based exception, meaning the exception is engaged as long as the information constitutes ‘internal communications’. The underlying rationale behind the exception is that public bodies should have the necessary space to think in private. The emails were for internal circulation in order to assist the Downs committee members with their discussions about the issues in hand.

Despite Regulation 12(4)(e) being engaged, I am required to consider the public interest test because the information may still be disclosed if there is sufficient public interest in doing so.

**Factors for disclosure:**

Disclosure would achieve accountability and transparency. This in turn can help to increase public understanding, trust and participation in the decisions taken by public bodies. It is recognised the information requested affects the environment and this adds to the public interest.

**Factors against disclosures:**

There is a public interest in protecting the 'safe space' for public authorities. Disclosure of the withheld information would inhibit the ability of members to debate the issues and prevent a free and frank exchange of views if the contributors felt that their input would be disclosed to a wider audience.

This in turn would have an adverse impact on the Committees ability to properly and fully consider all advice, including opinions without limitations. Discussions on the subject of the Downs are still considered 'live' and on-going and it is in the wider public interest that the committee is able to allow its members to reach decisions away from external interference and distraction.

The Regulations ensure that consideration is given to what is in the Public Interest and not what is purely interesting for the Public.

With regard to your question 2 – "the five year licences for zoo parking purportedly granted in 2009 and 2013", the committee indicated they are giving that part of your request "further consideration". I assume you have received their substantive response to that question by now but if not please advise and I will press for an answer.

**Decision**

We therefore uphold the decision not to disclose part of the information that falls within scope of this request because Regulations, 12(5)(b) and 12(4)(e) EIR applies and the wider public interest lies in favour of non-disclosure.

If you are not content with the outcome of this Internal Review you have the right to apply directly to the Information Commissioner's Office for a further decision. The Information Commissioner can be contacted at:

Information Commissioner's Office Wycliffe  
House Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
[www.ico.org.uk](http://www.ico.org.uk)

Regards

**Lynne Miller**

**Data Protection Manager**

## Annex 2: financial report from 2018

### Actual Result 17/18, Budget and Forecast 2018/19

In the financial year 2016/17, Bristol City Council contributed £262,000 to the Downs in accordance with the Downs Act of 1861.

In response to the budget challenges which the Council faced in 2017/18 and thereafter, the Downs Committee agreed to support the delivery of the following savings as contribution to bridging the Council's Medium Term Financial Plan budget gap -

16/17	£(262)k	(baseline)
17/18	£(200)k	(representing £62k saving)
18/19	£(100)k	(representing an additional £100k saving)
19/20	-	(representing an additional £100k saving and cost neutrality thereafter).

This report now presents:

- 1) The actual result for the full year 2017/18 (Table 1)
- 2) The budget and forecast for the full year 2018/19 (Table 2)

1. The last reported full year Forecast indicated the delivery of £141,000 savings.

The Actual full year result now confirms delivery of £160,103 savings.

£62,090 of this was treated as having met Bristol City Council's saving target for 17/18.

The balance of £98,013 has been transferred to the Downs Committee's Reserve.

The balance on the Reserve brought forward in 18/19 is now £327,358.

**Table 1: Shows last Forecast 2017/18 Income and Expenditure presented alongside Actual result 2017/18.**

	2017/18 Last Full Year Forecast £	2017/18 Final Full Year Actual £	Commentary
<b>Income</b>			
Fees - Leisure Services	171,477	178,391	Football, Team Love, Funderworld, Foodies Festival
Fees - Licensing	70,433	103,827	Zoo parking and Ladies Mile parking and ice cream concession
Commercial Rents	18,000	18,000	Annual concession for Café Retreat.
Fees - Other	27,765	18,488	S106 monies for changing rooms and goal posts, filming, photo shoots and runs.
<b>Total Income</b>	<b>287,675</b>	<b>318,706</b>	
<b>Expenditure</b>			
Employees	(207,600)	(201,833)	Includes salaries costs and non-contractual overtime related to provision of football pitches.
Premises	(15,100)	(16,639)	Includes Sea Walls inspections, emergency security works and works to dressing rooms.
Transport	(200)	(291)	Depot equipment repairs and maintenance.
Supplies and Services	(86,300)	(69,801)	Includes Biodiversity Officer, grass seed, replacement of fences at Black Rock Quarry.
Third Party Payments	(22,500)	(10,614)	Early hay cut and Avon Gorge and Downs Wildlife Project
Support Services	(17,350)	(45,227)	Includes security patrols May-September.

Sub-Total Expenditure	<b>(349,050)</b>	<b>(344,405)</b>	
Other Direct Costs	(51,144)	(51,144)	Includes grounds maintenance incurred by Parks Services, changing room cleaning costs and fleet running costs (excludes allowance for fleet renewal charges).
Indirect Costs	(25,144)	(25,144)	Includes Parks Management, Finance and Democratic Services
Employee Adjustment	17,000	-	Less: the cost of Employee time spent at Blaise and Kingsweston Estate
<b>Total Expenditure</b>	<b>(408,338)</b>	<b>(420,693)</b>	
<b>Income Less Expenditure</b>	<b>(120,663)</b>	<b>(101,987)</b>	
Plus:			
Council Contribution	200,000	200,000	
<b>Net Position</b>	<b>79,337</b>	<b>98,013</b>	Downs generated surplus <u>over and above</u> the £62,090 saving

2. The full year Budget for 2018/19 and first Forecast for 2018/19 is confirmed below.

**Table 2: Shows proposed Budget 2018/19 Income and Expenditure presented alongside Forecast 2018/19.**

	2018/19 Full Year Budget (as confirmed 22/1/18) £	2018/19 Latest Full Year Forecast £	Commentary
<b><u>Income</u></b>			
Fees - Leisure Services	170,126	205,126	Football, Russian Circus, Team Love, Funderworld, Let's Rock, Foodies Festival
Fees – Licensing	70,433	100,433	Zoo parking and Ladies Mile parking and ice cream concession
Commercial Rents	18,000	18,000	Annual concession for Café Retreat
Fees – Other	10,000	10,000	S106 monies, filming, photo shoots and runs
<b>Total Income</b>	<b>268,559</b>	<b>333,559 (i)</b>	
<b><u>Expenditure</u></b>			
Employees	(196,600)	(196,600)	Includes salaries costs and non-contractual overtime related to provision of football pitches
Premises	(14,100)	(37,100) (ii)	2018/19 includes contract cleaning
Transport	-	-	
Supplies and Services	(83,850)	(102,095) (iii)	
Third Party Payments	(8,500)	(8,500)	Includes early hay cut and Avon Gorge and Downs Wildlife Project
Support Services	(17,500)	(17,500)	Includes security patrols May-September
Sub-Total Expenditure	<b>(320,550)</b>	<b>(361,795)</b>	
Other Direct Costs	(39,144)	(39,144)	Includes grounds maintenance incurred by Parks Services and fleet running costs (excludes allowance for fleet renewal charges)
Indirect Costs	(25,144)	(25,144)	Includes Parks Management, Finance and Democratic Services
<b>Total Expenditure</b>	<b>(384,838)</b>	<b>(426,083)</b>	
<b>Income Less Expenditure</b>	<b>(116,279)</b>	<b>(92,524)</b>	
Plus:			
Council Contribution	100,000	100,000	
<b>Net Position</b>	<b>(16,279)</b>	<b>7,476</b>	Downs generated surplus/(shortfall) against relevant year's total saving (18/19 162k)

Notes:

- i) Representing incremental  
£18,000 for Football  
£17,000 for Team Love levy and

- £30,000 for ice-cream concessions.
- ii) Representing £23,000 for contract cleaning, servicing, opening and closing of loos.
  - iii) Representing £10,000 for Sea Walls Café Planning and £8,245 for Downs Changing Rooms Feasibility Study (survey, design, structural assessment).
- If the 2 investments go ahead in 18/19, £18,245 could subsequently be capitalised.

## Downs for People public forum statement no.2: retraction of statement by the Master of the Merchant Venturers.

### Summary

At the Downs Committee meeting on 24 January, the Master of the Merchant Venturers made a statement which is recorded under item 7 of the minutes (public forum). This statement misrepresents the roles of both the Society of Merchant Venturers and Downs for People. It is factually incorrect. The statement should be publicly retracted, apart from the commitments at the end to collaborate with interested groups and to operate in line with the Nolan principles.

### Background

#### *Overall critique*

1. Downs for People wrote to the Master of the Merchant Venturers on 1 February drawing attention to the inaccuracies in his statement. Our email is annexed. We have not received a reply.

#### *Role of the Merchant Venturers*

2. ***It is not true that the MVs bought Clifton Down specifically to prevent others making a fortune from developing houses on it.*** The Society of Merchant Venturers bought Clifton Down in 1676, as part of the Manor of Clifton. As common land, Clifton Down could not be developed but the rest of the Manor could. Far from preventing development, the Merchant Venturers made a fortune from the sale of leases to those who built houses on the fields of the Manor.

3. ***It is not true that the MVs have sought throughout the history of the Downs to protect them.*** The Merchant Venturers could not build on the Downs, but they could dig them up and take them away. The plateau was littered with workings, while there were giant quarries in the gorge. An 1806 guidebook objected to the destruction of the magnificent scenery. Rare plants and trees will have been destroyed too. MV author and historian Francis Greenacre wrote: "Despite popular concern, quarrying was to continue until the later nineteenth century, to the considerable benefit of the Society of Merchant Venturers."

#### *Role of Downs for People*

4. ***The following defamatory statements should either be substantiated or withdrawn:***

- ***Downs for People feel that they're entitled to demand meetings and receive preferential treatment ahead of other stakeholders.***
- ***Downs for People didn't seem concerned about the future of the Zoo, nor of the many visitors including people with small kids and disabled people who needed to park close by.***
- ***Downs for People continued with the litigation unnecessarily and drove the costs up needlessly.***

Downs for People

17 March 2022

## ANNEX: Downs for People email of 1 February to the Master of the Merchant Venturers

### *Downs Committee meeting 24 January 2022: Downs for People follow-up*

1. *Downs for People (DfP)* was encouraged by the outcome of last Monday's Downs Committee meeting. We welcomed the Lord Mayor's assurance that there would soon be public consultation on proposals for Downs strategy and governance, including legislation to change the composition of the Downs Committee. We also welcomed your assurance that the Society of Merchant Venturers was committed to collaborating with interested groups and would in future be bound by the Nolan principles. We trust this promise of public accountability and openness will be translated very soon into publication of the information we have sought about the conduct and costs of our court case.

2. We were, however, most concerned by the misrepresentation of the court case and by other inaccuracies in your prepared statement. We recognise that you are new to the Committee and had been poorly briefed. You apologised to Cllr Goggin for misleading him on the court case at the time. Nonetheless, given that the statement was a public one and has been reported in the Press, all the mistakes need to be corrected. (I apologise for any transcription errors in what follows: we do not have a printed version of your statement).

#### Downs for People

3. You said you were **"...puzzled by why Downs for People feel that they're entitled to demand meetings and receive preferential treatment ahead of other stakeholders."**

We feel no such entitlement: *Downs for People* has always worked in tandem with other stakeholders. We are an informal group set up in 2013 to co-ordinate objections to a planning application for continued zoo parking on the Downs. All but one of us then represented major amenity organisations who had long objected to the zoo's occupation of the land. DfP continued to spearhead and co-ordinate the campaign against zoo parking through a subsequent planning application, meetings with the zoo, repeated statements to Downs Committee meetings, and our High Court challenge. As well as maintaining links to the organisations of which we were individually members, we kept other stakeholders informed. Many publicly supported us. We have almost a hundred organisations and individuals on our mailing list.

4. DfP expected to disband when zoo parking came to an end. We have not done so because our experience convinced us that the Downs Committee was unfit for purpose. Our new mission is to change the composition of the Committee through legislation. Failing that, we want Merchant Venturer members of the Committee to be selected by open competition. We also want to use our knowledge to contribute fully to the current review of Downs governance and strategy.

5. We have played an information-sharing and co-ordinating role with other stakeholders on that review. I wrote to the Lord Mayor in July and September on behalf of twelve organisations who wished to be involved in a discussion. We were all then invited to the stakeholders' meeting in October. This focused on a few topics. When submitting a wider-ranging paper before the meeting, *Downs for People suggested* (but did not **'demand'**) a further separate session or working group on governance issues, to include any stakeholders who were interested. At the meeting we asked that our paper be considered and that we should be included in any working group.

6. We **asked for** - but again did not **'demand'** - a meeting last month with the Society of Merchant Venturers to discuss ideas concerning them. We hoped that the Society would adopt as its own our idea that it should give Clifton Down to the city. We are not aware that any other stakeholders were seeking a meeting with the Society, nor are we aware that the Society intended to hold discussions at a later stage. We do not understand the reference to preferential treatment.

#### The court case

7. The discussion of our court case last Monday was muddled. At least it led you to realise that you had made a misleading statement and apologise. You claimed that the case had not been a judicial review: **it was, and it still is, a judicial review, in its entirety.** (We did not understand Gillian Camm's suggestion that only part of the case had been a judicial review. We had to make a separate application for the disclosure of basic information but that was very much part of the review).

8. In summary, we made a formal application for judicial review that was granted. The case was due to be heard by a judge on 13 May last year. It has not been dismissed: under the terms of the order agreed by the judge on 12 May, the case has only been discontinued. Anyone can ask for it to be resumed if they want a definitive judgment. We are confident that a judgment would be in our favour. The Downs Committee and Bristol City Council must have thought so too, to offer us such a generous settlement – twice as much money as we would have received in court if we had won.

9. You made two further points in relation to the court case with which we take issue:

1) **"Downs for People didn't seem concerned about the future of the Zoo, nor of the many visitors including people with small kids and disabled people who needed to park close by."**

The Zoo has been forced to close its Clifton site because of financial losses caused by COVID, not by us. (See <https://future.bristolzoo.org.uk/new-bristol-zoo/bristol-zoological-society-unveils-new-plan-to-safeguard-its-future/>) We are sad about that. We agreed as part of the legal settlement in May that the Zoo could retain use of both the Ladies Mile site on the Downs and the North car park (outside the Zoo's main entrance) while it still needed them. Parking can continue at Ladies Mile site until 1 October this year. The North car park can be used until the end of next year.

Further, when COVID forced the temporary closure of the Zoo in early 2020, we promised that we would not campaign against its use of the Ladies Mile site that year if it were able to re-open.

**2) "I'm at a loss to understand why Downs for People continued with the litigation unnecessarily and drove the costs up needlessly."**

We had to continue our legal action after the Zoo's closure was announced to ensure that there was no danger of the Downs being used as a car park for other businesses and activities not on the Downs. The Downs Committee and Bristol City Council took a long time to offer satisfactory undertakings. They did not make a meaningful offer until Friday 7 May, less than a week before the case was due in court. We agreed to settle on Monday 10 May.

Since we were advised throughout the proceedings that we were likely to win, we suspect that the Committee and Council were advised at an early stage that they were likely to lose. If satisfactory undertakings had been given then, much money could have been saved. **We** are at a loss to understand why these undertakings were not given even when the zoo's closure was announced. We can only conclude that this was a deliberate decision to drive up costs in the expectation that this would force DfP to withdraw.

The costs of the case would have been much lower too if the Downs Committee and the Council had employed less expensive lawyers: two QCs against our single junior barrister. Our legal costs were £68k, of which the Downs Committee and City Council repaid £65k. We estimate their legal costs were almost £300k.

#### History of the Merchants' involvement

10. The facts do not support your rosy account of the Merchants' involvement with the Downs. It contained some glaring errors, as set out below:

1) **"... the Merchants, under the terms of the 1861 Act, committed Clifton Down, which they owned, irrevocably to be kept as open space for the benefit of the people of Bristol, at a time when others were making a fortune out of developing houses all around. In fact they bought the land specifically to stop that from happening..."**

You have confused the Society of Merchant Venturers and Clifton Down with the Bristol Corporation and Durdham Down. The Corporation bought Durdham Down in the 1800s to protect it from encroachment by building. The Society of Merchant Venturers bought Clifton Down long before, in 1676, as part of the Manor of Clifton. We are unaware of any suggestion that the Society's purchase of the Manor of Clifton was philanthropic. We are, of course, appreciative of the Society's role in agreeing to give a right of public access for recreation to some of its land. As the 1861 Act records, such access was something that had in practice been enjoyed "from time immemorial".

2) **" [ the Merchants]... have sought throughout the history of the Downs to protect it.**

Not so – for long periods the Merchants saw the Downs as a giant quarry to plunder. The valuable rockfaces in the gorge were excluded from the 1861 Act and extensive quarrying continued on the part of Clifton Down that the Act covered.

3) **"...any income received from any activity on Clifton Down has always gone to the Downs Committee."**

So have the costs: in exchange for granting a right of access to its land, the Society transferred the expense of maintaining it to the Corporation. Income to the Committee has not been maximised: the Zoo, for example, was allowed to keep most of the income from parking on the Downs.

4) **" The Merchants put a great deal of time and effort into the Downs, care about it deeply, and gain absolutely no benefit from their involvement.**

The history of zoo parking on the Downs suggests some Merchant Venturers care more about their other interests. Their support for the Zoo, to which some have shareholder and trustee links, has been more evident than their care for the Downs.

For example, in 2013 two Merchant Venturers argued the case for the Downs Committee to grant an unnecessary licence to the zoo for parking in order to strengthen the zoo's application for planning permission. (The zoo already had a licence that was not due to expire). One Merchant explained "As one of the City's premier visitor attractions, bringing in significant revenue to boost the economy in Bristol, the Committee has been keen over the years to support the Zoo." (Indeed it had - there appears to have been a similar charade in 2009. Unsurprisingly, no trace of 2009 and 2013 licences has yet been found. There was a twenty year licence running until 2024.)

In 2013, the Zoo's other Merchant Venturer advocate further demonstrated his care for the Downs by writing personally in support of the Zoo's application:

*"The Zoo offers open-air recreational activities not so very dissimilar to the Downs themselves. [ Comment: as long as you can afford the price of admission, do not have a dog, and do not want to play ball games or walk or run far...!] That a relatively contained area of the Downs should continue to be available to visitors to the Zoo .....is surely reasonable."* That area was used by 1000 cars at peak times, bringing noise and visual intrusion much more widely.

We have reminded the Committee repeatedly that it has a single statutory remit: to manage the Downs as a place of public resort and recreation for the people of Bristol. Their failure to heed our reminders led to our court case.

11. I am copying this email to the Lord Mayor, councillors on the Downs Committee, Oliver Harrison as Clerk to the Committee, Gillian Camm and Caroline Duckworth. We will also be releasing it to the Press.

### **Statement on the SMV composition of the Downs Committee**

At the last Downs Committee I raised the issue of representatives of the Society of Merchant Venturers sitting on this committee who do not live in the city and thus do not pay the more than £3,000 council tax that I do. At the same time they can make decisions that cost me and other council taxpayers money, as no doubt we shall hear today.

My point was not addressed at the meeting.

Although I note that the Lord Mayor emphasised the value of the Venturers' contribution to the committee.

However, my argument remains unchallenged, especially by the three Venturers who didn't even turn up the last time, for reference: Peter Rilett, Patrick Despard and Mark Burchfield. From my best research endeavours, neither Mr Rilett nor Mr Despard live in Bristol. Mr Burchfield, I don't know, but he appears to run a business in Clevedon.

So once again I say: no representation without taxation. The Venturer committee members who do not live in Bristol need to be replaced now. And if they wish to wait until the end of the year, I suggest they pay a pro rata amount of a year's Band F council tax for the privilege of sitting on the committee.

I will be happy to keep coming to these meetings until these Venturers realise they need to do the right thing.

**Andrew Lynch**

## **Downs Committee Statement March 21<sup>st</sup> 2022 Cllr Christine Townsend - Opinion**

As stated in January this committee must be served by the Nolan Principles, current composition prevents this. The Society of Merchant Venturers is an unincorporated, undemocratic, invite only, private members' club whose position derives from ongoing environmental extraction and the historic horror of the TST that saw human exploitation, kidnap and murder for private gain. The legacy of the TST is structuralised throughout present day society and personified in Merchant Venturer presence on this committee. Despite Freed claiming that the Merchant Venturers will follow the Nolan Principles, the statement he then read out in January ran contrary to each and every one of them: -

**Selflessness** – Fighting members of the public in a prolonged, unwinnable judicial review, funded by the public purse to 'save face' is not in the public interest.

**Integrity** – Merchant Venturers are on this committee by way of this undemocratic, unaccountable private members club and, by definition, are here to represent and promote that organisation's interests

**Objectivity** – Freed attempts to blame Downs for People for the cost of the judicial review. But it was the Merchant Venturer dominated sub of the Downs Committee, not Downs for People, that prolonged the case even though they will have known it was hopeless. They did not concede until they were almost on the steps of the courtroom. Downs for People were pursuing the case in the public interest to safeguard the Downs, mainly at their own expense.

**Accountability** – This committee has repeatedly failed to engage with scrutiny from members of the public, ignored email requests for information and has to date failed to make public the amount of public money wasted attempting to fight an unwinnable judicial review. As I stand here as a democratically elected representative there remains zero public information about the total sum wasted on this failed venture.

**Openness** – it is not acceptable that members of the public are needing to resort to making Freedom of Information and Environmental Information Regulation requests to get basic information. It was necessary for Downs for People to get a disclosure order via the court to have sight of the 20 year licence they were challenging, the judge was unimpressed with the Committee's behaviour. Needing to approach the Information Commissioner to access requested information is shameful and the antithesis of the Nolan Principles.

**Honesty** – Freed's statement references 'the court case' the process was a judicial review – accurate language use matters. Freed referred to the history of the Downs and claims that 'at a time when the others were making a fortune out of developing houses all around it....they bought the land specifically to stop that from happening' This statement is factually incorrect, the Merchant Venturers purchased the land in the 17<sup>th</sup> century and sold leases for development pocketing the money and quarried large parts for private capital gain. The idea that Merchant Venturers act in a manner that benefits anyone other than themselves is ludicrous and is demonstrated in other aspects of their 'work'. The public words of their ex-head teacher John Whitehead stated that the instinct of the Merchant Venturers is '**self-preservation**' days after the felling of their statue mascot the enslaver Edward Colston.

**Leadership** – Whilst Freed promoted historical inaccuracies, myths about the history of the involvement of the organisation with the Downs and private profit made from it, described a judicial review as a 'court case' the rest of the Merchant Venturers sat back silent, this is not leadership this is complicity.

Democracy and the Nolan Principles are not and cannot be served whilst the Merchant Venturers sit on this, or any other council committee. Any elected representative claiming otherwise are themselves failing to adhere to those principles.