

THE DOWNS COMMITTEE

Clifton and Durdham Downs (Bristol) Act 1861

Reply to Steve Gregory

To : Members of the
Downs Committee

Telephone

E-mail

steve.gregory@bristol.gov.uk

Date

Friday, 28 February 2025

The Lord Mayor and 6 City Councillors

The Rt. Hon. The Lord Mayor

Councillor Andrew

Varney

Councillor Kye Dudd

Councillor Caroline

Gooch

Councillor David Wilcox

Councillor

Calascione

Councillor Paul Goggin

Councillor

O'Rourke

George

Paula

The Master and 6 Merchant Venturers

Dear Member,

You are invited to attend a meeting of the **Downs Committee** to be held at **2.00 pm on Monday, 10th March, 2025 at .**

The agenda for the meeting is set out overleaf and the supporting documents are attached.

Democratic Services Section

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

Website

www.bristol.gov.uk

Agenda

7. Public Forum (Pages 3 - 6)

Up to 30 Minutes is permitted for this item.

To consider items of Public Forum sent to the Downs Committee.
Interested parties can submit:

- A written statement of approximately one side A4 which must be received **2 clear working days** prior to the meeting. For this meeting that means no later than 12pm on 5 March 2025 at 5pm.
- A maximum of 2 written questions (which will be answered verbally at the meeting) must be received **3 clear working days** prior to the meeting. For this meeting, it means that your question(s) must be received no later than 5pm on 4 March 2025.
- You will have the opportunity to ask one supplementary question arising directly out of each of the original questions or replies.

Public Questions and Statements should be submitted via our webform:

www.bristol.gov.uk/publicforum

Please note that your statements and questions will be sent to Committee Members and published on Council's website prior to meeting.

Steve Gregory, Democratic Services Officer

Email: steve.gregory@bristol.gov.uk or democratic.services@bristol.gov.uk

Phone:

THE DOWNS COMMITTEE

10 March 2025

Public Forum

Statements

1. Susan Carter

Statement title: Padel Courts and North Car Park legal issues

Statement: I am concerned that I have received no response to my email of 15 January to the Lord Mayor. This raised important legal issues. I am asking the Clerk to the Committee to circulate it again as it is longer than the 5000-character limit.

On 15 Jan 2025, at 01:08, Susan Carter <susan.carter231@gmail.com> wrote:

Dear Lord Mayor,

1. I am writing about the two issues I raised at yesterday's Downs Committee meeting: the Padel court and mini-golf proposals, and the North car park. On the latter, I have simply set out for the record what I said yesterday. On the Padel court and mini-golf proposals, I have looked at the Downs Act and cannot see that it can be interpreted as suggested at the meeting. ***In my view, the Committee needs to get further legal advice urgently before incurring more expenditure.***

Padel court and mini-golf proposals

Committee's legal advice

2. You will recall I asked a question about how it would be possible to construct Padel courts and a mini-golf course without enclosing parts of the Downs, The business development manager explained that he had received legal advice that enclosure would be possible because the land would be appropriated. In a Supplementary Question, I asked if I could see the legal advice.

3. Robert Bourns provided further details. He said (as I recall) that enclosure provisions in legislation had a long history. They were mainly intended to stop people being driven off their land. Section 11 of the Downs Act gave the Committee powers to enclose land for decorative purposes and to appropriate land for recreation and exercise. The section set out

how the Downs should be managed to support activity. Consideration of the Downs Act should not stop at the first point about keeping them open and unenclosed: it should cover section 11 as well. Padel and mini-golf provided recreation and exercise. The Committee could therefore appropriate and enclose parts of the Downs for those activities.

A different view of section 11 of the Downs Act

4. I have looked at section 11 of the Act and cannot see that it can be read in this way. The section sets out in ten sub-sections all the powers that the Downs Committee may lawfully exercise. The first seven sub-sections relate to discretionary powers; the last three to accounting and minuting requirements. The fourth sub-section reads:

They [the Downs Committee] may drain, plant or improve the said Downs, may inclose parts thereof for ornamental purposes only, and may appropriate portions thereof for particular purposes of recreation or exercise

There are three separate parts to this sub-section, without links between them. Enclosure is *only* possible for ornamental purposes: there is no connection to portions of the Downs appropriated for recreation and exercise.

Purpose of the Downs Act and the Committee's role

5. The primary (indeed only) purpose of the Downs Act is clearly set out in section 1:

Such part of Clifton Down as is coloured pink in the said Plan, so deposited as aforesaid, together with such part of Durdham Down as is coloured blue in the said Plan, shall, so soon as Durdham Down shall be vested in the Corporation, be managed and regulated as hereinafter provided, and 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

The Act provided for the establishment of the Downs Committee to contribute to achieving this purpose. Section 11 describes the powers and obligations the Committee would have. The Committee's only role is to manage the Downs to ensure that they remain open and unenclosed for Bristolians to enjoy.

The Committee can only use the specific powers it has been given: these do not extend to enclosing land for recreation, nor to constructing Padel courts.

Enclosure in the context of the Downs Act

6. Individuals have enclosed common land for centuries to make money from it, generally from changed agricultural practices. In Bristol in the nineteenth century the threat was not from agriculture but from house-building. People were encroaching on the Downs to develop them. That is why the

Bristol Corporation decided to acquire Durdham Down and to negotiate with the Society of Merchant Venturers to ensure continuing public access to Clifton Down too. Hence the Downs Act.

7. Enclosure in the context of the Downs Act is not an archaic medieval term. The Act's use of the word 'unenclosed' reflects the special qualities of the Downs which have been enjoyed for centuries and which the Act - very specifically - sought to protect..

Need for further legal advice

8. As a civil servant I worked for decades with legislation. For eight years my responsibilities included common land and access. In the course of my work I dealt with many High Court challenges. I became very familiar with the legislation relating to the Downs while co-ordinating the successful High Court challenge to zoo parking on the Downs.

9. What I have set out above is only my opinion. Others, including Robert Bourns, clearly hold a different view. **While only the courts can decide on the correct interpretation of the law, I suggest members of the Downs Committee look at the wording of section 11 and consider whether they should seek further legal advice.**

North car park

10. Here is an account for the record of what I said to the Committee yesterday:

I explained that I would need to consult others on a full response to your email sent at 12.27 that day. I set out some of my initial thoughts in the hope that the Committee would consider them. These included:

- **finality of September decision.** *The video of the September meeting showed that the decision to proceed had been taken without proper consideration of the legal issues. The decision needed to be reviewed/revoked to avoid challenge;*
- **enclosure.** *There was a lot of case law on enclosure and access, which were fundamental in the legislation on common land. Southampton Corporation had been successfully challenged in a key case where the judge decided the presence of cars alone was a barrier to access.*
- **County of Avon Act 1982.** *I was well aware of the County of Avon Act 1982 as the co-ordinator of the High Court challenge by Downs for People to zoo parking on the Downs. Without that Act, all parking on the Downs would be unlawful. The 1982 Act amended the Downs Act but only insofar as parking was allowed in relation to activities on the Downs.*
- **enforcement.** *The relationship between the law and its enforcement had been dealt with at length in the Downs for People public forum statement to the November meeting. Para 5 of that statement concluded:*

"...lack of enforcement would increase, not reduce, the risk of being found in breach of the consent order. Shoplifting has become more likely, but not more lawful, in the absence of police enforcement."

I pointed out that the letter of 8 April had been written in the hope that we could avoid litigation. It asked for a meeting to discuss the issues. We would still like this.

11. I am sorry to write at such length. i think it important though that you and others consider these points fully now rather than risk costly litigation.

Best wishes,

Susan