

# **THE DOWNS COMMITTEE**

## **16 September 2024**

### **Public Forum**

#### **Questions**

1. Mark Ashdown – Tree Forum

#### **Statements**

2. Thomas Dawkins
3. Simon Robertshaw
4. Chris Jefferies CHIS
5. Susan Carter - DfP
6. Dominic Hogg

1

Dear Democratic Services,

Please place these questions before the Committee when it meets on 16 September:

**Item 9. Use of the North Car Park.**

**Question 1:**

Is the Committee willing to meet with the Bristol Tree Forum and other interested groups to discuss their statutory obligations under the Downs Act and Commons legislation, particularly in relation to the future of the North Car Park?

**Question 2:**

If the committee approves the proposal that the North Car Park be reopened for pay and display parking for Downs users, will it make a planning application seeking permission to this?

I am unable to attend the meeting, so please provide written answers in time for the meeting

Regards

Mark

Mark CD Ashdown

**Chair – Bristol Tree Forum**

It has come to my attention that Funderworld will be making another visit to the section of the Downs adjacent to the water tower. Notably, 2024 is the first year with two Funderworld visits.

I should start off by fully acknowledging that Funderworld pays a fee to operate on the Downs, it contributes to local charities and is broadly enjoyed by hundreds of people in the broader Bristol area (and possibly further afield) when it visits.

This all said, for those of us who live nearby, it is an unpleasant nuisance. This is in part due to the fact it produces large levels of noise which can be heard well into Redland. For context, I live in the vicinity of Oswald Road, and can hear Funderworld in my garden well into the evening. That said, it is also an eyesore which ruins enjoyment of a large part of the downs, it increases traffic density (and therefore pollution) in the local area, and there is invariably large patches of dead grass left behind at the end for us locals to make do with. I have not previously complained, because I have known it would only be around for a month each year (although that is longer than most Downs events) and I did not want to obstruct people traveling in who wished to enjoy it. However, Funderworld gracing the Downs multiple times a year is pushing on unreasonable.

On a personal level, I would happily be without any visits at all, but I understand it does have merit to others, therefore I write this in the spirit of compromise.

My questions are as follows:

- Please can the committee look to restrict the visits to the usual once a year, given the negative effect it has on local residents and considering the fact that it lasts an entire month on each visit?
  
- If the committee feels very strongly that it must visit multiple times a year, then can the committee consider a new site for it - either on The Downs or elsewhere? This would be another reasonable compromise.

The Downs is a public space and should be enjoyed by all. I just ask that this singular item is considered for the benefit of those of us who wish to enjoy the comfort of our homes and gardens without enduring excessive noise pollution for an additional month each year.

Public Forum sent to the Downs Committee – 16<sup>th</sup> September 24.

Simon Robertshaw

Written statement.

Earlier this month I sent a large number of e-mails to councillor members, members of the Downs committee and FOD. My personal ignition point was a morning run with my dog starting from home in Cotham then to the water tower, around past the travellers encampment, with bins, debris and diggers, through the woods along the v narrow overgrown cliff edge path, then past the pretty ugly fencing for the Massive Attack event (so I couldn't get to the sea walls really), then past the long string of parked up mobile home, some with scooters beside them and mini gardens and debris up to the White tree then home. I've been aware of the pressure that the Downs is under for a long while, but that day seemed to be massively excessive and unmanaged. It felt like there was no management and people were taking the mick unchecked.

After my flurry of complaint e-mails, I got some great e-mails back from Robert Westlake, Guy Poultney, Paula O'Rourke and Steve Gregory. I appreciate the feedback. It is clearly not an easy task to manage this great space for the benefit of Bristolians across the city. I'm aware that travellers landing always results in around £8K worth of costs and a long delay, and that there are limitations on how the long-term camper van residents are managed.

The council has to provide good quality travellers sites as part of its statutory obligations, which I am sure its fulfilling? For the long-term stayers its more difficult. There is a cost-of-living crisis but the camper vans around the Downs are not connected to that directly. There is a city-wide camper van issue, always around attractive public amenity spaces. Isn't this a choice to use public space for personal long-term amenity right outside your mobile home door. In my ideal world there would be some serviced temporary camper vans, supported and space for passing wild camping but this would need to be managed and there would need to be costs, for BCC staff or volunteers (materials etc). Alongside this, sites for camper vans across many areas could feasibly be provided but temporary/limited and serviced.

Looking at the Downs in its widest sense it's a massive area connecting to the gorge. For me access to the wooded areas beside the gorge seems restricted at the moment with narrow paths. The cliff edge walk is lovely but it's a solo experience as no one with access issues needing a wheelchair could get through this area. Fuller access to all areas would be positive.

In summary - I love the festivals (if not back-to-back), love the football, love the dog walking, love the space to run, love the space for picnics. It's a great resource for the entire city.....and I am appreciative of the work that the Downs Committee does.

Two questions

- Given that the actions of the council and the Downs committee are restricted, relative to the speed to action on unauthorised travellers sites and ongoing habitual

overnight camper van stays, are the councillor members lobbying their respective MP colleagues to change legislation and government guidance so that BCC and the Downs committee can manage things effectively?

- Is there any master planning process in place for the Downs and Gorge to ensure that the vast array of uses that the Downs are put to for public benefit are achieved to maximum effect and minimum harm, for nature/heritage and beauty.

PUBLIC FORUM STATEMENT SUBMITTED ON BEHALF OF THE CLIFTON AND  
HOTWELLS IMPROVEMENT SOCIETY

1. The Clifton & Hotwells Improvement Society has seen and approved a letter dated April 8th 2024 sent by DOWNS FOR PEOPLE to the (then) Lord Mayor, at the time Chair of the Downs Committee. The letter has since been copied to Michael Bothamley as Master of the Merchant Venturers. Although the letter called for a response none whatsoever has been received.
2. The Clifton & Hotwells Improvement Society also submitted a letter signed by its Chair, Brian Worthington, and Christopher Jefferies to the Master of the Merchant Venturers, Michael Bothamley, and copied to the Lord Mayor, dated April 20th. That letter, too, required a response. None has been received.
3. The letter submitted by DOWNS FOR PEOPLE suggested that the proposed use of the North Car Park as a pay-and-display facility would be unlawful and may constitute a breach of the undertaking that was given to the Court. It ran to almost 10 pages and contained over 30 paragraphs. It gave detailed reasons for the conclusions reached.
4. We have seen the report dated 16th September from Luke Mackenzie submitted to the Committee. It makes no reference to either letter.
5. It would constitute an egregious breach of duty if the Committee were to approve the Officer's recommendation without (a) being appraised of the contents of the letters and (b) having the opportunity to take proper legal advice on their contents. Specifically, the provisions of the County of Avon Act cannot override the fact and terms of the undertaking. The consequences of a breach of the undertaking would, obviously, be a very serious matter for the individual members of the Committee since the normal remedy for a breach of an undertaking is a contempt of court application. The position in this case would be all the more serious as a result of the fact that DOWNS FOR PEOPLE has given detailed reasons for its contentions and, as yet and despite the fact that 5 months have elapsed, no reply has been received.
6. CHIS has no wish to be obstructive but does insist on the law being properly applied. The letters referred to above made it clear that the issues raised needed to be resolved constructively by means of a meeting to agree a way forward. That remains the position and is the sensible approach.

Christopher Jefferies  
Brian Worthington

On behalf of the Clifton & Hotwells Improvement Society

# DOWNNS FOR PEOPLE

*For ever unenclosed, for all to enjoy.*

## 5 Public forum statement: use of the North car park

***Summary. If the Downs Committee agrees to go ahead with the provision of a pay and display car park, it risks contempt of court proceedings and another expensive High Court challenge. It needs to consider the legal implications and the alternatives carefully. The site should be restored to amenity use.***

### Detail

1. *Downs for People* made a public forum statement to the Committee in June 2024 about the North car park. We reported that, together with *Bristol Tree Forum* and with support from the *Clifton and Hotwells Improvement Society (CHIS)* and the *Friends of the Downs and Avon Gorge (FODAG)*, we had written to the then Lord Mayor in April setting out in detail why proposals for a commercial car park appeared unlawful (attached). We had asked for a meeting to discuss this. In June we urged the Committee to seek briefing on the legal implications and the risk of expensive challenges. We repeated our request for a meeting.

### *Legal objections*

2. We have heard nothing since. The Committee is now being asked to approve use as a pay-and -display car park, ignoring the concerns we set out in our April letter. In summary, if the Committee agree to this they will – on the basis of our legal advice – be acting contrary to the terms of:
  - **the consent order which discontinued our High Court challenge against zoo parking on the Downs (attached to the Downs Committee paper).** The Committee and the City Council gave an undertaking that they would not “make arrangements whose purpose is to allow persons to park on the North Car Park so as to undertake non-Downs activities”. This is very obviously the purpose here. The primary objective is to make money, irrespective of where it comes from or the payee’s purpose in parking. The Committee cannot expect that the main users will be engaged in Downs activities when free parking is available on the roads on the Downs. The car park will be much more attractive to commuters, and to those going to Clifton College; the proposed conservation centre at the former entrance to the zoo; the housing to be built on the zoo site; and elsewhere close by. ***If the Committee breach the terms of the consent order, they will be in contempt of court and liable for action to be taken by the Court against them. The maximum penalty is imprisonment.*** Putting up a notice about Downs use seems unlikely to impress the Court if the Committee clearly do not intend to enforce it.

- **the 1861 Downs Act.** The provision of parking on the Downs is unlawful except insofar as specifically allowed by the 1982 County of Avon Act i.e. for Downs users. The Downs, including the North car park, must be kept open and unenclosed for the public resort and recreation of the people of Bristol. Creating an enclosed pay-and-display car park that is available to all risks another expensive High Court challenge. Our challenge to zoo parking on the Downs cost council tax payers well over £400,000 and the zoo a further £50,000.

3. In addition, the site is registered common land. The creation of an enclosed car park requires permission from the Secretary of State. There is a right of public access on foot.

#### *Alternative uses*

4. It is disappointing that the Business Development Manager can think of no feasible alternatives. *FODAG*, *Downs for People*, *Bristol Tree Forum* and *CHIS* have all argued in the past for the car park to be restored to amenity use. Apart from re-wilding and integration into the Downs, suggestions have included a linear park, a tree-lined avenue to rival the Promenade, an eye-catching floral display and a wildflower meadow. The car park is on a popular walking route from Whiteladies Road to Clifton village. There are potential moneymaking options too, especially the provision of refreshments.

*Downs for People*

*September 2024*



## Written Statement

Living close to the Downs, as we do, there are now a diminishing number of summer weekends where the days and evenings are not affected by loud music. The recent Forwards Festival experience gave rise to some of the loudest music we have heard in our street (much louder, for instance, than seemed to be the case with the Massive Attack concert the week before).

It's convenient for some to dismiss those who complain of noise as 'kill-joys', or as people who want to stop others having fun. Yet the law, as it stands, even if it's not especially well implemented or enforced, does recognise the right of citizens not to be bothered by noise.

Noise is not a trivial matter. In England, it has been estimated that 127,000 life years were lost due to transport noise each year.<sup>1</sup> In Europe, the European Environment Agency estimated that long-term exposure to environmental noise (defined, essentially, as that due to transport) causes 12,000 premature deaths as well as 48,000 new cases of ischaemic heart disease each year. 22 million people suffer chronic and high levels of annoyance and 6.5 million people suffer chronic and high sleep disturbance. From aircraft noise alone 12,5000 children are estimated to suffer learning impairment at school.<sup>2</sup>

These impacts are, as already noted, based only on the impact of noise related to transport. The noise from neighbourhoods is less well-characterised in terms of the links between exposure and response. The relative paucity of studies that enable such characterisation should not be taken as evidence of no effect. On the contrary, given the contribution made by noise to various health endpoints - among these being cardiovascular disease, cognitive impairment, hearing impairment and tinnitus, adverse birth outcomes, metabolic outcomes, annoyance and reduced quality of life, with night noise exposure contributing also to effects on sleep – then it would be reasonable to expect an effect from noise from entertainment venues, for example.<sup>3</sup> Indeed, the WHO does set suggested limits for entertainment noise and in 2022<sup>4</sup>, WHO issued its Global Standard for safe listening venues and events<sup>5</sup>. These, though, are focussed on the exposure to noise experienced by persons attending events, not those who do not attend, but who are affected by them.

There are also impacts on wildlife from noise which are the subject of increasing research, with the negative impact of noise in oceans being progressively better understood. This is relevant to the Downs (I've spoken to the goats and they hate wearing earplugs).

Our interest is to achieve a situation where, as far as possible, the rights of residents to experience no nuisance noise are respected in the context of whatever programme of events is planned for the Downs. This ought to imply consideration, in particular, of the rules that need to be respected by those organising events. If the loudness of events is not controlled, then even at their current frequency, they might be considered a statutory nuisance everyone can be happy.

The Committee programmes events. These events may include limits on sound levels. The setting of a noise limit should not imply a 'target'. The WHO rightly states that its 100dB  $L_{Aeq, 15 \text{ min}}$  limit is, '*an upper limit, not a desired target; a sound level significantly below the limit would be suitable for many venues and events.*' The question it's reasonable to ask is, '*how loud does an event need to be in order for it to be enjoyed by those attending, recognising the reasonable expectation that others may have to an absence of associated nuisance?*' The lower that noise level becomes, then the less likely it becomes that those attending an event

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<sup>1</sup> C. Jephcote et al (2023) Spatial assessment of the attributable burden of disease due to transportation noise in England, *Environment International* 178.

<sup>2</sup> European Environment Agency (2020) *Environmental noise in Europe — 2020*, Copenhagen: EEA.

<sup>3</sup> Recent research hints also at an impact on fertility in women (Guardian (2024) Air pollution harms male fertility while women face similar risk from noise, study finds, September 2024).

<sup>4</sup> WHO (2018) *Environmental Noise Guidelines for the European Region*, Copenhagen: WHO.

<sup>5</sup> WHO (2022) *Global Standard for safe listening venues and events*, Geneva: WHO.

are exposed to noise levels that may damage their hearing, and the less likely it becomes that those not in attendance are exposed to levels which may – whatever the local authority’s licensing conditions – still give rise to a statutory nuisance. Note that licensing conditions do not exempt the license holder (and potentially, the licensor) from the application of relevant law as set out in, for example, the Environmental Protection Act 1990, the Noise and Statutory Nuisance Act 1993, the Noise Act 1996 (though the limit values implied in the Noise Act apply only between 11pm and 7am) and the Anti-social Behaviour, Crime and Policing Act 2014.

In Litfield Road, we currently experience noise from concerts (and other events) on the Downs; from the Café at the Observatory when evening events are held; from the Mansion House; and yes, even from the Merchant Venturers (occasionally, well into the evening). The Love Saves the Day event in Ashton Court is also on the list of weekends which are ruined by noise. The one saving grace is that we know that – with the exception of the occasional Merchant Venturers evening - these events will cease by 11pm. That is not much comfort, however, if all one wishes to do is enjoy a summer day without being forced to listen to someone else’s music, the more so when the win-win solution might be as simple as turning the music down a notch or two.

I did engage with ‘Team Love’, including Tom Paine, and we had an interesting and useful discussion. I recognise the increased interest in greening events, but most have found it convenient to ignore that unwanted sound – noise – is a pollutant, and it causes harm to humans, and most likely, wildlife also. Tom noted:

*Our Premises Licence contains dbA limits at certain points around the Downs as specified by Bristol City Council. These are 65db until 16:30, 68db until 19:30 and 70db until 23:00. An independent acoustic monitoring team are employed to monitor these positions to ensure we don't exceed them. They then have to prepare a full report with all readings and submit this to the council.<sup>6</sup>*

The above response doesn’t indicate the duration over which the dBA sound limit applies. Even so, they beg the questions, ‘who is setting these?’, ‘how are these levels being set?’ (as well as ‘what are the ‘certain points’ to which they are attached?’). They seem somewhat permissive given:

- The post-11pm permitted level (Noise Act 1996) is 34dBA (or 10dB above background where this is >24dBA);
- The WHO Guidelines Development Group suggested, for entertainment noise, that yearly average noise exposure from all leisure noise sources combined should be below 70 dB LAeq,24h, as “leisure noise above this level is associated with adverse health effects”;
- The prominence of loud, bassy (lower frequency) notes, which might make a C-weighted measurement of sound pressure more appropriate.

It is worth reflecting that a 3dB movement up or down implies a doubling in / halving of sound energy. The 70dB deemed acceptable at 10:59pm would be 4,096 times the sound energy which is implied by the Noise Act at 11pm. It would be around sixteen times as loud as the 34dB sound. This seems less than fair to local communities, especially those with small children. Furthermore, any extension of an ‘agent of change’-style principle would tend to favour the incumbents, who are the existing residents.

We understand the desire of the Downs Committee to attract an increasingly level of revenue, and events appear to have been given a role to play in that respect. Yet not all events need to be loud ones. We would ask the Committee to consider the potential for events which are not noisy, and to resist whatever temptation to increase the use of the Downs for loud music events. At all events, we’d respectfully ask that sensible limits are set for noise so that an acceptable compromise is kept between the interests of the sponsors, and those of us who are exposed now far too regularly to levels of noise which are unacceptable. The effect is corrosive: we are significantly and negatively affected by these events. We hope the Committee will take these comments seriously and plan future events accordingly.

*Rita Jelinski and Dominic Hogg*

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<sup>6</sup> The independence of those monitoring might be questioned if the organisers are their client.