

## Downs for People public forum statement: review of High Court challenge to parking on the Downs

### I Summary

1.1 *Downs for People* seeks the following assurances:

- a report will be published of the legal briefing that the Downs Committee received on 8 September in relation to our High Court challenge to parking on the Downs; and
- the report will cover all the points made in our email of 5 August to the Lord Mayor (annexed).

1.2. If this is not the intention, we will make a formal request for information under the Environmental Information Regulations 2004.

### II Background

2.1 The minutes of the Downs Committee meeting on 5 July record (final page) that there was to be a 'full management report' on our High Court challenge. As much as possible would be published. The minutes said:

*"We also need a review of the recent judicial review; it justifies a full management report. The Lord Mayor has spoken to BCC legal and requested this, we are waiting on a possible meeting date. It is likely to be a closed session as it will contain privileged advice.*

*There is a considerable amount of public interest in this report so it would be helpful if we are able to hold a closed session with a public report after. This would need to be discussed carefully with legal colleagues."*

2.2 The agenda for this September meeting (item 9) says that:

*"On the 8<sup>th</sup> September 2021, the Downs Committee received a confidential legal briefing in relation to recent litigation in respect of parking on the Downs. By a majority vote, it was RESOLVED that the committee was satisfied the process had been handled properly and that no further review was necessary."*

2.3 The finance update for the meeting (agenda item 13) suggests that our estimate of £350k for the total costs of the case (para 9 of the annex) was too low. The Committee's forecast expenditure for the year is £593k, £287k more than the £306k expected. Apart from the court case, the excess costs are attributed to "some ongoing Covid-19 related

*expenditure, such as additional cleaning and maintenance.*“ Additional expenditure on cleaning and maintenance seems unlikely to have accounted for more than £50k, meaning the Downs Committee will have spent at least £237k on the court case, not the £165k we estimated ( para 8 of annex) . ***The £70k difference means the total cost to council taxpayers will have been £350k and the total costs overall will have been about £420k.***

### III Conclusions

3.1 £420k is a shocking amount to have been squandered on a court case that would not have been necessary if the Downs Committee had heeded our warnings that zoo parking on the Downs was unlawful. The Committee needs to account publicly for what has happened and explain what steps it is taking to ensure that it does not make the same mistakes again.

3.2 *Downs for People* therefore seeks the following assurances:

- a report will be published of the legal briefing that the Downs Committee received on 8 September in relation to our High Court challenge to parking on the Downs; and
- the report will cover all the points made in our email of 5 August to the Lord Mayor (annexed).

3.3 Paras 5 and 6 of our email of 5 August explained that councillors were required to be open and accountable, in accordance with the Nolan principles of public life and the City Council’s constitution. The Freedom of Information Act 2000 was not intended as a constraint. Since then, our attention has been drawn to the Environmental Information Regulations 2004. We have alerted the Lord Mayor and others to their implications. The Downs Committee qualifies as a public authority under the terms of those regulations and must therefore provide information. *Downs for People* can ask for an internal review if the Committee fails to do so and we can appeal to the Information Commissioner if still dissatisfied. We will use these powers if we do not receive the assurances we are seeking.

**Downs for People**  
**16 September 2021**

## Annex: Downs for People email of 5 August to the Lord Mayor

### Title: report on Downs for People's court case: key issues

1. *Downs for People* was encouraged by the commitment given at the Downs Committee meeting on 5 July to produce a report on our court case. As you will know from our public forum statement to that meeting, we are concerned that lessons should be learned so that no further public money is squandered in this way. In the light of recent developments, I am writing now to draw attention to some of the issues that the report should address.

#### Background

2. We have been dismayed to discover that the City Council has refused to answer requests from both a councillor and a member of the public for information about the costs of the case. The City Council has said that, apart from the (unquantified) costs of some of its legal and other staff, the costs were all incurred by the Downs Committee. It claims that the Downs Committee does not have to provide information because it is not covered by the Freedom of Information Act 2000.

3. We find these refusals extraordinary and depressing. Nothing seems to have been learned from our court case. Both the Committee and the Council were censured by the judge for failing to provide basic information (see the final page of the judge's decision on disclosure in November 2020 attached). It was the Committee's secrecy and unwillingness to engage with us that made court action necessary. The Committee and the Council claimed that their licensing decision was not one that could be challenged: this was a claim that they were not prepared to make in court, presumably because they were advised it was wrong.

4. Further, it is misleading to suggest that the Downs Committee, not the City Council, has met the costs of the court case. The Committee is drawing on its reserves, built up largely from City Council grants. Until 2016/17 the Council was giving the Committee £262k a year, over half the costs of managing the Downs (plus an additional £20k a year for wildlife). In 2017/18, this grant was reduced to £200k and there was a further cut to £100k in 2018/19. The Council has recognised that it will have to meet any shortfall this year.

***We are issuing a news release about these refusals and our hope that the report to the Downs Committee will cover these points.***

#### Need and reasons for transparency: the duty of councillors

5. The Downs Committee may not be a public authority as specified by the Freedom of Information Act 2000 but that does not absolve it from the need to account for its actions. The Freedom of Information Act sets out the minimum information that public authorities must provide under that Act: it does not prevent them or other bodies providing more information, either voluntarily or because of other regulatory measures. The Downs Committee is a statutory body answerable to the courts. Further, the councillors on the Committee are acting in an official, not a personal, capacity. They must therefore adhere to the Nolan principles of public life and the City Council's constitution.

6. The seven Nolan principles require accountability and openness from holders of public office as follows:

**Accountability:** to be accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness:** to act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

The City Council's constitution reflects these principles including "a presumption in favour of openness" and a requirement that "those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions".

#### Issues that need to be covered

7. We suggest that the report to the Downs Committee needs to cover:

History to May 2020

- Why did the Committee ignore repeated warnings from at least 2009, made with increasing frequency by Downs for People in its public forum statements from 2017, that licensing zoo parking was contrary to the Downs Act and could be challenged in the Courts? Did anyone seek legal advice? If so, what was that advice?

- Why did the Committee purport to grant five year licences for Zoo parking in both 2009 and 2013? There was already an extant 20 year licence and it seems that neither five year licence was executed. Unaware of this, the Ramblers pointed out in 2013 that the 2009 licence still had two years to run. The purported grant of licences coincided with applications by the Zoo for planning permission, for which many on the Committee expressed strong support. Support for the Zoo is no part of the Committee's statutory remit....
- Why did the Committee not publicise its decision on Zoo parking in July 2019?
- Why was Downs for People not given any information about the licence issued in January 2020 until the end of May, despite the Committee authorising this - at Cllr O'Rourke's request - at its meeting in January?

#### *May 2020 to August 2020*

- Why did the Lord Mayor insist on 24 July 2020 that the grant of a licence to the Zoo was lawful? Who advised her?
- Why was Downs for People refused information about the decision? Who decided this?
- Why did the City Council say in July that they had no involvement, when it was revealed on 25 August that the Society of Merchant Venturers had issued a licence to the Council and that the Council in turn had issued a sub-licence to the Zoo?

#### *August 2020 to December 2020*

- Who in the Council and on the Committee were involved in the decisions in this period and subsequently?
- Why were **two** expensive QCs engaged initially? The judge clearly found this extraordinary. *Downs for People* appointed one junior barrister.
- What did the QCs advise was the likelihood of success? *Downs for People* received clear advice from our barrister that our prospects were good. If the advice to the Council and Downs Committee was less positive, why did they proceed?

#### *December 2020 – May 2021*

- Once the Zoo announced it was going to move, why were the concessions *Downs for People* sought not agreed so that the case could have been settled out of court much earlier?
- Was the Committee consulted about the 'eleventh hour' decision of the Society of Merchant Venturers to be separately represented in court, by the same QC no longer engaged by the defendants?
- Why was an acceptable offer made to *Downs for People* even later, involving additional expense for all concerned?

#### *Costs*

- How much was each QC paid and when? How much would have been saved by employing only one QC and settling out of court much earlier? We know that the costs for the QCs' initial advice in September 2020 was £33,042 – £21,042 for one and £12,000 for the other.
- What other costs has the Committee incurred on this case?
- How much has the Society of Merchant Venturers contributed to these costs? Merchant Venturers played a leading role in the negotiations with the Zoo on the licences and, as far as we can tell, in decisions on the court case.
- What will be the impact of the costs of the court case on the Committee's other activities?
- What has been the cost to the Council of its legal officers' input? (Our estimate is £ 83.400 - 384 hours at the published hourly rate for the solicitor mainly involved.. )

#### *Lessons learned*

- Need to engage with stakeholders, not hope they will go away if ignored or threatened with huge costs?

#### **Estimate of total costs**

8. Our court case should not have been necessary. We are shocked that the Committee's poor conduct has led to so much public money being wasted. We recall that the Committee received a report some time ago that £250k might be needed. This seems likely to be an underestimate given the costs of which we are aware:

- **Payment to Downs for People.** Settled at £65k
- **Payment to QCs.** Charged £33k for short initial advice. One produced a much longer amended document later and was involved in extensive correspondence and telephone calls So probably over £100k

In addition, as noted above, Bristol City Council spent about£83k on its legal officers. Other staff will also have been involved whose time is not recorded. ***On this basis the cost to council taxpayers will have been about £280k.***

9. Apart from the public money spent on the case, *Downs for People* has had to meet further costs of about £5k, the Zoo has had legal bills of about £50k. and the Merchant Venturers also engaged one of the expensive QCs, who will probably have charged at least £12k. ***The total costs of the case have therefore probably been about £ 350k.***

#### **Need for publicity**

10. We hope the promised review of Downs strategy and governance marks the start of a new era of transparency and collaboration. To begin with, the Committee needs to make the report on our court case public (without naming the particular council officers involved) and provide full information on the costs incurred.

11. I am copying this email to the councillors on the Downs Committee and to the Master of the Merchant Venturers.

*Susan Carter  
Downs for People  
5 August 2021*