

**BRISTOL CITY COUNCIL
PUBLIC SAFETY AND PROTECTION COMMITTEE
16 August 2016**

Report to consider an application for the Grant of Street Trading Consent(s) at Sea Walls, Adjacent To Public Conveniences Circular Road, Durdham Down

Applicant: Steve Bellot

Report of the Service Manager – Regulatory Services

Purpose of Report

To determine an application for the grant of a Street Trading Consent at the following location: **Sea Walls, Adjacent To Public Conveniences, Circular Road, Durdham Down**

Background

1. This application was considered on 7 June 2016. Members resolved to defer determination of the application pending clarification from the Downs Committee.
2. With effect from 1 May 2009 the above location is designated as a consent street for the purpose of street trading legislation. Any street trading at that location other than under a street trading consent issued by the Council would constitute a criminal offence.
3. The land is owned by Bristol City Council.
4. This location is part of an area known as Durdham Down which, together with Clifton Down are managed by the Downs Committee, a statutory body, established by an Act of Parliament

known as The Clifton and Durdham Downs (Bristol) Act 1861 (Downs Act). This body are empowered to ask the council to make byelaws to help them fulfil their statutory duties to manage the land under the Downs Act. The council has made byelaws.

5. Byelaw 6 states *'No person shall on the Downs, without the consent of the Downs Committee, sell or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any commodity or article.'*
6. The Downs Committee have given consent for trading to take place at this location and the Council as landowner has granted a contract for use of its land which includes conditions governing matters such as prevention of litter and rubbish accumulation, quality and design of product and vehicle, and power supply to be electricity only.
7. General conditions which would normally be attached to a licence/consent if granted are at Appendix A, however the position in relation to The Downs is unusual in that the council has made a byelaw that enables another public body (the Downs committee) to regulate street trading on most of the Downs. It is not clear that the council has ever had cause to consider the effect of there being two street trading regimes operating on the Downs and officers suggest the Committee should revisit whether it is necessary and proportionate for street trading controls to remain in place for this area given the issue is covered by the byelaw referred to in paragraph 4 above. Meanwhile the controls exist and the application must be determined, but the Committee is advised that:
 - a. If a street trading consent is granted the Council should take care not to impose conditions that are inconsistent with the conditions imposed through the consent already given by The Downs Committee; and
 - b. when deciding whether or not to grant a street trading consent, the views of the The Downs committee, being the body with a statutory duty to manage The Downs, should be afforded appropriate weight.
8. In line with the decision of the Committee meeting on 7 June officers sought the observations of the Downs Committee. A copy of the letter to and response from the Downs Committee is attached at Appendices F and G.
8. Photographs of the proposed trading site are attached at Appendix B and a site location plan at Appendix C.

9. On 18 January 2015 Mr Steve Bellot applied to sell the following goods:

Burgers, Chips, Hotdogs, Roasted Meat, Sandwiches, Hot pressed bread, paninis, rice dishes, charcuterie, kebabs, soup, tea, coffee, soft drinks

During the hours of 0600 – 2200 Monday to Sunday

Photographs of Mr Bellot's trading unit are attached at Appendix D

The applicant has demonstrated that consent exists for the activity from both the landowner (Bristol City Council) and under the byelaw (from the Downs Committee); however it appears that those two permissions do not extend to the hours between 6 and 7 a.m. Trading between 6 and 7 a.m. would be a criminal offence, therefore if the applicant maintains the application to commence from 6 a.m. Furthermore those consents are not in given in favour of the applicant, but refer to a company. Whilst it is appreciated that the applicant and the company may be related it is important that this committee does not give consent to trade that would be contrary to the byelaw.

Consultation

10. The Council's policy states that normally consultation will take place with the following interested parties:-

- a. Local Residents
- b. Local businesses
- c. Bristol City Council – Highways officer
- d. Bristol City Council – Planning Team
- e. Bristol City Council – Food Safety Team
- f. Bristol City Council – Pollution Control Team
- g. Bristol City Council – Councillor
- h. Avon and Somerset Police

Standard consultation was undertaken in respect of this application

Consultation Responses

11. The following responses have been received.

A high number of representations from local residents and local councillors were received in respect of this application, which are

included at Appendix E.

Officer Considerations

12. Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 deals with street trading consents. Subject to certain exemptions that do not apply to this application, Paragraph 7 enables the council to grant a consent if they think fit. The council may attach such conditions as they consider necessary, which may include among other things conditions to prevent obstruction of the street or danger to persons using it, nuisance or annoyance etc. Consent may include permission for its holder to trade in a consent street from to trade from a stationery van, car, barrow or other vehicle, or from a portable stall. Unless such permission is included the act prohibits a consent holder trading from a van or other vehicle or from a stall, barrow or cart. If such a permission is included then the council may include conditions

- (a) as to where the holder of the street trading consent may trade by virtue of the permission; and
- (b) as to the times between which or periods for which he may so trade.

A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time. The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

13. The applicant has been provided with a copy of the report and has been invited to the meeting.

RECOMMENDED

1The applicant should be asked to clarify before the report is considered if he is prepared to bring the application in line with the byelaws consent which has been given to a company for different trading hours than he has applied for as an individual under the street trading regime.

2. If he does so then, having regard to the response from the Downs committee and considering in particular that body's statutory role in managing the land, officers recommend a street trading consent be granted in line with the Downs Committee decision.

Officers completely understand the concerns of local residents but

consider those representations have to be balanced with the judgment of the body to whom Parliament has entrusted the job of managing the land. On balance officers do not consider the case is made to prevent the decision of the Downs Committee from taking effect. It is considered that the concerns of residents can be addressed in the future if the trading causes problems. Members will be aware that a street trading consent, although usually given for 12 months, can be revoked at any time and with no right of appeal. It is therefore in the interests of any trader granted consent to avoid causing problems that could result in the permission being withdrawn. If the consent did need to be considered for revocation the views of the Downs Committee would again be obtained.

Officers should be asked to bring forward proposals to bring to an end the duplication of regulation of street trading on the Downs. Licensing officers have already met with DC Officers to ensure a process is introduced to avoid a recurrence of this undesirable situation.

Legal Implications

The recommendations are lawful.

Duplication of regulatory control is never desirable; it can result in inconsistent regulation and be disproportionate. It appears that when this committee designated the Downs as a “consent street” and so brought it within the ambit of the street trading regime the Committee was not aware that the full council had already put in place a sound and effective means of regulating trading on the Downs that is enforceable through the criminal courts. If this been apparent the Committee would have been advised not to introduce a further layer of control. In these circumstances the committee is advised to agree recommendation 2 and so enable that error to be corrected.

Pauline Powell

Team Leader – Planning, Transport and Regulatory law
For Interim Service Director – Legal Services

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background papers

Minutes from meeting of Downs Committee

Contract issued by BCC in respect of site at Sea Walls

Contact Officer: Ms A Holman, Senior Licensing Officer

Ext: Telephone 01173 574 900

Appendices:

Appendix A	General Conditions
Appendix B	Photos of site
Appendix C	Location Plan

Appendix D
Appendix E
Appendix F
Appendix G

Photos of trading unit
Representations received
Letter to Downs Committee
Response from Downs Committee