

Downs Committee: 21 March 2022

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 ***The following defamatory statements should either be substantiated or withdrawn:***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