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Cllr Liz Frost  
Chairman, Epsom and Walton Downs Conservators

22 June 2018

Dear Liz

**PARKING IN FRONT OF DERBY ARMS**

I am writing to you about the report on parking in front of the Derby Arms taken by the board at its meeting on Monday. The content of the report causes us surprise and concern, and I would be grateful for clarification.

In the Society's response to the consultation earlier this year, we set out a legal argument that the conservators have no power to permit the use of the two areas (pre-emptively referred to in the report as 'car park 2a' and 'car park 6') for all-year round parking. In discussion, Kathryn, the clerk to the board, said that our arguments were rebutted in the report.

Paragraph 2.7 of the report states that, 'the Racecourse does not have any right to use the areas for parking outside of the period specified in the Act (the preparatory and racing period). This is set out in paragraphs 4 to 10 of the BHS response.' We welcome what appears to be an acknowledgement of the correctness of that part of our submission. We would add that it is far from clear that the Act intends car parking areas established during the preparatory period to be used for the purposes of parking during the preparatory period, given that the entire purpose of s.17 is to enable the racecourse to 'hold and conduct horse races at authorised meetings on the Downs', and to regulate its conduct in doing so. One would no more expect car parks to be used for the purposes of attending non-racing events on non-race days than to see the temporary omnibus stations (also permitted under s.17(4)(a)(i)) to be populated with buses on non-race days. But, without prejudice to our position, we assume for the purposes of this letter that the point is not without doubt, and do not rely on it.

Paragraph 2.8 goes on to respond to paragraph 11 of our submission. Paragraph 2.8.1 cites the power conferred on the conservators in s.25 of the Act to provide public parking places (subject to certain constraints). We infer here the words 'public' parking places, because I do not think there can be any

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doubt that such places, which are specifically 'for private motor cars and motor cycles', and for which the conservators may raise charges, can be anything but public, but please say if you disagree.

The citation of s.25 is really very surprising. We dismissed it from our submission because we did not for a moment conceive that it was intended to establish new public car parks. Can you please confirm that the board is relying on the powers in s.25 to authorise parking in car parks 2a and 6? If so, will the conservators display signs indicating that these are public car parks? Does the board consider it has the power to permit parking in these prospectively designated public car parks only on certain days, and to permit the racecourse to determine those days, and if so, how will parking (in these public car parks) be prevented on other days? We shall wish to communicate with the management of the Derby Arms and Rubbing House public houses that their customers will in future be able to park on the downs conveniently close to their establishments: we are sure that the proprietors of the Rubbing House will be delighted to hear of this solution to their parking capacity constraints.

Perhaps we have misunderstood the rebuttal set out in the report, but we can see nothing further in it, having made the concession in paragraph 2.7, beyond paragraph 2.8.1 and the citation of the powers in s.25, which suggests an alternative source of empowering the provision of the parking areas. Paragraphs 2.8.2 and 2.9 rightly refer to the power of the conservators by making byelaws to regulate or prohibit driving on the downs, which have been exercised in byelaw 2(i)(a) and (f), but as we explored in our submission, and as is acknowledged in paragraph 2.7 of the report, 'the Racecourse does not have any right to use the areas for parking outside of the period specified in the Act', and the removal of any element of criminality about such use does not confer a right — it merely renders any such use a civil wrong rather than a criminal offence. We therefore ineluctably conclude that the board does rely on the powers in s.25, and would be grateful for clarification on the points discussed above.

We also note that paragraph 2.10 states that: 'The duty on the Conservators when making decisions, is to balance the competing interests of protecting the Downs whilst balancing the competing interests of all other the [sic] parties.' Paragraph 13 of our submission referred to "the duty of the conservators under s.10(1) to 'preserve the Downs so far as possible in their natural state of beauty'". This is the only relevant duty expressly imposed by the Act on the conservators. Would it not be wise, in such a context, for the report to remind the board of its single statutory duty of conservation contained in s.10(1)? S.10(1) has nothing to say about 'balance', still less does it explore the odd concept of 'balanc[ing] the competing interests of protecting the Downs' — what competing interests are there in protecting the Downs? Indeed, my notes from the meeting show that Kathryn said that the racecourse's application was intended to rely on the board's duty to balance the interests in the downs, as set out in paragraph 2.10 of the report, which was drawn 'from the legislation' (my emphasis). The board was invited to vote on the proposal immediately after. Can you explain how the analysis in paragraph 2.10 is drawn 'from the legislation' please: there is nothing in that paragraph which owes its provenance to the Act, and the sole relevant duty in the Act is not recited? In the absence of a correct presentation of the board's statutory duties, in the context of a proposal to use open and unenclosed parts of the downs for car parking, do you think that the board was properly briefed on its duties prior to reaching its decision?

Our offer remains open to discuss with officers and the racecourse what alternative measures are open to secure additional parking.

Yours sincerely

Hugh Craddock  
BHS District Access & Bridleways Officer, Epsom and Walton Downs

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