

From: Amardip Healy AHealy@epsom-ewell.gov.uk
Subject: RE: Parking in front of Derby Arms
Date: 20 July 2018 at 09:15
To: Hugh Craddock (BHS/EWD) ewd@craddocks.co.uk
Cc: Liz Frost LFrost@epsom-ewell.gov.uk, Kathryn Beldon KBeldon@epsom-ewell.gov.uk

AH

Dear Mr Craddock

Thank you for your email. I am afraid as you have threatened legal proceedings, you will I am sure appreciate, I am required to take that threat seriously. As such I would be grateful for your anticipated cause of action against the Conservators.

You will no doubt appreciate that 'ultra vires' is a public law term and you have not explained its relevance in this instance.

Many of the facts you assert in your email are incorrect, however as I have previously said it is unlikely that we will agree. I believe in light of the history of this matter a protracted email exchange is likely to resolve matters. The issue of car parking has been discussed for several years, of which you are aware. It clear you hold strong views to further the interests of your group of users. The interests of that group are unaffected by the decisions which have been taken, since measures have been put in place to mitigate any effect.

Kind regards

Mrs Amardip Healy
Chief Legal Officer

Epsom & Ewell Borough Council
Town Hall
The Parade
Epsom KT18 5BY

Tel: 01372-732148
Email: Ahealy@epsom-ewell.gov.uk
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From: Hugh Craddock (BHS/EWD) <ewd@craddocks.co.uk>
Sent: 20 July 2018 08:58
To: Amardip Healy <AHealy@epsom-ewell.gov.uk>
Cc: Liz Frost <LFrost@epsom-ewell.gov.uk>; Kathryn Beldon <KBeldon@epsom-ewell.gov.uk>
Subject: Re: Parking in front of Derby Arms

Dear Mrs Healy

The answer to your question is, if I may say so, manifest from the correspondence to date.

But to summarise, the board has resolved to provide parking places on the downs. Either it relies on s.25 of the 1984 Act, in which case, we acknowledge that we shall have to wait and see whether the implementation of these parking places is consistent with the

wait and see whether the implementation of those parking places is consistent with the powers conferred by s.25. Or it does not, in which case, it has disclosed no power on which it might rely to support the decision and is, in our view, acting *ultra vires*. As I have said, we await your advice on that question.

We also observe, again, that the board, in reaching its decision, was informed by a report which described the duty of the board to: '...to balance the competing interests of protecting the Downs whilst balancing the competing interests of all other the [*sic*] parties.' The 1984 Act sets out no such duty (we pause here only to reflect that it is far from clear what the quoted words actually mean). Yet the clerk orally advised the board that its duty to balance the interests in the downs, as set out in the report, was drawn 'from the legislation'. We know of no basis for that advice. S.10(1) does, however, impose on the board a duty to 'preserve the Downs so far as possible in their natural state of beauty' — a duty which appears to us to be highly relevant to the matter on which the board was invited to reach a decision, but which is neither addressed in the report nor in oral briefing. Regardless of the powers on which the board relies, it appears to us that the board was not properly advised of its duty in reaching a decision. In the circumstances, having regard to the nature of the discussion at the meeting, there is a substantial likelihood that, had the board been properly advised, it might have arrived at a different decision. That also appears to be grounds for challenge, and one which, on the face of it, satisfies the test in s.31(2A) of the Senior Courts Act 1981.

Nevertheless, we wish to resolve the matter without recourse to costly confrontation.

Please would you therefore respond to the request for an explanation of the powers on which the board relies, and we can then decide how to proceed?

regards

Hugh Craddock

On 19 Jul 2018, at 18:10, Amardip Healy <AHealy@epsom-ewell.gov.uk> wrote:

Dear Mr Craddock

I would be grateful if you could confirm the legal basis of a pre action protocol letter in the matter you have raised.

Kind regards

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