

From: Hugh Craddock (BHS/EWD) ewd@craddocks.co.uk
Subject: Re: Parking in front of Derby Arms
Date: 3 August 2018 at 08:12
To: Amardip Healy AHealy@epsom-ewell.gov.uk
Cc: Liz Frost LFrost@epsom-ewell.gov.uk, Kathryn Beldon KBeldon@epsom-ewell.gov.uk
Bcc: John Lavery john.z.lavery@mac.com



Dear Mrs Healy

Thank you for your email of 30 July.

I note your comments about the scope of judicial review.

You refer to the parties 'not going to agree' and a prolonged (previously 'protracted') exchange of correspondence. But we are not in a position of disagreement (scope of judicial review aside): we merely wish to have our entirely reasonable questions answered. Until the conservators, or their officers, have answered them, there is nothing with which we can disagree. Our protracted correspondence can promptly be brought to a close when those questions are answered, following which we shall decide how to proceed.

As we have made clear, we see no reason to pursue the pre-action protocol without an understanding of what decision was made by the conservators at its meeting on 18 June. Did the conservators decide to establish new car parks under s.25, or intend to exercise some other power? We therefore await your reply to the questions posed in my email of 27 July.

regards

Hugh Craddock

On 30 Jul 2018, at 11:27, Amardip Healy <AHealy@epsom-ewell.gov.uk> wrote:

Dear Mr Craddock

Thank you for your email, from which you will be aware that judicial reviews are a challenge to the way in which a decision has been made rather than the rights and wrongs of the conclusion reached. To cite case law

"[It is a remedy] invented by the judges to restrain the excess or abuse of power" (*R v Secretary of State for the Home Department, ex parte Brind [1991] AC 696, at 751*).

The boundary between public and private law divide is constantly blurring. In deciding whether a particular body is a public body for the purposes of judicial review, the court considers the functions that it performs and whether those functions have public law consequences.

Bodies exercising functions of a public law nature are susceptible to a challenge by way of judicial review. In deciding whether a particular act or decision is judicially reviewable, the courts will focus on the nature of the act or decision being challenged rather than on the identity of the body in question or the source of its powers (*R v Panel on Takeovers and Mergers, ex parte Datafin plc [1987] QB 815, at 847-9 (per Lloyd LJ)*). It is, artificial to consider the reviewability of the body and the act or decision in question separately: the key question is whether that act or decision is one that should be subject to

judicial review. Which is different from the point you make.

As I said in my first email to you, the parties are not going to agree and rather than prolonging an exchange of correspondence, please forward a pre action protocol letter and I will seek authority to instruct lawyers to respond. We would be looking for 28 days rather than the 14 if this helps.

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
Website: www.epsom-ewell.gov.uk

Hugh Craddock
BHS District Access & Bridleways Officer, Borough of Epsom and Ewell (including Epsom and Walton Downs)
01372 729793
email: ewd@craddocks.co.uk
website: www.craddocks.co.uk/ewd/
blog: ewd.craddocks.co.uk