

Public Document Pack

Simon Young, Solicitor
Head of Legal and Democratic Services



To: All Members of the Epsom and Walton Downs Conservators

Dear Councillor

EPSOM AND WALTON DOWNS CONSERVATORS - WEDNESDAY, 13TH APRIL, 2016

Please find attached the following report(s) for the meeting of the Epsom and Walton Downs Conservators to be held on Wednesday, 13th April, 2016. These were not included in the original Agenda pack published previously.

5. **HACK SAND TRACK, FOOT OF WALTON DOWNS** (Pages 3 - 8)

This report considers the position in relation to the Hack Sand Track on Walton Downs.

Note: This report was marked as 'To Follow' in the agenda papers initially published for this meeting, and circulated at the meeting on 13 April 2016.

For further information, please contact Tim Richardson, 01372 732122 or trichardson@epsom-ewell.gov.uk

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Young'.

Head of Legal and Democratic Services

This page is intentionally left blank

HACK SAND TRACK

Report of the: Clerk to the Conservators

Contact: Simon Young

Urgent Decision?(yes/no) No

If yes, reason urgent decision required:

Annexes/Appendices (attached): None

Other available papers (not attached):

REPORT SUMMARY

This report considers the position in relation to the Hack Sand Track on Walton Downs.

RECOMMENDATION (S)

It is recommended that:

- (1) the Downkeepers be instructed not to continue to undertake any works of maintenance to the hack sand track, and**
- (2) the Council's Head of Legal & Democratic Services be asked to write to the Horserace Betting Levy Board to confirm that the Conservators do not accept that they are responsible for maintaining the track, and that they decline to do so.**

Notes

1 Background

- 1.1 The Epsom & Walton Downs Regulation Act 1984 seeks to define the respective rights of the public and of the owners of the Epsom and Walton Downs. It also continued the Conservators as a body to regulate preserve and control the Downs. Under section 10, the Conservators have a duty to preserve the Downs so far as possible in their natural state of beauty. The Conservators have the power to do any works necessary in furtherance of their duty to preserve the Downs. The Conservators may also give consent (with the consent of the Council and the owner of the Downs) for events to be held other than horse races. The Conservators may make Byelaws for the prevention of nuisances etc.

- 1.2 Section 4 of the Act gives members of the public access to the Downs on foot for air and exercise, provided that such rights are not to interfere with horse training.
- 1.3 Under section 15 of the Act, members of the public have the right of access to certain parts of the Downs for air and exercise on horseback. Again, these rights are not to interfere with race horse training. The rides and areas to which the public have access are to be clearly identified by sufficient notices and signs, and are to be displayed in such places as the Conservators see fit.
- 1.4 If in the opinion of the Conservators it is necessary to do so, they may temporarily restrict or prohibit riding on any hack ride or area in order to “prevent undue deterioration of the surface and/or secure its natural or other restoration”. No restriction is to be imposed unless “when practicable” a reasonably sufficient area or ride is provided in substitution. The Conservators have no duty to undertake the restoration of the rides, but arguably have the power to do so.
- 1.5 The Act contains certain protections for the owners and occupiers of the Downs (in particular the Race Course).
- 1.6 The hack sand track is on the south side of Walton Downs. It is one of those shown on the “Signed Map”, and is therefore one of the rides which is protected for public access on horseback under section 15 of the 1984 Act.
- 1.7 It was constructed following the giving of an undertaking given to Parliament on behalf of the Horserace Betting Levy Board to construct a sand track within 12 months and thereafter maintain it.
- 1.8 At the meeting of the Opposed Bills Committee of the House of Commons on 27 March 1984, the undertaking of the Levy Board to construct the track was accepted. There was discussion about the maintenance of the track and the Levy Board’s representative said
“I think the cost of maintenance of the sand track at the bottom will be undertaken by either the Metropolitan County Racecourse, which is our subsidiary company, or the Management Board. What makes me hesitate a little bit is that we have on occasions on the all-weather gallop in very heavy rain had the whole of it washed out because there is a huge slope down from the eastern end of it to the west, and the replacement of that could be frightfully expensive, but nevertheless the maintenance of that we do accept responsibility for.”
- 1.9 Acceptance of the undertaking directly led to the enactment of the Bill as the Epsom & Walton Downs Regulation Act 1984.
- 1.10 In the location of the Hack Sand Track, the freehold of the land is held by Trelissick Limited. It is subject to a 999 year lease from 31 December 1969 to the Horserace Betting Levy Board.

- 1.11 It has been said since at least 2012 that the track is in need of repair. The riding surface is inconsistent – parts are very soft and muddy, and other parts are hard and littered with stones. It was considered that the surface perhaps represents something of a risk to both horses and riders, particularly if attempting to ride at higher speeds, though the view has also been expressed that a sensible rider taking appropriate care could traverse the track without significant additional risk.
- 1.12 Since the track was installed it has required maintenance. It seems some of this work over the years was undertaken by the Racecourse, some was undertaken by or on behalf of the Conservators, but at the expense of the Levy Board or Racecourse, and some (particularly the ad hoc periodic maintenance) has been done by the Downskeepers at the Conservators' expense. The condition of the track has been raised on a number of occasions over the years at meetings of the Conservators and Consultative Committee.

2 Responsibilities

- 2.1 The status of the undertaking to Parliament is not clear. If it is enforceable, it is considered that it would be enforceable against the Levy Board. The undertaking requires that the track be maintained. It is silent as to the extent of the required maintenance, but it is clearly contemplated that it will be maintained to a standard to permit its use for the purpose it was installed.
- 2.2 It will be for the body responsible to determine precisely what works they consider are necessary to discharge the duty under the undertaking. The issue is who is now responsible for complying with the undertaking in practice.
- 2.3 Aside from the position under the undertaking, it is the case that the occupier of land has obligations in respect of their land.
- 2.4 Under the Occupiers' Liability Act 1957, an occupier has a duty to visitors to his land to take such care as is reasonable in all the circumstances to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.
- 2.5 It has been said that wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an 'occupier' and the person coming lawfully there is his 'visitor'; and the 'occupier' is under a duty to his 'visitor' to use reasonable care.
- 2.6 Under the 1957 Act, for example, warning signs can be sufficient to discharge an occupier's responsibility.

- 2.7 There has been correspondence with the Levy Board on this issue. The current position is that the Levy Board believes that, following a grant given by the Levy Board in 1999/2000, that the Conservators and Training Grounds Management Board between them accepted responsibility for maintenance of all rides on the Downs. However, officers consider that the grant and the correspondence relate to other parts of the Downs, specifically racehorse walkways, and not the Hack Sand Track. Unfortunately we have not been able to locate a copy of the map referred to in the correspondence about the grant and works.

3 Proposals

- 3.1 It is proposed that the Downskeepers be instructed not to continue to undertake any works of maintenance to the hack sand track.
- 3.2 It is further proposed that the Council's Head of Legal & Democratic Services be instructed to write to the Horserace Betting Levy Board to confirm that the Conservators do not accept that they are responsible for maintaining the track, and that they decline to do so. Further enquiries regarding the track are to be referred to the Levy Board.

4 Financial and Manpower Implications

- 4.1 A provisional estimate of £204,000 was obtained some years ago, for full track renovation. The costs now are likely to have increased.
- 4.2 There is no provision for this work in the Conservator's budget for the current year.

5 Legal Implications (including implications for matters relating to equality)

- 5.1 The legal implications are set out above.

6 Conclusion and Recommendations

- 6.1 Coupling Occupiers Liability with the undertaking to Parliament it seems there is a positive obligation to maintain the track. The level of maintenance required is unclear.
- 6.2 The undertaking was clearly not given by or on behalf of the Conservators. The 1984 Act imposes no obligation on the Conservators to maintain the various rides. There is some uncertainty as to the enforceability of the undertaking, and the party or parties who are responsible, but it seems likely that responsibility lies with the Levy Board.
- 6.3 Clearly it would be best if we could work together to reach a solution, but it is not considered that this will be possible. The track could only be closed "temporarily" under section 15, and there would need to be a realistic expectation as to when it would be re-opened.

- 6.4 The Conservators have power to assist with the track, and could discuss what involvement they consider appropriate, if it appears we can resolve the matter by agreement.
- 6.5 The Conservators might wish at some point to consider using the power in section 15 to restrict or prohibit use of the track. It is not possible now to consider what sort of restriction may be imposed, but it might be reasonable to restrict the number of people using the track, the speed at which they ride (eg “no galloping” / “walk only”) or the times during which they may ride (eg not in bad weather). A prohibition might be necessary, and will be required on a temporary basis if works are to be undertaken.
- 6.6 In the circumstances it is considered that, in order to draw a line under the issue from the point of view of the Conservators, that we write to the Levy Board setting out our position, and referring any further queries to the Levy Board. In order to avoid any suggestion as to the Conservators being responsible in the event of an accident, it is further suggested that the Downskeepers be instructed not to undertake any further works to the track.

This page is intentionally left blank