

# Public Document Pack

## EPSOM AND WALTON DOWNS CONSERVATORS

Tuesday 12 May 2020 at 6.30 pm

Place: Remote Meeting

PLEASE NOTE: this will be a 'virtual meeting'.

The link to the meeting is: <https://attendee.gotowebinar.com/register/3016149917604292110>

Webinar ID: 739-855-619

Telephone (listen-only): 0800 389 5284, Telephone Access Code:334-675-232

The members listed below are summoned to attend the Epsom and Walton Downs Conservators meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

### Committee Members

Councillor Liz Frost, the Council (Chairman)

Simon Durrant, Jockey Club Racecourses (the Company) (Vice-Chairman)

Andrew Cooper, Jockey Club Racecourses (the Company)

Simon Dow, Horserace Betting Levy Board (the Levy Board)

Councillor Bernice Froud, the Council

Councillor Jan Mason, the Council

Councillor Steven McCormick, the Council

Councillor Lucie McIntyre, the Council

Stephen Wallis, Jockey Club Racecourses (the Company)

Councillor Clive Woodbridge, the Council

Yours sincerely



Clerk to the Conservators

For further information, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk) or tel: 01372 732000

## **Public information**

### **Please note that this meeting will be a ‘virtual meeting’**

This meeting will be held online and is open to the press and public to attend as an observer using free GoToWebinar software, or by telephone.

A link to the online address for this meeting is provided on the first page of this agenda and on the Council's website. A telephone connection number is also provided on the front page of this agenda as a way to observe the meeting, and will relay the full audio from the meeting as an alternative to online connection.

Information about the terms of reference and membership of this Committee are available on the [Council's website](#). The website also provides copies of agendas, reports and minutes.

Agendas, reports and minutes for the Committee are also available on the free Modern.Gov app for iPad, Android and Windows devices. For further information on how to access information regarding this Committee, please email us at [Democraticservices@epsom-ewell.gov.uk](mailto:Democraticservices@epsom-ewell.gov.uk).

### **Exclusion of the Press and the Public**

There are no matters scheduled to be discussed at this meeting that would appear to disclose confidential or exempt information under the provisions Schedule 12A of the Local Government (Access to Information) Act 1985. Should any such matters arise during the course of discussion of the above items or should the Chairman agree to discuss any other such matters on the grounds of urgency, the Committee will wish to resolve to exclude the press and public by virtue of the private nature of the business to be transacted.

### **Questions from the Public**

Questions from the public are not permitted at meetings of the Epsom and Walton Downs Conservators.

## **AGENDA**

### **1. VARIATION TO DERBY RACE DAY (Pages 5 - 18)**

To note the current position with regard to holding sporting events at Epsom Downs Racecourse along with the potential for changes in approach. In the light of possible changes to arrangements, to determine an application for variation to the fixture date for the 2020 Derby.

This page is intentionally left blank

## VARIATION TO DERBY RACE DAY

<b>Head of Service/Contact:</b>	Amardip Healy, Chief Legal Officer
<b>Annexes/Appendices (attached):</b>	Annex: Application for variation of 2020 Derby fixture.
<b>Other available papers (not attached):</b>	Report to Conservators, 27 January 2020 Epsom Downs Racing Season 2020 Epsom & Walton Downs Act 1984

### Report summary

To note the current position with regard to holding sporting events at Epsom Downs Racecourse along with the potential for changes in approach. In the light of possible changes to arrangements, to determine an application for variation to the fixture date for the 2020 Derby.

### Recommendation (s)

The Conservators are asked to:

- (1) consider the special circumstances affecting racing at Epsom Downs Racecourse;
- (2) note the current position in relation to the holding of a race day not open to the general public and the safe conditions requested for the holding of such an event at Epsom Downs Racecourse;
- (3) consider the request for a change to the date of the 2020 Derby with a flexibility of dates in July or August 2020 along with the fencing/secure area which is required, shown edged red on the Plan attached to the Annex;
- (4) to approve, if accepted,
  - (i) flexibility for the Derby to be held on a date in July or August 2020, with notice of such date to be given to the Clerk to the Conservators at least 3 days before the event occurs and

- (ii) the details of the fencing/ secure area arrangements as set out in the Application for consent, attached at the Annex.**

## **1 Background**

- 1.1 In January 2020 the Conservators agreed dates for the racing calendar for 2020. The Derby Festival was due to take place on the 5<sup>th</sup> to the 6<sup>th</sup> June. During the Festival there would be a number of key races run, the most significant of which is the Investec Derby which would have been on Saturday 6<sup>th</sup> June, along with several other races, including the Investec Oaks, which would have been on Friday the 5<sup>th</sup> June.
- 1.2 On the 12<sup>th</sup> March 2020 the Government confirmed that COVID19 was a global pandemic. At that time the Government was considering the question of banning major public events such as sporting fixtures.
- 1.3 On the 21<sup>st</sup> March the Government introduced business closure and health protection regulations, which came into effect a few days later. The effect of these regulations were to close some businesses from operating, introduce social distancing requirements and also define when the public were permitted to leave their homes. The regulations were supported with powers to prosecute.
- 1.4 The spread of Covid 19 has severely impacted the ability to hold any sporting events. The calendar for most sports events have been either cancelled until early June or until further notice.
- 1.5 Most sports are looking towards when the operation of the current lock down may be eased, or the terms of when the health protection regulations might be lifted. The situation is complex and constantly changing. It therefore consequently requires all sporting bodies and operators to manage their business continuity plans with as much flexibility as possible.
- 1.6 There are currently a number of discussions underway between the various sporting industries and Government in terms of how sport could be allowed to operate in a safe way if and when it was able to do so. This has resulted in an approach of sporting events being potentially held, in what has now been described as 'behind closed doors' (BCD). This means there would no public access or attendance, but would continue to be televised.

## 2 Proposals

- 2.1 The Racecourse has requested the Conservators to consider a change to the date set for the Derby this year to facilitate the possibility, should it become available, to hold the Derby behind closed doors.
- 2.2 The details of the proposed arrangements for the Derby day are set out in the application from the Racecourse, attached as an Annex to this report. The application sets out the context, the justification for the proposed change and arrangements. The request before the Conservators is to approve the change in date to the 2020 Derby along with new fencing arrangements needed for the event.
- 2.3 The current date for the Derby is Saturday 6<sup>th</sup> June. The request is to move this date to a Saturday in July or August. Flexibility is requested in terms of fixing the actual date so as to allow a date to be set as soon as it possible to do so. If the Conservators fixed an actual date now and that date could not go ahead, a further meeting would need to be called to vary the date. By taking a flexible approach to fixing a date, would avoid the necessity of having to arrange a further meeting, which will invariably be at short notice. It would also provide some certainty to the Racecourse that they have the approval of the Conservators so as to enable the planning process in the event it were possible to proceed.
- 2.4 The Derby is a significant and iconic event within the Racing calendar. It has a long relationship with Epsom and the industry are keen for the event to take place this year and if possible for it to be run at Epsom. This is despite the logistical issues the Racecourse at Epsom presents to the Racing Industry in terms of its openness and its public accessibility against the requirements of what is needed to hold an event behind closed doors.
- 2.5 The arrangements for a new date will inevitably require a different approach to planning and delivery. Holding an event behind closed doors will require stopping the public being able to access the racecourse and paddock areas for a day. As a result, the Application sets out the extent of the extra steps and measures required, so as to hold the event at Epsom. The most significant difference from the normal Derby event would be the restrictions on use of public footpaths at the Racecourse. The need to have in effect, an exclusion zone would facilitate the ability to hold the Derby safely at Epsom. If this cannot be secured, then the Derby cannot be held at Epsom.
- 2.6 It would also mean the likelihood of no racing taking place at Epsom in 2020.

- 2.7 If consent is granted for the variation to the date of the Derby, the Applicant also aims to run the Oaks race on the same day. The Oaks is currently set for Friday 5<sup>th</sup> June. Any new day will have both the Derby, the Oaks along with a number of other races run so as to secure a day of racing.

### **3 Financial and Manpower Implications**

- 3.1 None for the purposes of this report.
- 3.2 **Chief Finance Officer's comments:** *none arising from the contents of this report.*

### **4 Legal Implications (including implications for matters relating to equality)**

- 4.1 The arrangements for race days are set out in the Epsom and Walton Downs Regulation Act 1984 (the Act). Some arrangements are set out within the Act itself and some arrangements need the consent of the Conservators.
- 4.2 Section 14 of the Act, sets out the requirements for race meetings and highlights the need for the Conservators consent to the day on which the race known as the Derby is run.
- 4.3 Section 17 (3) allows, in effect, as landowner, the Racecourse to control access over the Downs to the race course and the paddock, and section 17 (4) (d) any necessary fencing.
- 4.4 It is important to note that the right of the public over the Downs is constrained in terms of the conditions set out in section 4 of the Act.
- 4.5 **Monitoring Officer's comments:** *none arising from the contents of this report.*

### **5 Sustainability Policy and Community Safety Implications**

- 5.1 Not applicable.

### **6 Partnerships**

- 6.1 Not applicable.

### **7 Risk Assessment**

- 7.1 There is no requirement for the Conservators to risk assess the application as the risk management responsibility for racing events rests with the Applicant. The Applicant has confirmed that they would only run an event if the current restrictions on movement were eased or lifted.



## 8 Conclusion and Recommendations

- 8.1 The Racecourse's application is to vary the day of the Derby and seek permission for fencing to enable the event to be held safely and securely. The reasons for the application and the approach being taken, are reflective of the context of the current challenging climate within which all businesses having to respond to and at some point to operate within. The advice from Government in terms of approach, is to give those who need it, the flexibility and support to ensure they are able to function and address their own industry's needs.
- 8.2 For the reasons stated in the Racecourse's application, the Derby is a key date in the racing diary and also significant within the horse breeding calendar.
- 8.3 Even though the costs of holding a behind closed doors event at Epsom are significant, the Application demonstrates the commitment of the Racecourse to the Industry to Epsom. If the Application is not granted, the Racecourse have confirmed that it will have a 'significant commercial and reputational consequences to the racecourse and the local training community'.

**Ward(s) Affected:** College Ward; Woodcote Ward;

This page is intentionally left blank

## Investec Derby Day 2020

### Summary of Application

As you will be aware, following consultation with our many event stakeholders, the DCMS and in order to comply with current government guidance, sadly it has not proved possible to stage the Investec Derby Festival on 5<sup>th</sup> and 6<sup>th</sup> June as planned and these dates have consequently been cancelled.

At its meeting on the 27<sup>th</sup> January 2020, the Conservators approved, as is a requirement under the Act, for the Derby to be held on Saturday 6<sup>th</sup> June 2020.

The Conservators are now asked:

- (1) to approve an alternative date on which the Derby race would be run as part of a single day race meeting. At this stage, it is almost certain this would be a Saturday, no earlier than the first Saturday in July, and provisionally Saturday 4<sup>th</sup> July. In order to approach with a degree of flexibility, it is requested that Saturday's in both July and August approved. Notice of no less than 14 days will be given in advance of the proposed race day.

The race meeting would stage The Derby and Oaks races along with up to five other races. Race times are likely to follow a similar pattern to previous Derby Days e.g. 2pm – 5.50pm.

- (2) to approve an exclusion zone, as shown in *Appendix One*, around the perimeter of the Epsom Downs, created through the use of temporary fencing and supplemented with appropriate levels of Security.
- (3) to note that as a result of Item (2) above, the temporary suspension via Surrey County Council, for a 24hr period, of the following Footpaths and Bridleways as shown in Appendix 2 and identified as:-

FP48  
FP49  
FP50  
FP51  
BW65  
BW127

In summary, to approve in principle, a single day race meeting at Epsom Downs to be held this Summer 'behind closed doors' (BCD), thus anticipating no public access within the Exclusion Zone (*see Appendix 1*).

## Background

Due to the current COVID19 pandemic restrictions, the British Horseracing Authority (BHA) has currently suspended all horseracing in the UK and it will only re-commence in accordance with Government and Public Health guidelines.

The BHA has not set a new date for ending the suspension but plans are in place so that the sport is ready to resume as soon as is possible and appropriate, in consultation with government and alongside other sports.

Plans currently work towards a racing resumption in mid-May, if that is possible, and there is an assumption that it would initially be behind closed doors only, at a point when the safety of participants can be assured and the pressure on the health service allows.

Because of the very strong likelihood that restrictions on mass gatherings will continue, the BHA has decided that racing with crowds will not be possible until June at the earliest.

We are now working with the sport to explore our options to reschedule, at minimum, The Derby and the Oaks races onto a one day race meeting. These races are of vital importance as they form part of the 2020 Classic programme, which also includes the 1000/2000 Guineas at Newmarket, which has also been postponed, and were due to have been run in early May. These races are significant to the entire racing and breeding industry and not only to the respective courses that they are run at.

## Behind Closed Doors

Assuming that the current Government lockdown restrictions are eased and consent for sport is given, it is our assumption that the BHA will have agreements in place that racing can resume but under specific requirements, in particular around social distancing and mass gatherings. It is using these assumptions that we believe that the only way to run The Derby and Oaks at Epsom would be to stage them behind closed doors. In the event that we cannot achieve this, we believe that the races could not and would not be staged at Epsom in 2020. The 2020 Derby and Oaks would have to be held elsewhere. This would obviously be hugely disappointing from a racing and breeding perspective but also for Epsom as a Borough, who have successfully hosted every Derby since 1780, other than during both World Wars.

If we are unable to gain permission to race behind closed doors at Epsom, it is probable that the entire Epsom fixture list for 2020 is in jeopardy. This will have significant commercial and reputational consequences to the racecourse and local training community.

Creating a behind closed doors event at Epsom is not straightforward. Whilst the racing operation within the main stands and equine areas (parade ring, stables and racecourse) would only be accessed by key operational staff, the Downs at Epsom are a very open space with the public having a legal right 'to air and exercise on foot' under S4 of the Epsom & Walton Downs Regulation Act 1984. A behind closed doors event at Epsom will not be possible unless the overall interpretation given to the Act permits one.

It is therefore via the Act itself that we seek Conservator approval for a race meeting behind closed doors.

### **Epsom & Walton Downs Act 1984**

We believe that there is a widespread misconception (historically shared by many of us), that the right in S4 of the Act for the public to have access to 'air and exercise on foot over the Downs' is somehow of greater legal stature than any other rights granted elsewhere within the legislation.

The wording of S4 makes it clear that it is not an absolute right - it is 'Subject to the provisions of this Act...' and is further qualified via 'Provided that nothing in this section shall authorise any interference..with any...rights conferred upon the Company...by this Act.'

One such right of the Company is the right to hold authorised race meetings, as defined in S14 and further detailed in S17.

In an explanatory document produced by Epsom & Ewell Borough Council at the time of the 1984 Act, it states "one proviso (to the public right to air and exercise) is that the public's use shall not interfere with the rights conferred upon (the racecourse) and the Levy Board, principally to hold race meetings and to train racehorses."

It could clearly not have been, nor was reasonably envisaged at the time of passing the 1984 Act, of a circumstance whereby the S4 public right of access might conflict with the ability to stage a race meeting, but that is where we currently are in these unprecedented times.

The Company has the right to hold race meetings under S14, with Conservators approval required 'in respect of the day on which the horse race known as The Derby is run', so that requirement is applicable here.

Under S17(3) the Company may, 'notwithstanding anything contained' in the Act, 'during the racing period, control access over the Downs to the Race Course and Paddock'. The entire extent of the racecourse that would be in use behind closed doors is within Epsom Downs as defined, and to which we would need to 'control access' in order to race.

The 1984 Act ultimately contains a combination of rights, duties and restrictions but we consider that its primary intention was, and still is, to preserve and strengthen the historic rights of the racing and training industry.

As the Act made its way through the House of Lords during May 1982, in support of the draft Bill, Lord Wigg (who had been Levy Board Chairman 1967-1972) said "In our view it is of prime importance that all users of the Downs - hack riders, trainers, pedestrians, picknickers - all have a right and somebody has to balance those rights, and that should be the Epsom Council, the elected representatives".

## Physical implementation of a Behind Closed Doors Event

Assuming that appropriate approval is obtained to stage a behind closed doors race meeting at Epsom, the racecourse and key partners would ensure that access to relevant parts of the Downs and outer enclosures was denied. It would not be necessary to exclude pedestrians from all parts of the wider Downs, only to those areas that could see gatherings of people who may gain a vantage point to watch the racing.

Our plans to stage a one day race meeting would mean that access to the Downs and outer enclosures would not be available to anyone not deemed as essential to the race meeting operation e.g. members of the public. However, the plans that we have drawn up would mean that this access restriction was only in place for 24hrs (0001hrs – 2359hrs).

Trainers wishing to exercise their horses on the morning of the race meeting would be permitted access and no additional restrictions would be placed upon them.

In order to facilitate the creation of a sterile area, a number of measures would be implemented across the site. Through a fully conducted site survey, these measures would take the form of:-

- 1) Fencing and pedestrian barriers placed around the perimeter of the site, including at the various crossing points onto the Hill and surrounding areas. This control measure would be in place for the 24hr period and whilst it may be erected/dismantled outside of this period, pedestrian access would be made available. *Please see Appendix 1*
- 2) Sufficient Security and Stewarding staff would be placed around the perimeter of the site in order to maintain the sterile area and also provide information to any member of the public who may seek to gain access.
- 3) We are in dialogue with Surrey & Sussex Police to support our Security & Stewarding teams and to ensure any support would not have an adverse effect on their current demands around existing duties. Payment for the Policing resource remains a racecourse cost under the Special Police Services agreement through the National Policing Guidelines.
- 4) Our own racecourse control room would provide clear, live data through CCTV and aid the overall operation to ensure a safe and sterile area is maintained.
- 5) Due to the proposed change of date and the need to race behind closed doors, we have already spoken with Charlie Cooper around the Travellers attendance. He has made assurances that the travelling community would not attend and suggested that if we felt it beneficial, he would be on-site during the event to deal with any eventualities. This would be communicated as a positive piece to our local residents, in particular those in Langley Vale.

## **Communications Strategy**

Should permission be granted to stage The Derby and Oaks at Epsom behind closed doors, a very clear and informative communications strategy will be produced by the racecourse in conjunction with The Jockey Club, the British Horseracing Authority and EEBC (including Conservators). We will require a multi-channel communication strategy, targeting the racing industry and the local community, working with all parties to ensure the message is clear and is broadcast effectively.

During these unprecedented times, we need to ensure that there is understanding as to the importance of running The Derby and Oaks. It is not simply a commercial exercise for the racecourse but is vitally important to the many other stakeholders within the industry e.g. Owners, Trainers, Jockeys, Breeders and the myriad of others involved within the sport. However, it is also important to remember that the commercial stability of the racecourse helps support and sustain the local economy in many areas, in particular the local training industry and in the year round maintenance of the Downs through the Precept.

We understand that some local residents may feel aggrieved that they cannot access the Exclusion Zone to enjoy their normal jog, dog walk etc. but our messaging will be clear that this is for a strict 24hr period and that other areas around the Downs will remain open and accessible.

We understand that many local (and perhaps less local) residents will feel disappointed that they cannot share with us the day and view the races in areas where they have previously congregated. Our messaging will be clear and state that whilst it is obviously not something we have wanted to do, running The Derby and Oaks behind closed doors at Epsom is important to both the racing community and the Borough of Epsom. Sadly, the only safe way to do this during this period of social distancing, is the creation of a sterile, behind closed doors facility. They will however be able to watch the racing live on ITV.

## **Conclusion & Recommendation**

This application seeks approval for a scheme to enable in principle a single race meeting at Epsom Downs to be held this summer, at an exact date to be confirmed, 'behind closed doors', and at which The 2020 Derby and Oaks would be run. Given the fluid nature of this, the flexibility to approve the Derby on a Saturday in July or August is requested.

Appendix One

**Key**

- Exclusion Zone
- Stables Area / Pull-Up Area (outside Downs area)

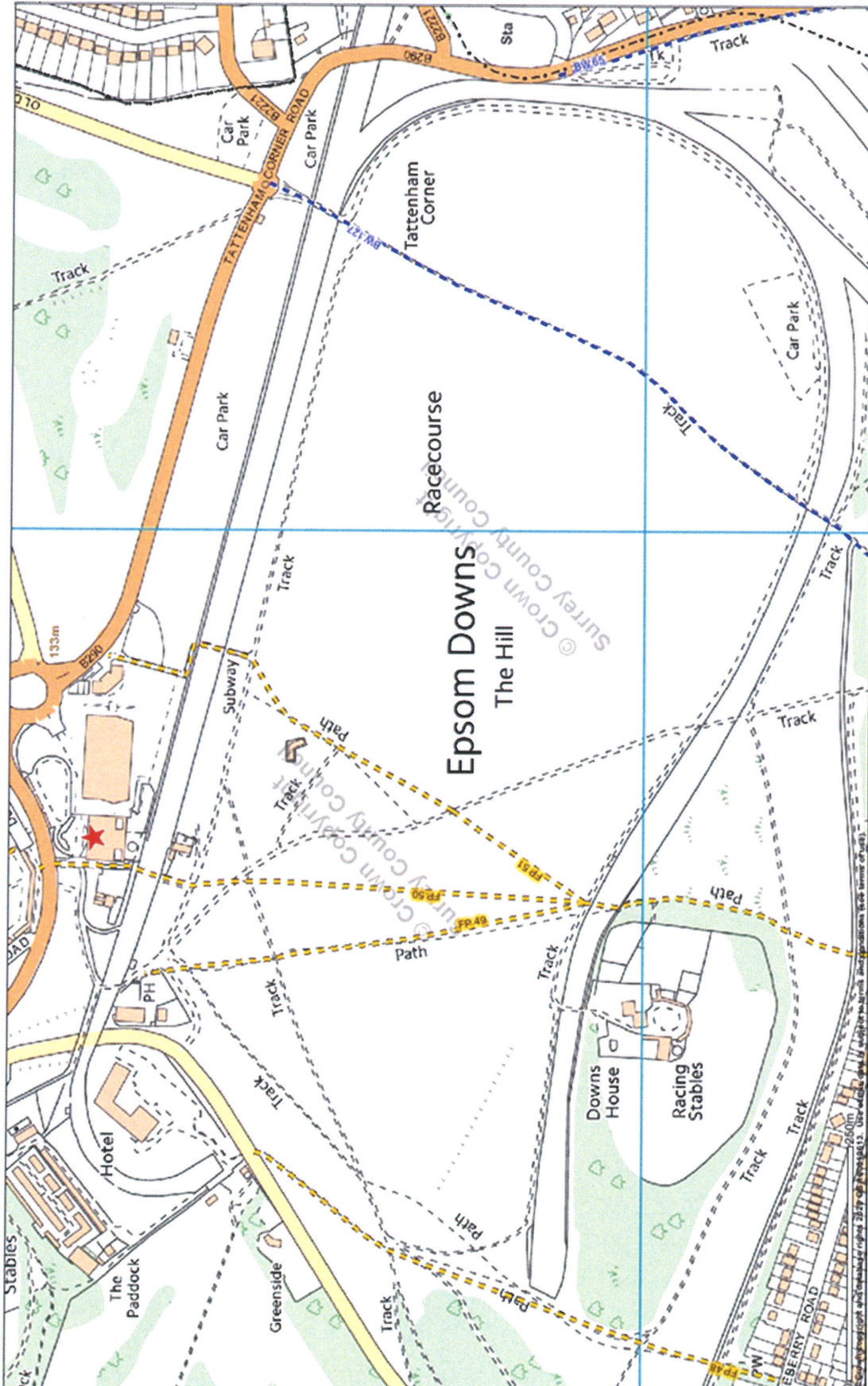






# EPSOM DOWNS

A Jockey Club Racecourse



This page is intentionally left blank