

## **UPDATE PARKING ON LAND IN FRONT OF DERBY ARMS**

<b>Head of Service/Contact:</b>	Amardip Healy, Chief Legal Officer
<b>Annexes/Appendices (attached):</b>	<b>Annex 1</b> – Report and Minutes of the meeting of the Conservators held on 18 January 2017 <b>Annex 2</b> – Plan <b>Annex 3</b> – Consultation responses <b>Annex 4</b> – Consultation comments <b>Annex 5</b> – Representation from Epsom Civic Society <b>Annex 6</b> – Representation on behalf of British Horse Society <b>Annex 7</b> – Epsom Downs Racecourse parking log for 2017
<b>Other available papers (not attached):</b>	Report and Minutes of the meeting of the Conservators held on 23 January 2014

### **Report summary**

**Consideration of the Epsom Downs Racecourse's request for permission for car parking on car parks known as Car Park 2 and 6, outside their current permitted usage.**

### **Recommendation (s)**

- (1) To determine Epsom Downs Racecourse's application to use the areas identified on the Plan attached at Annexe 2 known as Car Park 2 and 6 for further car parking use in accordance with the options set out in paragraph 3.6 of this Report, by either:**
- a) Refusing (Option A)**
  - b) Granting without conditions (Option B );**
  - c) Granting with conditions (Option C);**
- both or any part of the applications.**

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### 1 Background

- 1.1 At the Conservators Meeting on the 18 February 2017, the Conservators were asked to consider a request from Epsom Downs Racecourse for consent to use the area known as “Car Park 6” for parking for certain events throughout the year.
- 1.2 The Conservators agreed in principle to the application but requested that a public consultation should be undertaken prior to a full decision being taken. The report presented to that meeting set out the full history of the application and the minutes are attached at **Annex 1**.
- 1.3 In January 2018, Epsom Downs Racecourse asked for “Car Park 2” to be added to its request. The location of the proposed car parking at Car Park 2 and 6 is shown at **Annex 2**.
- 1.4 The Conservators received an update at their meeting on the 22 January 2018 along with a copy of the proposed public consultation document on the parking proposal (further to the Conservators recommendation of January 2017). The consultation document was agreed.
- 1.5 The public consultation ran from 29 January 2018 to 28 February 2018.

### 2 Consultation responses

- 2.1 The consultation process asked 6 questions, the responses to 1-5 is attached at **Annex 3** and the responses to question 6 which requested any further comments on any of the questions respondents wished to make, are set out in a Table in **Annex 4**.
- 2.2 There were sixteen responses to the consultation in total and the responses were equally divided as to whether consent should be granted, with 50% of respondents answering ‘yes’ and 50% answering ‘no’.
- 2.3 Of the eight respondents who answered ‘no’, five provided a comment for their response. However, all these comments had previously been raised and discussed by the Conservators at their meeting on the 17 January 2017.
- 2.4 For easy reference the table below sets out the comments along with details of their previous consideration:

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No of responses	Response	Officer comment
3	the possible detrimental effect to the protected grassland	considered at the meeting of the Conservators on 18 January 2017, at which the representative for the Lower Mole Countryside Management Service informed the meeting that he did not have any ecological concerns with regard to the application for use of 'Car Park 6'
1	concerns about the health and safety implications and access to the area	considered at the meeting of the Conservators on 18 January 2017
1	sufficient parking already available	explored at the meeting in January 2017 and Epsom Downs Racecourse advised that this area was preferable as it had better drainage and provided a more pleasant customer experience
1	application included a designated hack area under the Epsom and Walton Downs Regulation Act 1984 (the "Act")	the legal position was set out fully in the report presented to the Conservators on 18 January 2017

2.5 In addition to the consultation responses, two further representations were received. The first was from Epsom Civic Society is at **Annex 5** and requests that a limit is placed on the number of days when the area can be used for parking.

2.6 The second was received on behalf of the British Horse Society (the "BHS") is at **Annex 6**. This response raises a number of legal arguments as to whether consent can actually be granted for the area to be used for car parking. The legal position was set out fully in the report presented to the Conservators on 18 January 2017.

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- 2.7 In relation to the specific queries raised by the BHS 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.
- 2.8 In considering paragraph 11 of the BHS representation, s.1 of the Act sets out powers of the Conservators to regulate, preserve and control the Downs and this specifically includes:
- 2.8.1 They shall set aside areas for use as car parks under s.25 of the Act but the Act is silent as to where these areas should be.
- 2.8.2 They have the power to prohibit and regulate the driving and placing on the vehicles on the Downs under s.11 of the Act which permits the Conservators to make byelaws for this purpose.
- 2.9 The Act does not prohibit driving or placing vehicles in the Downs. Instead management of the Downs is left to the regulation by the Conservators. The Conservators have chosen to make byelaws which prohibit the driving and placing of vehicles without their consent, unless it is in an authorised parking place.
- 2.10 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 parties.
- 2.11 In reviewing the consultation responses and representations (including paragraphs 13 to 16 of the BHS representation) and the request from the Racecourse, the following points would need to be noted:
- 2.11.1 The request is for the parking of vehicles by the Racecourse in the identified areas only;
- 2.11.2 Parking can currently take place in the identified areas at specific times, as provided:
- in the Act;
  - under the consent granted by the Conservators on 23 January 2014 for events approved by the Conservators. This consent was as follows: “Applications for event parking for approved events on areas designated as ‘1,2,5,6 and 15’ on the map attached as **Annex 1** to the report will be considered as falling on racecourse land and within the Racecourse’s ability to approve if it wishes. The Racecourse will be solely responsible for the reinstatement of any of these areas for which it has granted access, in the event of any damage as a result of their use for such parking”;
  - pursuant to the consent granted in principle on 17 January 2017;

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2.11.3 The Conservators can restrict any consent granted and/or attach conditions as appropriate.

### 3 Proposals

- 3.1 The Racecourse has sought consent for parking in the identified areas to respond to the need for flexibility when circumstances require. The circumstances have varied from inclement weather to the need for workman to be able to park whilst works to the Racecourse are carried out. These have put some pressure on the need for suitable parking to be available often at short notice.
- 3.2 In order to monitor usage, following the grant of consent in January 2017, the Racecourse have recorded the frequency of use of these areas, and summary is attached at **Annex 7**.
- 3.3 The Racecourse have confirmed they will assist with the practical steps to balance the needs of the competing interests with the need to protect the Downs. They have offered to meet with representatives of Epsom and Walton Downs Consultative Committee to discuss how suitable paths are identified and kept clear to enable use for hack riding/ pedestrians to continue, when the areas under consideration are in use for an event. Although this offer is welcome, it would add to uncertainty to all parties and if the Conservators are minded to grant a conditional consent, it is better this issue is addressed as a part of a management plan for the operation of the affected car parks.
- 3.4 The areas identified are currently used for car parking, during certain times of the year and for permitted events. The Racecourse have used these areas as additional parking for a substantial period of time.
- 3.5 In terms of taking matters forward the options available range from not giving consent, to giving unqualified consent to qualified consent. It would be difficult not to provide any consent as the Racecourse have been using the area for some time which the Conservators have recognised in the decision of in January 2017.
- 3.6 The options for determining the request are:

#### Option A

No consent

#### Option B

Grant consent for either both or one of the Car Parks without any conditions

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### Option C

Grant consent for either both or one of the Car Parks with restrictions and conditions, namely:

- (i) *limit the use of Car Park 2 and 6 jointly to no more than 40 days a year (which is exclusive of existing permitted user rights);*
- (ii) *to identify and make available suitable paths to enable use for hack riding/pedestrians to continue when Car Park 2 and 6 are in use for an event falling within C (i) above;*
- (iii) *the Racecourse produce an agreed management plan for the management of the car parks, which is then implemented, to ensure compliance with proposed conditions and restrictions, with the rights of inspection of such plan given to officers of the Council.*

## **4 Financial and Manpower Implications**

- 4.1 The Council will be able to monitor compliance with any management plan through existing resources.
- 4.2 **Chief Finance Officer's comments:** Any costs relating to implementing conditions and/or restrictions will need to be met within existing resource levels or supplemented by external funding.

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

- 5.1 These are addressed in detail throughout the report.

## **6 Risk Assessment**

- 6.1 If consent is granted then there remains a risk that riders, walkers and cars wishing to use the areas may come in to conflict. Whilst this does not appear to have presented problems to date, if the use intensifies, then it is a possibility and is something that will need careful consideration. The implementation of a management plan should help to mitigate any risks.

## **7 Conclusion and Recommendations**

- 7.1 That, following consideration of the responses received to the public consultation, the Conservators determine whether consent should be granted to Epsom Downs Racecourse for use of the areas identified in **Annex 2**.

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