From: Hugh Craddock (BHS/EWD) <ewd@craddocks.co.uk>
Date: 28 February 2018 at 17:26:03 GMT
To: Tim Richardson <trichardson@epsom-ewell.gov.uk>
Cc: Alex Stewart <alexstewart013@gmail.com>
Subject: Re: Public consultation: Event parking at Epsom Downs Racecourse

Dear Tim

1. I am responding on behalf of the British Horse Society to the consultation to which you kindly alerted me on 30 January. As the online form does not meet our requirements, please would you forward this response to the appropriate colleague co-ordinating the consultation?

2. We should say first of all that we sympathise with the racecourse's wish to secure additional overflow parking for commercial events held in the grand stand buildings. We are happy to support commercial ventures which improve the profitability of operations on the downs, provided they do not have an adverse impact on riders' or the broader public interest.

3. However, in this case, we do not accept that the racecourse has any right to use the areas of the downs highlighted in the consultation for parking for racecourse events, nor that the conservators may authorise such use.

4. It is often said (including in meetings of the conservators) that the downs are 'private land'. So they are: but the context is that the land was formerly also common land subject to rights of common, and subject to a right of access for air and exercise under s.193 of the Law of Property Act 1925. The 1936 Act changed that: it provided for the regulation of the downs in the interests of the public, the racecourse and the trainers. The 1936 Act was repealed and re-enacted with modifications in the 1984 Act. It is the 1984 Act which now provides for the regulation of the downs. The preamble to the 1984 Act provides that: 'It is expedient that the rights of the public over the Downs and the rights of the Company and of the said Stanley Thomas Wootton and his successors in title and of the Levy Board parts of the Downs for the said purposes [*i.e.* racing and training of race horses] should be defined as by this Act provided'. The 1984 Act does precisely that: it sets out the respective rights of the public, the owners (generally referred to below simply as 'the racecourse') and the trainers. The racecourse has no residual rights as a private owner: it may do on the downs what the Act permits it to do, and may not do what is not expressly permitted. It has surrendered its usual rights as a landowner (but see below for how these rights have always been limited) in return for the privilege of regulation of the downs under a statutory scheme: the 1984 Act. The 1984 Act gives the racecourse powers to do things no ordinary landowner could do (such as to close highways and to exclude the public from certain lands with criminal sanctions for breach), but the corollary is that the 1984 Act also defines the full extent of the racecourse's powers.

5. It should be recalled that, prior to the enactment of the 1936 Act, every development on the downs to facilitate racing was controversial and often opposed by the town. That is why the 1938 Act was procured: to put in place a statutory mechanism for regulating the downs and reducing conflict. It should not be assumed that, were the downs not subject to statutory regulation, the racecourse would have a free hand to manage the land in its own interests: the powers of the owners would be severely circumscribed by the historical status of the land as common land. The racecourse was released from that constraint by the 1936 Act, but voluntarily placed itself under new statutory constraints.

6. It follows that the 1984 Act must be consulted to establish the powers of the racecourse as respect its use of any land. Those powers are extensive. They comprise:

- s.14: holding race meetings;
- s.17(1)–(8), (12)–(14), (16): a detailed and precise regime for the holding and conduct of horse races at meetings, including the exclusion of the public, erection of fencing, structures, booths and other facilities, operation of bookmakers, and the closure of roads;
- ss.17(9) and 20: training of race horses;
- s.17(10): erection of refreshment stalls;
- s.17(11): leases for a golf course;
- s.17(15): maintenance of race course;
- s.18: alteration of race course;
- s.21: temporary car parking;
- s.22: grazing of sheep;
- s.23: obligation to maintain certain highways.

7. These provisions are remarkably detailed. For example, ss.17(9) and 20 provide for the precise demarcation of areas which may be used for the training of race horses, subject to the power of the conservators to allow training to extend into other areas, and confer a power (s.17(9)(c) and 20(3)) to, 'preserve and maintain training gallops thereon and place bushes and wooden dolls on such training gallops'. It need hardly be said that, if the racecourse had the usual powers of a landowner as regards the downs, the 1984 Act would not need to confer on it a power to contract for the training of race horses on the land — still less to concern itself with the seemingly trivial power to mark out the training areas with dolls and bushes. Similarly, the race course can lease part of the downs for the purposes of a golf course only because s.17(11) says that it may do so. And so on.

8. Turning to car parking, s.17(4)(a) confers a power on the racecourse to set out temporary parking places on the downs during the preparatory period, the racing period and the intervening period, subject to their being removed as soon as practicable after the end of each meeting, and in any event, within ten days. S.17(12) confers a power to, 'admit vehicles to temporary parking places…on payment of such charges as aforesaid', but the power is clearly contingent on the powers in s.17(4) in relation to the racing period. S.21(a) confers a power to erect a temporary parking place at a specified site (not relevant to the lands highlighted in the consultation). S.17(2) confers a power, with the approval of the council, to make provision for parking in connection with alterations to the Grand Stand and certain other buildings, but — there being no such alterations at the present time — is not relevant here.

9. In summary, the clear intention of the 1984 Act is to confer a power on the racecourse to set out temporary car parks on the downs for use during race meetings, and to use, and charge for admission to, those car parks during race meetings. The powers apply to the land coloured green on the deposited map, which includes the land highlighted in the consultation.

10. The racecourse therefore has no power to permit car parking on these areas at times other than race meetings, still less throughout the year for commercial events independently of the racing calendar.

11. The consultation states that: 'The byelaws for the Downs set out that parking outside of these times needs to be agreed by the Conservators.' The byelaws make no such provision. Byelaw 2(i)(f) provides that, 'A person shall not, without the consent of the Conservators, on the Downs: …drive or place any carriage cart motor car or other vehicle other than upon public carriageways or use any part of the Downs as a parking place.' It is therefore an offence under the byelaws to park on the downs without the consent of the conservators. The consent of the conservators is presumably implied in relation to designated car parks. However, the conservators' consent to parking in any other place merely removes the possibility of prosecution under the byelaws: it does not render lawful what would be unlawful under the 1984 Act. And as we have shown, the 1984 Act does not confer any power on the racecourse to use the downs for commercial parking except in connection with race meetings. Nothing that is done under or for the purposes of the byelaws can affect the question of lawfulness under the 1984 Act. The racecourse must act in compliance with the civil law, even if the threat of prosecution is removed. However, it would be improper for the conservators to waive the application of byelaws to an act which remains unlawful.

12. It is hardly surprising that the racecourse labours under these severe restrictions on the use of its land: it has voluntarily entered into the statutory commitment to do so, ever since the 1936 Act was procured.

13. It is also the duty of the conservators under s.10(1) to 'preserve the Downs so far as possible in their natural state of beauty' — not to turn over the most accessible and visible parts of the downs to an all-year round car park. The conservators constantly express concern about the potential impact of events on the downs: why then should they be prepared to entertain the possibility of using these areas for parking, with the wear and damage that this will cause, in the most visible of locations? Moreover, the land highlighted in the consultation outside the Derby Arms, which has the character of a village green, is a riders' hack area: the Society says that, regardless of the wider context of statutory powers, the conservators should not purport to authorise the use of a riders' hack area as a private car park, to the obvious interference with riders' rights and convenience. When this area is used for car parking, riders are diverted to ride along Derby Arms Road, competing with motor vehicles being driven to and from the Derby Arms, and of course, vehicles entering and leaving the 'car park', access to which is from Derby Arms Road. This hardly matters on race days, when hack riding near the racecourse is prohibited — but it matters at other times.

14. It is intolerable that the conservators even entertain the possibility that the areas highlighted in the consultation should be used for parking for commercial events. This is not the purpose for which the downs are regulated and conserved under the 1984 Act, it is a gross interference with the use of the downs for quiet recreation and (particularly) designated equestrian use, it is an imposition on the amenity of the downs and a visual degredation, it has nothing whatsoever to do with the public enjoyment of the downs, and (unsurprisingly, given the public detriment) it is unlawful.

15. We therefore call on the conservators to reject these proposals. The public do not visit the downs to see them used as a commercial car park. We should be happy to discuss with officers and the racecourse what alternative measures are open to secure additional parking.

16. Please would you ensure that this objection is placed before the conservators when they are asked to make a decision on the proposal.

regards

Hugh

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