



Thursday, 1 March 2018

STANDARDS HEARING SUB-COMMITTEE

A meeting of **Standards Hearing Sub-Committee** will be held on

Friday, 9 March 2018

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Stocks

Councillor Thomas (D)

Councillor Thomas (J)

A prosperous and healthy Torbay

For information relating to this meeting or to request a copy in another format or language please contact:

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STANDARDS HEARING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**

To elect a Chairman/woman for the meeting.

2. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

3. **Declarations of interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

4. **Allegation of a Breach of the Member Code of Conduct**

To consider a report and determine what action, if any, should be taken in respect of allegations made against a Member of Torbay Council in accordance with the Local Protocol for Assessment and Determination of Allegations of Breaches of the Members Code of Conduct.

(Pages 3 - 116)



INVESTIGATION REPORT

LOCAL GOVERNMENT ACT 2000

ALLEGATION OF FAILURE TO COMPLY WITH THE CODE OF CONDUCT

INVESTIGATING OFFICER

MRS JUNE GURRY
GOVERNANCE SUPPORT MANAGER

Dated: 9 October 2017

Updated with Independent Person response: 18 January 2018

1. Introduction

- 1.1 The Monitoring Officer requested that I undertake an investigation following a complaint as to the conduct of Councillor Stubley, in respect of her dealings on matters related to unauthorised encampments on Churston Common during 2016/2017. Councillor Stubley has been represented by her solicitor, Mr Roger Richards, from the outset of this investigation.
- 1.2 This report represents my findings and is being presented to Anne Marie-Bond, Monitoring Officer, who will determine how this matter shall be progressed in line with the Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct, and would act as legal advisor to Council's Standards Hearing Sub-committee if she determines that they should consider this complaint.
- 1.3 This investigation has been carried out in accordance with the guidance on 'How to Conduct an Investigation' produced by Standards for England that was applicable to the Code of Conduct for Members pursuant to the Local Government Act 2000.

2. Details of the Complaint and Methodology

- 2.1 The Monitoring Officer received a verbal complaint in respect of Councillor Stubley's conduct in respect of the issues surrounding unauthorised encampments at Churston Common and specifically in relation to:
1. Use of a personal e-mail account;
 2. Language and tone of communication to Council Officers, fellow Councillors and members of the public;
 3. Potential misrepresentation of facts;
 4. Potential misrepresentation of decision making; and
 5. Conduct which is potentially outside that appropriate for a Ward Councillor
- 2.2 The provisions of the Code of Conduct of Torbay Council that have been considered in my investigation are:-
4. You **must** –
 - (a) treat others with courtesy and respect
 5. You **must not** –
 - (b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);
 - (e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

2.2 I have also considered the requirements set in the Constitution as follows:

Local Protocol – Members IT (use and security of iPads, use of emails and confidentiality when forwarding emails to third parties/use of data)

Article 11 (Decision-making), Elected Member Job Description (in relation to officers' role, members taking advice from officers and limitations on decision-making)

Local Protocol – Member and Officer Relations (guiding principles on dealings between members and officers)

2.3 Extensive email correspondence between Councillor Stubleby, fellow elected members, officers and the community provided the evidence for the basis of the complaint. The emails range from July 2016 to March 2017. A corporate complaint was considered prior to my investigation which linked to the complaint against Councillor Stubleby. I have reviewed these emails and the corporate complaint which resulted in a number of questions and areas for response by Councillor Stubleby. These were presented to Councillor Stubleby for written response.

2.4 The evidence that has been compiled and considered during the course of the investigation is set out in the Evidence and Document pack attached.

2.5 I have taken account the responses on behalf of Councillor Stubleby in respect of my questions and areas for response as contained in the Standards Investigation Plan.

2.6 I have also taken account of the following:

- Code of Conduct of the Council of the Borough of Torbay
- Torbay Council – Constitution relevant provisions (as detailed above in paragraph 4).

2.7 I have considered the provisions of the Code of Conduct and the Constitution. I have grouped the potential breaches into the following questions:

2.7.1 Did Councillor Stubleby's behaviour through her communications with members of the public, fellow councillors and officers, breach the Code of Conduct (Paragraph 4)? To support this element of the Code of Conduct, did Councillor Stubleby represent individual constituents within her ward serving all equally, in particular those who did not support the works on Churston Common (Elected Members Job Description Paragraph 1)?

2.7.2 Did Councillor Stubleby act in accordance with the Council's statutory requirements in respect of the protected characteristics for gypsies and travellers (Paragraph 5 (b))?

- 2.7.3 Did Councillor Stubley's comments in her emails impact on the impartiality, professionalism and integrity of officers (Paragraph 5 (e))?
- 2.7.4 Did Councillor Stubley's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (Paragraph 5 (h))?
- 2.7.5 Did Councillor Stubley meet the requirements of the Council's Constitution – Local Members' IT Protocol in respect of her handling of emails and providing confidential data to third parties (Local Protocol – Members' IT Paragraphs 1.3, 4.6, 10.1 and 10.2)?
- 2.7.6 Did Councillor Stubley use officer resources prudently in light of her repeated and insistent requests on being provided with a breakdown of figures on travellers costs (Local Protocol – Members and Officer Relations Guiding Principles 3.1 (h))?

3. Councillors Details and Training Records

- 3.1 Councillor Di Stubley, was elected as a Councillor in May 2015 for the Churston with Galmpton ward in the Borough of Torbay.
- 3.2 Councillor Stubley gave a written undertaking to observe the Code of Conduct on 12 May 2015.
- 3.3 Councillor Stubley has received the following relevant training;
- 13 May 2015 – Welcome and Introduction to Torbay Council
 - 19 May 2015 – Communications and Media Skills
 - 21 May 2015 – Making Licensing Decisions
 - 22 May 2015 – Making Planning Decisions
 - 26 May 2015 – Mock Council Meeting and How Meetings Work
 - 27 May 2015 – Where are we? Opportunities and Threats for Torbay's Future
 - 28 May 2015 – Code of Conduct
 - 3 June 2015 – How do we get there? Seizing the opportunities and minimising the threats
 - 10 June 2015 – Introduction to Finance
 - 17 June 2015 – Keeping People Safe Incorporating Corporate Parenting
 - 19 June 2015 – The Harbour Estate and Harbour Committee
 - 9 July 2015 – Working with Partners
 - 15 July 2015 – Treasury Management
 - 28 July 2015 – Information Governance – Your roles and responsibilities
 - 8 September 2015 – Safeguarding
 - 11 September 2015 – Scrutiny Skills
 - 26 October 2015 – Contacting the Council
 - 22 September 2016 – Governance training

4. Relevant Aspects of the Code of Conduct and Constitutional Requirements

4.1 Torbay Council has adopted a Code of Conduct in which the following paragraphs are included:-

4. You **must** –

(a) treat others with courtesy and respect

5. You **must not** –

(b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);

(e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

4.2 The Torbay Council Constitution includes a number of Local Protocols and other requirements which elected members are expected to follow. The following extracts are relevant to my investigation:

Local Protocol – Members IT

1. Introduction

1.3 In the case of iPads, software and other equipment provided by the Council, the Council will also provide the necessary training and support that individual Members may require to enable them to use the equipment and services provided. The minimum training requirement for a Member is to complete IT Induction/Data Protection and Information Security training.

4. Security of the iPad and Provided Equipment

4.6 The Member are their own data controller and could be liable for any breaches, any loss or breach of personal data/equipment must be reported immediately to infocompliance@torbay.gov.uk in order to comply with Data Protection requirements.

10. Confidentiality

10.1 The Member will be able to access confidential and/or exempt Council information using the equipment provided. The Member is responsible for ensuring the continued security of any such information which they receive. The Member is reminded of their obligations under the Council's Code of Conduct for Members not to disclose such information to any third party. This includes

the forwarding of any information by way of email or any other method.

- 10.2 Some of the data will be personal data relating to individuals. The unauthorised processing or disclosure of such data is prohibited under the Data Protection Act 1998 and its associated statutory instruments and the Member is responsible for ensuring that there is no such unauthorised disclosure from the iPad or from the Council's Information Management systems.

Extracts related to officers role, members taking advice from officers and limitations on decision-making:

Article 11 – Decision-making

11.02 Principles of decision-making

All decisions by the elected Mayor, individual members, officers and of decision-making bodies and recommendations of all Council bodies (including working parties) will be made in accordance with the following principles:

- (ii) Decision makers must understand the legal requirements regarding the decision-making power and observe them.

Job Description – Elected Member

Main Duties and Responsibilities

1. To represent the individual constituents within their Wards (or in the case of the elected Mayor constituents within Torbay), undertaking casework on their behalf and serving all equally.
2. To liaise with the elected Mayor, Executive members, other council members, officers and other service providers in ensuring that local community needs are considered and identified.
3. To be a channel of communication for the local communities about the decisions of Council and Council procedures.
4. Acting as community leader, to represent the views, aspirations and concerns of the people of Torbay as a whole, providing the focus for local democracy.
8. To develop and maintain a working knowledge of the Council's services, management arrangements, powers/duties and constraints and to develop good working relationships with the relevant officers of the Council.
9. To develop and maintain a good knowledge of the corporate policies of the Council.
10. To uphold the Council's Constitution and to promote high ethical standards. To act in accordance with the Members' Code of Conduct and the Protocols as set out in the Council's Constitution.
12. To promote and enhance the Council's reputation through participating constructively in the governance of Torbay.

Local Protocol – Member and Officer Relations

3. Guiding Principles

3.1 In their dealings with one another members and officers will:

- (a) Serve only the public interest;
- (b) Behave properly and not place themselves in situations where their honesty and integrity may be questioned;
- (c) Make decisions on merit
- (d) Be open about (and be prepared to give reasons for) their actions;
- (e) Promote equality by not discriminating unlawfully against any person;
- (f) Treat people with dignity and respect, accepting that everyone is acting in good faith, and show courtesy in all meetings and contacts, both formal and informal, between members and officers.
- (g) Uphold the law;
- (h) Seek to ensure that the Council uses its resources prudently;
- (i) Promote and support all these general principles by example, and act in a way that secures or preserves public confidence in local government;
- (j) In addition, members will respect the impartiality and integrity of officers; and
- (k) Officers will work for the Council as a whole, treating members of different party groups fairly, and showing no favour to any particular political group or individual member.

5. Findings

5.1 Councillor Stubley's behaviour through her communications and representing constituents equally (para 2.7.1 above)

5.1.1 Councillor Stubley was involved in numerous email conversations with the Police, the Council's Chief Executive, senior legal officers, environment officer, Executive Members, all councillors and constituents from her ward. Councillor Stubley received advice from officers and in particular Officer 1, Senior Solicitor and Deputy Monitoring Officer. During the course of these communications, in my opinion, it is evident that Councillor Stubley's conduct in respect of her comments made about Officer 1 do not meet the

requirements of the Code of Conduct to treat others with courtesy and respect. Examples of Councillor Stubley's conduct in these emails include:

22 December 2016 20:46 Email from Councillor Stubley to Officer 1, cc to Councillors Mills, Excell, and Mayor. The overall tone of this email demonstrates disregard and disrespect to Officer 1's position and previous advice given, an extract is provided below:

'Officer 1 I am not being rude but I do not need yours or anyone else's permission to have the facts checked out by an outside source.'

23 December 2016 email conversation between Person 2 (member of the community) and Councillor Mills, copied by Councillor Stubley to Mayor's Executive Group. Within these emails, Councillor Stubley's is disrespectful towards officers and fellow councillor, her email was copied on to Officer 1:

(Email at 00:28)

'I really feel I could cry, I am exhausted and it is because Officer 1chose to send out this information to someone like Person 3 who refuses to accept what I.....

Officer 1 and Officer 2 refused to attend the meeting and I got told off by Officer 1.....

Officer 1 is furious I have done this without consulting her....If she had been doing her job correctly the Council could have saved a great deal of money.'

3 March 2017 14:35 email from Person 2 forwarded to council officers, community members and Torbay Community Development Trust by Councillor Stubley. Councillor Stubley's tone and comments include:

'I do feel I need to point out the obvious...

Officer 1 stormed down the corridor and tore a strip off me.'

- 5.1.2 The Corporate Complaint response highlights that the community is divided on the response for dealing with unauthorised encampments with some of the community wishing to restrict access to the Common. Throughout the correspondence, Councillor Stubley responds to a number of individuals within the community, both those for and against the restrictions. It is clear Councillor Stubley supports the restrictions on the Common and her correspondence with those who do not support the restrictions demonstrates, in my opinion, that she does not serve all her constituents equally. The general tone of the email trail with Person 3 dated 21 to 22 December 2016 and Person 5 dated 15 November to 22 December provides examples and are attached at Appendix 1 and 2.

Councillor Stubley's response:

- 5.1.3 In response to my questions above, Councillor Stubley considers that her communications throughout the emails did meet the standards required of the Code. Councillor Stubley believes that in her email dated 3 March 2017 the semantics she has used were not a criticism of anyone but was merely an

explanation of the situation. She further believes that her reference to Officer 1 was a correct explanation; she considers Officer 1's conduct was aggressive and disrespectful.

- 5.1.4 In relation to my comments in respect of the corporate complaint, Councillor Stubley believes that I am misinformed. She believes the community was not divided as evidenced by the public meeting held on 8 February 2017 where she advises me that the majority were in favour of reinforcing the common.
- 5.1.5 In respect of serving all constituents equally and representing those who did not support the restrictions on the Common, Councillor Stubley considers that she has met this requirement. Furthermore, Councillor Stubley believes that on contentious matters where there is a majority view on one side and a small minority view on the other, a Councillor must be at liberty to deal with the majority position, otherwise the Councillor will not be acting in the best interests of her constituents. In relation to the Elected Member Job Description 'To be a channel of communication for the local community', Councillor Stubley considers this is the communication with the majority democratic view. Councillor Stubley denies that she is not dealing equally between the factions. She believes in a democratic way she is supporting the community while listening to the small minority and explaining to them that the overwhelming democratic feeling of her constituents was opposed to their views. Councillor Stubley is of the view that it is impossible to serve all constituents equally and must take heed of the overwhelming majority as exemplified by Brexit. Councillor Stubley believes my comments in 5.1.2 are naïve, undemocratic and wrong.

5.2 Councillor Stubley acting in accordance with the Council's statutory requirements in respect of the protected characteristics for gypsies and travellers (para 2.7.2 above)

- 5.2.1 As an elected member, Councillor Stubley has a duty to ensure her conduct does not cause the Council to breach a statutory duty or any of the equality enactments which includes gypsies and travellers (as defined in section 149 of the Equality Act 2010 and included at Appendix B of the Code of Conduct). Under this requirement of the Code, as part of their community leadership role, Councillors are required to 'foster good relations between persons who share a relevant protected characteristic and persons who do not share it; and having regard to the need to foster good relations involves the need to (a) tackle prejudice, and (b) promote understanding. Throughout the correspondence I cannot see any evidence which demonstrates that Councillor Stubley has met this requirement of the Code. Examples include Councillor Stubley's email dated 15 November 2016 19:08 to Person 5, an extract is provided below:

'...due to unauthorised encampments on both Commons – which were horrendous this year, i.e. a serious assault on a local person, verbal assaults and threats to walkers using the common, Mums stopping for ice creams and verbal assaults made on her in front of her children. Men showing naked outside, in full view of the general public. Plus the cost involved to evict and clean up after they have gone.

It was so bad the Police picked up on comments on social media of vigilantes threatening to firebomb the areas in order to get the travelers out of the area. The problems this year have been the worse so far.

I for one feel the personal safety of the general public should be paramount in the discussion.'

Councillor Stubleley's response:

- 5.2.2 In response to my question, Councillor Stubleley advises that she considers she has acted in accordance with the Council's statutory requirements in respect of the equality protected characteristics of gypsies and travellers, and that the support of local electors is a primary duty for her, and the requirement to deal with travellers either by the Council's policy or the bringing in of a PSPO is a furtherance of her duty as a ward Councillor. Furthermore, Councillor Stubleley believes there is nothing wrong in what she has said where she urges or suggests that the Council should breach any statutory duty and my comments above are taken out of context. She considers there are many ways in which the problem of travellers can be dealt with by a local authority and it is proper for her to allow debate on these different approaches and bring them to the Council.
- 5.2.3 Councillor Stubleley considers her conduct has not caused the Authority to breach any statutory provision nor has she urged any individual to do anything that would cause there to be friction. She considers that she has always referred matters to the Council for them to deal with. Councillor Stubleley asked questions provoked by her constituents as to why the Council uses certain strategies and not other lawful ones, which she considers her job as a Councillor.
- 5.2.4 Councillor Stubleley considers the reference from the e mail to Person 5 is a statement of fact which is in essence criminal acts committed by the travellers which have been reported to the police. She believes there is not a breach of any code of conduct by relaying factual information already complained of to Police officers.
- 5.2.5 Councillor Stubleley believes she has been stating throughout that it is the duty of Torbay Council to protect the common both under the by-laws for the Common and the Deed of Gift of the Common; the duty is to protect the common from Travellers; once on the common then the law with regard to eviction, of whatever type the Council use, must be obeyed. She adds this is two fold however and while Torbay Council have a duty to carry out the eviction lawfully then the Travellers also have a duty to live within the law. She believes her e mail merely states the facts.
- 5.3 **Councillor Stubleley's impact on the impartiality, professionalism and integrity of officers (para 2.7.3 above)**
- 5.3.1 The Corporate Complaint concluded that officers acted appropriately and provided consistent advice in respect of the Council's position. Councillor Stubleley's comments in her emails, a number of which were sent to the community, brings in to question officers' impartiality, professionalism and

integrity. Councillor Stublely also makes disparaging remarks in respect of Officer 1's advice in a number of her emails. Examples include Councillor Stublely's email dated 3 March 2017 (attached at Appendix 3) to the Mayor, councillors, officers and the community; and emails between Officer 1, Councillor Stublely, Person 3 (copied to the Mayor, councillors Excell, Haddock and Mills and members of the community) dated 22 and 21 December 2016 – extracts provided below (please refer to Appendix 1 for the full email conversation):

Email from Councillor Stublely to Person 3, 21 December 2017:

'I will add it has been checked out by a solicitor already both Person 2 and my daughter who is a lawyer, not to mention the Council Solicitor but please feel free to take independent legal advice.....'

Knowing the information that was researched and presented to Council to the Senior Councillors, also that Person 6 has confirm along with two other independent solicitors as well as the Council's one simply highlights that this could all have been done years ago to save the Council serious amounts of money and officers time'

Email response from Officer 1, Senior Solicitor and Deputy Monitoring Officer, 22 December 2017:

'...I respond to seek clarification to which Council Solicitor you refer to with regards to confirming this information.'

It is of great concern that works to Churston Common have been carried out without consent from the appropriate Officers within the Council first being obtained....

As expressed to you on a number of occasions recently, before any further action was to be taken by the Council in regards to Churston Common, the community needed to come up with agreed options in respect of any proposed works being carried out to Churston Common and that these agreed options should be submitted in writing to the Council

Councillor Stublely's response:

5.3.2 In response to my questions, Councillor Stublely considers she has not complained about Officer 1 and that the complainant was a member of the community. Councillor Stublely does not consider her comments have impacted on the professionalism of officers. In addition, Councillor Stublely considers she is a new councillor and Officer 1 is a professional and in light of this, allowance should be made for Councillor Stublely's inexperience.

5.4 **Councillor Stublely's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (para 2.7.4 above)**

5.4.1 Councillor Stublely received support and advice throughout the correspondence from a number of council officers and the Police, namely:

- Email from Steve Parrock dated 30 July 2016
- Email from Justin Wyles Sector Inspector, Devon and Cornwall Police

dated 3 August 2016

- Email from Officer 1 dated 3 August 2016
- Email between Officer 1, Officer 4 and Councillor Stubley dated 4 August 2016
- Meeting with Councillors Mills, Haddock, Stubley, Officer 2, Officer 1 and Officer 3 on 10 August 2016
- Email from Officer 1 to Councillor Stubley dated 11 August 2016
- Officer 1 email dated 11 August 2016 advising on Council's IT Protocol and use of personal email addresses
- Summary of how Torbay Council manages unauthorised encampments and the relevant legal procedures utilised (emailed via Councillor Mills to all councillors on 24 August 2016)
- Email from Officer 1 to Person 9 dated 28 November 2016 advising of consents required for works on Churston Common
- Email from Officer 1 to Councillor Stubley dated 22 December 2016 11.30

5.4.2 In addition to the support and guidance provided by the police and officers, Councillor Stubley undertook her own research outside of the Council and communicated with Natural England. I cannot find evidence that Councillor Stubley shared the information she acquired outside of the Council with Council officers to seek their professional guidance and verification before sharing it with the community. As a result Councillor Stubley has misrepresented the facts to the community – this is demonstrated in Councillor Stubley's email dated 21 December 2016 and Officer 1's response dated 22 December 2016 (see extracts provided at paragraph 5.3.1 above and full email provided at Appendix 1); and Councillor Stubley's email dated 3 March 2017 attached at Appendix 3.

5.4.3 Throughout the correspondence there are a number of references to a decision by senior councillors in relation to the unauthorised works on the Common. Formal authorisation had not been given by the Council, however, the community proceeded with the works. Email correspondence between Officer 1 and Person 9 dated 28 November 2017 confirmed the Council's position and that the works were not authorised. Despite this, a meeting was then held on 5 December 2017, attended by Councillors Mills, Stubley and Excell with community representatives and the Torbay Community Development Trust. The draft minutes of that meeting gave the impression that 'the works to replace the boulders with larger blocks was considered to be maintenance of the existing arrangements and did not need any further approval'.

5.4.4 Following the meeting held on 5 December 2016, Councillor Stubley then repeatedly misled the community by stating on numerous occasions that a decision had been taken authorising the works – examples include: Councillor Stubley's emails dated 21 December 2016 to Person 3 and Person 6 of Natural England; Councillor Stubley's email to Person 5 dated 22 December 2016; Councillor Stubley's email dated 22 December 2016 to Officer 1 – 'A democratic decision was made with the evidence put before the Senior Councillors and careful evaluation of the full facts that were presented in the meeting that recently took place.'
'The Councillors made this decision with the refusal of yourself or any representation of the legal department in this matter. Therefore they have the right to do this.'

'I fully agreed and supported the Senior Councillors decision, after I too had clarification from another legal source.'

Councillor Stuble's email dated 3 March 2017 contradicts her previous comments 'None of the Councillors made a decision, the evidence was considered and the Executive Councillors said they did not need to make any decision as the Friends already had permission in place.....'

- 5.4.5 The Corporate Complaint response calls into question the conduct of Elected Members and the way in which they engaged with the community giving the appearance of being in a position to make a decision on behalf of the Council.
- 5.4.6 Paragraph 5.3 above sets out my view as to the potential damage to the integrity of officers throughout and thereby has the potential to bring the Council into disrepute.

Councillor Stuble's response:

- 5.4.7 In response to my questions, Councillor Stuble considers she is entitled to undertake her own research and is entitled as any citizen to take whatever course she desires in ascertaining the facts. She considers no standing order of the Council can take away the right of a Councillor to embark on their own investigation and research and the Constitution does not state that private investigation by a Councillor cannot occur. Furthermore, Councillor Stuble believes it is incorrect that Council officers refused to countenance a PSPO stating it is for the police to initiate. Therefore, Councillor Stuble is of the view that councillors should undertake research themselves as otherwise they may be misled or make incorrect decisions in light of officers' incorrect advice. She adds the provision of a PSPO is perfectly within the ambit of a Councillor to suggest, especially when as here, it has been suggested previously by her electorate.

Councillor Stuble states a senior Council officer did state that the PSPO could only be brought about by the Police. Councillor Stuble believes this was factually incorrect and as such she would have been allowing the Council to become into disrepute unless she had corrected this.

In addition, Councillor Stuble states it is not true that she does not consider it necessary to provide information acquired outside the Council to officers. Councillor Stuble feels she can investigate and can adduce matters without the requirement of bringing matters to the attention of officers. Councillor Stuble considers Council officers are not the fount of all knowledge and nothing in the constitution can remove the ability of a Councillor to seek independent advice.

Councillor Stuble considers the matter of integrity of officers can only be enhanced where, like Councillors, their decisions are also subject to scrutiny. Councillor Stuble states that officers do not get it correct all of the time and it is the duty of Councillors to make sure that information and advice is correct.

- 5.4.8 Councillor Stuble did not consider it necessary to provide the information she acquired outside of the Council to Council Officers to seek their professional guidance/verification before sharing it with the community. Councillor Stuble

believes, as a private individual as well as a Councillor, she may take part in private conversations and be advised by many people. However, in her role as Councillor, Councillor Stubley does believe she must and does consider officer advice when dealing with actual Council business.

5.4.9 Councillor Stubley does not consider she has damaged the integrity of officers and has not therefore brought the Council into disrepute. Councillor Stubley believes officers made comments without properly ascertaining the full facts about the situation of Churston Warborough Common.

5.4.10 Councillor Stubley denies misleading the community and considers no decision was made at the meeting held on 5 December 2016. Councillor Stubley believes my interpretation at para 5.4.3 above is factually incorrect as she considers permission to protect the Common had been given in the past by senior officers of the Council and the meeting which was conducted by the Deputy Mayor and Councillor Excel was to evidence the information . Councillor Stubley's involvement was just to arrange the meeting. Councillor Stubley considers her emails refer to a decision that was made at that meeting, not by Councillor Stubley or the participants, but by the two senior Councillors who evaluated the previous permissions and evaluated the situation and then stated that permission was already in place to protect the common. She considers no decision was made at this meeting. Her only action was to disseminate the facts of what happened at the meeting on 6 December 2016 and there is no evidence that she ever purported to making the decision.

5.4.11 Paragraphs 5.3.2 and 5.3.3 above set out Councillors Stubley's response in respect of the integrity of officers and bringing the Council into disrepute.

5.5 Councillor Stubley's handling of emails and providing confidential data to third parties and the requirements of the Council's Constitutional Local Members' IT Protocol (para 2.7.5 above)

5.5.1 During November and December 2016, a personal e-mail address was used by Councillor Stubley when dealing with Council business. Councillor Stubley also forwarded email trails to additional recipients. Councillor Stubley did seek advice from Officer 1 in regards to sending emails to additional recipients and Officer 1 responded via email on 11 August 2016. Within that email, advice was also given in respect of councillors using their council email address to ensure data security.

5.5.2 Throughout the documentation there are a number of email conversations which include forwarding and copying of emails by Councillor Stubley. There is potential for data and confidential information being shared inappropriately which may amount to a breach of Data Protection requirements. It will be necessary to review the documentation with the Council's Data Protection Officer to identify any potential breach.

Councillor Stubley's response:

5.5.3 In response to my questions, Councillor Stubley confirms that the emails from the private email address were from her and during this period she had IT issues and could not use her council email address. Councillor Stubley does not believe she has contravened any requirement of the Constitution including disclosing confidential and/or exempt Council information to third parties.

5.6 Councillor Stubley's use of officer resources in light of her repeated and insistent requests on being provided with a breakdown of figures on travellers costs (para 2.7.6 above)

5.6.1 Councillor Stubley received extensive support and advice from officers, in particular Officer 1 (see para 5.4.1 above). Despite this advice, Councillor Stubley made repeated and insistent requests for information regardless of the responses she had received. The email trail between Councillor Stubley, Officer 4 and Officer 1 dated 4 August 2016 provides an example and an extract is provided below:

Email from Officer 4 to Councillor Stubley, 4 August 2016:
'I am afraid I have to interject in this.

Officer 1 is tasked by me, with a significant workload, and I have to ensure that her time is used in the most productive way possible.

Officer 1 has moved her diary to make herself available to meet with you, in order to ensure that she can fully explain to you the position, and immediately answer any questions that you have. This is the most time efficient manner for her to deal with this issue. This is entirely reasonable and one which I fully support.'

Councillor Stubley's response:

5.6.2 In response to my questions, Councillor Stubley does believe she has used Council resources prudently and considers that whenever a request is made, if the officers are not forthcoming, she is entitled to ask again or request why the information has not been forthcoming. Councillor Stubley states this information can be made as a Freedom of Information Act matter when there would be a requirement on the Council officers to ascertain it. Once the Monitoring Officer interjected Councillor Stubley ceased to ask further questions on this matter.

6. Conclusions

6.1 I acknowledge and appreciate that it is challenging for Members to manage issues when there is conflict within their constituency. In such circumstances, it is incredibly important that Members ensure they promote and support the highest standards of conduct and behaviour in accordance with the Code of Conduct and the Council's Constitution.

- 6.2 Whilst considering carefully the responses that Councillor Studley has provided to the issues raised, I do believe, on the balance of probabilities, and on the basis of the evidence I have set out in my report, that Councillor Studley has breached the Code of Conduct in respect of:
- 6.2.1 Paragraph 4 - must
- (a) treat others with courtesy and respect,
- 6.2.2 Paragraph 5(b) - must not do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);
- 6.2.3 Paragraph 5 (h) - must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.
- 6.3 Further, I believe on the balance of probabilities that there has been a breach of the Members' IT Protocol as well as the Local Protocol – Members and Officer Relations in respect of the prudent use of officer resources.

Councillor Studley's response:

- 6.4 Councillor Studley does not agree with my conclusions. She believes that my conclusions are misguided and has indicated an intention to appeal some or all of my contentions.

7. Independent Person

- 7.1 The Independent Person has had sight of this report and has made the following comments:

'Having read the investigation report, based on the information and papers made available to me, it seems to me that the report is thorough and addresses all the issues. With regards to the findings I make the following observations on the following sections:

5.1 **Councillor Studley's behaviour through her communications and representing constituents equally (para 2.7.1 above)**

Based upon the investigation report, Councillor Studley has used her email communication to openly criticise an officer and deny what had been said. She also ensures various members of the public were also made aware of her position and criticism of the officer.

5.3 **Councillor Studley's impact on the impartiality, professionalism and integrity of officers (para 2.7.3 above)**

It is acknowledged that Councillor Studley was relatively inexperienced compared to some of her other colleagues, however, a number of courses have been undertaken and the issues continue over a period of time. It does not therefore excuse Councillor Studley for the comments she made. Even the little experience she had at this time

would have indicated and suggested that the comments would damage the integrity of the officers concerned. She clearly doesn't trust the information that she was provided with and sought to undertake her own research rather than seeking further advice and guidance. Given the initial inexperience, seeking support would have seemed the more obvious path. It is a regretful that Councillor Stubley didn't recognise that there were officers who could help and support her.

5.4 Councillor Stubley's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (para 2.7.4 above)

Councillor Stubley's views on this matter are quite clear and she has made her opinion known. She undertook her own research in order to support her own view. As a consequence, to an outsider looking in, it would appear that Councillor Stubley has clearly taken a side which has resulted in a stance that represents the view of one element of her community. I leave it to others with more experience on such matters to decide if it should be expected that an elected Member should represent all the views of their community given the circumstances. To use her family members as a way of legitimising this agenda is in my view naïve and further undermines the relationship she should have with the Council's officers. She was clearly 'on a mission' and rather than accepting support from officers she instead criticised those officers who didn't support her view.

I understand that Councillor Stubley has been given the opportunity to input and consider the report. Her response appears to focus on justifying her position, rather than objectively reflecting upon her behaviour. I am disappointed that a Councillor who has been elected to represent the community and who should be demonstrating high standards has been unable to self-reflect. Consequently, this means that the Standards Committee has to determine the matter, when the outcome could have been very different.'

8. Recommendations

8.1 On reviewing the responses provided by Mr Richards on behalf of Councillor Stubley, it is my view that, whilst recognising Councillor Stubley has attended the training required of a new councillor, there remains a misinterpretation by Councillor Stubley of the expectations on her in the role of a councillor. There are a number of misunderstandings throughout the responses I have received on behalf of Councillor Stubley, particularly the role of a community leader. There is also a need for Councillor Stubley to recognise the need to communicate in the appropriate manner when reaching a wider audience in respect of her comments made about those with protected characteristics. In light of this, I recommend Councillor Stubley undertakes the following development and training to ensure she fully understands the requirements of her role as councillor and the conduct expected of her:

- a. Members roles and responsibilities and working with officers;

- b. Mentoring from an experienced Member in respect of Councillor Stublely's communications with constituents and officers, and her community leadership. An appropriate mentor to be identified by the Conservative Group Leader and Governance Support Manager;
 - c. Data protection;
 - d. Managing conflict in communities; and
 - e. Meeting the requirements of the Code of Conduct and Councillor's responsibilities in respect of gypsies and travellers
- 8.2 The Constitution and the Council's policy in respect of use of private emails by councillors for council business is made clearer and that all Members are briefed so they are fully aware of their responsibilities when communicating electronically.
- 8.3 Potential data protection breaches are referred to the Council's Data Protection Officer for investigation.

Appendices:

- Appendix 1: Email trail with Person 3 dated 21 to 22 December 2016
- Appendix 2: Email trail with Person 5 dated 15 November to 22 December 2016
- Appendix 3: Email from Councillor Stublely to the Mayor, councillors, officers and the community

Evidence and documents considered (pack presented in date order)

Document	Date
Extensive email correspondence between Councillor Stublely, elected members, council officers, partners and the community	Range: 29 July 2016 to 3 March 2017
Summary of how Torbay Council manages unauthorised encampments and the relevant legal procedures utilized	August 2016
Draft notes of meeting to discuss Galampton Warborough Common	5 December 2016
Corporate Complaint Response Ref. 277498	March 2017

Officer 1

From: Officer 1
Sent: 22 December 2016 11:30
To: 'Diane Stubleby'; Person 1
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Person 1; Person 6; Officer 2;
Subject: Officer 5
UNCLASSIFIED:RE:The Common

Importance: High

Good morning Councillor Stubleby,

Given that I have been copied in to this email, it is necessary that I respond to seek clarification to which Council Solicitor you refer to with regards to confirming this information.

It is of great concern that works to Churston Common have been carried out without the necessary consent from appropriate Officers within the Council first being obtained. As such, it is my belief that once these works became known, the Council's Principal Officer for Natural Environment instructed that these works must cease with immediate effect. It is my further belief that a subsequent investigation will now be carried out in this regard.

As expressed to you on a number of occasions recently, before any further action was to be taken by the Council in regards to Churston Common, the community needed to come up with agreed options in respect of any proposed works being carried out to Churston Common and that these agreed options should be submitted in writing to the Council for the attention of Officer 2 who is the Council's Assistant Director (Community and Customer Service). On receipt of these proposals the Council would consider whether any of the options were lawful and if so, how they may be funded. To date the Council has not received any such agreed options.

Please do not hesitate to contact me should you wish to discuss this further.

Kind Regards

Officer 1

From: Diane Stubleby [mailto:Cllr Stubleby's personal email address]
Sent: 21 December 2016 13:34
To: Person 2
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Officer 1; Person 1; Person 6
Subject: Re: The Common

Good morning Person 2,

Person 4 from natural England was in complete agreement with what has been done and will be relaying the information to you as she stated to me this morning.

Please send the list of names and addresses of the objectors to be kept on file along with those in favour for the community files on this matter. As Ward Councillor I need this information.

I enclose the reply I received from Person 4 below -
isn't this wonderful information she has provided about how the common CAN be used.

Thank you so much for putting her in touch to help clarify this matter. I will forward this on to the Council Solicitor who can research this to confirm this information to you.

I will add it has been checked out by a solicitor already, by Person 1 and my daughter who is a lawyer, not to mention the Council Solicitor but please feel free to take independent legal advice if you so

wish. I will not need to reply to you again but the list of names and addresses of the objectors are needed to confirm the numbers for Council records.

Knowing the information that was researched and presented to Council to the Senior Councillors. also that Person 4 has confirmed along with two other independent solicitors as well as the Council's one simply highlights that this could all have been done years ago to save the Council serious amounts of money and officers time from many decades previously.

At least clarification has been brought to light now and it has been confirmed by various parties. A great deal of research has been done on this matter as you are now well aware.

Thank you very much for all your help by providing this contact to also confirm these facts. Who was also completely independent.

Brilliant result.

The matter is finally closed.

Kindest regards.

Diane

Enc.

Diane,

I think that what you are telling me is that there is a scheme of management in place – I think this would have originated from the 1899 Commons Act .This was ratified in 1930 -article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation, but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common .

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purse ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the

common - was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge .

Regards,

Person 6

Senior Adviser for the Strategy and Implementation

M:07

Please note: I am multibased working out of a number of offices and at home. Please send mail to the following address:

Natural England, Rivers House, Sunrise Business Park, Higher Shaftsbury Road, Blandford Forum, Dorset , DT11 SST

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

On 21 December 2016 at 12:01, Person 2 <Person 2 email address> wrote:

I am afraid that I am not satisfied by your response, Di, and will continue to pursue the matter with the Commons solicitor and other bodies like Natural England. You do not appear to me to have observed the correct legal procedure. In my view, the installation of concrete blocks combined with boulders (of over 200 metres) has not been formally approved. The whole enterprise has been handled undemocratically. However, I am willing to accept that you have indeed been acting within the law if this can be confirmed by a legal body.

I can assure you that many people - not a mere handful! - are upset by the ugly barriers which have been erected, but it was the responsibility of council, authorised by the Planning Inspectorate, to conduct a proper consultation on what had never been agreed in the initial, unofficial consultation 2 years previously.

As I have already said, further exchange of emails is futile, so unless you can send me evidence of having observed the procedures outlined in the DEFRA documents, I want no further contact before Christmas.

Thank you for respecting this.

With thanks,

Best regards,

Helen

From: Diane Stubley [mailto:<:Councillor Stubley's Personal Email Address
Sent: 21 December 2016 10:43
To: Person 2
Cc: Person 1; Mills, Derek; robert.excell@torbay.gov.uk
Subject: Fwd: The Common

Good morning Person 2,

to put you in the picture I have at length replied to Person 4 the work that has been carried out, the **decision making process in the Town Hall by Senior Councillors**. Plus the permission that was granted by council officers to maintain the perimeter of the commons in accordance to the information of the bylaws affecting this land that have recently come to light.

I also concur as Ward Councillor with the CPI need to have a list of the objectors you mention as an etcetera simply as I represent the entire community on this ward and I have been given a list of names that support the Friends of the Commons. I also need to see the list of names of the objectors. I would be grateful if you could supply this list and their addresses.

Otherwise it would seem it that there are only a small handful of objectors so **the decision to go with the majority view by a democratic vote/consultation was also the right one taken in Council**.

.

With kind regards,

Diane

From: Person 1
To: Person 2
Cc: Person 6
Sent: Tuesday, 20 December 2016, 21:34
Subject: The Common

Hi Person 2

You sign one of your email's as Person 2 and Person 7, Person 8, person 9, Person 10, Person 11 etc

Can you please let the CP know who exactly the etc. are. We feel it is important to gain the number of people who feel like you all as we need to give proper representation to all members of the community.

I believe that the friends of the common have a list of their supporters.

Best wishes

Person 1

Best wishes

Person 1

Sent from my iPad

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Barlow, Amanda

From: Diane Stublely [Councillor Stublely's Personal Email Address]
Sent: 22 December 2016 22:33
To: Officer 1
Subject: Fwd: Galmpton Common and Travellers

Good evening Amanda,

I also enclose this

Date: 22 December 2016 at 22:28
 Subject: Re: Galmpton Common and Travellers
 To: Person 3 Derek Mills <derek.mills@torbay.gov.uk>, robert.excell@torbay.gov.uk
 Cc: Person 12, Person 1

Yes Peter the work was agreed by Senior Councillors in accordance with the legislation from the of state that granted permission for the local communities to do this.

I have copied and pasted this information below my response to you that was also agreed with the decision from Natural England.

The commons were originally known as 'The Warborough' it was given as a gift to the people of Chuston and Galmpton with strict conditions attached, it had originally been privately owned. That the land had to be kept vehicle free for the pleasure and usage of the local communities.

When the boundaries changed the land was transferred to Torbay Council from Totnes and The South Hams Council.

Torbay Council allowed Vehicles onto the commons against the conditions the land was gifted under. The benefactor heard about it and sent their land agent to check it out. The information they had been given was proved to be correct.

Torbay Council ignored the wishes of the benefactor and the local community and were taken to the High Court. The benefactor won their case and Torbay Council incurred considerable costs. For years this information was lost and recently came to light.

After the court case the case was brought before the Secretary of State who tightened up bylaws therefore allowing the local community the right to maintain the perimeters of the land with whatever means were listed under the bylaw. Also their right to enjoy the land if they so wished by planting trees shrubs, adding benches etc for the pleasure of the community if they so wished.

This information only recently came to light. The 1899 common law act relating to the usage on the commons by pedestrians and horse riders meant that permission was needed if the residents of the communities were going to be prevented from using common land if work was to be done that closed the common off.

But as the boulders and the concrete blocks vary in size so too the gaps the public were not being denied access when the work was being carried out. Therefore permission to carry out the work was not needed.

The Friends of the Common would have preferred natural boulders but none could be found locally and the cost of buying and transporting them was beyond the finances of the Friends.

The recent legislation and history relating to the commons was put before Senior Councillors from the Mayors Executive Group who considered all the history and facts. Plus the evidence provided about the original consultation process having been done under strict conditions and the choice of questions that were asked and the choice of what was preferred for the short term, mid term and long term plan to maintain the commons. Also the fact it had been advertised in the press, in Churston Library and also in the local Gazette several weeks before and lastly by Sarah Wollaston in her column.

You will then see the situation for yourself. A majority decision of 84% of the local community wanting the perimeter of the commons to be reinforced and maintained to prevent vehicle access was a majority decision.

The blocks will be painted green and the land will be allowed to settle then the grass will receive further attention in spring.

In reality, the commons are being protected by vehicle access under which the land was gifted and the bylaw tightened up and amended to allow the community to enjoy the common for their recreation and pleasure but also prevent vehicle access. But over generations this information had been lost or forgotten.

When all the facts and evidence was put before Senior Councillors they made the decision that the Friends of the Common were simply exercising their rights to do so as set out in the legal documentation from the then Secretary of State.

I think you will find this response from Person 4 interesting and I hope you fully understand the decision and why it was made.

With kind regards,
Diane

Diane,

I think that what you are telling me is that there is a scheme of management in place – I think this would have originated from the 1899 Commons Act .This was ratified in 1930 -article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation. but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common.

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purpose ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the common - was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge.

Regards,

Person 4

Senior Adviser for the Strategy and Implementation

On 22 December 2016 at 19:52, Person 3 wrote:

Hi Diane,

I see the blocks have now been placed on the common. I'm assuming the meeting to discuss this did not happen?

I would like you to know that my objections still stand. I know that 'beauty is in the eye of the beholder' but I cannot agree that these blocks do anything to enhance the look of the common.

They are somewhat lower than I had expected but it looks to me as though a couple of well placed car ramps would convert each block from a barrier and into an access point...

Can you please assure me that the council have agreed to this work?

Person 3

On 14 December 2016 at 12:23, Person 3 wrote:

Hi Di,

I walked over the common this morning and was surprised at the amount of digging that has happened.

It looks very much as though the ground has been prepared to accept 8 rectangular blocks of approximately 3m length.

Did I miss the meeting?

Can you assure me that this is being done within the law and with the agreement of the council?.

If there are plans, where can I inspect them?

Person 3

On 15 November 2016 at 22:26, Person 13 wrote:

There seems to be a little confusion Di, about the General meeting. In fact it is an open meeting organised by the friends group which will be held early in December. This will be widely publicised to encourage as

wide attendance as possible.
Best wishes Person 13
Title within community organisation
Sent from my iPhone

On 15 Nov 2016, at 19:08, Diane Stublely <Councillor Stublely's Personal Email Address> wrote:

Good evening Person 3,

I think a general meeting will be held after Christmas to discuss the two commons through the Local Community Partnership.

I do not know a date as yet but I feel sure you will all be informed when a date is decided upon.

The Community Partnership meeting will give everyone a chance to discuss and have more understanding of the problems that have been ongoing due to unauthorised encampments on both Commons - which were horrendous this year. i.e. a serious assault on a local person, verbal assaults and threats to walkers using the common, Mums stopping for ice creams and the verbal assaults made on her in front of her children. Men showing naked outside, in full view of the general public. Plus the cost involved to evict and clean up after they have gone.

It was so bad the Police picked up comments on social media of vigilantes threatening to firebomb the areas in order to get the travellers out of the area. The problems this year have been the worse so far.

I for one feel the personal safety of the general public should be paramount in the discussion.

With kind regards,

Diane

On 15 November 2016 at 16:32, Person 3 wrote:
Hi all,

sorry to be coming to this debate so late but we have only recently returned from a longer than usual holiday.

I have read the Emails that have passed between the GRA, FOGWC, local councillors and other residents of the area - with mounting concern - and felt I ought to express my views.

I am opposed to the use of 3m concrete blocks being placed round the common .

I got the impression from one EMail that this was a done deal. i.e. the blocks had been purchased and it was only due to other commitments they had not already been deployed. So I was relieved to read from Di Stublely that no decision about the concrete blocks has yet been made.

Apart from anything else I do not believe these blocks would work to keep the travellers off the common.

I took a stroll round the perimeter of the common yesterday and identified at least 10 gaps where I reckon I could move a single smallish rock and then drive my car onto the common (they are all on the Dartmouth Road).

The other query I would raise is about the way decisions are made concerning changes to the common.

If I want to make any alterations to my property it is a requirement that I apply for planning permission and this involves public notices on the street and plans available for perusal by interested parties.

Should this also be a requirement for proposed changes to the boundary of the common?

At least it gives everyone an opportunity to inspect the proposal and give feedback. The proposal is set out in black and white and changes can be forced if the result does not agree with the plans.

This would save a lot of discussions about what has and has not been agreed at past public consultations which some people may not have been able to attend.

Person 3 (long term resident of Galmpton in XXXXXXXXXXXX Road)

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Antrobus, Lisa

From: Gurry, June
Sent: 06 March 2017 11:43
To: Antrobus, Lisa
Subject: UNCLASSIFIED: FW: The Response - please read both emails

Please add to document file for the Standards complaint in respect of Councillor Stubley.
Thank you
June

June Gurry
Governance Support Manager
Corporate and Business Services
Torbay Council
(Telephone (01803) (20)7012, Fax (01803) 207011)

Information in this message is confidential and may be legally privileged. It is intended solely for the person to whom it is addressed. If you are not the intended recipient, please notify the sender, and please delete the message from your system immediately.

From: Stubley, Di
Sent: 03 March 2017 15:25
To: Gurry, June <JuneGurry@torbay.gov.uk>
Cc: Person 1
Subject: Fwd: The Response - please read both emails

Hi June,

For complete transparency I am forwarding you this email which sets out all the information that is background knowledge on Churston Commons.

Please feel free to check everything out as this is both detailed and accurate information.

With kindest regards,

Di Stubley
Councillor for Churston with Galmpton Ward.

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Begin forwarded message:

From: "Stubley, Di" <Di.Stubley@torbay.gov.uk>
Date: 3 March 2017 at 14:35:40 GMT
To: Mayor <Mavor@torbay.gov.uk>, "Mills, Derek" <Clr.D.Mills@torbay.gov.uk>, "Excell, Robert" <Robert.Excell@torbay.gov.uk>, Officer 4

Officer 2, Person 6, Person 1, Person 12
Person 14, Officer 6, Person 15,
Person 13

Subject: Fwd: The Response- please read both emails

Good afternoon everyone,

I do feel I need to point out the obvious:-

1. I was approached by the FOGWC and the CP to arrange a meeting in December and asked to present all the evidence the FOGWC had kept on file to support their case to do maintenance work on the perimeter of the commons.

2. Person 16 was recovering from hip surgery and not in the Town Hall. Person 16 suggested I went into the Mayors support office to check availability of both his diary and Officer 1's to ensure a date and time when their diaries were free to book a meeting with the Friends and CP. It should have gone out in his name but by mistake it was sent out in mine.

3. **Officer 1 stormed down the corridor and tore a strip off me** for requesting a meeting and sending out the request from the Mayor's office. Stating she had to attend any meeting the Mayor sent out but she did not have to attend any meeting I sent out. Also that enough time had been spent on the commons and she did not feel any more should be done on the subject.

4. I was taken aback and maybe should have made a complaint about the way I was spoken to but did not wish to cause any upset. I did tell Councillor Mills and the Mayor of this incident.

5. The Mayor ensured that both Councillor Mills and Councillor Excel would be present in the 5th December meeting to look at all the evidence provided by the Friends group.

6. None of the Councillors made a decision, the evidence was considered and the Executive Councillors said they did not need to make any decision as the friends already had permission in place with the emails from Officers and the information that came to light with the Bylaws.

7. As these Bylaws were came across purely by accident none of the Councillors were even aware of them. Why did Torbay's Legal dept. not inform the Councillors of them as it was T.C.'s own legal dept. that set them up in the first place.

The Bylaws were done as preventative measures to stop vehicle incursions in the first place. (Thus saving the Council money to evict travellers when unauthorised encampments occur. Not to mention the upset to the local communities. Surely T.C. failed in their duty in this respect to inform the Councillors of these?)

8.The email from Officer 7 in 2015 was predominantly about the reinforcement of the boundary of the commons. The gate was not mentioned in the email provided by the Friends Group. The Officer Officer 7 was aware of the suggestion to put back a gate that had originally been on the common, therefore he mentioned this work in the email. Work to maintainthe boundaries was what was the main topic in this email where permission was granted by Patrick Camey who mentioned the community already had in place the option to do this as he quoted the Bylaws that later came to light, that neither the Community or the Councillors were even aware of.

9.Torbay Legal dept. were responsible following the court case in the 1970's when they were taken to the high court and lost for not adhering to the Covenant from the transfer of land from Person 17 to the people in the Parish of Churston.

After years of complaints by the Churston Community who complained to the Council to stop vehicle access on the commons The Solicitor Sutton Coulson eventually found the address of the person who gave the Land known as 'The Warborough' and informed her of the vehicle incursion on the commons. A court case followed which Torbay Council lost. The bylaws were then worked on by Torbay Councils Legal Dept. it was sent to the then Secretary of State for approval. It was then signed therefore ratified thus making the Bylaws legal which is my understanding from the information found online and from the local Library.

10. At the end of the day it is the local community who have shown by a huge majority that they wanted to reinforce the perimeter of the commons, thus saving the Council the cost through the eviction process.

I agree once incursions take place EU law is applicable in the process to evict travellers following checks on

children and the elderly before an eviction warrant can be obtained. Then there is the clean-up cost after they have gone all of which is paid for from rate payer's money.

11. Maybe the Secretary of State needs to be contacted for clarification that these Bylaws should or should not still be adhered to. Also if the choice of materials as a barrier method as mentioned in these Bylaws are still applicable, so that the use of only natural boulders as suggested in an email this week from an Officer is not the only choice for the local community.

Then at least the local community and the Ward Councillors would know what choices are permitted.

With kind regards,

Di Stubley

Councillor for Churston with Galmpton Ward.

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Sent from myPad

On 3 Mar 2017, at 11:56, Mills, Derek <Cllr.D.Mills@torbay.gov.uk> wrote:

Original Message-----

From: Person 1

Sent: 03 March 2017 10:00

To: Mills, Derek; Person 12; Person 6; Stubley, Di; Haddock, Richard; Mayor; Person 13

Subject: Re: The response

By the way we need to go to stage 2 of the complaint before we can go to the LA ombudsman .

On 3 Mar 2017, at 09:19, Person 1: wrote:

Hi All

I have now read the decision and have the following comments :-

1 I have never seen a response where the investigating officer confirms in it that she has been involved in the situation and made value judgement decisions on the specific thing complained about. The Common

2 She refers to the minutes of the meeting which she relies on; them states that they are incomplete(how does she know as no officer other than the minute taker were there) and then fails to recognise that they were draft.

3 Throughout she fails to recognise the duty on the Council to protect the Common under the Bye Laws and the Deed of Gift. She states that the Council have a tried and tested means of getting the Travellers off the Common but fails tom see that it is their duty to protect it from then Travellers in the first place.

4 It is unfortunate that Ward Councillors and Executive leads do not have powers. The question is why have ourElected Councillors allowed this state of adffairs to occur where the tail is firmly wagging the dog.

5 The investigating officer has failed to recognise that on 3 separate occasions permission was given and our executive leads stated in the meeting with us that they were of the view that permission was granted.

6 The investigation officer is failing to find the overwhelming good will of the majority of persons living in the area and the fact that they bare prepared to spend their own money rather than that of the Council in protecting the Common. I would point out again that there is a duty on Torbay Council to do more than clear up mess but to stop it in the first place.

I believe we should petition the Mayor and ask himm to make the decisiopn that we can go ahead and do what Torbay Council should be doing.

Person 1

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Officer 1

From: Person 5
Sent: 03 August 2016 15:27
To: Officer 1
Subject: FW:Out of Office: Travellers Churston Common Car park
Attachments: Travellers - FAQ sheet.docx

From: Person 5
Sent: 01 August 2016 13:04
To: 'Di.Stubley@torbay.gov.uk'
Cc: Officer 8; Person 18
Subject: FW: Out of Office: Travellers Churston Common car park

Dear Councillor Stubley,

Thank you for your emails

As I'm sure you are aware that officers were deployed on Friday to the report of assault and the travellers driving on to the car parking area of the Churston Common on Friday afternoon.

This was brought to the attention of the South Devon Critical Incident Manager (Duty Inspector) Person 19, who assessed the situation and then responded to your email informing you that I was aware, but not in a position to contact you at that time. This was accurate as I was committed with a different policing matter. I had though prior to your contact ensured members of the Paignton & Brixham Neighbourhood teams attended, which they did within a few minutes of the call being received. I again contacted them whilst at the scene. The victim was identified and crime report was taken for a common assault, which is being investigated. Unfortunately the offender was not present as he had left already.

As you may know from being a Councillor to the local area this issue of the Unauthorised Encampments in that area is frequent and has previously caused an Community consultations which occurred on the 7th & 8th Feb 2015 in the Galmpton Institute. This was as a result of a meeting with the MP Sarah Wollaston, local councillors, Torbay Council and the Police meeting at the Town Hall. The purpose was to look at what target hardening the local community wished to pursue and give guidance and information to the community regards responsibilities, legislation police and council powers and obligations towards the travelling community. I have attached a FAQ from that event for your information.

The travelling community gained un restricted access to the land which was open to the public for which the local authority has responsibility for. The police did and will continue to work in partnership with Torbay Council, Councillors and all communities to work within the law policies and procedures.

There was a report of assault at the time of this occurring for which the police provided a proportionate legal response, a crime has been recorded and is being investigated. Officers from the local authority Torbay Council were immediately in attendance and worked with the police to attempt to engage with the Travellers to allow the Council to carry out an initial assessment. There were no powers for the police or the Council to remove anyone at that time. As explained by Officer 8 there are restrictions and procedures to be followed to allow the Council to effectively apply to evict occupants of the land. The Police cannot just assist Tor 2 in "kicking the travellers out" or bring in the "heavyweights". I am aware that Torbay Council have begun this process welfare & educational requirements are being assessed to then apply to retake position of the land.

I am committed through this week with the South Devon Critical Incident Managers role through late and night shifts, but available on this email. When I return to my Sector Role next week I would be very happy to meet and explain in further detail to assist in managing your parishioners expectations and discuss this and any other matters should you wish.

I have placed a YouTube clip from Chief Constable Shaun Sawyer to understand his response to policing unlawful Encampments.

<https://www.youtube.com/watch?v=SS1A04> amDI

Regards

Person 5
Paignton & Brixham
Sector Inspector
Ext
Mobex

From: Officer 8,
sent: 30 July 2016 01:22
To: Stubbley, Di
Cc: Mayor; Mills, Derek; Person 18
Subject: Re: Out of Office: Travellers Churston Common car park

Dear Di,

Albeit on leave I noticed your emails earlier but given your numerous contacts to the police and others felt it best not to interfere.

We always have a senior officer on duty, and I was for example in contact with Officer 4 earlier - so I'm not sure why you could not get through.

There is a strict protocol we must follow for travellers and I suggest you discuss this with Officer 2 when she gets back from leave.

The police will respond to emergencies very promptly but it is simply not possible for TC to evict as you would wish.

It is also my understanding is that we cannot lock car parks with travellers inside.

Regretfully it is a common occurrence but we are heavily restricted in what we can and cannot do.

The alleged violence is strictly a matter for the police (and we are not privy to their actions).

Regards
Officer 8

Sent from my iPhone

On 30 Jul 2016, at 00:49, Stubbley, Di <Di.Stubbley@torbay.gov.uk> wrote:

Hi,

I tried to get an update from the Police and got this automated reply.

I was not able to get anyone to speak with anyone in authority on Friday afternoon in order to try to deal with this.

There should be a nominated person available to speak with but there was no one to ask advice from. Officer 8 was away, Officer 4 was away, Derek was away. Officer 8's P.A. had already left the Town Hall and was not available to contact. I could not get hold of anyone in the role of a designated person in order to help deal with the travellers and try to get them evicted by 20.00 hrs. Even though there had been a member of the public assaulted during the afternoon.

I had incoming phone calls complaining about them and was not able to give an update except for me to say I had forwarded the information to the necessary departments. There was anger and disbelief from the Local Community that there was no one available to deal with this on Friday afternoon. I started contacting the Town Hall by email and phone at 15.00 hrs so I did expect to be able to get this dealt with before 17.00 hrs.

I had no such luck. Surely there should be someone available on a rota based system to act in a position of authority to organise and deal with urgent Ward complaints. Especially when travellers are acting in a violent and hostile way towards local road users.

I was also surprised there was no one in a position of authority with the Police Community in order to deal with this before the weekend. Especially when there is evidence the travellers have been violent to a local member of the public by throwing a metal tyre iron at them through an open window thus hurting their shoulder. This incident has been reported to the Police.

I don't believe anyone from Tor 2 were going to be going there this evening to lock up as there would be no support for them. Surely this in itself is giving Travellers the green light to come and set up camp in the Churston area. It seems they can do and act exactly as they like and there is no one around to deal with such matters as a sense of urgency.

Not only that it also means it costs the Council a lot of money to clean up after them when they have been encamped for several days/weeks. Not to mention the intervention costs when Social Services need to make the necessary health checks. Plus the time and cost for eviction orders which need to be granted through the courts.

There should be a way of ensuring early intervention before lock up time on this car park.

With kind regards,
Diane Stubley
Councillor for Churston with Galmpton

Begin forwarded message:

From: "Person 19"
<[Person 19 email address](#)>
Date: 29 July 2016 18:10:22 BST
To: "Stubley, Di" <Di.Stubley@torbay.gov.uk>
Subject: Out of Office: Travellers Churston Common Car park

I'm away from my office until 15:00 Monday 1st August 2016, I will respond to emails on my return.

Contact Devon & Cornwall Police on 101@devonandcornwall.pnn.police.uk
Textphone 18001 101 for the deaf, hard of hearing or speech impaired
Always call 999 in an emergency

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Officer 1

From: Officer 1
Sent: 03 August 2016 12:45
To: Stublely, Di
Subject: UNCLASSIFIED:FW
Travellers Problem

Importance: High

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good afternoon Councillor Stublely,

I am writing to you as the Council's Officer 1 Job Title who advises the Council on matters relating to unauthorised encampments on land owned by Torbay Council .

I note that a meeting has been proposed for you to meet with me. Councillor Mills, and Councillor Haddock. I also propose that Officer 3, as the Council's Principal Officer responsible for such encampments attends this meeting and that it is convened as an internal meeting only.

In the interim, I respectfully ask that you cease sending or forwarding emails in this regard and await the outcome of discussions with appropriate officers . In addition, I respectfully advise that you refrain from submitting opinions or suggestions in writing until after our meeting.

Please do not hesitate to contact me directly should you wish to discuss this further.

Kind Regards

Officer 1

Officer 1
Officer 1 Job Title

Electric House
Town Hall
Castle Circus TORQUAY
TQ1 3DR

Telephone Number: 01803 207xxx
Fax Number: 01803 207xxx
DX Number: 59006 TORQUAY

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-----Original Message-----

From: Mills, Derek
Sent: 03 August 2016 12:14
To: Officer 1
Subject: FW: Travellers Problem

FYI

-----Original Message-----

From: Stubley, Di
Sent : 03 August 2016 12:13
To: Mills, Derek; Mayor
Subject: Re: Travellers Problem

Hi,

I have checked the availability of Person 1 who you suggested I include and the date is fine with him.

Please can you ensure I get written answers sent to me in advance of the meeting with Officer 1 .

I think this is very important to have these in writing so we can have a proper debate.

Many thanks.

With kind regards, Diane Stubley

Councillor for Churston with Galmpton

> On 3 Aug 2016, at 11:59, Stubley, Di <Di .Stubley@torbay.gov.uk> wrote:

>

> Hi Derek,

>

> I would like answers to my questions that I have raised first before I have a meeting with Officer 1 . There is a trail of emails with questions raised but I think answers need to be given before a meeting is arranged. That way there is something to debate on.

>

> I also think you also need to be present as you too are fellow Councillor for Churston and you are now the lead for Travellers.

>

> Please can you check the diary for a couple of dates and times when Richard Haddock and Officer 1 will have a gap for a meeting to be scheduled.

>

> Then when I have a couple of choices I can invite Person 1 and he can check his own diary.

>

> Many thanks.

>

> With kind regards,

> Diane Stubley

> Councillor for Churston with Galmpton

Barlow, Amanda

From: Stuble, Di
Sent: 04 August 2016 16:41
To: Officer 4
Cc: Officer 1; Mills, Derek; Mayor
Subject: Re: UNCLASSIFIED:RE:Travellers • Meeting today

Good afternoon Officer 4,

this is very kind of you to interject. Your help is very much appreciated.

As you will see from my previous emails I understood that if necessary Officer 1 may need more time in which to be able to form written replies and also provide an itemised break down of costs to Torbay Council for the last 3 years on a yearly basis for the total cost of eviction, clean up process, health checks, Eviction Order etc. as these figures have not been produced as yet.

When I have these facts I am then happy to meet up for discussion but these are needed for me to be able to have all the facts available in order to have an informed discussion .

I am aware even at Westminster written questions are submitted, written replies are always given out even if there is a debate conducted on the subject. In all aspects of professionalism written replies are properly done. I do not mind as I pointed out if Officer 1 needs to allocate time to slot the replies in as I do appreciate her workload is busy at present. But under the freedom of information act I do wish to have properly written replies.

Simply as a record is then available, also this means those replies can be debated on properly.

This is the normal professional conduct expected of any legal office.

I did my training in a large legal firm many years ago so I am aware this is normal practice.

I also have a daughter who is a Solicitor who assures me this is not an unreasonable request.

Also, please forward me the contact details of the LGA so I can seek their professional guidance and possibly a mentor to help guide me . Not a member from T.C . or from the group, I am aware Richard Haddock has one to help guide him.

I do think this may be a good idea to have an unbiased view on the travellers problem.

The LGA said last year it was the job for Councillors to question things and look at possible alternatives in the way things are or have been done previously in order to do things differently .

As I also stated, it may be this is already the best way of dealing with unauthorised travellers encampment within Torbay. But without written answers to reflect on there is nothing to properly debate. I will always request written replies to my questions to look back on for further/future reference. This is the way I was instructed to act when I worked for the head office of a large legal firm in the Midlands . I did have very professional training .

Please ensure the answers to my questions are properly provided even if it takes within the next month for Officer 1 to allocate time to do this. I am happy to wait a few weeks as this is reasonable in the circumstances, as you point out Officer 1 has a large caseload at present .

Thank you again for your help with this matter .

I am sure you can see how important and invaluable this information will be.

With kind regards,
Diane Stubley
Councillor for Churston with Galmpton

> On 4 Aug 2016, at 15:22, Officer 4 wrote :

>

> Di

> I am afraid I have to interject in this.

> Officer 1 is tasked by me, with a significant workload, and I have to ensure that her time is used in the most productive way possible .

> Officer 1 has moved her diary to make herself available to meet with you, in order to ensure that she can fully explain to you the position, and immediately answer any questions that you have . This is the most time efficient manner for her to deal with this issue. This is entirely reasonable and one which I fully support.

> Officer 1 remains available to meet with you at 3.30pm this afternoon.

> Kind regards

> Officer 4

>

>

> Officer 4

> Officer 4 Job Title

>

> Torbay Council

> Civic Office, Castle Circus Torquay, TQ1 3DR

>

> Tel : 01803 20xxxx

> Fax: 01803 20xxxx

> e-mail : xxxx

>

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>

>

>

> -----Original Message-----

> From: Stubley, Di

> Sent: 04 August 2016 14:31

> To: Officer 1; Mayor; Mills, Derek

> Cc: Officer 4

> Subject : Re: UNCLASSIFIED: RE: Travellers - Meeting today

>

> Good afternoon Officer 1 ,

>

> thank you for your reply. I am however absolutely astounded you refuse to provide written answers to written questions that is standard practice in every aspect of professional conduct .

>

> One has to wonder why you are so reticent to do so.

>

> I am requesting instead of minutes which don't give the full account, a full transcript of the meeting a copy of which will then be sent to all interested parties thereafter .

>
> Please ensure a full breakdown of all costs incurred through the eviction process, i.e. clean up, health checks, legal work and eviction order per year for the last 3 years are made available at this meeting.

>
> I have copied in this email to the Mayor.

>
> With kind regards,
> Diane Stublely
> Councillor for Churston with Galmpton

>
>> On 4 Aug 2016, at 13:39, Officer 1 wrote:

>>
>> Good afternoon Councillor Stublely.

>> As advised and for the reasons given, I will not be providing you with the written information you have requested at this stage.

>> In order to be of assistance to you, I have agreed to meet with you in person today at 3.30pm and on Wednesday 10th August 2016 at 9am, along with others. These offers stand and I shall ensure that they remain free in my diary, should you wish to attend.

>> I respectfully advise and request that you do attend these scheduled meetings, as it will be beneficial to you and in turn to those in the community that you represent.

>>
» Kind Regards
»
» Officer 1
»
» Officer 1
» Officer 1 Job Title

>>
»

>> Town Hall
» Castle Circus
» TORQUAY
» TQ1 3DR

>>
>> Telephone Number : 01803 20xxxx
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>>
>>
>> -----Original Message-----

>> From : Stublely,Di
>> Sent : 04 August 2016 12:56
>> To: Officer 1
>> Subject: Re: UNCLASSIFIED: RE: Travellers - Meeting today

>>
» Hi Officer 1,
»

>> Please read my previous email which I sent you at 12.06 explaining the reason for cancelling this meeting.

>>

>> The method used may in fact be the best one but without all the facts it is difficult to make an unbiased opinion.

>>

>> I look forward to receiving the necessary information asking you to provide .

>>

>> With kindest regards,

>> Diane Stublely

>> Councillor for Churston with Galmpton

>>

>>> On 4 Aug 2016, at 12:17, Officer 1 wrote:

>>>

>>> Good afternoon Councillor Stublely,

>>>

>>> In consideration of all the emails received or have been copied in

>>> to from you, I submit that it is paramount that I meet with both you

>>> and Councillor Mills this afternoon, as requested by Councillor Mills

>>>

>>> As per my previous emails, is not good use of Council resources for me to respond or obtain the information you request at this stage .

>>>

>>> It is hoped by the outcome of our preliminary meeting this afternoon that you will have a clearer understanding of the Council 's position in respect of unauthorised encampments and that this may result in the requests you have made being proportionate.

>>>

>>> I look forward to meeting with you and Councillor Mills at 3.30pm today.

>>>

>>> Kind Regards

>>>

>>> Officer 1

>>>

>>> Officer 1

>>> Officer 1 Job Title

>>>

>>>

>>> Town Hall

>>> Castle Circus

>>> TORQUAY

>>> TQ1 3DR

>>>

>>> Telephone Number : 01803 20xxxx

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>>> -----Original Message-----

>>> From: Stublely, Di

>>> Sent : 04 August 2016 12:06

>>> To: Officer 1

>>> Cc:Mills, Derek; Mayor

>>> Subject: Travellers - Meeting today

>>>

>>> Hi Officer 1,

>>>

>>> I had a telephone call from Derek Mills this morning suggesting a meeting today .

>>>

>>> After much consideration I think we need a full breakdown cost per year of what it costs Torbay Council in the eviction of travellers from unauthorised encampments for the last 3 years.

>>>

>>> Please obtain these figures which include the health checks that are carried out, the cost of the legal work plus the eviction order obtained from the Courts. Plus the clean up which is done after they have vacated the sites.

>>>

>>> I do think written replies need to be done in relation to the questions I have raised.

The purpose of this is to have a meeting with prominent members of the local Community with the view of working together to consider all options. I welcome the debate with questions raised by both sides in order to consider the best practice in dealing with this ongoing problem.

>>>

>>> Today's meeting will not give you time to provide these answers so for that reason I think it best to postpone it till all the facts and questions put forward can be presented properly.

>>>

>>> This avoids a situation where both I and Derek end up as piggy in the middle and we do not have the answers to questions that may be raised are aired which you in your capacity and knowledge would be able to provide in such a meeting.

>>>

>>> Thank you in anticipation for the time and effort needed with this.

>>> If you need more than a week in order to provide this information that is understandable .

>>>

>>> Please let me know an approximate date when this information will be available .

>>>

>>> Again, thank you for all your help in this matter.

>>>

>>> With kind regards,

>>> Diane Stubley

>>> Councillor for Churston with Galampton



Officer 1

From: Officer 1
Sent: 11 August 2016 16:06
To: Stubbley, Di
Subject: UNCLASSIFIED: RE: Brief Chat

Good afternoon Councillor Stubbley,

I too hope that our meeting yesterday and subsequent chat will build a strong working relationship.

As I said, I am here to offer you advice, assistance and support and ask that if you do have any queries or concerns that you do speak with me directly.

In response to your query below, you will find the following in the Council 's IT Protocol:

Pgh 4.6:

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Pgh 10.1:

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Some of the data available on the iPad may be subject to request under the Freedom of Information Act 2000, the Data Protection Act 1998 or Environmental Information Regulations 1992 (amended 1998). As such the Member must make available any such data in response to a request received by the Council .

I am led to believe this information was given to all Members in the Induction Training. The training was titled: Information Governance, your roles and responsibility which I believe you attended on the 28 July 2015 If you would like further clarity or support with this, I would advise that you make arrangements with the officer who delivered this training . Alternatively, speak with June Gurry or Teresa Buckley and they will assist you.

In concluding, all Council matters should be sent using your Council email address and to other Councillors using their Council email address. This will ensure data security, as there are software data protections in place and reduce the risk of information breaches occurring .

I hope this assist .

Kind Regards

Officer 1

Officer 1

Officer 1 Job Title

Town Hall
Castle Circus TORQUAY
TQ1 3DR

Telephone Number: 01803 20xxxx

Fax Number : 01803 20xxxx

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-----Original Message-----

From: Stuble, Di

Sent: 10 August 2016 16:18

To: Officer 1

Subject : Brief Chat

Good afternoon Officer 1,

I appreciate our get together this morning and hope from our chat to build a strong working relationship with each other . Especially in regards to the problem with Travellers on this ward.

Please can you clarify via email to save you time - the position in regards to sending out emails to members of the ward? Simply as this was mentioned this morning.

I have always responded via email to requests of information from local members of the Community. I- did send one out to Derek's personal email address but this was only in reply to a round robin one that was being sent to all community partnership members who were adding comments to the ongoing correspondence .I clicked on Derek's home email address in a hurry purely by mistake when I clicked on forward it in order to copy him in, simply to it to keep him informed. I try to be transparent with everyone I deal with.

I am aware of the FIA and EIR requests by the general public so I welcome your clarification of what I can and cannot do via emails?

With grateful thanks .

kindest regards,
Diane Stuble
Councillor for Churston with Galmpton

Antrobus, Lisa

From: Stubley, Di
Sent: 22 August 2016 11:53
To: Mills, Derek; Haddock, Richard; Mayor; Officer 9; Officer 2; Officer 1
Fwd: Travellers on Galmpton Common
Subject:

Hi everyone,

I brought an item to the attention of Officer 9 this morning about the Police enforcement powers under section 61 of the Criminal Justice Act. Stating that when a group of Travellers are evicted from a site they and any other group of Travellers setting up camp on that piece of land can be quickly moved on as stated in this legislation. This is passed over to the Police to enforce a.s.a.p.

Therefore it saves the Council time and money going through the same procedure again within a period of 3 months. The Law is unbiased, If I am correct then we have the Law on our side to insist the Police use their powers of enforcement in accordance with the Act.

Tolerance by the community with travellers coming to this area is supposed to be a two way thing.

Otherwise tolerance and picking up the tab for the financial eviction process and clean up is a one way thing. At present the local community are up in arms about this long term ongoing problem. The Local community have had enough. I was up till late going through emails, messages on social media are so bad I am concerned there will soon be major conflict. Even fire bombs are being threatened as Officer 9 pointed out this morning.

Officer 9 is going to be discussing this further with Officer 1.

I also thought that after Richard explained the dire financial situation the Council is in financially I wondered the following:-

If Churston Library is going to close anyway, why not close it and allocate the money for a long term solution to make sure both Commons at Churston and Galmpton are made secure long term. Officer 9 pointed out Officer 5 estimated that to dig a trench around the commons, put in a mound of earth and plant hedging would cost approx. £30,000.

I personally think a hedge would not stop them anyway. They could put something over the trench and cut through hedging and they are back again.

Do we have any input on transferring funds from one area to another? Who makes the decision that funds are not available to correct a long term yearly problem?

If Churston Library is going to close anyway (which is what I am being led to believe) surely we should make use of the funds available which have been ear marked to spend on the Library from this present financial year to at least tackle the ongoing Traveller problem permanently on this ward.

Otherwise that money will be gone and there is nothing to show for it to prevent unauthorised encampment as a permanent solution.

A trench and big boulders seems a quicker long term deterrent/solution? Could money be made available to dig deeper trenches and money made available to cover the cost for Richard to hire a breaker and man power to prevent Travellers gaining access to Churston and Galmpton Commons and the car park at Broadsands? I understand this suggestion comes under operations but it is also a strategic solution.

Please can you get back to me with my suggestions.

With kind regards,
Diane Stubley
Councillor for Churston with Galmpton

Begin forwarded message:

From: Person 20
Date: 22 August 2016 10:11:36 BST
To: "Haddock, Richard" <Richard.Haddock@torbay.gov.uk>, "Mills, Derek" <Clr.D.Mills@torbay.gov.uk>, "Stubley, Di" <Di.Stubley@torbay.gov.uk>
Subject: Travellers on Galmpton Common

Dear Councillors,

I'm writing to raise the issue of travellers on Galmpton common. This now must be the third time that travellers have pitched up on the common since spring this year.

I know it costs the taxpayer to remove such travellers from illegal occupation of the common, court summons, wasted council time, clean up costs etc. Surely prevention is better than the cure ? certainly from a taxpayer cost viewpoint.

Would it not be prudent to put in additional safeguards (boulders or other measures) to prevent access in the first place ?

I see tourists from all across the UK paying considerable daily fees to camp on local sites in nearby villages and enjoy this beautiful county ambience and views, yet travellers can access the common freely and pay nothing for an extended stay.

It also seems there is no effort to try and recoup any of the clean up costs from the travellers, I'm sure this would not be the case for law abiding citizens.

Can you respond and clarify why the council has such problems in preventing access to this site, I've resided in other counties and I have not seen them having the same prevention issues as Torbay council.

Sincerely

Person 20

Antrobus, Lisa

From: Officer 2
Sent: 24 August 2016 12:19
To: Mills, Derek
Subject: Unauthorised encampments
Attachments: 2016 08 08 Final Position Statement on Managing Unauthorised Encampments (Revised).docx

Derek

Please find attached a copy of the document you requested regarding unauthorised encampments

Regards

Officer 2

Officer 2
Officer 2 Job Title
Torbay Council
01803 20xxxx

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Summary of how Torbay Council manages unauthorised encampments and the relevant legal procedures utilised.

An unauthorised encampment is one where Gypsies and/or other Travellers camp on land that they do not own, and without the owner's permission. An unauthorised encampment is not a criminal offence.

When Torbay Council is made aware of an unauthorised encampment, it has regard to the following documents when considering what, if any, action to take:

- *Guidance on managing unauthorized camping ODPM/Home Office 1994*
- *Supplement to managing unauthorized camping: A good practice guide ODPM/Home Office 2005*
- *Guide to the effective use of enforcement powers Part1 unauthorised encampments ODPM/Home Office 2006*
- *CLG 2007 Local Authorities and Gypsies and Travellers: a guide to responsibilities and powers.*

The Council then advises partner agencies of the encampment and requests the attendance of health visitors and where appropriate, the education welfare officers to make an assessment. These partners endeavour to respond within 3 working days of a request, subject to the availability of one of the two specialist health visitors and one ethnic minority achievement officer. The outcome of these assessments will subsequently determine the appropriate course of action to be taken by the council.

If the unauthorised encampment is on a sensitive and high profile site in Torbay, the Council would generally seek immediate possession of that land, if the group cannot be tolerated there and there are no severe health need or other welfare issue with a member(s) of that group which first needs to be addressed.

During our initial visit we will:

- ask the travellers the purpose of their encampment and how long they are planning to stay;
- undertake a preliminary welfare check in co-operation with the travellers making a note of any obvious needs;
- make general observations of the encampment, e.g. details noticed at the time of the visit, of which not verbally advised (e.g. if there is a heavily pregnant woman on-site, or children not in education, or people with physical, learning or sensory disabilities);
- consider the possible impacts of the encampment on the local community i.e. are they impeding access to public facilities or in a high profile location

- if the encampment is close to a busy road, comment on the safety of the location from the travellers and other road users' perspective;
- advise the travellers that partner agencies (e.g., the relevant Health Trust and Children & Young People's Services) will be contacted, and that they may also visit the site;

Decisions on what action will be taken; will also take into account health and welfare needs, the size of the encampment and whether any anti-social behaviour has been associated with it.

All decisions taken by the Council must be lawful, reasonable, balanced, proportionate, and compatible with the Human Rights Act.

On confirmation from partner agencies that there are no outstanding health or education issues, the Council will consider this information and either decide to tolerate the encampment or seek to evict. If a decision is taken to evict we will then apply to the Court for a possession hearing. This is to seek a date on which our application for possession can be heard. . We then attend court to present our case on the specified date, and if the Court grants the possession order, we then serve the possession order on the occupants of the encampment and request that they leave forthwith.

Where there is anti-social behaviour associated with the encampment, it may be possible for the Council to apply for an "abridged service", this reduces the amount of time which the travellers are given to leave the site. An abridged procedure means that we could have the hearing for the possession order on the same date we make the application, thus saving the usual 48 hours notice we are normally required to give. However, in the overall scheme of things, this doesn't reduce the time period significantly.

Historical and general intended action taken by the Council is the use of Part 55 Civil Procedure Rules or the use of Section 77-78 of the Criminal Justice and Public Order Act 1994. The advantage of using Civil Procedure Rules Part 55 is that it can be against persons unknown and prohibits those persons from returning to the site for approximately 6 months. Therefore if there are any new additions to the encampment, they become subject to the same proceedings. This process requires the involvement of the Court, in order for an eviction to be carried out lawfully.

As mentioned, the Council is dependent upon the Courts availability for a hearing date, and following the granting of the order for possession, if it is not complied with it is again dependant, on a date being given by the court bailiffs to enforce the order by carrying out the eviction.

Government guidance states that it is good practice to allow some toleration for short periods in locations where the encampment does not have any adverse impact on the settled community. The Council follows this practice on each and every

unauthorised encampment. The ODPM Guidance on Managing Unauthorised Camping (2004) indicates that local authorities should not use their common law powers to evict unauthorised encampments but should, instead, use eviction procedures which involve court action.

The speed at which the Council can seek possession will vary on each occasion and depends on a number of factors including: the time when the unauthorised encampment commences e.g. they may arrive over a bank holiday when there are no resources to respond; the availability of partners to undertake health checks; Court availability. Whilst in some cases a possession order can take between a week and ten days, on other occasions it may take more than three weeks. Where it is decided that an encampment cannot be tolerated, the Council's current practice usually results in a two week time frame, from arrival to a possession order being granted.

Humanitarian considerations and government guidance

Before coming any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. The local authority must consider whether these enquiries have revealed circumstances which warrant further examination or lead to the conclusion that the eviction should be postponed.

Other consideration include relevant case law, the Humans Rights Act and the best interest of the child are mandated as a primary consideration.

Unacceptable locations

There are locations where an encampment will not normally be acceptable under any circumstances. Each encampment location must be and is considered on its own merits, against criteria such as health and safety considerations for the unauthorised campers, traffic hazard, public health risks, serious environmental damage, and genuine nuisance to neighbours and proximity to other sensitive land- uses.

Set out below is a list of the types of site where unauthorised camping would not normally be acceptable:

- A Site of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife
- School car park or playing fields (especially in term time)
- A town centre public park
- Car parks, including hospital, supermarket or leisure facility car parks
- Land on an industrial estate or business park

- Recreation ground and public playing fields
- A site where pollution from vehicles or dumping could damage ground water or water courses
- A derelict area with toxic waste or other serious ground pollution
- A village green or other open area within a residential area
- The verge of a busy road where fast traffic is a danger to unauthorised campers or their children

A balance has to be struck between the needs of the travelling community and those of the settled community, in terms of the location in question. It is recognised that many travelling groups integrate well with the surrounding settled community and do not cause any environmental nuisance or damage. However, as is the case with Churston Common, repeated unauthorised encampments over many years have created a legacy of intolerance by a number of residents.

Whilst the Council has to decide each unauthorised encampment on its own merits, its current position is that it cannot consider previous encampments or environmental damage where there is insufficient evidence to prosecute or community tension. However, where there are sensitive sites in relation to tolerance, the Council's historical decision has been to seek possession where it has been appropriate to do so.

The Council acknowledges that the process in seeking possession can appear drawn out and that some residents in the settled community feel that their rights are not always given sufficient consideration and that those of the travellers take precedent. Although this is not the case it does create ill feeling, and mistrust.

The Council cannot compel the Police to use alternative powers, especially where the council does not have a transient or permanent site and the Council has no authority to determine when health and welfare checks are carried out. That said, good established working relationships have resulted in workload priority and a prompt response.

Environmental Damage

Environmental damage is one of the significant impacts of some unauthorised encampments. The costs of cleaning up human waste, fly-tipping and other rubbish from some unauthorised encampments runs to thousands of pounds. Where there is insufficient evidence to prosecute and persons remain unknown, there is no mechanism to reclaim this from the travellers themselves, and it has to be met from the public purse. This is again a significant tension with the settled community.

Summary of the Current position statement

As a landowner, Torbay Council will consider each case of an unauthorised encampment on its land on its own merits, having regard to the government

guidance on managing such circumstances. In the absence of a transit or permanent site in Torbay, the Council will ensure that a prompt assessment of the encampment is made with relevant partner agencies. However, it must be noted that any action to remove an unauthorised encampment is not a statutory duty of the Council and any action deemed necessary, will be prioritised against other mandatory demands for service.

It is anticipated that Civil Procedure Rule 55 will continue to be the most appropriate legal remedy to gain possession of the Council owned land. However, there may be circumstances where other powers are considered appropriate and proportionate. Where this is the case, the Council will seek to follow that course of action.

Examples of Alternative Enforcement Options

Use of Pre-emptive injunctions

The Council has sought Counsel's advice on whether the power of applying for a pre-emptive injunction would be applicable to unauthorised encampments on Churston Common.

The legal advice given by Counsel is that whilst this is theoretically possible, if a Court was simply faced with an application for an unqualified permanent injunction (i.e. the travellers are not in situ), it may be reluctant to make such an order, which is a discretionary remedy, without the persons directly affected by the order having an opportunity to object. This would be the position if the application was effectively made ex parte before next year's season.

Such a blanket order would not serve much purpose, as it would be likely that the order would only be drawn to the attention of the travellers after they had moved on to the Common. Once the travellers are on the Common, then the Council has a duty to make the required welfare enquiries, as mentioned in order that it can make a decision in the traveller's particular circumstances to rely on the injunction to seek their removal. However, it is important to note that the decision, i.e. to rely on the injunction to remove them in their particular circumstances, would not have the prior approval of the court. Rather the Council would be in little better position than it already is under the Byelaws, which already authorise an officer to remove vehicles and persons breaching the Byelaws, without the need for a court order.

One possibility would be to apply for permanent injunction as soon as the first encampment is set up next summer, naming the occupants as defendants, but in reality this doesn't significantly change the position. If the proceedings were defended, it would probably be because the proceedings had attracted wider publicity and drawn attention to the issue with the Common. This would have the effect of escalating the costs of the proceedings and possibly serving to attract others to the Common, by way of protest. If the application were not defended then the costs of making the application for an injunction would be in the order of £5,000. If, however, the matter became fully contested then the costs of each side would likely reach £20,000, if not more, making the total costs exposure potentially double that amount or more.

A Pre-emptive Injunction can only really be used where the defendant is in situ and deliberately or flagrantly flouting the law before an injunction will be granted. It is likely that such an order would be disproportionate in terms of Article 8 of the Human Rights Act, especially if a less severe form of action could be taken (Stoke-On-Trent CC vs B and Q (Retail) Ltd. Such injunctions generally have to be served on named individuals. Historically in Torbay, each travelling group which arrives has no previous history with the council, and has not moved from elsewhere in the Council area. In such circumstances it is difficult to see how we could apply a pre-emptive injunction.

Therefore applying for a permanent injunction would not put the Council in any materially better position than it is at the moment and that an application for a permanent injunction would not be a cost effective or proportionate response.

Enforcement of Existing Byelaws on Churston Common

There are Byelaws in place to prohibit camping and the parking of vehicles on Churston Common. Whilst on paper this gives Torbay Council the ability to remove unauthorised encampments, there are a number of considerations before this power could be utilised:

- i. The Byelaws were brought in before the Human Rights Act. Therefore Torbay Council considers that the government guidance on carrying out health and welfare checks would still need to be undertaken before an encampment could be removed. This process would still take between 3 and 5 days as currently.
- ii. To remove an encampment, the Council would need to employ security staff, bailiffs, towing equipment etc, and have the police present to secure the eviction. The cost of this would likely be prohibitive and will not be a swift process to arrange. It is likely to result in public disorder and traffic congestion whilst caravans were towed onto the adjacent highway. Even if this was effective, there is nothing to stop the aggrieved travellers moving to another unauthorised location within Torbay, where further procedures would have to be invoked.

Given that the use of Byelaws do not significantly reduce the amount of time it is likely to take to remove an unauthorised encampment, then the most expedient and cost effective route is to seek possession of the land using Civil Procedure Rule Part 55.

Public Spaces Protection Order (PSPO)

The use of a PSPO is a discretionary power of the Council. The purpose of a PSPO is to remedy anti-social behaviour or prevent recurrence but should not be used to restrict access to land. It also has to be based on clear evidence, and currently the reports of anti-social behaviour on Churston/Galmpton Common are sporadic and emanate from different groups of the travelling community, all of which have been

dealt with appropriately by police or council officers. A PSPO cannot be used to restrict access to an area by a minority group who are identified as having defined characteristics under equalities legislation eg are part of the gypsy or travelling community.

Assuming a PSPO was put in place on the Common a breach of the PSPO would not cause the removal the camp. Enforcement of the PSPO would require the Council or Police to take the perpetrators to court, and the court may issue a fine. The unauthorised encampment would however remain in situ.

Summary

The Council does not have a statutory duty to take any action to remove unauthorised encampments. The Council will use its discretion in deciding whether or not it will take action, with each encampment, regardless of location, considered on its merits.

As matters stands with Churston Common, the Council's principal options are either:

- (i) to seek to reach agreement with the travellers for a temporary licence to use part of the Common for a limited period, subject to conditions. The Council does not wish to pursue this at present as an option;
- (ii) to use the Byelaws to remove travellers, which risks an application for Judicial Review of the decision to make use of such powers and confrontation between the travellers and the Council officers or their agents seeking to effect the removal; or
- (iii) to use the Part 55 Civil Procedure Rules, which has the advantages that it is relatively cheap, it is well understood by the travellers, who are generally content to abide by such orders, it allows for the Council to comply with its obligations to undertake welfare checks and precludes any further legal challenge, as the Court is the public body which determines that such a step is proportionate.

Having carefully considered the legal advice received from Counsel and the Council's historical successful practice, option (iii) is considered the most appropriate and proportionate course of action.

Revised August 2016 (FH)

From: Stubley, Di
Sent: 05 September 2016 03:36
Cc: Officer 9; Excell, Robert; Officer 2
Subject: Travellers & Gypsies

Hi everyone,

In response to this debate, (I have only just got back from holiday, sorry it took me time to reply)

I have been looking into the current legal acts and other legislation in regards to Travellers and the Criminal Justice Act to understand more about what is set out in the acts and guidelines from the Home Office.

I do not personally think an encampment site for Travellers is the best way forward. Simply as it advertises the bay so even more Travellers would come. It creates long term social problems associated with a permanent site and causes upset to the surrounding local residents. Also, when this site is full Travellers will still set up unauthorised encampments around the bay which in reality adds to the problem we already have plus the additional expense of the clean up of a permanent site on a regular basis thus costing the L.A. even more money when we can least afford it.

The Law is unbiased, only by using the Law by ensuring areas of unauthorised encampments fit the current criteria as set out in The Criminal Justice Act can the Local Authority force the Police to act. Only then can the ongoing problem of unauthorised Travellers be dealt with cheaply and more quickly. See below :-

if we can use the current guidelines on the areas Travellers usually target so it fits the criteria of the current legislation. Then the the L.A. Can insist Police can use their powers of enforcement as set out in section 61 and 62 Criminal Justice Act. Then we can simply pass it over to the Police immediately for them to use their powers of enforcement to act quickly without the need for the Court costs and time involved by the Council as is currently the case.

Prevention is better than cure:-

One avenue to explore where possible - is to turn regular unauthorised encampment sites into car parks with pay and display meters. This area is then classed as an area of revenue which ticks one of the criteria boxes. Thus showing the L.A. Is losing revenue so the Council can insist the Police use their powers of enforcement to evict.

This also increases revenue to the Council which is something desperately needed. It also states in the act that where local communities are deprived of the use of there local amenities, i.e. Use of common land for e.g dog walkers/picnickers this also ticks the box in the Police Powers of enforcement criteria. At present tolerance to unauthorised encampments appears to be one sided. The local communities are being deprived of their amenities plus footing the cost of the clean up process and legal costs. This fact doesn't seem to be taken into consideration.

Think about it. The Local Authority have had huge cuts to their budget of 44 million but the Police have had cuts of only 1 million as was stated when the new Police Commissioner

came and met with us in the Common Room. When I pointed this out she simply shrugged and laughed. Yet the Council are the ones picking up the cost of clean up and the legal process which is upsetting the communities.

We need to ensure such areas fit the criteria as set out in the Criminal and Justice Act so we can insist where applicable The Police use their Powers of Enforcement to evict unauthorised encampments. Eviction as set out in the current criteria can be carried out at short notice without the considerable financial costs to the Council. At present this has not been happening.

Under the Present guidelines Torbay Council has been doing everything right under the current legislation. But unfortunately this is a long winded process. I am simply highlighting the current criteria for the Police to evict quickly without the current financial costs to Torbay Council.

But by ensuring as much as possible specific areas regularly targeted by travellers can tick the criteria as set out in the Criminal Justice Act highlighting where the Police should be using their Powers of Enforcement. This is something that may not have been fully enforced by the Police and followed through by the Council. Even as far as Westminster if need be.

With kind regards,
Diane Stubley
Councillor for Churston with Galmpton

On 2 Sep 2016, at 12:22, Tolchard, Anna <Anna.Tolchard@torbay.gov.uk> wrote:

Quite so.

*Councillor Anna Tolchard
Preston Ward
Torbay Council*

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On 2 Sep 2016, at 11:51, Bye, Nick <Nick.Bye@torbay.gov.uk> wrote:

This fits with my advice to Di, Richard Haddock (& for what it is worth) family members. The local police made it pretty clear to me when I was doing my old job they would be much more willing to use their powers to move gypsies & travellers if Torbay Council had a site.
Best wishes,

*Nick Bye
Councillor for Wellswood
Torbay Council*

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On 27 Aug 2016, at 11:59, Tolchard, Anna
<Anna.Tolchard@torbay.gov.uk> wrote:

Sorry not to come back sooner but I have been in the depths of Norfolk for the last ten days with very poor signal and communication. (I think I will relocate!), Back in Suffolk now for the next few days. However, I did mention the establishment of a permanent site to both Di and Richard, although I understand the Mayor is not keen. In all my dealings with other constituencies over the years the ones with permanent (albeit small ones) find it easier to move encampments on. If I recall we struggled to find a suitable site but I think one or two possibles have now been identified??

Regards to all. Anna

*Councillor Anna Tolchard
Preston Ward
Torbay Council*

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On 18 Aug 2016, at 08:03, Bye, Nick

<Nick.Bye@torbay.gov.uk > wrote:

Dear Di & Richard,
Just a quick message to say how sorry I was to see the larger encampment on Galmpton Warborough as I passed through last evening. It appeared to have grown considerably during the day & looked like one of the biggest "invasions" I have seen. Like many of the residents there & my family of course, I greatly appreciate all you are trying to do to deal with this problem. I did not say much at the Group Meeting earlier in the week, however I do want you to know whilst I was doing my old job I

established a strong relationship with the local Police & for what it is worth they made it very clear they could much more effectively manage the situation if we established a Travellers & Gypsies site somewhere in the Bay. They also made it pretty clear there was little they could/would do unless we committed to such a thing.

Such a site need not be large or permanently occupied & according to then senior (Torbay Council) officer Officer 11 such sites worked well in Cornwall & elsewhere & caused little friction once set up. Indeed they have to be some distance from existing dwellings etc.

I shall include Anna Tolchard (former Churston Councillor) & Caroline Taylor in this e mail as they may have a clearer memory of discussions, also Derek Mills out of courtesy.

Best wishes,

*Nick Bye
Councillorfor Wellswood
Torbay Council*

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...

Officer 1

From: Person 6
Sent: 28 November 2016 17:08
To: Officer 1
Cc: Stuble, Di; Officer 5; Mayor; Officer 4; Haddock, Richard; Mills, Derek
Subject: Re:UNCLASSIFIED: RE:The Common - recent correspondence and the legal position

Dear Derek and Di,

As below Officer 1 has set out the position that the two consents re works on the Common were intended to be temporary and have now expired. This also appears to apply to several other consents copies of which she may have seen but not through me and which the Friends Group in particular rely.

Perhaps there has been a misunderstanding, but it was understood the consents were enduring.

On this basis monies were raised and spent. These monies now appear to have been wasted.

May I ask can the Friends Group obtain compensation from Torbay Council? I raise this because when you (it won't be me!) explain to the Friends Group the new position I expect you to have some cross constituents.

Please note I am disappointed to be told that I may have committed criminal acts by placing boulders - where presumably the complaint is the Council - when the only reason I have put any boulders anywhere is having been repeatedly asked by Derek to do so.

Kind regards Person 6.

On 28 Nov 2016 4:19 pm, Officer 1 wrote:

Dear Mr ,

I have now had an opportunity to review paperwork in respect of this matter and confirm as follows:

Permission was granted by Torbay Council to place boulders around the open space between Bascombe and Dartmouth Road, as per Officer 10 email to you dated 11 May 2012 @ 12.12. It was in that instance only that permission was granted. as per our Officer 10 email to you dated 11 May 2012 @ 13.09.

Despite your request to be permitted as the Chair of the Community Partnership with a generic consent to undertake works to the main part of the Common bounded by Galampton and Dartmouth Road with the verbal agreement of a named officer of the Council or that of a ward Councillor, as per your email to our Officer 10 dated 11 May 2012 @ 12.53. this was not granted by Torbay Council.

In response to your further request to grant an extension of the consent for the Community Partnership to temporarily place boulders at their discretion to secure land such that it also covers the narrow grass verge either side of the Broadsands Car Park entrance, as per your email to our Officer 10 dated 17 May 2012 @ 12.59, this was not granted by Torbay Council.

I hope this clarifies that Torbay Council's permission was specific and should not be interpreted as an ongoing permission.

In concluding, it is important to note that any person(s) carrying out works to Common Land without the required consent will be committing a criminal offence and may find themselves subject to criminal proceedings being initiated against them.

Yours sincerely

Officer 1

From: Person 6
Sent: 23 November 2016 17:50
To: Officer 4; Officer 1
Cc: Haddock, Richard; Stubley, Di; Mills, Derek
Subject: Re: The Common - recent correspondence and the legal position

Dear Officer 1,

Following Officer 4's call of 5 minutes ago and her polite request that I send you copies of the consent referred to in my email of this morning please see the text below.

There are other consents. Given I was one of the persons undertaking the works i made sure for my own protection that there were multiple points of authority. I am sure we can discuss these consents if necessary.

I am trying to assist. My phone number is XXXXXXXXXXXX.

Kind regards, Person 6.

On 11 May 2012 13:09, Officer 10 wrote:

Person 6,

In this instance please place the boulders that secures the area of land as you see fit. Going forward it is unlikely I will be your regular contact and unable a agree to your proposal describe below. I have however given permission today as there is nobody else in the office. That said I will forward your request on to the appropriate Council member of staff who will deal with your request.

Regards

Officer 10

Natural Environment Officer

Natural Environment Services

Resident and Visitor Services

Torbay Council

XXXX XXXXXX

Natural Environment Services are responsible for:

Parks and Open Spaces; Playground and Leisure Services; Public Rights of Way, Facilities Management; Tree and Woodland Services

On 11 May 2012 12:12, Officer 10 wrote:

Dear Person 6.

I'm writing to confirm permission from Torbay Council to place boulders around the open space between Bascombe and Dartmouth Road. Attached is the plan I produced the last time it was agreed to place boulders. From my conversation with colleague Officer 12, I understand the boulders are going to be placed on the opposite site of this open space. As with the permission granted before the placement of boulders will be reviewed by the appropriate asset holder at Torbay Council, this will be done at a later date.

Please do not hesitate to contact us if you have any further issues.

Regards

Officer 10

Natural Environment Officer

Natural Environment Services

Resident and Visitor Services

Torbay Council

XXXX XXXXXX

Natural Environment Services are responsible for:

Parks and Open Spaces; Playground and Leisure Services; Public Rights of Way, Facilities Management; Tree and Woodland Services

....
From: Person 6

To: Officer 4; Officer 1

Cc: Richard Haddock <richard.haddock@torbay.gov.uk>; Di Stubbley <di.stubbley@torbay.gov.uk>; Derek Mills <derek.mills@torbay.gov.uk>; Mayor <mayor@torbay.gov.uk>; Mark King <mark.king@torbay.gov.uk>

Sent: Wednesday, 23 November 2016, 10:01

Subject: The Common - recent correspondence and the legal position

Dear Officer 4 and Officer 1

On 11 May 2012, as Chairman of the Community Partnership I was provided with document by the Council which:

"confirms permission from Torbay Council to place boulders"

in the expectation that the Community Partnership would

"please place boulders that secures the area of land as you see fit"

This consent was in writing; was not time limited; and has never been withdrawn. It has since been used on a reoccurring annual basis to facilitate works known to and supported by the Council.

In view of Person 2's recent e-mails I would like to discuss a way forward. Perhaps you might be able to give me a call?

kind regards, Person 6.

S

Person 6

Chairman

Churston, Galmpton and Broadsands Community Partnership.

XXXXXXXXXXXX

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Notes of meeting to discuss Galmpton Warborough Common Monday 5th December 2016 Torquay Town Hall

Present:

Cllr Derek Mills

Cllr Di Stubbley

Cllr Robert Excell

Clair Stanley, Friends of Galmpton Warborough Common (FOGWC)

Janet Regan, Friends of Galmpton Warborough Common

Roger Richards, Churston, Galmpton and Broadsands Community Partnership (CGBCP)

Geoff Melbourne, Churston, Galmpton and Broadsands Community Partnership

Tracey Cabache, Torbay Community Development Trust (Notes)

1. Introduction

Cllr Derek Mills welcomed those present. The meeting has been called to identify the way forward, in the short term, to protect the Common. He confirmed the Council was looking for the Friends Group and the Community Partnership to have a plan agreeable to both. The Council also requests that the groups work on a medium and long term plan for the Common.

2. Maintenance/replacement of current boulders

Cllr Di Stubbley outlined the results of the research she has undertaken with respect to the prohibition of vehicles on the Common, the case brought against Torbay Council by Mrs Charles Williams (the original benefactor), the validity of the consultation with residents where, of the 154 respondents to a questionnaire, 84% were in favour of placing boulders on the Common to protect it, the approval to place boulders on the common as agreed by Neil Coish in November 2011 and by Sue Cheriton and Patrick Carney in May 2015.

Roger Richards shared extracts of the Byelaws for the land.

It was confirmed that further work on the boundary of the common was needed as some of the original boulders had been removed, or were too small so could be moved to allow access to the Common. It was further confirmed by Cllr Robert Excell, Portfolio Lead for Communities, that the work proposed by the FOGWC to replace some of the boulders with larger blocks was considered to be maintenance of the existing arrangement and did not need any further approval.

Clair Stanley shared plans of the citing of the blocks. They measure 3m in length, 0.5m in height and are 0.75m wide and will be interspersed by the smaller existing boulders. The FOGWC reassured those present that the blocks would be camouflaged by the natural planting and are unlikely to have a detrimental effect. They can also be used as low level seating.

It was reconfirmed by those present that the maintenance work was not going to cost the Council anything.

Given the results of the previous consultation (the validity of which has also been confirmed by the local Community Partnership), it was the opinion of those present that the FOGWC should progress with the plans to replace the boulders with the blocks, and this should take place by the end of February.

Cllr Di Stubley was asked to hold on to the evidence she had gathered and respond to the residents who had contacted her regarding this issue.

3. Public Spaces Protection Order (PSPO)

Roger Richards reminded those present that the previous Police and Crime Commissioner had called for Torbay Council to put a PSPO on the Common. Cllr Excell pointed out that this had not been supported by the Devon and Cornwall Constabulary at the time, as they could not guarantee having the capacity to enforce the order. Those present thought it was worth considering this again in the future.

4. Medium and Long Term Plan

Janet Regan shared the groups concerns re developing a medium or long term plan before the plans for the widening of Dartmouth Road were clear. Cllr Mills provided an update. It was agreed the longer term plans would be looked at in 2017.

5. Protection at Broadsands

Broadsands residents had requested the use of any blocks left over to make land secure at Broadsands. This was agreed by those present.

6. Height Restriction bar for Car Park on Common

The FOGWC had requested a new height restriction bar for the small car park on the common, of a design that could not be unbolted. This request had gone to Kevin Mowat. Cllr Excell requested a copy of the email and agreed to follow this up with Kevin Mowatasap.

The meeting closed.

Officer 1

From: Officer 1
Sent: 22 December 2016 11:30
To: 'Diane Stubley'; Person 2
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Person 1; Person 6; Officer 2; Officer 5
Subject: UNCLASSIFIED: RE: The Common

Importance: High

Good morning Councillor Stubley,

Given that I have been copied in to this email, it is necessary that I respond to seek clarification to which Council Solicitor you refer to with regards to confirming this information.

It is of great concern that works to Churston Common have been carried out without the necessary consent from appropriate Officers within the Council first being obtained. As such, it is my belief that once these works became known, the Council's Principal Officer for Natural Environment instructed that these works must cease with immediate effect. In is my further belief that a subsequent investigation will now be carried out in this regard.

As expressed to you on a number of occasions recently, before any further action was to be taken by the Council in regards to Churston Common, the community needed to come up with agreed options in respect of any proposed works being carried out to Churston Common and that these agreed options should be submitted in writing to the Council for the attention of Officer 2 who is the Council's Assistant Director (Community and Customer Service). On receipt of these proposals the Council would consider whether any of the options were lawful and if so, how they may be funded. To date the Council has not received any such agreed options.

Please do not hesitate to contact me should you wish to discuss this further.

Kind Regards

Officer 1

From: Diane Stubley (personal email address)
Sent: 21 December 2016 13:34
To: Person 2
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Officer 1; Person 1; Person 6
Subject: Re: The Common

Good morning Person 2,

Person 4 from natural England was in complete agreement with what has been done and will be relaying the information to you as she stated to me this morning.

Please send the list of names and addresses of the objectors to be kept on file along with those in favour for the community files on this matter. As Ward Councillor I need this information.

I enclose the reply I received from Person 4 below -
isn't this wonderful information she has provided about how the common CAN be used.

Thank you so much for putting her in touch to help clarify this matter. I will forward this on to the Council Solicitor who can research this to confirm this information to you.

I will add it has been checked out by a solicitor already both Person 1 and my daughter who is a lawyer, not to mention the Council Solicitor but please feel free to take independent legal advice if you so

wish. I will not need to reply to you again but the list of names and addresses of the objectors are needed to confirm the numbers for Council records.

Knowing the information that was researched and presented to Council to the Senior Councillors, also that Person 4 has confirmed along with two other independent solicitors as well as the Council's one simply highlights that this could all have been done years ago to save the Council serious amounts of money and officers time from many decades previously.

At least clarification has been brought to light now and it has been confirmed by various parties. A great deal of research has been done on this matter as you are now well aware.

Thank you very much for all your help by providing this contact to also confirm these facts. Who was also completely independent.

Brilliant result.

The matter is finally closed.

Kindest regards,

Diane

Enc.

Diane,

I think that what you are telling me is that there is a scheme of management in place—I think this would have originated from the 1899 Commons Act. This was ratified in 1930—article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation. but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common.

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purse ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the

common -was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge.

Regards,

Person 4

Senior Adviser for the Strategy and Implementation

M: XXXXXXXXXXXXX

Please note: I am multibased working out of a number of offices and at home. Please send mail to the following address:

Natural England, Rivers House, Sunrise Business Park, Higher Shaftsbury Road, Blandford Forum, Dorset, DT11SST

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

On 21 December 2016 at 12:01, Person 2 wrote:

I am afraid that I am not satisfied by your response, Di, and will continue to pursue the matter with the Commons solicitor and other bodies like Natural England. You do not appear to me to have observed the correct legal procedure. In my view, the installation of concrete blocks combined with boulders (of over 200 metres) has not been formally approved. The whole enterprise has been handled undemocratically. However, I am willing to accept that you have indeed been acting within the law if this can be confirmed by a legal body.

I can assure you that many people - not a mere handful! • are upset by the ugly barriers which have been erected, but it was the responsibility of council, authorised by the Planning Inspectorate, to conduct a proper consultation on what had never been agreed in the initial, unofficial consultation 2 years previously.

As I have already said, further exchange of emails is futile, so unless you can send me evidence of having observed the procedures outlined in the DEFRA documents, I want no further contact before Christmas.

Thank you for respecting this.

With thanks,

Best regards,

Person 2

From: Diane Stublely (private email address)
Sent: 21 December 2016 10:43
To: Person 2
Cc: Person 1; Mills, Derek; robert.excell@torbay.gov.uk
Subject: Fwd:The Common

Good morning Person 2,

to put you in the picture I have at length replied to Person 4 the work that has been carried out, the **decision making process in the Town Hall by Senior Councillors**. Plus the permission that was granted by council officers to maintain the perimeter of the commons in accordance to the information of the bylaws affecting this land that have recently come to light.

I also concur as Ward Councillor with the CP I need to have a list of the objectors you mention as an etcetera simply as I represent the entire community on this ward and I have been given a list of names that support the Friends of the Commons. I also need to see the list of names of the objectors. I would be grateful if you could supply this list and their addresses.

Otherwise it would seem it that there are only a small handful of objectors so **the decision to go with the majority view by a democratic vote/consultation was also the right one taken in Council.**

With kind regards,

Diane

From: Person 1
To: Person 2
Cc: Person 6
Sent: Tuesday, 20 December 2016, 21:34
Subject: The Common

Hi Person 2

You sign one of your email's as Person 2, Person 7, Person 8, Person 9, Person 10, Person 11 etc

Can you please let the CP know who exactly the etc. are. We feel it is important to gain the number of people who feel like you all as we need to give proper representation to all members of the community.

I believe that the friends of the common have a list of their supporters.

Best wishes

Person 1

Best wishes

Person 1

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Officer 1

From: Diane Stublely (personal email address)
Sent: 22 December 2016 20:46
To: Officer 1
Cc: Mills, Derek; Excell, Robert; Mayor
Subject: Fwd: Chat

Hi Officer 1,

I am copying you in to the email that was received from natural england.

I believe the MEG and Mayor want a list of answers to the questions they will collate after Christmas.

You will see that Person 4 was in agreement also.

Person 2 refuses to give a list of the objectors names and addresses for the records. Trying to state that there are a great many other objectors than there actually are.

The majority of the local communities have cheered and clapped and stated it was about time something was done when the work was going on.

The general opinion is that it is only one or a small number of individuals that are creating a stir. A democratic majority decision was made with the evidence put before Senior Councillors and careful evaluation of the full facts that were presented in the meeting that recently took place.

I think if you are unhappy about just one or two individuals causing a stir then maybe the other 84% who attended the consultation need to make their wishes known so maybe the word needs to go out to start complaining to the Council.

Maybe the legal department will listen then to the majority instead of a tiny minority who refuse to accept the information that came to light from the secretary of state when Torbay Council lost their case in the High Court and were awarded considerable costs.

I am curious as to why with such strong legislation allowing the enclosed information to protect the commons to keep them vehicle free in compliance to the wishes of the benefactor this had not been done for many decades which has cost the Council huge sums of money in the past.

Had you attended the meeting you would have been present to hear all the evidence. Now Person 2 is making waves as a member of small minority the legal department want the work stopped.

I think you need to look into the history of the common and the bylaws before stating work should stop.

The work for now has stopped, the turf and finishing off will begin again in Spring.

The Councillors made this decision with the refusal of yourself or any representation of the legal department in this matter. Therefore they have the right to do this.

There is nothing in the constitution that Councillors are not allowed to check legal facts and laws. This is precisely what was done because of your absence and refusal to attend this meeting.

Richard Haddock put the blocks in, Robert Excell and Derek Mills with the agreement of the Mayor gave their permission for the continuation to maintain and strengthen the perimeters in accordance with the law as set out in the email below, and the permission of Council Officers in 2015.

The short term, mid term and long term plans are in the process of being decided upon.

Approval was not needed to carry out this work as permission was granted and the bylaws specified by the then secretary of state. The Commons never prevented the public from gaining access on foot or for that matter horse riders.

I suggest you also clarify with the present secretary of state to save Torbay Council being taken the High Court again especially when the Council had such costs incurred last time. Simply as there are many residents in the area who would be willing to consider doing this in order to prevent vehicles as was the condition the land was originally given.

I fully agreed and supported the Senior Councillors decision, after I too had clarification from another legal source.

The Councillors are trying to save the Council huge amounts of money. The fact that vehicle prevention from the two commons was allowed when there was previous history to ensure vehicles were kept off the commons is one question many of us want clarification on.

There will I believe be repercussions which will I suspect be far spreading after the decision to grant the Friends of the Commons permission to carry on when legislation from the State Department had previously approved this.

Person 2 may be making waves that will be nothing when those who took part in the original consultation start.

I concur with the Deputy Mayor and Robert Excell on this.

Officer 1 I am not being rude but I do not need yours or anyone elses permission to have the facts checked out by an outside source.

I have had to deal predominantly with the upset of the majority of the local community all summer who as you know threatened to firebomb the commons to get the travellers off them.

If the Councillors had known the history that the Council were supposed to prevent vehicle access to the two commons but have not done so for many years. Therefore the long term cost to the council regarding the eviction process has cost the Council a fortune.

Believe me, there are many Councillors who want answers.

I am thinking of contacting the LGA to have all the background history to put before them and see what they say about the huge costs incurred to Torbay Council through the eviction process of unauthorised encampments, health checks, the legal work involved in the eviction process and clean up process after the travellers had gone when these bylaws could have been upheld.

There may be laws regarding ethnic minorities but there are also laws protecting this land that were put in place decades ago and should have been upheld ever since.

I have no authority to prevent work on the Commons or permission to grant it. I simply put forward the Friends of the Commons case to the executive officers. The original paperwork was presented that had been found and printed off.

i.e. the consultation and questionnaires. The % of the final results plus the legislation provided by the then secretary of state. [The meeting that took place in the Town Hall carefully examined all the paperwork that was presented. A great many questions were asked and the result was the work to the boundaries was given permission to go ahead.]

I only copied you in as Person 2 was stating you were in complete agreement with her. Yet you refused to attend this meeting to consider all the facts that were presented .

On this matter I have nothing further to add.

Thank goodness the background history to the legal case when Torbay Council lost in court and incurred huge costs which resulted in the secretary of state granting the local communities permission and the right to reinforce and maintain the perimeters to stop any vehicles from accessing the commons. Completely in accordance with the bylaws that came to light and hugely influenced the decision .

As you are aware, the law is unbiased and emotion free. This fact needs to be considered in this case.

I look forward to meeting up with you Robert Excell, Derek Mills and The Mayor after Christmas.

I have spent enough time replying to Person 2 who refuses to hear anything she does not want to hear. The blocks are in place finally thank goodness.

Have a good Christmas .

Kind regards,

Diane

Thank you Person 4,

I think the information you have provided is the information that everyone has been working from. I will forward it to the Vice Chair of the CP Person 1 who as you know is a retired Solicitor. There has been considerable discussion to ensure the whole process has been done correctly.

I am grateful for your help in this matter.

My original email I hope that I will be able to send out to you later today will clarify this further. I need to see the technical team to unblock the problem as to why the emails I sent yesterday are stuck in the out box.

It will further explain why the maintenance of the perimeters was so important as there was nearly war with threats of fire bombing the commons to rid the travellers who were the worst that ever came this summer. Ironic that it was the real romanes who heard of their behaviour and came down in numbers and got them off before the eviction warrant had been formally obtained.

The Council did not want a major disturbance and carefully evaluated everything before Senior Officers, one of which was the Deputy Mayor who acted on the Mayors instructions to ensure the commons were protected from vehicles or caravans but still allowed the public to access it

Protection of this land and the protection of the local community plus the right of the community to continue to exercise their right to enjoy this land has been paramount in the decision making process .

I hope this now clarifies everything.

With kindest regards,

Diane

On 21 December 2016 at 10:20, Person 4 wrote:

Diane,

I think that what you are telling me is that there is a scheme of management in place—I think this would have originated from the 1899 Commons Act . This was ratified in 1930 -article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation, but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common.

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purse ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the common - was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge.

Regards,

Person 4

Senior Adviser for the Strategy and Implementation

M: XXXXXXXXXXXX

Please note: I am multibased working out of a number of offices and at home. Please send mail to the following address:

Natural England, Rivers House, Sunrise Business Park, Higher Shaftsbury Road, Blandford Forum, Dorset , DT11BST

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

From: Diane Stubley (personal email address)
Sent: 21 December 2016 03:35
To: Person 4
cc: Person 1
Subject: Chat

Hi Person 4,

The land in question still has gaps for horse riders or pedestrians to access on this land. It has not been completely blocked off which is the impression that you may have been given.

The express wishes and conditions regarding this land is for the use of the local residents to enjoy the open space but banning the use of vehicles onto this land, which was the condition under which it was given and acknowledged in the High Court.

As I have pointed out Torbay Council disregarded this fact and were taken to the High Court and lost and therefore had to pay considerable costs.

The boulders when placed on the common in 2015 caused upset to a very small minority, the same individuals who are doing so again.

The land was never blocked off to prevent the use to the local community ie horse riders or pedestrians. Permission was granted for the community to prevent vehicles on to this land. Maintaining the perimeter is what has been carried out against the wishes of a small number of individuals.

The Friends of the Commons chose natural boulders last year which were donated by a local businessman. Some of which were removed by the travellers over this summer. The low concrete blocks which are in place now are not excessively high and can be used as seating for the local community. This is what the majority of the local community wanted.

A very small minority you have been contacted by wanted nothing at all on the commons. The incidents that occurred over the summer by the worst travellers who ever to set foot on the land did not affect them as they live so far from it.

The attitude from them stated I have been told -

'the nuisance from the travellers over the summer months is a small price to pay to avoid putting in any measures of restricting access' i.e. boulders, posts or the low blocks that have been added recently.

The measures done this winter are temporary until other measures can be put in place for the long term. The rest of the community, business folk, holiday makers do not think the work done is offensive or stops them accessing the commons.

A democratic decision was done through consultation previously. **A decision was made by Senior Councillors to allow them to continue.** Permission to maintain the perimeter was also granted by council officers last year.

The legal documentation from the secretary of state granted the people of Churston and Galmpton the right to maintain the perimeters with a choice of options. The commons can still be accessed by anyone on foot or by horse riders.

There are some areas where the gaps are larger than others, the gaps vary to allow for the public to gain access to the land whether by horse or on foot.

I will copy in the Vice Chair of the CP to forward to you the information that was made available for the objectors to read. It seems they do not want anything put in place even though the bylaws outlined by the secretary of state allows the local community to do this.

The land has been maintained to ensure the local community their right to enjoy it. But without unauthorised vehicles accessing it and ruining their use and pleasure.

The only thing the boulders or temp. concrete blocks is vehicle access which is the main reason for objecting by the individuals that you have been contacted by.

These low blocks that have been added will also act as seating around some positions on the perimeter. Also, they will also be painted green to blend into the landscape.

The very thing that the ruling in the High Court granted the permission for the community to do. In order to prevent vehicle access, therefore complying with the conditions that was originally put in place when the land was gifted to the local communities.

The very reason that Torbay Council were taken to the High Court for and lost, for not ensuring vehicles were not allowed access this land in compliance with the wishes it was expressively given.

As I said all the evidence and history regarding this land was presented recently in Council. The Friends of the Commons already had legislation in place allowing them to do this.

Senior Councillors recognised this fact, carefully considered all the facts and gave them permission to carry on with the work they had stated they would do as a temporary measure.

I hope this clarifies things better. The information which stated these facts was emailed out to Person 2, it also attached the bylaws that were applicable to allow this work to be carried out.

The Vice Chair of the CP simply set it out for them to read and emailed attachments explaining in detail the outcome of the court case which went to the secretary of state to tighten up the legislation surrounding this land. Simply done in order to try to help certain individuals who want nothing done at all to the commons see the Friends of the Commons have permission in which they can do this.

Person 1 had nothing to do with the decision making process, he simply came along to support the friends in their presentation in the meeting with senior councillors.

The minutes of the meeting will show it has set out the short term, medium term and long term plans regarding the perimeters of this land.

I reiterate the work done recently was done as a short term measure to prevent vehicles gaining access on to the common, it does not prevent horse riders or pedestrians accessing the land in question. It will also be painted green in order to blend in to the landscape.

With kind regards.

Diane

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Officer 1

From: Diane Stubley (personal email address)
Sent: 22 December 2016 22:33
To: Officer 1
Subject: Fwd: Galmpton Common and Travellers

Good evening Officer 1,

I also enclose this

Date: 22 December 2016 at 22:28

Subject: Re: Galmpton Common and Travellers

To: Person 3; Derek Mills <derek.mills@torbay.gov.uk>, robert.excell@torbay.gov.uk

Cc: Person 12, Person 1

Yes Person 3 the work was agreed by Senior Councillors in accordance with the legislation from the secretary of state that granted permission for the local communities to do this.

I have copied and pasted this information below my response to you that was also agreed with the decision from Natural England.

The commons were originally known as 'The Warborough' it was given as a gift to the people of Chuston and Galmpton with strict conditions attached, it had originally been privately owned. That the land had to be kept vehicle free for the pleasure and usage of the local communities.

When the boundaries changed the land was transferred to Torbay Council from Totnes and The South Hams Council.

Torbay Council allowed Vehicles onto the commons against the conditions the land was gifted under. The benefactor heard about it and sent their land agent to check it out. The information they had been given was proved to be correct.

Torbay Council ignored the wishes of the benefactor and the local community and were taken to the High Court. The benefactor won their case and Torbay Council incurred considerable costs. For years this information was lost and recently came to light.

After the court case the case was brought before the Secretary of State who tightened up bylaws therefore allowing the local community the right to maintain the perimeters of the land with whatever means were listed under the bylaw. Also their right to enjoy the land if they so wished by planting trees shrubs, adding benches etc for the pleasure of the community if they so wished.

This information only recently came to light. The 1899 common law act relating to the useage on the commons by pedestrians and horse riders meant that permission was needed if the residents of the communites were going to be prevented from using common land if work was to be done that closed the common off.

But as the boulders and the concrete blocks vary in size so too the gaps the public were not being denied access when the work was being carried out. Therefore permission to carry out the work was not needed.

The Friends of the Common would have preferred natural boulders but none could be found locally and the cost of buying and transporting them was beyond the finances of the Friends.

The recent legislation and history relating to the commons was put before Senior Councillors from the Mayors Executive Group who considered all the history and facts. Plus the evidence provided about the original consultation process having been done under strict conditions and the choice of questions that were asked and the choice of what was preferred for the short term, mid term and long term plan to maintain the commons. Also the fact it had been advertised in the press, in Churston Library and also in the local Gazette several weeks before and lastly by Sarah Wollaston in her column.

You will then see the situation for yourself. A majority decision of 84% of the local community wanting the perimeter of the commons to be reinforced and maintained to prevent vehicle access was a majority decision.

The blocks will be painted green and the land will be allowed to settle then the grass will receive further attention in spring.

In reality, the commons are being protected by vehicle access under which the land was gifted and the bylaw tightened up and amended to allow the community to enjoy the common for their recreation and pleasure but also prevent vehicle access. But over generations this information had been lost or forgotten.

When all the facts and evidence was put before Senior Councillors they made the decision that the Friends/ of the Common were simply exercising their rights to do so as set out in the legal documentation from the then Secretary of State.

I think you will find this response from Person 4 interesting and I hope you fully understand the decision and why it was made.

With kind regards,
Diane

Diane,

I think that what you are telling me is that there is a scheme of management in place — I think this would have originated from the 1899 Commons Act. This was ratified in 1930 – article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation, but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not. ...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common.

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purpose ?

▪
If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the common -was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge.

Regards,

Person 4

Senior Adviser for the Strategy and Implementation

On 22 December 2016 at 19:52, Person 3 wrote:

Hi Diane,

I see the blocks have now been placed on the common. I'm assuming the meeting to discuss this did not happen?

I would like you to know that my objections still stand. I know that 'beauty is in the eye of the beholder' but I cannot agree that these blocks do anything to enhance the look of the common.

They are somewhat lower than I had expected but it looks to me as though a couple of well placed car ramps would convert each block from a barrier and into an access point...

Can you please assure me that the council have agreed to this work?

Person 3

On 14 December 2016 at 12:23, Person 3:

Hi Di,

I walked over the common this morning and was surprised at the amount of digging that has happened.

It looks very much as though the ground has been prepared to accept 8 rectangular blocks of approximately 3m length.

Did I miss the meeting?

Can you assure me that this is being done within the law and with the agreement of the council?.

If there are plans, where can I inspect them?

Person 3

On 15 November 2016 at 22:26, Person 13 wrote:

There seems to be a little confusion Di, about the General meeting. In fact it is an open meeting organised by the friends group which will be held early in December. This will be widely publicised to encourage as

wide attendance as possible.
Best wishes Person 13
Co-chair FOGWC
Sent from my iPhone

On 15 Nov 2016, at 19:08, Diane Stubley (personal email address) wrote:

Good evening Person 3,

I think a general meeting will be held after Christmas to discuss the two commons through the Local Community Partnership.

I do not know a date as yet but I feel sure you will all be informed when a date is decided upon.

The Community Partnership meeting will give everyone a chance to discuss and have more understanding of the problems that have been ongoing due to unauthorised encampments on both Commons - which were horrendous this year. i.e. a serious assault on a local person, verbal assaults and threats to walkers using the common, Mums stopping for ice creams and the verbal assaults made on her in front of her children. Men showing naked outside, in full view of the general public. Plus the cost involved to evict and clean up after they have gone.

It was so bad the Police picked up comments on social media of vigilantes threatening to firebomb the areas in order to get the travellers out of the area. The problems this year have been the worse so far.

I for one feel the personal safety of the general public should be paramount in the discussion.

With kind regards,

Diane

On 15 November 2016 at 16:32, Person 3 wrote:

Hi all,

sorry to be coming to this debate so late but we have only recently returned from a longer than usual holiday.

I have read the Emails that have passed between the GRA, FOGWC, local councillors and other residents of the area - with mounting concern - and felt I ought to express my views.

I am opposed to the use of 3m concrete blocks being placed round the common.

I got the impression from one EMail that this was a done deal. i.e. the blocks had been purchased and it was only due to other commitments they had not already been deployed. So I was relieved to read from Di Stubley that no decision about the concrete blocks has yet been made.

Apart from anything else I do not believe these blocks would work to keep the travellers off the common.

I took a stroll round the perimeter of the common yesterday and identified at least 10 gaps where I reckon I could move a single smallish rock and then drive my car onto the common (they are all on the Dartmouth Road).

The other query I would raise is about the way decisions are made concerning changes to the common.

If I want to make any alterations to my property it is a requirement that I apply for planning permission and this involves public notices on the street and plans available for perusal by interested parties.

Should this also be a requirement for proposed changes to the boundary of the common?

At least it gives everyone an opportunity to inspect the proposal and give feedback. The proposal is set out in black and white and changes can be forced if the result does not agree with the plans.

This would save a lot of discussions about what has and has not been agreed at past public consultations which some people may not have been able to attend.

Person 3 (long term resident of Galmpton in Stoke Gabriel Road)

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For more information please visit <http://www.symanteccloud.com>

Officer 1

From: Mills, Derek
Sent: 03 January 2017 08:58
To: 'Diane Stublely'
Cc: Officer 1
Subject: RE: Last e mail

Di

Read what I wrote! I said Councillors did not have the authorisation to give permission for this work to be undertaken.

Derek.

From: Diane Stublely (personal email address)
Sent: 23 December 2016 13:12
To: Mills,Derek
Subject: Re: Last e mail

Wrong Derek,

I have spoken with Robert Excel who agreed that the Friends already had permission for the work to go ahead. By both Council officers and the bylaws attached to this land. That both you and he backed up the decision the work could go ahead and that further permission was not needed.

Officer 1 stated in writing that the Council did not authorise this work which is factually incorrect.

Some residents are now stating they are considering a JR as the land should have been protected from vehicles in the first place .That unauthorised encampments should have been prevented. The local community feel they have been fobbed off and for decades and the cost to Torbay Council through not implementing the bylaws is immense.

The legal department are supposed to have knowledge of all court cases they have been involved with. As Councillors were are supposed to be saving the council money.

There will be repercussions in Council on this in the New Year when all the evidence will be put before the group to explain how the legal department did not check bylaws that could have been adhered to and weren't thus costing the council considerable amounts of money.

Speak to you in the new year.

Have a good Christmas.

Di.x

On 23 December 2016 at 11:26, Mills, Derek <Cllr.D.Mills@torbay.2ov.uk> wrote:
Hi both,

If you remember correctly I did stated at the meeting that Councillors were NOT authorised to instruct these works to be done. The friends have carried out works the under the authorisation letters from Officer 5 and Officer 7.

You need to talk to Officer 1 since you have now shared emails with her and she is now involved.

Derek Mills

Cllr Derek Mills
Deputy Mayor
Executive Lead for Health and Wellbeing

Torbay Council,
Town Hall,
Castle Circus,
Torquay,
Devon,
TQ13DR

Tel XXXX XXXXXX
Mobile XXXXXXXXXXXX

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Sent from my iPhone

On 23 Dec 2016, at 00:28, "Diane Stubley" (personal email address) wrote:

Thank you Roger,

I am copying in members of the MEG group with this,

no wonder I have had so many upset local individuals who have needed a great deal of convincing. Making a difficult job even harder and caused me unnecessary amount of my time to fully answer to each and everyone as they wanted answers and clarification as they were in serious doubt.

I really feel I could cry, I am exhausted and it is because Officer 1 in the legal department chose to send out this information out to someone like Person 2 who refuses to accept what I and even Natural England – Person 4 has fully backed up. Simply it seems it is because they do not want any changes to the way the travellers are dealt with.

It puts me in a very bad light. Who would want me to be again Ward Councillor if it is thought I am working independently of the Council and going against the wishes of the members of this ward and going against the likes of Natural England when they actually endorse what has been done in accordance with the bylaws applicable to both commons.

Officer 1 and Officer 2 refused to attend the meeting and I got told off by Officer 1 as she said she did not need to attend the meeting with the Friends as the invitation was from me and not the Mayor who I had included. The invitation I had sent out by Gordon's PA Adrian. Simply as he could check the diaries of those who were invited.

I request the LGA are involved in this as I feel I am being publically humiliated and my role as ward councillor is being put in question.

I work very hard and thoroughly research things. Officer 1 is furious I have done this without consulting her.

Now we know why. If she had been doing her job correctly the Council could have saved a great deal of money. I request accountability on this as it has been detrimental to the Council's finances for a very long time.

How can a Council Solicitor not know the details of the Court Case and even when the bylaws were mentioned completely disputed them as too did Officer 2 who stated they would not be applicable in this day and age.

Kind regards,

Diane

On 22 December 2016 at 23:18, Person 1 wrote:
Hi Di, Robert and Derek

I forgot to say I would be happy to meet with Officer 1 or any other of the Council Solicitors to discuss the matter

Sent from my iPad

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Complainants:

Person 6, Chairman, Churston, Galmpton and Broadsands Community Partnership

Person 1, Vice Chairman, Churston, Galmpton and Broadsands Community Partnership

Person 12, Co. Chairman, Friends of Galmpton and Warborough Common

Complaint reference: 277498

Responding Officer: Officer 2 Assistant Director (Communities and Customer Services)

Following complaints made by the above individuals, I have been asked to undertake an investigation into the matters raised under Stage 2 of the Council's Complaints Procedure. My investigation findings are detailed within this report.

Allegations

1. That there has been a breach of the Code of Conduct for employees because: the officer made a statement which was not supported by evidence which she should have ascertained as part of the matter; that the officer failed to gain the minutes of the meeting between members of the public and Ward Councillors before writing to another member of the public; that the officer failed to ascertain matters which had been discussed and permitted previously by three senior officers of the Council; that the officer failed to take her decision impartially, fairly and on merit, using the best evidence.
2. That the legal department had been requested to attend a meeting with Ward Councillors on 5th December 2016 but had refused;
3. That the Officer 1 should have ensured that the information she was issuing was up-to-date before any statement to either Person 2 or the Press;
4. The officers should have been aware that the permission for boundary maintenance was ongoing and had not been rescinded;
5. That the release of the incorrect statement by Officer 1 was directly responsible for the article in the Herald Express and has resulted in serious damage to the reputation of the Friends Group and to Person 12 in particular;
6. That the article in Herald Express should have been corrected at the earliest opportunity, and the article should not have been given such prominence or even published at all.

Schools and services for children and young people • social care and housing • recycling, waste disposal and clean streets • community safety • roads and transportation • town planning • tourism, harbours and economic regeneration • consumer protection and licensing • leisure, museums, libraries and arts

If you require this in a different format or language, please contact me.

Parties involved

- Complaint received from Person 1 on behalf of Churston, Galmpton and Broadsands Community Partnership;
- Complaint received from Person 12 on behalf of Friends of Galmpton and Warborough Common;
- Officer 1 - Senior Solicitor and Deputy Monitoring Officer at Torbay Council

Factual Information

Background history

There has been dialogue over many years with regard to the management of Churston Common with a variety of officers of Torbay Council. This has been the direct result of the impact of unauthorised encampments which occur across the Common, sporadically, but generally between April and September. Some of the community have a long held desire to restrict access to the Common, but this is a contravention of the Commons Act, and restricted access has never been wholeheartedly supported by all residents.

The Council as the landowner always takes action in respect of dealing with unauthorised encampments and has a clear procedure for acting in these matters. However, the community believes that the Council should do more, and this has been shown through the liaison with the Friends Group, participating in community consultations in 2015 and the instigation of the ASB Community Trigger in 2015.

On 5th December 2016 a meeting was arranged between Ward Councillors for Churston and Galmpton and representatives of the community. This was a meeting which was entirely at the Elected Members request and was not a decision making meeting of the Council, as it was not within the constitutional requirements of the Council. Therefore Ward Councillors and Executive Leads who were present did not have decision making powers. Officers do not support Ward Councillors where there are Ward discussions, if there is no requirement for them to do so, and would be impractical given the level of resources which would be required.

Allegations and responses

Allegation 1

That there has been a breach of the Code of Conduct for employees because: the officer made a statement which was not supported by evidence which she should have ascertained as part of the matter; that the officer failed to gain the minutes of the meeting between members of the public and Ward Councillors before writing to another member of the public; that the officer failed to ascertain matters which had been discussed and permitted previously by three senior officers of the Council; that the officer failed to take her decision impartially, fairly and on merit, using the best evidence.

The response

The Council's position on the management of Churston/Galmpton Common has not changed as a result of the meeting on 5th December 2016. The minutes of this meeting show that the Councillors who attended this meeting agreed for works to be undertaken to the common as maintenance. The minutes appear to reflect the discussions which took place on that day, although it is noted that there are a number of factual inaccuracies contained within those minutes. None of the Councillors present had the authority to give such an agreement in these circumstances and in doing so had ignored advice from Senior Council Officers which was verbally sought in the lead up to the meeting and is in breach of the Elected Member Code of Conduct.

Having reviewed the correspondence and the Investigation Report (by Officer 10, Senior Natural Environment Officer) I am clear that there has never been a tacit approval given by the Council for works to be undertaken on the Common. This was in fact reiterated by myself to the community and their representatives on numerous occasions, in person, at Community meetings and at a number of meetings with the community chaired by Sarah Woolaston M.P when such matters have previously been discussed in public.

What the investigation undertaken has failed to ascertain to date is why the meeting was minuted at all, as it was not a decision making meeting of the Council, the minute taker was not a representative of the Council, and it would be unusual to take minutes of a discussion relating to a particular area of Ward business.

There is absolutely no evidence to support the allegation that Officer 1 has in any way breached the Officer Code of Conduct. She has been consistent in her advice on this matter over many years, and has made the Council's position clear on many occasions. The issue here seems to be that the complainants do not wish to believe that Officer 1's advice is correct, as it does not support the actions they have taken, and therefore they are calling into question the advice given.

Allegation 2

That the legal department had been requested to attend a meeting with Ward Councillors on 5th December 2016 but had refused;

The response

It is correct that Officer 1 was invited to the meeting. However, it is not a requirement for officers to attend all meetings with Ward Councillors. The Council has limited resources and unless there is a specific reason for which an officer is required to attend e.g. it is a decision making meeting of the Council, then there is not an expectation that Council officers attend. Officer 1 had made the Council's position clear to Elected Members before the meeting and a number of them had met with her to discuss Churston Common prior to the meeting taking place.

There is also the question of the Council's limited resources. Officers have to prioritise their workload to ensure that they deal with the priorities of the Council. The issue of dealing with unauthorised encampments or maintenance of Churston Common is not a priority of the Council which is detailed in its Corporate Plan, and therefore Officer 1 was not expected to reprioritise her workload to accommodate the request.

That said, Elected Members have been given consistent advice from Senior Officers in respect that any works to Churston Common required a community consensus and any proposals would need to be submitted in writing to the Council to enable an evaluation by Officers before any further protective measures would be considered or agreed. To date, no such proposals have been submitted for evaluation.

Other relevant information

Allegation 3

That the Officer 1 should have ensured that the information she was issuing was up-to-date before any statement to either Person 2 or the Press;

The response

The investigation has not shown that Officer 1 has acted in any way inappropriately. The advice that Officer 1 gave was in accordance with the Council's position on the matter. For clarity Officer 1 did not issue any statement to the press. The Council's statement to the press was correct, and any interpretation which the Press may have placed on it is outside of the Council's control.

Allegation 4

The Officers should have been aware that the permission for boundary maintenance was ongoing and had not been rescinded;

The response

The officers were aware of the facts of the matter and there was never a tacit approval given for the maintenance of the boundaries on Churston Common. This is a misunderstanding by the community. The previous works which were approved by the Council were specific and related only to Bascombe Road and Dartmouth Road and not Churston Common. Previous council officer Officer 7 appears to give permission to place boulders around the edge of Galampton/Warborough Common in May 2015 as part of any works to the temporary gate. However, he makes it clear in the same email that excavation of Galampton/Warborough Common was not permitted and the works were to be completed before the Bank Holiday. There is no evidence that the permission provided was to be of a continual nature. The Investigation Report considered as part of this investigation is clear in this regard.

In particular the email from Officer 1 to the Chair of the Community Partnership, Person 6 dated 24th November 2016, copying in two of the Elected Members who were present at the meeting on 5th December 2016, clearly sets out the Council's position. This email clearly details that there are no consents in place, so any previous misunderstanding was clarified at this point. It is important to note that the said email was sent prior to the works at Churston Common commencing. The Community Partnership Chairman responded to this email within an hour by directly emailing the said two Elected Members and copying in Officer 1.

Allegation 5

That the release of the incorrect statement by Officer 1 was directly responsible for the article in the Herald Express and has resulted in serious damage to the reputation of the Friends Group and to Clair Stanley in particular;

The response

As stated above, Officer 1 has acted appropriately and given advice in accordance with the Council's position. In correspondence to Person 2, Officer 1 stated "It is important to clarify that to my knowledge the recent works to Churston Common have not been instructed by Torbay Council and a subsequent investigation will be undertaken." This is factually correct. The subsequent reporting of the matter by the Press and any associated comments are not attributable to Officer 1 or any other Council officer. The Council's response to the press enquiry was one line which said "These works were not authorised by us and an investigation will be taking place." Again this is factually correct, as the Council was unaware that any such works were planned. Any perceived reputational damage caused by press reporting is a matter which the community should address with the Herald Express.

Allegation 6

That the article in Herald Express should have been corrected at the earliest opportunity, and the article should not have been given such prominence or even published at all.

The response

See above answer to allegation 5

Conclusion

That there is no evidence that Officer 1 has either acted inappropriately or breached the Officer Code of Conduct.

It is clear that the community representatives believe that the meeting they attended on the 5th December 2016 was a decision making meeting, which it was not.

It is important to note that the process for obtaining a formal decision from the Council in respect of Churston Common has never been sought and therefore there are no recorded decisions in respect of this matter.

It is clear that the community wish to take proactive action to protect the Common and this has been a general theme for a number of years. However, no long term management plan has ever been forthcoming or agreed by the Council as the landowner to facilitate this aspiration.

It is however clear that the approvals given were only for specific issues and not a tacit approval for all future works. This matter is further complicated by different voices and groups within the community who do not appear to have a consensus view on a direction of travel. The absence of any approval for works has been confirmed to community representatives on a number of occasions by Officer 4, Officer 2 and Officer 1.

It is also clear that the community have a different view on how the Common should be managed, than the landowner, Torbay Council. It is not for the community to determine how the landowner conducts its business. However, it is also clear that the Council has

allocated a significant amount of resources to the issue of maintenance of the Common and dealing with unauthorised encampments over many years. This has included active participation in numerous community meetings and a two day public consultation event.

Additional findings as a result of the investigation

There are matters arising from this investigation which call into question the conduct of Elected Members and the way in which they are engaging with their communities and giving the appearance of being in a position to make a decision on behalf of the Council which is contrary to advice they are seeking from Council officers. This will need to be investigated separately.

Recommendations

1. None of the allegations about the conduct of Officer 1 can be substantiated; therefore there are no recommendations on this issue which arise from this investigation.
2. There is a potential breach of the Elected Members Code of Conduct which will be investigated separately.

Antrobus, Lisa

From: Gurry, June
Sent: 06 March 2017 11:43
To: Antrobus, Lisa
Subject: UNCLASSIFIED:FW: The Response - please read both emails

Please add to document file for the Standards complaint in respect of Councillor Stubley.
Thank you
June

June Gurry
Governance Support Manager
Corporate and Business Services
Torbay Council
(Telephone (01803) (20)7012, Fax (01803) 207011)

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From: Stubley, Di
Sent: 03 March 2017 15:25
To: Gurry, June <June.Gurry@torbay.gov.uk>
Cc: Person 1
Subject: Fwd: The Response - please read both emails

Hi June,

For complete transparency I am forwarding you this email which sets out all the information that is background knowledge on Churston Commons.

Please feel free to check everything out as this is both detailed and accurate information.

With kindest regards,

Di Stubley
Councillor for Churston with Galmpton Ward.

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Sent from my iPad

Begin forwarded message:

From: "Stubley, Di" <Di.Stublev@torbay.gov.uk>
Date: 3 March 2017 at 14:35:40 GMT
To: Mayor <Mayor@torbay.gov.uk>, "Mills, Derek" <Cllr.D.Mills@torbay.gov.uk>, "Excell, Robert" <Robert.Excell@torbay.gov.uk>, "Officer 4,

Subject: Fwd: The Response - please read both emails

Good afternoon everyone,

I do feel I need to point out the obvious:-

1. I was approached by the FOGWC and the CP to arrange a meeting in December and asked to present all the evidence the FOGWC had kept on file to support their case to do maintenance work on the perimeter of the commons.

2. Person 16 was recovering from hip surgery and not in the Town Hall. Person 16 suggested I went into the Mayors support office to check availability of both his diary and Officer 1's to ensure a date and time when their diaries were free to book a meeting with the Friends and CP. It should have gone out in his name but by mistake it was sent out in mine.

3. Officer 1 stormed down the corridor and tore a strip off me for requesting a meeting and sending out the request from the Mayors office. Stating she had to attend any meeting the Mayor sent out but she did not have to attend any meeting I sent out. Also that enough time had been spent on the commons and she did not feel any more should be done on the subject.

4. I was taken aback and maybe should have made a complaint about the way I was spoken to but did not wish to cause any upset. I did tell Councillor Mills and the Mayor of this incident.

5. The Mayor ensured that both Councillor Mills and Councillor Excel would be present in the 5th December meeting to look at all the evidence provided by the Friends group.

6. None of the Councillors made a decision, the evidence was considered and the Executive Councillors said they did not need to make any decision as the Friends already had permission in place with the emails from Officers and the information that came to light with the Bylaws.

7. As these Bylaws were came across purely by accident none of the Councillors were even aware of them. Why did Torbay's Legal dept. not inform the Councillors of them as it was T.C 's own legal dept. that set them up in the first place.

The Bylaws were done as preventative measures to stop vehicle incursions in the first place. (Thus saving the Council money to evict travellers when unauthorised encampments occur. Not to mention the upset to the local communities. Surely T.C. failed in their duty in this respect to inform the Councillors of these?)

8. The email from Officer 7 in 2015 was predominantly about the reinforcement of the boundary of the commons. The gate was not mentioned in the email provided by the Friends Group. The Officer Officer 7 was aware of the suggestion to put back a gate that had originally been on the common, therefore he

mentioned this work in the email. Work to maintain the boundaries was what was the main topic in this email where permission was granted by Officer 7 who mentioned the community already had in place the option to do this as he quoted the Bylaws that later came to light, that neither the Community or the Councillors were even aware of.

9. Torbay Legal dept. were responsible following the court case in the 1970's when they were taken to the high court and lost for not adhering to the Covenant from the transfer of land from Person 17 to the people in the Parish of Churston.

After years of complaints by the Churston Community who complained to the Council to stop vehicle access on the commons The Solicitor Sutton Coulson eventually found the address of the person who gave the Land known as 'The Warborough' and informed her of the vehicle incursion on the commons. A court case followed which Torbay Council lost. The bylaws were then worked on by Torbay Councils Legal Dept. it was sent to the then Secretary of State for approval. It was then signed therefore ratified thus making the Bylaws legal which is my understanding from the information found online and from the local Library.

10. At the end of the day it is the local community who have shown by a huge majority that they wanted to reinforce the perimeter of the commons, thus saving the Council the cost through the eviction process.

I agree once incursions take place EU law is applicable in the process to evict travellers following checks on

children and the elderly before an eviction warrant can be obtained. Then there is the clean-up cost after they have gone all of which is paid for from rate payer's money.

11. Maybe the Secretary of State needs to be contacted for clarification that these Bylaws should or should not still be adhered to. Also if the choice of materials as a barrier method as mentioned in these Bylaws are still applicable, so that the use of only natural boulders as suggested in an email this week from an Officer is not the only choice for the local community.

Then at least the local community and the Ward Councillors would know what choices are permitted.

With kind regards,

Di Stubley

Councillor for Churston with Galmpton Ward.

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On 3 Mar 2017, at 11:56, Mills.Derek <Cllr.D.Milts@torbay.gov.uk> wrote:

Original Message--

From: Person 1

Sent: 03 March 2017 10:00

To: Mills, Derek; Person 12; Person 6; Stubley, Di; Haddock,

Richard; Mayor; Person 13

Subject: Re:The response

By the way we need to go to stage 2 of the complaint before we can go to the LA ombudsman .

On 3 Mar 2017, at 09:19, Person 1 wrote:

Hi All

I have now read the decision and have the following comments;-

1 I have never seen a response where the investigating officer confirms in it that she has been involved in the situation and made value judgement decisions on the specific thing complained about. The Common

2 She refers to the minutes of the meeting which she relies on: them states that they are incomplete (how does she know as no officer other than the minute taker were there) and then fails to recognise that they were draft.

3 Throughout she fails to recognise the duty on the Council to protect the Common under the Bye Laws and the Deed of Gift. She states that the Council have a tried and tested means of getting the Travellers off the Common but fails to see that it is their duty to protect it from then Travellers in the first place.

4 It is unfortunate that Ward Councillors and Executive leads do not have powers. The question is why have our relected Councillors allowed this state of adffairs to occur where the tail is firmly wagging the dog.

5 The investigating officer has failed to recognise that on 3 separate occasions permission was given and our executive leads stated in the meeting with us that they were of the view that permission was granted.

6 The investigation officer is failing to find the overwhelming good will of the majority of persons living in the area and the fact that they bare prepared to spend their own money rather than that of the Council in protecting the Common. I would point out again that there is a duty on Torbay Council to do more than clear up mess but to stop it in the first place.

I believe we should petition the Mayor and ask him to make the decision that we can go ahead and do what Torbay Council should be doing.

Person 1

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Comments on Investigation Report

2

2.1 The actual wording of the complaint has never been given to councilor Stubley although it has been requested several times. We therefore cannot state if the investigating officer has miss interpreted in any way what is said to be the complaint. To this end Cllr. Stubley is working in the dark. We would still like to se the wording or the monitoring officers note of what was said at the time of the complaint. We believe that this action of failing to give the actual complaint is against Natural Justice.

5 Findings

5.1 The finding is misconceived. Cllr Stubley has a duty to be honest and fair with all persons that she deals with. If someone does something then it is open for Cllr Stubley to bring this to the attention of interested parties providing that the information is correct. The information given in this case was correct and the action of the officer was hostile and rude. Cllr Stubley has made a complaint to the Monitoring Officer about the officer's behaviour and to date there has been no action on this matter.

Cllr. Stubley would point out the following which is the direction from the Local Government association

“As a local councillor, your residents will expect you to:

- respond to their queries and investigate their concerns (casework)
- communicate council decisions that affect them
- know your patch and be aware of any problems
- know and work with representatives of local organisations, interest groups and businesses
- represent their views at council meetings
- lead local campaigns on their behalf.”

This is exactly what Cllr Stubley did.

The reference to Cllr Stubley e mail

'Officer 1 I am not being rude but I do not need yours or anyone elses permission to have the facts checked out by an outside source.'

This was in response to an e mail from Officer 1 to Cllr Stubley, which has not been provided in this investigation and has been asked for. Until this e mail is provided then the decision of the investigating officer over this matter must be suspect.

It is not accepted that any of the other comments are disparaging in any way but merely a statement of the facts in an honest and truthful way.

The below comment was made to me by the local Member of Parliament which were re-laid by me so as to advise what our local MP thought.

“her....If she had been doing her job correctly the Council could have saved a great deal of money”

5.12 The finding is factually wrong. The community is not divided as could be seen by a meeting on the 8thFeb 2017 where 180 people attended on the specific point of Travellers and 178 were in favour of exclusion, 1 abstained and 1 was against. Cllr Stublely would be failing in her duty as a councilor if she were not to support the vast majority decision.

5.13 The use of personal e mails cannot form any misconduct as there is no provision in the Council Constitution requiring the use only of Council equipment. At the time the Councils equipment was defective and the only way for Cllr. Stublely to communicate was by her own equipment

5.21 None of Cllr. Stubleys actions have bought the Council into disrepute. The Council has failed to properly consider PSPO order which was requested by the local community after a trigger petition was served on the Council and still refuses to implement a POSPO stating that the criteria has not been met. To date the Council has failed to state publically what the Criteria are. The investigating officer has misdirected herself as theses comments were about protection of the common and not any failing against the Equality Act 2010. It appears that the investigating officer is stating that to request a means of stopping unauthorised encampments is a breach of the Act but this cannot be the case otherwise Travellers could never be removed from property. The Equality Act protects minorities once on the land. Matters of prevention are not covered by the Act.

5.3 Cllr. Stublely believes that her communications have not been anything other than correct, honest and truthful and as such she believes that she has complied with her duties as stated by the Local Government Association.

5.32 Cllr Stublely was subjected to rude aggressive and unprofessional behaviour by an officer. This conduct had resulted in a complaint to the Monitoring Officer by Cllr. Stublely against the officer but no action seems to have been taken.

5,4 It is inconceivable that a person, including a Councilor, cannot make their own investigation by whatever means are available to investigate matters of concern to their ward. This cannot form a realistic complaint. 5.4.1 anticipated that a Councilor can receive advice from other than Council Officers as it states Police.

5.4.8 There is a vast difference between considering and agreeing with something. If there is a conflict then it is right that it is brought up in debate so that the correct answer can be found.

5.4.10 this is denied as all Councilor Stublely did was to arrange a meeting between senior Councilors' so that the local interested parties could be advised by those senior Councilors'. Decisions were made by those senior Councilors' which were explained to the meeting which was told that the relevant criteria was met and that the community could, in their opinion, carry on with the permissions already given. Apart from organizing the meeting Cllr Stublely had no more involvement other than reporting what had happened.

5.51 As already alluded to there is no requirement under the Torbay Constitution to use only the Council e mail. "Must use" is different to "should use"

5.6.1 There was not any extensive support from the officer just a comment that "This is the way we have always dealt with it" Cllr Stublely was left to communicate with her constituents that they must be more tolerant.

With regard to Cllr. Stublely comments over the course of this investigation and the comments herein Cllr. Stublely does not agree with the finding of the investigating officer. Cllr. Stublely due to this investigation now communicates with both Derek Mills and Cllr. David Thomas, two experienced Councilor's, to explain anything contentious and to ask their advice.

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