



Meeting: Council

Date: 26 February 2015

Wards Affected: Tormohun

Report Title: Windmill Hill Covenant (Mayoral Decision)

Is the decision a key decision? Yes

When does the decision need to be implemented?

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1. Purpose and Introduction

- 1.1 The purpose of the report is to consider options to protect the area of Windmill Hill shown edged red on the attached plan and to allow the present uses of Windmill Hill to continue as well as new uses, provided that they are supported by the community.

2. Proposed Decision

- 2.1 That the Council considers entering into a deed covenanting with the residents around the Windmill Hill playing fields as follows:-

“Torbay Council covenants with all inhabitants of the ward of Tormohun that for a period of 40 years beginning on the date of this deed it will not on the land shown edged red on the plan attached erect or permit the erection of any permanent structure or permit the sale and/or consumption of alcohol without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of councillors for Tormohun Ward and are registered as local government electors at an address within this Ward. For the purpose of this covenant ‘permanent structure’ shall mean any structure intended to remain on the land for a period greater than 3 months. This covenant shall not apply to the installation, construction or renewal (whether by statutory undertakers or otherwise) of any media for the supply or removal, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media/or to the installation of street furniture and sports equipment. Nothing contained or implied in this deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument.”

3. Reason for Decision

- 3.1 An application was made in 2014 by representatives of the community for a covenant on Windmill Hill.
- 3.2 By entering into the deed of covenant with the residents around the Windmill Hill Playing Field the Council will be unable to carry out substantial development of the open space without first obtaining consent of the majority of those residents taking part on a referendum on the proposals. The Covenant would also prevent the consumption of alcohol on the land as well as any change of use
- 3.3 The land affected by the covenant shall be that shown edged red on the plan attached to this report.
- 3.4 The Council cannot dispose of its land (disposal means selling, granting interests in land such as covenants and leases) unless it can achieve best value for it. It would therefore be incumbent on the Council to seek the best consideration reasonably obtainable for the covenant, unless the Council has the specific consent of the Secretary of State or it can rely on a General Consent Order.

This covenant would be granted for no consideration. The Council may be able to rely on a General Consent Order whereby deemed consent is given to an undervalue disposal of land if;

‘the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2m’.

Determining the value of the covenant is not easy. It will be enjoyed by and confined to those with an interest in land capable of being benefited by the covenant. That value (the enhanced value of their land with the covenant in place) will need to be assessed by a valuer.

Depending upon the outcome of the valuation exercise, it may be possible to rely on the General Consent Order. If, however, the enhanced value of the properties exceeds £2m, an application for the Secretary of State’s specific consent would be required.

Another procedure that will need to take place beforehand is that a notice of the Council’s intention to grant the covenant will need to be advertised in the Herald Express for two consecutive weeks and any objections to the proposed covenant will need to be duly considered.

For more detailed information on this proposal please refer to the supporting information attached.

Supporting Information

4. Position

- 4.1 An application has been made by a representative of the community to place a covenant on Windmill Hill.
- 4.2 There is currently no intention to develop any of the land edged red on the plan. However the Council may wish to make changes to the site in relation to providing new changing facilities.
- 4.3 If a covenant is placed, should the Council wish to build a structure, permit the consumption of alcohol or allow a change of use on any part of the land edged red on the plan in the future it will be required to hold a referendum of the residents of the ward specified in the covenant with the majority of those voting, voting in favour of such structure or structures.

5. Possibilities and Options

- 5.1 To take no action as use of the land is controlled through the political and planning process.
- 5.2 To enter into the deed of covenant.
- 5.3 To add exemptions (in addition to temporary structures) allowing certain types of development to take place on the Covenant Land.

6. Fair Decision Making

- 6.1 Public consultation has been carried out and a survey is included in Appendix 2. The results show that the local residents support the implementation of a covenant or some type of protection for the site.
- 6.2 Internal consultation with Legal Services and Senior Managers resulted in the officer recommendation that the land is adequately protected.

7. Public Services (Social Value) Act 2012

- 7.1 These proposals do not require the procurement of any services.

8. Risks

- 8.1 Should any permanent development of the Covenant Land be proposed then it would be necessary to carry out a referendum which is likely to cost the Council in the region of £5,000. Any referendum would also create work pressures on Democratic Services. If a referendum could be held to coincide with local or national elections the costs and work pressures would however be reduced.

- 8.2 The Council is under a general duty to obtain best value when making decisions; it is difficult to argue that the Council is obtaining best value if no financial consideration is being obtained; by entering into a restrictive covenant the Council's land is worth less to a prospective purchaser of the same. Any environmental or social benefits gained from preventing development of this land could be achieved through other means (such as an assurance by Members that they wouldn't countenance development during their time in office). Possibly another solution would be to dispose of this land to a community group (for value) but make it subject to a covenant enforceable by the Council that the purchaser wouldn't develop and that the land would remain open to the public to use.
- 8.3 The Council's decisions may be open to challenge if it fails to act in a consistent manner, if a decision to enter into a restrictive covenant is made in this location then this may open the floodgates to similar applications and mean that the Council's ability to develop and/or sell its property may be compromised. Previous comments for Paignton Green could be viewed as a special case given that the potential for development has always been very limited and that the Council's decision to enter into a covenant was in some way a compromise with those attempting to argue that it should be awarded the status of a village green. However, the more sites that are voluntarily made subject to covenants, the more difficult it will be to resist future applications.

Appendices

Appendix 1 – Plan of Windmill Hill Playing Fields

Appendix 2 – Results of public consultation

Additional Information

None.