

Meeting: Council

Date: 10 December 2015

Wards Affected: Churston with Galmpton

Report Title: Covenant Protecting Churston Golf Club from Development – Call-In

Is the decision a key decision? Yes

When does the decision need to be implemented?

Executive Lead Contact Details: Mayor Oliver, Mayor and Executive Lead for Finance and Regeneration, mayor@torbay.gov.uk

Supporting Officer Contact Details: Anne-Marie Bond, Assistant Director of Corporate and Business Services, (01803) 207160, anne-marie.bond@torbay.gov.uk

1. Proposal and Introduction

1.1 On 22 October 2015, the Mayor took the following decision:

“That further to the Decision of the Mayor taken on 4 December 2014, in accordance with the correspondence from the Department for Communities and Local Government dated 2 September 2015, and in consideration of the position of the Churston, Galmpton and Broadsands Community Partnership dated 6 October 2015, the General Disposal Consent Order 2003 shall be applied to the disposal (by way of a restrictive covenant), of the land comprising of Churston Golf Club. Thereby meaning that the specific consent of the Secretary of State is not required.”

1.2 The Mayor’s decision was called in for scrutiny and considered at the meeting of the Overview and Scrutiny Board held on 4 November 2015 and referred to Council for consideration. An extract from the Minutes of the meeting is set out below.

“In particular, the Board asked the Mayor to explain how he had reached his decision and, whilst it was noted that he had taken legal advice, the Board was not able to satisfy itself that there was a proper record of the information considered by the Mayor before he made his decision.

Resolved:

- (i) that the responses received from the Mayor at the meeting did not give the Board the assurances it needed and therefore the matter be referred to the Council in order that an officer report can be prepared setting out all of the information on which the Mayor relied in making a decision; and
- (ii) that prior to the meeting of the Council, the Board request the Executive Director to consider whether obtaining a second legal opinion and/or

valuation would make the Council's position stronger in defending any future legal challenge."

2. Reason for Proposal

- 2.1 To consider the recommendations of the Overview and Scrutiny Board and further information detailed in the submitted report.

3. Recommendation(s) / Proposed Decision

- 3.1 That the Council considers the contents of this report in determining whether it objects to the decision of the Mayor dated 22 October 2015 in respect of the covenant protecting Churston Golf Club from development.

Appendices

Appendix 1: Reasons for call-in

Appendix 2: Record of Decision

Appendix 3: Letter from Golf Club

Appendix 4: Letter from Community Partnership

Background Information

- 4.1 At the Council meeting held on 4 December 2014 in response to a petition and call-in of his original decision the Mayor agreed the following:

"That, having reflected on all of the issues raised following the call-in of the Mayor's previous decision taken on 25 September 2014, the following decision is confirmed:

that the Council enters into a deed covenanting with the residents of Churston & Galmpton ward in the following terms;

'Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of 100 years beginning on the date of this deed it will not on the land, shown edged in red on the plan attached to the submitted report to the Council meeting on 25 September 2014, known to be Churston Golf Course, allow any development of Churston Golf Course 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 the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant 'development' shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. 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.'

In accordance with the Local Government Act 1972, the Covenant will be referred to the Secretary of State for consent for the disposal and the disposal will be advertised. The covenant will then be appropriately registered with the Land Registry."

- 4.2 The Council first wrote to the Secretary of State requesting consent from the disposal on 23 December 2014.
- 4.3 In pursuance of the proposed disposal, an advertisement was placed in the local newspaper on 11 December 2014. In consideration of the time of year, the notice period for objections was extended until 5 January 2015. The letter to the Secretary of State requesting consent was sent during the period for objections. It was considered that there was likely to be a period between receipt of the request and its allocation to an officer to consider, therefore it was believed to be appropriate to send the request, with an update to follow in respect of any objections received together with the outcome of consideration of the same.
- 4.4 On 23 January 2015 the Mayor considered a report, detailing the objections received following the advertisement. Having considered the report, he did not believe that any of the objections raised issues which had not been covered in detail through the Council and Overview and Scrutiny meetings and that therefore, all of the issues raised had been weighed into his thinking when he made the decision to grant to the Deed of Covenant at the Council meeting on 4 December 2014. The report and the Mayor's record of consideration of the same was provided to the Secretary of State on 27 January 2015.
- 4.5 By way of a letter dated 23 March 2015, the Secretary of State sought further information as to the intended purpose of the disposal, as well as querying an aspect of the valuation. On 1 April 2015, a response was sent, providing further detail as to the intended purpose, as well as seeking clarity regarding the valuation, and whether further information was in fact required. The Secretary of State responded advising that they did require a further valuation, and this was instructed and sent to them. Following this, a request was received from the Secretary of State on 29 June 2015 asking that the contents of all correspondence from the Council be consolidated into one letter in order to aid consideration of the matter. This was provided on 2 July 2015. A response was received from Department for Communities and Local Government (DCLG) on 2 September 2015.
- 4.6 In light of this response from the Secretary of State the Mayor took the decision on 22 October 2015 as set out in paragraph 1.1. This decision has been called in and is now before the Council for consideration.
- 4.7 Following the meeting of Overview and Scrutiny, consideration was given as to whether further legal or valuation advice was required. A decision was taken to seek further valuation advice, following specific advice from a Chartered Surveyor within the Secretary of State's office. This further valuation advice has been instructed and the outcome is awaited.

Background Documents

Record of Decision -

<http://www.torbay.gov.uk/DemocraticServices/ieDecisionDetails.aspx?ID=418>

Overview and Scrutiny Board – 4 November -

<http://www.torbay.gov.uk/DemocraticServices/ieListDocuments.aspx?CId=218&MId=6510&Ver=4>