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Date: Friday, 05 January 2018

Overview and Scrutiny  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

Dear Member

**OVERVIEW AND SCRUTINY BOARD - WEDNESDAY, 4 NOVEMBER 2015**

I am now able to enclose, for consideration at the Overview and Scrutiny Board to be held on Wednesday, 4 November 2015, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
4.	<b>Churston Covenant - Application of the General Disposal Consent Order 2003</b>	(Pages 7 - 20)

Yours sincerely

Kate Spencer  
Overview and Scrutiny Lead

## Call-in Reasons – Churston Covenant – Application of General Disposal Consent Order 2003

1. The General Disposal Consent Order 2003 states that “where applicable, authorities should have regard to the community strategy”. The Record of Decision does not state how regard has been had to any community strategy.
2. When last considering the proposed covenant, members were informed that the General Disposal Consent Order could only be relied upon “if the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million”. No information is provided within the Record of Decision on the valuation that has taken place.
3. The General Disposal Consent Order requires that before the making of the covenant, the Council’s intention to do so should be advertised in a local newspaper for two consecutive weeks and any objections needed to be duly considered. It is understood that this advertisement was placed in December 2014.
  - a. No reference to the response to this consultation is included in the Record of Decision.
  - b. Between that advertisement being placed and the Record of Decision being published, the Inspector’s Final Report on the Examination into the Torbay Local Plan has been published. This included that (amongst other things) Churston Golf Club should be added to the list of possible housing sites for the medium/long term.

This may impact on the views which people may wish to express in response to the advertisement.

Record of Decisions

**Covenant protecting Churston Golf Club from development**

**Decision Taker**

Mayor on 22 October 2015

**Decision**

- (i) 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.

**Reason for the Decision**

To allow the decision of 4 December 2014 in respect of the Covenant to proceed.

**Implementation**

This decision to apply the General Disposal Consent (GDC) 2003 will take effect at the end of the call in period.

**Information**

At the time of the Decisions of the Mayor in September and December 2014, it was believed that in order to progress the disposal of land at Churston Golf Club, by way of a restrictive covenant, in order to comply with s.123 Local Government Act 1972, the specific consent of the Secretary of State was required.

However advice received from DCLG in their letter of 2 September 2015 indicated that the General Disposal Consent (GDC) Order 2003, could be applied. Thereby meaning that specific consent was not required. The letter from DCLG stated;

*“On the basis of the information provided to date, and as the covenant effectively empowers local residents to participate in decision-making concerning any future proposed development of the land, it appears to us arguable that such a covenant does promote local residents’ social, environmental and economic interests as required by the GDC 2003. In this regard it seems to us that local residents are themselves most likely to value their own social, economic and environmental interests when considering any future development proposed on the land.*

*It also appears to us that the proposed restrictive covenant is intended to ensure greater protection for local residents against unwelcome development of the land, and therefore may arguably promote their social, environmental and economic interests as required by the GDC 2003 because the covenant is against the freehold. In contrast, without the restrictive covenant, the Golf Club holds only a lease which it appears may be capable of being broken by the Council. The interests of residents may therefore be better protected by the proposed restrictive covenant than they are at present.*

*Finally, I refer to the Mayor's rationale for his decision to grant the covenant: ("...decisions on development of this land in the future should not be in the hands of one person (i.e. the Mayor...), but it should be for the majority of the ward to decide upon. The Mayor believes that this is the principle of localism at its best.")*

*You may also wish to consider whether this rationale, which informs the decision to enter into the covenant, may also be consistent with the aim of promoting the well-being of residents as articulated in the GDC 2003."*

The Churston, Galmpton and Broadsands Community Partnership have provided a letter dated 6 October 2015 providing their perspective of why the GDC should be applied.

### **Alternative Options considered and rejected at the time of the decision**

Alternative options were not considered.

### **Is this a Key Decision?**

Yes – Reference Number: I020921

### **Does the call-in procedure apply?**

Yes – in respect of the decision to apply the General Disposal Consent (GDC) 2003 only. This element of the decision will come into force and may be implemented on 30 October 2015 unless the call-in procedure is triggered (as set out in Standard Orders in relation to Overview and Scrutiny).

**Declarations of interest** (including details of any relevant dispensations issued by the Standards Committee)

No

### **Published**

22 October 2015

Signed: \_\_\_\_\_  
Mayor of Torbay

Date: 22 October 2015

CENTENARY 1990

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Agenda Item 4  
Appendix 2  
Churston Golf Club Ltd.

The Clubhouse  
Churston  
Brixham  
Devon  
TQ5 0LA

November 2, 2015

Councillor C Lewis,  
Chairman, Torbay Overview & Scrutiny Board,  
Town Hall, Castle Circus,  
Torquay TQ1 3DR

Dear Councillor Lewis.

**RE: CHURSTON COVENANT – OVERVIEW & SCRUTINY BOARD November 3, 2015**

Please take this letter as Churston Golf Club's official submission to the above meeting. May I also ask that copies be circulated to members of the Board and the Mayor in advance of the meeting. May I further request that this letter be included in the official meeting documents and details of the content added to the minutes.

**1. Introduction**

Churston Golf Club Limited believes that the following points are central to any discussion about the Mayor's decision to impose a non-development Covenant on the club's golf course and invites the Board to take them into account when making decisions at the meeting.

**2. The Mayor and Council Officer's failure to consult with Churston Golf Club Ltd about this Covenant has resulted in his decision being based on partial and biased information. The decision was, therefore, inevitably flawed and inappropriate.**

Torbay's Mayor Gordon Oliver has repeatedly stated that, in making his Covenant decision, he was "listening to the people" and that this was "localism at its best." However, while he was listening to those making a lot of noise, the Mayor wasn't listening to the views of another very important group – the 600 plus members of the golf club and their families. They are also Torbay people and their views are just as valid as those of the petitioners.

The Mayor also needs to answer the question: "Before making your decision, did you ask the golf club if the Covenant was the best way to protect the social, environmental and economic interests of the Churston and Galmpton area?" If he had asked, the club would have been able to explain why a Covenant is not the best way to protect anybody's interests for reasons that are clear and obvious. By only listening to one side of the argument, the Mayor's didn't have all the facts with the result that he made a flawed decision.

I would also like to draw the Board's attention to the fact that Churston Golf Club Ltd has not received any communication about this matter from the Mayor. We have been given no information about the process; no explanation as to why the Covenant is being imposed; no guidance as to what it means for the future of the limited company. As holders of a 999-year lease on the land, we should have been involved. We believe the Mayor's attitude to the club and its members over this matter has been and remains unacceptable and, of course, his failure to enter into any meaningful dialogue with the club has resulted in an unsound decision.

### **3. The imposition of the Covenant will devalue Churston Golf Club's asset base with potentially serious consequences for the future of the club, Churston/Galmpton residents and Torbay Council.**

Churston Golf Club purchased a 999-year lease on its golf course land for the sum of £1.6 million in 2003 and borrowed money from Barclays Bank to fund the purchase. At the time of the purchase it was known that the land comprising the 1st and 18th holes had no planning designation (marked white on the Council's planning map) and was available for development. The £1.6 million the club paid for the lease recognised the fact that the 1st and 18th was available for development.

In due course, planning permission for houses on the 1st and 18th was granted and the then Mayor agreed a lease variation contract. The end result was an increase in the club's assets base of about £5.3 million, which was then available to secure the club's future and enable it to develop. The investment in the lease, therefore, had proved to be a shrewd and sensible decision. At that time, as far as the Board of the club was concerned, this was a signed and settled deal and the future of the club had been secured for the foreseeable future.

In the event the Lease Variation Contract was "timed out." Then the current Mayor in his wisdom decided to impose a non-development Covenant on the golf course, which, if it stands, means that the club will no longer be able to realise the £5.3 million increase in its assets.

If this decision by the Mayor is confirmed it will destroy the club's carefully planned long-term strategy for survival and result in the club suffering a loss that exceeds £5 million. The club believes it may have a case for compensation based on the lack of continuity between two Council administrations.

Furthermore, the club will suggest that, if the Mayor had taken the trouble to ascertain all the facts before making his decision, he would have known that a Covenant on the golf club land was incapable of protecting the "social, environmental and economic interests of the residents of Churston/Galmpton" in contravention of GDC 2003.

The Mayor has also ignored the possibility that other better solutions were available, for example, a Covenant on all the golf club land with the exception of the 1st and 18th holes. A proposal of this type may well have been welcomed by the club and would have been free of the difficulties presented by the Covenant as proposed.

In addition, it is interesting to note that Bloor Homes were, and are, prepared to offer Torbay Council a sum well in excess of £2 million in settlement of the Lease Variation Contract on the 1st and 18th holes. It will, therefore, be interesting to discover how, in the context of GDC 2003, a valuation for the whole course could be for less than £2 million when 11 acres has already been granted planning permission for 90 plus houses.

### **4 The Mayor has exceeded his remit.**

The Council's Constitution states that, while individual councillors have a special duty to their Wards, the Mayor represents the community of Torbay as a whole and he cannot favour one part of the Bay over another. Therefore, in taking decisions, he must take into account the views of all interested parties from all sections of the Bay. Clearly the Mayor has it within his power to impose a Covenant but in making that decision his main consideration must be the overall effect on Torbay. Under the Constitution he is not permitted to favour a special interest group to the detriment of the remainder of the population of Torbay, which is precisely what he is doing with the Churston Covenant.

Churston Golf Club Ltd is the only major sporting venue on the Brixham Peninsula and as a community club provides a service to the whole of Torbay and beyond. The Covenant, therefore, effectively, takes control of Churston Golf Club away from the management of the club and hands it to the few residents of Churston/Galmpton to the detriment of the whole population of the Brixham peninsula and greater Torbay without the residents of Churston/Galmpton having any financial responsibility for ensuring the club is financially sound.

## **5 The Covenant puts Churston Golf Club in an impossible position.**

The Mayor and Deputy Mayor have tried to claim that this Covenant is not an anti-development Covenant but that is clearly disingenuous and frankly a ludicrous claim because that's precisely what it is. Clearly, the introduction of this Covenant has the potential to make Torbay's Development Management Committee redundant because Covenants of this type give unelected people the power to overturn any planning approval issued by the committee.

This Covenant effectively prevents Churston Golf Club engaging in any future development where planning approval is required because no developer will now be prepared to spend time and money putting together an expensive planning application knowing that, even if planning approval is gained, the local population are in a position to prevent it from going ahead – no developer would be prepared to take that chance. If the Covenant goes ahead Churston Golf Club will be in an impossible position and one that we believe will be unprecedented in this country.

In addition, this Covenant affects the club's 999-lease with the Council in that it introduces a third party into the club's relationship with its landlord. Under normal circumstances a leaseholder wishing to arrange a change of use for the land negotiates with his landlord. In Churston Golf Club's case it would appear that in addition to the Council the club will, in future, also have to negotiate with a third party i.e. the residents of Churston and Galmpton. The Council has made this change unilaterally without consultation and without seeking the club's permission to make a major change to the way its lease is operated. This begs the question, does the Council have the legal authority to do this and which legislation covers this situation?

## **6 The effect of the Covenant on Churston Golf Club's financial stability.**

Clearly this Covenant prevents the club from using its own assets to solve its financial problems and so secure its future to the benefit of everybody in Torbay, including the Council. As we don't expect a sudden and rapid increase in the demand for golf club membership in Torbay, which is one of the most deprived areas in the country, the outlook for the club is looking increasingly bleak.

In view of this difficult situation I am forced to mention the possibility of Churston Golf Club Ltd going into liquidation. Not only is this a very serious situation for the club it is also relevant to the discussions about this Covenant.

Many people, including some club members, cling to the belief that the club will be saved by an injection of cash from one or more benefactors. However, the legal status of the club, and its CASC registration, means that that is not a viable option as nobody is legally permitted to make any personal gain from investing in the company. What's probably more interesting from the Council's point of view is the status of the club's 999-year lease if the club does go into liquidation. The Inland Revenue's interest in the club, through the club's CASC registration, means that there can be no certainty about the future ownership of the lease.

## **7 Conclusion.**

It is obvious that the Churston/Galmpton residents who organised the petition thought that placing a Covenant on the golf course would bring an end to all their worries. Sadly, all they have achieved is the opening of a Pandora's Box with far reaching consequences right across the Bay and the Mayor will have to take responsibility for that.



T J Lake,  
Chairman,  
Churston Golf Club Limited.

**we don't just talk - we do!**

To:  
Gordon Oliver, Mayor  
Steve Parrock, Chief Executive  
Anne-Marie Bond, Solicitor

Jackie Stockman, Acting Chair Overview and Scrutiny

Call In Promoters:  
Chris Lewis  
Alan Tyerman  
Jane Barnby  
Steve Darling  
Neil Bent

Di Stubbley, Ward Councillor  
Derek Mills, Ward Councillor

Mark King, Executive Lead  
Richard Haddock, Executive Lead

2 November 2015

c/o 15 Waterside Road  
Paignton  
Devon  
TQ4 6LJ

chair@cgbpartnership.co.uk



Dear Anne-Marie,

**Re: Churston Golf Course Covenant**

We write to express concern at the proposed **second** Overview and Scrutiny meeting to be held in relation to the Churston Golf Course covenant on the basis that:

- The call-in is not valid as it does not comply with the Council's Constitution; and
- All matters raised in the call-in have already been addressed.

We evidence this position by reference to the chronology of decision making on this matter as set out below.

To resolve the concern we suggest that if the Overview and Scrutiny board is to have a **second** opportunity to consider a matter which they, and the Council, have already considered it must be clarified that such an opportunity is extended to them by the decision maker as a goodwill gesture only and not as constitutional right.

Such a clarification must extend to defining the options open to the Overview and Scrutiny board. It is our view that the Overview and Scrutiny board cannot debate the item but rather should simply note the call-in request and inform the call-in petitioners accordingly.



## Chronology

On 25 September 2014 a petition to Covenant was submitted to the Full Council by the Churston, Galmpton and Broadsands Community Partnership. Having debated the Petition, Minute Note 73 records that the Full Council recommended that:

*“the decision be deferred to allow further investigation by the Place Policy Development Group.”*

Having considered this recommendation, Minute Note 73 further records that the Mayor made a decision to grant the covenant. The decision notice states, amongst other things:

*“The Covenant would be appropriately registered with the Land Registry”*

*“Does the call-in procedure apply? Yes”*

On 7 October 2014, 9 Councillors called-in this decision. Their wide ranging reasons were:

*“That insufficient time was allowed to explore the implications and consequences of agreeing to the implementation of a covenant on Churston Golf Course and that the consequences of the Mayor implementing his decision could result in the Council acting illegally, the local tax payer becoming liable to legal costs and damages that could easily exceed £100,000, the Local Plan would become void and opening up greenfield sites for inappropriate development across Torbay and therefore we request that the Overview and Scrutiny Board carry out a detailed investigation into seeking answers to the following questions, assisted by the Executive Head of Commercial Services and other relevant officers:-*

1. *Is the proposed covenant legal...*
3. *What is the likely impact [on] the Local Plan...*
5. *Does the Churston Covenant result in any change to the financial value of land comprising Churston Golf Course? If so, how much is the change in value...*

On 16 October 2014, a 3 hour Overview and Scrutiny meeting was held. On 22 October, a further 3 hour Overview and Scrutiny meeting was held. The Overview and Scrutiny board resolved that:

*“the issue be referred to the Council for consideration for the following reasons: A range of additional information has been made available since the original decision was made and therefore due consideration should be given to the:*

- *legal implications of the decision*
- *financial implications of the decision*
- *implications for the Local Plan*
- *fairness of the decision on other wards in Torbay*
- *potential damage to the economy*

*The original recommendation of the Council was that the decision be deferred to allow further investigation by the Place Policy Development Group. Given the additional information now available, councillors should be given the opportunity to consider that information and make their recommendation.”*

On 4 December 2014, the matter was debated by the full Council. Minute note 115 records that that:

*“the Mayor be requested to reconsider his previous decision on the covenant protecting Churston Golf Course from development, and take no further action on the petition in light of the findings of the Overview and Scrutiny Board in respect of the following:*

- (a) legal implications of the decision;*
- (b) financial implications of the decision;*
- (c) implications for the Local Plan;*
- (d) fairness of the decision on other wards in Torbay; and*
- (e) potential damage to the economy.*

Having considered this recommendation and the advice of officers, Minute Note 115 further records that the Mayor made a decision to grant the covenant. The decision notice states, amongst other things:

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

*Is this a Key Decision?*

*No*

*Does the call-in procedure apply?*

*No as this is a response to a call-in in accordance with Standing Order D9.4B.”*

On 2 September 2015, following full examination of the disposal by the Secretary of State, including the Secretary of State seeking further information from the Council on at least 3 known occasions, the Secretary of State wrote to the Council to confirm the Mayor was entitled to rely on the executive powers already conferred to him by virtue of the *Local Government Act 1972: General Disposal Consent 2003*. The letter states:

*“Your Council may wish to give further consideration to the covenant, which in our view is not just focused towards ensuring the golf course remains undeveloped, but also aims to ensure that any proposed development of the course meets with the approval of the majority of local residents.*

*On the basis of the information provided to date, and as the covenant effectively empowers local residents to participate in decision-making concerning any future proposed development of the land, it appears to us arguable that such a covenant does promote local residents’ social, environmental and economic interests as required by the GDC 2003. In this regard it seems to us that local residents are themselves most likely to value their own social, economic and environmental interests when considering any future development proposed on the land.*

*It also appears to us that the proposed restrictive covenant is intended to ensure greater protection for local residents against unwelcome development of the land, and therefore may arguably promote their social, environmental and economic interests as required by the GDC 2003 because the covenant is against the freehold. In contrast, without the restrictive covenant, the Golf Club holds only a lease which it appears may be capable of being broken by the Council. The interests of residents may therefore be better protected by the proposed restrictive covenant than they are at present.*

*Finally, I refer to the Mayor's rationale for his decision to grant the covenant:*

*"...decisions on development of this land in the future should not be in the hands of one person (i.e. the Mayor...), but it should be for the majority of the ward to decide upon. The Mayor believes that this is the principle of localism at its best."*

*You may also wish to consider whether this rationale, which informs the decision to enter into the covenant, may also be consistent with the aim of promoting the well-being of residents as articulated in the GDC 2003."*

On 22 October 2015, the Mayor made a further decision in relation to the Covenant. The decision notice states, amongst other things:

*"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.*

*Is this a Key Decision?*

*Yes – Reference Number: I020921*

*Does the call-in procedure apply?*

*Yes – in respect of the decision to apply the General Disposal Consent (GDC) 2003 only. This element of the decision will come into force and may be implemented on 30 October 2015 unless the call-in procedure is triggered (as set out in Standard Orders in relation to Overview and Scrutiny*

### **Reason why the Call-in is not valid**

The decision of the Mayor on 4 December 2014 was the last stage in a response to a call-in. As such it is not again subject to call-in as a decision cannot be called-in twice. The decision recorded states this very clearly.

The decision of the Mayor on 4 December 2014 also makes no reference to the form of the consent to be sought from the Secretary of State i.e., whether it be a general or a specific consent.

The Mayor, acting on legal advice, has clarified his 4 December 2014 decision on 15 October 2015 to make it clear he intended to rely on the general consent.

Given that the 4 December 2014 decision was not capable of being subject to call in, it is our submission that 15 October 2015 clarification of that decision cannot be called-in either. We hence must respectfully point out that the call-in statement on the 15 October decision was incorrect.

If the current call-in - which we submit does not comply with the Council's constitution for the above reason - goes ahead, a constitutional problem arises.

Specifically the Overview and Scrutiny board, which is itself a sub-committee of the Full Council will reconsider a matter already considered by the Full Council. Article 5 of the standing orders at para 5.07b(i), makes it clear the Overview and Scrutiny board does not have the power to do this.

It is noted that the 15 October 2015 decision separates between the Secretary of State's general and specific consent and that call-in supporter may therefore claim a new decision has been taken. However, there are no grounds for this separation from the 4 December 2014 decision.

### **Reason why the Call-in reasons have already been addressed**

The Secretary of State, the Full Council on two occasions and the Overview and Scrutiny board in over 6 hours of deliberations have already considered the issue. There are no new issues that enable a further call-in right to be triggered.

Decision makers have already addressed the issues now purporting to justify this call-in. Indeed, no accusation is made that the issues have not been considered. Rather, the accusation is that the decision notice variously does not specifically state they have been dealt with.

Given the hard work which Officers put into drafting public Council documents to make them both legally correct and accessible to the community it seems highly unfair for the call-in promoters to criticise Officers for not reciting in a decision notice every piece of information already in the public domain.

For completeness we set out below the public information which already answers the call-in reasons:

#### **Community Strategy.**

Call-in petitioner's state:

*The General Disposal Consent Order 2003 states that "where applicable, authorities should have regard to the community strategy". The Record of Decision does not state how regard has been had to any community strategy.*

It is unclear from the use of the word "any" whether the call-in promoters are familiar with the Council's community strategy.

Were they to be familiar with the *Community Plan*, they could see that the Secretary of State's letter expressly refers to key aspects of plan.

The Community Plan states "*The plan aims to unlock Torbay's potential and drive forward its economic prosperity to deliver our vision of healthy, prosperous and happy communities with a higher quality of life*". In addressing this point, the Secretary of State has concluded "*a covenant does promote local residents' social, environmental and economic interests*".

The Community Plan states "*...our aim is to inspire and involve the community to get everyone working together to make Torbay a better place to live. We must bring communities together...*". In addressing this point, the Secretary of State has concluded "*the covenant effectively empowers local residents to participate in decision-making*".

Accordingly, this issue is already fully answered by the public information available to call-in petitioners.

### Valuation

Call-in petitioner's state:

*When last considering the proposed covenant, members were informed that the General Disposal Consent Order could only be relied upon "if the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million". No information is provided within the Record of Decision on the valuation that has taken place.*

The *Officer Response to the Call-in* by Anne-Marie Bond dated 16 October 2014 and considered by the Overview and Scrutiny board as an evidence document states:

*Having made the comments in Assumption 6 above, if the Overview and Scrutiny Board did ask what the financial loss in terms of any capital receipt (sic) then this would be £2M, based upon the above assumptions*

Accordingly, the Overview and Scrutiny board have already considered this issue.

### Advertisements

Call-in petitioner's state:

*The General Disposal Consent Order requires that before the making of the covenant, the Council's intention to do so should be advertised in a local newspaper for two consecutive weeks and any objections needed to be duly considered. It is understood that this advertisement was placed in December 2014. No reference to the response to this consultation is included in the Record of Decision.*

The disposal was correctly advertised. Indeed, still available as a download on the Churston Golf Club website is a generic template letter which the club requested members send in to the Council in response to the consultation. All such responses formed part of the information submitted to the Secretary of State.

Accordingly, this issue is already fully answered by the public information available to call-in petitioners.

### Local Plan

Call-in petitioner's state:

*Between that advertisement being placed and the Record of Decision being published, the Inspector's Final Report on the Examination into the Torbay Local Plan has been published. This included that (amongst other things) Churston Golf Club should be added to the list of possible housing sites for the medium/long term. This may impact on the views which people may wish to express in response to the advertisement.*

The petitioners appear to assert that the Golf Course 1<sup>st</sup> and 18<sup>th</sup> housing site was not in the Local Plan when the decision was advertised but that as it has now been included. This is not correct. Rather the situation is the other way round.

As at December 2014 when the advertisement was placed, the Golf Course 1<sup>st</sup> and 18<sup>th</sup> housing site was a “Committed” housing site in the Local Plan meaning that it was considered imminently deliverable. It also formed part of the Council’s 5 year land supply.

As at October 2015 when the decision was taken, the Golf Course 1<sup>st</sup> and 18<sup>th</sup> housing site was a rejected housing site in the Local Plan as according to Officers “*The site appears to be undeliverable based on [the Churston Golf Course Planning] Appeal decision*” and it did not form part of the 5 year land supply.

Although as at October 2015 it has been recommended by Inspector Holland that the site be included in a list of potential long term sites, this recommendation can only be actioned when the Local Plan is adopted at Full Council on 5 December. It seems also not to have been understood by the call-in petitioners that the Inspector has made it clear in his report at paragraph 67 that it will then be for the community to consider the matter further as part of the neighbourhood planning process, which itself will allow any further views to be made known by the community at that time.

Accordingly, this statement by the call-in petitioners has no relevance.

## **Conclusion**

To summarise we have a situation where a decision has been fully debated and the decision properly taken, and also properly recorded as not subject to further call-in. A **second** time call-in is clearly in breach of the Council’s Constitution.

To now hold an Overview and Scrutiny board meeting would be unconstitutional as to do so would seek to re-examine an issue already determined by the Full Council and indeed the Secretary of State.

Furthermore the reasons relied on by the call-in promoters to assert that the decision notice pertaining to the decision – and **not** the decision itself – is defective have already been addressed.

Holding meetings costs money. Given the very stretched financial resources of the Council it is surprising that call-in promoters considered it appropriate that the Overview and Scrutiny board consider this matter for a **second** time. This is particularly the case when fighting the recent Churston Golf Club planning appeal has already cost the Council many hundreds of thousands of pounds when the whole purpose of this covenant is to avoid such a situation occurring again.

We suggest that if the decision maker is to show goodwill to the Overview and Scrutiny board and indulge their desire to consider for a **second** time a matter which they now have no constitutional right to consider, it must be clarified that such an opportunity is extended by the decision maker as a goodwill gesture only - and does not exist by way of constitutional right.

Such a clarification must also extend to defining the options open to the Overview and Scrutiny board. It is our view that for the reasons previously explained, the Overview and Scrutiny board cannot debate the item but rather should simply note the call-in request and inform the call-in petitioners accordingly.

With kind regards,

*Adam*

Adam Billings

*Chairman*

*Churston, Galmpton and Broadsands Community Partnership*