



Friday, 14 July 2017

**POLICY DEVELOPMENT AND DECISION GROUP  
(JOINT OPERATIONS TEAM)**

A meeting of **Policy Development and Decision Group  
(Joint Operations Team)** will be held on

**Monday, 24 July 2017**

commencing at **4.00 pm**

The meeting will be held in the Riviera International Conference Centre,  
Chestnut Drive, Torquay

**Membership**

Councillor Haddock

Councillor Amil

Councillor Mills

Councillor Excell

Councillor Parrott

Councillor King

Mayor Oliver

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**A prosperous and healthy Torbay**

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

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# **POLICY DEVELOPMENT AND DECISION GROUP (JOINT OPERATIONS TEAM)**

## **AGENDA**

### **1. Apologies**

To receive apologies for absence.

### **2. Disclosure 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 Governance Support or Legal Services prior to the meeting.)

### **3. Minutes**

To confirm as a correct record the Minutes of the meeting of the Policy Development and Decision Group held on 18 May 2017.

(Pages 4 - 6)

### **4. Urgent Items**

To consider any other items the Chairman decides are urgent.

### **Part A - Policy Development**

### **5. Article 4 Direction for Houses in Multiple Occupation**

To consider a report on the above.

(To Follow)

### **Part B - Mayoral Decisions**

### **6. Mayor's response to the Section 5 report issued by the Monitoring Officer**

Attached is the Monitoring Officer Report issued pursuant to Section 5 of the Local Government and Housing Act 1989 and the Mayor's Decision in respect of the petition requesting a covenant protecting Churston Golf Course from development.

(Pages 7 - 17)



## **Minutes of the Policy Development and Decision Group (Joint Operations Team)**

**18 May 2017**

**-: Present :-**

The Mayor and Councillors Amil, Excell, Haddock, King and Parrott

(Also in attendance: Councillors Barnby, Morey, O'Dwyer, Stubley, Thomas (D), Tolchard and Tyerman)

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### **1. Election of Chairman**

Councillor Haddock was elected Chairman of the Policy Development and Decision Group (Joint Operations Team) for the 2017/2018 Municipal Year.

#### **Councillor Haddock in the Chair**

### **2. Apologies**

An apology for absence was received from Cllr Mills.

### **3. Appointment of Vice-Chairman**

No Vice-Chairman of the Policy Development and Decision Group was appointed at this time.

### **4. Minutes**

The minutes of the meeting of the Policy Development and Decision Group (Joint Operations Team) held on 26 April 2017 were confirmed as a correct record and signed by the Chairman.

### **5. Apprentices Strategy**

The Group considered the submitted report which set out a revised Employing Apprentices Strategy which took account of new Government targets and operating model, following the introduction of the Apprentices Levy.

The Policy Development and Decision Group (Joint Operations Team) made the following recommendations to the Mayor:

“That the Employing Apprentices Strategy 2017, as set out at Appendix 2 to the submitted report, be approved.”

The Mayor considered the recommendations of the Policy Development and Decision Group (Joint Operations Team) set out above at the meeting and his decision, together with further information is attached to these Minutes.

**6. Transformation Project - Generating Income through Housing Policy Framework Document**

The Group considered a report which set out the Mayor's proposal for the Policy Framework document to support the previous Council decision to establish three new companies to develop and own homes.

The Policy Development and Decision Group (Joint Operations Team) made the following recommendations to the Mayor:

“That the Housing Company Policy Framework document, as set out at Appendix 1 to the submitted report, be approved for consultation with the Overview and Scrutiny Board and submission to Council.”

The Mayor considered the recommendations of the Policy Development and Decision Group (Joint Operations Team) set out above at the meeting and his decision, together with further information is attached to these Minutes.

**7. Disposal of Land Adjacent to the Inn on the Quay, Tanners Road, Goodrington, Paignton**

The Group considered a report which set out a proposal from the operator of the Inn on the Quay at Goodrington, Paignton to expand their hotel by an extra 20 beds, within their existing leased area. To accommodate this, the tenant would require additional Council owned land for the additional car parking required.

The Policy Development and Decision Group (Joint Operations Team) made the following recommendations to the Mayor:

(i) That the Assistant Director – Corporate and Business Services, be requested to implement the procedure for the proposed disposal of “open space”, including public consultation, in respect of the proposed lease area identified in Appendix 3 to the submitted report;

(ii) That the results from the public consultation in (i) above be considered at a future meeting of the Policy Development and Decision Group (Joint Operations Team) together with the proposed details for the new lease;

(iii) That the Executive Head – Business Services be asked to explore the possibility of Premier Inn Hotels Ltd attending a meeting of the Community Partnership in the near future; and

(iv) That the Executive Head – Business Services be asked to bring together key stakeholders in Goodrington and report to a future Policy

Development and Decision Group (Joint Operations Team) with long term proposals for the area.”

The Mayor considered the recommendations of the Policy Development and Decision Group (Joint Operations Team) set out above at the meeting and his decision, together with further information is attached to these Minutes.

Chairman

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## **Monitoring Officer Report Issued pursuant to s.5 Local Government and Housing Act 1989**

3 July 2017

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### **1. Introduction**

- 1.1 In accordance with legislation and in accordance with the Council's Constitution, if I, as the Council's Monitoring Officer believe that any proposal, decision or omission by the Council (acting through the Executive or as the Council), has given rise to (or is likely to, or would give rise to) a contravention by the Council of "any enactment or rule of law" it is my duty to prepare a report ("a Monitoring Officer Report") on the matter.
- 1.2 I make this report believing that the decision of the Mayor dated 27 June 2017 is such a contravention.
- 1.3 As this report relates to a decision of the Mayor, it must be submitted to him. It must also be sent to every member of the Council.
- 1.4 In preparing a Monitoring Officer Report, I must, so far as is practicable, consult with the Chief Executive and the Chief Finance Officer. I have consulted with the Chief Executive, but it has not been possible to consult with the Chief Finance Officer due to his absence from the office on annual leave.
- 1.5 The Mayor must consider this report within 21 days of it first being sent to him and all members. The Mayor is under a duty to ensure that no step is taken to give effect to any decision to which this report relates until the end of the first business day after the day on which his consideration of the report is concluded and reported.
- 1.6 The Mayor must prepare a report setting out what action (if any) he has taken in response to this report; what action (if any) he proposes to take (and when); and his reasons for taking (or not taking) action. The Mayor must ensure that a copy of his report is sent to every member of the Council and myself as Monitoring Officer.

### **2. Contravention**

- 2.1 The Council's Policy Framework, in the form of the Asset Management Strategy states that the Council shall not restrict or reduce the current or future value of its assets through the use of contractual restrictions, covenants, or peppercorn rents.
- 2.2 The Council is the freehold owner of the land comprising Churston Golf Course.
- 2.3 The Mayor can only make decisions which are not contrary to the Policy Framework and are not contrary to (or not wholly in accordance with) the Budget. This is set out in law within The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Schedule 4, and as set out in the Constitution at F5.1;

"Executive functions may only take decisions that are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision that is contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Budget approved by the Council, then ... that decision may only be taken by the Council."

2.4 Therefore the Mayor cannot make any decision in respect of the land comprising Churston Golf Course if it reduces the current or future value of it.

2.5 The Mayor has previously sought to impose a 100 year covenant on the land at Churston Golf Course on 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, 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.'

2.6 However ultimately the Mayor withdrew his decision on 17 December 2015, although the Mayor's wish to place a covenant on the land remains on the Council's Forward Plan.

2.7 More recently the Mayor requested that Officers explore whether a covenant of a shorter period would result in a diminution of the value of the land at Churston Golf Course, and consequently the District Valuer was instructed to advise.

2.8 The District Valuer (DV) prepared his advice, as contained within a letter dated 17 May 2017 (attached as appendix 1). On 27 June 2017, I met with the Mayor and Deputy Mayor to discuss this advice, together with Liam Montgomery, Head of Asset Management within the TDA.

2.9 Within this meeting it was discussed that within the words used in Paragraph 11 of the DVs letter, there was a contradiction, highlighted in yellow as set out below;

"I have also been asked about the effect of a shorter period of time that a restricted covenant would last for and the effect on value. In my opinion a restrictive covenant of 5 years or less would probably have a negligible effect on value. My reasoning for this is that any development of the site is going to be a long term project with several hurdles to overcome. I think that once the term of the restrictive covenant is above 10 years there would be an effect on value."

It was agreed that the TDA would revert to the DV and ask that he consider this wording.

2.10 Consequently the DV issued a revised letter on 29 June 2017 (attached as appendix 2), and I met with the Mayor at 5pm on the same day and provided him with a copy. In respect of Paragraph 11 this stated;

“I have also been asked about the effect of a shorter period of time that a restricted covenant would last for and the effect on value. In my opinion a restrictive covenant of 5 years or less would still have a negative effect on value although this is likely to be minimal. My reasoning for this is that any development of the site is going to be a long term project with several hurdles to overcome. I think that once the term of the restrictive covenant is above 5 years, there would be a measurable negative effect on value.”

2.11 I advised the Mayor that the advice from the DV was now absolutely clear that the imposition of any covenant, irrespective of length, would result in a diminution in value of the asset. As such it was contrary to the Corporate Asset Management Plan which is a Policy Framework document, and therefore the Mayor could not make a decision to impose a covenant. The Mayor asked that further questions be submitted to the DV.

2.12 Shortly after returning to my office, the Mayor arrived and handed to me a Record of Decision dated 27 June 2017 (attached as appendix 3), placing a covenant on the land comprising of Churston Golf Course for a period of 10 years. It should be noted that the Record of Decision that the Mayor has signed does not accord in its entirety with Standing Orders in relation to Access to Information, namely E17.

2.13 I firmly advised the Mayor that he could not make the decision and that as Monitoring Officer I am required to advise all Councillors that such a decision was outside his powers as it was contrary to the Policy Framework. The Mayor acknowledged my advice, but confirmed that he was making the decision, and asked that it be published.

2.14 I have re-affirmed my advice to the Mayor earlier today, when I advised him as to the contents of this report, and the process that would now follow.

### **3. Conclusion**

3.1 The Mayor is seeking to make a decision that is unlawful as it is ultra vires (i.e. outside of his powers). The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Schedule 4 is clear that the Mayor cannot make a decision which is contrary to Policy Framework.

3.2 The revised letter of the DV does not, in my opinion, leave any ambiguity nor room for interpretation. The imposition of a covenant of any duration on the land at Churston Golf Club will result in a reduction in the value of the asset.

3.3 As such it is my clear belief that the Mayor's decision has given rise to a contravention of a rule of law, and therefore it is my duty to prepare this report and submit it to the Mayor and all Councillors.

**Anne-Marie Bond**  
**Monitoring Officer**

Appendix 1 : District Valuers Letter of 17 May 2017  
Appendix 2 : District Valuers Letter of 29 June 2017  
Appendix 3 : Decision of the Mayor dated 27 June 2017



Valuation Office Agency  
Longbrook House  
New North Road  
Exeter  
Devonshire EX4 4GL

Mr P Palmer MRICS  
Estates Manager  
Torbay Development Agency  
3<sup>rd</sup> Floor Tor Hill House  
Union Street  
TORQUAY  
TQ2 5QW

Our Reference : AD/CAY/ 1634558  
Your Reference :

Please ask for : Andrew Doak  
Tel : 03000 500143  
Mobile : 07850 795882  
E Mail : andrew.doak@voa.gsi.gov.uk

Date : 17 May 2017

Dear Paul

**Churston Golf Course**  
**Dartmouth Road, Churston Ferrers, TQ5 0LA**

1. I refer to your instructions dated 4 May 2017 and my terms of conditions dated 5 May 2017 in respect of this case. This letter should be treated as an addendum to my valuation report in respect of Churston Golf Club dated 3 February 2016 under case reference 1574234. This note extends and adds to the scope of advice provided in that report.
2. There are two parts to the advice you have requested; Part 1 relates the 1972 conveyance of the golf course land to Torbay Council and specifically clause 4 of that conveyance document. Part 2 is to consider whether a restrictive covenant imposed on the land lasting 30 years would change the restricted value of the property compared to a covenant for 100 years.
3. The conveyance is dated 20 December 1972 and is between Churston Golf Club as Vendor, Messrs Rawlence, Young & Bailey as Trustees, Woodcote (Guernsey) Investment Co Ltd as the Company and Torbay Council as Purchaser. The sale price for the land was £125,000. I have not seen a plan of the conveyance as it was not attached to the conveyance document and I have therefore assumed that the conveyance covers the whole of the golf course broadly as it exists now.
4. The conveyance is written in standard legal language so I will set out the terms as I broadly understand them. The conveyance creates a covenant that is for the benefit of the Trustees who own land adjoining the land included in the conveyance. The covenant will bind any future owner of the land as it passes with the land. It binds the purchase to use the land in such a way that there will always be an 18-hole golf course on part of the land. There is no mention of the length of the course required in this conveyance, although the subsequent lease under which the golf club currently occupies the course provided for a golf course of 18 holes and minimum length 6,000 yards. The Clause goes on to say that the provision of the golf course is required until such time as there is no public demand for a golf course. Any dispute on establishing whether public demand still exists can be referred to Arbitration. The conveyance does not define the criteria defining public demand nor when those criteria are met.

5. The covenant does not restrict the purchaser to maintain the existing boundaries of the Course, but does require the course to be of at least the same standard as the current one. I assume that the phrase "same standard" would imply that the replacement course would have to be of similar length, have a similar par score, of equal number of holes and be in the same locality as the current course.
6. The Clause then goes on to say that it will not be a breach of the covenant for the purchaser to sell Parcel OS4259. It also states that if Parcel OS4259 is disposed of, the purchaser will procure re-siting of the lost facilities in such a manner so as to produce a golf course and buildings no less suitable than the current facilities. I understand that Parcel OS4259 is the parcel of land that currently houses the Club House, 1<sup>st</sup> and 18<sup>th</sup> greens and the ancillary facilities such as the training school.
7. Essentially this Clause reinforces the use of the land as a golf course with the parcel that was subject to the potential sale to Bloor Homes being out-with the covenant. However the disposal of this land (Parcel OS4259) means that other work is required to maintain the golf course to the current standard within the remaining boundaries or by the acquisition of further land. It is perhaps worth mentioning that Clause 5 is a claw-back clause that provides for any increase in value on a sale of Parcel OS4259 to be divided between Torbay Council and Woodcote Guernsey Investment Co Ltd.
8. It is difficult to see that Clause 4 of the 1972 conveyance changes the current situation, because it always envisaged the possibility of development of Parcel OS4259 and the reality is that proposals have been in place to sell the land. The other issues however, mainly around access to other parts of the course for a replacement Club House etc. have not changed and this covenant does nothing to change those issues. Therefore, in my opinion, Clause 4 of the 1972 Conveyance does not change any of the opinions of value expressed in my previous report.
9. The second issue is the effect of the 30 year covenant against disposal of any part of the golf course for redevelopment unless it is approved by a Referendum of the local residents of Churston and Galmpton. My valuation of the restricted value of the golf course subject to the 100 year covenant took a discount from the development value to reflect the risk of the vote of the local population going against the proposals for development, over the next 100 years. The risk of a negative vote does not change but the risk profile changes slightly if the covenant period is reduced from 100 years (that is, near perpetuity) to a shorter period. By discounting the unrestricted value of the golf course with the potential for redevelopment over 30 years I arrive at a valuation of £785,000 as opposed to £618,500 reported in my previous valuation report.
10. Therefore, in my opinion this difference between £618,500 and £785,000 reflects the difference in value between a covenant against development for 100 years and a covenant against development for 30 years.
11. I have also been asked about the effect of a shorter period of time that a restricted covenant would last for and the effect on value. In my opinion a restrictive covenant of 5 years or less would probably have a negligible effect on value. My reasoning for this is that any development of the site is going to be a long term project with several hurdles to overcome. I think that once the term of the restrictive covenant is above 10 years, there would be an effect on value. This would be proportional to the length of the covenant, so the shorter the duration of the covenant the less effect on value, the longer the duration of the covenant the greater the discount to the unrestricted value.

12. I trust that this letter will give you the advice you need in respect of the above matter.  
Should you require any further explanation or further advice please do not hesitate to get in touch and I will be pleased to assist further.

Yours sincerely

D Andrew C Doak BSc MRICS  
Senior Surveyor  
RICS Registered Valuer  
DVS

Valuation Office Agency  
Longbrook House  
New North Road  
Exeter  
Devonshire EX4 4GL

Mr P Palmer MRICS  
Estates Manager  
Torbay Development Agency  
3<sup>rd</sup> Floor Tor Hill House  
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Our Reference : AD/CAY/ 1634558  
Your Reference :

Please ask for : Andrew Doak  
Tel : 03000 500143  
Mobile : 07850 795882  
E Mail : andrew.doak@voa.gsi.gov.uk

Date : 29 June 2017

Dear Paul

**Churston Golf Course**  
**Dartmouth Road, Churston Ferrers, TQ5 0LA**

1. I refer to your instructions dated 4 May 2017 and my terms of conditions dated 5 May 2017 in respect of this case. This letter should be treated as an addendum to my valuation report in respect of Churston Golf Club dated 3 February 2016 under case reference 1574234. This note extends and adds to the scope of advice provided in that report.
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12. I trust that this letter will give you the advice you need in respect of the above matter.  
Should you require any further explanation or further advice please contact me.

Yours sincerely

D Andrew C Doak BSc MRICS  
Senior Surveyor  
RICS Registered Valuer  
DVS

Record of Decisions

**Petition requesting a covenant protecting Churston Golf Course from development**

**Decision Taker**

Mayor on 27 June 2017

**Decision**

That following receipt of a valuation from the District Valuer dated 17 May 2017 which at paragraph 11 confirms that a 10 year covenant would not have an effect of the value of the Council's property interest in land comprising Churston Golf Course the Council enters into a deed of 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 **10 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 Mayor on behalf of the Council has all necessary information to make this Covenant. The covenant will then be appropriately registered with the Land Registry with immediate effect

**Reason for the Decision**

To implement the Mayor's Decision of 4 December 2014.

**Implementation**

This decision will come into force and may be implemented on 12 July 2017 unless the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

**Information**

At the Council meeting held on 4 December 2014 the Mayor decided to make a 100 year covenant.

At that stage the Mayor's legal advice was that he was required to specifically refer the disposal to the Secretary of State. This he did, but the Secretary of State subsequently confirmed the Mayor was entitled to use the General Disposal Consent and no such referral was in fact required.

The Mayor's legal advice was then to use the General Disposal Consent. This he did, but on the day satisfactory information was provided to the Mayor to allow him to rely on said consent the Council amended its constitution removing the Mayor's ability to implement the decision.

The Mayor continues to be able to make decisions on covenants where there is no value impact. The Mayor has been advised by the District Valuer that a 10 year covenant will not have a value impact. Accordingly, the Mayor has made a 10 year covenant.

The Mayor's decision is set out above.

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

Alternatives were considered.

One alternative considered was that the Mayor should move away from the clear commitment he has at all times made to the residents of Churston and Galampton and deny them a covenant. The Mayor does not prefer this option particularly when other covenants have recently been made for the people of Torquay in relation to Windmill Hill.

Another alternative considered was to revisit the previous circumstances which prevented the original 100 year covenant being implemented. The Mayor does not prefer this option either. On balance and having considered all the options the Mayor has determined a 10 year covenant is in the interest of Torbay as a whole.

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

No.

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

Yes.

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

None.

### **Published**

3 July 2017

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

Date: 27 June 2017