



Title: **Covenant Protecting Babbacombe Downs Against Development (Mayoral)**

Public Agenda Item: **Yes**

Wards Affected: **St Marychurch Ward**

To: **Council**

On: **17 July 2014**

Key Decision: **No**

Does the call-in procedure apply: **Yes.**

Change Budget: **No**

Change to Policy Framework: **No**

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1. **What we are trying to achieve**

- 1.1 To protect the area of Babbacombe Downs shown edged red on the attached plan.
- 1.2 To allow the present uses of Babbacombe Downs to continue as well as new uses provided that they are supported by the community.

2. **Recommendation(s) for decision**

That the Mayor be recommended:

- 2.1 That the Council considers entering into a deed covenanting with the residents of St Marychurch Ward as follows:-

“Torbay Council covenants with all inhabitants of the ward of St Marychurch that for a period of 100 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 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 St Marychurch 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”.

3. Key points and reason for recommendation

- 3.1 An application was made in 2014 by representatives of the community for a covenant on Babbacombe Downs.
- 3.2 By entering into the deed of covenant with the residents of the present St Marychurch Ward the Council will be unable to carry out substantial development of the green without first obtaining consent of the majority of those residents taking part on a referendum on the proposals.
- 3.3 The land affected by the covenant shall be that shown edged red on the plan attached to this report.
- 3.4 The most significant risk to the Council of entering into the proposed covenant is that should any substantial development be considered desirable over the next 100 years a referendum would have to be undertaken and a majority of votes in such a referendum would have to be in favour of the development before it could take place. The land already has some protection from the development due to the planning and political process and therefore could be considered as having adequate protection.

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

**Sue Cheriton
Executive Head Residents & Visitor Services**

Supporting Information

A1. Introduction and History

- A1.1 An application has been made by a representative of the community to place a covenant on Babbacombe Downs. This application has the support of the Ward Councillors and the Community Partnership.
- A1.2 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 street furniture such as bins, bench and shelters in the future.
- A1.8 If a covenant is placed, should the Council wish to build a structure 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.

A2 Risk assessment of preferred option

A2.1 Outline of significant key risks

- A2.1.1 If the Council does not progress the covenant application it could receive an application for village green status.

- A2.1.2 Should the Council wish to build a structure on the Covenant Land that was intended to remain for a period of more than 3 months it would first have to carry out a referendum of the residents of St Marychurch Ward. Even if the proposals were supported by the residents of St Marychurch Ward the delay caused in carrying out the referendum could result in the funding or support of the proposals being withdrawn or the Council being overlooked for any funding even where the proposals would be for the benefit of Paignton and/or Torbay as a whole.
- A2.1.3 The covenant is an absolute one, therefore any permanent structure would not be permitted without approval in a referendum. An exemption could be included in the covenant however this would need to be carefully worded and would not be in accordance with the 'absolute' nature of the covenant. Any land the members consider may be suitable for the erection of small but permanent structures may be better excluded from the Covenant Land.
- A2.1.4 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.
- A2.1.5 It is a basic rule of land law that covenants are taken for the benefit of property rather than a class of people. The land intended to be benefited should be identified if the covenant is to be enforceable. Such benefiting land would of course be worth more (as they could guarantee development would not occur which would protect the views they enjoy) and they should therefore have to pay for such a windfall.

A3. Other Options

- A3.1 To take no action as use of the land is controlled through the political and planning process.
- A3.2 To enter into the deed of covenant.
- A3.3 To add exemptions (in addition to temporary structures) allowing certain types of development to take place on the Covenant Land.

A4. Summary of resource implications

- A4.1 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.

A4.2 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.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 None

A6 Consultation and customer focus

A6.1 No public consultation has been carried out on the proposal, although the application has the support of the Ward Councillors and Community Partnership. Internal consultation with Legal Services and Senior Managers resulted in the officer recommendation that the land is adequately protected.

A7 Are there any implications for other Business Units?

A7.1 See A4.

Appendices:

Appendix 1 – Plan of Babbacombe Downs

Background Papers:

None