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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.