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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
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2 November 2015

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 1st and 18th 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 1st and 18th 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 1st and 18th 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