

Appendix 1

Officer 1

From: Officer 1
Sent: 22 December 2016 11:30
To: 'Diane Stubleby'; Person 1
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Person 1; Person 6; Officer 2;
Subject: Officer 5
UNCLASSIFIED:RE:The Common

Importance: High

Good morning Councillor Stubleby,

Given that I have been copied in to this email, it is necessary that I respond to seek clarification to which Council Solicitor you refer to with regards to confirming this information.

It is of great concern that works to Churston Common have been carried out without the necessary consent from appropriate Officers within the Council first being obtained. As such, it is my belief that once these works became known, the Council's Principal Officer for Natural Environment instructed that these works must cease with immediate effect. It is my further belief that a subsequent investigation will now be carried out in this regard.

As expressed to you on a number of occasions recently, before any further action was to be taken by the Council in regards to Churston Common, the community needed to come up with agreed options in respect of any proposed works being carried out to Churston Common and that these agreed options should be submitted in writing to the Council for the attention of Officer 2 who is the Council's Assistant Director (Community and Customer Service). On receipt of these proposals the Council would consider whether any of the options were lawful and if so, how they may be funded. To date the Council has not received any such agreed options.

Please do not hesitate to contact me should you wish to discuss this further.

Kind Regards

Officer 1

From: Diane Stubleby [mailto:Cllr Stubleby's personal email address]
Sent: 21 December 2016 13:34
To: Person 2
Cc: Mills, Derek; Mayor; Excell, Robert; Haddock, Richard; Officer 1; Person 1; Person 6
Subject: Re: The Common

Good morning Person 2,

Person 4 from natural England was in complete agreement with what has been done and will be relaying the information to you as she stated to me this morning.

Please send the list of names and addresses of the objectors to be kept on file along with those in favour for the community files on this matter. As Ward Councillor I need this information.

I enclose the reply I received from Person 4 below -
isn't this wonderful information she has provided about how the common CAN be used.

Thank you so much for putting her in touch to help clarify this matter. I will forward this on to the Council Solicitor who can research this to confirm this information to you.

I will add it has been checked out by a solicitor already both Person 1 and my daughter who is a lawyer, not to mention the Council Solicitor but please feel free to take independent legal advice if you so

wish. I will not need to reply to you again but the list of names and addresses of the objectors are needed to confirm the numbers for Council records.

Knowing the information that was researched and presented to Council to the Senior Councillors. also that Person 4 has confirmed along with two other independent solicitors as well as the Council's one simply highlights that this could all have been done years ago to save the Council serious amounts of money and officers time from many decades previously.

At least clarification has been brought to light now and it has been confirmed by various parties. A great deal of research has been done on this matter as you are now well aware.

Thank you very much for all your help by providing this contact to also confirm these facts. Who was also completely independent.

Brilliant result.

The matter is finally closed.

Kindest regards.

Diane

Enc.

Diane,

I think that what you are telling me is that there is a scheme of management in place – I think this would have originated from the 1899 Commons Act .This was ratified in 1930 -article 3 says:

The council may execute any necessary works of drainage, raising, levelling or fencing or other works for the protection and improvement of the Common and shall preserve the turf shrubs trees plants and grass thereon and for that purpose may for short periods enclose by fences such portions as may require rest to revive the same and may plant trees and shrubs for shelter or ornament and erect fences for the protection thereof and may place or erect seats shelters drinking fountains and conveniences upon and light the Common and otherwise improve the Common as a place of exercise or recreation, but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the Common or (subject as herein otherwise provided) interfere with free access to every part thereof and shall not...at any time hereafter erect any shelter or building in such a position as to be an annoyance to the inhabitants of or detrimental to any dwellinghouse erected or hereafter to be erected on lands adjacent to the Common .

I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purse ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the

common - was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge .

Regards,

Person 6

Senior Adviser for the Strategy and Implementation

M:07

Please note: I am multibased working out of a number of offices and at home. Please send mail to the following address:

Natural England, Rivers House, Sunrise Business Park, Higher Shaftsbury Road, Blandford Forum, Dorset , DT11 SST

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

On 21 December 2016 at 12:01, Person 2 <Person 2 email address> wrote:

I am afraid that I am not satisfied by your response, Di, and will continue to pursue the matter with the Commons solicitor and other bodies like Natural England. You do not appear to me to have observed the correct legal procedure. In my view, the installation of concrete blocks combined with boulders (of over 200 metres) has not been formally approved. The whole enterprise has been handled undemocratically. However, I am willing to accept that you have indeed been acting within the law if this can be confirmed by a legal body.

I can assure you that many people - not a mere handful! - are upset by the ugly barriers which have been erected, but it was the responsibility of council, authorised by the Planning Inspectorate, to conduct a proper consultation on what had never been agreed in the initial, unofficial consultation 2 years previously.

As I have already said, further exchange of emails is futile, so unless you can send me evidence of having observed the procedures outlined in the DEFRA documents, I want no further contact before Christmas.

Thank you for respecting this.

With thanks,

Best regards,

Helen

From: Diane Stubley [mailto:<:Councillor Stubley's Personal Email Address
Sent: 21 December 2016 10:43
To: Person 2
Cc: Person 1; Mills, Derek; robert.excell@torbay.gov.uk
Subject: Fwd: The Common

Good morning Person 2,

to put you in the picture I have at length replied to Person 4 the work that has been carried out, the **decision making process in the Town Hall by Senior Councillors**. Plus the permission that was granted by council officers to maintain the perimeter of the commons in accordance to the information of the bylaws affecting this land that have recently come to light.

I also concur as Ward Councillor with the CPI need to have a list of the objectors you mention as an etcetera simply as I represent the entire community on this ward and I have been given a list of names that support the Friends of the Commons. I also need to see the list of names of the objectors. I would be grateful if you could supply this list and their addresses.

Otherwise it would seem it that there are only a small handful of objectors so **the decision to go with the majority view by a democratic vote/consultation was also the right one taken in Council**.

.

With kind regards,

Diane

From: Person 1
To: Person 2
Cc: Person 6
Sent: Tuesday, 20 December 2016, 21:34
Subject: The Common

Hi Person 2

You sign one of your email's as Person 2 and Person 7, Person 8, person 9, Person 10, Person 11 etc

Can you please let the CP know who exactly the etc. are. We feel it is important to gain the number of people who feel like you all as we need to give proper representation to all members of the community.

I believe that the friends of the common have a list of their supporters.

Best wishes

Person 1

Best wishes

Person 1

Sent from my iPad

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Barlow, Amanda

From: Diane Stublely [Councillor Stublely's Personal Email Address]
Sent: 22 December 2016 22:33
To: Officer 1
Subject: Fwd: Galmpton Common and Travellers

Good evening Amanda,

I also enclose this

Date: 22 December 2016 at 22:28
 Subject: Re: Galmpton Common and Travellers
 To: Person 3 Derek Mills <derek.mills@torbay.gov.uk>, robert.excell@torbay.gov.uk
 Cc: Person 12, Person 1

Yes Peter the work was agreed by Senior Councillors in accordance with the legislation from the of state that granted permission for the local communities to do this.

I have copied and pasted this information below my response to you that was also agreed with the decision from Natural England.

The commons were originally known as 'The Warborough' it was given as a gift to the people of Chuston and Galmpton with strict conditions attached, it had originally been privately owned. That the land had to be kept vehicle free for the pleasure and usage of the local communities.

When the boundaries changed the land was transferred to Torbay Council from Totnes and The South Hams Council.

Torbay Council allowed Vehicles onto the commons against the conditions the land was gifted under. The benefactor heard about it and sent their land agent to check it out. The information they had been given was proved to be correct.

Torbay Council ignored the wishes of the benefactor and the local community and were taken to the High Court. The benefactor won their case and Torbay Council incurred considerable costs. For years this information was lost and recently came to light.

After the court case the case was brought before the Secretary of State who tightened up bylaws therefore allowing the local community the right to maintain the perimeters of the land with whatever means were listed under the bylaw. Also their right to enjoy the land if they so wished by planting trees shrubs, adding benches etc for the pleasure of the community if they so wished.

This information only recently came to light. The 1899 common law act relating to the usage on the commons by pedestrians and horse riders meant that permission was needed if the residents of the communities were going to be prevented from using common land if work was to be done that closed the common off.

But as the boulders and the concrete blocks vary in size so too the gaps the public were not being denied access when the work was being carried out. Therefore permission to carry out the work was not needed.

The Friends of the Common would have preferred natural boulders but none could be found locally and the cost of buying and transporting them was beyond the finances of the Friends.

The recent legislation and history relating to the commons was put before Senior Councillors from the Mayors Executive Group who considered all the history and facts. Plus the evidence provided about the original consultation process having been done under strict conditions and the choice of questions that were asked and the choice of what was preferred for the short term, mid term and long term plan to maintain the commons. Also the fact it had been advertised in the press, in Churston Library and also in the local Gazette several weeks before and lastly by Sarah Wollaston in her column.

You will then see the situation for yourself. A majority decision of 84% of the local community wanting the perimeter of the commons to be reinforced and maintained to prevent vehicle access was a majority decision.

The blocks will be painted green and the land will be allowed to settle then the grass will receive further attention in spring.

In reality, the commons are being protected by vehicle access under which the land was gifted and the bylaw tightened up and amended to allow the community to enjoy the common for their recreation and pleasure but also prevent vehicle access. But over generations this information had been lost or forgotten.

When all the facts and evidence was put before Senior Councillors they made the decision that the Friends of the Common were simply exercising their rights to do so as set out in the legal documentation from the then Secretary of State.

I think you will find this response from Person 4 interesting and I hope you fully understand the decision and why it was made.

With kind regards,
Diane

Diane,

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I think you are therefore saying that having obtained consent from PINS you became aware of the scheme of management and realised you did not need such consent, you realised at that point that you could choose the materials for the barrier to meet the situation and your purse ?

If this is the case I will get back to the members of the community who are unhappy with the situation and explain the situation to them. Yes I know that the local authority were taken to task for failing to protect the common - was it 1978. I did not know they had been subject to a hefty fine. Would seem self defeating- but I am not a lawyer or judge.

Regards,

Person 4

Senior Adviser for the Strategy and Implementation

On 22 December 2016 at 19:52, Person 3 wrote:

Hi Diane,

I see the blocks have now been placed on the common. I'm assuming the meeting to discuss this did not happen?

I would like you to know that my objections still stand. I know that 'beauty is in the eye of the beholder' but I cannot agree that these blocks do anything to enhance the look of the common.

They are somewhat lower than I had expected but it looks to me as though a couple of well placed car ramps would convert each block from a barrier and into an access point...

Can you please assure me that the council have agreed to this work?

Person 3

On 14 December 2016 at 12:23, Person 3 wrote:

Hi Di,

I walked over the common this morning and was surprised at the amount of digging that has happened.

It looks very much as though the ground has been prepared to accept 8 rectangular blocks of approximately 3m length.

Did I miss the meeting?

Can you assure me that this is being done within the law and with the agreement of the council?.

If there are plans, where can I inspect them?

Person 3

On 15 November 2016 at 22:26, Person 13 wrote:

There seems to be a little confusion Di, about the General meeting. In fact it is an open meeting organised by the friends group which will be held early in December. This will be widely publicised to encourage as

wide attendance as possible.
Best wishes Person 13
Title within community organisation
Sent from my iPhone

On 15 Nov 2016, at 19:08, Diane Stublely <Councillor Stublely's Personal Email Address> wrote:

Good evening Person 3,

I think a general meeting will be held after Christmas to discuss the two commons through the Local Community Partnership.

I do not know a date as yet but I feel sure you will all be informed when a date is decided upon.

The Community Partnership meeting will give everyone a chance to discuss and have more understanding of the problems that have been ongoing due to unauthorised encampments on both Commons - which were horrendous this year. i.e. a serious assault on a local person, verbal assaults and threats to walkers using the common, Mums stopping for ice creams and the verbal assaults made on her in front of her children. Men showing naked outside, in full view of the general public. Plus the cost involved to evict and clean up after they have gone.

It was so bad the Police picked up comments on social media of vigilantes threatening to firebomb the areas in order to get the travellers out of the area. The problems this year have been the worse so far.

I for one feel the personal safety of the general public should be paramount in the discussion.

With kind regards,

Diane

On 15 November 2016 at 16:32, Person 3 wrote:
Hi all,

sorry to be coming to this debate so late but we have only recently returned from a longer than usual holiday.

I have read the Emails that have passed between the GRA, FOGWC, local councillors and other residents of the area - with mounting concern - and felt I ought to express my views.

I am opposed to the use of 3m concrete blocks being placed round the common .

I got the impression from one EMail that this was a done deal. i.e. the blocks had been purchased and it was only due to other commitments they had not already been deployed. So I was relieved to read from Di Stublely that no decision about the concrete blocks has yet been made.

Apart from anything else I do not believe these blocks would work to keep the travellers off the common.

I took a stroll round the perimeter of the common yesterday and identified at least 10 gaps where I reckon I could move a single smallish rock and then drive my car onto the common (they are all on the Dartmouth Road).

The other query I would raise is about the way decisions are made concerning changes to the common.

If I want to make any alterations to my property it is a requirement that I apply for planning permission and this involves public notices on the street and plans available for perusal by interested parties.

Should this also be a requirement for proposed changes to the boundary of the common?

At least it gives everyone an opportunity to inspect the proposal and give feedback. The proposal is set out in black and white and changes can be forced if the result does not agree with the plans.

This would save a lot of discussions about what has and has not been agreed at past public consultations which some people may not have been able to attend.

Person 3 (long term resident of Galmpton in XXXXXXXXXXXX Road)

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Antrobus, Lisa

From: Gurry, June
Sent: 06 March 2017 11:43
To: Antrobus, Lisa
Subject: UNCLASSIFIED: FW: The Response - please read both emails

Please add to document file for the Standards complaint in respect of Councillor Stubley.
Thank you
June

June Gurry
Governance Support Manager
Corporate and Business Services
Torbay Council
(Telephone (01803) (20)7012, Fax (01803) 207011)

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From: Stubley, Di
Sent: 03 March 2017 15:25
To: Gurry, June <JuneGurry@torbay.gov.uk>
Cc: Person 1
Subject: Fwd: The Response - please read both emails

Hi June,

For complete transparency I am forwarding you this email which sets out all the information that is background knowledge on Churston Commons.

Please feel free to check everything out as this is both detailed and accurate information.

With kindest regards,

Di Stubley
Councillor for Churston with Galmpton Ward.

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Begin forwarded message:

From: "Stubley, Di" <Di.Stubley@torbay.gov.uk>
Date: 3 March 2017 at 14:35:40 GMT
To: Mayor <Mavor@torbay.gov.uk>, "Mills, Derek" <Clr.D.Mills@torbay.gov.uk>, "Excell, Robert" <Robert.Excell@torbay.gov.uk>, Officer 4

Officer 2, Person 6, Person 1, Person 12
Person 14, Officer 6, Person 15,
Person 13

Subject: Fwd: The Response- please read both emails

Good afternoon everyone,

I do feel I need to point out the obvious:-

1. I was approached by the FOGWC and the CP to arrange a meeting in December and asked to present all the evidence the FOGWC had kept on file to support their case to do maintenance work on the perimeter of the commons.

2. Person 16 was recovering from hip surgery and not in the Town Hall. Person 16 suggested I went into the Mayors support office to check availability of both his diary and Officer 1's to ensure a date and time when their diaries were free to book a meeting with the Friends and CP. It should have gone out in his name but by mistake it was sent out in mine.

3. **Officer 1 stormed down the corridor and tore a strip off me** for requesting a meeting and sending out the request from the Mayor's office. Stating she had to attend any meeting the Mayor sent out but she did not have to attend any meeting I sent out. Also that enough time had been spent on the commons and she did not feel any more should be done on the subject.

4. I was taken aback and maybe should have made a complaint about the way I was spoken to but did not wish to cause any upset. I did tell Councillor Mills and the Mayor of this incident.

5. The Mayor ensured that both Councillor Mills and Councillor Excel would be present in the 5th December meeting to look at all the evidence provided by the Friends group.

6. None of the Councillors made a decision, the evidence was considered and the Executive Councillors said they did not need to make any decision as the friends already had permission in place with the emails from Officers and the information that came to light with the Bylaws.

7. As these Bylaws were came across purely by accident none of the Councillors were even aware of them. Why did Torbay's Legal dept. not inform the Councillors of them as it was T.C.'s own legal dept. that set them up in the first place.

The Bylaws were done as preventative measures to stop vehicle incursions in the first place. (Thus saving the Council money to evict travellers when unauthorised encampments occur. Not to mention the upset to the local communities. Surely T.C. failed in their duty in this respect to inform the Councillors of these?)

8.The email from Officer 7 in 2015 was predominantly about the reinforcement of the boundary of the commons. The gate was not mentioned in the email provided by the Friends Group. The Officer Officer 7 was aware of the suggestion to put back a gate that had originally been on the common, therefore he mentioned this work in the email. Work to maintainthe boundaries was what was the main topic in this email where permission was granted by Patrick Camey who mentioned the community already had in place the option to do this as he quoted the Bylaws that later came to light, that neither the Community or the Councillors were even aware of.

9.Torbay Legal dept. were responsible following the court case in the 1970's when they were taken to the high court and lost for not adhering to the Covenant from the transfer of land from Person 17 to the people in the Parish of Churston.

After years of complaints by the Churston Community who complained to the Council to stop vehicle access on the commons The Solicitor Sutton Coulson eventually found the address of the person who gave the Land known as 'The Warborough' and informed her of the vehicle incursion on the commons. A court case followed which Torbay Council lost. The bylaws were then worked on by Torbay Councils Legal Dept. it was sent to the then Secretary of State for approval. It was then signed therefore ratified thus making the Bylaws legal which is my understanding from the information found online and from the local Library.

10. At the end of the day it is the local community who have shown by a huge majority that they wanted to reinforce the perimeter of the commons, thus saving the Council the cost through the eviction process.

I agree once incursions take place EU law is applicable in the process to evict travellers following checks on

children and the elderly before an eviction warrant can be obtained. Then there is the clean-up cost after they have gone all of which is paid for from rate payer's money.

11. Maybe the Secretary of State needs to be contacted for clarification that these Bylaws should or should not still be adhered to. Also if the choice of materials as a barrier method as mentioned in these Bylaws are still applicable, so that the use of only natural boulders as suggested in an email this week from an Officer is not the only choice for the local community.

Then at least the local community and the Ward Councillors would know what choices are permitted.

With kind regards,

Di Stubley

Councillor for Churston with Galmpton Ward.

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Sent from myPad

On 3 Mar 2017, at 11:56, Mills, Derek <Cllr.D.Mills@torbay.gov.uk> wrote:

Original Message-----

From: Person 1

Sent: 03 March 2017 10:00

To: Mills, Derek; Person 12; Person 6; Stubley, Di; Haddock, Richard; Mayor; Person 13

Subject: Re: The response

By the way we need to go to stage 2 of the complaint before we can go to the LA ombudsman .

On 3 Mar 2017, at 09:19, Person 1: wrote:

Hi All

I have now read the decision and have the following comments :-

1 I have never seen a response where the investigating officer confirms in it that she has been involved in the situation and made value judgement decisions on the specific thing complained about. The Common

2 She refers to the minutes of the meeting which she relies on; them states that they are incomplete(how does she know as no officer other than the minute taker were there) and then fails to recognise that they were draft.

3 Throughout she fails to recognise the duty on the Council to protect the Common under the Bye Laws and the Deed of Gift. She states that the Council have a tried and tested means of getting the Travellers off the Common but fails tom see that it is their duty to protect it from then Travellers in the first place.

4 It is unfortunate that Ward Councillors and Executive leads do not have powers. The question is why have ourElected Councillors allowed this state of adffairs to occur where the tail is firmly wagging the dog.

5 The investigating officer has failed to recognise that on 3 separate occasions permission was given and our executive leads stated in the meeting with us that they were of the view that permission was granted.

6 The investigation officer is failing to find the overwhelming good will of the majority of persons living in the area and the fact that they bare prepared to spend their own money rather than that of the Council in protecting the Common. I would point out again that there is a duty on Torbay Council to do more than clear up mess but to stop it in the first place.

I believe we should petition the Mayor and ask himm to make the decisiopn that we can go ahead and do what Torbay Council should be doing.

Person 1

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