



Title: **Covenant Protecting Paignton Green Against Development**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Paignton**

To: **Mayor** On: **27 September 2012**

Key Decision: **Yes**

Change to 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 Paignton Green shown edged red on the attached plan ('the Covenant Land') from future development without first obtaining the consent of a majority of the residents of Paignton who vote in a referendum on the development proposals.
- 1.2 To allow the present uses of Paignton Green to continue as well as new uses provided that any structure required for such uses is only on a temporary basis (6 months or less).

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

That the Council enters into a deed covenanting with the residents of Paignton as follows:-

"Torbay Council covenants with all inhabitants of the wards of Blatchcombe, Clifton with Maidenway, Goodrington with Roselands, Preston and Roundham with Hyde ("the Paignton Wards") 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 any of the Paignton Wards and are registered as local government electors at an

address within the Paignton Wards. For the purposes of this covenant 'permanent structure' shall mean any structure intended to remain on the land for a period greater than 6 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"

3. Key points and reason for recommendations

- 3.1 An application was made in 2010 to register the undeveloped portions of Paignton North, Middle and South Green as town or village green ('the Application Land')
- 3.2 The application was refused on the basis that it failed as a matter of law however councillors across all parties were keen that Paignton Green should be protected for future generations to continue using the green for the uses it is currently put to and similar uses
- 3.3 Although the Council could have voluntarily registered Paignton Green as town or village green such registration would bring into question some of the present uses as they are not consistent with lawful uses of a town or village green
- 3.4 By entering into the deed of covenant with the residents of the present Paignton Wards the Council will be unable to carry out substantial development of the green without first obtaining the consent of the majority of those residents taking part in a referendum on the proposals
- 3.5 The land affected by the covenant shall be that shown edged red on the plan attached to this report. The covenant will not affect the sites of the cinema, crazy golf course or the children's play park.
- 3.6 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

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

**Anne-Marie Bond
Executive Head Commercial Services**

Supporting information

A1. Introduction and History

- A1.1 In 2011 the Council considered an application made under the Commons Act 2006, Section 15(2) in respect of the undeveloped portions of Paignton North, Middle and South Green ('the Application Land') to register the Application Land as town or village green
- A1.2 The application was refused on the basis that it failed as a matter of law. The report considered in refusing the application by the then Deputy Chief Executive under her delegated powers is available as a background document.
- A1.3 At the time the application to register the Application Land was refused members across all groups were of the view that the protection of Paignton Green from significant development in the future was desirable and following discussions with local residents the covenant set out in the recommendation was suggested.
- A1.4 As registration authority despite the fact that the application failed as a matter of law it was within the power of the Council to register the Application Land as town or village green. However, the implications of such registration would have been that some of the present uses of the green would be unlawful and therefore susceptible to legal challenge and that future uses of the green could be affected.
- A1.5 The most significant current activity that could have been affected is the annual waste management conference on Paignton Green. Advice was sought and received from leading counsel and it was considered that the conference in its current form would be unlawful were the land registered as town or village green. Crucially, once registered, as a town or village green, a green cannot be 'un-registered', nor can exemptions from the legislation be created or rules allowing certain activities be set.
- A1.6 If the land was registered as town or village greens, whether a matter is unlawful is always a matter of fact and degree. However, if a significant proportion of a town or village green is fenced off or otherwise, so that the public cannot access that part without payment, it is likely to be unlawful and therefore susceptible to a successful legal challenge.
- A1.7 There is currently no intention to develop any of the land edged red on the plan. The reason that the red edging does not run up to the boundary of the green is because the Council may wish or need to enclose the green and/or update the present boundary structures. If the red edging followed the actual boundary of the green, the Council would not be able to do so without a referendum approving such structures. Furthermore, if it is deemed desirable to provide sites for the delivery of the services provided by the tenants of the refreshment kiosks currently situated on Paignton Beach on environmental grounds then the Council is able to do so. The Council may also wish to place beach huts on the seaward boundary of the north and middle greens without having to go the expense of a referendum.
- A1.8 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 wards 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 Should the Council wish to build a structure on the Covenant Land that was intended to remain for a period of more than 6 months it would have to first carry out a referendum of the residents of Paignton. Even if the proposals were supported by the residents of Paignton the delay caused in carrying out the referendum could result in the funding or support for 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.

A2.1.2 The covenant is an absolute one, therefore any permanent structure (including a bench or other street furniture) 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 that members consider may be suitable for the erection of small but permanent structures may be better excluded from the Covenant Land.

A2.1.3 It is considered that the above risks are acceptable on the basis that they go to the purpose of the covenant; which is to stop any further development of Paignton Green without the consent of the residents of Paignton

A2.2 Remaining risks

A2.2.1 Although a strip of land to the seaward side of the middle green is excluded from the Covenant Land until further proposals are developed officers do not know whether it will be possible to connect any new kiosks to the necessary services if they are built on this land.

A3. Other Options

A3.1 To not enter into the deed of covenant

A3.2 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.

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

A7. Are there any implications for other Business Units?

A7.1 See A4

Appendices

None

Background Papers

Report to the Deputy Chief Executive dated 12 May 2011