

Meeting: Council

Date: 8 August 2017

Wards Affected: All Wards

Report Title: Call-in of Mayor's Decision requesting a covenant protecting Churston Golf Course from development

Is the decision a key decision? No

When does the decision need to be implemented? once a decision has been made

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1. Proposal and Introduction

1.1 On 27 June 2016 the Mayor took the following decision:

“Petition requesting a covenant protecting Churston Golf Course from development and Monitoring Officer Report pursuant to Section 5 Local Government and Housing Act 1989

That following receipt of a valuation from the District Valuer dated 17 May 2017 which at paragraph 11 confirms that a 10 year covenant would not have an effect of the value of the Council's property interest in land comprising Churston Golf Course the Council enters into a deed of covenanting with the residents of Churston & Galmpton ward in the following terms:-

‘Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of **10 years** beginning on the date of this deed it will not on the land, shown edged in red on the plan attached to the submitted report to the Council meeting on 25 September 2014, known to be Churston Golf Course, allow any development of Churston Golf Course 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 the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant ‘development’ shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. Nothing contained or implied in this Deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument.’

In accordance with the Local Government Act 1972, the Mayor on behalf of the Council has all necessary information to make this Covenant. The covenant will then be appropriately registered with the Land Registry with immediate effect.”

- 1.2 The Mayor’s decision was called in for scrutiny and considered at the meeting of the Overview and Scrutiny Board held on 12 July 2017. An extract of their Minute is set out below:

“6. Petition requesting a covenant protecting Churston Golf Course from development

The Board considered the details of a call-in by seven Members of the Council of the decision of the Mayor to enter into a deed of covenant with the residents of Churston with Galmpton Ward for a period of 10 years in respect of land at Churston Golf Course.

The Call-in Promoter outlined that the decision had been published alongside a report issued by the Monitoring Officer pursuant to section 5 of the Local Government and Housing Act 1989. The Monitoring Officer’s report set out her view that the Mayor’s decision was outside the Council’s Budget and Policy Framework and was therefore ultra vires.

The Deputy Mayor read a letter from the Mayor to the Chairman of the Board asking that consideration of the call-in be deferred until he had responded to the Monitoring Officer’s report (which he was required to do within 21 days of it being issued).

Members of the Board indicated that they were minded to agree that the decision was contrary to the Council’s Budget and Policy Framework and, at that point, the Monitoring Officer provided advice to the Board.

Resolved: that, having heard the Monitoring Officer reconfirm her advice that the decision of the Mayor to place a covenant on the land at Churston Golf Course was contrary to the Policy Framework, the matter shall be referred to the Council in accordance with the Constitution.”

- 1.3 Members are requested to consider this report and firstly determine whether the decision if implemented would be contrary to Policy Framework or contrary to, or not wholly in accordance with the Budget.
- 1.4 The s.151 Officer has confirmed that there are no financial implications of the decision, and therefore it is his advice that the decision is in accordance with the Budget.
- 1.5 The advice of the Monitoring Officer is set out clearly in Appendix 2.
- 1.6 If Members determine that the decision, if implemented, would not be contrary to Policy Framework or contrary to, or not wholly in accordance with the Budget, they need to determine whether they wish to refer the decision back to the Mayor, setting out any concerns they have.
- 1.7 If Members determine that the decision, if implemented, would be contrary to Policy Framework or contrary to, or not wholly in accordance with the Budget, then the

decision shall be deemed as a recommendation to the Council and the Council itself shall take the final decision on the matter.

2. Reason for Proposal

- 2.1 To consider the recommendation of the Overview and Scrutiny Board and further information detailed in the submitted report.

3. Recommendation(s) / Proposed Decision

- 3.1 That the Council considers the contents of this report (including appendices) in determining whether or not the Mayor's decision dated 27 June 2016 in respect of a covenant protecting Churston Golf Course from development is contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Council's budget, and take any subsequent decisions that flow from their decision in this respect.

Appendices

- Appendix 1: Reasons for call-in Petition requesting a covenant protecting Churston Golf Course from development
Appendix 2: Monitoring Officer Report Issued pursuant to S.5 Local Government and Housing Act 1989
Appendix 3: District Valuer Letter 17 May 2017
Appendix 4: District Valuer Letter 29 June 2017
Appendix 5: Record of Decision Petition requesting a covenant protecting Churston Golf Course from development and Monitoring Officer Report pursuant to Section 5 Local Government and Housing Act 1989
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4. Background Information

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- 4.1 The Overview and Scrutiny Board considered the call-in notice and the Monitoring Officer's Report issued pursuant to S.5 Local Government and Housing Act 1989 in respect of the Mayor's decision regarding entering into a deed of covenant with the residents of Churston with Galmpton Ward for a period of 10 years in respect of land at Churston Golf Course and concluded that the decision of the Mayor to place a covenant on the land at Churston Golf Course was contrary to the Policy Framework and therefore the matter will be referred to the Council in accordance with the Constitution.

5. Options

- 5.1 In accordance with the Standing Orders, the Council has to firstly to determine whether or not the decision (if implemented) would be contrary to Policy Framework or contrary to, or not wholly in accordance with the Budget (D10.7).
- 5.2 If the Council determines that the decision would not be contrary to the Budget and Policy Framework, the subsequent action they can take it to refer any decision to which it objects back to the decision maker together with the Council's views on that decision (D9.4C).

5.3 If the Council decides that the decision would be contrary to Policy Framework or contrary to, or not wholly in accordance with the Budget, the decision shall be deemed as a recommendation to the Council and the Council itself shall take the final decision on the matter.