

Date of issue: 6<sup>th</sup> January, 2009

**MEETING**

**OVERVIEW & SCRUTINY COMMITTEE**

(Councillors Grewal (Chair), Basharat, Coad, Davis, Dodds, Haines, Matloob, Munkley and Walsh.)

**DATE AND TIME:**

THURSDAY, 15TH JANUARY, 2009 AT 6.30 PM

**VENUE:**

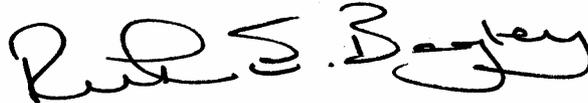
COUNCIL CHAMBER, TOWN HALL, BATH ROAD, SLOUGH

**DEMOCRATIC SERVICES  
OFFICER:  
(for all enquiries)**

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NOTICE OF MEETING

You are requested to attend the above Meeting at the time and date indicated to deal with the business set out in the following agenda.



**RUTH BAGLEY**  
Chief Executive

**NOTE TO MEMBERS**

This meeting is an approved duty for the payment of travel expenses.

**AGENDA**

**PART 1**

**AGENDA  
ITEM**

**REPORT TITLE**

**PAGE**

**WARD**

Apologies for absence.

**AGENDA**  
**ITEM**

**REPORT TITLE**

**PAGE**

**WARD**

**CONSTITUTIONAL MATTERS**

1. Declarations of Interest.

(Members are reminded of their duty to declare personal and personal prejudicial interests in matters coming before this meeting as set out in the Local Code of Conduct).

2. Minutes of the Meetings held on 4th and 24th November, 2008. 1 - 28

**SCRUTINY ISSUES**

3. Scrutiny of 'Castleview' Issue - Further Consideration. 29 - 48 Upton/All
4. Performance and Financial Reporting for 2008/09. 49 - 62
5. CPA to CAA – Implications for Overview and Scrutiny - Presentation by Improvement and Development Team.
6. Forward Agenda Plan. 63 - 64
7. Date of Next Meeting - Thursday, 5th February, 2009.

Press and Public

You are welcome to attend this meeting which is open to the press and public, as an observer. You will however be asked to leave before the Committee considers any items in the Part II agenda. Special facilities may be made available for disabled or non-English speaking persons. Please contact the Democratic Services Officer shown above for further details.



**Overview & Scrutiny Committee – Special Meeting held on Tuesday, 4th November, 2008.**

**Present:-** Councillors Basharat (Vice-Chair in the chair), Coad, Davis, Haines (part), Munkley (part) and Walsh.

**Also present under Rule 30:-** Councillors Dale-Gough, Dhillon, Plimmer and Stokes.

**Apologies for Absence:-** Councillor Dodds and Grewal.

**PART I**

**40. Meeting Procedure**

Some Members present queried the scope of the scrutiny being undertaken by the Committee, having understood that the Committee at its meeting on 11<sup>th</sup> September, 2008 had agreed to examine the whole history of the Castlevue site from 1999 to the present time. Councillor Stokes, who had submitted the post-decision call-in on this matter, advised that he had prepared a number of questions which dealt with the history of the site over a prolonged period up until the Cabinet decision of 10<sup>th</sup> March, 2008 and beyond. He had been advised when he had submitted pre- and post-decision call-ins in of the Cabinet's decision of 7<sup>th</sup> July, 2008 that he would be given the opportunity to ask any questions he wished to at an Overview and Scrutiny Committee meeting. If this was not the case then he would withdraw from the meeting and raise his concerns with the Council's auditors. Another Member indicated that he had attended the meeting of the Cabinet on 7<sup>th</sup> July with a series of questions and had also been advised that he would have the opportunity to deal with all of these matters at this meeting.

Officers advised that the minutes of the Overview and Scrutiny Committee of 11<sup>th</sup> September, 2008 indicated that the Committee had voted to undertake a post-decision scrutiny exercise of the decision taken by the Cabinet on 10<sup>th</sup> March, 2008 and these minutes had subsequently been approved by the Committee at its 9<sup>th</sup> October meeting. Some Members believed however that the Committee had indicated previously that it wished to carry out a wider scrutiny review than this and they did not consider that they could continue to take part in the meeting unless the scope of the scrutiny was widened.

The Borough Secretary and Solicitor indicated that his report responded to the specific issues raised by Councillor Stokes' call-in and he and other Officers present would certainly endeavour to deal with questions relating to events leading up the Cabinet decision of 10<sup>th</sup> March as well as with issues that had occurred subsequently. However, he commented that Councillor Stokes had previously indicated that there may be a number of other matters that he wished to raise although no further indication had been received from him nor from other Members as to what these matters might be. Accordingly, his report only addressed those matters of which he had received notice. However, he and the other Officers present were more than happy to deal

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with any issues Members wished to raise, with the caveat that where it was not possible to deal with a particular question at this meeting, Officers would carry out the necessary research and respond in writing to the Member.

The meeting adjourned at 6.50 p.m. to enable Members to consider the position and reconvened at 6.55 p.m. Members indicated that they were prepared to proceed on the basis outlined by the Borough Secretary and Solicitor. The Chair suggested that Members should ask any questions they wished to this evening but that if Officers were unable to respond at this meeting, written responses would be prepared.

### **41. Declarations of Interest**

The meeting noted that Councillor Grewal had absented himself from the meeting as he had previously declared a personal and prejudicial interest in the matter before the Committee.

Councillors Haines and Munkley declared a personal and prejudicial interest in the item before the Committee and withdrew from the meeting. Their prejudicial interest related to the fact that the business before the Committee concerned a decision made by the Cabinet on 10<sup>th</sup> March, 2008 when they were both Members of the Cabinet and were present when the decision relating to the Castlevew site was made.

In declaring his interest, Councillor Munkley stated that he disagreed with the interpretation of the Code of Conduct but had been advised that he could be in breach of it and as such felt that he had no option but to withdraw as he had never knowingly breached the Code. He did however feel that he had been placed in an unfair situation as he had always acted without any bias on all matters that he had considered.

Councillor Haines similarly stated that he would abide by the strict interpretation of the Code of Conduct and that he had always acted without any bias in all of his dealings on this matter.

Councillors Haines and Munkley then left the meeting.

### **42. Proposed Appropriation of Land at Upton Court Park, Slough - Post-Decision Call-Ins**

The Chair offered Councillor Stokes the opportunity to introduce his call-in. Councillor Stokes referred to his considerable concerns at what he saw as failings in the way in which this matter had been dealt with, with flawed, inaccurate information provided for Members and the provision of verbal information on other occasions when advice to Commissioners should more properly have been put in writing. He also referred to his concerns at how his pre- and post-decision call-ins had been handled by the Cabinet in what he considered to be a pre-determined manner and there had been no opportunity for serious consideration to be given to the points he wished to raise. He sought an assurance that the Overview and Scrutiny Committee would

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undertake a proper scrutiny of all of the issues that he and other Members wished to raise.

Another Member indicated that she remained concerned that Members were not being given the opportunity to properly scrutinise the issue and sought assurances that Members would be able to raise any matters they wished to. The Chair reminded the Committee that it had already been agreed that Members could raise any issues relating to this matter that they wished to and that where Officers were unable to respond at this meeting, they would provide written responses as requested. If however Members wished to adjourn this meeting so that written questions could be submitted then this was another option that could be considered.

A Member sought to clarification as to whether, if the Committee restricted itself to considering matters leading up to but not including the decision of the Cabinet of the 10<sup>th</sup> March 2008, then Councillors Haines and Munkley would be able to take part in the scrutiny. The Deputy Borough Solicitor advised that the provisions within the Code of Conduct were extremely prescriptive and referred to any matter "if it relates" to the matter under consideration. Accordingly, it would be not be possible for the two Members to take part.

Following further debate, it was agreed to proceed on the basis set out in that Members would be able to ask any questions they wished to on the matter with the proviso that, where Officers were unable to respond at this meeting, a written response would be prepared as soon as possible.

The Borough Secretary and Solicitor then introduced his report pointing out in particular that it was fully accepted that two mistakes had been made in the advice previously given to the Cabinet, namely relating to the Green Belt status of the Access Land and the law on the enforceability of restrictive covenants. Officers had previously apologised for these errors and these apologies were repeated in the report before the Committee. However, he was of the view that these issues had to be considered in the overall context of the matter and it was important for Members to know that the two errors had neither prejudiced the Council in any way nor caused it harm in respect of its possible future dealings with regard to the Access Land.

The Chair then invited Members to ask questions of the Borough Secretary and Solicitor and other Officers present at the meeting. A copy of the questions asked and the Officer responses is attached at **Appendix A** to these minutes.

On completion of the questioning, Members requested that a copy of the questions asked and the answers given be circulated to all Members of the Committee and this was agreed. A Member also asked whether it would be possible for these to be circulated at the same time to interested local residents and this was agreed, subject to the caveat that any matters containing exempt information would need to be excluded from the papers circulated to members of the public.

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Councillor Stokes indicated that he had a number of further questions that he wished to ask and would submit these in writing. Councillor Coad also indicated that she wished to raise a number of further questions. Following discussion, it was agreed that any further questions to be asked by Members on this issue be forwarded to the Borough Secretary and Solicitor by the end of November. Officers would then provide written responses to all of those questions by no later than the end of December. The questions and answers would be collated and circulated to the Committee at its meeting on 15<sup>th</sup> January, 2009 when a decision would be taken as to whether any further scrutiny should be undertaken into this matter.

### **Resolved –**

- (a) That copies of the questions and responses given at this meeting be circulated to Committee Members and to other interested parties including local residents (with the proviso that any exempt information will be excluded from the documentation forwarded to members of the public).
- (b) That Councillor Stokes and Committee Members submit any further questions on this matter in writing by the end of November, 2008.
- (c) That Officers respond in writing to the questions to which it had not been possible to provide an answer at this meeting and to any further questions received by the end of November, by no later than the end of December, 2008.
- (d) That a copy of all questions and replies be circulated with the agenda for the meeting of the Committee taking place on 15<sup>th</sup> January, 2009 and that the Committee consider at that meeting whether it wishes to undertake any further scrutiny of this matter.

Chair

(Note: The Meeting opened at 6.35 p.m. and closed at 8.55 p.m.)

**Appropriation of Land at Upton Court Park - Questions and Replies  
(where given) at Overview and Scrutiny Committee on 4<sup>th</sup> November,  
2008**

Questions by Councillor Coad

1. Page 2, para 5.6e. This paragraph acknowledges that there are restrictive covenants on the land in question but there appears to be a contradiction in that earlier reports did not acknowledge that restrictive covenants were an issue in this case.

Reply by Steven Quayle (SQ)

The briefing paper to Commissioners of February 2005 (page 95, para. 3.3) acknowledged that the covenant issue remained unresolved and that the land was subject to a restrictive covenant that limited its use to (effectively) parkland. The proposed use as access would require the covenant to be extinguished; the Council has statutory powers to do this. The briefing went on to advise that the interpretation of the use of these powers had been thrown into doubt by a recent court decision. The decision may be flawed and to make use of its powers, the Council would first need to successfully challenge the court's decision. The briefing paper then went on in the following paragraphs to set out the position at that time. Accordingly, Members were advised of the position with regard to the restrictive covenants from an early stage.

2. Page 3, para 6.2. I take issue with the statements in the final sentence, namely "it is felt these issues must be considered in the overall context of this matter and it is important for members to note that these two areas have neither prejudiced the Council in any way nor caused it harm in respect of its possible future dealing with the access land". I feel this is like raping someone's daughter and then asking her father the following day whether they could court her.

(Note - A Member of the Committee expressed his concern at the terminology being used by Councillor Coad and requested that she withdraw the comment that she had just made as he did not consider it to be appropriate in a public meeting. The Chair also suggested that Councillor Coad should withdraw the comment that she had made. Councillor Coad declined to withdraw her comment).

Reply by SQ

That statement is my opinion of the position and we will have to agree to disagree. Whilst the errors did give rise to some delay and some minor additional expense, I am still of the view that the decision of the Council did not prejudice the Council in any way nor cause harm in respect of possible future dealings.

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3. Page 7, para. 3.

Surely the statement that “many of the issues under scrutiny were complex. Without adequate documentation and without time to read that documentation no effective scrutiny was possible and none took place” underlines the point we are making in our call-in?

### Reply by SQ

Can I clarify that these words are those of Councillor Stokes as set out in his call-in. I reiterate that officers are more than happy to answer any questions submitted by Members but it would have been helpful to have as many of these in advance as possible so that replies could be prepared.

Councillor Coad indicated that whilst she had a number of further questions, she would submit these to officers in writing.

### Questions by Councillor Stokes

1. When did Officers first decide to explore the possible sale of Upton Park land to a developer and who were the Officers involved?
2. With how many companies did discussions take place? Which companies were they? Over which period did these discussions extend?
3. When did Officers first enter into formal or informal discussions and/or negotiations with Kelobridge? Over which period did these discussions extend?
4. Who were the Officers engaged in formal or informal discussions and/or negotiations with Kelobridge?
5. According to S.B.C. the farmland in question was put up for sale in 1997. Kelobridge bought the farmland in December, 1999. As Kelobridge was only formed in July, 1999, would Officers agree that it is reasonable to conclude that the company was formed as a development company with the Castleview project in mind?
6. Who was negotiating with the Council in 1999 before Kelobridge was formed?
7. When Kelobridge bought the farmland in December, 1999 they paid £9 million for the land knowing that there was no access to the site and subsequent planning permission could be problematical. An informed estimation of the value of the land at that time (given the status of the land) puts the figure at approximately £300,000. Why should Kelobridge pay a highly inflated sum for the land unless they had a strong conviction that access would be secured? Did any discussions

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take place with Officers that could have encouraged Kelobridge to embark upon what, on the face of it, was such an astonishingly optimistic financial gamble as to be reckless?

8. Kelobridge was registered on 22<sup>nd</sup> July, 1999 and took a mortgage charge in 1999. Therefore was S.B.C. negotiating with a company that had no proven track-record? If so, why? Was this not contrary to best practice?
9. Were any Councillors informed or consulted about any of the proceedings detailed above? If so, who were those Councillors and in what capacity were they involved?

### Reply by SQ

All of these questions relate to property issues, many of which go back to 1997 and 1999. It will not be possible to give an answer this evening but officers will research what information is still available and reply in writing.

(Councillor Davis expressed concern that the previous Administration had not taken the opportunity to look into these issues between 2004 and 2008 when they were in control of the Council. Councillor Stokes indicated that he had tried on a number of occasions to get answers to these questions but had been unsuccessful).

10. Why has S.B.C. made it difficult for residents to obtain information from the Planning Department? For example, why is the Council continuing to charge extortionately high fees for *information*?

### Reply by SQ

The Planning Service was charging quite high fees for the copying of documents in ignorance of a court case. This was pointed out by residents and the Covenant Movement and I understand appropriate copying fees are now being charged. The whole freedom of information function is now moving to legal services and the publication scheme is under review, together with the fees being charged. The fees were indeed high but I don't think they are now being charged at this level.

(SQ referred this matter to Gerry Wyld for clarification.)

### Reply by Gerry Wyld (GW)

We were made aware of the case referred to about the level of charges and the department has been reviewing its charges. I am unable to say this evening whether the revised charges have yet been introduced but will confirm this after the meeting - but they are certainly being revised.

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11. Are the fees being charged for information lawful?

See reply to question 10.

12. I have made repeated requests to be supplied with a copy of the Council's Information Charging Policy. Why have Officers refused to supply a copy of the Policy?

Reply to be sent in writing.

13. On several occasions I have been informed that "the policy is under review". If the policy is under review is that a reason for refusing to reveal the existing policy?

Reply to be sent in writing.

14. Does a Council Information Charging Policy actually exist?

Reply to be sent in writing.

15. Has the revised Council Information Charging policy been completed and if so why have Councillors not been given a copy of the policy?

See answer to question 10 and reply to be sent in writing.

16. Who is responsible for the Information Charging Policy?

See answer to question 10 and answer to be sent in writing.

Councillor Stokes also asked whether, if residents had been overcharged, would the Council reimburse them the overcharged amount?

Reply by Andrew Blake-Herbert (ABH)

If residents have been overcharged, I am more than happy to take the issue away and look into the possibility of reimbursing them.

17. The Planning Position (paragraph 5.8 p37) of 10/3/08 states that "the principle of residential development on the Castleview site serviced by a road through the access land". How and when was this principle established and by whom?

Reply by GW

The principle was established through the Local Plan for Slough adopted in March 2004.

18. What was the reason for Officers "dividing the issue" and submitting two papers on the Castleview issue to Cabinet Meeting on 10<sup>th</sup> March

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2008? Should the arguments not have been discussed within the context of one paper?

### Reply by SQ

It was decided to “split” the two issues as the decision to be taken on the appropriation issue was dependent on whether Members considered the Access Land was still required for open space purposes. If the decision taken on the first report regarding the possible appropriation of the Access Land was that it was still required for open space, then the Cabinet would not have needed to consider the second report. I wanted to make it clear that these were two separate issues and it would have been wrong to conflate the two. In the event, Members had discussed the two issues at the same time at the meeting but my view had been that it was preferable to consider them as two separate matters.

19. Why did Officers argue that “appropriation was just a technical matter”?

My view was that the appropriation was in essence a technical report about the statutory test. Obviously it had local implications if the appropriation took place but the report was in essence technical in nature.

20. What was the point of appropriating land if there was no intention to sell it?

See reply to question 18.

21. This Council is normally a Council that produces comprehensive and objective written documentation. Unfortunately this was not the case with the Castleview issue. Immediately following the Cabinet Meeting on 10<sup>th</sup> March 2008 as the then Leader of the Council I wrote to the Chief Executive to emphasise that Commissioners “felt that they were being driven towards a decision on the basis of considerable supposition and speculation. Much of that supposition and speculation was verbal and became variable with the passage of time”. Why was this over-reliance on verbal statements?

22. It is difficult to prepare a representative list of the inconsistent and, in some cases the contradictory, verbal advice given by Officers for the obvious reason that no written evidence exists. Questions 22-29 constitute a representative sample drawn from both written notes that I made at the point of expression and from a review of letters that I wrote to Officers after the point of expression. For example, Cabinet Commissioners were told initially that “the lifting of the covenant on the ransom strip would be a straightforward procedural matter, especially as an exhaustive search had not revealed a single resident with an interest in the covenant”. When this statement was made residents had already produced evidence to the contrary. What form did the

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“exhaustive search” take? How many residents were surveyed? Why was no detailed evidence ever submitted to Cabinet Commissioners and Members?

### Reply by SQ

There was not a survey as such but a search was undertaken of HM Land Registry records with a sample of 20 properties in total looked at. The cost of the searches was £12 each. Unfortunately the legal advice given was wrong as the Legal Officer looking at the matter misinterpreted the law. Accordingly, between November 2007 and 10<sup>th</sup> March 2008 the enforceability of the covenant position was wrongly stated. However, a note was given to Commissioners just before the Cabinet meeting on 10<sup>th</sup> March, 2008 explaining the correct position (page 33 of the documentation).

Officers were cautious throughout the whole process in respect of the restrictive covenants. In the briefing paper to Commissioners in September, 2007 (pages 19 and 20 of the pack) Members were advised that sample searches had been made and officers had tried to make it clear at various times what the position was. So I do not feel it is fair to state that the Cabinet had been told verbally that “an exhaustive search” had been carried out into the issue.

Councillor Stokes stated that he disagreed and that there had been a verbal statement at the Cabinet meeting that an exhaustive search had taken place and had found nothing.

23. Cabinet Commissioners were informed verbally that to “protect the Council if any residents emerged with an interest in the covenant a restrictive covenant policy could be purchased by the Council”. The Council was not able to obtain insurance cover. Do Officers consider that this is an indication of the Council being a bad risk in relation to the covenant? Why were Cabinet Commissioners and Members not notified of the failure to obtain insurance cover? How many insurance companies were approached and what reasons did they give for not insuring S.B.C?

### Reply by SQ

The briefing paper to Commissioners in September 2007 (page 21 para. 3.5) was cautious on this issue and stated that “*at present it seems unlikely that the Council would need to invoke the complicated and time consuming procedure under section 237 and may simply take the precaution of seeking a restrictive covenant indemnity policy. A quote is being sought from Zurich Municipal*”. Subsequently, at the Cabinet meeting on 26<sup>th</sup> November, 2007 Members had been advised (page 30, para 2.5) that “*if no one appears to have the benefit of the covenants the purchase of a restrictive covenant indemnity policy might be sufficient to enable the access land to be developed. These*

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*insurance policies are commonplace where restrictive covenants may be breached and the risk in value terms is small but much will depend on whether insurance company will take on the risk and at what cost. If this option is not viable or one of more properties benefit from the covenants then action under Section 237 would be appropriate.*” There again, consistent advice was being given and a cautious line adopted. In a briefing note to Commissioners in February 2008 (page 104 final para.) the Cabinet was advised that the Council had been unsuccessful in obtaining indemnity insurance against any claims arising from the covenant. It would therefore be necessary to start High Court proceedings to reverse the “Thames Water decision”. The note then went on advise that the Government had acknowledged that Thames Water case was illogical and that there was a proposal in the current Planning Bill to change the law but the earliest that it could come into law was September 2008. It was therefore being recommended that proceedings start in the High Court to reverse Thames Water decision as the final outcome and the timing of the Planning Bill was beyond the Council’s control. Accordingly, it is felt that consistent and cautious advice had been given throughout the process. As the national position changed, so Members were advised in writing of the current position.

Councillor Stokes asked whether insurance companies were not prepared to offer indemnity cover to the Council because it was too large a risk. SQ responded that, as with all insurance matters, if companies felt that there was a risk that they may have to pay out, then they may not be prepared to insure the Council or would charge very high premiums.

Councillor Stokes reiterated that he believed that very optimistic verbal assurances had been given but that these opinions were subsequently modified in writing. Accordingly, he felt that statements were often corrective of earlier verbal comments. ABH commented that the evidence showed that proper written information was provided around the indemnity insurance issue and the risks associated with it. His view was that the proper information and options were given in writing.

24. Cabinet Commissioners were told verbally that the Thames Valley Utilities Limited v Oxford City Council (1997) case represented a perverse judgment that soon would be corrected by government legislation. Subsequently Cabinet commissioners were informed in writing that “this High Court decision must be overturned by the Council in order to further any objective to facilitate the development of the development site”. Officer advice on impending Government became more pessimistic in writing (“it is unknown when this will become law if at all”). Cabinet Commissioners were then informed if S.B.C. failed in the High Court the Council would need to seek permission to go to the Court of Appeal. Thus S.B.C. would have to embark alone on expensive and by definition unpredictable legal action. How much

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would it cost S.B.C. to go to High Court and then to the Court of Appeal?

### Reply by SQ

The briefing note to Commissioners in September 2007 (page 20, paras. 3.3 onwards) advised on the position of restrictive covenants and stated that “the major obstacle the Council must overcome is the High Court case of the Thames Water Utilities Limited v Oxford City Council (1997). Although this is a little known case, its decision is of significant importance on the interpretation of Section 237. In summary the case decided that Section 237 did not apply to a user of land and therefore a local authority could not rely on it to permit a use in contravention of restrictive covenants. If the principle is applied to our case Section 237 would permit the construction of a road in contravention of the restrictive covenants (on payment of compensation) but not the subsequent use of it by motor vehicles. This High Court decision (which is the only decision on the interpretation of Section 237) must be overturned by the Council in order to further any objective to facilitate the development of the site. To do this the Council must seek a declaration in the High Court that the decision was wrongly decided. If this fails, it will be necessary to seek permission to go the Court of Appeal. Counsel has stated that there is a reasonable prospect of overturning the Thames Water decision”.

Counsel would not be prepared to provide a percentage likelihood of any success but always use the term “reasonable prospect”.

The matter had also been looked at by the Cabinet at its meeting on 26<sup>th</sup> November 2007 (page 31, paras. 2.8 and 2.9) when it had been additionally advised that there was a reasonable prospect of overturning the Thames Water case particularly as the Department of Communities and Local Government were consulting on an amendment to section 237 which sought to overcome the High Court decision. However, it was unknown when this would become law if at all. Accordingly, Members were kept updated on the current national position.

In the February 2008 briefing note (page 105) Members were advised that the Government was proposing changes in the current Planning Bill to change the law and the earliest it could become law was September 2008. Accordingly, Commissioners were told that there was progress on this issue. I feel that Members were kept apprised of changes relating to Section 237, etc.

The current position for Members’ information is that the matter is still going through Parliament with a view to overturning the Thames Water decision. I believe that the Members have been kept fully apprised of the changing position over time as evidenced by the various papers submitted.

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Councillor Stokes stated that he had asked for the verbal notes to be put in writing but had never received them.

25. Cabinet Commissioners were told verbally that the developer had offered to meet the legal costs of lifting the covenant. In what circumstances was this offer made? What conditions, if any, were attached to the offer?

To be responded to in writing.

26. Cabinet Commissioners were told verbally that the £5 million offered by the developer for the ransom strip must be accepted immediately otherwise the developer would walk away and S.B.C. would receive nothing. After the Cabinet rejected the £5 million offer the developer increased the offer to £7 million. Cabinet Commissioners came under very strong verbal pressure to accept the increased offer for reasons of "fiduciary duty". This pressure was applied in respect of the sale of the ransom strip only. Why was no mention made of the fiduciary duty of the Cabinet Commissioners in respect of possible financial liabilities arising from the covenant interests of residents?

To be responded to in writing.

27. Cabinet commissioners were told verbally that verbal advice had been drawn from a basis of "working notes". Requests have been made for copies of these "working notes" without success. Could copies of these notes be provided?

To be responded to in writing.

28. Cabinet Commissioners were provided with verbal summaries of opinions received from internal and external lawyers. Why were Cabinet Commissioners not provided with written copies of the legal advice?

Councillor Stokes added that he had been advised that it was not "custom and practice" to provide Members with copies of legal advice obtained. He took the view that it was essential that they could read the whole opinion and he felt that a recommendation should be submitted to the Cabinet that, in future, the decision makers were in possession of the full legal opinion.

### Reply by SQ

It is true that it is not custom and practice to provide Members with complete legal opinions either here or elsewhere. It is to be hoped that Councillors would trust officers to summarise an opinion given for Members' convenience. Any Members who wish to have a complete copy of an opinion will of course be provided with one if they ask.

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29. Incorrect legal advice was given to Cabinet Commissioners “that the benefit of the covenants had to be referred to in the Title deeds and documents i.e. at H.M. Land Registry”. As Officers have explained the provision of incorrect legal advice “was due to a Legal Officer misinterpreting the law on restrictive covenants and not reading the advice of Gregory Jones”. This explanation prompted several questions that I submitted, including the following:- Although the advice from Gregory Jones (an external lawyer) was “located on another file” is that an acceptable excuse for a legal officer not reading it? As there cannot be a multiplicity of opinions provided by lawyers retained by the Council is it not reasonable to expect all our Legal Officers to make themselves familiar with all opinions provided by lawyers retained by the Council? Would the personal development of each Legal Officer not be enhanced by a wider exchange of both direct and indirect information? In the light of the interest shown, and repeatedly expressed, by residents in the restrictive covenants should there not have been a checking and scrutinising procedure within our Legal Division in order to eliminate incorrect legal advice? As some residents had continually expressed more accurate views on the covenant issue should their comments have not been regarded as a “warning signal” that merited reconsideration by our Legal Officers? As no response has been received to any of these questions could Officers now respond?

### Reply by SQ

We all accept that the advice on the enforceability of the restrictive covenants was wrong and this has been fully accepted. The Legal Officer looking in to the matter did not realise that the advice by Gregory Jones existed because it was in a different file. However, Councillor Stokes makes a good point and I am happy to take this matter on board with the Deputy Borough Solicitor so that existing procedures can be improved to avoid such an error occurring again.

30. Some legal advice given to the Council has been unsatisfactory. For example, John Hobson Q.C. stated that: “The claim (by residents) is misconceived and raises no arguable case for Judicial Review because the Green Belt was irrelevant to the decision to appropriate under Section 122...” In granting a Judicial Review Mr Justice Collins rejected the views of John Hobson Q.C. and said that: “The fact that the access land was in the Green belt is arguably relevant to whether it was no longer required for open space (i.e. no development)...” Does a procedure exist for evaluating the quality of legal advice?

### Reply by SQ

It is rare that I do not anticipate the reply that will be given by Counsel and this is the response I expected in this case. Members should bear in mind the two stage process of Judicial Review proceedings (page 12, paras 4.6 onwards). In the permission stage, the judge simply

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looks at the paperwork and considers whether there is an arguable case which requires a full hearing. This legal hurdle is not an onerous one particularly where some of the decision makers are supporting the claimant. Counsel's opinion made it clear that the opinion related to the whole process and his view, which I agree with, was that the claim was misconceived and that the Green Belt status of the access land was not material to this issue. I believe that the advice received was completely right and that the Judicial Review will be unsuccessful.

31. Officers were not able to produce detailed information of the fees paid to all the external lawyers retained to advise on the Castlevue issue. How is it possible to spend Council Taxpayers' money on lawyers without having any record of the expenditure? Are there other lawyers' fees for which no record exists?

### Reply by ABH

There is not an individual cost code for each invoice as all these costs are aggregated within a particular code. However, if any particular invoice is required, then this can be extracted from the system if Members so wished.

32. At the Cabinet Meeting on 10/03/08 cabinet Commissioners were given the following advice by *officers*:- "This additional advice and information does not alter the position that the Council can apply to the Lands Tribunal for the release of the covenants on the disused car park and surrounding scrub land. Such application would be publicised and it would be open to those who can prove they have the benefit of the covenants to object. The Tribunal would hold hearings and make a determination if the covenants should be released from this piece of land and if any compensation is payable. It also does not alter the position that the development complained of does have planning permission and the developers have obtained other access routes albeit not as favourable for their development". This advice indicated that by making an application to the Lands Tribunal the Council would facilitate proper judicial hearing. All parties would be able to give evidence to the Tribunal to establish their covenant rights and benefits and, if the Tribunal thought fit to vary the covenants appropriate compensation would be awarded. The Cabinet may seek to avoid the Lands Tribunal and attempt to use a S.237 planning procedure to override legal rights normally dealt with by the Lands Tribunal where there would be a proper judicial consideration of the matter with evidence and expert witnesses. Some affected residents believe that such action by the Cabinet could contravene the provisions of the Human Rights Act 1998(see Chapter 42: Article and Right to respect for private and family life and Part II – The First Protocol – Article 1 – Protection of Property. What consideration has been given to the provisions of the Human Rights Act 1998?

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### Reply by SQ

I believe that section 237 of the Town and Country Planning Act meets the requirements of the Human Rights Act 1998 and I am not aware that it is incompatible. If it was, a "certificate of incompatibility" would have been issued by the Government. However, I will research this matter further and give a thorough reply.

33. The advice detailed in Paragraph 32 assumed that the developers have other access routes for their proposed back land development. As at 10.03.2008 and subsequently there was no planning permission outline for any "other access routes". Why was this assumption made?

Written reply to be provided.

34. The "Castlevew issue" has generated considerable concern in the minds of many Slough residents and in the minds of a significant number of Councillors. The Coalition Cabinet received some flawed information, some inaccurate information and some accurate information from Officers. The Coalition Cabinet experienced difficulty in determining the category within which the information should be classified. A major difficulty was the over-reliance on verbal information that was sometimes inaccurate, sometimes contradictory and often fluctuated in emphasis. The Council is accountable to residents and owes them a duty to ensure that the "Castlevew issue" is scrutinised independently and thoroughly by the Overview and Scrutiny without manipulation by, or pressure from, the Labour administration. Thus far the omens are not encouraging. My pre-decision call-in was conducted in an incomplete, superficial and pre-determined manner. My post-decision call-in was nullified. The Coalition Cabinet passed the Chair of the Overview and Scrutiny Committee to then Labour opposition. The Coalition Cabinet gave serious consideration to all recommendations from the Overview and Scrutiny Committee and accepted a majority of them. Some Labour Councillors have indicated to me that they do not agree with the decision of the Labour administration to take control of the Scrutiny process because the Labour Cabinet Commissioners will be in a position to "lean on" any of their inexperienced and deferential Councillors serving on the Overview and Scrutiny Committee. Thus far no analytical scrutiny of the "Castlevew issue" has taken place. Would members of the Overview and Scrutiny Committee agree that a comprehensive scrutiny of the "Castlevew issue" is necessary and could they indicate how such an exercise could be conducted?

Councillor Stokes added that this was not a question for officers but for the Committee to consider.

## **Overview & Scrutiny Committee – Meeting held on Monday, 24th November, 2008.**

**Present:-** Councillors Basharat (Vice-Chair in the Chair), Davis, Haines, Matloob, Munkley and Walsh.

**Also present under Rule 30:-** Councillors Anderson, S Chaudhry, Long, Maclsaac, Parmar, Plimmer and Swindlehurst.

**Apologies for Absence:-** Councillors Coad, Dodds and Grewal.

### **PART I**

#### **43. Declarations of Interest**

None were declared.

#### **44. Minutes**

The minutes of the meetings of the Committee held on 17<sup>th</sup> September and 9<sup>th</sup> October, 2008 were approved as a correct record and signed by the Chair.

#### **45. Minutes of Scrutiny Panels**

The minutes of the following Scrutiny Panels were noted:-

- Education and Children's Services of 1<sup>st</sup> September, 2008.
- Neighbourhoods and Renewal of 2<sup>nd</sup> September, 2008.
- Community, Leisure and Environment of 16<sup>th</sup> September, 2008.
- Health of 18<sup>th</sup> September, 2008.

#### **46. Health Scrutiny Panel - Appointment to Vacancy**

The Committee was requested to formally approve the appointment of Councillor Cryer to the Health Scrutiny Panel following the recent resignation of Councillor P Choudhry.

**Resolved -** That Councillor Cryer be appointed to the vacancy on the Health Scrutiny Panel.

#### **47. Revenue Budget Strategy - 2009/10 and Future Years**

The Strategic Director of Resources made a comprehensive presentation to the Committee setting out the latest assessment of the Council's budget projection for 2009/10 and future years and considering the opportunities and threats facing the authority in the short and medium term. He advised Members in particular that, without corrective action, there would be a significant budget gap, currently estimated at some £8.5m, in the next financial year and, for this reason, early decisions about savings and

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efficiencies were required so that a full year's financial effect could be achieved. The objective of the financial strategy was to work out how the Council wanted to structure and manage its finances and to ensure that this fitted with and supported the direction of the Council's stated objectives. There were two elements to this – firstly to set a balanced budget responding to year on year changes and supporting business continuity; and using the budget strategy to support and enable the transformation of services so that they matched the Council's priorities.

His presentation outlined the current revenue budget position and referred to the capital investment strategy as it was essential that the revenue implications of the capital programme were taken into account. The Council was currently in the middle of a three year budget cycle and knew that its growth in central government funding in each of the next two years would be set as £914,000 and £820,000 respectively. To meet ongoing commitments and continue to deliver business continuity of current services, whilst investing funds into the Council's new priorities, it would be essential for substantial savings to be identified both in this year and in future years.

He outlined the action that had been taken to date by Departments to identify a range of savings options for Members' consideration. Wherever possible, these savings derived from increased efficiency or the deletion of vacant posts. However, given the scale of the anticipated budget gap, there would inevitably be some reductions in service levels as well as potential redundancies. The Council would use its redeployment process to try to minimise the impact of the latter. It was being recommended that the savings options proposed in the presentation were approved without delay, rather than await the Council Tax setting meeting in February so that the savings could be achieved at the earliest opportunity. Further options to bridge the budget gap were being considered by Officers and would be reported back to the January cycle.

The Director then went on to outline the budget consultation process over the coming weeks with a range of methods being utilised to consult local residents, the business community, other stakeholders and staff. He advised that the Council had a good track record on consultation which had been held up as best practice by central government. Feedback from the consultation would be reported to Cabinet in January and taken into account before the budget was agreed by the Council in February, 2009.

The Director cautioned that, given that the potential budget gap in 2009/10, there was still an urgent need to identify further efficiencies and savings beyond those already presented if the gap was to be bridged.

Members raised the following issues in the subsequent debate:-

- Clarification was sought as to what work was currently being done in respect of the lobbying campaign on Slough's population figures. The Director advised that a great deal of work was ongoing and he referred to the acceptance by government earlier this year that the basis upon which

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the mid-year population estimates were compiled was inaccurate. Regrettably, the Department for Communities and Local Government had not been prepared to change the basis of the current financial settlement. However, the issue was being looked at in detail by government and, in addition, Slough had been selected for the carrying out of a sample survey to test the practices and procedures to be put into place for the 2011 census. This would give the authority the opportunity to influence the approach adopted by the Office for National Statistics (ONS), ensure that it was responsive to Slough's needs and also test the Council's own practices and learn locally for the census exercise. The ONS proposed to conduct a sample survey of 8,000 properties at the beginning of March, 2009, carrying out a full mini-census including address checks, recruiting local staff, carrying out the required publicity and door knocking on non-returned forms with the aim of learning as many lessons as possible. They were particularly interested in looking at houses in multiple occupation as well as individuals living in sheds or other temporary accommodation, etc.

- The Director reminded the Committee that the basis upon which the current settlement had been made was that Slough had a population of just under 120,000 and that there were some 41,000 properties in the town.
- A Member noted the demand on the Council in respect of care packages and asked whether the care home re-provision would bring down costs. The Director advised that there would be a one-off pressure during the transfer from the existing to the new care homes as there would be an element of dual funding whilst both were still in operation. However, this one-off pressure had been taken into account in the figures.
- The Director confirmed that there would need to be reductions in the current anticipated capital programme, given the revenue implications of a programme of over £71m. Again, it would be necessary for the Council to prioritise its key capital schemes based on the Council's spending priorities.
- In respect of the savings, a total of £5.2m had already been identified in 2009/10 but further work was ongoing to identify further savings to meet the budget gap. A Member asked whether any indication could be given at this time as to the possible number of redundancies that may result. The Director commented that it was not possible at this stage to put a figure on any redundancies as it would be necessary to examine Departmental structures in detail before such a figure could be arrived at. However, work was ongoing to identify such savings between now and February, 2009. Members were also advised that, wherever possible, vacant posts would be deleted as would non-essential posts currently filled by agency staff. Redeployment would be offered to any redundant staff wherever possible.

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- The Director confirmed that work was ongoing to identify further savings and a further report would be submitted to the Committee and to its Scrutiny Panels in January/February, 2009 prior to consideration by the Cabinet and Council in February. This would contain more detail for Members' consideration.
- The Leader of the Council stressed that, whilst the government had accepted that the current population figures were flawed, as no additional funding had been passed to the authority, the Council had no option but to live within its means and set a balanced budget for 2009/10. There was no ability to use balances, given that these were set at a prudent level and it was inevitable that the capital programme would have to be reduced. Even with the level of savings already identified, further work was required to ensure that the savings target was achieved.
- A Member asked whether the current administration's growth of some £0.5m in respect of improved recycling facilities and community wardens for every ward could be justified in the light of the current financial situation. The Leader responded that these were priority areas identified as part of its manifesto commitments and as such would proceed.

**Resolved -** That the current position be noted and that the Officers keep the Committee informed of ongoing progress in respect of the current budgetary situation and the work being undertaken to set a balanced budget.

### 48. Performance, Financial & HR Reporting for 2008/09

The Strategic Director of Resources presented his report highlighting the Council's overall performance from delivery of service to financial management. The report focused on performance management, the latest Human Resources statistics, the revenue monitoring position, the capital programme, a financial systems update and central debt management for the Council. He also advised of the Council's deposit of £2.5m in Heritable Bank, now in administration, and the actions already taken and to be taken in respect of the Treasury Management strategy in light of the current turmoil in the money markets. The report also included the annual report on the performance of the Investigations and Overpayments Unit in line with the recommendations of the KPMG report on "Countering Benefit Fraud". The Director also referred to the Balanced Scorecard which gave a rounded view of the Council's performance as it focused on five perspectives to achieve the authority's strategic priorities. He advised that a full scorecard would be submitted to the next meeting.

Members raised the following issues in the discussion:-

- With regard to the monies invested in the Heritable Bank, it was noted that the outlook appeared more optimistic as the administrators were hoping to sell the Bank as a going concern and it may result in the Council's assets being released.

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- A Member referred to the Council Tax collection rate and sought clarification as to whether the figure of 57.4% collected at the end of September was on target. The Director responded that this was the highest percentage collection rate achieved at this stage in the financial year. He also referred to the target of 99% collected which the Council had not yet achieved although it had gone very close during the last financial year. Members were advised that 95% had been collected in year during 2007/08 but that outstanding arrears continued to be pursued in the following years so that as high a collection figure as possible was achieved. Reference was also made to the action taken in respect of benefit frauds and it was confirmed that where prosecution were successfully pursued, the Council would recover monies back from the government.
- The Leader of the Council referred to the continuing high rates of return on the Council's investments and, in particular, the excellent performance of the Treasury Management Team over the past ten years which had secured the Council additional income of some £4.5m. Notwithstanding the recent problem with the Heritable Bank, the Treasury Management function continued to perform excellently.
- A Member sought an assurance that the highways maintenance programme would be achieved within the current financial year, given the good performance in 2007/08. The Commissioner for Neighbourhoods & Renewal advised that much of the spend on highways work was incurred during the latter part of the financial year and he did not expect the authority to fall short in respect of highway improvement schemes in the current year.

**Resolved** - That the report be noted.

### 49. Shared Services for Transactional Back Office Functions

The Strategic Director of Resources presented a report to be submitted to Cabinet shortly seeking approval to the programme business case to commence a joint procurement with two other local authorities and select a private sector partner to enable the creation of a Local Government Shared Service Joint Venture. He advised that shared service arrangements would link to the effective and efficient running of transactional functions within the Council the aim being to deliver top quartile performance and lowest quartile costs. Shared services were not a new practice, with this authority already having a number of shared service arrangements with the Berkshire authorities going back to 1998 when the former Berkshire County Council services were disaggregated. However, recent government initiatives linked to the Gershon efficiency review had been forcing local authorities to consider further shared services, particularly for back office functions as a way of driving down costs. This authority was keen to be at the forefront of such arrangements, if they were right for the Council, to enable it to have maximum influence over what they looked like, rather than to be forced into an arrangement that may not suit the authority's needs. Officers had been

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looking into options for shared service arrangements and had been working closely with another Berkshire unitary. However, other opportunities had been kept under review and the proposal now was to enter into a proposed shared service arrangement with two other local authorities elsewhere in the country which presented a very exciting opportunity for Slough to be at the forefront of shared service arrangements. A copy of the full business case had been circulated to Committee Members in the Part II agenda and, if Members wished to discuss this in any detail, it would be necessary to exclude the press and public.

Whilst this provided a very exciting opportunity for Slough to be at the forefront of shared service arrangements, there were significant risks involved and it was important that Members understood what was being proposed, and challenged the assumptions before considering whether the Council should press ahead with such an arrangement.

The Director outlined the next steps, assuming the Cabinet approved the Officer recommendation. The initial stage would be to advertise for a private sector partner and the proposal for a preferred supplier would be brought back to Cabinet with the aim of setting up the joint venture by 1<sup>st</sup> April 2010.

The strategic risks of this proposal had been identified and were set out for Members' consideration. A risk register had been compiled and this was to be reviewed in a workshop of key stakeholders every six months at which the probability and impact of each risk was considered and any new risks identified. However, the view of Officers was that the proposal contained significant potential benefits for the authority to improve its efficiency in a number of back office transactional arrangements as well as driving down costs and it was accordingly being recommended to Cabinet on that basis.

Members raised the following issues in the subsequent debate:-

- In response to a Member question, the Director advised that the two other local authorities were already working jointly and discussions had been held with them with a view to a joint venture of three authorities. It may be possible for other authorities to join at a later date which would give rise to greater economies of scale. It was felt to be important for Slough to become involved at an early stage as the government would be requiring participation in such ventures in the future and the authority may have less influence at that stage.
- Some Members expressed concern at the figure of £1m capital expenditure to fund the procurement project at a time when the Council was having to reduce its capital programme. There was concern that such expenditure may be difficult to justify as against the other Council service priorities. The Director responded that whilst there was indeed an element of risk involved in any venture of this nature, the Council needed to make improvements to its processes in any case and this was likely to cost even more if the Council went it alone. This joint venture would mean that the cost of the procurement was shared with two other authorities. In addition,

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the anticipated year on year efficiency savings shown were set at a prudent figure and it was anticipated that a higher level of savings may in fact be achieved. Moreover, as referred to earlier, if other authorities became involved, the likely savings would be even higher. Officers were firmly of the view that the joint venture would bring significant benefits and that, notwithstanding the element of risk which would be managed, the Council had little option in the long run but to undertake this exercise. Members were also reminded that the cost of not driving down costs and improving efficiency also needed to be balanced in the equation.

- It was stressed that the types of processes to be included initially within the venture were of the “back office” type including payroll, some Human Resources functions and financial processes. The three authorities used a similar financial IT system and it would be advantageous for there to be a single platform for these types of processes. There was also the advantage of business continuity should one authority suffer IT issues. There was also the opportunity for the Council to act as a pilot for the rest of the country and this was advantageous for the reasons stated earlier.
- Members asked whether sufficient safeguards were in place to ensure that there was no slippage in the programme and that all three authorities gave the project the same priority. Officers responded that all three authorities were like-minded and there would be agreed and fit for purpose governance arrangements and a signed partnership agreement which would include milestones to be achieved by certain dates. All three authorities were very firmly fixed on those milestones. The Officer view was that although the programme was ambitious it was achievable.
- A Member asked whether there were exit strategies in place should the programme not deliver as anticipated. The Officer confirmed that exit strategies would be included as part of the partnership agreement.
- With regard to the possible co-location of staff, it was noted that in most cases there would be a “virtual co-location”, although some rationalisation would probably be necessary.
- A Member asked whether, should the arrangement prove beneficial, it would be possible to extend the agreement beyond the ten years proposed. The Officers responded that the initial arrangement with an external partner would be for ten years and it would then be necessary to re-procure if this was the desire of the authorities.
- A Member asked whether this venture, if it continued to evolve, could lead to a loss of some independence by the authority. Officers confirmed that only the three authorities entering the arrangement would be involved in managing the process and they would have the major influence in how it progressed. This was one of the advantages of entering the arrangement early. Similarly, there were no concerns about the political dimension as regards Members’ influence over matters as the arrangement would be purely about driving out costs and introducing efficiencies in back office

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processes and ensuring that best practice was achieved. In this regard the three authorities would work together with the private partner to design best practice in each area, challenging the current practices and procedures and arriving at a more cost effective approach to the functions in question.

- A Member referred to the fact that the Leader of the Council worked for a company that was currently working for the other two authorities and asked whether this could lead to a conflict of interest. Officers responded that Slough would not be involved with that contract and there would be a full procurement process for the private sector partner for the joint venture which would be fully transparent. In the event that the company in question was the preferred bidder, then the Leader and anyone else who had any connection would not be involved in the process, in accordance with normal practice.
- The Leader of the Council stressed that all authorities would be forced to enter such arrangements in due course and, as it was essential to improve processes in any case to drive down costs, it was indeed advantageous to be involved at this early stage. He confirmed that this was not in relation to the customer-facing services but purely in respect of back office functions. The great advantage for the Council was that it would give rise to significant economies of scale which should assist the Council in becoming ever more efficient.
- A Member expressed his ongoing concerns at the upfront costs of procurement and the period over which these costs would be recouped. Whilst he had no doubt that such arrangements could be to the best interests of both residents and staff, he was uncertain from the information provided whether the costs would not in fact be higher than those shown in the report. He requested that further consideration be given to the detailed business case in the Part II agenda and this was agreed. However, he did ask that the tangible benefits estimated at saving £2.9m over four years from the service commencement were in fact the total savings for all three authorities rather than simply for Slough as this was unclear in the report.
- The Committee agreed to give further consideration to the business case in the Part II agenda.

**Resolved** - That the report be noted.

### 50. **Heart of Slough - Update on Scheme Progress and Approval of Bus Station Scheme and Key Terms with Development Partner**

The Strategic Director of Resources provided an update on the current position with the Heart of Slough project and in particular the bus station quadrant and discussions with Development Securities. He reminded the Committee of the background to the scheme and its objectives. In addition, he referred to the withdrawal of Berkeley Homes from the scheme prior to the submission of the master plan. Negotiations had continued with Thames

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Valley University since then to negotiate that their element of the TVU site was brought forward with the Council's part of the site to deliver the whole site as part of the master plan. Berkeley Homes had no commitment to build on site until market conditions were appropriate, so in the current circumstances there was no delay to the delivery of the scheme and there was time to tender for a developer. Discussions with TVU were ongoing and positive although there was always a risk that they would not bring the site forward due to current market circumstances or until the value of the site had risen. This could in itself delay English Partnerships' commitment to commence the highway infrastructure.

The Committee was updated on negotiations with First Bus Group who had an occupational licence to use the current bus station until 2018. To ensure that the development proceeded, the Council needed to negotiate a surrender of this agreement and some detailed discussions had now taken place around the design and layout of the new bus station and about offering them a new lease and licence on similar terms to those that currently exist. Whilst negotiations were still ongoing, and in order to protect the Council's position, it was being suggested that Officers investigate using compulsory purchase powers to acquire First Buses' interest as a fallback position in the event that negotiations failed.

The Committee was also updated on negotiations with Development Securities who had verbally confirmed that they remained committed to the project. Maintaining the support of a key commercial partner in the current market was considered key to maintaining momentum and confidence in the Heart of Slough. Particular reference was made to the state of the property market at the present time and the effect that this was having on the scheme. The dramatic slowdown of the commercial property market had inevitably had a significant impact on the viability of new speculative development and Development Securities, whilst still committed to the project, were no longer able to proceed on the previously agreed financial terms.

The Heart of Slough, like many complex regeneration schemes, required a medium view to be taken on returns and values. In addition, Development Securities were still some way off being able to commence development on the Brunel site as this depended on the location of the bus station. Whilst it was clear that no speculative development was likely to commence in the immediate short term, and views were mixed as to when activity would improve within the property sector, it was important that steps were taken to enable early development of the site once the market conditions improved.

Progress was being made on the scheme generally and it was hoped that planning permission for the new bus station and Phase I of the Development Securities scheme would be granted early in 2009 with a resolution to grant planning permission for the master plan soon after this. Discussions were ongoing with other landowners and stakeholders including First Bus.

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Obtaining control of the Compair House site would enable the Council to commence on site with the new bus station during 2009 which would reflect positively on Slough's image at a time of national downturn.

Members raised the following issues in the subsequent debate:-

- Clarification was sought as to whether the withdrawal of Berkeley Homes had undermined the Heart of Slough scheme. The Director reiterated that it did not as the housing scheme had not been programmed for any particular timeframe and it would be possible to discuss with TVU alternative proposals and bring forward a scheme on a phased basis if necessary.
- Members also sought an assurance that the verbal commitment of Development Securities to remain involved would be honoured. The Director commented that he believed that they continued to be committed to the scheme and had devoted a great deal of time and money on the project.
- A Member asked whether the University would continue to have a presence on site and was advised that the current University buildings were not fit for purpose and the plan was to provide a new purpose-built University building as part of the master plan.
- With regard to the bus station site, a Member stressed that if at all possible, the roadway between the railway station and the new bus station should be traffic free and asked whether this was feasible. Officers responded that the intention was that there should only be low traffic usage by for example buses and taxis but that the aim was indeed to make the area much more pedestrian friendly. Reference was also made to the desirability of improving cycle facilities in the area with prominent cycleways included as part of the scheme. Officers responded that the encouragement of the use of cycles was indeed included within the scheme but the comments of Members to make cycleways as prominent as possible would be taken back for further consideration.
- Members also raised a number of issues with regard to the ongoing negotiations with First Bus to which Officers responded. The current contractual and on-site arrangements at the bus station were noted and the options being considered and discussed with the company were outlined. Members would be kept advised of the outcomes of the ongoing negotiations.

**Resolved** - That the report and the current position be noted.

### 51. Proposed Scrutiny Visit to Select Committee

The Scrutiny Officer sought the views of the Committee on whether they wished her to organise a visit to view a Parliamentary Select Committee or a meeting of the Greater London Assembly undertaking scrutiny. Members

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expressed their willingness to undertake such a visit and the Officer undertook to write with further details and dates shortly.

**Resolved** - That a visit for Members be arranged to observe either a Parliamentary Select Committee or a meeting of the Greater London Assembly and that full details be circulated to all Committee Members.

### 52. Forward Agenda Plan

The Committee noted its agenda plan for future meetings.

### 53. Exclusion of the Press and Public

**Resolved** - That the press and public be excluded from the meeting during consideration of the item in Part II of the agenda as it involves the likely disclosure of exempt information relating to the financial and business affairs of any particular person (including the authority) as defined in paragraph 3 of Part I of Schedule 12(A) of the Local Government Act 1972 (as amended).

## PART II

### 54. Shared Services for Transactional Back Office Functions

(The following is a summary of the discussion in the Part II agenda).

The Strategic Director of Resources responded to a number of questions raised by Members on the detailed business case presented including further information on the full costs of the joint venture; the likely savings and efficiencies; and potential redundancy costs if required.

Particular reference was made to the pension rights of any transferred staff and Officers responded that, given that the three authorities were in different geographical areas of the country, it would be necessary for the three partners to choose which pension scheme any transferred staff should be included within, with the most advantageous being chosen. It was noted that any transferred staff would have a right to remain in the Local Government Pension Scheme but that it would be closed to any new employees of the joint venture. This was the arrangement that had occurred with other TUPE arrangements including with Slough Community Leisure Ltd. Following further discussion, the Officer undertook to provide further detailed information for the Member on the pension arrangements for Slough Community Leisure Ltd and People 1<sup>st</sup> (Slough) Ltd.

**Resolved** - That the position be noted.

Chair

(Note: The Meeting opened at 6.30 p.m. and closed at 9.40 p.m.)

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**SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview and Scrutiny Committee    **DATE:** 15<sup>th</sup> January, 2009

**CONTACT OFFICER:** Kevin Barrett, Democratic Services Manager  
**(For all enquiries)** (01753) 875014

**WARD(S):** Upton/All

**PART I**  
**FOR CONSIDERATION**

**SCRUTINY OF “CASTLEVIEW” ISSUE – FURTHER CONSIDERATION**

**1    Purpose of Report**

- 1.1 As agreed at the special meeting of the Committee on 4<sup>th</sup> November, 2008 this report submits the questions received from Members on the “Castleview” issue by the end of November together with the Officer responses to those questions.
- 1.2 The Committee is asked to consider what further action it wishes to take on this matter, if any.

**2.    Recommendation**

- 2.1 That the Committee consider whether it wishes to undertake any further scrutiny of this matter.

**3.    Key Priorities**

- 3.1 None arising from this administrative report.

**4.    Other Implications**

- 4.1 There are no direct financial, staffing or legal (including Human Rights) implications arising from this report. However, any recommendations made by the Committee may result in such matters arising.

**5.    Background/Supporting Information**

- 5.1 The Committee at its special meeting on 4<sup>th</sup> November, 2008 considered a number of questions submitted by Councillors Coad and Stokes arising out of their post-decision call-ins submitted relating to the proposed appropriation of land at Upton Court Park, the “Castleview” issue. The Committee resolved as follows:-
  - (a) That copies of the questions and responses given at this meeting be circulated to Committee Members and to other interested parties including local residents (with the proviso that any exempt information will be excluded from the documentation forwarded to members of the public).
  - (b) That Councillor Stokes and Committee Members submit any further questions on this matter in writing by the end of November, 2008.

- (c) That Officers respond in writing to the questions to which it had not been possible to provide an answer at this meeting and to any further questions received by the end of November, by no later than the end of December, 2008.
- (d) That a copy of all questions and replies be circulated with the agenda for the meeting of the Committee taking place on 15<sup>th</sup> January, 2009 and that the Committee consider at that meeting whether it wishes to undertake any further scrutiny of this matter.

5.2 Subsequent to the November meeting, a number of further questions were received from Councillor Stokes and Councillor Davis before the end of November. Responses to these were circulated to all Committee Members and to Councillor Stokes on 9<sup>th</sup> December, 2008. A copy of all of the questions received by the end of November together with the responses submitted is attached at **Appendix A**. (It should be noted that there are a number of questions where it has not been possible for Officers to give a full response due to the non-availability of files or where the information relates to issues that occurred some 10 years ago.)

5.3 Subsequently, Councillor Stokes has submitted a number of further questions by letter dated 19<sup>th</sup> December, 2008.

5.4 As referred to above, the Committee agreed that it would at this meeting consider all of the questions and responses and decide whether to undertake any further scrutiny of this matter. The Committee's decision is requested.

## **6. Appendices**

Appendix A – Questions received by the end of November, 2008 and responses thereto.

## **7. Background Papers**

Agenda and minutes of the meeting of the Committee held on 4<sup>th</sup> November, 2008.

**Appropriation of Land at Upton Court Park – Questions Received by the End of November 2008 and Officer Replies**

Questions by Councillor Coad

1. Page 2, para 5.6e. This paragraph acknowledges that there are restrictive covenants on the land in question but there appears to be a contradiction in that earlier reports did not acknowledge that restrictive covenants were an issue in this case.

Reply

The briefing paper to Commissioners of February 2005 (page 95, para. 3.3) acknowledged that the covenant issue remained unresolved and that the land was subject to a restrictive covenant that limited its use to (effectively) parkland. The proposed use as access would require the covenant to be extinguished; the Council has statutory powers to do this. The briefing went on to advise that the interpretation of the use of these powers had been thrown into doubt by a recent court decision. The decision may be flawed and to make use of its powers, the Council would first need to successfully challenge the court's decision. The briefing paper then went on in the following paragraphs to set out the position at that time. Accordingly, Members were advised of the position with regard to the restrictive covenants from an early stage.

2. Page 3, para 6.2. I take issue with the statements in the final sentence, namely "it is felt these issues must be considered in the overall context of this matter and it is important for members to note that these two areas have neither prejudiced the Council in any way nor caused it harm in respect of its possible future dealing with the access land". I feel this is like raping someone's daughter and then asking her father the following day whether they could court her.

Reply

That statement is my opinion of the position and we will have to agree to disagree. Whilst the errors did give rise to some delay and some minor additional expense, I am still of the view that the decision of the Council did not prejudice the Council in any way nor cause harm in respect of possible future dealings.

3. Page 7, para. 3.

Surely the statement that "many of the issues under scrutiny were complex. Without adequate documentation and without time to read that documentation no effective scrutiny was possible and none took place" underlines the point we are making in our call-in?

Reply

Can I clarify that these words are those of Councillor Stokes as set out in his call-in. I reiterate that officers are more than happy to answer any questions submitted by Members but it would have been helpful to have as many of these in advance as

possible so that replies could be prepared.

Councillor Coad indicated that whilst she had a number of further questions, she would submit these to officers in writing.

### Questions by Councillor Stokes

1. When did Officers first decide to explore the possible sale of Upton Park land to a developer and who were the Officers involved?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

2. With how many companies did discussions take place? Which companies were they? Over which period did these discussions extend?

#### Reply

From the information available, Officers are only aware of discussions taking place with Kelobridge and their advisers. There are no files or correspondence available to indicate over what period these discussions have extended.

3. When did Officers first enter into formal or informal discussions and/or negotiations with Kelobridge? Over which period did these discussions extend?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

4. Who were the Officers engaged in formal or informal discussions and/or negotiations with Kelobridge?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

5. According to S.B.C. the farmland in question was put up for sale in 1997. Kelobridge bought the farmland in December, 1999. As Kelobridge was only formed in July, 1999, would Officers agree that it is reasonable to conclude that the company was formed as a development company with the Castleview project in mind?

#### Reply

That is a possibility but Officers do not have any information to confirm that this is the case.

6. Who was negotiating with the Council in 1999 before Kelobridge was formed?

### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

7. When Kelobridge bought the farmland in December, 1999 they paid £9 million for the land knowing that there was no access to the site and subsequent planning permission could be problematical. An informed estimation of the value of the land at that time (given the status of the land) puts the figure at approximately £300,000. Why should Kelobridge pay a highly inflated sum for the land unless they had a strong conviction that access would be secured? Did any discussions take place with Officers that could have encouraged Kelobridge to embark upon what, on the face of it, was such an astonishingly optimistic financial gamble as to be reckless?

### Reply

Until recently, it was common practice for developers to pay high prices to land bank sites in prime locations where they felt there might be a reasonable prospect of development taking place at some point in the future. With regard to the specific question as to whether Kelobridge were encouraged by officers to purchase the land, there are no files or correspondence available to enable an accurate and informed answer to be provided.

8. Kelobridge was registered on 22<sup>nd</sup> July, 1999 and took a mortgage charge in 1999. Therefore was S.B.C. negotiating with a company that had no proven track-record? If so, why? Was this not contrary to best practice?

### Reply

The Council negotiated with Kelobridge because they are the freeholders of the land in question. Belmont Homes is the UK subsidiary of Kelobridge Ltd.

9. Were any Councillors informed or consulted about any of the proceedings detailed above? If so, who were those Councillors and in what capacity were they involved?

### Reply

There are no files or correspondence available relating to events around 1997 – 1999 and it is not possible to provide an accurate and informed answer concerning any involvement by or consultation with Councillors during the period referred to.

10. Why has S.B.C. made it difficult for residents to obtain information from the Planning Department? For example, why is the Council continuing to charge extortionately high fees for *information*?

### Reply

The Planning Service was charging quite high fees for the copying of documents in ignorance of a court case. This was pointed out by residents and the Covenant Movement and I understand appropriate copying fees are now being charged. The whole freedom of information function is now moving to legal services and the publication scheme is under review, together with the fees being charged. The fees

were indeed high but I don't think they are now being charged at this level.

11. Are the fees being charged for information lawful?

See reply to question 10.

12. I have made repeated requests to be supplied with a copy of the Council's Information Charging Policy. Why have Officers refused to supply a copy of the Policy?

Reply

There is no one policy in existence. In some cases a statutory fee is payable, in others fees are set by the Council. In addition, the FoI Publication Scheme does refer to charges although not to amounts.

13. On several occasions I have been informed that "the policy is under review". If the policy is under review is that a reason for refusing to reveal the existing policy?

Reply

The scale of charges for copies of planning documents has now been reviewed following the Markinson case and representations subsequently received. Charges are now 10p per A4 sheet and 20p per A3 sheet. Alternatively, copies of planning decisions can be downloaded from the new on-line system (without charge) which has all cases going back to 1964.

The previous scale of charges had been in place for a number of years and was broadly based at a level required to cover costs of the work.

14. Does a Council Information Charging Policy actually exist?

See reply to Q 12.

15. Has the revised Council Information Charging policy been completed and if so why have Councillors not been given a copy of the policy?

Reply

The planning charges have been reviewed in light of the Markinson case.

16. Who is responsible for the Information Charging Policy?

The Council sets some fees and charges but others are set by law/regulation.

(Councillor Stokes also asked whether, if residents had been overcharged, would the Council reimburse them the overcharged amount?)

Reply by Andrew Blake-Herbert (ABH)

If residents have been overcharged, I am more than happy to take the issue away and look into the possibility of reimbursing them.

17. The Planning Position (paragraph 5.8 p37) of 10/3/08 states that “the principle of residential development on the Castleview site serviced by a road through the access land”. How and when was this principle established and by whom?

Reply

The principle was established through the Local Plan for Slough adopted in March 2004.

18. What was the reason for Officers “dividing the issue” and submitting two papers on the Castleview issue to Cabinet Meeting on 10<sup>th</sup> March 2008? Should the arguments not have been discussed within the context of one paper?

Reply

It was decided to “split” the two issues as the decision to be taken on the appropriation issue was dependent on the decision taken on the first report regarding the possible sale of the Access Land and the second report would have been superfluous if the decision taken on the first report was not to proceed. I wanted to make it clear that these were two separate issues and it would have been wrong to conflate the two matters. In the event, Members had discussed the two issues at the same time at the meeting but my view had been that it was preferable to consider them as two separate matters.

19. Why did Officers argue that “appropriation was just a technical matter”?

My view was that the appropriation was in essence a technical report about the statutory test. Obviously it had local implications if the appropriation took place but the report was in essence technical in nature.

20. What was the point of appropriating land if there was no intention to sell it?

See reply to question 18.

21. This Council is normally a Council that produces comprehensive and objective written documentation. Unfortunately this was not the case with the Castleview issue. Immediately following the Cabinet Meeting on 10<sup>th</sup> March 2008 as the then Leader of the Council I wrote to the Chief Executive to emphasise that Commissioners “felt that they were being driven towards a decision on the basis of considerable supposition and speculation. Much of that supposition and speculation was verbal and became variable with the passage of time”. Why was this over-reliance on verbal statements?

Reply

It is considered that the Officers produced comprehensive, objective and professional advice to the Commissioners in briefing papers/notes and reports to Cabinet since January 2005. Briefing papers/notes were produced in January 2005, February 2005, November 2006, September 2007, February 2008, and March 2008. Formal reports were submitted to the Cabinet on 27<sup>th</sup> November 2007 and 10<sup>th</sup> March 2008 (x2).

In addition, the Castleview Site was discussed at informal meetings many of which had the benefit of the briefing papers/notes referred to above.

In a complex and potentially commercial transaction such as this one there will often be a change in circumstances and consequently officers cannot reasonably have a concrete answer to all of the queries that may be raised. It was made clear by officers that the statutory procedures involved in facilitating any residential development of the Castleview Site was not without "difficulties and uncertainties".

If Members were concerned about the accuracy or clarity of any information provided by the officers then they were at liberty to seek further information/clarification and, if necessary, defer the item under consideration.

In respect of the proposed appropriation from open space to planning purposes no recommendations were made by the officers in the report submitted to the Cabinet on 10<sup>th</sup> March 2008.

22. It is difficult to prepare a representative list of the inconsistent and, in some cases the contradictory, verbal advice given by Officers for the obvious reason that no written evidence exists. Questions 22-29 constitute a representative sample drawn from both written notes that I made at the point of expression and from a review of letters that I wrote to Officers after the point of expression. For example, Cabinet Commissioners were told initially that "the lifting of the covenant on the ransom strip would be a straightforward procedural matter, especially as an exhaustive search had not revealed a single resident with an interest in the covenant". When this statement was made residents had already produced evidence to the contrary. What form did the "exhaustive search" take? How many residents were surveyed? Why was no detailed evidence ever submitted to Cabinet Commissioners and Members?

#### Reply

There was not a survey as such but a search was undertaken of HM Land Registry records with a sample of 20 properties in total looked at. The cost of the searches was £12 each. Unfortunately the legal advice given was wrong as the Legal Officer looking at the matter misinterpreted the law. Accordingly, between November 2007 and 10<sup>th</sup> March 2008 the enforceability of the covenant position was wrongly stated. However, a note was given to Commissioners just before the Cabinet meeting on 10<sup>th</sup> March, 2008 explaining the correct position (page 33 of the documentation).

Officers were cautious throughout the whole process in respect of the restrictive covenants. In the briefing paper to Commissioners in September, 2007 (pages 19 and 20 of the pack) Members were advised that sample searches had been made and officers had tried to make it clear at various times what the position was. So I do not feel it is fair to state that the Cabinet had been told verbally that "an exhaustive search" had been carried out into the issue.

(Councillor Stokes stated that he disagreed and that there had been a verbal statement at the Cabinet meeting that an exhaustive search had taken place and had found nothing.)

23. Cabinet Commissioners were informed verbally that to “protect the Council if any residents emerged with an interest in the covenant a restrictive covenant policy could be purchased by the Council”. The Council was not able to obtain insurance cover. Do Officers consider that this is an indication of the Council being a bad risk in relation to the covenant? Why were Cabinet Commissioners and Members not notified of the failure to obtain insurance cover? How many insurance companies were approached and what reasons did they give for not insuring S.B.C?

### Reply

The briefing paper to Commissioners in September 2007 (page 21 para. 3.5) was cautious on this issue and stated that *“at present it seems unlikely that the Council would need to invoke the complicated and time consuming procedure under section 237 and may simply take the precaution of seeking a restrictive covenant indemnity policy. A quote is being sought from Zurich Municipal”*. Subsequently, at the Cabinet meeting on 26<sup>th</sup> November, 2007 Members had been advised (page 30, para 2.5) that *“if no one appears to have the benefit of the covenants the purchase of a restrictive covenant indemnity policy might be sufficient to enable the access land to be developed. These insurance policies are commonplace where restrictive covenants may be breached and the risk in value terms is small but much will depend on whether insurance company will take on the risk and at what cost. If this option is not viable or one of more properties benefit from the covenants then action under Section 237 would be appropriate.”* There again, consistent advice was being given and a cautious line adopted. In a briefing note to Commissioners in February 2008 (page 104 final para.) the Cabinet was advised that the Council had been unsuccessful in obtaining indemnity insurance against any claims arising from the covenant. It would therefore be necessary to start High Court proceedings to reverse the “Thames Water decision”. The note then went on advise that the Government had acknowledged that Thames Water case was illogical and that there was a proposal in the current Planning Bill to change the law but the earliest that it could come into law was September 2008. It was therefore being recommended that proceedings start in the High Court to reverse Thames Water decision as the final outcome and the timing of the Planning Bill was beyond the Council’s control. Accordingly, it is felt that consistent and cautious advice had been given throughout the process. As the national position changed, so Members were advised in writing of the current position.

(Councillor Stokes asked whether insurance companies were not prepared to offer indemnity cover to the Council because it was too large a risk. SQ responded that, as with all insurance matters, if companies felt that there was a risk that they may have to pay out, then they may not be prepared to insure the Council or would charge very high premiums.)

(Councillor Stokes reiterated that he believed that very optimistic verbal assurances had been given but that these opinions were subsequently modified in writing. Accordingly, he felt that statements were often corrective of earlier verbal comments. ABH commented that the evidence showed that proper written information was provided around the indemnity insurance issue and the risks associated with it. His view was that the proper information and options were given in writing.)

24. Cabinet Commissioners were told verbally that the Thames Valley Utilities Limited v Oxford City Council (1997) case represented a perverse judgment that soon would be corrected by government legislation. Subsequently Cabinet commissioners were informed in writing that “this High Court decision must be overturned by the Council in order to further any objective to facilitate the development of the development site”. Officer advice on impending Government became more pessimistic in writing (“it is unknown when this will become law if at all”). Cabinet Commissioners were then informed if S.B.C. failed in the High Court the Council would need to seek permission to go to the Court of Appeal. Thus S.B.C. would have to embark alone on expensive and by definition unpredictable legal action. How much would it cost S.B.C. to go to High Court and then to the Court of Appeal?

#### Reply

The briefing note to Commissioners in September 2007 (page 20, paras. 3.3 onwards) advised on the position of restrictive covenants and stated that “the major obstacle the Council must overcome is the High Court case of the Thames Water Utilities Limited v Oxford City Council (1997). Although this is a little known case, its decision is of significant importance on the interpretation of Section 237. In summary the case decided that Section 237 did not apply to a user of land and therefore a local authority could not rely on it to permit a use in contravention of restrictive covenants. If the principle is applied to our case Section 237 would permit the construction of a road in contravention of the restrictive covenants (on payment of compensation) but not the subsequent use of it by motor vehicles. This High Court decision (which is the only decision on the interpretation of Section 237) must be overturned by the Council in order to further any objective to facilitate the development of the site. To do this the Council must seek a declaration in the High Court that the decision was wrongly decided. If this fails, it will be necessary to seek permission to go the Court of Appeal. Counsel has stated that there is a reasonable prospect of overturning the Thames Water decision”.

Counsel would not be prepared to provide a percentage likelihood of any success but always use the term “reasonable prospect”.

The matter had also been looked at by the Cabinet at its meeting on 26<sup>th</sup> November 2007 (page 31, paras. 2.8 and 2.9) when it had been additionally advised that there was a reasonable prospect of overturning the Thames Water case particularly as the Department of Communities and Local Government were consulting on an amendment to section 237 which sought to overcome the High Court decision. However, it was unknown when this would become law if at all. Accordingly, Members were kept updated on the current national position.

In the February 2008 briefing note (page 105) Members were advised that the Government was proposing changes in the current Planning Bill to change the law and the earliest it could become law was September 2008. Accordingly, Commissioners were told that there was progress on this issue. I feel that Members were kept apprised of changes relating to Section 237, etc.

The current position for Members’ information is that the matter is still going through Parliament with a view to overturning the Thames Water decision. I believe that the Members have been kept fully apprised of the changing position over time as evidenced by the various papers submitted.

(Councillor Stokes stated that he had asked for the verbal notes to be put in writing but had never received them.)

25. Cabinet Commissioners were told verbally that the developer had offered to meet the legal costs of lifting the covenant. In what circumstances was this offer made? What conditions, if any, were attached to the offer?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

26. Cabinet Commissioners were told verbally that the £5 million offered by the developer for the ransom strip must be accepted immediately otherwise the developer would walk away and S.B.C. would receive nothing. After the Cabinet rejected the £5 million offer the developer increased the offer to £7 million. Cabinet Commissioners came under very strong verbal pressure to accept the increased offer for reasons of “fiduciary duty”. This pressure was applied in respect of the sale of the ransom strip only. Why was no mention made of the fiduciary duty of the Cabinet Commissioners in respect of possible financial liabilities arising from the covenant interests of residents?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

27. Cabinet commissioners were told verbally that verbal advice had been drawn from a basis of “working notes”. Requests have been made for copies of these “working notes” without success. Could copies of these notes be provided?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

28. Cabinet Commissioners were provided with verbal summaries of opinions received from internal and external lawyers. Why were Cabinet Commissioners not provided with written copies of the legal advice?

Councillor Stokes added that he had been advised that it was not “custom and practice” to provide Members with copies of legal advice obtained. He took the view that it was essential that they could read the whole opinion and he felt that a recommendation should be submitted to the Cabinet that, in future, the decision makers were in possess of the full legal opinion.

Reply

It is true that it is not custom and practice to provide Members with complete legal opinions either here or elsewhere. It is to be hoped that Councillors would trust officers to summarise an opinion given for Members’ convenience. Any Members who wish to have a complete copy of an opinion will of course be provided with one

if they ask.

29. Incorrect legal advice was given to Cabinet Commissioners “that the benefit of the covenants had to be referred to in the Title deeds and documents i.e. at H.M. Land Registry”. As Officers have explained the provision of incorrect legal advice “was due to a Legal Officer misinterpreting the law on restrictive covenants and not reading the advice of Gregory Jones”. This explanation prompted several questions that I submitted, including the following:- Although the advice from Gregory Jones (an external lawyer) was “located on another file” is that an acceptable excuse for a legal officer not reading it? As there cannot be a multiplicity of opinions provided by lawyers retained by the Council is it not reasonable to expect all our Legal Officers to make themselves familiar with all opinions provided by lawyers retained by the Council? Would the personal development of each Legal Officer not be enhanced by a wider exchange of both direct and indirect information? In the light of the interest shown, and repeatedly expressed, by residents in the restrictive covenants should there not have been a checking and scrutinising procedure within our Legal Division in order to eliminate incorrect legal advice? As some residents had continually expressed more accurate views on the covenant issue should their comments have not been regarded as a “warning signal” that merited reconsideration by our Legal Officers? As no response has been received to any of these questions could Officers now respond?

#### Reply

We all accept that the advice on the enforceability of the restrictive covenants was wrong and this has been fully accepted. The Legal Officer looking in to the matter did not realise that the advice by Gregory Jones existed because it was in a different file. However, Councillor Stokes makes a good point and I am happy to take this matter on board with the Deputy Borough Solicitor so that better procedures are in place to avoid such an error occurring again.

30. Some legal advice given to the Council has been unsatisfactory. For example, John Hobson Q.C. stated that: “The claim (by residents) is misconceived and raises no arguable case for Judicial Review because the Green Belt was irrelevant to the decision to appropriate under Section 122...” In granting a Judicial Review Mr Justice Collins rejected the views of John Hobson Q.C. and said that: “The fact that the access land was in the Green belt is arguably relevant to whether it was no longer required for open space (i.e. no development)....” Does a procedure exist for evaluating the quality of legal advice?

#### Reply

It is rare that I do not anticipate the reply that will be given by Counsel and this is the response I expected in this case. Members should bear in mind the two stage process of Judicial Review proceedings (page 12, paras 4.6 onwards). In the permission stage, the judge simply looks at the paperwork and considers whether there is an arguable case which requires a full hearing. This legal hurdle is not an onerous one particularly where some of the decision makers are supporting the claimant. Counsel’s opinion made it clear that the opinion related to the whole process and his view, which I agree with, was that the claim was misconceived and that the Green Belt status of the access land was not material to this issue. I believe that the advice received was completely right and that the Judicial Review

will be unsuccessful.

31. Officers were not able to produce detailed information of the fees paid to all the external lawyers retained to advise on the Castleview issue. How is it possible to spend Council Taxpayers' money on lawyers without having any record of the expenditure? Are there other lawyers' fees for which no record exists?

Reply

There is not an individual cost code for each invoice as all these costs are aggregated within a particular code. However, if any particular invoice is required, then this can be extracted from the system if Members so wished.

32. At the Cabinet Meeting on 10/03/08 cabinet Commissioners were given the following advice by *officers*:- "This additional advice and information does not alter the position that the Council can apply to the Lands Tribunal for the release of the covenants on the disused car park and surrounding scrub land. Such application would be publicised and it would be open to those who can prove they have the benefit of the covenants to object. The Tribunal would hold hearings and make a determination if the covenants should be released from this piece of land and if any compensation is payable. It also does not alter the position that the development complained of does have planning permission and the developers have obtained other access routes albeit not as favourable for their development". This advice indicated that by making an application to the Lands Tribunal the Council would facilitate proper judicial hearing. All parties would be able to give evidence to the Tribunal to establish their covenant rights and benefits and, if the Tribunal thought fit to vary the covenants appropriate compensation would be awarded. The Cabinet may seek to avoid the Lands Tribunal and attempt to use a S.237 planning procedure to override legal rights normally dealt with by the Lands Tribunal where there would be a proper judicial consideration of the matter with evidence and expert witnesses. Some affected residents believe that such action by the Cabinet could contravene the provisions of the Human Rights Act 1998(see Chapter 42: Article and Right to respect for private and family life and Part II – The First Protocol – Article 1 – Protection of Property. What consideration has been given to the provisions of the Human Rights Act 1998?

Reply

I believe that section 237 of the Town and Country Planning Act meets the requirements of the Human Rights Act 1998 and I am not aware that it is incompatible. If it was, a "certificate of incompatibility" would have been issued by the Government.

33. The advice detailed in Paragraph 32 assumed that the developers have other access routes for their proposed back land development. As at 10.03.2008 and subsequently there was no planning permission outline for any "other access routes". Why was this assumption made?

Reply

The Adopted Local Plan for Slough (March 2004) proposed that access to the Castleview development should be via the land in Upton Court Park. It did not

propose any alternative access arrangements and the subsequent outline planning permission granted by the Secretary of State in 2006 was on this basis.

Notwithstanding this the applicants Kelobridge have sought to establish an alternative access via Castleview Road. Initial proposals were refused planning permission by the Borough Council and this refusal was upheld by the Secretary of State on appeal in 2006. Subsequent planning applications for this alternative access have also been refused by the Council in July 2008 and to date have not been appealed. There is therefore currently no alternative access arrangement with planning permission.

34. The "Castleview issue" has generated considerable concern in the minds of many Slough residents and in the minds of a significant number of Councillors. The Coalition Cabinet received some flawed information, some inaccurate information and some accurate information from Officers. The Coalition Cabinet experienced difficulty in determining the category within which the information should be classified. A major difficulty was the over-reliance on verbal information that was sometimes inaccurate, sometimes contradictory and often fluctuated in emphasis. The Council is accountable to residents and owes them a duty to ensure that the "Castleview issue" is scrutinised independently and thoroughly by the Overview and Scrutiny without manipulation by, or pressure from, the Labour administration. Thus far the omens are not encouraging. My pre-decision call-in was conducted in an incomplete, superficial and pre-determined manner. My post-decision call-in was nullified. The Coalition Cabinet passed the Chair of the Overview and Scrutiny Committee to then Labour opposition. The Coalition Cabinet gave serious consideration to all recommendations from the Overview and Scrutiny Committee and accepted a majority of them. Some Labour Councillors have indicated to me that they do not agree with the decision of the Labour administration to take control of the Scrutiny process because the Labour Cabinet Commissioners will be in a position to "lean on" any of their inexperienced and deferential Councillors serving on the Overview and Scrutiny Committee. Thus far no analytical scrutiny of the "Castleview issue" has taken place. Would members of the Overview and Scrutiny Committee agree that a comprehensive scrutiny of the "Castleview issue" is necessary and could they indicate how such an exercise could be conducted?

(Councillor Stokes added that this was not a question for officers but for the Committee to consider.)

35. How many companies, consultancies and advisers have been retained since 1<sup>st</sup> January, 1999 in relation to the "Castleview issue"?

#### Reply

On property matters, officers are only aware of Messrs Drivers Jonas having been instructed on property matters. Additional highways advice has been obtained from Hyder Consulting acting as sub-consultants to Drivers Jonas. The details of Counsel have already been provided to you.

36. Which were the companies, consultancies and advisers so retained?

Reply

Please see answer to Q35

37. What fees were paid to these companies, consultancies and advisers?

Reply

Please see answer to Q41 re property fees. The details of Counsel's fees have already been provided.

38. Was Drivers Jonas, 85 King William Street, London, EC4N 7BL one of the organisations referred to above?

Reply

Please see answer to Q35

39. When were the services of Drivers Jonas retained?

Reply

Drivers Jonas provided terms and conditions for the project at the end of October 2007.

40. In what capacity were Drivers Jonas retained?

Reply

Drivers Jonas were appointed to advise upon the offer received from Kelobridge and, subject to that advice and the approval of Committee, to enter into negotiations with Kelobridge to secure payment to Slough Borough Council of the finally agreed payment.

41. What fees were paid to Drivers Jonas?

Reply

A total of £30,000 has been paid to Drivers Jonas in respect of professional work undertaken to date.

42. Did Council Officers meet Drivers Jonas at their London offices on 19<sup>th</sup> November 2007?

Reply

Andy Algar, Assistant Director, Property Services, attended a meeting at the offices of Drivers Jonas on 19<sup>th</sup> November 2007.

43. What was the purpose of that meeting on 19<sup>th</sup> November 2007?

Reply

Two meetings took place on 19<sup>th</sup> November, the first being a pre-meeting between Slough Borough Council and Drivers Jonas (to discuss strategy) in advance of meeting with Kelobridge. This was the first meeting between Drivers Jonas and Kelobridge, the purpose of which was to broadly scope out the issues to be addressed and work undertaken.

44. Did Council Officers leave two files with Drivers Jonas containing instruction documents relating to land to the rear of Castleview Road, Slough?

Reply

It is understood that two files relating to Castleview Road were left with Drivers Jonas following the meeting of 19 November 2007.

45. What other documents were contained within the files?

Reply

The files would have contained property correspondence and other information relevant to the case

46. Where are those files now?

Reply

The location of the files is currently unknown. Drivers Jonas confirm that they have undertaken an extensive search of all areas within both its City and West End offices. They have also made enquiries of their external file storage facility. Neither search has resulted in the location of the missing files.

47. Have those files been lost?

Reply

Refer to Q46 above.

48. If the files have been lost who is responsible for that loss?

Reply

Refer to Q46 above.

49. Is it customary for Officers to leave files with companies, consultancies and advisers retained by SBC?

Reply

Where a firm of advisors is instructed to manage a specific case on behalf of the Council, it is often more practicable for files to be handed to them rather than copies be made of what can be an extensive amount of documentation.

50. If and when files are left with companies, consultancies and advisers, what are the

conditions, obligations and restrictions under which the files are loaned?

Reply

There are no formal obligations but consultants have a duty of care to manage any files whilst in their possession.

51. Could I be provided with a copy of those conditions, obligations and restrictions?

Reply

Please see answer to Q50

52. Was a signature obtained for the files?

Reply

Driver Jonas have acknowledged that the files were in their possession. As Andy Algar is no longer employed by the Council, it is not possible to state whether or not a signature was obtained.

53. If a signature was obtained who was the person who accepted responsibility for safe custody of the files?

Reply

Please see answer to Q52.

54. If the files have been lost when were they lost?

Reply

The files were last seen by a Council officer (Andy Algar) at the meeting on 19<sup>th</sup> November. The files were not then referred to until 12 March 2008 when the project came to an end following the committee decision not to pursue agreement with Kelobridge. On 12 March Andy Algar requested the files be returned at which point it became apparent that these could not immediately be located. Andy Algar was notified of the issue at this time. Drivers Jonas subsequently wrote formally to Slough Borough Council on 15 October to confirm that it had failed to locate the missing files.

55. If the files have been lost what steps have been taken to recover them?

Reply

Refer to Q46 above.

56. What documents relating to the Castlevue issue were contained within the files?

Reply

Refer to Q45 above.

57. In particular, what were the SBC instructions to Drivers Jonas contained within the files?

Reply

Refer to Q40 above.

58. Who was present at the meeting between SBC and Drivers Jonas on 19<sup>th</sup> November 2007?

Reply

Andy Algar (Slough Borough Council)  
Michael Burdus (Drivers Jonas)  
Philip Wallbridge (Drivers Jonas)  
Representatives of Kelobridge

59. If the files have been lost can they be reconstituted in accurate, sequential and complete form?

Reply

It is believed that Drivers Jonas can supply copies of all correspondence between themselves and the Council if required.

60. Have any other files been lost since 1999?

Reply

Apart from the missing files, there is no information to suggest that there are any other property files relating to Castleview that have been lost.

61. If the two files given to Drivers Jonas on 19<sup>th</sup> November 2007 have been lost when was the loss first noticed and by whom?

Reply

Refer to Q54 above

62. If the two files given to Drivers Jonas on 19<sup>th</sup> November 2007 had been lost and had been noticed were steps taken to notify anyone?

Reply

Refer to Q54 above

63. If steps were taken to notify a person, or persons, of the loss of two files, when was that person or those persons notified?

Reply

Refer to Q53 above.

64. If a person or persons were notified of the loss of two files who was the person notified or who were the persons notified?

Reply

Andy Algar – refer to Q53 above.

65. If two files have been lost has disciplinary action been taken against any Officer or Officers?

Reply

No

66. If two files have been lost has any financial or other redress been sought from Drivers Jonas?

Reply

No

67. If two files have been lost and are in the hands of others are there any issues of confidentiality and/or security that would cause concern?

Reply

There is nothing to suggest that the files are in the hands of anyone other than Drivers Jonas – in line with their letter to the Council dated 15 October, a copy of which has been provided to Cllr Coad via email on 28 October 2008.

Question by Councillor Davis

68. Following the Overview & Scrutiny Committee meeting at which Councillor Stokes claimed to have made repeated requests to officers concerning the Castleview site, during the four years he was in control of the leading group of the Council, could you please supply me with any records of these requests, either verbal or written?

Reply

Officers have been unable to locate any relevant correspondence from Councillor Stokes on this issue. However, the Commissioners were fully briefed in the documentation referred to in the papers put before the Overview and Scrutiny Committee and mentioned in the response to Question 21 above.

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**SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview & Scrutiny Committee **DATE:** 15<sup>th</sup> January 2009

**CONTACT OFFICER:** Andrew Blake-Herbert, Strategic Director of Resources  
(For all enquiries) (01753) 875300  
Roger Parkin, Strategic Director of Improvement & Development (01753) 875207

**WARD(S):** All

**PART I**  
**NON-KEY DECISION**

**PERFORMANCE AND FINANCIAL REPORTING FOR 2008/09**

**1 Purpose of Report**

This report highlights the Council's overall performance from delivery of service to financial management. This month the report focuses on performance management, the revenue monitoring position, the capital monitoring programme to September 2008 and central debt management for the Council. It also reports the findings of the Annual Performance Assessment (APA) process for adult social care services for Slough Borough Council, and the star rating judgement for 2008

**2 Recommendation(s) / Proposed Action**

- a) That the following aspects of the report be noted:
- i. Performance
  - ii. Debt Recovery
  - iii. Financial performance – revenue

b) That the virements highlighted in the report be noted.

**3 Key Priorities – Taking Pride in Slough and Making a Difference to Communities**

The budget is the financial plan of the authority and as such underpins the delivery of the Council's key priorities through the financial year.

Performance and budget monitoring throughout the financial year reflects on whether those priorities are being met and, if not, the reasons why, so Members can make informed decisions to ensure the Council remains within its available resources.

**4 Other Implications**

(a) Financial

These are contained within the body of the report.

(b) Human Rights & Other Legal Implications

While there are no Human Rights Act implications arising directly from this report, the Authority is required to set and maintain an adequate level of balances. The Council operates within a legislative framework in the recruitment, employment and management of its workforce. The provision of workforce information

ensures that our performance in areas can be monitored at a strategic level across the organisation.

Housing and Council Tax Benefit administration is governed by detailed statutory requirements.

All counter fraud enquiries and operations are carried out in compliance with the Human Rights Act, the Regulation of Investigatory Powers Act, Police and Criminal Evidence Act, and the Criminal Procedures and Investigations Act. The procedures developed from this legislation have been validated by the Council's Legal section.

## 5 Supporting Information

### Performance Management

- 5.1 The new National Indicator Set (NIS) replaces the previous Best Value Performance Indicators. The LAA (Local Area Agreement) indicators have been selected from the NIS and agreed by GOSE. The agreed list was published at the end of May. The Council will be assessed against its performance against all 198 indicators through the Use of Resources Assessment.
- 5.2 Officers are currently collating the data for the third quarter performance against the National Indicator set (where possible) establishing baseline targets for future reporting purposes. Information is also to be provided regarding the performance against the LAA targets.
- 5.3 The Council-wide Balanced Scorecard will be produced quarterly to inform Members of the Council's overall performance in critical service areas.
- 5.4 It is intended to use this report to highlight areas where performance may need improvement and proposed corrective measures to address such issues. Officers are currently aligning the budget setting and business planning process and a revised approach to service planning will be introduced.

### Slough's Performance Judgement for 2008

- 5.5 For 2008 Slough achieved 3 star 'excellent' rating judgements for adult social care:
  - Delivering **Excellent** outcomes
  - **Excellent** Capacity for Improvement
- 5.6 This is the fourth year Slough has achieved 3 stars. However, it is the first year that a judgement of *excellent* for both 'Delivering Outcomes' and 'Capacity to Improve' has been achieved, and reflects an improvement on the previous year. This is the highest judgement rating.
- 5.7 Table 1 below details the composition of this judgement was by each of the 7 'Delivering Outcome' domains, and the 2 'Capacity to Improve' domains.
- 5.8 This achievement was confirmed by the Chief Inspector of the Commission of Social Care Inspection on 27<sup>th</sup> November 2008, and detailed in an earlier notification dated 27<sup>th</sup> October 2008.
- 5.9 The APA star rating and performance judgements for adult social care contributes to the Council's CPA rating, and will continue to do so under the new CAA performance

framework. However, from 2009 onwards, the adult social care 'Capacity to Improve' judgement will only be reflected in the Councils CAA rating and not the APA rating.

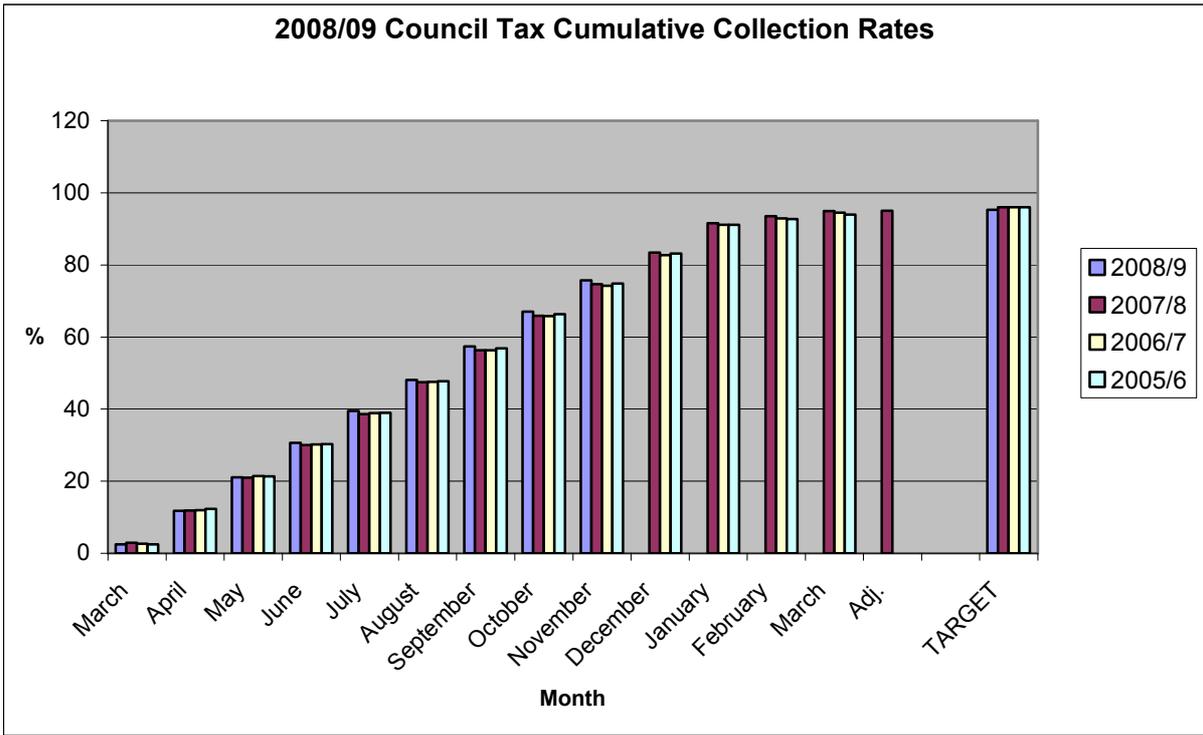
**Table 1: ADULT SOCIAL CARE PERFORMANCE JUDGMENTS FOR 2007/08**

<b>Areas for judgment</b>	<b>Grade awarded</b>
<b>Delivering Outcomes</b>	<b><u>EXCELLENT</u></b>
Improved health and emotional well-being	Good
Improved quality of life	Good
Making a positive contribution	Excellent
Increased choice and control	Good
Freedom from discrimination and harassment	Excellent
Economic well-being	Excellent
Maintaining personal dignity and respect	Excellent
<b>Capacity to Improve (Combined judgment)</b>	<b><u>EXCELLENT</u></b>
Leadership	Excellent
Commissioning and use of resources	Excellent
<b>Performance Rating</b>	<b><u>3 STARS</u></b>

### **Debt Recovery**

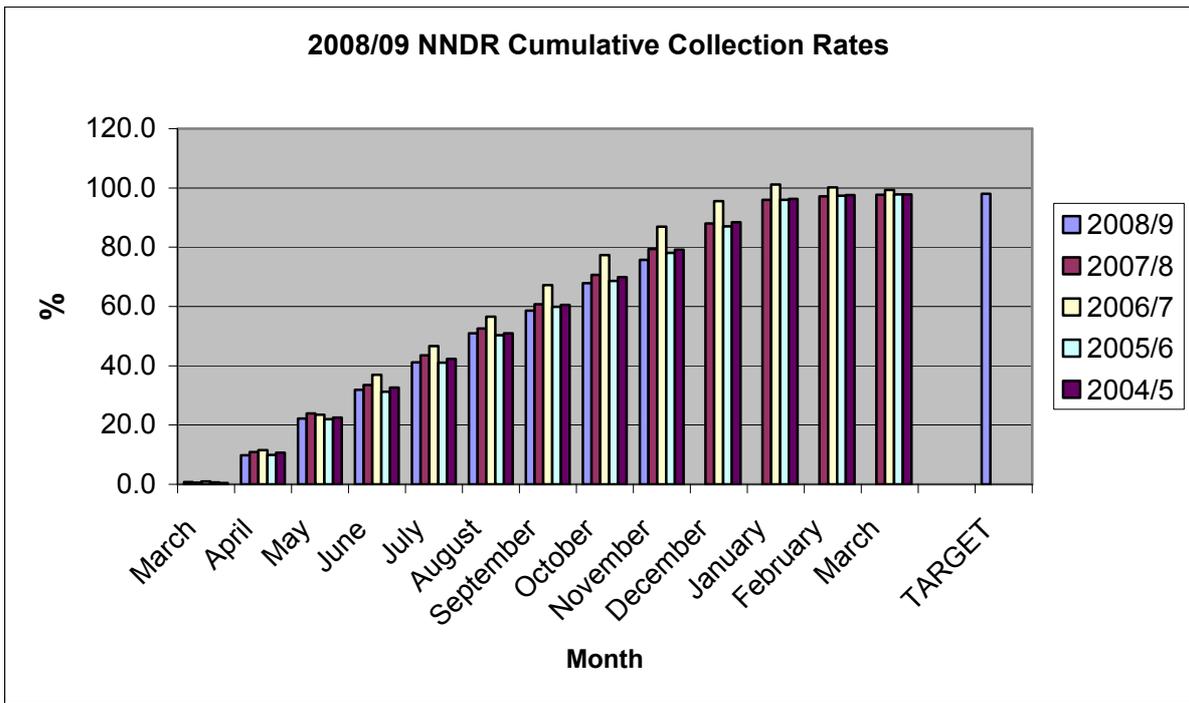
5.10 As we work through the second half of 2008/09, this report will give a monthly update of the Council's overall debt position, focusing on Council Tax and Business Rates collection, and the Accounts Receivable Ledger.

5.11 Council Tax collection is showing an improved position for this time of year compared with previous years, coming in at 75.7% by the end of November 2008. This year's performance is the highest single in year collection rate, so if this trend continues will result in an improved final position, although the current world economic situation may impact on individual's ability to pay



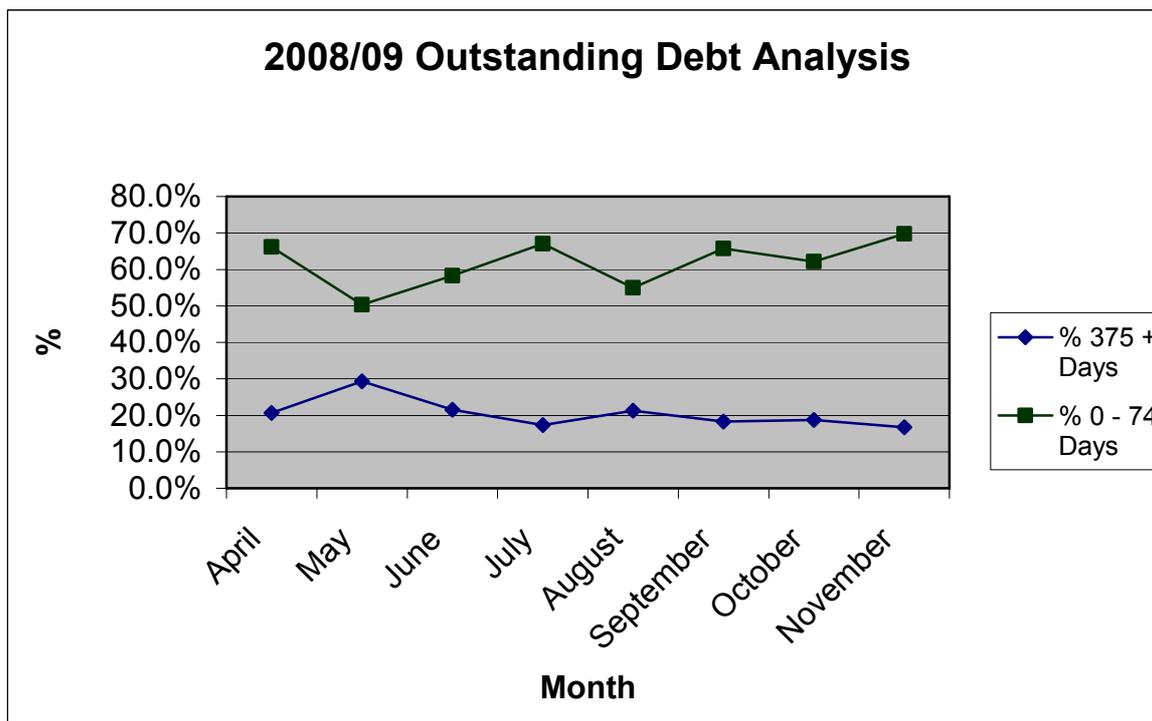
5.12 NNDR collections continue to slowdown this period, as compared with the previous two years. This may be due to resistance to the change in legislation for 2008/09 regarding the payment of full rates for empty premises.

5.13 This has resulted in the amount of net collectable debt increasing by £13m from the previous year. This continues to place a significantly increased burden on the team and officers are reviewing the actions that can be taken to try and turn this situation round.



5.14 With respect the Accounts Receivable system, the Council currently has outstanding debts of £4.8m at the end of November.

5.15 Of this, approximately £3.4m is less than 74 days overdue representing 69.8% of the total outstanding debt and approximately £810k is older than 375 days representing 16.7% of the total outstanding debt.



### Financial reporting

5.16 The Council's 2008/09 net revenue budget is £98m. This excludes the schools' budget of £89m which is funded through the Dedicated Schools Grant.

5.17 A number of the Council's services are demand led services for which budgets for 2008-09 have been set on known placements and client activity at a point in time. Clearly these areas are subject to constant review as client levels change and thus subject to pressures that are not directly controllable. As we head into the winter quarter there is likely to be an impact in particular around Adult Social Care services.

### Projected Outturn Position at 31st November 2008

5.18 There is currently a projected overspend by Directorates of £404k, the same as was reported to Cabinet on 4<sup>th</sup> December 2008.

5.19 Corporate pressures stand at £703k making a total projected overspend of £1.11m. The Projected Outturn position is analysed in Table 2 below.

Table 2 - Projected as at 30th November 2008

Directorate	Current Budget	Projected Outturn	Variance Over/(Under) Spend	Variance Over/(Under) Spend CMT (3.12.08)	Movement
	B	C	D = C - B		
	£'M	£'M	£'M	£'M	£'M
Education and Childrens Services	25.63	25.07	(0.56)	(0.50)	(0.06)
Community and Wellbeing	31.17	31.63	0.46	0.46	0.00
Green and Built Environment	26.39	26.75	0.36	0.42	(0.06)
Central Directorates	24.46	24.61	0.15	0.15	(0.00)
<b>Total Cost of Services</b>	<b>107.65</b>	<b>108.06</b>	<b>0.41</b>	<b>0.53</b>	<b>(0.12)</b>
<b>% of revenue budget over/(under) spent by Services</b>			<b>0.38%</b>	<b>0.49%</b>	
Treasury Management	(1.63)	(4.63)	(3.00)	(1.00)	(2.00)
Contingencies & earmarked reserves	0.18	2.18	2.00	0.00	2.00
Corp pressures and savings	0.00	1.70	1.70	1.91	(0.21)
Area Based grant	(7.56)	(7.56)	0.00	0.00	0.00
<b>Total</b>	<b>98.64</b>	<b>99.75</b>	<b>1.11</b>	<b>1.44</b>	<b>(0.33)</b>

5.20 Full details of variances to budgets by Directorates are set out in Appendix A to this report.

### Movement in Variances Month on Month

5.21 **The Directorate of Education and Children Services** are reporting an increase in their underspend of (£33k) to give a net under spend of (£562k). There are movements in variances across all their services but the most significant are:

- Children & Families – There has been an overall increase in expenditure of £39k, which fundamentally reflects the cost of the Berkshire wide Joint Arrangement for the Social Care legal Service. This reflects the increased activity arising from the increased number of clients on the Child Protection Register.
- Youth – A £75k variance reflecting full budget expenditure is now expected arising from Increased recruitment activity, delivery of youth project plans across the service and a damages claim at Orchard Youth Centre;
- Inclusion – (£38k) Savings have arisen due to management of vacancies and the reduction in care costs arising from a change in client placement timescale.;
- Raising achievements – Savings are expected due to the management of vacancies (£15k), the restructure of the Governor Training Service and a review of the discretionary areas of the Early Years Service (£36k);
- Resources, Commissioning & Performance – (£110k) of savings have arisen due to a review of all areas of discretionary spend, an estimation of reduced costs relating to the PFI scheme and the reconfiguration of the Multi Agency Locality Teams (MALTS). (£26k) of savings have arisen due to the costs for the completion of the Suitability Surveys for schools coming in at lower than expected and an estimated reduction in External Audit charges for the current year.

5.22 **Community and Well Being**, the Directorate's overspend position has increased by £17k, with pressures in the Adult Social Care area being partially offset by savings from the other service areas.

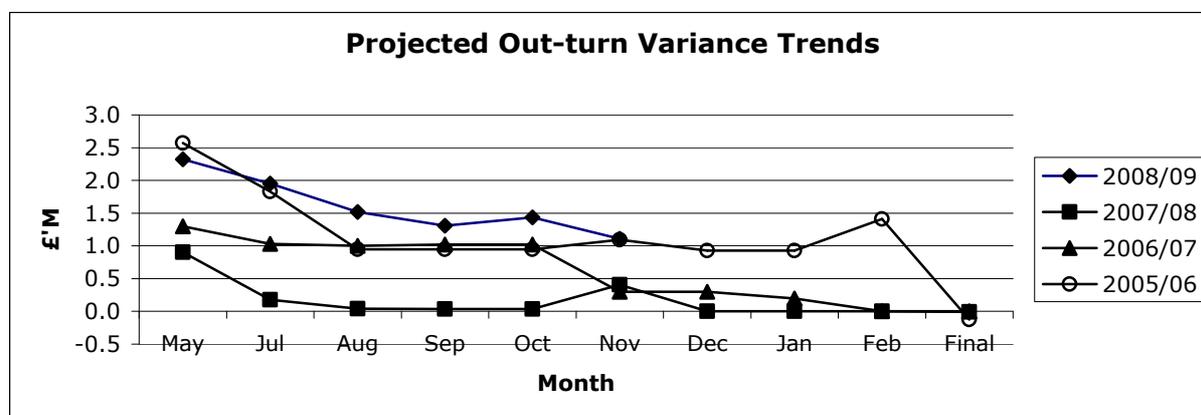
5.23 **Green and Built Environment** are showing an increase in their overspend of £22k, with pressures within the Environment Services & Quality and Housing Strategy & Renewal being partially offset by savings across the other service areas.

5.24 **Central Directorates** are reporting an overspend of £146k showing no change from the position reported last month.

5.25 **Treasury Management** is reporting an overall in-year saving of £3m. This is mainly due to the high money market rates to date. However, due to the reduction in base rates and expected further reductions in interest rates with result in a reduction of future investment income which will impact on the Council's ability to meet it's debt charges in forthcoming years. It would, therefore, be prudent to set aside at least £2m to help fund these costs so as not to impact on the overall revenue budgets. As previously reported £1m has been set aside as a contingency to meet any impairment costs of Heritable Bank.

5.26 Other corporate pressures now stand at £1.7m, a reduction of £200k from that last reported. This is due to the managing down of a pressure relating to unachievable savings within one of the frontline services.

5.27 Figure 1 below illustrates the trends in Projected Outturn reported to Cabinet since July 2005/06.



5.28 Directorates continue to work on their action plans to contain pressures by the year end. CMT has now issued enhanced purchasing rules to reduce, if not eliminate, any non-essential spend between now and the end of March 2009. A copy can be seen in Appendix B. Savings options for 2009/10, as agreed with Members, have been re-issued for Officers to review and identify if any can be implemented in the latter months of 2008/09.

### Virements

5.29 In accordance with the Financial Procedural rules, approval to virement requires the consent of officers and Members.

5.30 Members will this month be asked to approve the following virements which mainly relate to the release of contingencies and earmarked reserves unless otherwise stated.

**Figure 2**

Description	Value £
Release of LABGI Reserve to fund the introduction of free bulky waste collection for the elderly.	10,000
Transfer of Treasury Management Contingency in respect of the capital receipt adjustment.	50,000
Transfer from contingency to cover works carried out at Langley Pool	6,500
Release of contingency to fund standby payments to staff in relation to Emergency Planning, as agreed at CMT 19th Dec 2007.	17,500
Transfer of Corporate Consultation Officer from I & D to CE	33,850
Funding for I-Procurement Assistant from GBE to resources for period Jul08-Mar08	21,530
	139,380

5.31 The cumulative virement position by directorate as at the 30<sup>th</sup> November 2008 is given below:

DIRECTORATE	VIREMENTS TO DATE (£)
Education & Childrens Services	(534,170)
Community & Wellbeing	(1,194,650)
Green & Built Environment	1,538,880
Central Directorates	5,135,970
<b>Total Services</b>	<b>4,946,030</b>
Contingencies, Reserves & Other	(4,946,030)
<b>Total</b>	<b>0</b>

## 6. Conclusion

Members will receive a joint summary report covering Resources and Performance Management at each meeting in 2008/09.

Directorates continue to work on their action plans to contain pressures by year end including ensuring officers respond to action in the monitor email recently circulated by the Strategic Director of Resources.

## 7. Appendices Attached

- A** Schedule of Directorate Variances to Budget 2008/09
- B** Financial Management and Purchasing Rules 2008/09

## 8. Background Papers

- '1' Finance Detailed working papers are held in Corporate Finance and the relevant departments.

## Summary Variance Analysis

For the Period Ended: 30<sup>th</sup> November 2008

### Education & Childrens Services

Pressures / Savings	Projected Variance £'000	Description
Children & Families	322	<p>This reflects an increase in the number of external residential placements during the first part of this year together with the part year withdrawal of health funding for one client resulting in a cost pressure of £130k. Also an adverse pressure exists as a result of legislative change in respect of increased liabilities for children in Foster care that want to pursue Further Education which extends the borough's financial commitment to their foster support beyond their 18th birthday until they are 21, together with an increase in the number of clients and extensions to placements within foster settings costs £100k.</p> <p>The Public Law Outline (PLO) will replace the existing Protocol for Judicial Case Management in Public Law Children Act Cases from 1 April 2008 which aims to reduce unnecessary delay and is designed to promote better co-operation between all the parties involved in care and supervision cases. A result of this is that there has been a dramatic increase in the demand placed upon the provision of Family Group Conferences which is expected to create a pressure of £50k.</p> <p>A continued trend of increases in demand led intervention to prevent children from becoming looked after evidenced from a previously raised issue regarding referral and assessment activity creates a pressure of £90k. Linked to this an increase in the number of foreign clients requiring support has produced a pressure in respect of the interpretation services being accessed at a cost of £40k.</p> <p>Clients leaving care qualify for financial allowance support for 3 years up until their 21st birthday (or 24th depending on whether they pursue FE). A detailed analysis of activity indicates that not all clients exercise this right following changes in their circumstance thus resulting in a cost reduction to the borough. The cost of providing supported lodgings for children leaving care is also expected to reduce this year following expectation that a publicity campaign to recruit carers will not take place until later this financial year. Together these 2 save £100k.</p>
Inclusion	(212)	<p>The requirement to support clients via direct payments has seen a reduction in the rate of growth that was previously experienced due to parental capacity saving around £40k. A reduction of 1 client from within a residential setting from a full year to a 3 month placement saves in excess of £40k. Other savings of £60k have arisen following the utilisation of DSG funds for additional management support and an extended period of unpaid leave for an employee.</p>
Raising Achievement	(369)	<p>An estimated under spend reflecting current school children take up linked to efficient procurement of contracts across Home to School, the successful sale of school crossing patrol services to schools and the application of grant funding to offset costs as a one-off in 2008-09.</p>
Resources, Commissioning & Performance	(303)	<p>An estimated under spend reflecting current school children take up linked to efficient procurement of contracts across Home to School, the successful sale of school crossing patrol services to schools and the application of grant funding to offset costs as a one-off in 2008-09.</p>
	(562)	

## Appendix A (Cont.)

### Community & Wellbeing

Pressures / Savings	Projected Variance £'000	Description
Care Packages	665	This is due to overspends of £277k on residential care; £103k on nursing care and £197k on Direct Payments (all client groups), and offset by an underspend of £7k on Day, Home & Other Care.
Internal Residential Homes	278	These are additional costs being incurred by the Internal Residential Homes mainly due to the reprovision programme, and includes an overspend of £134k relating to Langley Day Centre which has not been closed/ changed in line with the 2008-09 Star Chamber decision.
Staffing and Other Budgets	(484)	This has a net underspend due to vacancies and includes a significant under spend of £160k relating to social work teams and other services in Business Resources & C&CE. This is partially offset by an over spend due to unbudgeted legal fees.
	459	

### Green & Built Environment

Pressures / Savings	Projected Variance £'000	Description
Waste Disposal	30	Contractual dispute - disposal of fridges offset by trade waste income maximisation.
Slough Enterprise/APCOA	40	Contracts - index linked inflation uplifts, partly offset by reduction in works programme.
Concessionary Fares	274	Increased demand/Shortfall of government grant
Housing	248	L & Q Housing - contractual settlement
Staffing	(240)	Potential savings from staff vacancies (net)
Other Variances under £50K (net)	9	Wexham Nursery rent income; Chalvey Depot business rates; Flood Defence Levy; Alcohol intervention; Joint Strategic Planning Unit; highways rents; traffic management.
	361	

Central Directorates

Pressures / Savings	Projected Variance £'000	Description
CSC	123	Targeted savings through BPR not likely to be achieved.
Fundamental Review	384	Anticipated savings not achievable due to delays in the implementation of the Fundamental Review.
Commercial Rents	171	Reduction in Commercial rental income due to a number of vacant units, unachievable accruals from last financial year and loss of income from Accord (c£74k).
Accommodation Strategy	287	Unachievable savings for Accommodation Strategy.
Capital Disposal & Feasibility costs	425	Pressure from Capital Disposal and Feasibility costs (figure to be confirmed).
Slough Music Event	74	Loss on the Slough Music Event.
Targeted Salary Savings	476	Targeted savings from Vacancy Factors/Self Funding Harmonisation.
All Cost Centres	(866)	Gross savings from vacant posts.
Building Maintenance	(100)	Savings on the costs of the corporate building maintenance contract.
Income	7	Expected additional income generated over all cost centres.
Running Costs	70	Additional running costs at St. Martin's Place (Service charges + Building Cleaning).
Running Costs	(44)	Miscellaneous Savings on Running Costs
All Cost Centres	(861)	Possible funding from contingencies & earmarked reserves.
	146	

## **Financial Management and Purchasing Rules 2008/09 Agreed by CMT**

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The Council's outturn projection has been falling month on month, but the size of the drops has begun to slow, leaving a current reported overspend of about £1.4m. In light of this it is necessary to take actions to ensure that we manage within our overall existing budgets. It is early enough within the financial year that these actions should have time to impact and reduce the overall budget position.

There are two elements to this firstly the early implementation of the some of the proposed savings from the budget strategy, which were agreed at Cabinet last night. Your directors and finance leads will be in touch to discuss these shortly. The second is around reducing levels of spend this year.

I have set out below some amendments to the current financial management policy that should be followed for the recruitment of staff, including agency staff, and the ordering of supplies and services. Some of these guidelines still remain in place from previous years and others are being reintroduced with the aim of improving the outturn position.

This isn't about preventing the day to day business of the organisation, but is about cutting out any unnecessary expenditure between now and the end of March 2009.

### **Recruitment to Vacant Posts:**

As a measure to help control spend and contain the budget pressures, any post that now becomes vacant, unless it is in an area where there are minimum staffing levels for statutory purposes, must remain unfilled until the end of the financial year, before anyone, permanent or temporary, takes up the role.

If there are reasons why a post cannot be held vacant for this period of time, i.e. minimum staffing levels, then these must be clearly explained on the approval for hiring form, attached, which must be authorised by the Departments Director on the way up to the Chief Executive.

In light of the list of potential savings through restructures if posts can be held to the end of the financial year it may also help support the council's approach to redeployment.

### **Temporary Staff Recruitment:**

As you are all aware, the hiring of temporary staff takes up a substantial part of the Authority's budget. For the purposes of this section temporary staff includes staff on short-term contracts, agency staff and consultants.

There is to be no hiring of temporary staff before the end of the year unless the above business case has been produced. This will be closely monitored between now and the end of the financial year.

The use of temporary staff should not be seen as a long term solution to a vacancy or staff shortfall problem. Temporary staff should only be used as a matter of final resort, and any temporary staff that can be released should be with immediate effect. Depending

on the length of time a temporary member of staff has been with the Council it may be worth a discussion with you relevant HR business partner.

If there are temporary staff who are in positions which are likely to remain in the structure after the review, who are very competent and whose employment currently costs significantly more than direct employment would, consideration should be given to securing them as permanent members of staff.

### **Procurement of Goods and Services:**

These measures apply to all external supplies and services and those internal services which require external or part external resourcing. It is important first to draw a distinction between procurement of a general nature such as expenditure on stationery, training, subsistence, travel, IT equipment and software etc and procurement that is directly related to client services. Examples of this include expenditure on temporary accommodation, social care, special educational needs, highways etc.

This guidance relates particularly to expenditure of a general nature. However, each Director must ensure that they have appropriate controls in place to control the procurement of provision of client services.

All purchasing other than for client services must be made via either the i-procurement system or a purchasing card.

### **IT Purchasing**

All IT procurement must be made via corporate IS & IT, and there are to be no new purchases before the year end, without their approval.

### **Printing**

All design and printing must go through the Corporate Communications team (x 5558).

No design or printing work should be taken to outside companies without the prior approval from the Head of Communications (x5558)

Photocopying of 20 or more items by officers in the Town Hall must be taken to printing as this is significantly cheaper than copying on local machines.

### **Furniture**

No furniture can be ordered without the prior approval of the Head of Facilities (x5945), and there is to be no spend before the end of the financial year.

### **Stationery**

The procurement process for stationery requires all departments to order their stationery via i-procurement. Only essential expenditure should be incurred.

### **Training**

Only essential external training should now be undertaken, if it supports needed continuing professional development, or is required formally to enable someone to undertake their duties.

### **Conferences**

As with training, only free conferences or those that are needed to support continuing professional development can be undertaken.

**Conclusions**

Wherever possible expenditure should be deferred until after the end of March 2009.

Please note that these rules are Council policy and therefore subject to the usual disciplinary procedures if they are not followed. Analysis of these expenditures will be produced and presented to CMT monthly

**SLOUGH BOROUGH COUNCIL**  
**OVERVIEW & SCRUTINY COMMITTEE**  
**FORWARD AGENDA PLAN 2008/09**

Meeting	Policy Reviews, Etc.	Audit/Performance Monitoring/Other	Final Report Deadline (5 pm)
<b>5<sup>th</sup> February 2009</b>	<ul style="list-style-type: none"> <li>• Budget Reports (A Blake-Herbert)</li> </ul>	<ul style="list-style-type: none"> <li>• Performance Report (A Blake-Herbert)</li> </ul>	<b>23<sup>rd</sup> January 2009</b>
<b>26<sup>th</sup> February 2009</b>	<ul style="list-style-type: none"> <li>• Chief Constable of TVP</li> <li>• Update on Per Temps Contract (Y Harris)</li> <li>• Neighbourhood Shops Policy (N Aves)</li> </ul>	<ul style="list-style-type: none"> <li>• Performance Report (A Blake-Herbert)</li> </ul>	<b>13<sup>th</sup> February 2009</b>
<b>16<sup>th</sup> April 2009</b>		<ul style="list-style-type: none"> <li>• Performance Report (A Blake-Herbert)</li> </ul>	<b>1<sup>st</sup> April 2009</b>
<b>Unprogrammed</b>	<ul style="list-style-type: none"> <li>• Outcomes of Ombudsman case re Supported Housing Complex (N Aves)</li> <li>• Outcomes of Housing Stock and HMO Surveys (N Aves)</li> <li>• Broom &amp; Poplar – Performance of Pellings ( A Blake-Herbert/S Pathak)</li> <li>• Post-implementation Review of Top 30 Capital Projects (A Blake-Herbert)(to be submitted as Reviews are completed)</li> <li>• Report on Property Disposals – Estate Shops/Windsor Road (M Jennings)</li> <li>• Member IT/Deliveries, etc (C Meek)</li> </ul>		

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