

Special Overview & Scrutiny Committee – Meeting held on Wednesday, 17th September, 2008.

Present:- Councillors Grewal (Chair), Basharat, Coad, Davis, Haines, Matloob, Munkley and Walsh.

Also present under Rule 30:- Councillors Anderson, Dhillon, Long, Maclsaac, Mann, Plimmer and Stokes

Apologies for Absence:- Councillor Dodds.

PART I

31. Declarations of Interest

Councillor Grewal declared a personal prejudicial interest in the item to be considered – Proposed Appropriation of Land at Upton Court Park – and indicated that he would take no part in the debate on the matter and would leave the meeting.

Councillor Stokes indicated that whilst he had been advised that he could not raise his concerns about the previous decision taken with regard to appropriation of Land at Upton Court Park at this meeting he sought an assurance that he would be able to do so at a future meeting.

The Committee noted that it had agreed on 11th September 2008 to scrutinise the decision taken and that a report would be submitted to the meeting on 9th October 2008.

Councillor Grewal left the meeting.

(Councillor Basharat, Vice-Chair in the Chair).

32. Proposed Appropriation of Land at Upton Court Park

The Borough Secretary and Solicitor introduced the report which set out the responses to the Council's proposal to appropriate an area of Upton Court Park from its present purpose of open space to planning. The land was referred to in the report as the Access Land and Members were asked to note that in addition to the land's use as open space it was also designated as Green Belt.

The Borough Secretary and Solicitor advised the Committee of the legal position and the statutory test to be applied to the decision. A local authority had the power to appropriate for any purpose any land which belonged to the authority and was no longer required for the purpose for which it was held immediately before the appropriation. In the case of the Access Land the current or original purpose was that of open space. The words no longer required were construed to mean "not needed in the public interest of the locality for the original purpose and that question involved matters both of degree and of comparative needs".

Overview & Scrutiny Committee - 17.09.08

Members' attention was drawn to a typographical error in paragraph 5.1 (a) where '...public walks, paths, ...' should read'public walks, **parks**'

It was a matter for the members to decide the issue and members were advised that as the land was currently used as open space no appropriation to another purpose could take place until notice of the Council's intention to do so was published in a local newspaper for 2 consecutive weeks and the Council had considered any objections which had been raised. Members had to look at the factual position and consider the objections received to the proposal and then decide whether the Access Land was no longer required as open space and, if it was not, should the land be appropriated for planning purposes.

The Borough Secretary and Solicitor highlighted a number of issues with regard to the factual situation and current planning permission relating to the Castleview site and the Access Land :-

- The Access Land was open space and formed part of the Upton Court Park
- It represented 1.03% of Upton Court Park as it was today.
- Upton Court Park and the Access Land itself was designated as Green Belt and that this was arguably relevant to the Committee's considerations given the Order of Mr Justice Collins.
- The Access Land comprised a car park, redundant cycling proficiency area, grassland, and a road which led to the Slough Rugby Club, an owl sanctuary and an electricity substation.
- The road had been used for many years to access Land/Property which had nothing to do with the open space/pleasure ground uses for which Upton Court Park was used.
- The Access Land as well as Upton Court Park was subject to the restrictive covenants referred to in the report.
- There was a possibility that the law may deem the land as being held under statutory trust but any appropriation of the Access Land for planning purposes would free that land and that land alone from the trust.
- Planning permission had been granted for a residential development on the Castleview site. As part of the planning permission the Secretary of State had accepted that the Access Land could be developed into a road which would serve the Castleview site.
- The planning permission contained a number of conditions which sought to replace the facilities lost if the Access Land was developed in accordance with the planning permission.
- Some Members had suggested that the planning inspector who reported to the Secretary of State may not have known that the Access land had the benefit of Green Belt status. However Appendix C to the report demonstrated that the inspector was well aware of the greenbelt status when he reported to the Secretary of State recommending the granting of planning permission.

Overview & Scrutiny Committee - 17.09.08

Members were advised of the statutory process that had been followed to give notice of the Council's intention to appropriate the Access Land. Members were reminded that on 10th March 2008 the Cabinet had resolved to appropriate the Access Land from open space to planning purposes having considered the objections from local residents but this decision was subsequently revoked by the Cabinet in the light of the judicial review proceedings launched by representatives of the Castleview Residents' Association. At the same time, the Cabinet resolved to start the statutory process again and the practical effect of the revocation was that all matters relating to the Access Land and the Castleview Site had to be considered afresh.

The letters and petitions that had been received were set out in Appendix G to the report in their entirety so that Members could read for themselves the number of objections received, from where the objections were raised and to get an idea of how strong the feeling was about the proposal. There were no letters of support or petitions to support the proposal to appropriate. The objections covered a whole range of reasons why the Cabinet should not appropriate the land for planning and a summary of the objections had been provided for Members.

Members of the Committee discussed the report and raised a number of queries including

- A request for a summary of the objections received to the proposed appropriation. The Borough Secretary and Solicitor ran through the summary of the objections received.
- A member of the Committee asked whether the covenant had already been breached as part of the Access Land was already a road. The Borough Secretary and Solicitor indicated that he did not know when the road had been developed but that to date, as far as he was aware, no one had made an objection to road. Other members argued that the current "road" was a track for park users and that even if the current track was an apparent breach of the covenant there was no justification to compound the problem by putting a road in.
- A Member of the Committee indicated that she had been advised that 1500 people had the benefit of the covenant and no officer had asked to see the covenant documents. The Borough Secretary and Solicitor advised that the covenant issue was not the point of this report although there would be a large number of people who appeared to have the benefit of the covenant. However a breach would only arise if there was a decision to appropriate the land for planning purposes and the land was subsequently sold for development and the planning permission was implemented.

Councillor Coad undertook to write to the Vice Chair with an indication of the matters she would wish to see scrutinised with regard to the previous decision on appropriation of land at Upton Court Park at the October Overview and Scrutiny Committee.

Overview & Scrutiny Committee - 17.09.08

The Chair adjourned the meeting at 7.10 p.m. and the meeting reconvened at 7.25 p.m.

Members continued to debate the proposals and made a number of points including:

- A view that the land was still needed for open space for the following reasons
 - The larger car park was not accessible to larger cars as the barriers were the wrong height
 - This was the most accessible entrance to the car park.
 - The cycle path was used a great deal.
 - The Access Land gave access to less busy parts of the park.
 - Replacing trees but with no arrangement to sustain them was insufficient. The Head of Planning and Strategic Policy advised that the provision of trees was a planning matter which had been considered and taken into account by the Secretary of State when the planning applications were determined.
 - The public open space that would be created as part of the development would not be part of the park and would not be readily accessible to park users.
 - The bio-diversity of the park should be considered and that the park should be protected
 - Although this was only 1% of the park that it would be the thin end of the wedge and might set a precedent for disposing of parkland. The Borough Secretary and Solicitor and Head of Planning and Strategic Policy advised that there were no proposals in the adopted Local Plan to carry out development in Upton Court Park and that the Council had strong policies for retaining local parks. In planning terms the access was acceptable, issues had been aired at inquires and appeals and the Secretary of State had decided that this was the most suitable access. No precedent was being created.
- Some Members expressed a concern that they had been advised that the Access Land was not in the Green Belt. The Borough Secretary and Solicitor and Head of Planning and Strategic Policy explained that the Cabinet had been wrongly informed in March 2008 and that the decision taken had subsequently been revoked by the Cabinet to start the process afresh. The Head of Planning and Strategic policy confirmed that the Access Land was in the Green Belt and that there was no issue of its status changing. He confirmed that the land would remain Green Belt regardless of whether or not a road was built on it.

Members asked whether the objection letters and petitioners had been responded to on an individual basis. The Borough Secretary and Solicitor advised that the letters had been or were in the process of being acknowledged. Where a direct question had been asked Officers were trying

Overview & Scrutiny Committee - 17.09.08

to respond but officers could not respond to the issues raised as these were matters for the Cabinet to weigh up in making their decision.

The Chair invited Members present under Rule 30 to speak and members made the following comments:

- A question as to why, if the test was whether the land was “no longer required as open space”, the Council was seeking to relocate the open space as part of the development if it was not required in the first place.
- An acknowledgement that the Cabinet was not obliged to sell the land.
- A view that the loss of the Access Land would be detrimental to the whole park.
- The Council would be potentially facing legal costs if it was to challenge the covenant.
- A view that that the capital receipt that would be much less than anticipated because of the recession.
- A query as to the access to the school that had outline planning permission. The Head of Planning and Strategic Policy advised that the planning permission did not require a school to be built but that a site was to be reserved on the plan. Issues of parking would need to be considered.

The following proposal was put and seconded “that in the light of substantial number of objections received the Access Land is required for open space purposes as part of Upton Court Park and that it should not be appropriated to planning purpose”.

The proposal was put to the vote and carried by 4 votes to 3.

The Committee discussed an additional proposal that each objector got an individual reply to their letter and that a generic reply be sent to each person who had signed the petition. The Borough Secretary and Solicitor advised that as he did not yet know what the decision of the Cabinet would be, he would be unable to do this, however, once the Cabinet had met, it would be possible to write to objectors explaining the Council’s position.

Recommended to the Cabinet - That, in the light of the substantial number of objections received, the Access Land is required for open space purposes as part of Upton Court Park and that it should not be appropriated to planning purposes.

Chair

(Note: The Meeting opened at 6.30 p.m. and closed at 8.35 p.m.)