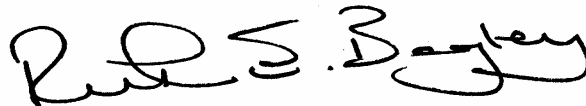


Date of issue: 9<sup>th</sup> September, 2008

<b>MEETING</b>	<b>SPECIAL OVERVIEW &amp; SCRUTINY COMMITTEE</b> (Councillors Grewal (Chair), Basharat, Coad, Davis, Dodds, Haines, Matloob, Munkley and Walsh.)
<b>DATE AND TIME:</b>	WEDNESDAY, 17TH SEPTEMBER, 2008 AT 6.30 PM
<b>VENUE:</b>	COUNCIL CHAMBER, TOWN HALL, BATH ROAD, SLOUGH
<b>DEMOCRATIC SERVICES OFFICER:</b> (for all enquiries)	KEVIN BARRETT (01753) 875014

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.

**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).

**SCRUTINY ISSUES**

2. Proposed Appropriation of Land at Upton Court Park. 1 - 26

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.

Minicom Number for the hard of hearing – (01753) 875030

**SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview & Scrutiny Committee    **DATE:** 17<sup>th</sup> September 2008  
**CONTACT OFFICER:** Steven Quayle, Borough Secretary and Solicitor  
**(For all Enquiries)** (01753) 875004  
**WARDS:** Upton/All  
**PORTFOLIO:** Resources

**PART I**  
**FOR CONSIDERATION & COMMENT**

**PROPOSED APPROPRIATION OF LAND AT UPTON COURT PARK**

**1. Purpose of Report**

- 1.1 The purpose of this report is for the Committee to comment on the following issues prior to consideration of the matter by Cabinet on 24<sup>th</sup> September:-
- (a) Members to consider the substantial number of objections received to the proposed appropriation of the Council's land (the Access Land) from open space to planning purposes shown hatched black on **Appendix A** to this report.
  - (b) Whether or not the Access Land is no longer required for open space purposes as part of Upton Court Park and if not whether it should be appropriated to planning purposes.

**2. Recommendations/Proposed Action**

- 2.1 The Committee is requested to consider the objections raised in the context of the factual, planning and legal background set out in this report and pass any comments thereon to the Cabinet.

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

**Priority 5 – Maintaining Excellent Governance within the Council to ensure it is efficient, effective and economic in everything it does**

- 5.1 Improve financial and asset planning, monitoring and stewardship.

**4. Other Implications**

(a) Financial

- 4.1 The appropriation of the Access Land to planning purposes would not in itself have significant financial implications as it is a transfer of the land from one statutory purpose i.e. open space to another i.e. planning.

4.2 However, if the Access Land is appropriated for planning purposes to facilitate residential development on land known as the “Castleview Site” then a significant capital receipt could be generated to fund part of the Council’s Capital Programme. However no decision has been taken to dispose of the Access Land to the developers but if this were proposed this would be the subject of a separate report to the Cabinet. There is nothing significant to report since the Cabinet meeting held on 27<sup>th</sup> May 2008.

(b) Human Rights Act and Other Legal Implications

4.3 A local authority as a land owner may hold its land for a variety of statutory purposes e.g. housing, planning or open space. Section 122 of the Local Government Act 1972 (“the 1972 Act”) permits a local authority to appropriate (transfer) its land from one statutory purpose to another where it concludes that the land is no longer required for the former purpose. However, where the land is currently used as open space a local authority cannot appropriate it for another purpose until its intention has been publicised in a notice and any objections received to the proposed appropriation have been considered. The relevant statutory provisions are contained in **Appendix B** to this report.

4.4 A local authority, acting in good faith, is the sole judge of the question whether or not any land is still required for the purpose for which it is held immediately before the appropriation and its decision cannot be challenged in the absence of bad faith.

4.5 Thus the Cabinet must consider all of the factual, legal and planning circumstances and in that context decide whether the Access Land which remains designated as Green Belt land is no longer required as open space within Upton Court Park. The Access Land represents 1.03% of Upton Court Park as it is today.

## 5. Background/Supporting Information

(a) Existing Uses of Access Land

5.1 Upton Court Park (which includes the Access Land) was purchased by the Council from a Mr Frederick Cornish in 1935. It is Green Belt land. The Conveyance contained several restrictive covenants. Two of those covenants provide in summary as follows:-

(a) That Upton Court Park (which will include the Access Land) should not be used otherwise than for the provision of public walks, paths, pleasure grounds or playing fields, including the provision of pavilions, other buildings and conveniences.

(b) Nothing should be done on the park that may be or become a nuisance or annoyance to Frederick Cornish.

The full text of the restrictive covenants referred to above are attached at **Appendix C**.

5.2 As will be seen from **Appendix C** the land is to not be used otherwise than for “*the provision of public walks parks pleasure grounds or playing fields under the Public Health Acts or any enactments amending those Acts*”. If the Access Land is held

for pleasure ground purposes under Section 164 of the Public Health Act 1875 and as a consequence of that is held in trust for the enjoyment of the public, then any appropriation of the land from open space to planning purposes will free the land from such trust (see Section 122 [2B] of the 1972 Act in **Appendix B**). Meanwhile it is anticipated that the developers' use of the Access Land in accordance with the planning permission would effectively override the restrictive covenants (subject to a right of compensation) following the Planning Bill becoming law in the next few months and introducing an amendment to Section 237 of the Town and Country Planning act 1990.

- 5.3 Much of the Access Land (but not all) has been laid out as a road serving the Slough Rugby Club, an owl sanctuary and an electricity service station. It is understood that this road has been so used for many years so that the users may have acquired rights of access along the road.
  - 5.4 It is evident that the use of the road does not directly relate to the purposes of the restrictive covenant i.e. the provision of the public walks, parks, etc and whilst its use for the benefit of the rugby club and more recently the cricket and hockey club might be said to be ancillary to the use of the park it is plain that access for a sub-station and owl sanctuary do not come within the terms of the covenant even indirectly.
  - 5.5 It should be noted that the Council would be unable to dig up the road and use it if the rights which appear to have accrued to the owl sanctuary, the electricity sub-station and the rugby club were substantiated.. The use of the road does indicate that as a matter of fact the land upon which the road is built has not been required for any of the express purposes of Upton Court Park itself for some time.
  - 5.6 Apart from the first part of the road which leads to one of the car parks situated in Upton Court Park the remainder and majority of the road is not used for accessing any of the playing field at Upton Court Park. Indeed, bollards are in place along the road which prevent persons parking to the side off the road to access the playing fields. The changing rooms for the playing fields are themselves some distance away and served by a different car park.
  - 5.7 The remainder of the Access Land comprises a car park (which some users of the park may use), a redundant cycling proficiency test area and grassland.
- (b) The Planning Position
- 5.8 The Local Plan for Slough was adopted in March, 2004 as the development plan for the Borough of Slough after a major public inquiry into all of the proposals. At this public inquiry the developers and local residents had an opportunity of commenting on the proposals being put forward.
  - 5.9 Proposal Site 16 which is the land known as the Castlevue Site was released from the Green Belt and allocated for residential purposes with the preferred access being over the Access Land which is the subject of this report. However as indicated above the Access Land was not released from the Green Belt and continues to have Green Belt status. Whilst the Green Belt status of the Access Land has now been said to be arguably relevant to the decision to which this report relates (see the Order of Mr Justice Collins (See **Appendix F**) it should also be

noted that the principle of residential development on the Castleview Site serviced by a road through the Access Land is well established.

- 5.10 Whilst applications for residential development on the Castleview Site were refused by the Local Planning Authority in 2004/2005 outline planning permission for residential development on the Castleview Site with access through the Access Land was granted by the Secretary of State on appeal subject to a number of conditions. The Green Belt status of the Access Land was known by the Planning Inspector who heard the appeal and extracts from his report and the comments of Mr G Wyld (Head of Planning & Strategic Policy) are shown at **Appendix E**. The planning permission is annexed to this report at **Appendix F**
- 5.11 It should be noted that if the Access Land were disposed of to the developer and the planning permission implemented the developer would have to:-
- (a) provide a minimum of 10% of the housing development site as public open space to replace the open space which will be lost by the construction of the road on the Access Land.(Condition 12)
  - (b) replace any trees lost as part of the construction of the road which will service the proposed residential development. (Condition 10)
  - (c) relocate the existing car park and recycling facilities which form part of the Access Land. (Condition14)

#### The Statutory Appropriation Process

- 5.12 As a result of the two statutory notices which appeared in the Slough Observer on the 4<sup>th</sup> and 11<sup>th</sup> January, 2008 well over 100 residents responded. None of the letters were in favour of appropriating the land from open space to planning purposes.
- 5.13 All of the letters received were placed in the Members' Room on Wednesday, 20<sup>th</sup> February and this was publicised in the Members' Information Bulletin issued on Friday, 22<sup>nd</sup> February, 2008.
- 5.14 It would be fair to say that the responses from the local residents were robust and included the following:-
- Development of the Access Land would breach covenants in the 1935 Conveyance.
  - The development of a small part of Upton Court Park would create a precedent for future development.
  - The development would cause disturbance to the local community during and after construction.
  - The additional traffic serving the residential development would be a nuisance and a danger.
  - Loss of open space/affect the use of Upton Court Park.

- The development would be a breach of trust.
- Loss of car parking/cycling facility.
- Flood risk.
- Loss of farm land.
- Residential development would create overlooking, loss of light, overshadowing, visual intrusion, disturbance and smell.
- Loss of trees.
- Loss of view of the Park.
- The proposal is unlawful.
- Devaluation of property.
- Ulterior motives.
- Slough becoming a “concrete jungle”.

5.15 At the meeting of the Cabinet on 10<sup>th</sup> March, 2008 Members of the then Cabinet considered a proposal to appropriate the Access Land for planning purposes under Section 122 of the 1972 Act on the basis that it was no longer required for its previous purpose i.e. that as open space. The report set out the considerable number of objections raised by the public as a result of the statutory consultation process but in the course of the Cabinet meeting Members were wrongly advised by Officers that the Access Land had been removed from the Green Belt which is not the case. At the meeting the Cabinet decided to appropriate the Access Land for planning purposes. This decision was challenged by way of Judicial Review proceedings on the grounds that erroneous advice was given i.e. that the Access Land was no longer in the Green Belt.

5.16 The advice of John Hobson QC was sought on the prospects of the Claimants being successful in the judicial review proceedings and he advised as follows:-

- (1) The Council could advance the argument that the Green Belt status of the land was irrelevant to the decision to appropriate it under Section 122 of the 1972 Act, on the basis that the only issue under section 122(1) was whether the Access Land was “no longer required for the purposes for which it is held immediately before the appropriation” and/or that any issue of whether residential development on the Green Belt land should be permitted had already been decided by the grant of planning permission.
- (2) If the judicial review proceeded to a substantive hearing, then the Council would probably succeed on the basis of these arguments.

(3) However, there was a real risk that the Claimants would be granted permission to seek judicial review because the threshold for permission is low and more latitude is sometimes given to lay Claimants.

(4) In the circumstances it would be wiser to revoke the previous decision to appropriate and for Cabinet to consider appropriation a second time. This would be much quicker than awaiting the outcome of judicial review proceedings and would minimise further legal costs.

5.17 In the event the Claimants were indeed granted permission by Mr Justice Collins. The terms of the Court order are set out in **Appendix F**.

5.18 On 7th July the Cabinet considered the position with regard to the appropriation and the pending judicial review proceedings and decided:-

5.18.1 to note the issue of Judicial Review proceedings and the advice of John Hobson QC on the likelihood of success.

5.18.2 that, notwithstanding the strong legal position of the Council as set out, to revoke the decision of the Cabinet on 10<sup>th</sup> March, 2008 to appropriate the Access Land from open space to planning purposes.

5.18.3 to further resolve to give notice of the Council's intention to appropriate the Access Land which forms of part of Upton Court Park from open space to planning purposes under the provisions of Section 122 of the Local Government Act 1972 (as amended) 1972 and to consider any objections to the proposed appropriation at its meeting in September, 2008.

5.19 As a result of the Cabinet decision of 7th July 2008 and its subsequent decision on 23<sup>rd</sup> July not to delay implementation two further statutory notices were published in the Slough Express and Slough Observer on the 1st and 8<sup>th</sup> August 2008.

5.20 Once again these notices have generated numerous further objections to the proposed appropriation. Each Cabinet Member has been provided with a folder (**Appendix G**) containing every objection letter/petition received from local residents as a result of both publications of the statutory notices i.e. those in January and those in August 2008 so that they can read in full the residents views. A summary with officer comment has also been provided.

## **6. Conclusion**

6.1 As can be seen there is a wealth of public objection to the proposed appropriation and many of the objections relate to matters which have already been established through the allocation of the Access Land as part of Proposal Site 16 in the Council's own Local Plan for Slough and the planning permission granted on appeal by the Secretary of State in 2006.

6.2 The Cabinet must decide having considered the factual, legal and planning circumstances set out above and the significant number of objections received whether the Access Land is no longer required as part of the open space which



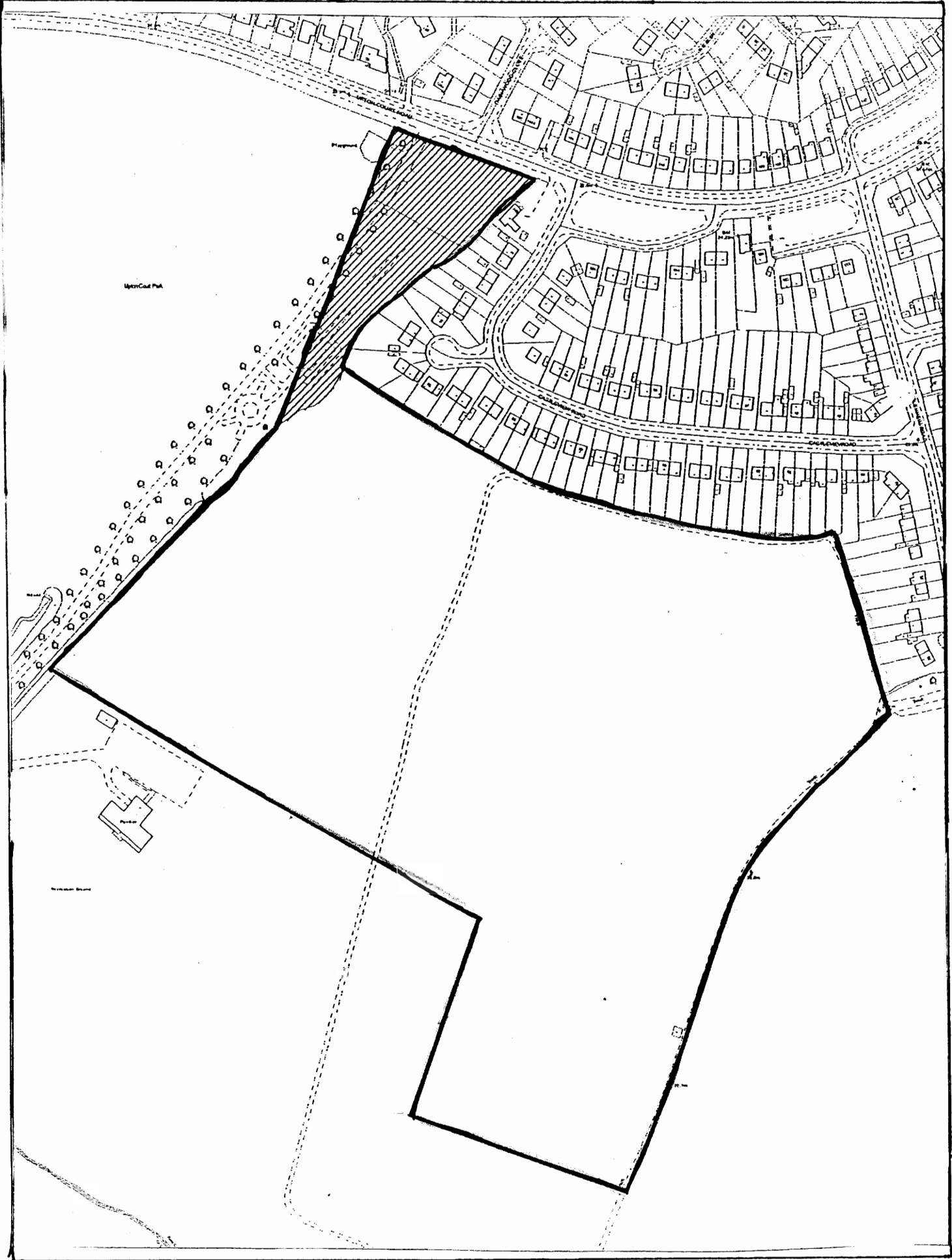
forms Upton Court Park and if so whether it should be appropriated for planning purposes.

## 7. **Appendices**

- A** Plan of Access Land
- B** Section 122, Local Government Act 1972 (as amended)
- C** Extract from a Conveyance dated 15<sup>th</sup> May, 1935 between Frederick Cornish (1) and the Urban District of Slough (2).
- D** Extracts from Planning Inspector's report dated 23<sup>rd</sup> February 2006 and comments of Mr G Wyld
- E** Planning Permission for the Castlevue Site
- F** Order of Mr Justice Collins
- G** Bundle of Objection letters/petitions (**TO FOLLOW**).

**Steven Quayle**  
**Borough Secretary and Solicitor**

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**RELEVANT EXTRACTS FROM SECTION 122, LOCAL GOVERNMENT ACT (1972) (AS AMENDED)**

- (1) Subject to the following provisions of this Section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned.
- (2A) A Principal Council may not appropriate under sub-section (1) above land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.
- (2B) Where land appropriated by virtue of subs. (2A) above is held –
- (a) for the purposes of s.164 of the Public Health Act 1875 (pleasure grounds);  
or
  - (b) in accordance with s.10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),

the land shall by virtue of the appropriation be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said s.164 or, as the case may be, the said s.10.]

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**EXTRACT FROM A CONVEYANCE DATED 15<sup>th</sup> MAY 1935 BETWEEN  
FREDERICK CORNISH (1) AND THE URBAN DISTRICT OF SLOUGH (2)**

**The Restrictive Covenants**

2. The Purchasers will not use or permit the land coloured green (*this is Upton Court Park*) on the said plan to be used otherwise than for the provision of public walks, parks, pleasure grounds or playing fields under the Public Health Acts or enactments amending those Acts including the provision of pavilions or other buildings and conveniences PROVIDED ALWAYS that nothing in this covenant shall prevent the Purchasers (a) permitting the use of portion of the said land by the Boy Scout's Association or other similar association as a summer camp for training or recreation and the erection thereon of lavatories canteens and club headquarters (b) hereafter when thought fit with the consent of the Government Departments required using a portion of the said land considered most suitable for cultivation and provision of allotments in substitution for the "Upton Allotments" under the Allotment Acts 1908 and 1925 or any enactments amending those Acts (c) selling the frontages to the future road approximately indicated on the said plan by the colour brown for the erection thereon of private residences PROVIDED ALWAYS that no part of the land coloured green that lies immediately to the south of the said road between the points "A" and "B" on the said plan and within a distance of 100 yards therefrom shall be used for any such allotments nor shall any lavatories camps canteens or club headquarters be or be allowed to be erected maintained or placed on the said portion of the land coloured green lying to the south of said road within the distance aforesaid.
  
- 3 The Purchasers will not permit anything to be done on the land coloured green or brown on the said plan that may be or become a nuisance or annoyance to the Vendor PROVIDED ALWAYS that nothing in this covenant shall prevent the said land being used as aforesaid.

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**EXTRACTS FROM AND COMMENTS ON PLANNING INSPECTOR'S REPORT**

Set out below are relevant extracts from the report of Michael Clark, Inspector into Appeals by Kelobridge Ltd, dated 23<sup>rd</sup> February 2006.

Paragraph 17, part of his description of the site includes the following *"That part of the site of Appeal 2 within Upton Court Park is also within the Green Belt as defined on the adopted Local Plan"*.

Appeal 2 is the one that was approved by application P/1145/003 with access from Upton Park Road across the park. The Inspector recommended approval, which was subsequently granted by the Secretary of State.

Paragraph 170, summary of evidence from Mrs. P. Underdown, states *"Access from Upton Court Road is equally unsatisfactory because of loss of parkland, breach of a restrictive covenant which has been abided by local residents, and encroachment into the Green Belt"*.

Paragraph 315. Inspector states *"The proposed means of access to the site is in accordance with the Local Plan Proposals Map and the requirements in Chapter 10"*(Appeal 2).

Paragraph 316. He states *"Having regard to the above and all other matters, I conclude that appeal 2 should be allowed"*

This demonstrates that the Inspector was

- (a) fully aware that the area the subject of the access road was still in the Green Belt and
- (b) he was satisfied that the access proposals were in accordance with the Local Plan.

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**Office of the  
Deputy Prime Minister**

Creating sustainable communities

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Our ref: APP/J0350/A/04/1166905,  
APP/J0350/A/05/1175855,  
APP/J0350/A/05/1187532 &  
APP/J1725/E/05/1186646

29 March 2006

**COPY**

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78**

**APPEALS BY: KELOBRIDGE LTD**

**APPLICATION NUMBERS P/11425/001, P/11425/003, P/13303/000 & P/13303/001  
PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT AND ASSOCIATED  
ACCESS ON LAND TO THE REAR OF 2-78 CASTLEVIEW ROAD, SLOUGH**

1. I am directed by the First Secretary of State to say that consideration has been given to the report of the Inspector, Michael Clark FRTPI FRICS, who held an inquiry on 10-13 January 2006 into your client's appeals against the decision of Slough Borough Council to refuse planning permission for:
  - appeal 1, residential development with public open space and play area on land to the rear of 2-78 Castleview Road, Slough;
  - appeal 2, residential development with primary school with public open space with play areas on land to the rear of 2-78 Castleview Road, Slough;
  - appeal 3, a revised proposal for access to application P/11425/001 (appeal 1) including the demolition of no. 26-32 Castleview Road; and
  - appeal 4, a revised proposal for access to application P/11425/001 (appeal 1) including the demolition of no. 26-32 Castleview Road and a replacement dwelling on no. 30-32 Castleview Road.

**Inspector's Recommendation and Summary of the Decision**

2. The Inspector, whose conclusions are annexed to this letter, recommended that the appeal 2 be allowed and appeals 1, 3 and 4 be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and his recommendations. All references to paragraph numbers appearing in this letter, unless otherwise stated, are to the Inspector's report (IR).

**Policy Considerations**

3. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan includes:

Regional Planning Guidance Note 9: the South East (RPG9), published in March 2001; the Berkshire Structure Plan (2001-2016), adopted in July 2005; and the Local Plan for Slough (1991-2006) adopted in March 2004.

4. The Secretary of State has also taken into account as material considerations: Planning Policy Guidance 3 *Housing* (PPG3); Planning Policy Guidance 13 *Transport* (PPG13); and Planning Policy Guidance 15 *Planning and the Historic Environment* (PPG15).
5. In determining the appeals, the Secretary of State has taken into account draft Planning Policy Statement 3 *Housing* (PPS3) but he accords it very little weight. He also considers that this draft raises no new issues which would affect his decision or require him to refer back to the inquiry parties, either under Rule 17 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, or in the interests of natural justice.

#### **Main Considerations**

6. The Secretary of State considers the main issues are:
  - whether the proposed development would result in an over-supply of housing land in Slough and, if so, whether that would cause any material harm;
  - whether the sites are in a sustainable location for housing;
  - whether the proposed development accords with Local Plan requirements for Proposal Site 16;
  - the effect of the proposed means of access to the sites on the operation, safety and convenience of the local highway network and on the living conditions of nearby residents in terms of noise and disturbance;
  - the effect of the proposed development on the character and appearance of the surrounding area; and
  - whether the proposed development would provide sufficient social and affordable housing as required by Policies H5 and H6 of the Local Plan.

*Whether the proposed development would result in an over-supply of housing land in Slough and, if so, whether that would cause any material harm*

7. The Secretary of State agrees with the Inspector, for the reasons given at IR212-223, that the proposed development would lead to an over-supply of hard commitments for housing in Slough in relation to the strategic housing requirements for the period 2006-2011. However, he concludes that no material harm would arise from such an over-supply, particularly in view of the benefits arising from the delivery of family and affordable housing on the sites.

*Whether the sites are in a sustainable location for housing*

8. The Secretary of State agrees with the Inspector, for the reasons given at IR224-233, that the site of Appeals 1 and 2 is in a sustainable location for housing, in terms of the accessibility of the proposed development.

***Local Plan requirements for Proposal Site 16***

9. The Secretary of State agrees with the Inspector, for the reasons given at IR234-253, that appeals 1, 3 & 4 fail to comply with the requirements of the Local Plan in terms of the proposed access to the appeal site and, in respect of appeal 1 only, by a failure to provide land for the relocation of Castleview School. The Secretary of State concludes that appeal 2 complies with the requirements of Chapter 10 of the Local Plan.

***Effect on the operation, safety and convenience of the local highway network and on the living conditions of nearby residents***

10. The Secretary of State agrees with the Inspector, for the reasons given at IR254-269, that the proposed means of access to the site in appeal 1, as revised by appeals 3 and 4, would cause harm to the operation, safety and convenience of the local highways. He concludes that appeal 1 fails to accord with the Local Plan on this matter. The Secretary of State concludes that, subject to appropriate conditions and the s106 agreement, the proposed means of access to the site in appeal 2 would not cause harm to the operation, safety and convenience of local highways and accords with the Local Plan in that respect.
11. The Secretary of State agrees with the Inspector, for the reasons given at IR270-283, that the proposed means of access to the development in appeals 1, 3 & 4 would cause harm to the residential amenities of nearby residents in Castleview Road by virtue of noise disturbance, contrary to environmental policies in the Local Plan.

***Effect on the character and appearance of the surrounding area***

12. The Secretary of State agrees with the Inspector, for the reasons given at IR284-307, that the proposed development in appeals 1 and 2 would not cause unacceptable harm to the character and appearance of the surrounding area.

***Provision of social and affordable housing***

13. The Secretary of State agrees with the Inspector (IR309) that the proposed developments in appeals 1 and 2 would both provide sufficient social and affordable housing to comply with the requirements of the Local Plan.

***Conditions***

14. The Secretary of State has considered the conditions for this development, having regard to Circular 11/95 "The Use of Conditions in Planning Permissions". He agrees with the Inspector, for the reasons given in IR322-341, that all of the suggested conditions, as amended, are necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

***s106 agreement***

15. For the reasons given in IR320-321, the Secretary of State agrees with the Inspector that the provisions of the section 106 Agreements would deliver all of the mitigation measures promised by the Promoters, and meet the test of necessity for planning obligations.

## **Conclusion**

### **Appeal 1**

16. The Secretary of State agrees with the Inspector's conclusions (IR310-313) that the appeal site is in a sustainable location and the housing proposed would not have an unacceptable impact upon housing supply in Slough or on the character and appearance of the area. However, he concludes that the means of access to the site, as revised by Appeals 3 & 4, does not accord with the Local Plan's requirements for the site. The Secretary of State further concludes that the proposal would cause harm to the operation, safety and convenience of the local highway network and to the residential amenity of nearby residents and therefore fails to accord with the Local Plan in this regard. In addition, the proposal also fails to accord with the Local Plan in terms of its failure to make provision for the relocation of Castleview School. On balance, the Secretary of State considers that the harm arising from the proposal outweighs the benefits of the provision of housing on the site and concludes that the appeal should be dismissed.

### **Appeal 2**

17. The Secretary of State agrees with the Inspector, for the reasons given at IR314-317, that the appeal site is in a sustainable location, the housing proposed would not have an unacceptable impact upon housing supply in Slough or on the character and appearance of the area and that the proposal would make provision for the relocation of Castleview Primary School. He concludes that the proposal accords with the requirements of the Local Plan for the site and that there are no highway objections to the proposed means of access. The Secretary of State concludes the appeal should be allowed, subject to conditions.

### **Appeal 3**

18. For the reasons given in paragraph 16 above and at IR318, the Secretary of State concludes that the appeal should be dismissed.

### **Appeal 4**

19. For the reasons given in paragraph 16 above and at IR319, the Secretary of State concludes that the appeal should be dismissed. In reaching this conclusion he has taken into account the proposal for a replacement dwelling for numbers 30/32 Castleview Road, but considers that this would not outweigh the harm arising from the proposed means of access to the appeal site.

## **Formal Decision**

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector and accepts his recommendations. He hereby dismisses appeals 1, 3 & 4 (relating to applications P/11425/001, P/13303/000 AND P/13303/001), and allows appeal 2 (relating to application P/11425/003) against the decision of Slough Borough Council and grants planning permission for residential development with primary school with public open space with play areas on land to the rear of 2-78 Castleview Road, Slough, subject to the following conditions:

1. Application for approval of the reserved matters must be made not later than three years from the date of this outline permission and the development must be begun not later than two years from the date of the final approval of the last of the reserved matters, or within five years from the date of this outline permission, whichever is the later.
2. The development shall be carried out in accordance with detailed plans showing the siting, design and external appearance of any buildings to be erected, the landscaping of the site, road, footpath and cyclepath design, vehicular parking and turning provision, hereinafter collectively referred to as 'the reserved matters' which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development.
3. The development hereby approved shall be implemented only in accordance with the following plans and drawings hereby approved unless otherwise agreed in writing by the Local Planning Authority:
  - Drawing No. 2319/PL.01A Location Plan, received 6 December 2004 (correcting drawing of the same number received with application 10.11.04.)
  - Drawing No. 3048C4001 rev B Proposed Roundabout Access
  - Drawing No. 3048C4002 rev A Proposed Roundabout and Access
4. Prior to the submission of details pursuant to the reserved matters (Condition 2) a Master Plan and Design Guide for the development shall have been submitted to and approved by the Local Planning Authority. The development shall be implemented in accordance with Master Plan and Design Guide approved.
5. Prior to the commencement of development a Phasing Plan for the development shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the Phasing Plan as approved. The Phasing Plan shall show the sequence of completion of the development including open space, play areas, site boundary tree and shrub planting, pedestrian, cycle and emergency links to and from the site.
6. Development shall not commence until the off-site works shown on drawing numbers 3048C4002A and 3048C4001B (or approved revisions to those drawings) have been substantially formed, laid out and constructed in accordance with the approved drawings and in accordance with detail construction drawings and specifications that shall have first been approved in writing by the local planning authority. No dwelling shall be occupied until the approved works have been fully implemented.
7. Prior to first occupation of each dwelling the internal access roads footpaths and vehicular parking and turning areas serving the associated dwelling shall be provided in accordance with the approved drawings.
8. Development shall not commence until details of boundary treatment have been submitted to and approved in writing by the Local Planning Authority. The

boundary treatment shall be implemented as approved prior to the occupation of the adjacent dwelling/building or completion of adjoining path or open space.

9. Details and samples of external materials to be used on the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority before the scheme is commenced on site. The details shall include hard surfaces. Development shall be carried out in accordance with the approved details.
10. Any trees lost as a result of construction of the access roundabout and associated link road through Upton Court Park shall be replaced with semi-mature trees in accordance with the design and maintenance details approved pursuant to the reserved matters.
11. Prior to the submission of reserved matters pursuant to Condition 2 a written scheme of archaeological investigation work shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include site investigation, excavation, recording and reporting details. The scheme shall be implemented prior to the submission of reserved matters pursuant to Condition 2 and results reported to the Local Planning Authority. Any long term recording & reporting requirements identified within the scheme shall be submitted to the Local Planning Authority prior to the first occupation of the penultimate dwelling approved pursuant to the reserved matters.
12. A minimum of ten percent of the housing development site area shall be laid out as public open space in accordance with details approved pursuant to Conditions 2 (Reserved Matters), 8 (Boundary Treatment) and 13 (Play Area) and in accordance with the Phasing Plan approved pursuant to condition 5.
13. Development shall not commence until details of an equipped play area has been submitted to and approved in writing by the Local Planning Authority. The play area shall be constructed in accordance with the approved details and in accordance with the Phasing Plan approved pursuant to Condition 5.
14. Prior to the commencement of the means of access and link road through Upton Court Park the relocation of the Park car park and recycling facilities and other accommodation works shall be carried out in accordance with details first approved in writing by the Local Planning Authority. The accommodation works shall include verge protection measures, formation of alternative Park access, erection of height restriction barriers and fencing, relocation of signs.
15. No more than 150 dwellings shall have been occupied prior to the laying out of a recycling compound & installation within it of recycling containers. The compound shall be constructed and containers installed in accordance with details first approved in writing by the Local Planning Authority. The location of the compound shall be in accordance with siting details approved pursuant to the reserved matters Condition number 2.
16. Development shall not commence until the means of access shown on drawing numbers 3048C4002 rev A have been completed to base course level prior to the start of construction of any dwelling on the site and completed in full prior to the first occupation of a dwelling.

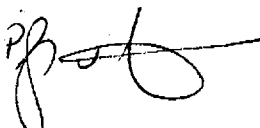


17. Vehicle wheel cleaning and dust suppression facilities shall be installed at construction site exit points/access road for the duration of the construction period in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.
18. There shall be no access to Blenheim Road other than for pedestrians, cyclists and emergency vehicles. Blenheim Road shall not be used as an access for activity related to the construction of the development.
19. A site measuring 2.024 hectares shall be reserved for a primary school adjoining Upton Court Park for 5 years from the date of the start of the development.
20. Development shall not commence until details of on site drainage works have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker. No works which result in the discharge of foul or surface water from the site shall be commenced until the onsite drainage works referred to above have been completed.
21. No residential or other flood sensitive development shall be permitted within the area shown as liable to flood in a 1 in 100 year event (otherwise known as the flood plain) as defined on Drawing No. 3826/21/07 Rev.D.
22. Details of finished floor levels of buildings shall be submitted to and approved by the local planning authority in consultation with the Environment Agency, prior to commencement of development. The scheme shall be completed in accordance with the approved plans.
23. A buffer zone of 8m measured from the outer edge of the culvert of Datchet Common Brook shall be established and shown on a plan to be submitted to and approved in writing by the local planning authority before development commences. No development including fences or hardstanding, or storage of building materials shall take place within the buffer zone.
24. Surface water drainage works incorporating surface water source control measures shall be carried out in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority before development commences.
25. No spoil or materials shall be deposited or stored on that part of the site lying within the area of land liable to flood.
26. Provision shall be made to the satisfaction of the local planning authority for an alternative safe, dry access route from the development to land outside the 100 year modelled floodplain, suitable for use by residents should a flood event occur.
27. Development shall not commence until additional boundary treatment for existing houses adjacent to the access road (No. 1-20 Castlevie Road) have been constructed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

**Right to Challenge the decision**

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
22. A copy of this letter has been sent to Slough Borough Council and to all those who appeared at the Inquiry.

Yours faithfully



**Phillip W Smith**

Authorised by the First Secretary of State to sign in that behalf



**In the High Court of Justice  
Queens Bench Division  
Administrative Court**

CO Ref:  
**CO/5292/2008**

In the matter of an application for Judicial Review

The Queen on the application of

**ANKERS & Others**

Versus

**Slough Borough Council**

**Application for permission to apply for Judicial Review**

**NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of Service filed by the Defendant and / or Interested Party]

*Order by the Honourable Mr Justice Collins*

**Permission is hereby granted.**

*Observations:*

The fact that the access land was in the Green Belt is arguably relevant to whether it was no longer required for open space (ie no development) quite apart from the assertion by three councillors that the erroneous information led them to vote in a way in which they would not otherwise have voted.

**02 JUL 2008**

**Signed: Sir Andrew Collins**

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the defendant's evidence.

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Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:  
Ref:

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