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 11th September, 2008 had agreed to examine the whole history of the Castleview 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 10th 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 7th 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 7th 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 11th September, 2008 indicated that the Committee had voted to undertake a post-decision scrutiny exercise of the decision taken by the Cabinet on 10th March, 2008 and these minutes had subsequently been approved by the Committee at its 9th 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 10th 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

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 10th March, 2008 when they were both Members of the Cabinet and were present when the decision relating to the Castleview 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

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 10th 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.

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 15th 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 15th January, 2009 and that the Committee consider at that meeting whether it wishes to undertake any further scrutiny of this matter.

APPENDIX A

Appropriation of Land at Upton Court Park - Questions and Replies (where given) at Overview and Scrutiny Committee on 4th 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.

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 agreed 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 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 22nd 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?

<u>Reply by SQ</u>

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*?

<u>Reply by SQ</u>

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.)

<u>Reply by Gerry Wyld (GW)</u>

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.

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 10th March 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 10th 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 "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 10th March 2008 the enforceability of the covenant position was wrongly stated. However, a note was given to Commissioners just before the Cabinet meeting on 10th 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 26th 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 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 26th 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 appraised 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 appraised 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?

    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 possess of the full legal opinion.

    <u>Reply by SQ</u>

    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 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 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 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?

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 “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.