

SLOUGH BOROUGH COUNCIL

REPORT TO: Overview & Scrutiny Committee **DATE:** 11th September 2008

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PART I **FOR DECISION**

CALL – INS – APPROPRIATION OF LAND AT UPTON COURT PARK AND CLOSURE OF HAYMILL BAR

1 Purpose of Report

- 1.1 To advise the Committee of the call-ins received since the last meeting and the action taken on them.
- 1.2 For the Committee to consider whether to carry out a post decision scrutiny on the Appropriation of Land at Upton Court Park.

2 Recommendations

The Committee is requested to resolve

- (a) That the pre and post decision call-ins submitted on the Appropriation of Land at Upton Court Park and the action taken on them be noted.
- (b) Whether or not to undertake post decision scrutiny of the decision taken by the Cabinet on the Appropriation of Land at Upton Court Park.
- (c) That the call in on the closure of the Haymill Bar be noted.

3 Key Priority Implications

There are no implications for the Council's key priorities as this report is administrative in nature.

4 Legal, Human Rights and Other Implications

None as the report is administrative in nature.

5. Supporting Information

- 5.1 Since its last meeting a number of call ins have been received from Members. The Constitution requires the Call-ins and the action taken on them to be reported to the Committee.

APPROPRIATION OF LAND AT UPTON COURT PARK

PRE DECISION CALL IN

5.2 Councillor Stokes submitted the following pre-decision Call in prior to the Cabinet considering a report on this matter on 7th July 2008 :

- “1 **Incorrect information was given by Officers to the Cabinet meeting on the 10th March, 2008** – as a consequence of this incorrect information Cabinet Members took decisions that they would not have taken if they had been supplied with correct information.
- 2 **Subsequently Officers sought to minimise the impact of flawed advice to the Cabinet meeting on the 10th March, 2008 by suggesting that it was immaterial in any event** – Officers admitted that they had mistakenly stated that parkland had been removed from the Green Belt although it remained in the Green Belt. They subsequently argued that this mistake was not important because the status of the access land was not material to the issue. Mr Justice Collins when granting permission for a Judicial Review indicated that the mistake could be material to the issue (see item 4 below).
- 3 **Officers stated that the residents’ complaints were misconceived and raised no arguable case for Judicial Review because the Inspector/Secretary of State had allowed access through the park** – Mr Justice Collins clearly disagreed with the Officers because he granted the request for a judicial review. Furthermore, the Inspector had been misled with regard to the Green Belt status in the same way that Cabinet Commissioners had been misled. It is arguable that the Inspector could have reached different conclusions if he had been presented with accurate information.
- 4 **The case submitted by Slough Borough Council to the High Court of Justice Queen’s Bench Division Administrative Court was rejected by Mr Justice Collins** – Officers argued that “the claim (by Rex Ankers and Richard Sable) is misconceived and raises no arguable case for a Judicial Review because the Green Belt was irrelevant to the decision to appropriate under Section 122. In particular:-
 - (a) The only issue under Section 122 (1) was whether the access land was “no longer required for the purpose for which it is held immediately before the appropriation”. The Green Belt status of the access land was not material to this issue.
 - (b) Further or in the alternative, the issue of whether residential development on Green Belt land should be permitted had already been decided by the grant of planning permission by the Secretary of State on appeal and remains unaffected by the decision to appropriate the access land for planning purposes”.

In rejecting the SBC case and granting permission for a Judicial Review Mr Justice Collins stated that “the fact that the access land was in the Green Belt is arguably relevant whether it was no longer required for open space (i.e. no development) quite apart from the assertion by three Councillors that erroneous

information lead them to vote in a way in which they would not otherwise have voted.

5. **Other inaccurate information** – There is other inaccurate information (in relation to covenants, for example) that will prove an embarrassment to Slough Borough Council at the Judicial Review and should be scrutinised.’

5.3 Councillor Stokes attended the meeting of the Cabinet and was invited to speak to his call-in. An extract of the minutes of the Cabinet meeting and the consideration given to the call in is attached at Appendix A.

5.4 The Cabinet agreed not to defer taking the decision and resolved:

‘(a) That the issue of Judicial Review proceedings and the advice of John Hobson QC on the likelihood of success be noted.

(b) That, notwithstanding the strong legal position of the Council, the decision of the Cabinet on 10th March, 2008 to appropriate the Access Land from open space to planning purposes be revoked.

(c) That notice of the Council’s intention to appropriate the Access Land which forms of part of Upton Court Park Upton from open space to planning purposes under the provisions of Section 122 of the Local Government Act 1972 (as amended) (“the 1972 Act”) be given and that any objections to the proposed appropriation be considered at the September, 2008 Cabinet meeting.’

5.5 The Overview and Scrutiny procedure rules require the call in to be reported to the Overview and Scrutiny Committee for Post Decision Scrutiny.

POST DECISION CALL-IN

5.6 Councillor Stokes submitted the following Post Decision Scrutiny Call in of the Cabinet’s Decision on 7th July 2008 with regard to the appropriation of Land at Upton Court Park.

“1 The pre-decision call-in was conducted in a pre-determined manner.

Early on in the discussion Councillor Anderson said: - “The reason that we have reached our decision is” Before Councillor Anderson could complete his explanation for a pre-determined decision I challenged him on the grounds that the Cabinet had not even listened to the pre-decision arguments before seeking to close down discussion.

2 The pre-decision call-in was conducted in an incomplete and superficial manner.

For example, former Councillor Dexter Smith had submitted a letter to the Chief Executive raising important issues of “inaccurate information”, “false information”, and “flawed argument”. He requested that “these inaccuracies and concerns” should be brought “to the attention of the relevant officers and the Cabinet Commissioners” at the Cabinet Meeting on 7th July 2008. This was not done. Cabinet Commissioners were not given a copy of former Councillor Dexter Smith’s letter. The Chief Executive did make some brief comments on the letter but ignored some of former Councillor Dexter Smith’s main concerns. As a consequence Cabinet Commissioners remained

uninformed and unaware of these concerns. Whether they would have wished to scrutinise these concerns is a matter of conjecture but as Cabinet Commissioners remained uninformed they were denied any opportunity to scrutinise the concerns.

3 The lack of adequate and comprehensive documentation together with the consequent reliance on verbal comments led to confusion and inadequate analysis.

For example the Head of the Planning Department was invited to make comments. He did so without producing any supporting documentation. Several references were made to “the Inspector’s decision”. There was confusion about dates and whether reference was being made to one decision, two decisions or three decisions, and how many Inspectors had been involved. Councillor Anderson, as the Chair, was confused about dates and incorrectly referred to “the Inspector’s decision in 2004” (a mistake which he sought to correct subsequently).

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. The Overview and Scrutiny Committee should consider the general need for adequate documentation, especially as some verbal advice from Officers has been found to be fallible.

4 Other information had been inaccurate and consequently misleading

For example, inaccurate information in relation to covenants, insurance cover and other matters has not been challenged and scrutinised. Furthermore the legal advice given to the Council has been unsatisfactory. 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)” The quality of advice given to Members needs to be scrutinised.

5 The Cabinet seems determined to avoid any Lands Tribunal procedure

At the Cabinet Meeting on 10/3/08 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 a 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.)

Incidentally this advice assumed that the developers have other access routes for their proposed backland development. As at 10/3/2008 and even now, there is no planning permission outline for any "other access routes". There were also inaccuracies in the Officer's description of the Park Entrance and adjacent area which will be detailed through the Scrutiny process including a site visit."

- 5.7 Councillor Stokes also submitted the following information with his post-decision scrutiny call-in:-

'N.B. This is not a comprehensive list of issues I wish to raise at a post-decision scrutiny. I have raised sufficient issues to warrant a post-decision scrutiny. I will have other and supplementary points to raise. I will seek to call on the services and submissions of former Councillor Dexter Smith and others during the scrutiny process. I hope that the post-decision scrutiny will be adequately documented and will prove more thorough than the pre-decision scrutiny.'

- 5.8 Councillors Buchanan, P Choudhry, Coad, Cryer, Dale-Gough, Dhillon, Finn, Haines, Hewitt, Khan, Jenkins, Long, MacIsaac, Munkley, Plimmer, Shine and Wright indicated their support for the call-in received from Councillor Stokes.

- 5.9 A Post-Decision call-in was also received from Councillors Coad and Dale-Gough within the time allowed in the following terms:

"I consider we should be having an enquiry into the whole case before rushing into further ill advised action, especially in the light of the ruling of Mr Justice Collins who rejected legal advice given by Mr Steven Quayle, Head of Legal and John Hobson Q.C. regarding the relevance of matters given in Judicial Review Application and an enquiry into why Councillors have been given incorrect advice on a number of matters relating to this case for a prolonged period of time."

- 5.10 Councillor Stokes was unable to be present at the Special Cabinet meeting held to consider the Post Decision Call in and Councillor Plimmer spoke on his behalf. An extract of the minutes of the Cabinet held on 23rd July 2008 is attached at Appendix B.
- 5.11 The Cabinet resolved not to defer implementation of the decision and the Overview and Scrutiny Procedure Rules require the reasons for this to be reported to the Overview and Scrutiny Committee. The call in must also be reported to the Overview and Scrutiny Committee for Post decision scrutiny in the normal way.

POST DECISION CALL IN – HAYMILL BAR

- 5.12 Councillor Hewitt submitted a post decision scrutiny call in with regard to the decision taken by the Cabinet on 7th July 2008 on the closure of the Haymill Bar. The Cabinet resolved ‘That the closure of the Haymill Bar be approved with immediate effect.’
- 5.13 The Call in read
- “Insufficient consideration in respect of the impact of the closure of the Bar function on this Community Centre Facility. No breakdown of costs across the function of the Centre as a whole were submitted. I request that this is given.”
- 5.14 The call-in procedure does not apply to matters which have been considered and determined by Overview and Scrutiny Committee or the Council within the preceding six months.
- 5.15 The Committee considered a report – Performance Financial and HR Reporting for 2008/09 and Future of Haymill Centre at its meeting on 3rd July 2008. The views of the Committee were reported to and considered by the Cabinet at its meeting on 7th July 2008.
- 5.16 As the Overview and Scrutiny Committee had therefore considered and determined the matter within the last six months it cannot be called in as a post decision scrutiny. Councillor Hewitt has been advised accordingly. The Overview and Scrutiny Procedure Rules require the call in and the reasons for its non acceptance to be reported to the Overview and Scrutiny Committee.

6. Background Papers

Agenda and Minutes – Cabinet 7th July and 23rd July 2008
Call in submitted by Councillors Stokes, Coad, Dale-Gough and Hewitt

Extract of Draft Minutes of Cabinet – 7th July 2008

APPROPRIATION OF LAND AT UPTON COURT PARK

‘Councillor Stokes was invited to speak to his call-in and the points raised were taken in order.

1. Incorrect information was given by Officers to the Cabinet meeting on the 10th March, 2008. The Chair indicated that it was acknowledged that Councillor Stokes was unhappy with the decision made on the 10th March and the proposal before the Cabinet that evening was to revoke it which dealt with the issue raised.
2. Subsequently Officers sought to minimise the impact of flawed advice to the Cabinet on the 10th March, 2008 by suggesting that it was immaterial in any event. The Director of Law and Corporate Governance advised that Mr Justice Collins had stated there was an argument to be heard. John Hobson QC’s opinion was that the error was irrelevant to the decision to appropriate. The Director emphasised that Mr Justice Collins had read the papers but had heard no oral arguments. The recommendation in front of the Cabinet that evening accepted that the Cabinet on the 10th March, 2008 had received incorrect information and the proposal was to revoke that decision and start afresh. This point was therefore dealt with if the decision was revoked.
3. Officers stated that the residents’ complaints were misconceived and raised no arguable case for Judicial Review because the Inspector/ Secretary of State had allowed access through the park. Councillor Stokes pointed out that Mr Justice Collins had disagreed with this and that arguably there may be a case to be heard. He believed the Inspector had been misled and may have reached different conclusions. The Head of Planning and Strategic Policy clarified that the Planning Inspector had been made aware by several parties of the status of the Green Belt and had not been misled. The Director of Law and Corporate Governance stressed that people would be able to make observations following the publication of the statutory notice if the Cabinet agreed to start afresh.
4. The case submitted by Slough Borough Council to the High Court of Justice Queen’s Bench Division Administrative Court was rejected by Mr Justice Collins. The Director of Law and Corporate Governance stressed that the Council’s case had not been rejected as the case had not yet been heard. In any event this point would be dealt with if the Cabinet resolved to revoke the decision of the 10th March, 2008. The Chair sought an assurance from Councillor Stokes that he was happy for the Cabinet to quash the decision of the 10th March, 2008. Councillor Stokes indicated that he was not happy for the decision to be quashed but wanted a pre-decision scrutiny and Judicial Review of the matter. The Director of Law and Corporate Governance stressed that there had not been a judgment from Mr Justice Collins. He had made an Order, arguments had still to be put and the advice of John Hobson QC was set out in full in the report. He advised that there had not been a great deal of work done on the covenants issue as this was not yet the time and not a relevant issue at present. He indicated that it might be relevant if the Council decided to sell the land.’

Extract of Draft Minutes of Cabinet – 23rd July 2008

APPROPRIATION OF LAND AT UPTON COURT PARK

The Cabinet considered a report setting out two post-decision scrutiny call-ins on the decision taken by the Cabinet at its meeting on 7th July, 2008 with regard to the Appropriation of Land at Upton Court Park. The Cabinet had resolved to revoke the decision made by the Cabinet on the 10th March, 2008 to appropriate the Access Land at Upton Court Park from open space to planning purposes and to give notice of the Council's intention to appropriate the Access Land.

The Leader confirmed with the Cabinet Members that they had all received the agenda for the meeting and, in addition, a letter from Councillor Stokes to the Assistant Director (Democratic Services) dated 20th July, 2008. The Leader advised that Councillor Stokes was unable to be present at the meeting and that he had been advised that Councillor Plimmer was attending to speak on his behalf.

Councillor Plimmer read out a statement on behalf of Councillor Stokes which raised issues with regard to:

- The flawed nature of the process and Councillor Stokes' view that any decision arising would be challengeable.
- Councillor Stokes' view that the meeting should have been scheduled at a time to allow him to speak as the primary individual responsible for the call-in.
- The significant factual inaccuracies in Cabinet reports and legal advice on the matter.
- A concern that Cabinet Members would be unlikely to be able to come to a decision that could be truly based on facts as none of the relevant documentation had yet been provided. Councillor Plimmer therefore suggested that a review of the process including how facts and legal advice came to be inaccurate took place so that Cabinet Members could be assured that they were making a decision on solid, legal and factual grounds. Councillor Plimmer then also drew attention to the points made in the letter from Councillor Stokes' letter of 20th July, 2008:

The Leader acknowledged that it was unfortunate that there had been a diary clash and Councillor Stokes had been unable to attend the meeting. However, in his view the issue of scrutiny was not relevant, the issue was whether the Cabinet wished to revoke the decision taken on 10th March 2008 and start afresh. Councillor Anderson asked whether Councillor Plimmer had any objection to the decision of the Cabinet on 10th March, 2008 being revoked - Councillor Plimmer confirmed that Councillor Stokes wished the decision to be revoked.

The Leader advised that if the decision was taken to implement the Cabinet decision taken on the 7th July, 2008 notices would be published in August but a decision on the Appropriation would not be made until September. The publication of the notices would allow everyone to have their say and for all views to be fully considered by the Cabinet prior to a decision being made. In answer to a question, the Director of Law and

Corporate Governance confirmed that there was no reason why Councillor Stokes could not present any objections he had to the September Cabinet meeting.

The Director of Law and Corporate Governance advised that Councillor Stokes had made a request for a significant amount of background information with regard to the land at Upton Court Park and had been asked to advise how he wished to proceed in viewing the information available.

The Leader drew the Cabinet's attention specifically to the matters raised by Councillor Stokes in his post-decision call-in.

1. The pre-decision call-in was conducted in a pre-determined manner. The Leader advised that this was not the case and there had been a full debate.
2. The pre-decision call-in was conducted in an incomplete and superficial manner. The Leader drew attention to the comments of the Director of Law and Corporate Governance in the report.
3. The lack of adequate and comprehensive documentation together with the consequent reliance on verbal comments led to confusion and inadequate analysis. The Leader advised that there was nothing to prevent Councillor Stokes from seeking this information and presenting it to the Overview and Scrutiny Committee.
4. Other information had been inaccurate and consequently misleading. The Leader advised that there had been a full debate at the meeting and that, as a result, a decision was taken to revoke the decision made by the Cabinet on 10th March, 2008.
5. The Cabinet seemed determined to avoid any land's tribunal procedure. The Director of Law and Corporate Governance advised that the previous Cabinet had been given a general picture with regard to restrictive covenants, the process to utilise the Section 237 procedure and the payment of compensation.

Councillor Dale-Gough had submitted a call-in on the same issue and, when asked to speak, he indicated that a number of his questions had been answered, however, he was concerned over the decision the Cabinet took with regard to this Land on 27th May, 2008. He asked what progress was being made and the level of compensation residents affected by the covenant might expect. The Director of Resources advised that the Cabinet had given officers authority to negotiate to progress the possible sale of the Council's land but there was no authority to sell. The Director of Law and Corporate Governance advised that he could not predict the level of compensation that might apply with regard to the covenants.

Councillor Coad had also submitted a call-in on this item and stressed her view that the date of this meeting should have been changed to allow Councillor Stokes to attend. Councillor Coad drew attention to best practice in other authorities on Overview and Scrutiny and the right to documents. She was concerned that the documentation that had been requested would not be available by September. The Leader stressed that a decision would not be taken until September following consultation. The Overview and Scrutiny Committee could scrutinise the matter before this if it wished. Councillor Coad drew attention to the flawed information that had been given on a number of occasions. The Leader reminded her that only two errors had been made – one, with regard to the status of the land and the other, with regard to the issue of covenants. The Cabinet's decision to revoke the decision of 10th March took care of the status of the Access Land

issue and the issue of who would have the benefit of covenants would not be relevant until a decision was taken to sell the land.

The Leader sought an assurance from the Director of Law and Corporate Governance that there was time to get this matter back to the meeting of the Cabinet in September 2008 and the Director advised that the consultation would take place during the whole of August and that he was confident that the information would be available for the September meeting.

The Cabinet agreed unanimously that it would stand by its original decision and that there was no reason to delay its implementation, noting that there was nothing to preclude the Overview and Scrutiny Committee scrutinising the matter as a post-decision scrutiny.

Resolved – That the implementation of the decision taken on 7th July, 2008 with regard to the revocation of the decision of the Cabinet on 10th March, and giving notice of the Council's intention to appropriate the Access Land from open space to planning purposes be implemented forthwith.