

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview and Scrutiny Committee    **DATE:** 4th November, 2008

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### **PART I** **FOR CONSIDERATION & RECOMMENDATION**

#### **PROPOSED APPROPRIATION OF LAND AT UPTON COURT PARK, SLOUGH - POST DECISION CALL-INS**

##### **1. Purpose of Report**

1.1 The purpose of this report is twofold, namely:

- To respond to the post decision call-in of the Cabinet's decision on 7<sup>th</sup> July, 2008 submitted by Councillor R Stokes (Appendix C), and
- To comment on the post decision call-in received from Councillors Coad and Dale-Gough (Appendix C) in the form set out below:-

*"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."*

##### **2. Recommendation/Proposed Action**

2.1 The Overview and Scrutiny Committee is requested to consider the responses from Officers set out in Appendix C and to make any recommendations that are deemed necessary.

##### **3. Key Priorities – Taking pride in Slough and making a difference to communities in our environment**

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

**Priority 5.1** – Improve financial and asset planning, monitoring and stewardship.

#### **4. Other Implications**

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

#### **5. Background/Supporting Information**

- 5.1 The Local Plan for Slough which was adopted in March, 2004 took the Castleview Site (known as Proposal Site 16) out of the green belt and allocated it for housing purposes with the preferred access (the Access Land) through Upton Court Park. The Castleview Site and the Access Land are shown on the plan at Appendix A.
- 5.2 Whilst the Castleview Site was removed from the green belt, the Access Land remained to prevent development save for the preferred access as shown in the Local Plan.
- 5.3 The owners of the Castleview Site, Kelobridge Limited, sought outline planning permission for a residential development and associated access on the Castleview Site by submitting four applications to the Local Planning Authority. All of the applications were refused by the Planning Committee.
- 5.4 The owners of the Castleview Site appealed against the refusal and whilst three of the appeals were dismissed one was allowed as the proposal accorded with Proposal Site 16 in the Local Plan. Costs were awarded against the Council.
- 5.5 In summary since the granting of planning permission on appeal by the Secretary of State, the owners of the Castleview Site have made two offers to purchase the Access Land from the Council to facilitate the development of their land. Those offers have not been accepted and no decision has been taken to sell the land to Kelobridge Ltd.
- 5.6 The possible sale of the Access Land to Kelobridge Ltd has led Officers and Members over the years to consider the following issues:-
- (a) The appropriation of the Access Land from open space to planning purposes.
  - (b) The planning permission granted on appeal by the Secretary of State on 29<sup>th</sup> July, 2006.
  - (c) The possible disposal of the Access Land to Kelobridge Ltd, the terms and conditions of such disposal and the capital receipt that might be generated.
  - (d) Members' fiduciary duty.
  - (e) The restrictive covenants which burden the Access Land and how these could be handled/overridden.
- 5.7 There is no doubt that the possible disposal of the Access Land is a complex one and not without many difficulties and uncertainties.

5.8 As a result of the resolution to appropriate the Access Land from open space to planning purposes on 10<sup>th</sup> March 2008, the subsequent judicial review proceedings launched by the Castleview Residents' Association and the revocation of the appropriation resolution, the Overview & Scrutiny Committee ("O&S") at its meeting on 17<sup>th</sup> September, 2008 resolved to consider this further. The Committee were not specific as to what they wished to scrutinise so attached at Appendix D are Briefing Papers submitted to Commissioners since February, 2005 so that Members of O&S can see what advice was given and at what time including advice given at various informal meetings. In addition Members are provided with reports and minutes of the Cabinet since 26<sup>th</sup> November, 2007 to date.

## **6. Conclusion**

6.1 The Officers have attempted to answer the known concerns of some Members arising out of this complex matter and will attend O&S to answer any supplementary or other questions Members may have.

6.2 It is acknowledged and accepted that Officers got two things wrong namely (1) the green belt status of the Access Land and (2) the law on the enforceability of restrictive covenants. Officers apologise for this. However, 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 errors have neither prejudiced the Council in any way nor caused it harm in respect of its possible future dealings with the Access Land.

## **7. Appendices**

Appendix A – Plan of the Access Land and the Castleview Site.

Appendix B – Councillor Stokes' Post Decision Call-In.

Appendix C - Officer responses to the call-ins from Councillors Stokes, Coad and Dale-Gough.

Appendix D – Relevant Briefing Papers, Reports and Minutes of the Cabinet. \*

(\* Note – Certain briefing papers are included in the Part II report attached for Committee Members only.)