

**POST DECISION CALL-IN FROM COUNCILLOR STOKES**

Councillor Stokes submitted the following Post Decision Scrutiny Call-in of the Cabinet's Decision on 7<sup>th</sup> 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 7<sup>th</sup> 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.”

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.’

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.