

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview and Scrutiny Committee    **DATE:** 15<sup>th</sup> January, 2009

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### **PART I** **FOR CONSIDERATION**

#### **SCRUTINY OF “CASTLEVIEW” ISSUE – FURTHER CONSIDERATION**

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

- 1.1 As agreed at the special meeting of the Committee on 4<sup>th</sup> November, 2008 this report submits the questions received from Members on the “Castleview” issue by the end of November together with the Officer responses to those questions.
- 1.2 The Committee is asked to consider what further action it wishes to take on this matter, if any.

##### **2. Recommendation**

- 2.1 That the Committee consider whether it wishes to undertake any further scrutiny of this matter.

##### **3. Key Priorities**

- 3.1 None arising from this administrative report.

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

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

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

- 5.1 The Committee at its special meeting on 4<sup>th</sup> November, 2008 considered a number of questions submitted by Councillors Coad and Stokes arising out of their post-decision call-ins submitted relating to the proposed appropriation of land at Upton Court Park, the “Castleview” issue. The Committee resolved as follows:-
  - (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 15<sup>th</sup> January, 2009 and that the Committee consider at that meeting whether it wishes to undertake any further scrutiny of this matter.

5.2 Subsequent to the November meeting, a number of further questions were received from Councillor Stokes and Councillor Davis before the end of November. Responses to these were circulated to all Committee Members and to Councillor Stokes on 9<sup>th</sup> December, 2008. A copy of all of the questions received by the end of November together with the responses submitted is attached at **Appendix A**. (It should be noted that there are a number of questions where it has not been possible for Officers to give a full response due to the non-availability of files or where the information relates to issues that occurred some 10 years ago.)

5.3 Subsequently, Councillor Stokes has submitted a number of further questions by letter dated 19<sup>th</sup> December, 2008.

5.4 As referred to above, the Committee agreed that it would at this meeting consider all of the questions and responses and decide whether to undertake any further scrutiny of this matter. The Committee's decision is requested.

## **6. Appendices**

Appendix A – Questions received by the end of November, 2008 and responses thereto.

## **7. Background Papers**

Agenda and minutes of the meeting of the Committee held on 4<sup>th</sup> November, 2008.

**Appropriation of Land at Upton Court Park – Questions Received by the End of November 2008 and Officer Replies**

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

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.

Reply

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

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?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

2. With how many companies did discussions take place? Which companies were they? Over which period did these discussions extend?

#### Reply

From the information available, Officers are only aware of discussions taking place with Kelobridge and their advisers. There are no files or correspondence available to indicate over what period these discussions have extended.

3. When did Officers first enter into formal or informal discussions and/or negotiations with Kelobridge? Over which period did these discussions extend?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

4. Who were the Officers engaged in formal or informal discussions and/or negotiations with Kelobridge?

#### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

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 agree that it is reasonable to conclude that the company was formed as a development company with the Castleview project in mind?

#### Reply

That is a possibility but Officers do not have any information to confirm that this is the case.

6. Who was negotiating with the Council in 1999 before Kelobridge was formed?

### Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

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?

### Reply

Until recently, it was common practice for developers to pay high prices to land bank sites in prime locations where they felt there might be a reasonable prospect of development taking place at some point in the future. With regard to the specific question as to whether Kelobridge were encouraged by officers to purchase the land, there are no files or correspondence available to enable an accurate and informed answer to be provided.

8. Kelobridge was registered on 22<sup>nd</sup> 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?

### Reply

The Council negotiated with Kelobridge because they are the freeholders of the land in question. Belmont Homes is the UK subsidiary of Kelobridge Ltd.

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?

### Reply

There are no files or correspondence available relating to events around 1997 – 1999 and it is not possible to provide an accurate and informed answer concerning any involvement by or consultation with Councillors during the period referred to.

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*?

### Reply

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.

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

There is no one policy in existence. In some cases a statutory fee is payable, in others fees are set by the Council. In addition, the FoI Publication Scheme does refer to charges although not to amounts.

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

The scale of charges for copies of planning documents has now been reviewed following the Markinson case and representations subsequently received. Charges are now 10p per A4 sheet and 20p per A3 sheet. Alternatively, copies of planning decisions can be downloaded from the new on-line system (without charge) which has all cases going back to 1964.

The previous scale of charges had been in place for a number of years and was broadly based at a level required to cover costs of the work.

14. Does a Council Information Charging Policy actually exist?

See reply to Q 12.

15. Has the revised Council Information Charging policy been completed and if so why have Councillors not been given a copy of the policy?

Reply

The planning charges have been reviewed in light of the Markinson case.

16. Who is responsible for the Information Charging Policy?

The Council sets some fees and charges but others are set by law/regulation.

(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

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 10<sup>th</sup> March 2008? Should the arguments not have been discussed within the context of one paper?

Reply

It was decided to “split” the two issues as the decision to be taken on the appropriation issue was dependent on the decision taken on the first report regarding the possible sale of the Access Land and the second report would have been superfluous if the decision taken on the first report was not to proceed. I wanted to make it clear that these were two separate issues and it would have been wrong to conflate the two matters. 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 10<sup>th</sup> 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?

Reply

It is considered that the Officers produced comprehensive, objective and professional advice to the Commissioners in briefing papers/notes and reports to Cabinet since January 2005. Briefing papers/notes were produced in January 2005, February 2005, November 2006, September 2007, February 2008, and March 2008. Formal reports were submitted to the Cabinet on 27<sup>th</sup> November 2007 and 10<sup>th</sup> March 2008 (x2).

In addition, the Castleview Site was discussed at informal meetings many of which had the benefit of the briefing papers/notes referred to above.

In a complex and potentially commercial transaction such as this one there will often be a change in circumstances and consequently officers cannot reasonably have a concrete answer to all of the queries that may be raised. It was made clear by officers that the statutory procedures involved in facilitating any residential development of the Castleview Site was not without "difficulties and uncertainties".

If Members were concerned about the accuracy or clarity of any information provided by the officers then they were at liberty to seek further information/clarification and, if necessary, defer the item under consideration.

In respect of the proposed appropriation from open space to planning purposes no recommendations were made by the officers in the report submitted to the Cabinet on 10<sup>th</sup> March 2008.

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

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 10<sup>th</sup> March 2008 the enforceability of the covenant position was wrongly stated. However, a note was given to Commissioners just before the Cabinet meeting on 10<sup>th</sup> 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

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 26<sup>th</sup> 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

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 26<sup>th</sup> 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 apprised 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 apprised 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?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

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?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

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?

Reply

There are no files or correspondence available to enable an accurate and informed answer to be provided to this question.

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.

Reply

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

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 better procedures are in place 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

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

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

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.

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?

Reply

The Adopted Local Plan for Slough (March 2004) proposed that access to the Castleview development should be via the land in Upton Court Park. It did not

propose any alternative access arrangements and the subsequent outline planning permission granted by the Secretary of State in 2006 was on this basis.

Notwithstanding this the applicants Kelobridge have sought to establish an alternative access via Castleview Road. Initial proposals were refused planning permission by the Borough Council and this refusal was upheld by the Secretary of State on appeal in 2006. Subsequent planning applications for this alternative access have also been refused by the Council in July 2008 and to date have not been appealed. There is therefore currently no alternative access arrangement with planning permission.

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.)

35. How many companies, consultancies and advisers have been retained since 1<sup>st</sup> January, 1999 in relation to the "Castleview issue"?

#### Reply

On property matters, officers are only aware of Messrs Drivers Jonas having been instructed on property matters. Additional highways advice has been obtained from Hyder Consulting acting as sub-consultants to Drivers Jonas. The details of Counsel have already been provided to you.

36. Which were the companies, consultancies and advisers so retained?

Reply

Please see answer to Q35

37. What fees were paid to these companies, consultancies and advisers?

Reply

Please see answer to Q41 re property fees. The details of Counsel's fees have already been provided.

38. Was Drivers Jonas, 85 King William Street, London, EC4N 7BL one of the organisations referred to above?

Reply

Please see answer to Q35

39. When were the services of Drivers Jonas retained?

Reply

Drivers Jonas provided terms and conditions for the project at the end of October 2007.

40. In what capacity were Drivers Jonas retained?

Reply

Drivers Jonas were appointed to advise upon the offer received from Kelobridge and, subject to that advice and the approval of Committee, to enter into negotiations with Kelobridge to secure payment to Slough Borough Council of the finally agreed payment.

41. What fees were paid to Drivers Jonas?

Reply

A total of £30,000 has been paid to Drivers Jonas in respect of professional work undertaken to date.

42. Did Council Officers meet Drivers Jonas at their London offices on 19<sup>th</sup> November 2007?

Reply

Andy Algar, Assistant Director, Property Services, attended a meeting at the offices of Drivers Jonas on 19<sup>th</sup> November 2007.

43. What was the purpose of that meeting on 19<sup>th</sup> November 2007?

Reply

Two meetings took place on 19<sup>th</sup> November, the first being a pre-meeting between Slough Borough Council and Drivers Jonas (to discuss strategy) in advance of meeting with Kelobridge. This was the first meeting between Drivers Jonas and Kelobridge, the purpose of which was to broadly scope out the issues to be addressed and work undertaken.

44. Did Council Officers leave two files with Drivers Jonas containing instruction documents relating to land to the rear of Castleview Road, Slough?

Reply

It is understood that two files relating to Castleview Road were left with Drivers Jonas following the meeting of 19 November 2007.

45. What other documents were contained within the files?

Reply

The files would have contained property correspondence and other information relevant to the case

46. Where are those files now?

Reply

The location of the files is currently unknown. Drivers Jonas confirm that they have undertaken an extensive search of all areas within both its City and West End offices. They have also made enquiries of their external file storage facility. Neither search has resulted in the location of the missing files.

47. Have those files been lost?

Reply

Refer to Q46 above.

48. If the files have been lost who is responsible for that loss?

Reply

Refer to Q46 above.

49. Is it customary for Officers to leave files with companies, consultancies and advisers retained by SBC?

Reply

Where a firm of advisors is instructed to manage a specific case on behalf of the Council, it is often more practicable for files to be handed to them rather than copies be made of what can be an extensive amount of documentation.

50. If and when files are left with companies, consultancies and advisers, what are the



conditions, obligations and restrictions under which the files are loaned?

Reply

There are no formal obligations but consultants have a duty of care to manage any files whilst in their possession.

51. Could I be provided with a copy of those conditions, obligations and restrictions?

Reply

Please see answer to Q50

52. Was a signature obtained for the files?

Reply

Driver Jonas have acknowledged that the files were in their possession. As Andy Algar is no longer employed by the Council, it is not possible to state whether or not a signature was obtained.

53. If a signature was obtained who was the person who accepted responsibility for safe custody of the files?

Reply

Please see answer to Q52.

54. If the files have been lost when were they lost?

Reply

The files were last seen by a Council officer (Andy Algar) at the meeting on 19<sup>th</sup> November. The files were not then referred to until 12 March 2008 when the project came to an end following the committee decision not to pursue agreement with Kelobridge. On 12 March Andy Algar requested the files be returned at which point it became apparent that these could not immediately be located. Andy Algar was notified of the issue at this time. Drivers Jonas subsequently wrote formally to Slough Borough Council on 15 October to confirm that it had failed to locate the missing files.

55. If the files have been lost what steps have been taken to recover them?

Reply

Refer to Q46 above.

56. What documents relating to the Castlevue issue were contained within the files?

Reply

Refer to Q45 above.

57. In particular, what were the SBC instructions to Drivers Jonas contained within the files?

Reply

Refer to Q40 above.

58. Who was present at the meeting between SBC and Drivers Jonas on 19<sup>th</sup> November 2007?

Reply

Andy Algar (Slough Borough Council)  
Michael Burdus (Drivers Jonas)  
Philip Wallbridge (Drivers Jonas)  
Representatives of Kelobridge

59. If the files have been lost can they be reconstituted in accurate, sequential and complete form?

Reply

It is believed that Drivers Jonas can supply copies of all correspondence between themselves and the Council if required.

60. Have any other files been lost since 1999?

Reply

Apart from the missing files, there is no information to suggest that there are any other property files relating to Castleview that have been lost.

61. If the two files given to Drivers Jonas on 19<sup>th</sup> November 2007 have been lost when was the loss first noticed and by whom?

Reply

Refer to Q54 above

62. If the two files given to Drivers Jonas on 19<sup>th</sup> November 2007 had been lost and had been noticed were steps taken to notify anyone?

Reply

Refer to Q54 above

63. If steps were taken to notify a person, or persons, of the loss of two files, when was that person or those persons notified?

Reply

Refer to Q53 above.

64. If a person or persons were notified of the loss of two files who was the person notified or who were the persons notified?

Reply

Andy Algar – refer to Q53 above.

65. If two files have been lost has disciplinary action been taken against any Officer or Officers?

Reply

No

66. If two files have been lost has any financial or other redress been sought from Drivers Jonas?

Reply

No

67. If two files have been lost and are in the hands of others are there any issues of confidentiality and/or security that would cause concern?

Reply

There is nothing to suggest that the files are in the hands of anyone other than Drivers Jonas – in line with their letter to the Council dated 15 October, a copy of which has been provided to Cllr Coad via email on 28 October 2008.

Question by Councillor Davis

68. Following the Overview & Scrutiny Committee meeting at which Councillor Stokes claimed to have made repeated requests to officers concerning the Castleview site, during the four years he was in control of the leading group of the Council, could you please supply me with any records of these requests, either verbal or written?

Reply

Officers have been unable to locate any relevant correspondence from Councillor Stokes on this issue. However, the Commissioners were fully briefed in the documentation referred to in the papers put before the Overview and Scrutiny Committee and mentioned in the response to Question 21 above.