APPENDIX A

Appropriation of Land at Upton Court Park - Questions and 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.

Question by Councillor Davis

1. 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.

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

   The first correspondence on file is from Mike Coles of Valuation Services on behalf of David Lewis (Head of Valuation Services) to Paul Stimpson (Head of Planning Policy & Projects) dated 2nd July, 1999 requesting confirmation of a number of statements made by Howard Courtley (on behalf of his client) in a telephone conversation that day regarding the development of the subject site. On 12th July Courtley Consultants, referring to the aforementioned telephone conversation, set out their methodology for valuing the ransom strip on a without prejudice basis. It would be reasonable to state that the exploration of the sale of Upton Park land was initiated on or before 2nd July, 1999.

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

This question is essentially answered in (1) above subject to the proviso that the without prejudice correspondence was with Kelobridge's agent Howard Courtley. Initial negotiations stalled in November, 2000 pending the Planning Inspector's Report. Negotiations re-commence on 18th June, 2003 (meeting between Andy Algar/Mike Coles and Howard Courtley) to discuss land ownership issues in light of the report to Cabinet on 23rd June recommending that the site be released for housing as part of the Local Plan Review.

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

Reply

Initially David Lewis/Mike Coles, then Andy Algar/Mike Coles and moving forward Andy Algar.

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

The files are not clear on either of the points raised.

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 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?

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.

Supplementary Reply to Questions 1-9

Officers can only respond to these questions based on the records that are currently available and consequently the answers are as complete as they can be in the circumstances.

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.

Supplementary Reply Questions 11 – 15

The Council are entitled to charge fees for the production/copying of planning documents so the fees are not unlawful although considered excessive following the Markinson case.

There is no one Information Charging Policy and that is why it has not been supplied. The Publication Scheme which is on the Council's website does set out where charges will be levied but not the amount as previously stated in a reply to Question 12. The whole Freedom of Information Act 2000, Publication Scheme and supporting documents (which includes the

charging arrangements) is still under review but once completed will be published on the Council's website.

The charges for planning documents have now been reduced in line with the Markinson ruling

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 10th 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 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?

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 27th November 2007 and 10th 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 10th March 2008.

Supplementary Reply

Officers do not accept the contention made as the Commissioners were briefed on a regular basis as is evident from the documents produced to the Overview and Scrutiny Committee on 4th November, 2008. There were occasions at informal meetings where questions were asked about Castleview when the subject was not on the agenda. Inevitably answers were oral. Officers were at times asked for absolute and precise answers

to questions about risk and probability. Inevitably the answers would be couched in terms of uncertainty and based on the best knowledge at that time. As knowledge was gathered assessments would change. That is not supposition and speculation but a proper approach to assessment of a complex situation.

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 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

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.)

Supplementary Reply Questions 22 and 23

These questions relate to the issues surrounding the restrictive covenant indemnity policy. It is considered that a comprehensive reply to both questions has been given in the previous responses and in the Borough Secretary and Solicitor's letter to Cllr Stokes dated 17th October, 2008 (copy attached).

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 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.)

Supplementary Reply

It is assumed that the point that remains unanswered is the cost to the Council of going to the High Court and then the Court of Appeal to overcome the Thames Water case. No definitive answer could have been given because of the many uncertainties that surround litigation. At worst the High Court costs would have been in the region of £20k.ie if the Council lost and advice on these lines was given. The issue is now somewhat academic as Section 237 of the Town and Country Planning Act 1990 has been amended by the Planning Act 2008 and the amendment effectively overrides the problems created by the judgment in the Thames Water case. (Please also see the reply to question 76).

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.

Supplementary Reply

No further information can be given in the absence of the file/correspondence referred to.

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.

Supplementary Reply

Since the Briefing Paper issued in February, 2005 Commissioners were consistently informed that should the Council breach the restrictive covenants compensation would be payable to those residents who could prove that they had the benefit of the restrictive covenants. It is axiomatic that the compensation would be payable out of any capital receipt received from any sale of the land.

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.

Supplementary Reply

No "working" notes are available given the previous reply 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.

Supplementary Reply

Officers seek legal advice when they are unsure of the legal position or seek confirmation of their views. There is no set procedure for evaluating the quality of legal advice other than seeking a second opinion. As has been indicated in the previous reply to this question the advice received from John Hobson Q.C. was of no great surprise to Officers.

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.

Supplementary Reply

None of the actions taken by the Cabinet contravene the Human Rights Act 1998 or the European Convention of Human Rights.

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.

Supplementary Reply

It is right to say that there was no planning permission in place for "other access routes" but the point Officers were trying to make is that the developers did have other potential options regarding other access routes should the "preferred access" not be available and that Members should be mindful of the possibility of that being achieved. It is well known that they have purchased properties to enable access (subject to planning permission being granted) through the Castleview estate.

The Council, as Local Planning Authority, has refused two applications involving accesses from Castleview Road and Castleview Road and Blenheim Road to the Castleview Site and the developers have now appealed against those refusals with a public inquiry due later on this year. If planning permission is granted for either of the accesses then the

developer could implement the planning permission without use of the Council's land.

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.)

Supplementary Reply

This question is directed at the Overview and Scrutiny Committee itself and not Officers.

35. How many companies, consultancies and advisers have been retained since 1st 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 19th November 2007?

Reply

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

43. What was the purpose of that meeting on 19th November 2007?

Reply

Two meetings took place on 19th 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 19th 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 Castleview 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 19th 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 19th 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 19th 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 was provided to Cllr Coad via email on 28 October 2008.

68. Thus far Officers have 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”.

This statement was made in a report to the Overview and Scrutiny Committee issued on 24th October 2008.

Are Officers satisfied that no other mistakes have been made?

Reply

None that the Officers are aware of.

69. I submitted a post-decision call-in of the Cabinet's decision on 7th July 2008 with regard to the appropriation of land at Upon Court Park. My call in stated:-

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

> "Early in the discussion Councillor Anderson (the Chair) 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.
>
> The Officer response to the fact that the Cabinet had decided to pursue a course of action irrespective of what might be said at the pre-decision call-in meeting was:- "This is a political comment and a matter for Councillor Anderson".
>
> Do Officers agree that they have a duty to ensure that the proceedings of the Council follow proper procedure? Could Officers also explain why they concluded that no procedural issue was involved when Councillor Anderson indicated that he had taken a decision before listening to any representation?

Reply

It is a matter for each Member to decide whether or not s/he has an "open mind" when considering any item on the agenda of the Cabinet or any other meetings of the Council. The decision is one for the Member concerned and no one else. Training has been given on this issue and Officers are able to give advice when requested to do so.

70. My post-decision call-in of the Cabinet's decision on 7th July 2008 also stated that:

"other information had been inaccurate and consequently misleading".

Officers have "accepted and acknowledged that the legal advice on the enforceability of the restrictive covenants was incorrect". Officers have also stated that "whilst the error is regrettable it is important to recognise that, notwithstanding the error, the Council has not been prejudiced in any way".

Would Officers agree that the reputation of the Council has been prejudiced?

Reply

This is not considered to be a matter for Officers to determine

71. Have apologies been offered to the Castleview Residents Association for the factual errors made by Officers at the Cabinet meeting on 10th March 2008?

Reply

An apology was made by Officers at the Overview and Scrutiny Committee meeting on 4th November, 2008 which was held in public and attended by representatives of the Castleview Residents' Association.

72. What consideration has been given by Officers to the fact that the Castleview Residents Association were driven to take Judicial Review Proceedings as a consequence of factual errors made by Officers at the Cabinet meeting on 10th March 2008?

Reply

The issues arising out of the judicial review proceedings were responded to in Appendix C to the report to the Overview and Scrutiny Committee held on 4th November, 2008.

73. Do Officers agree that the Castleview Residents Association were involved in unnecessary expense as a consequence of Officer mistakes?

Reply

No, given the answer to question 72 above. However arrangements are in hand to "settle" the outstanding judicial review proceedings which include the payment of the reasonable disbursement/expenses incurred by Messrs Ankers and Sable acting on behalf of the Castleview Residents' Association.

74. In seeking mitigation for incorrect legal advice Officers have offered the following excuses:-

"The enforceability of those restrictive covenants would only have become an issue if:-

"(1) The Access Land had been appropriated from open space to planning purposes and

"(2) The Council had sold the Access Land to the developer and

"(3) The developer implemented the planning permission".

As the Labour Administration had decided in principle to sell the Access Land and the developer had publicly announced an intention to work closely with the Labour Administration to implement the planning permission how can Officers conclude that the enforceability of the restrictive covenants is not an issue?

Reply

Officers have not offered "excuses" but rather an explanation as to when the enforceability of the restrictive covenants would become an issue. As has been said previously no restrictive covenant would be breached until

each of the three issues set out occurred. At this point in time only (1) has taken place.

75. In a confidential report written in September 2007 Officers described "the need for High Court action" to overcome the restrictive covenant as an "unlikely event". Are Officers still of the same opinion?

Reply

As is well known the confidential report referred to was based on the incorrect legal advice given on the enforceability of the restrictive covenants. This was corrected just prior to the Cabinet on 10th March, 2008 and has been the subject of subsequent reports to the Cabinet and the Overview and Scrutiny Committee. In any event, as anticipated by Officers, the Planning Act 2008 has amended Section 237 of the Town and Country Planning Act 1990 which means that once the provision has been brought into force no High Court action will be necessary to overcome the Thames Water case.

76. The Council retained Drivers Jonas to advise on the Valuation and Castleview negotiation issues. How many meetings have been held with Drivers Jonas? Where did the meetings take place? What fees were paid to Drivers Jonas? What fees in the future are anticipated?

Reply

Officers have held five meetings with Drivers Jonas.. The majority of these have been held at Council offices. One meeting has been held at Drivers Jonas' Grosvenor Street office. Fees of £36,954 have been paid to Drivers Jonas. It is not possible to predict the amount of future fees as this will be largely dependent on the amount of time they spend negotiating with Kelobridge's agents.

77. Have legal proceedings to overturn the Thames Water Utilities Ltd v Oxford City Council (1997) case commenced? If so, when did legal proceedings commence? What expenditure has been incurred to date? What is the additional anticipated expenditure?

Reply

No, for the reasons set out in the answer to question 75

78. Are Officers currently in negotiation with Kelobridge?

Reply

Drivers Jonas are currently in negotiation with Kelobridge's agent with a view to achieving an acceptable resolution.

79. Former Councillor Dexter Smith submitted a letter to the Chief Executive raising issues of "inaccurate information", "false information" and "flawed argument". He requested that "these inaccuracies and concerns" should be brought "the attention of the relevant Officers and the Cabinet Commissioners at the Cabinet Meeting on 7th July 2008".

Why was this not done? Cabinet Commissioners were not given a copy of former Councillor Dexter Smith's letter. Why not?

Reply

As requested by Dexter Smith all of the issues raised by him in his letter were addressed by the Officers at the Cabinet meeting on 7th July, 2008. In the circumstances there was no need to circulate the letter.

80. By 22nd September 2008 the number of Slough petitioners and objectors to the Castleview development amounted to 3,206. Not a single submission in favour of the development had been received. Has Slough Borough Council ever received such overwhelming opposition to a proposed development?

Reply

Yes there have been larger numbers of objections e.g. 5,719 objections from 1,248 individuals to the proposed housing development at Wexham in the Local Plan. At the Local Plan stage there were 4,683 objections from 1,669 individuals for the Castleview Site.

81. Sally Stanton is the granddaughter of Frederick Cornish, who sold some of his land to the Urban District of Slough in May 1935 "in order to create a Park for the pleasurable use of the people of Slough for all time". Sally Stanton supplied a Witness Statement for the High Court of Justice Administrative Court on 2nd June 2008. What consideration has been given to the statement of Sally Stanton?

Reply

The witness statement of Sally Stanton formed part of the application for judicial review proceedings and it was taken into account when the Council submitted its Acknowledgment of Service and Defence to the proceedings.

82. Richard Sable wrote to the Director of Law and Corporate Governance on 4th November 2008 on behalf of the Castleview Residents Association. What is the response of Officers to Mr Sable's letter.

Reply

This was dealt with at the Overview and Scrutiny meeting on 4th November, 2008.

83. The Coalition Cabinet was given an optimistic assurance that a Restrictive Covenant Indemnity Policy could be purchased to protect the Council if restrictive covenants were breached. The Council's insurers, Zurich Commercial, refused to offer a Restrictive Covenant Indemnity Policy. Zurich Commercial explained that "the risk of a claim was too high". Did Officer regard the Zurich decision as a warning signal?

Reply

The Borough Secretary and Solicitor responded to this point in a letter to Councillor Stokes dated 17th October, 2008 (attached). In addition further information is contained in the reply to question 23 which was circulated with the responses to all the questions to Members of the Overview and Scrutiny Committee on 9th December, 2008.

84. Further to Question 84 Zurich stated that "the fact that many of the objectors were aware of the restrictive covenants gave them cause for concern". Could Officers explain why Zurich had accurate information about the number of residents who enjoyed benefit of covenant rights and why, in contrast, Slough Borough Council's information was so inaccurate?

Reply

The point made relates to the interpretation of the enforceability of restrictive covenants rather than what information was available to the Council and Zurich.

85. In the High Court Sir Andrew Collins granted leave to the Castleview Residents Association for a Judicial Review of the Cabinet decision taken on 10th March 2008 and on more than one ground. In opposing the Castleview Residents Association S.B.C. claimed £2,000 costs against Mr Sable and Mr Anders for their "misguided" and "irrelevant" arguments raised in the application to seek this Judicial Review against S.B.C. Why did S.B.C. adopt such a punitive approach? In the light of the decision of Sir Andrew Collins could the Castleview Residents Association receive an apology and be reimbursed for the expense they were driven to incur?

Reply

It is standard practice for a Defendant/Respondent to claim costs where it considers that the claim is misconceived and likely to fail. Please see the answer to question 74 in respect of the second question raised here.

86. Officers have indicated their willingness to reimburse residents for excessive charges imposed on residents seeking copies of documents within the public domain. (N.B. I am still awaiting a reply to my question as to whether these charges were lawful). Could Officers indicate how many residents have been reimbursed, how many residents are awaiting payment and what is the total sum involved?

Reply

No one has sought to gain reimbursement for any excessive charges imposed in the copying of planning documents.

87. Was Kelobridge set up by a parent company, Belmont Homes?

Reply

Kelobridge is one of three property companies known to be owned by David Daly who is an Irish individual of significant personal worth. Belmont Homes and Albany Homes are also owned by David Daly.

88. What assurances, if any, were given to Belmont Homes, ahead of the democratic process, to convince Belmont Homes that it was worthwhile establishing a development company to purchase agricultural land without access and here planning permission would be problematical?

Reply

None that officers are aware of.

89. Do Officers accept that Kelobridge has not declared any income in its 9 year trading history; its only Directors are Mr and Mrs Daly; the land in site 16 is its only listed asset; there is no indication in the accounts of how the company will capitalise in order to build the development; the company does not appear to possess sufficient funds itself; and its accounts have been qualified twice? If so, can Officers explain how the "Best Practice" whereby Local Authorities are expected to deal only with organisations with a proven track-record has been upheld?

Reply

The Council is required to ensure that Best Consideration is achieved when assets are disposed of. Kelobridge as owners of the Castleview Site is realistically the only party that would wish to purchase the land. The Council is therefore required to deal with them. If an agreement is reached with Kelobridge to purchase the site then all due diligence will be undertaken to ensure that the Company is able to finance the agreement that is made.

17th October, 2008

Department: Resources, Legal Services
Contact Name: Steven Quayle
Contact No: 01753 875004
Fax:
Email:
Our Ref: SQ/JC/1117
Your Ref:

Councillor Richard Stokes
(Via Members Bag)

Dear Councillor Stokes

Re: Request for Information/Documentation – The Castleview Site

I refer to my letter to you dated 1st October, 2008 and now respond to the eight additional points you have raised in your letter dated 16th September, 2008:-

(1) Information relating to the "exhaustive search that failed to reveal a single resident with an interest in the covenant."

I will try and respond to the issues you raised in your confidential memorandum to the Chief Executive dated 12th March, 2008 in point 9 below if the point has not already been covered in this letter or previous correspondence.

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. As I have said to you in previous correspondence it has always been made clear by Officers that the statutory procedures involved in facilitating any residential development of the Castleview site was not without "difficulties and uncertainties."

Needless to say 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.

The phrase "exhaustive search" is not a phrase that I can recall ever being used particularly as the Briefing Papers and the reports to Cabinet use such phrases as "*preliminary searches"* and *"..twenty sample records from H.M. Land Registry…"*

(2) Incorrect legal advice given to Members "the benefit of the covenants had to be referred to in the Title deeds and documents i.e. at H.M. Land Registry."

The Legal Officer that gave the advice on the enforceability of the restrictive covenants did not know of the existence of the advice from Gregory Jones as this was obtained in 2003 and filed away on a general file by an Officer who is no longer employed by the Council.
I agree with your point that Counsel's opinions which give general advice on legal issues that may arise could be located in a central library of opinions for professional development purposes. This does happen informally but I will take up the issue with the Deputy Borough Solicitor.

According to my records the local residents (through the Covenant Movement) did not raise any issues about the legal advice on the enforceability of the covenants until 5th March, 2008 when an e-mail/letter was received by the Leader of the Council's Personal Assistant. It was upon the receipt of that document that further advice from Counsel was sought and the legal advice to Members subsequently corrected.

(3) Information relating to "the restrictive covenant indemnity policy that could be purchased by the Council to protect the Council if the restrictive covenants were breached."

I do not accept that Officers had indicated to Commissioners that the purchase of a restrictive covenant indemnity policy was a *"forgone conclusion"* as you put it. The Briefing Paper dated September, 2007 stated at paragraph 2.5 that:-

> *"However it only needs one person to challenge and, if that occurs, the Council would have to invoke Section 237 of the Town & Country Act 1990".*

The Briefing Paper went on to say that a quote was being sought from Zurich Municipal. The Commissioners were subsequently informed in a Briefing Note dated February, 2008 that the Council had been unsuccessful in obtaining the restrictive covenant indemnity insurance against claims arising from any breach of the covenants.

One of my legal colleagues did try and discover the rationale behind the decision but details were not forthcoming. I can only assume that Zurich, on an analysis of the legal documentation provided, felt there were a number of local residents who could successfully make a claim. It is clear from the information we have now i.e. that over 400 local residents appear to have the benefit of the restrictive covenants that the purchase of a restrictive covenant indemnity policy was not appropriate in the circumstances.

(4) The information relating to instructions given to, and opinions received from, those lawyers retained by the Council.

The fee note of Gregory Jones has either been misfiled or destroyed but if the fee paid is important then I will be happy to interrogate the financial system to see if the information can be provided.

It is not common practice for the written opinions/advice of Counsel to be annexed to Briefing Papers or reports. It is more usual for the Officers to simply set out the conclusions Counsel has reached and that has been the accepted practice for many years. There was no *"unwillingness by Officers to provide Cabinet Commissioners with copies of all the opinions received by lawyers"* as Officers were simply following the accepted practice of the past.

I do not agree that the legal advice received about the judicial review proceedings launched by the Castleview Residents Association was flawed. On the contrary I consider the advice set out in paragraphs 5.5 to 5.7 (inclusive) of the report to the Cabinet on 7th July, 2008, when read as a whole to be entirely correct. It is clear to me that Queen's Counsel advised that if the matter proceeded to a hearing then the Council would have succeeded in resisting the claim by arguing that the status of the Access Land was irrelevant when considering the proposed appropriation. The report states that there was a risk that the Claimants would get permission to proceed for two reasons namely:-

(a) That they were lay persons and
(b) There was a low threshold to overcome to enable the matter to proceed to a hearing.

That is exactly what transpired.

In respect of the possible sale of the Access Land the Briefing Papers dated February, 2005 and February, 2008 and the reports to the Cabinet on the 26th November, 2007 and 10th March, 2008 contained a full analysis of the financial and property issues arising from a possible sale of the Access Land to the developer.

(5) <u>Inadequate Officer support for Cabinet Commissioners.</u>

It is fair to say that at the Cabinet meeting on the 10th March there was a great deal of confusion. However the two reports needed to be considered independently because of the statutory test that Members had to apply in the report on the proposed appropriation of the Access Land from open space to planning purposes. As you will recall the statutory test, which was set out in the report, required Members to consider whether the Access Land was no longer required for open space purposes. If Members had concluded that it was still required for open space purposes then the report entitled "Land at Upton Court Park –Offer Received" would have been superfluous as this was, (amongst other things), seeking agreement in principle to the sale of the Council's land. The two reports needed to be considered separately and in the right sequence.

(6) <u>Information relating to the Council policy in charging residents for copies of documents that are essential to the defence of their interest.</u>

The Council is revising it's Publication Scheme under the Freedom of Information Act 2000 and it is hoped the new scheme will be adopted by the end of this calendar year.

In the meantime the planning service is reviewing its charges for the photocopying of planning documents and I have asked Gerry Wyld to comment on that when the Overview & Scrutiny Committee meet on 4th November, 2008.

(7) Information relating to legal costs.

It is difficult to predict with any certainty the legal costs that may be incurred in the future in respect of this matter. This is because there are many issues to resolve and potentially changing circumstances.

However, there does appear to be 404 properties having the benefit of the covenants but the amount of compensation payable to them will be dictated by how adversely affected they may be by the construction and subsequent use of the road should the planning permission be implemented. Each case would have to be treated on it's own merits but it is clear that some residents may receive more than others and perhaps some none at all.

At present the Council have not launched any proceedings to overturn the Thames Water case because the proposed amendments to Section 237 of the Town & Country Planning Act 1990 do not appear to be contentious and it is anticipated that the Planning Bill will become law by the end of this calendar year or by Easter 2009 at the latest. If the amendments do form part of the new Planning Act then there will be no need to go to court at all.

(8) List of files/documents – Castleview.

I have supplied you with the information documentation requested subject to the points I made in my letter to you dated 1st October, 2008.

(9) Memorandum dated 12th March, 2008.

I consider that my responses to your letters cover the first two bullet points of the memorandum.

The difficulties arising from the Thames Water case were mentioned in the Briefing Paper to Commissioners dated February, 2005 and effectively repeated in the Briefing Paper dated September, 2007. Subsequently the Cabinet, on 26th November 2007, were advised for the first time that there was a possibility that Section 237 of the Town & Country Planning Act 1990 might be amended and later in the Briefing Note dated February, 2008 the Commissioners were informed that there were proposals in the Planning Bill to amend Section 237 which would overcome the difficulties of the Thames Water case. It follows that the Commissioners were fully informed over a lengthy period of time of the difficulties of the Thames Water case and the possibilities of those being resolved by changes to the existing legislation.

I am not aware of any case being launched or underway by Salford Council.

I cannot answer the property questions you have raised but given the current downturn in the economic climate any informal offers of the past will inevitably be under review.

I hope that this fairly lengthy letter answers all of your queries but if not then please do not hesitate to give me a ring.

Yours sincerely

Steven Quayle
Borough Secretary and Solicitor