

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Cabinet **DATE:** 5<sup>th</sup> November 2009

**CONTACT OFFICER:** Steven Quayle, Borough Secretary and Solicitor  
**(For all Enquiries)** (01753) 875004

**WARDS:** Upton/All

**PORTFOLIO:** Leader, Finance and Strategy – Councillor Anderson

### **PART I** **KEY DECISION**

#### **PROPOSED DISPOSAL OF LAND AT UPTON COURT PARK, SLOUGH, BERKSHIRE**

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

The purpose of this report is for:-

- (a) Members to consider the objections received to the proposed disposal of the Council's land (the Access Land) shown hatched black on **Appendix A** to this report, and
- (b) In light of the objections referred to in 1.1(a) above and the factual, planning, financial and legal position decide whether or not the Access Land should be sold to Kelobridge Limited for the best consideration that can reasonably be obtained.

##### **2. Recommendations/Proposed Action**

Cabinet is requested to consider the objections raised in the context of the factual, planning, financial and legal background set out in this report and resolve accordingly.

##### **3. Community Strategy Priorities**

This report indirectly supports all of the Community Strategy priorities by ensuring the maintenance of excellent governance within the Council. This report contributes towards improving financial and asset planning, monitoring and stewardship.

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

- (a) Financial

The disposal of the Access Land which remains designated as Green Belt land, will generate a significant capital receipt (in excess of £3m), which will help to fund part of the Council's capital programme in the future.

(b) Human Rights Act and Other Legal Implications

- 4.2 A local authority as a land owner may hold its land for a variety of statutory purposes e.g. housing, planning or open space. Section 122 of the Local Government Act 1972 permits a local authority to appropriate (transfer) its land from one statutory purpose to another where it concludes that the land is no longer required for the former purpose. The Cabinet, after considering written objections from local residents, resolved to appropriate the land from open space to planning purposes on 24<sup>th</sup> September 2008.
- 4.3 Where open space land has been appropriated to planning purposes Section 233 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act”) requires a local authority who intend to dispose of the open space land to:-
- (a) publicise its intention to do so for at least two consecutive weeks in a newspaper circulating in their area, and
  - (b) consider any objections to the proposed disposal which may be made prior to any decision being reached. The extract from Section 233 of the 1990 Act is set out in **Appendix B** to this report.
- 4.4 Thus the Cabinet must consider, fairly and on their merits, all of the objections to the proposed disposal together with the factual, planning, financial, and legal circumstances and in that context decide whether the Access Land (which remains in the Green Belt) should be disposed of to Kelobridge Ltd.

5. **Background/Supporting Information**

Existing Uses of Access Land

- 5.1 Upton Court Park (which includes the Access Land) was purchased by the Council from a Mr Frederick Cornish in 1935. It is Green Belt land. The Conveyance contained several restrictive covenants. Two of those covenants provide in summary as follows:-
- (a) That Upton Court Park (which will include the Access Land) should not be used otherwise than for the provision of public walks, parks, pleasure grounds or playing fields, including the provision of pavilions, other buildings and conveniences.
  - (b) Nothing should be done on the park that may be or become a nuisance or annoyance to Frederick Cornish.

The full text of the restrictive covenants referred to above are attached at **Appendix C.**

- 5.2 As will be seen the land is to not be used otherwise than for “*the provision of public walks parks pleasure grounds or playing fields under the Public Health Acts or any enactments amending those Acts*”. However, as the

Access Land has been appropriated to planning purposes, Sections 237 of the 1990 Act (as amended) overrides the restrictive covenants by operation of law. However, local residents who have the benefit of the restrictive covenants may claim compensation from the Council in respect of any breach that might arise in the future.

- 5.3 Much of the Access Land (but not all) has been laid out as a road serving the Slough Rugby Club, an owl sanctuary and an electricity service station. It is evident that the use of the road does not directly relate to the purposes of the restrictive covenant i.e. the provision of the public walks, parks, etc and whilst its use for the benefit of the rugby club and more recently the cricket and hockey club might be said to be ancillary to the use of the park it is plain that access for a substation and owl sanctuary do not come within the terms of the covenant even indirectly.
- 5.4 Apart from the first part of the road which leads to one of the car parks situated in Upton Court Park the remainder and majority of the road is not used for accessing any of the playing fields at Upton Court Park. Indeed, bollards are in place along the road which prevent persons parking to the side of the road to access the playing fields. The changing rooms for the playing fields are themselves some distance away and served by a different car park.
- 5.5 The remainder of the Access Land comprises a car park (which some users of the park may use), a redundant cycling proficiency test area and grassland.

#### The Planning Position

- 5.6 The Local Plan for Slough was adopted in March, 2004 as the development plan for the Borough of Slough after a major public inquiry into all of the proposals. At this public inquiry the developers and local residents had an opportunity of commenting on the proposals being put forward.
- 5.7 Proposal Site 16 which is the land known as the Castleview Site was released from the Green Belt and allocated for residential purposes with the preferred access being over the Access Land which is the subject of this report. However as indicated above the Access Land was not released from the Green Belt and continues to have Green Belt status but it should be noted that the principle of residential development on the Castleview Site serviced by a road through the Access Land is well established.
- 5.8 Whilst applications for residential development on the Castleview Site were refused by the Local Planning Authority in 2004/2005 outline planning permission for residential development on the Castleview Site with access through the Access Land was granted by the Secretary of State on appeal subject to a number of conditions. The Green Belt status of the Access Land was known by the Planning Inspector who heard the appeal and extracts from his report and the comments of Mr G Wyld (Head of Planning & Strategic Policy at the time) are shown at **Appendix D**. The planning permission is annexed to this report at **Appendix E**.

- 5.9 It should be noted that if the Access Land were disposed of to the developer and the planning permission implemented the developer would have to:-
- (i) provide a minimum of 10% of the housing development site as public open space to replace the open space which will be lost by the construction of the road on the Access Land. (Condition 12)
  - (ii) replace any trees lost as a result of the construction of the access roundabout and associated link road which will service the proposed residential development with semi-mature trees. (Condition 10)
  - (iii) relocate the existing car park and recycling facilities which form part of the Access Land. (Condition 14)
- 5.10 It should be noted that an alternative access to the Castleview Site may be possible through Blenheim Road. The developers have previously sought planning permission but this was refused by the Local Planning Authority and the subsequent appeals withdrawn.

#### The Statutory Disposal Process

- 5.11 Members will recall that on 9<sup>th</sup> February 2009 the Cabinet considered a report from the Acting Director of Property in respect of the possible disposal of the Access Land and it was resolved:-
- “(a) That the current position regarding progress on the sale of the Land to the owners of the “Castleview Site” be noted.*
  - “(b) That the Strategic Director of Resources, in consultation with the Borough Secretary and Solicitor and the Leader of the Council, be authorised to conclude the terms and conditions and subsequent sale of the Land to the owners of the Castleview Site.”*
- 5.12 As a result of the resolution of the Cabinet on 9<sup>th</sup> February 2009 officers had further discussions with Kelobridge Ltd and this resulted in Heads of Terms being negotiated in accordance with that resolution but no conclusion has been reached to date. Any disposal must be at the best consideration that can reasonably be obtained. Further information will be given at the meeting.
- 5.13 In light of the provisions of Section 233 of the 1990 Act two Statutory Notices publicising the proposed disposal appeared in the Slough Express on 9<sup>th</sup> and 16<sup>th</sup> October 2009 with the consultation period expiring on 30<sup>th</sup> October 2009.
- 5.14 These notices, have not on the publication of this report, generated any written objections to the proposed disposal but the consultation period will not expire until 30<sup>th</sup> October 2009. Each Cabinet Member will receive prior to the meeting containing every objection letter/petition received from local residents as a result of the publication of the statutory notices i.e. those on

9<sup>th</sup> and 16<sup>th</sup> October 2009 so that they can read in full the residents views. A summary with officer comment will also been provided.

## **6. Comments of Other Committees**

- 6.1 An Extraordinary Meeting of the Council passed the following motion on 19<sup>th</sup> October 2009.

*The Council resolves:*

1. *That the "full financial analysis" of options under consideration in reaching the Heads of Terms negotiated with Kelobridge Ltd which the Cabinet on 9<sup>th</sup> February 2009 agreed would be presented to the Strategic Director of Resources be presented to all Members.*
2. *That officers report the anticipated total cost of compensation payments likely to be due in breaching the covenant to all Members.*
3. *That Members be advised of the percentage of any profits made by the developer which would be due to the Council in the event of the developer selling on the land".*

- 6.2 The answers to 2 and 3 above where given to Members at the EGM by the Leader of the Council but will, together with 1 above, be sent to all Members of the Council before the meeting.

## **7. Conclusion**

- 7.1 Members must consider the objections received together with the factual, planning, financial, and legal position set out above and then decide whether the Access Land should be disposed of in principle and on what terms.

## **8. Appendices**

Appendix A - Plan of Access Land

Appendix B - Section 233, Town and Country Planning Act 1990 (as amended)

Appendix C - Extract from a Conveyance dated 15th May, 1935 between Frederick Cornish (1) and the Urban District of Slough (2)

Appendix D - Extracts from Planning Inspector's report dated 23rd February 2006 and comments of Mr G Wyld

Appendix E - Planning Permission for the Castleview Site