

**OFFICER COMMENTS ON RESIDENTS' OBJECTIONS TO THE PROPOSED
DISPOSAL OF LAND AT UPTON COURT PARK, SLOUGH**

1. Introduction

As a result of the statutory consultation process referred to in paragraph 4.3 of the report a number of written objections have been received by the Council which include responses from the Castleview Residents' Association. This includes a petition of 383 signatures. Mr Jurkiw, who submitted the petition stated "*As its half term many people are not in and also quite a few of the people who volunteered to collect signatures have not been well so could not go out*". All the written objections together with supporting papers form this **Appendix F** so that Members can read them in their entirety.

The following paragraphs contain officer comments on some of the issues raised within the written objections and it is a matter for Members of the Cabinet to consider such objections, fairly and on their merits, together with the factual, planning, financial and legal circumstances and then decide whether or not the Access Land should be disposed of for the best consideration that can be reasonably obtained.

For the sake of completeness it is to be noted that there are no letters/petitions in support of the proposal.

2. The Planning Position

The Planning position as it relates to the Access Land and the Castleview Site is summarised in paragraphs 5.6-5.10 (inclusive) of the report. The full text of the planning permission is attached to this Appendix as only the first page has been reproduced in the Cabinet papers. As will be seen if the planning permission is implemented up to 300 residential units will be constructed on the Castleview Site. It is important to note that the adopted Local Plan for Slough is still the current "development plan" in relation to the Castleview Site and the Access Land (as the preferred access).

Mention has been made of an alternative access to the Castleview Site through Castleview Road (not Blenheim Road as set out in paragraph 5.10) of the report) but no planning permission for such alternative access currently exists. However, it is considered that the developer could apply again for planning permission for an access from Castleview Road. If the applications were refused by the Local Planning Authority and subsequently appealed to the Planning Inspectorate the Inspectorate would take into consideration the previous withdrawal of a similar scheme but it is unlikely that they would refuse to hear the appeal.

3. Traffic Issues

The additional traffic generated by the proposed residential development served by an access road constructed over the Access Land would have been canvassed at the public inquiry but the Secretary of State was satisfied that the development should proceed and granted planning permission.

In respect of the appeals that were refused the Planning Inspector's reason for refusal referred to the local highway network but his detailed reason, clarified in his report, did not include any reference to extra traffic and the ability of the road network to cope. His only concern was visibility from a small side road when turning out onto the altered Castlevue Road.

4. Infrastructure

Local infrastructure is improved where planning policy allows for this to be paid for or provided by the developers. This will occur where government policy allows for such infrastructure to be funded from the developers but only where there was a clear and specific need for it as a result of the new development rather than resolving any existing deficiencies. The Castlevue Site scheme provides for money for extra secondary school places in addition to land for a primary school or money for primary education. This is set out in the Section 106 Agreement. In respect of local open space the planning permission includes a new open space and play area for the new homes plus money for play area enhancement in Upton Court Park.

5. Breach of the Covenants in the 1935 Conveyance

It is true that the construction of a road over the Access Land to facilitate the residential development of the Castlevue Site will breach the first covenant referred to in **Appendix C** to the report and may arguably be a nuisance or annoyance to those owners of the properties that have the benefit of the covenant as set out by Frederick Cornish.

However, Section 237 of the Town and Country Planning Act 1990 (as amended) permits the local authority to develop its land in the manner in which it, acting properly, considers what best serves the public interest, provided that work is done in accordance with the planning permission and is subject to the payment of compensation. A balance has to be struck between giving local authorities freedom to develop land held for planning purposes and the need to protect the interests of third parties i.e. those residents with the benefit of the restrictive covenants whose rights were interfered with by local authority developments. The compensation for work carried out under Section 237 is for "injurious effect" arising out of the works and the subsequent use of the Access Land. The Council accepts that there are approximately 400 properties that may have the benefit of the covenants but that is something that each property owner will have to prove. With the aid of Counsel's advice,

the Council's property consultants Drivers Jonas have estimated that £475,000 may have to be paid out in compensation to local residents.

The effect of Section 237 is that the restrictive covenants are overridden by operation of law and thus no application is required to be made to the Lands Tribunal . However disputes as to compensation may be referred to the Lands Tribunal if agreement cannot be reached.

6. Loss of Open Space/Use of the Park

It is clear that Upton Court Park is regularly used by the local residents for all forms of leisure activity and by sports clubs including the Slough Rugby Club, and local hockey and cricket clubs.

However, the Access Land represents just over 1% of Upton Court Park and in any event Condition 12 of the planning permission addresses the loss of public open space by requiring the developer to provide a minimum of 10% of the housing development site area on the Castleview Site land as public open space.

The loss of trees and the re-location of the existing car park and recycling facilities are covered in paragraph 5.9 of the report.

7. The Appropriation of the Access Land

The Council has complied with the relevant statutory procedures in its appropriation of the Access Land from open space to planning purposes. The appropriation took place on 24th September 2008 and is lawful.

8. The Disposal Process

Paragraph 4.3 of the report summarises the process where a local authority intends to dispose of open space land under Section 233 of the Town and Country Planning Act 1990 (as amended).

Before any consultation could be undertaken, it is necessary for a local authority to identify with some precision its plans for the land, and in particular, its future use and potential purchasers. The Council have fully complied with this statutory requirement.

9. The 10 Metre Buffer Strip

This is referred to on page 2 of the Castleview Residents' Association's letter. There is a strip of land approximately 10 metres wide at the rear of homes in Castleview Road that are part of the approved layout. However, this strip of land has no physical development proposed on it. It will be landscaped and most of it incorporated into private rear gardens. The strip will act as a buffer

between any new and existing homes. There is no established public rights of way on this land.

10. Scrutiny

The meetings of the Cabinet, Council and the Overview and Scrutiny Committee have been published, held in public and decisions made by elected members in accordance with the Local Government Act 1972 (as amended).

11. Financial Matters

It must be made clear that the Council is under no obligation to sell the Access Land should it choose not to do so. However, Members do have a fiduciary duty which means a duty to act in “a fairly business like manner, with reasonable care, skill and caution”. The financial terms have not been finalised. However, the Council (through the Cabinet) is duty bound, if it decides to dispose of the Access Land, to secure a consideration that is the best that can reasonably be obtained. Thus the overriding consideration in determining what constitutes the best consideration that can reasonably be obtained is what is the commercial value of the disposal to the Council.

Members will be given an oral update on the current financial situation by the Council’s property consultants, Messrs Drivers Jonas at the meeting. However, the key principles are:-

- Any agreement entered into between the Council and the developer will bind the developer’s successors in title i.e. any purchaser of the Access Land and the Castlevue Site.
- The base price (in excess of £3 million) will be payable in full on the implementation of the planning permission or where there is a sale to a third party. This payment will be forthcoming prior to any lease (i.e. any disposal of the Access Land) being granted.
- If there is an increase in the value of the Castlevue Site the Council, will at a certain point, in time be entitled to a further payment representing 20.5% of any uplift. This is the overage provision.
- In respect of the School Land the Council will be entitled to 33.3% of any uplift in value should such land be developed for non-educational purposes. This is the school overage provision.
- The legal documentation will ensure that vehicular and pedestrian access is maintained to the Owl Sanctuary, the electricity sub-station and the rugby, cricket and hockey clubs. The same applies to the relocated car park and recycling facilities.

In the paragraph entitled "Worth of the Land" in the letter from the Castleview Residents' Association it has been suggested that the value of the Access Land will increase incrementally until such time as the planning permission expires but this is not the case. If the value of the land increases so will any payment to the Council through the overage mechanism set out above. If the value of the land falls the base price remains unaltered.

The value of testing the Access Land in the open market is limited. The developer (or any successor in title) is the only party capable of developing the land to the rear of Castleview Road i.e. the Castleview Site.

Individual Members cannot be held personally liable for the acts of the Council or its officers. If a third party has any grievance with the Council s/he would sue the Council as a corporate body.

12. Conclusion

If the Cabinet, having considered all the written objections, decide to dispose of the Access Land it can delegate the responsibility for ensuring that the disposal is for the best consideration that can reasonably be obtained to an officer who would have the power to conclude the transaction on behalf of the Authority.

As the Castleview Residents Association letter mentions the report of QA Research in February 2008 it is reproduced in full at the back of **Appendix F**.