

Item No:	Classification: OPEN	Date: 7 October 2003	Meeting Name: EXECUTIVE
Report Title:		Call-In: Appropriation for planning purposes of the Council owned section of Potter's Field former coach site	
Ward(s) or Group affected:		Riverside	
From:		Overview & Scrutiny Committee	

RECOMMENDATIONS

1. That the Executive reviews its decision of 9 September 2003 to appropriate the Council-owned northern section of the Potter's Field former coach park ("Potters Field") to planning purposes under Section 122 of the Local Government Act 1972, taking account of the following decision of Overview & Scrutiny Committee:
2. That the views of the Chief Financial Officer are sought and included in a further report;
 - That a risk assessment be undertaken covering the financial consequences of the Officer recommendations, including potential compensation if the land were used for purposes in breach of covenants and the potential costs of a judicial review of the Executive's decisions;
 - Noting that the Executive received legal advice on the issues raised before reaching its decision, that in future all Councillors present should have the opportunity of seeking clarification of the advice given; and
 - That the Executive provides a written response to Overview & Scrutiny Committee within two months as set out at paragraph 15.3 of the Scrutiny Procedure Rules in the Council's Constitution.

BACKGROUND INFORMATION

3. On 9 September 2003 the Executive considered report 7 & 7a from the Strategic Director of Regeneration seeking approval to the appropriation of Potter's Field to planning purposes under section 122 of the Local Government Act 1972. The Executive approved the recommendation.
4. On 16 September 2003 the Chair of Overview & Scrutiny Committee, Councillor Kim Humphreys, and three members of the Committee (Councillors John Friary, Barrie Hargrove and Andy Simmons) requested a call-in of this decision.
5. The reasons given for the call-in were as follows:

"That the comments of the Chief Financial Officer were not sought according to the Audit Trail and no evidence of adequate risk management".

6. The deputation to Overview & Scrutiny Committee from Masons (including initial deputation to Executive) is attached at Appendix A.

KEY ISSUES FOR CONSIDERATION

7. Overview & Scrutiny Committee considered the call-in request at their meeting on 25 September 2003. Members who had requested the call-in expressed concern at a perceived lack of openness in the giving of legal advice to the Executive. They also felt that there should be further risk assessment particularly in respect of any compensation being due from the Council should covenants be breached.
8. The Assistant Borough Solicitor confirmed that advice given in private to the Executive had been summarized in the Open meeting. The Strategic Director of Regeneration indicated that the decision before the Executive had concerned appropriation for planning purposes only, it had not dealt with the ultimate development of the site. The decision had been taken in order to allow the Council the greatest flexibility in the disposition of the site; it did not preclude use of the site for any purpose. Careful consideration had been given to all issues, particularly those raised by the deputation and which had been addressed in the supplemental report.
9. Masons addressed the Overview & Scrutiny Committee on behalf of Berkeley Homes. In addition to the points set out in their deputation request, they stated that they would apply for judicial review of the Executive's decision should it be implemented, and emphasised the following concerns:
 - Failure to provide financial advice to the Executive particularly relating to possible compensation costs;
 - Failure to provide advice in respects of covenants;
 - Failure to consider funding implications for the Council should a cultural user come forward; and
 - Failure to consider possible costs of a judicial review.
10. The Assistant Borough Solicitor indicated that compensation would only arise should the future development breach the covenants. The decision taken by the Executive did not give rise to any liability to pay compensation, as it did not determine the use of the land. The Assistant Borough Solicitor also stated that Berkeley Homes had been given advance notice of the report to the Executive.
11. The Assistant Borough Solicitor clarified the position in respect of the Berkeley Homes planning application which had been called in by the Secretary of State on grounds of non-determination.
12. The Overview & Scrutiny Committee considered the above in reaching its decisions as set out at paragraphs 1 – 3. Overview & Scrutiny Procedure Rule

19.5 requires that decisions referred back to the decision making body be considered within seven clear days of the date on which the decision to refer back was taken.

LEGAL & FINANCIAL IMPLICATIONS

13. There are no specific legal implications arising from the consideration of this report. Preparation of a report containing the detailed further information recommended by the Overview and Scrutiny Committee has not been possible in the intervening period. Officers will ensure that the further report is brought forward at the earliest possible date.

Background Papers	Held At	Contact
Executive 9 September 2003 – Agenda and Minutes	Town Hall, Peckham Road, London. SE5 8UB	Ian Millichap Constitutional Support 020 7525 7225
Overview & Scrutiny 25 September 2003 – Agenda and Minutes		Lucas Lundgren Scrutiny Team 020 7525 7224

APPENDIX A

Audit Trail

Lead Officer	Shelley Burke, Head of Overview & Scrutiny	
Report Author	Peter Roberts, Scrutiny Team	
Version	Final	
Dated	29 September 2003	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Chief Officer	Yes	
Borough Solicitor	Yes	Yes
Executive Member	No	
Date final report sent to Constitutional Support Services		29 Septembe 2003