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# Uttlesford District Council

Chief Executive: Peter Holt

## **SUPPLEMENTARY PACK STANSTED AIRPORT APPEAL COSTS**

### **Extraordinary Council**

**Date:** Wednesday, 15th June, 2022  
**Time:** 7.00 pm  
**Venue:** Council Chamber - Council Offices, London Road, Saffron Walden,  
CB11 4ER

**Chair:** Councillor H Asker  
**Members:** Councillors A Armstrong, G Bagnall, S Barker, M Caton, A Coote,  
C Criscione, C Day, A Dean, G Driscoll (Vice-Chair), D Eke,  
J Emanuel, J Evans, P Fairhurst, M Foley, R Freeman, N Gregory,  
N Hargreaves, V Isham, R Jones, A Khan, P Lavelle, G LeCount,  
P Lees, M Lemon, B Light, J Lodge, J Loughlin, S Luck, S Merifield,  
E Oliver, R Pavitt, L Pepper, N Reeve, G Sell, G Smith, M Sutton,  
M Tayler and J De Vries

### **ITEMS WITH SUPPLEMENTARY INFORMATION PART 1**

**Open to Public and Press**

**3 Stansted Airport Appeal Costs 3 - 8**

To consider the report regarding Stansted Airport Appeal Costs.



# Uttlesford District Council

Chief Executive: Peter Holt

**For information about this meeting please contact Democratic Services**

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## **General Enquiries**

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**Committee:** Council

**Date:**

**Title:** Stansted Planning Appeal - Costs

15 June 2022

**Report Author:** Peter Holt, Chief Executive

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## Summary

1. This paper updates Councillors on the process for settling the planning appeal costs due to Stansted Airport Ltd [STAL] which the authority has been ordered to pay, and includes a recommendation that an Part 36 Offer under the Civil Procedure Rules (CPR) be made by the authority to STAL in full and final settlement of those planning appeal costs.

## Recommendations

2. That Council approve that the Chief Executive be given authority to make a CPR Part 36 offer (“the offer”) to STAL in respect of the planning appeal costs in the sum of £1,400,000 in full and final settlement (being comprised of £1,362,500 in respect of the claim for costs itself, £0 in respect of VAT (see paragraph 18.5 below) and £37,500 in respect of interest).
3. The Council agrees that the Chief Executive be given authority to make a payment on account of the offer in the sum of £1,000,000 direct to STAL.
4. That Council agrees that, should STAL reject the offer in paragraph 2 above, the Chief Executive is authorised to propose to STAL that the matter is dealt with via mediation. Likewise, if STAL offer to resolve the matter by mediation then the Chief Executive is authorised to instruct external expert advice as needed and to enter directly into such mediation with STAL (noting that any settlement potentially arising from mediation over and above the sum authorised in paragraph 2 above would be subject to fresh approval by Council).

## Financial Implications

5. The final settlement sum will need to be paid from Reserves. The Strategic Initiative Fund (SIF) has a balance of £1.663 million and this will be the primary Reserve used. Should the final settlement sum exceed the balance in this Reserve then the Medium Term Financial Strategy (MTFS) Reserve will be used for the excess.

## Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report\*.

- Order from the Planning Inspector that UDC meet the applicant’s appeal costs.
- Without Prejudice exchanges between UDC/UDC’s costs lawyers and STAL/STAL’s costs lawyers (\*not available for inspection, as legally privileged).

## Impact

7.

Communication/Consultation	Cabinet and Party Group Leaders have been informally and confidentially updated as these negotiations have been ongoing
Community Safety	Nil
Equalities	Nil
Health and Safety	Nil
Human Rights/Legal Implications	The details of Legal implications are outlined throughout the body of this report.
Sustainability	Nil
Ward-specific impacts	Nil
Workforce/Workplace	Nil

## Situation

8. On 22<sup>nd</sup> February 2018 STAL submitted a planning application for works and to substantially extend passenger numbers:

*“Airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements (CATM)) and a throughput of 43 million terminal passengers, in a 12-month calendar period” (“the Proposal”)*

9. That application was refused by the Council’s Planning Committee on the 20<sup>th</sup> of January 2020.
10. On 24<sup>th</sup> of July 2020 STAL submitted an appeal against the decision of The Councils Planning Committee.
11. The Planning Inspectorate heard STAL’s appeal over 30 days between 12<sup>th</sup> January and 12<sup>th</sup> March 2021. The Inspectors found in STAL’s favour by order dated the 26<sup>th</sup> of May 2021:

*“In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Stansted Airport Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.”*

12. The Council subsequently challenged the Inspectors’ decision in the High Court, which was dismissed on 1<sup>st</sup> October 2021.
13. The Council resolved on 6<sup>th</sup> October 2021 to accept the High Court’s decision without seeking further leave to challenge, and to accept that this battle had ended.
14. STAL’s legal costs of that High Court challenge were assessed by the Court and have been paid. However, payment by the authority of STAL’s costs of the original planning appeal remain outstanding and it is those costs that are subject of this report.
15. The Council’s Chief Executive wrote to STAL on 22<sup>nd</sup> November 2021 advising that as the legal challenge was at an end, the Council was ready to begin negotiation over settlement of STAL’s costs of the original planning appeal, as ordered by the Inspectors, inviting STAL to submit details of their costs for consideration.
16. STAL replied to the Council on 23<sup>rd</sup> February 2022, on a Without Prejudice basis, providing details of their costs, invoices and some details of why their costs were being sought at the level they were. The precise sum of STAL’s claim is not provided in this public report, as it was part of privileged communications, and cannot be publicly disclosed by the authority. The sum in question is provided in strictest confidence to Councillors in the Part 2 version of this report.
17. The Council engaged a specialist Costs Lawyer to advise and following correspondence between the Council and STAL’s respective lawyers, and an in depth analysis of the claim by the Costs Lawyer appointed for the Council the offer cited in paragraph 2 above was advised.
18. A number of factors were considered in recommending the offer.
  - 18.1 Firstly, that STAL is entitled to its costs on what is called the “standard basis.” The standard basis is a legal principle that means STAL’s claim for costs must be (i) reasonably incurred; (ii) reasonable in amount; (iii) proportionate to the matters in issue; and (iv) where there is any doubt as to the reasonableness of STAL’s claim for costs , the benefit of that doubt falls in the Council’s favour. Accordingly, the burden ultimately rests with STAL to demonstrate the reasonableness and proportionality of its claim for costs.
  - 18.2 The Council has a fiduciary duty to the taxpayer for the effective and economic use of their money. It has a duty to demonstrate and act in good faith in its negotiations.

- 18.3 Consideration must be given to the fact that if an agreement cannot be reached by direct negotiation between UDC and STAL, and subsequent attempts were made to settle STAL's claim for costs by either mediation or litigation (through the Court), mediation and/or litigation would incur further costs; both in respect of cost to the Council in its own legal fees and also any further legal fees STAL make incur as a result of those processes.

18.4 The Council's cost lawyer has conducted an in depth analysis of the constituent parts of STAL's claim for costs in order to recommend the Part 36 Offer and shown below. It is recommended that nothing be offered at this stage in respect of categories 9,10,11 and 14 on the basis that STAL have yet to provide sufficient information to allow valuations to be placed against them.

<b>VALUATION</b>	
<b>Item</b>	<b>Costs</b>
Category 1	£90,000.00
Category 2	£500,000.00
Category 3	£250,000.00
Category 4	£150,000.00
Category 5	£65,000.00
Category 6	£95,000.00
Category 7	£45,000.00
Category 8	£75,000.00
Category 9	<i>Nothing offered at this stage</i>
Category 10	<i>Nothing offered at this stage</i>
Category 11	<i>Nothing offered at this stage</i>
Category 12	£35,000.00
Category 13	£45,000.00
Category 14	<i>Nothing offered at this stage</i>
Category 15	£3,000.00
Category 16	£6,870.00
Category 17	£2,021.00
Category 18	£255.00
Category 19	£114.00
<b>TOTAL</b>	<b>£1,362,260.00</b>

18.5 A part 36 Offer if rejected by STAL, protects the Council should the matter have to be ultimately determined by the Court. If the offer proposed at paragraph 2 above were to be accepted by STAL after 21 days from it being made, or if the Court were to assess the claim for costs at a sum equal to or lower than the offer then STAL would become responsible for the Council's costs incurred after the 21 day period from the date of making the offer. By way of further information, a CPR Part 36 Offer is required, by law, to include a provision in the respect of Interest. In other words if the Part 36 Offer were to exclude interest it would be invalid as a Part 36 Offer.

18.6 A sum of £0 has been offered in respect of STAL's claim for VAT. The reason for this is that it is understood that STAL are VAT registered and as a consequence STAL must claim any VAT they have paid in respect of legal fees from HRMC (or by way of set off as part of their VAT returns) and not from the Council. However, and in any event, even if the Council was required to pay STAL's claim for VAT any payment in respect of that would be net neutral to the Council as part of the usual VAT returns accounting process.

19. To this end the duties and issues in paragraph 18 above have been carefully considered in providing the Council with the recommended offer in paragraph 2 above. Accordingly, the offer proposed at paragraph 2 above is in the view of the officers and costs lawyer appointed, a reasonable and proportionate offer based on the information currently available.

20. Should STAL accept this offer, then this would essentially see the matter resolved, with no further reference to Members.

21. Should STAL reject the part 36 offer, they may:

21.1 Make a counter offer and seek to enter into further negotiation. Should this be the case, if the counter offer were to be at a level higher than that in paragraph 2 above a further officer report would be brought back for Council approval or

21.2 Seek to end the informal negotiation and invite the Council to enter into mediation to seek to resolve the matter. Any amount higher than that in paragraph 2 above would be brought back to Council for approval at the end of the mediation process or

21.3 Take the matter through the Court process. This process would require STAL to serve a full and detailed bill of their costs; the Council would have the opportunity to submit written representations challenging the claim for costs (called "points of dispute"); STAL would have the opportunity to

submit written representations responding to the points of dispute (called “replies to points of dispute”) and then the matter would proceed to a Court hearing before a specialist costs judge who will determine the reasonable and proportionate sum the Council must pay STAL. This process (called “detailed assessment proceedings”) can be lengthy and time consuming. Any sum the Court assesses as being reasonable and proportionate (assuming it would be above the threshold requiring full Council approval and above the sum proposed for the Part 36 Offer set out in paragraph 2 above) would require full Council approval in a fresh report at a future meeting. However, in reality, this would merely be a rubber stamp, as by that point it would be a duty to fulfil the Order of the Court, rather than a matter of discretion as today’s proposed Part 36 Offer is. Such detailed assessment proceedings would take an estimated 12 to 18 months to complete and will incur further substantial costs both for the Council and STAL, some or all of which might fall either on the Council or STAL, depending on the Court’s final settlement in relation to the Council’s Part 36 Offer. The Court would also order payment of interest on any sum ultimately awarded at a rate of 8% per annum; a rate fixed by legal statute.

22. Paragraph 3 of this report recommends that the Council make a payment on account of the offer in the sum of £1,000,000 direct to STAL. Whilst it is recommended at paragraph 2 that £1,400,000 represents a reasonable and proportionate Part 36 Offer in respect of STAL’s claim for costs, it is the advice of the Council’s costs lawyer that a payment be made for the minimum sum that any court would be likely to allow were the costs to be assessed. That minimum sum is £1,000,000.
23. The making of a payment on account meets two crucial fiduciary obligations. The first is that STAL’s claim for costs is accruing interest up to a rate of 8 percent per annum and by making a payment on account the Councils liability for interest becomes substantially reduced. The second is that costs litigation should be avoided at this early stage to allow for negotiations to be exhausted and making a payment on account increases the prospect of cost litigation being deferred.
24. The final settlement sum will need to be paid from Reserves. The Strategic Initiative Fund (SIF) has a balance of £1.663 million and this will be the primary Reserve used. Should the final settlement sum exceed the balance in this Reserve then the Medium Term Financial Strategy (MTFS) Reserve will be used for the excess.