



Public Document Pack

Uttlesford District Council

Chief Executive: Dawn French

Scrutiny Committee

Date: Tuesday, 24th September, 2019

Time: 7.30 pm

Venue: Committee Room - Council Offices, London Road, Saffron Walden, Essex CB11 4ER

Chair: Councillor N Gregory

Members: Councillors M Caton, A Coote, C Criscione, G Driscoll, J Evans, R Jones, G LeCount (Vice-Chair), N Reeve and G Sell

Substitutes: Councillors S Barker, C Day, A Dean, M Foley, M Lemon, R Pavitt and A Storah

Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting. A time limit of 3 minutes is allowed for each speaker. Please refer to further information overleaf.

AGENDA PART 1

Open to Public and Press

1 Apologies for Absence and Declarations of Interest

To receive any apologies for absence and declarations of interest.

2 Minutes of the Previous Meeting 5 - 8

To consider the minutes of the previous meeting.

3 Responses of the Executive to reports of the Committee

- To consider any responses of the Executive to reports of the Committee.
- 4 Consideration of any matter referred to the Committee in relation to call in of a decision**
- To consider any matter referred for call in.
- 5 Cabinet Forward Plan** 9 - 14
- To receive the updated Cabinet Forward Plan.
- 6 Scrutiny Work Programme 2019-20** 15 - 16
- To receive the Scrutiny Work Programme.
- 7 Planning Obligations and Conditions Task and Finish Group update**
- To receive an update on Planning obligations and conditions from the Task and Finish Group.
- 8 Major Planning Applications review update**
- To receive an update on the Major Planning Applications review.
- 9 Referral from Cabinet regarding AECOM engagement** 17 - 22
- To consider the report on the referral from Cabinet regarding the AECOM engagement.
- 10 Probit in Planning** 23 - 40
- To receive an update on Probit in Planning.
- 11 Discussion with Chief Executive and Directors**
- To receive an update on a discussion with the Chief Executive and Directors.

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The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

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Agenda Item 2

**SCRUTINY COMMITTEE held at COMMITTEE ROOM - COUNCIL OFFICES,
LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on TUESDAY, 25
JUNE 2019 at 7.30 pm**

Present: Councillor N Gregory (Chair)
Councillors C Criscione, C Day (In place of N Reeve), J Evans,
R Jones and G LeCount

Officers in attendance: R Auty (Assistant Director - Corporate Services), A Bochel (Democratic Services Officer), N Brown (Development Manager), G Glenday (Assistant Director - Planning) and S Pugh (Assistant Director - Governance and Legal)

SC7 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors Caton, Driscoll and Reeve.

SC8 MINUTES OF PREVIOUS MEETINGS

The minutes of the meetings held at 6.30 on 21 March 2019, and on 25 June 2019, were approved and signed by the Chair as a correct record.

SC9 CABINET FORWARD PLAN

In response to a Member question, officers said they would look into the feasibility of providing the Committee with access to a library of documents relating to items on the Cabinet forward plan.

SC10 PLANNING

Councillors Evans, Criscione and Jones had previously circulated proposals for a scoping review for planning obligations and conditions, and these had been published as a supplementary pack.

The Assistant Director – Planning said the Planning Department undertook a service review last year and had since begun to adopt some of the resulting proposals to move towards smarter working. As a result, the backlog of planning applications had been brought down from over 100 to 40. There had also been some scope for improving the quality of decisions, giving impetus to discussions about how to move forward. He welcomed the proposed scrutiny review as a means to provide a better service.

The Development Manager agreed, and said he was keen to involve the community. It was an urban myth that the council was not collecting Section 106 money, and a Section 106 officer was now in place to monitor the issue. The

Council was in the process of inputting data into a system so members of the public could see whether Section 106 funds had been collected for particular developments. It was intended that this new system would be available to the public in April or May 2020, as inputting data was a time-consuming process.

In response to a Member question, the Development Manager said the Section 106 Officer's role was to monitor the implementation of Section 106 agreements. Agreeing mitigation measures was the role of the planning officers concerned. He would forward the Section 106 Officer job description to Councillor Evans.

Members commended the scoping review proposals. The Chair suggested that the task group expand their remit to consider any other matters that might arise and be deemed relevant.

RESOLVED to establish the Planning Obligations and Conditions Task and Finish Group, comprising Councillors Evans, Criscione and Jones. Terms of reference would be as set out in the scoping review proposal, incorporating a line which would allow the group to expand their remit to consider any other matters that might arise and be deemed relevant.

SC11 MAJOR PLANNING APPLICATION PROCESSES - PLANNING ADVISORY SERVICE PROPOSAL

The Assistant Director – Corporate Services said the Planning Advisory Service (PAS) had proposed an initial scoping review to advise which aspects of the Council's approach to major planning applications required further scrutiny. Should the Committee approve the recommendations, the PAS should be ready to report back in September.

Members noted that the Major Planning Applications Task Group would not need to commence meeting until after the PAS had issued its first report.

RESOLVED to:

- 1) Approve the proposal for a scoping review from the Planning Advisory Service as set out in the report.
- 2) Appoint Councilor LeCount as Chair of the Major Planning Applications Task Group.

SC12 GOVERNANCE ARRANGEMENTS

The Chair asked the Leader of the Council to explain how work on reviewing the Council's governance arrangements would develop.

The Leader said his proposal would be to create a sub-committee of the Council, with the aim of setting the final recommendations before Annual Council in 2020. Various approaches to governance would be examined and it did not necessarily mean returning to the committee system the Council used previously. Further details about the sub-committee would go before Council at the July meeting.

Members noted that for the moment there was little role for the Scrutiny Committee to play in the process, but that it might examine the governance review's proposals after the sub-committee had developed them. It was suggested that the sub-committee contain some membership from the Scrutiny and Governance, Audit and Performance Committees.

The meeting ended at 8.45.

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UTTLESFORD DISTRICT COUNCIL DRAFT FORWARD PLAN

Item	Meeting	Date	Brief information about the item and details of documents submitted for consideration	Key Decision?	Part 2?	Portfolio Holder	Contact officer from where the documents can be obtained
Establishment & appointments to Cabinet Working Groups: Climate Change and Investments	Cabinet	26 Sep	To establish and appoint members to working groups for Climate Change and Investments.	No			Ben Ferguson, Democratic Services Officer bferguson@uttlesford.gov.uk
Corporate Plan Delivery Plan 2019/20 Quarter 1 Progress Update	Cabinet	26 Sep	To note the progress against actions in the Corporate Plan Delivery Plan	No	Open	Leader of the Council, Lead for Planning and the Local Plan	Dawn French, Chief Executive dfrench@uttlesford.gov.uk

Item	Meeting	Date	Brief information about the item and details of documents submitted for consideration	Key Decision?	Part 2?	Portfolio Holder	Contact officer from where the documents can be obtained
Saffron Walden Museum Collections Development Policy 2020-2025	Cabinet	26 Sep	This policy sets out what the Museum collects and how; priorities for collecting and for rationalisation, and the legal and ethical framework in which acquisition and disposal of collections takes place. It is a key document required of all museums by the government's Accreditation scheme (minimum standard for public museums, administered by Arts Council England). An updated Collections Development Policy, approved by the Council, is required for the Museum's Accreditation review in early 2020.	No	Open		Carolyn Wingfield, Curator - Saffron Walden Museum cwingfield@uttlesford.gov.uk
Shareholder report on the accounts for the Aspire companies	Cabinet	15 Oct		No	Open	Portfolio Holder for Finance and Budget	Adrian Webb, Director - Finance and Corporate Services awebb@uttlesford.gov.uk

Item	Meeting	Date	Brief information about the item and details of documents submitted for consideration	Key Decision?	Part 2?	Portfolio Holder	Contact officer from where the documents can be obtained
Corporate Plan Delivery Plan 2019/20 Quarter 2 Progress Update	Cabinet	26 Nov	To note the progress against the Corporate Plan Delivery Plan	No	Open	Leader of the Council, Lead for Planning and the Local Plan	Dawn French, Chief Executive, Sue Kempster, P/A to the Chief Executive dfrench@uttlesford.gov.uk, skempster@uttlesford.gov.uk
Heritage Strategy	Cabinet	26 Nov		Yes			Nigel Brown, Development Manager nbrown@uttlesford.gov.uk
Local Development Scheme	Cabinet	26 Nov	Update of the Council's Local Development Scheme	No	Open	Leader of the Council, Lead for Planning and the Local Plan	Stephen Miles, Planning Policy Team Leader smiles@uttlesford.gov.uk
Neighbourhood Planning Protocol	Cabinet	26 Nov	There is a need to update the existing protocol.	No	Open	Leader of the Council, Lead for Planning and the Local Plan	Ann Howells, Support and Business Manager ahowells@uttlesford.gov.uk

Item	Meeting	Date	Brief information about the item and details of documents submitted for consideration	Key Decision?	Part 2?	Portfolio Holder	Contact officer from where the documents can be obtained
Corporate Plan Delivery Plan 2019/20 Quarter 3 Progress Update	Cabinet	9 Jan	To note the progress against the Corporate Plan Delivery Plan	No	Open		Dawn French, Chief Executive dfrench@uttlesford.gov.uk

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Work Programme 2019/20

Date	11 June	25 June	24 September	5 November	17 December	4 February	10 March
Standard agenda items	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee	Responses of the Executive to reports of the Committee
	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision	Consideration of any matter referred to the Committee in relation to call in of a decision
	Invited reports from the Executive						
	Cabinet Forward Plan						
	Scrutiny Work Programme						
Page 15 Agenda items	Reflections on training	Governance discussion	Planning Obligations and Conditions task and finish group update	Planning Obligations and Conditions task and finish group interim report	Major Planning Applications Review final report	Planning Obligations and Conditions task and finish group update	Annual Report
	Statutory Guidance and Memorandum of Understanding	Planning ToR/scope	Major Planning Applications Review update	Major Planning Applications Review update	Planning Obligations and Conditions task and finish group update		Planning Obligations and Conditions task and finish group final report
	Work Planning	Major Planning Applications Review proposal	Referral from Cabinet re AECOM engagement				

			Probity in Planning				
			Discussion with Chief executive and Directors				

Agenda Item 9

Committee: Scrutiny Committee **Date:**
Title: Referral from Cabinet regarding AECOM Tuesday, 24
engagement September 2019
Report Author: Richard Auty, Assistant Director - Corporate Services
rauty@uttlesford.gov.uk

Summary

1. At its meeting on 15 July 2019, Cabinet referred a matter to Scrutiny relating to the engagement of AECOM to review the Local Plan Sustainability Appraisal.
2. This report contains the Chair of Scrutiny's proposed note to Cabinet following correspondence and a meeting which took place over the summer.

Recommendations

3. The Committee refers the attached report by the Chair of Scrutiny to Cabinet.

Financial Implications

4. None

Background Papers

5. None

Impact

- 6.

Communication/Consultation	The attached report will be communicated to Cabinet, should members agree it.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	The report is in connection to the Sustainability Appraisal

Ward-specific impacts	None
Workforce/Workplace	None

Situation

7. At the Cabinet meeting of Monday, 15 July 2019, the Chair of Scrutiny Cllr Gregory raised the concerns of a resident who had contacted him regarding engagement of AECOM to review the Sustainability Appraisal.
8. The Cabinet made the following resolution:
9. *To refer AECOM's commission to carry out the Sustainability Appraisal update to the Scrutiny Committee, in light of a comment received by a member of the public.*
10. The minute can be read here, at item 10:
<https://uttlesford.moderngov.co.uk/ieListDocuments.aspx?CId=136&MId=5268&Ver=4>
11. There has not been a Scrutiny Committee meeting since this referral; however Cllr Gregory has engaged in correspondence with relevant officers on the matter. Cllr Gregory and the Vice-Chair Cllr LeCount also attended a meeting with officers to discuss the matter.
12. Attached to this report is a report prepared by Cllr Gregory which is intended to be sent on to Cabinet, should members of the Scrutiny Committee agree. Also attached is a timeline prepared by Cllr Gregory.

DRAFT

To: Members of Cabinet

From: Chair of Scrutiny Committee

REFERRAL TO SCRUTINY COMMITTEE – 15 July 2019

1. Members of Cabinet will recall that the Leader received a complaint from a member of the public in relation to a. the appointment of AECOM to conduct a review of the Sustainability Appraisal element of the emergent UDC Local Plan and b. more general concerns about the ‘truthfulness’ with which the council as a corporate body conducts its business.
2. Both questions go to the heart of the relationship of trust that should exist between officers, members and residents.
3. The minutes of 15 July Cabinet state, *inter alia*:

"To refer AECOM's commission to carry out the Sustainability Appraisal update to the Scrutiny Committee, in light of a comment received by a member of the public."

4. Following Cabinet on 15 July, the Chair of Scrutiny Committee wrote to the Chief Executive and other senior officers. Following lengthy and detailed correspondence a meeting was held on 19 August. At the meeting were Ms French, Mr Harborough, Cllr Lodge, Cllr LeCount and Cllr Gregory. The meeting established the following:
 1. There had been a failure to fully inform members and the public of the potential challenges to the Sustainability Appraisal and proposed remedial action, including commissioning AECOM to undertake work on the matter.
 2. That failure was not however intentional and arose from an unintentional oversight by an officer.
 3. The oversight was out of character and regretted. Measures were now in place that should preclude a repetition.
 4. There were and remain issues around the perception of openness and transparency within UDC as a corporate body, which the Corporate Management Team (CMT), Leader, chairs of relevant committees and members as a whole needed to give further attention to.
 5. To, in part, address these issues of perception the Chair of Scrutiny Committee would invite members of the CMT to a forthcoming meeting of Scrutiny Committee to discuss options and actions.

5. Further discussions have also taken place following consideration of the timeline in respect of changes to/reviews of the Sustainability Appraisal. A copy of that timeline is attached for information. It can be concluded that there was a clear and reasoned process for addressing issues around the Sustainability Appraisal and guidance was sought on those issues from Michael Bedford QC. However, it is not clear that members and residents were as fully briefed as they might have been on developments and process. Some matters were reported to committee which were factually wrong and that should have been corrected at the time.

6. Cabinet is invited to discuss this report.

SA review / update timeline

- 15 June – first NEA letter published
- 19 June Full Council – decision to publish regulation 19 Local Plan
- 4 July – advice received from Place Services around the differences between our SA and the NEA's SA
- LPPB 19 July – decision to go out to tender for SA review
- 20 July – note received from Place Services on the UDC SA in the light of the NEA letter
- 25 July – email to three companies inviting them to tender
- 1 August – PINS phone call, during which I understand our SA in respect of the NEA letter was discussed
- 2 August – third NEA letter published
- 13 August – email to AECOM saying we are meeting our barrister next week and asking to hold off appointment until after the meeting
- 22 August – meeting with our barrister
- 24 August – email to AECOM confirming we wanted to appoint
- 29 August – AECOM appointed to review SA
- 2 October – Council received first draft of the SA review
- 3 October – Council received costing and timing estimates of completing the work identified in the report
- LPPB 5 October – SA review discussed
- 10 October – advice received from the Council's barrister re addressing the SA review
- 16 October – further advice received from the Council's barrister re addressing the SA review
- 16 October – advice received from Place Services as to what they considered needed to be done to fix the issues in the Reg. 19 SA
- 18 October – further advice received from the Council's barrister re addressing the SA review
- 19 October – CEX informed the Leader of the need to commission AECOM to undertake a full review
- LPPB 25 October – decision to appoint AECOM to update the SA; AECOM begin work at risk
- 26 October – CEX discussed the need for PPWG to discuss the SA (and other agenda items)
- JET 29 October – Cabinet members made aware of SA review findings and update to the SA
- 2 November – AECOM appointed to update SA
- 2 November – received final draft of the SA review (unchanged from the first draft)
- 12 November – meeting to discuss reasonable alternatives
- 12 November – PPWG papers published
- 20 November – PPWG to discuss SA review / update

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Agenda Item 10

To: Members of Scrutiny Committee

From: Chair of Scrutiny Committee

PROBITY IN PLANNING

1. Members of Scrutiny Committee will recall that there has been extensive correspondence over the summer between the Chair and Mr Harborough. That correspondence is attached to this note, as background information.
2. Discussion of the matter continues and Mr Harborough is due a reply to his most recent letter.

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Mr Roger Harborough
Director of Public Services
Uttlesford District Council

15 July 2019

Dear Roger,

Probity in Planning – UDC Constitution

I write as Chair of Scrutiny Committee

Background

Following a conversation with Mr Ross of Stop Stansted Expansion, he wrote to me with a list of concerns about the Stansted Airport planning application which, as you are aware, has been the source of so much debate and discussion recently.

The majority of Mr Ross' concerns are about a currently live application and as such are out-with the remit of Scrutiny Committee. I have, of course, forwarded a copy of Mr Ross' note to Cllr Merifield, as Chair of Planning Committee.

A working group of Scrutiny Committee under the chairmanship of Cllr LeCount will be considering the Council's handling of major planning applications during this session, that working group will doubtless seek evidence from a variety of sources in due course.

Two aspects of Mr Ross note do however fall within the remit of Scrutiny Committee and merit immediate consideration.

Areas of possible concern

I draw your attention to the UDC constitution. In particular, **Part 5 – Probity in Planning**, beginning on Page 274. I presume this section remains largely un-amended from the 2015, 2016 and 2017 versions of the UDC Constitution. Please confirm or correct this presumption.

I have highlighted the key points of the relevant extracts below

2.3.4 Councillors should not organise support for or against a planning application and should not lobby other councillors since this would also signal that they had made up their mind before hearing the evidence. Each councillor should make up his own mind on the evidence and facts presented to the committee.

3.1 Pre-application Discussions

3.1.1 Discussions between a potential applicant and the Council (through its planning officers) prior to the submission of the application can be of considerable benefit to both parties and is encouraged by the Audit Commission, the Local Government Association and the National Planning Forum. It should always be made clear at the outset that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional. Advice should be considered and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision maker. A written note should be made of all potentially contentious meetings and telephone discussions. A follow up letter may be advisable, especially when documentary material has been left with the Council.

3.1.2 Councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals. They should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. They should make it clear that they will only be in a position to take a decision after having considered the officers' reports and any representations and heard any debate in the committee meeting.

3.1.3 Councillors should not meet applicants or agents or third parties in connection with a current or proposed application. If councillors do agree to meet they should only do so in the presence of a planning officer. In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay councillors should notify the relevant planning officer of the proposed meeting beforehand and the notification recorded in the application file. Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the committee for determination.

3.1.4 If councillors receive information that is relevant to a planning decision they must declare that information to the relevant planning officers and to the committee. Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting.

3.1.5 Paragraphs 3.1.2 to 3.1.4 above do not apply to councillors when they are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job. However, they should make it clear to their clients that they cannot and will not use their position as a councillor to influence the outcome of an application.

4.3 Record Keeping

The planning application files should be complete and accurate containing sufficient information and itemising events so that the reason for the decision can be easily understood. Only "background papers" as defined in the Local Government Act 1972 are automatically available as a right to third parties. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by councillors. These principles apply equally to enforcement and development framework matters.

Mr Ross makes the following assertions, *inter alia*, in his note to me.

3. Informal meetings between officers and STAL

UDC planning officers held no fewer than 36 meetings with MAG/STAL between February 2016 and December 2017. The first 28 of these meetings were said to be informal and UDC officers claimed that there was no requirement to produce minutes for such meetings. Officers claimed a confidentiality exemption for the remaining eight meetings. However, UDC did provide SSE with handwritten notes for 9 these 36 meetings with STAL, including an extract from a meeting on 17 May 2017 where it was noted as follows:

...

4. Informal meetings between members of the Council and STAL

It is understood that a number of meetings were held between UDC members, including the Leader of the Council, and MAG/STAL during the two years prior to the determination of the Planning Application. Cllr Terry Farthing is also understood to have been active in this regard. However, none of these meetings have been disclosed and none are recorded on the Planning Application file. It is not even known whether officers attended any of these meetings.

Questions and issues Arising

1. Did the meetings with officers alleged by Mr Ross take place?
2. If so how many, when and with whom?
3. Were there meetings with UDC Members, as alleged by Mr Ross?
4. If so, how many, when and with whom?
5. Were there meetings with the Leader, as alleged by Mr Ross?
6. If so, how many, when and with whom?

7. Were there meetings with Cllr Farthing as Mr Ross alleges?
8. If so, how many, when and with whom?
9. I note Cllr Farthing was a substitute member of Planning Committee in 2018/19, did he hold similar positions in previous years?
10. Did he ever act as a substitute at a meeting where this application was considered?

Returning to the relevant aspects of the UDC Constitution;

Councillors should not meet applicants or agents or third parties in connection with a current or proposed application. – Did any councillors meet with applicants or third parties in respect of this application?

If councillors do agree to meet they should only do so in the presence of a planning officer. – Did all meetings, if any, take place in the presence of a planning officer?

In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay councillors should notify the relevant planning officer of the proposed meeting beforehand and the notification recorded in the application file. Were there any such cases and if so were planning officers notified and said notification recorded?

Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. Did Councillors at any/all meetings (if any) restrict themselves as so required? Was this documented?

A note should be taken of the meeting and placed on the application file. Do such notes exist for all meetings and are they on the appropriate file? Were notes taken of all meetings (if any)? Are they on the file?

The fact that a councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the committee for determination. Were such notifications, in all respects and with reference to each individual meeting (if any) made clear to the committee as required?

Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting. Were all such discussions (if any) reported and relevant correspondence made available as required?

The planning application files should be complete and accurate containing sufficient information and itemising events so that the reason for the decision can be easily understood. Are the planning files complete and accurate as required?

Clearly, these are questions that go to the heart of compliance with our own procedures, probity in planning and faith in the workings of UDC. They fall clearly within the duties of Scrutiny Committee in general and specifically in relation to:

6.3.6 review and scrutinise the decisions made by and performance of the executive, committees and council officers both in relation to individual decisions and in more general terms;

Requirements

Please may I have detailed, timely, individual and precise answers to each of the above questions, addressing each individual meeting (if any), at your earliest convenience.

Please may I also have copies of all notes/records of any meetings (if any) that took place with officers and/or members and applicants/agents. I note the requirement of Rule 21.2.

Please may I have a copy of the diaries of the Leader, Deputy Leader and Chair of Planning Committee for the period 1/1/16 – 28/6/19. I note the requirement of Rule 21.2.

I require these in accordance with my position as a member of Scrutiny Committee

7.1 In addition to their rights as councillors, members of overview and scrutiny committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

I note the specification of rights of access as laid down in part 4 of the UDC Constitution, appended below for ease.

RULE 21 OVERVIEW AND SCRUTINY COMMITTEES' ACCESS TO DOCUMENTS

21.1 Subject to Rule 21.3, an overview and scrutiny committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the executive and which contains material relating to:

21.1.1 any business transacted at a meeting of the executive or its committees; or

21.1.2 any executive decision taken by an individual member of the executive or

21.1.3 any executive decision taken by an officer of the Council

21.2 Subject to Rule 21.3, where a member of an overview and scrutiny committee requests any document which falls within Rule 21.1, it shall be supplied as soon as is reasonably practicable and in any event within 10 working days.

21.3 No member of an overview and scrutiny committee shall be entitled to a copy of:

21.3.1 a document containing exempt or confidential information unless that information is relevant to an action or decision that the member is reviewing or scrutinising or to any review contained in any programme of work of such a committee or sub-committee.

21.3.2 advice of a political adviser or assistant

21.4 Where the executive determines that a member of an overview or scrutiny committee is not entitled to a document or part of a document for a reason set out in Rule 21.3 it must provide the overview and scrutiny committee with written reasons for that decision.

Should you consider that any document falls within the purview of Rule 21.3.1, a course of action which I would consider most improbable, then please be advised that I will require individual and specific reasons iaw Rule 21.4.

Other Matters

This issue has potentially broad ramifications for the business of the Council and may raise issues of conduct of both officers and members.

If, there were breaches of the requirements laid down in the UDC Constitution in respect of this application, the obvious supplementary question is to ask whether there were other applications with similar breaches at any time. We can return to this question in the light of the answers to my detailed questions above.

I have, as a courtesy, copied this letter to the Leader, Deputy Leader, Chair of Planning Committee and my fellow members of Scrutiny Committee.

I look forward to your early response.

Yours ever

Neil Gregory
Chair, Scrutiny Committee



UTTLESFORD DISTRICT COUNCIL

Council Offices, London Road, Saffron Walden, Essex CB11 4ER
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Chief Executive: Dawn French

Cllr Gregory

30 July 2019

By email:-

RH

cllrgregory@uttlesford.gov.uk

Please ask for Roger Harborough on 01799 510457
email: rharborough@uttlesford.gov.uk

Dear Cllr Gregory

PROBITY IN PLANNING

I refer to your letter dated 15 July.

I very much welcome Scrutiny's consideration of the pre-application stage of major planning applications. It is important that our internal codes and procedures align with best practice. An instance of this is the Government guidance at <https://www.gov.uk/guidance/before-submitting-an-application>. This includes the following:

What involvement could the local planning authority's elected members have at the pre-application stage?

Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so. Section 25 of the Localism Act 2011 confirms that elected members do not have a 'closed mind' just because they have historically indicated a view on a matter relevant to the proposal. Further information on elected member involvement in the decision-making process.

On the face of it, paragraph 3.1.3 of UDC's Probity in Planning Code is out of step with this approach.

I agree that, in the interests of openness and transparency, that there should be a summary note in planning application files of the main points covered in discussions between planning officers involved in the case and applicants or third parties, both in meetings and in telephone calls. This would have been of considerable benefit in responding to requests for information under the Environmental Information Regulations made by SSE. This does not need to be a detailed note but should record the principal points discussed and action points arising. Many of the meetings

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to which Brian Ross refers between case officers and Stansted Airport in the pre-application stage involved MAG's team taking case officers through its initial work in preparing the environmental statement and discussions about process. I understand that these meetings were not contentious. The Environmental Statement was subsequently published. The council also published its scoping opinion providing its formal advice on the matters the statement should cover.

You are welcome to inspect the list of meetings between officers and Stansted Airport/ its consultants and copies of the documents disclosed to Brian Ross but I do not think that you would find this helpful other than perhaps to appreciate why it would be more useful to publish meeting notes as above. This would avoid the problems evident in SSE's witness statement in its claim against the Secretary of State for Transport in the High Court. In this witness statement, assertions have been made about what extracts of officers' manuscript rough jottings made during meetings meant. A senior civil servant in the DfT, the Deputy Director of Aviation Policy, and the Planning Director at MAG in their respective witness statements as defendant and interested party have pointed to alternative more plausible and reasonable interpretations that should have been made.

You also ask about any meetings between councillors and Stansted Airport Ltd relating to its planning application. There was one briefing session arranged to which all councillors were invited. I attach a contemporaneous note that I took. This broadly took the form of a presentation of material to councillors and a session of questions and answers.

I cannot be certain that no meetings took place between individual councillors and the management team at the airport about the planning application, but I do not believe they did. Our working relationship with Stansted is such that they would feel obliged to disclose any such meetings to officers and no such meetings were mentioned.

As part of periodic catch up meetings between the Leader and the Airport Chief Executive, Howard Rolfe met with Ken O'Toole. Other councillors were involved, together with me. They were also attended by MAG's Planning Director and Planning Manager as transport matters tended to regularly feature on the agenda. The meetings were not specifically to discuss the planning application, although as you can see aspects were covered. I attach notes of those meetings.

I have no knowledge of any meetings specifically between Terry Farthing and any member of the airport management team, but he declared his support for the airport proposals at an early stage and did not sit as a member of the Planning Committee at any committee meeting when matters related to the airport application were considered. He was appointed as a substitute member of the Planning Committee on 22 February 2018.

You quote extensively from Rule 21.2 but this applies to the Scrutiny Committee's functions in relation to decisions made by the Executive, such as decisions of Cabinet or those made by individual Portfolio Holders under delegated powers.

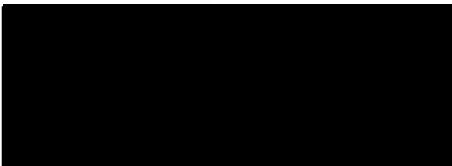
Dealing with all aspects of planning applications, or other related matters such as enforcement against a breach of planning control, is a council function.

I should also point out that a breach by a councillor of the Good Practice Guidance: Probity in Planning may potentially be a matter for the Standards Committee, but not for the Scrutiny Committee.

I cannot arrange for you to have access to the outlook calendar entries for the former Leader, Deputy Leader or Chair of Planning Committee, as to do so would be to release personal information in breach of general data protection controls.

I am disappointed that you felt it necessary to write to me formally rather than approach me about these matters. I accept that there is more to be done to develop codes and procedures for member involvement at the pre-application phase of proposals for major development, and in improving transparency in terms of officers fully embracing guidelines but it would help if members were apparently more readily inclined to balance what may be said by interest groups with their professional advice, which is always offered in good faith.

Yours sincerely



Roger Harborough
Director of Public Services

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Mr Roger Harborough
Director of Public Services
Uttlesford District Council

15 August 2019

Dear Roger,

Probitry in Planning – UDC Constitution

I hope you enjoyed your holiday.

Thank you for your letter of 30 July in response to mine of 15 July.

For clarity, I shall address the points you made in the same order as you made them.

Apparent conflict between UDC Constitution and national guidance

You do raise an interesting issue here about the contradiction in guidance. Leaving aside the issue of revision of the UDC Constitution which is wholly outside Scrutiny's remit, the questions arise as to why members did not comply with the extant rules in the UDC Constitution? Were waivers provided or explanations of the issues in the Localism Act given?

Meetings – officers/Stansted and members/Stansted

Thank you for your kind offer that I may inspect the files. However, as I said previously, I would like please a list of meetings and notes of each. If a list does not exist, why is this ? If notes do not exist, why ?

The documentation you have provided seems remarkably light bearing in mind the scale and importance of this application.

Rule 21.2

Could you please clarify your reasoning, my understanding is that Rule 21.2 needs to be read in the context of Rule 21.1.

Breaches of Good Practice Guidance

I agree any breaches would be a matter for Standards Committee. The question here is did any take place that merit referral to Standards Committee ?

Access to Diaries

You state that disclosure of diary entries of elected members with executive responsibilities relating to the conduct of official business would breach data protection regulations. Could you please clarify on what legal basis you make this

statement ? I note that the Council is undertaking an investigation into an alleged breach of confidentiality which will involve examination of Members' emails – how does this square with your statement ?

Outstanding Matters

I requested, *inter alia*, the following in my letter of 15 July, I have not received :

Please may I have detailed, timely, individual and precise answers to each of the questions, addressing each individual meeting (if any), at your earliest convenience.

1. Did the meetings with officers alleged by Mr Ross take place?
2. If so how many, when and with whom?
3. Were there meetings with UDC Members, as alleged by Mr Ross?
4. If so, how many, when and with whom?
5. Were there meetings with the Leader, as alleged by Mr Ross?
6. If so, how many, when and with whom?

Returning to the relevant aspects of the UDC Constitution;

Councillors should not meet applicants or agents or third parties in connection with a current or proposed application. – Did any councillors meet with applicants or third parties in respect of this application?

If councillors do agree to meet they should only do so in the presence of a planning officer. – Did all meetings, if any, take place in the presence of a planning officer?

In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay councillors should notify the relevant planning officer of the proposed meeting beforehand and the notification recorded in the application file. Were there any such cases and if so were planning officers notified and said notification recorded?

Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. Did Councillors at any/all meetings (if any) restrict themselves as so required? Was this documented?

A note should be taken of the meeting and placed on the application file. Do such notes exist for all meetings and are they on the appropriate file? Were notes taken of all meetings (if any)? Are they on the file?

The fact that a councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the committee for determination. Were such notifications, in all respects and with reference to each individual meeting (if any) made clear to the committee as required?

Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting. Were all such discussions (if any) reported and relevant correspondence made available as required?

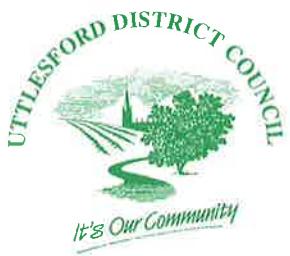
The planning application files should be complete and accurate containing sufficient information and itemising events so that the reason for the decision can be easily understood. Are the planning files complete and accurate as required?

Yours ever

Neil Gregory

Chair, Scrutiny Committee

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UTTLESFORD DISTRICT COUNCIL

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Chief Executive: Dawn French

Cllr N Gregory
Via Email

5 September 2019

RH

Please ask for Roger Harborough on 01799 510457
email: rharborough@uttlesford.gov.uk

Dear Cllr Gregory

PROBITY IN PLANNING

I refer to your letter dated 15 August.

Member participation at the pre-application stage for proposed major developments

The comments in the introductory paragraph of my letter of 15 July were of a general nature and not specifically directed to MAG's 35 million plus package of proposals. You ask why Members did not comply with the Probity in Planning Guidance in the Council's Constitution. I do not know on what basis you assert that. I am not aware of any material breach of the guidance either in relation to the MAG proposals or any other major development. If there had been a potential breach of the guidance as included in the constitution, it would have been considered in the context of the subsequent clause in the Localism Act.

Meetings with MAG/ STAL

I attach various overlapping lists of meetings produced for previous purposes. Notes relating to these meetings are also attached. **These are unredacted versions and include material that is exempt from disclosure under the Environmental Information Regulations after application of the public interest test. The versions provided to you should not therefore be released to any external party.**

Access to Information Rules 21.1 and 21.2

Rule 21.2 does need to be read in the context of Rule 21.1 but both rules apply to documents in the possession of the Executive and therefore these particular rules relate to Executive functions.

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Breaches of good practice guidance

I have interpreted your question as rhetorical.

Access to individual members' diaries

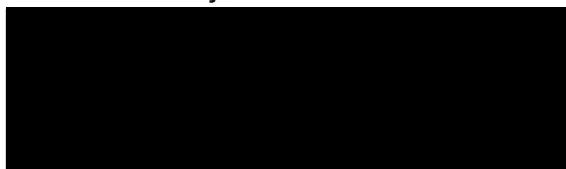
You have requested the release of certain former members' personal information. This is distinct from establishing whether there is evidence that there has been a breach of professional privilege in relation to protected legal advice.

Outstanding Matters

I responded to your questions relating to meetings between councillors and MAG/STAL in my previous letter of 30 July. To my knowledge, the only meetings were those to which I referred in that letter. As I said, I have no reason to believe that there were any other member meetings.

The minutes of Scrutiny Committee at its meeting on 15 January into handling major planning applications made it clear that it intended to include the process for the 35 million plus proposals but also that it was not appropriate that its focus should be on a single application that has not yet been determined. I am aware that PAS has been engaged to review the general issue of major application following the Committee's consideration of its proposed approach at its meeting on 25 June. The Planning Committee is dealing with the determination of the MAG application following the Council resolution of 28 June. Your continued questioning about the MAG application therefore seems to be misplaced.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Roger Harborough
Director of Public Services