

**SCRUTINY COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES,
LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on THURSDAY, 14 JULY
2022 at 7.00 pm**

Present: Councillor N Gregory (Chair)
Councillors C Criscione, G Driscoll, V Isham, R Jones,
G LeCount (Vice-Chair), S Luck, G Sell and J De Vries

Officers in attendance: P Holt (Chief Executive), C Gibson (Democratic Services Officer) and J Reynolds (Assistant Director - Governance and Legal).

Also in Attendance: Councillors S Barker, A Dean, J Evans, P Fairhurst, N Hargreaves, A Khan, P Lees, B Light, J Loughlin, S Merifield and B Ross.

SC21 CHAIR'S INTRODUCTION

The Chair opened the meeting and outlined how he proposed to move forward; he said that the intended order of business would be as follows:

- Public Speakers who could receive questions and comments.
- Councillor Barker had agreed to make a statement and take questions.
- Contributions from Councillors Evans and Merifield as current responsible Members.
- This would then be followed by a short break.
- The Report of the Task and Finish Group would be presented by Councillor LeCount.
- The Notes in dissent of the Task and Finish report would be presented by Councillor Fairhurst.
- The Stansted Review – lessons learned action plan would be presented by the Chief Executive.

In response to a question, the Chair recognised that there would be gaps historically in knowledge as two of the previously responsible Councillors (Rolfe and Lodge) had been unable to attend.

SC22 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were apologies for absence from Councillor Lavelle.

The following declarations of interest were given:

Councillors Fairhurst and Loughlin – Planning Committee Members in the current and previous administrations.

Councillor LeCount – Planning Committee Members in the current administration.

Councillor Sell – Planning Committee Member at the time of the Planning Committee decision in January 2020.

Councillor Isham – a member of Stansted Airport Watch (formerly Stop Stansted Expansion).

SC23 PUBLIC SPEAKERS

- Councillor J Loughlin expressed particular concern about paragraph 13.8 of the Evershed's report that concluded that refusal had been politically motivated. She said that the Planning Committee considered every application on its merits and that she was dissatisfied with the conclusions reached by Evershed's.
- Councillor A Khan said that he considered the Evershed's report to be incomplete and highlighted various failings, amongst which were the fact that the process had started in 2017, key people had not been interviewed, lack of minutes from many meetings, systemic failures and lack of accountability.
- Councillor A Dean referred the Committee to an eight- page dossier that he had circulated shortly before the meeting. He said that he did not consider that there was yet a report that was complete enough and accurate enough to be submitted to a Council meeting.
- Brian Ross (Chairman of Stansted Airport Watch, formerly Stop Stansted Expansion) said that the Evershed's report had presumed that the January 2020 determination had been flawed but he considered that the November 2018 determination, decided by the Chairman's casting vote, had been flawed. He made 5 recommendations, relating to future major applications, future oversight by elected members and Value for Money.
- Councillor B Light referred to paragraph 8.10 of the Chief Executive's covering report; she highlighted the lack of transparency in the process and expressed concern that oral interviews had not been held. She referred to the change of the recommendation from refusal to approval with conditions. She called for Evershed's report to be rejected.

The Chair then referred to the requirement for probity in the Planning process.

The Chief Executive addressed the questions of incompleteness; He said that only 2 of 42 meetings held had been documented and referred to the Wednesbury Test and whether there would have been any added value from interviewing many Members to try to get a consensus and accurate view. He said that he recognised that there was an incomplete picture.

Councillor Fairhurst said that there was difference between incomplete and inadequate.

Councillor Sell referred to the R B Greenwich definition of Scrutiny covering the need to consider both written and oral information.

SC24 **INPUT FROM COUNCILLOR BARKER**

Councillor Barker said that she had been the Chair of Stansted Airport Community Trust from 2005 to 2022. She outlined the circumstances surrounding the decision made in 2018; she said that the National Policy recommendation was for approval, that the Chair used their casting vote with a heavy heart and that the indications had been that any appeal would have been successful if the application had been refused. She said that the Cabinet had been kept informed of the progress of the application and that the issue of Stansted Airport expansion had become a political issue at the 2019 local elections.

Various comments were made in respect of:

- Poor practice in respect of undocumented meetings.
- The role and responsibilities of the Portfolio Holder and accountability concerns.
- The need to be objective rather than subjective.
- The Evershed's report being both incomplete and inaccurate.

SC25 **INPUT FROM COUNCILLORS EVANS AND MERIFIELD**

Councillor Evans, as the current Portfolio Holder, endorsed the report of the Task and Finish Group and the Action Plan.

Councillor Evans responded to various questions. He said that:

- He had been advised that Members had no right to be involved in the Appeal process and therefore could not have had an oversight role as this was for officers only. This advice had been given by the previous Monitoring Officer.
- He had been made aware that work was being undertaken but not the nature of it.
- He had been advised at the time that the 16 questions being asked were all subject to legal privilege.
- He had first become aware of the reversal of the previous refusal decision to approval with conditions in December 2020.

The Leader confirmed the advice that had been given by the Monitoring Officer and said that in hindsight there should perhaps have been monthly statements given.

Councillor Merifield, as current Chair of Planning Committee, responded to various questions. She said that:

- The Planning Committee always made decisions on the basis of what was in front of Members.
- Full Council in June 2019 had taken a decision to bring back the Stansted application to the Planning Committee and that legal advice had been taken.

- The Planning Committee decision to refuse the application in January 2020 had been supported by all members, bar two abstentions and that the decision had been non-political.

Various comments were made by Members:

- That there was no pre-determination at Planning Committee.
- The need for detailed information.
- Previous concerns expressed about the culture and lack of trust between Members and officers.
- Lack of accountability and governance weaknesses.
- That scrutiny should be a Member-led process.

There was a brief adjournment between 8.20 pm and 8.25 pm, during which time Councillor De Vries left the meeting.

The Chair said that any question about culture and the relationship between Members and officers was a matter for Full Council. He said that Councillors Barker and Evans had both made similar points in respect of the role of the Portfolio Holder and accountability.

SC26

REPORT OF THE TASK AND FINISH GROUP ON THE STANSTED AIRPORT REVIEW

The Chair thanked the Task and Finish Group, Councillor LeCount (Chair) and the Monitoring Officer for the works undertaken. Various Members also thanked the Task and Finish Group for their work during the course of the discussion.

Councillor LeCount introduced the report. He referred to the need to look backwards, to look at the current position and to look forwards. He said that the report had been based on reality and that due diligence had been referred to. He accepted that the report did not reflect a good position.

Various comments were made by Members:

- That oral evidence should have been taken by Eversheds.
- That the decision to refuse the Proposal had clearly not been politically motivated.
- Possible conflict between officers' recommendations and Members' decisions.
- The identification of potential Appeal costs.
- Delegated authority.
- The importance of negotiating S106 Agreements.
- The lack of minutes being taken at meetings between officers and MAG.
- Whether Members could submit written evidence.
- That an independent report had been commissioned and that it was not possible to pick and choose items. The report from Eversheds had to stand on its own and that the views expressed were from a Planning lawyer's perspective.

The Chief Executive said that a small working group would be set up to consider Constitution changes and that financial information would be held for total costs potentially awarded against the Council through the Appeals process.

Members agreed to extend the meeting beyond 9.05 pm.

Further discussions took place as to whether to take issue specifically with points 1.5 and 13.8 as made in the report by Eversheds. It was stated that the issue was that the Council had ended up with significant costs because the Appeals process had been flawed and that this area should be re-visited. The report was said to be flawed and incomplete. Concerns were expressed about planning lawyer speak and the failures to minute meetings. The Committee had read over 13,000 pages of evidence and comments were made that the report was defamatory to officers and the Chair.

The Chair responded that an independent report had been commissioned and that this was what had actually been presented.

SC27

NOTES IN DISSENT OF THE TASK AND FINISH GROUP REPORT

Councillor Fairhurst presented the Dissent report on behalf of him and Councillor Khan. He said that he considered the report to be inadequate and incomplete.

Various comments were made by Members that:

- Planning decisions taken had not been politically motivated.
- There was not a vote being taken to endorse the report, there may well be disagreements with certain elements of the report but that the recommendations should be taken forward to Council.
- The reports had already been published in the public domain.
- There should have been more records kept of meetings.
- The minutes from the Planning Committee meeting in January 2020 had taken a long time to be agreed, largely through the efforts of the Chair.
- It be recognised that the report by Eversheds was very much from a planning lawyer perspective.
- An independent report had not been required as evidenced by the work of the Task and Finish Group, together with the Chief Executive.
- The report could be taken to Council as an interim report, requiring further work and fine-tuning.
- There needed to be some clear accountability.
- Ultimately the decision for Scrutiny was to either receive or reject the report.
- There was concern about the difference between criticism and defamation.

Councillor Isham asked for clarification as to the basis on which it had been said that Councillors had to remain out of the Appeal process and Brian Ross was invited to comment. He said that he was not aware of any piece of legislation which prohibited Councillors from having oversight of the planning process.

Councillor Evans stated that the Monitoring Officer in post at the time had quoted the Local Government Act 1972 as saying that Members had no right to participate in the Appeal process.

SC28

STANSTED REVIEW - LESSONS LEARNED ACTION PLAN

The Chief Executive said that the recommendations regarding the management of planning appeals moved the Council forward. He said that Planning was a shared endeavour. He gave notice that in future should any member request second or third opinions on issues then that might not happen as taxpayers' money needed to be spent wisely. He referred to the need for transparency and Members ownership.

Following a full discussion, Councillor LeCount proposed that all of the Scrutiny reports be submitted to Full Council. This was seconded by the Chair.

A recorded vote was called for:

In favour: Councillors Criscione, Driscoll, Jones, LeCount, Luck and Gregory.

Against: Councillors Isham and Sell.

RESOLVED: That all of the Scrutiny reports be submitted to Full Council.

The meeting ended at 10.10 pm.