

EXTRAORDINARY SCRUTINY COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 22 AUGUST 2023 at 7.00 pm

Present: Councillor N Gregory (Chair)
Councillors G Bagnall, B Donald, R Gooding, R Haynes, S Luck and A Reeve

Officers in attendance: D Hermitage (Strategic Director of Planning), P Holt (Chief Executive), T Howes (Locum Legal Services Manager and Deputy Monitoring Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: Councillors J Evans (Portfolio Holder for Planning), R Freeman (Ward Councillor for Saffron Walden Castle) and P Lees (Leader of the Council)

Public Speakers: D Buscombe, M Harrison (Written Statement), J Sharp, K Waters and S Wicks (Written Statement)

SC9 PUBLIC SPEAKERS

Introductory remarks were made by the Chair.

Written statements were read out by the Vice-Chair from Martin Harrison and Sophie Wicks.

Jane Sharp, Kate Waters and Debbie Buscombe also addressed the Committee.

Copies of all statements have been appended to these minutes.

Councillor Church arrived at 19:03

SC10 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received by Councillors Criscione and Sell.

Apologies for lateness were received from Councillor Church, who was substituting for Councillor Criscione.

The Deputy Monitoring Officer addressed the meeting to outline the legal advice which had been provided to the members.

SC11 PLANNING AND ENVIRONMENTAL HEALTH ISSUE - ELECTRICITY SUB-STATION, MORTIMER'S GATE, SAFFRON WALDEN

The Leader of the Council introduced the Cabinet report regarding the Planning and Environmental Health issue at the electricity sub-station at Mortimers Gate, Saffron Walden.

She highlighted that it had taken so long to get to the current position due to delays from Covid and paid tribute to Jane Sharp, along with ward Councillors Asker and Freeman, for their work and campaigning.

She said that at the heart of the matter, the Council were dealing with residents which had a persistent noise nuisance. It was confirmed that all Cabinet members had visited the site, along with Planning Officers and members of the Scrutiny Committee.

The Chief Executive provided members with an outline of the issue, which answered the following questions:

- What happened back in 2018, what was wrong with it, and what lessons have been learned to avoid this in future?
- What this means as of today in terms of noise nuisance?
- What is the engineering solution?
- Where does liability lie (inc Ombudsman recommendation acceptance issues)
- The governance process required to reach a clear decision now

The Leader of the Council confirmed that constitutionally, the decision laid with the Council's Cabinet however, following campaigning from the ward members, the view of Full Council would be sought first, before finally determining the matter. Scrutiny Committee were also invited to examine the technical evidence and offer their feedback.

The Chair highlighted that the decision could have been decided at officer level and he commended the Chief Executive and his team for allowing members the opportunity to decide.

Councillor Freeman then addressed the Committee as the ward member for Saffron Walden Castle, where the estate was located. He said that this was not a political issue, rather a moral issue as the public had a right for elected officials to do their job properly.

He said that the challenge before the Committee was a "nightmare scenario". He explained that the estate had been developed on a Brownfield site, which were much sought after by developers as they were usually cheaper and well-placed, but there was also a responsibility from the developer to mitigate any unacceptable features or liabilities. The substation in question was designed for the former Acrow galvanizing factory, but now powered half of Saffron Walden. It should have never been in the middle of a housing estate and whilst the noise could be mitigated for residents; the substation would never be silent.

He said that he personally felt that the Council had a moral duty to fix the problem, even if it was not a legal one. There was a large density of housing along the substation, most of which was affordable and social housing. The saying "let buyers beware" didn't work in this scenario as it was on a private site and buyers could not have gone to look at the surroundings before the homes were built.

He concluded by saying that it was not an easy solution, and the responsibility lay with the developer, but this couldn't be enforced. It was therefore for the Council to do their best to fix it.

Members discussed the proposals within the Cabinet report and the following was noted:

- The sub-station had been classified as a statutory noise nuisance which required action to be taken to mitigate. Should the Council agree to fund the remedial works, then the proposal would replace the existing acoustic fencing with a solid brick structure which would entirely surround the substation. The replacement would have a potentially bigger footprint than the existing, due to the inclusion of a roof. The mitigation would be funded using the strategic reserves over a number of years.
- Whether the Council agree to fund the works or not will result in some form of reputational damage. If members voted against officer advice, it is possible that the decision could have an adverse effect on the auditors' determination of 'use of resources' and therefore their 'value for money' assessment. The impact of a negative or qualified value for money assessment from our external auditors would generally reduce public confidence in the authority. Alternatively, voting in favour of officer advice would result in reduce public confident elsewhere. It was officers' opinion that these risks potentially outweighed each other, and members needed to consider what they felt was right. Members argued that by doing the right thing would help restore public confidence.
- Whilst they only had an outline indication of cost, officers were cautious about getting a second opinion due to time and cost. Furthermore, they would have to use a builder approved by UKPN and there was only one.
- The Director of Planning had offered assurances to members that this situation would not happen again in the district; especially given the Planning department had undergone three peer reviews and an improvement programme since the permission was granted. He, along with the Portfolio Holder for Planning, were applying learning across the department and a report would be brought to the Planning Committee Working Group concerning the lessons learnt.
- The Ombudsman were only able to comment on the failings of public administration and not corporate bodies, such as the developer. It was clarified that the Council were provided with a copy of the draft report of the Ombudsman's findings, but this was to correct any errors and not challenge the decision. It was unfortunate that the Ombudsman subsequently then said the Council accepted the recommendations.

The Chief Executive clarified that during his discussions with Bloor Homes, he had consciously sought not to legally represent the residents of the Mortimers Gate estate. The Council were not in a position to advise the residents of a case against the developer as these were both third parties and commenting on such dispute ran the risk of the Council becoming a shadow litigator.

In addition, the Chief Executive confirmed that two figures had been presented to members; one was a cost estimate from the engineer, and another was an estimate which included a built-in contingency. He was confident that the higher figure would cover to funds required but if it could not be finished at this cost, then

it would be brought back to members to review.

Councillor Freeman summarised that it had been a balanced and calm debate. He said that he was still unchanged in his view that the Council had a moral duty to fix the noise nuisance and recommended that members voted for the higher figure in order to get on with the job as quickly as possible. He said the situation could be a learning exercise for Planning departments both here and across the country.

RESOLVED: that

1. Scrutiny recognises that behind this technically and legally complicated situation is a set of residents living all day and all night with a noise nuisance.
2. Scrutiny commends Mrs Jane Sharp for her assiduous campaigning on this issue.
3. Scrutiny invites Cabinet/Council to note that the current administration and senior officers are bringing forward for resolution a mess from 2018 not of their making and commends them for grasping this nettle.
4. Scrutiny commends the Cabinet and senior officers for their thoroughness in seeking to explore and exhaust every reasonable alternative route towards resolution.
5. Scrutiny commends the Ward Councillors for Saffron Walden Castle for their consistent campaigning on behalf of their residents.
6. Scrutiny advises Cabinet/Council to welcome the description of the complex governance position, which essentially places a double lock on any decision to step in and fund the necessary engineering solution and commends the Cabinet for being prepared to effectively invite all 39 members to take part in the primary debate and vote on this issue, rather than just taking them a Cabinet decision to approve on money grounds.
7. Scrutiny advises Cabinet/Council to accept that the independent external evidence provided on the ongoing scale and extent of the noise problem is thorough and objective.
8. Scrutiny urges Cabinet/Council to accept that officers have sought the advice of independent experts as to the necessary engineering solution as set out in the report, and as costed in the confidential appendix and to accept that this is what needs to be put in place to provide a credible and lasting solution to the noise nuisance experienced by residents.
9. Scrutiny urges Cabinet/Council to accept that the legal advice provided, including reflecting external KC advice, sets out clearly that the Council does not have liability for funding this engineering solution, but that simultaneously, the Council does have the discretion to authorise this funding.
10. Scrutiny further urges Cabinet/Council to accept that the legal advice provided, reflecting external KC advice, demonstrates clearly that there are no other legal recourses available to the authority to pursue, whether through litigation or regulatory action.
11. Scrutiny urges Cabinet/Council to accept that UK Power Networks have cooperated positively and consistently throughout this saga, and are neither responsible for the situation nor liable for its resolution.
12. Scrutiny urges Cabinet/Council to express its dissatisfaction in the

strongest terms with Bloor Homes' decision not to step up, take responsibility, and fund these necessary works itself.

13. Scrutiny notes that the Portfolio holder for Planning and Director of Planning will be working to ensure that suitable policies are brought forward to prevent an occurrence in the future.

The Chair proposed that the Scrutiny Committee support the option to fund the remedial works without acceptance of liability, subject to Council approving the additional expenditure.

He requested that a recorded vote be taken.

Cllr Bagnall	For
Cllr Church	For
Cllr Donald	For
Cllr Gooding	For
Cllr Gregory	For
Cllr Haynes	Abstain
Cllr Luck	For
Cllr A Reeve	For

RESOLVED: that Scrutiny Committee support the option to fund the remedial works without acceptance of liability, subject to Council approving the additional expenditure.

Meeting ended at 20.55

Minute Annex

Public Statement: Martin Harrison

I purchased 8 Fiske Close on a part buy / part rent scheme from Greenfields Housing Association, which is now Eastlight, Braintree. It was the only way I could afford a home to be able to stay in Saffron Walden.

My house was under construction, so I was shown a finished property on part of the estate as an example.

I had to put a non refundable deposit of £500 to secure the right to purchase 8 Fiske close.

At the time no one mentioned the fact that the substation would be directly behind my back garden. It was only later in my purchase that the substation was mentioned, but we were assured that Bloor Homes were to put a sound reducing fence around it, so the noise would be minimal.

In August 2019 about 6 weeks before moving in, we actually got to see the house for the first time. We were shocked to see a 12 foot fence at the bottom of our garden, as we didn't realise the actual size of it.

Anyway we moved in mid-September 2019, just a few months before Covid started. Initially the substation wasn't too loud, just an eyesore, but as time went on it just seemed to get louder, especially at night. It has totally stopped us from enjoying our garden as the constant humming is very loud. It's impossible to sit in for any length of time, as it gives you a headache!!! We can't even have our living room window open in the summer because the noise is so bad.

I can't understand why planning permission was granted to build homes so close to it, and we feel let down with the fact that Bloor didn't honour their agreement to the soundproofing.

As a part owner, I feel if I ever wanted to sell and move on, it would be very difficult as the substation has totally ruined the garden experience. Had I known what I know now, I wouldn't have purchased this house. I feel let down by all parties that allowed this to happen.

Thank you, Martin.

Public Statement: Sophie Wicks

I would like to clarify a few comments made in the report produced for this meeting, which contained inaccuracies and discussed the financial implications at the start. Combined this could have potentially led readers to be less sympathetic to the issue.

The point around a discount received for purchasing houses around the substation is incorrect and irrelevant. I personally did not get a discount that I was informed of. I am aware of 1 discount that was offered (although there could have been more) but this was not given for the noise, rather for the way the substation looks in addition to the fact people were concerned with the potential harm from the radiation. Bloor Homes still confirmed there would be no sound due to the promised acoustic fence, discount or not.

It is also worth noting that many of those who live near the substation are in social housing. They had little choice when it came to moving due to a shortage in housing and may not have got a chance to view the house before moving.

The report also mentions 'several of the houses have been sold on to second owners', this is incorrect. Several of the houses elsewhere on the estate may have been sold on, but not those near the substation, there is only 1 house that has been sold that would be considered to be near.

Another comment I would like to address is that 'there has only been one such neighbour complainant'. This is incorrect, some of us have been in contact with Andy Bonham regarding the noise, 84 of us also signed a petition that was given to the council as well as many of us showing up to the meeting on 29th June 2023.

I purchased my house based on the fact I was assured multiple times through the buying process I would not be able to hear the substation. I accepted that I was going to be living opposite a large fence which had the substation behind it and was happy on the basis there would be no sound. If I knew I was going to be able to hear the substation at all, let alone to this degree I wouldn't have purchased a house on the estate, let alone opposite. We have been badly let down and whilst I do agree that Bloor Homes is to blame for that, so is the council. The planning condition was discharged which allowed Bloor to get away it.

Living with the noise every day is depressing. There is no opening of windows whilst trying to sleep or being able to relax in your garden. Visitors and delivery drivers often comment on the noise stating they would not be able to put up with it. We are left feeling embarrassed to show people our home and left stressed wondering if we would ever be able to sell. Being at home should be calm and relaxing and shouldn't have a negative impact on people's mental health.

I understand that it is a lot of money and people may think that only a few residents are affected, but this is not the case. Many residents from all over Saffron Walden come and use the children's playground, which is located next to the substation. There is also an appeal for an additional 12 houses to be built on the land between De Vigier Avenue and Mapletoft Avenue, if approved these houses will be able to

hear the substation. There are also 55 houses being built on the land in front of the Mortimers Gate site.

The council had opportunity to amend or dispute anything in the draft decision from the Ombudsman if they did not agree with the findings. This was not done and the final letter was distributed highlighting that the council should fund the works. If the Ombudsman's decision is not listened to and not carried through with, what is the point in the process, it makes light of their position and sets the tone that UDC feel thought they don't have to comply.

I appreciate the time councillors have taken to come and see the substation, those that have not, I welcome you to visit and see how bad it is for yourself.

I would like to finish by saying, I do appreciate it is a lot of money but had the planning department enforced adequate planning measures, it would have been Bloor Homes who paid for it.

Ms. Wicks – Mapletoft Avenue

Debbie Buscombe

We had been living in a 3 bed house in Finchingfield and was paying bedroom tax at that time as our son had moved out, combine that with the fact that our then housing association was not doing essential repairs to the property, we felt we had no choice but to downsize to a 2 bed house. We finally managed to find a house in Mapletoft Avenue. The day we viewed the house, there were noises such as children playing in the park and the noise of a neighbour cutting their grass. we viewed the house and given the fact it was in better condition than our previous home and near to town we submitted paperwork for a mutual swap. we moved into the house in July 2022. The night before the move we dropped a couple of items off at the house and that is when we first heard the noise, I quickly found out that it was from the substation. Since a young child I have had tinnitus, I had surgery at 6 years old which included me having surgery in my ears at that time. My hearing loss got progressively worse as I got older. I have been wearing hearing aids for 11 years now and the hospital said the hearing aids would also help mask out my tinnitus. The irony is that I used to spend all day at work as a dental surgery assistant and the noise of the drills and ultrasonic equipment would aggravate my tinnitus, I now do voluntary work in a relatively quiet environment and its now our home environment that is now having an impact on mine and my familys life. I come home to a 24/7 hum. Our daughter aged 12 also suffers from tinnitus, She asks me 'why does that thing hum?' my husband is also affected badly by the noise. The hum can be heard over the television in the bedroom if the window is open. The noise is most noticable in bed at night, it is like having a loud fridge inside your head, I can also hear my high pitched tinnitus as well as the low hum which at times drives me mad. I resort at times to taking my hearing aids out which can help but I then cannot hear what I need to hear. I have to sleep with a window open at night as I have hot flashes due to having a hysterectomy, and it is too hot due to the weather at the moment, Bloor homes have not put air vents above the windows as is found in most new build houses so we dont have the option of using those. Bloor Homes have built the social housing near the substation for a reason, it is well known that social housing tenants often have limited choice in where they live and the type of housing they get allocated, which can lead to a sense of powerlessness and lack of control over their living situation its often a case of put up and shut up. social houses have inferior fixtures and fittings to other houses on new estates and they are situated in the less desirable areas of the estate. Why did Bloor Homes not build their larger houses as you come into the estate near the substation? is this because they would have found it a lot harder trying to sell them? They have built social flats backing directly onto the substation and also some private houses opposite the substation. Would I move through choice? yes but I would have to go through the swapping process again which is not easy. Our daughter could not get into the catchment school so gets free transport as the next nearest school is over 3 miles, if we moved to the other side of town we would no longer be eligible for this. As we are older tenants, two of our children having left home, we intended on staying here long term but the other families will potentially want to upsize as their families grow. If the noise from the substation is not dealt with then it will also have an impact on any future tenants.

Public Statement: Kate Waters

I live at the front of the Mortimers Gate development so I do not hear the noise from the substation when I'm at home.

However, I hear it regularly when I walk around the area or take my children to the playground. Of course, I find it annoying - a constant, loud hum that seems to get worse the more I try to ignore it.

But this isn't about me personally. Every time I hear it, I feel a deep sense of injustice. For the families who hear this noise every second of every day. Those who bought their homes, trusting that the Council would fulfil their responsibilities and make sure that developers like Bloor are held to the conditions of the relevant planning agreements. Or renters who, due to the current housing crisis, have to put up with this incessant noise because the cost of anywhere else is too high.

That annoying hum has a human cost. People who can't get to sleep. Children who can't concentrate on their school work. Adults who can't enjoy sitting in their garden after a hard day's work and older people who have to turn up their TV during the day just to try and drown out the noise. I know that if I lived close by, I would worry a great deal about whether I would be able to sell my home in the future.

I understand that the cost of fixing this problem is high. But I believe the Council should take responsibility for previous mistakes and reassure residents that it can, and will, hold developers to account. If this problem isn't fixed now, people here in Saffron Walden will suffer the consequences for decades to come.

This noise doesn't affect me personally, but I can't walk past it and do nothing. Those of you here tonight have much greater powers than me to resolve this situation and I sincerely hope you will use your influence to do so.

Public Statement: Jane Sharp

Good evening

First, BUYER BEWARE; to those who say, **why did you move to your house if you didn't like the noise?** I would ask – how many affordable homes are available to rent or buy in Saffron Walden? Look on Rightmove, very few to buy, even fewer to rent. I'd also point out that apart from my home and two others in close proximity to the substation, most are rented or part rented small homes. Many of the occupants are on low incomes.

We were told that an acoustic fence would reduce the noise. We took that on trust. We are not experts in acoustics. We had no knowledge at the time of a dispute between Bloor Homes and UK Power, where it transpired that the only effective engineering solution would be to fully encase the transformer.

Does a discount on the sale of just one of these homes, justify putting at risk the health and welfare of over 100 residents, including children?

Next, to those who say **it was Bloor Home's responsibility** to fund this work, I would agree with you. Now ask yourself, why didn't they do this and put in place the more expensive option they knew was necessary to reduce the noise?

Three reasons:

1. Profit – they are in the business of making money
2. Lack of care –once they've got your money they are not concerned about your health and welfare
3. UDC allowed them to take advantage of a weak planning condition, discharged by UDC without even questioning its effectiveness.

The Ombudsman agreed that UDC was at fault and so issued a final decision with a plan of action agreed by UDC.

Officers are now saying they did not agree with it. Well I would ask:

First, did they appeal against the findings on a point of law? **Secondly**, did they go back to the Ombudsman and ask him to amend the agreed plan? If the answer is no, why not?

Of course as predicted, Bloor Homes have refused to contribute to the cost of the works. Why? Because they complied with the planning condition which meant they had no legal obligation to do so.

Does UDC have a responsibility equal to that of Bloor Homes for funding the work? I believe they do.

1. A council should protect residents from harm
2. Overruling an Ombudsman recommendation and action, previously agreed, undermines this government-appointed role and removes the right of redress for residents of Mortimers Gate.

3. It damages the Council's reputation and risks costly legal action being taken against them and it generates a lack of trust and confidence in UDC.

I would ask you all, to please vote for option C which will put an end to this statutory noise nuisance and mean that residents can sleep at night with the windows open and finally enjoy peace and quiet in their home and garden.