

<b>Committee:</b>	Council	<b>Date:</b>	Thursday, 25 April 2019
<b>Title:</b>	Motion to Council: Stansted Airport Planning Application and S106 Agreement.		
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## Summary

1. This report is provided to members in relation to the motion before them: To instruct the Chief Executive and fellow officers not to issue a Planning Decision Notice for planning application UTT/18/0460/FUL until the related Section 106 Legal Agreement between UDC and Stansted Airport Limited and the Planning Conditions have been scrutinized, reviewed and approved by the Council's Planning Committee after the local elections.
2. For clarity, it is important to understand the nature of the proposal before the Council meeting. This, in essence, is that officers should not rely on delegated powers but should refer the draft section 106 agreement and conditions back to the Planning Committee for consideration. The Council's Procedure Rules state that "no business other than that set out in the summons shall be considered" at an extraordinary meeting (CPR 3.2.). Members should focus on this issue. It would not be appropriate for the Council meeting to reconsider or revisit the merits of the planning application or the merits of the Planning Committee's resolution. The Scrutiny Committee is to review separately the processes by which the Council deals with major planning applications, including the Stansted application.
3. In considering the proposal and this report, it is critical that members understand the legal framework within which planning obligations may be imposed and the risks associated with going beyond the legal framework. A planning obligation can only be imposed as a reason for granting planning permission, if the obligation is
  - a. *Necessary to make the proposed development acceptable in planning terms.*
  - b. *Directly related to the proposed development.*
  - c. *Fairly and reasonably related in scale and kind to the proposed development.*
4. This is not a commercial negotiation with a developer. The Council cannot impose or accept obligations that do not meet these tests. To do so runs the risk of legal challenge, whether by way of appeal or by judicial review. Officers have taken expert external legal advice to ensure that the obligations set out in the section 106 agreement meet the statutory tests.

5. This report also sets out some wider points of principle relating to good governance for members to consider.

### **Recommendations**

None. This report is prepared as a briefing note to inform Members' debate of the Motion before this Extraordinary Meeting of Council.

### **Financial Implications**

6. There are no direct financial implications arising from this report.
7. There should be no financial implications if the planning permission Decision Notice containing the planning conditions endorsed at Planning Committee on 14 November is issued following the completion of the S106 Agreement that has been prepared and agreed encompassing all the necessary obligations identified fully in the report before the Planning Committee
8. There could be financial implications in the event the matter is referred back to the planning committee as the applicant may appeal for non-determination of the application.

### **Background Papers**

9. 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.

Report to Planning Committee on 14 November 2018  
Deed of Planning Obligations (April 2019)

### **Impact**

- 10.

Communication/Consultation	<p>Consultation and public speaking arrangements on the planning application by Stansted Airport Ltd reflected the level of public interest in the proposals.</p> <p>As required by law, officers undertook a range of consultations on technical matters. The Environmental Impact Assessment Regulations mandate the use of suitable expertise when needed, and officers engaged external specialist expertise in noise and air quality. Officers of the local highways authority and the expert consultants were present at the</p>
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	Planning Committee to advise Members as necessary.
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	Set out fully in this report
Sustainability	Addressed comprehensively in the Environmental and Planning Statements submitted with the planning application, and in the case officer's report, to ensure compliance with the Environmental Impact Assessment Regulations
Ward-specific impacts	
Workforce/Workplace	The local planning authority, the local highways authority and the applicant entered into a Planning Performance Agreement. Such agreements are commonplace and merely secure contributions to additional resources so that councils can deal with complex applications without unduly prejudicing normal workflow.

## Situation

11. The Council has a statutory responsibility to determine planning applications in accordance with the provisions of the Town and Country Planning Act 1990. As is standard practice, it has delegated its responsibilities for determining applications to the Planning Committee and to officer level. The Council's scheme of delegation sets out matters reserved for the Planning Committee and those delegated to officer level.
  
12. The delegation to officers to settle the detailed drafting of a section 106 agreement is usual practice. The preparation of a section 106 agreement is a technical exercise relying on professional legal and planning expertise. However, the detailed terms of the agreement should flow from the "heads of terms" set by the resolution to grant planning consent. If it does not prove possible to agree terms reflecting the committee resolution, the matter should be referred back to Committee. In some cases, a change of circumstances might mean that officers should report back to Committee.
  
13. The delegation to officers serves a good purpose in ensuring that planning consents are issued in a timely manner. The consent is not treated as "issued"

when the committee resolves to grant consent, but is issued after the section 106 agreement has been completed. The delegation avoids delay in completing agreements and granting consent. This is important as delay gives rise to the risk of an appeal for non-determination. Delay will also damage the Council's performance figures, which carries a risk of reputational damage and possible central government intervention. The Council also has a service obligation to applicants and others to deal with applications in a timely and efficient manner.

14. Members should be very cautious about bringing planning matters to full Council meetings. This should only happen in very exceptional circumstances and must not be used to attempt to reopen planning decisions with which individual councillors disagree. The determination of planning applications is a complex and technical matter. For that reason, the Council delegates its planning function to the Planning Committee and to professional officers. Care is taken to ensure that members of the Planning Committee receive full training to allow them to exercise planning powers on behalf of the Council. Other members of the Council are unlikely to have received up to date training in the exercise of planning functions. In addition, for more complex cases, supplementary briefings are provided to the Planning Committee, as occurred for the application the subject of this debate.
15. A further risk is that the planning process could become politicised, bringing the Council into disrepute. Taking planning decisions on a whipped basis is likely to amount to maladministration. Planning decisions must be taken strictly on the basis of material planning considerations.
16. Members are advised to consider the wider implications of using Full Council to review the decisions of any committee or sub-committee, delegated to discharge functions on behalf of the council. As detailed, the scheme of delegation is established to enable the efficient and effective working of the council and seeks to provide a framework within which officers and members can confidently operate; it also provides residents, businesses, customers etc. clarity, transparency and some certainty on how the council makes decisions.
17. The application in this matter is a major application and it is also "EIA Development" so as to be subject to the requirements of the EIA Regulations 2017 that requires provision of an environmental impact assessment in the form of an Environmental Statement. Those Regulations also require under Regulation 4(5) that the local planning authority have available to it relevant expertise in order to assess the application. Planning officers in this district have considerable experience of Stansted Airport going back over many years. The report to the Committee on this major application set out the available expertise on further technical matters covered by the Statement.
18. The report to the Planning Committee on this major application was carefully structured on a thematic basis in order to consider each of the environmental, social and economic effects of the development and the variation to planning conditions sought. This was clearly explained at the beginning of the meeting, and Members were also requested to conduct the debate on a similarly

thematic basis for the purposes of clarity. The report considered on an effect by effect basis whether there was any adverse impact of the proposals and if so, the potential for addressing that impact by planning condition or planning obligation in the proposed terms to make the application acceptable.

20. A purpose of the Environmental Impact Assessment process is to establish whether measures may be necessary to mitigate likely significant effects resulting from the development. Such measures can be secured by planning condition or by planning obligations, as appropriate. In each section of the report there was an assessment of the possible mitigation measures. The report referred back to the submitted Environmental Statement and Planning Statement, both of which were available on the council's website for inspection. The Planning Statement included an Appendix D containing Draft S106 Heads of Terms drawing together the various measures set out in each of the topic chapters and clearly identifying the trigger points. These Heads of Terms were appended in full to the case officer's report.
21. The resolution of the Planning Committee to approve the application subject to an obligation under S106 TCPA 1990 as amended was made in the context of the application documentation in its entirety, together with the case officer's report which detailed the necessary clauses required in the planning obligation.
22. The appended Schedule identifies the relevant sections of the case officer's report dealing with each of the key mitigation measures and shows how those measures have been carried forward into the S106 Agreement.
23. The proposed planning conditions were also set out in full in the Planning Committee's report and have not been subsequently refined.
24. It was not part of the resolution of the Committee to require that any of the proposed obligations needed to be changed, strengthened or otherwise amended, nor that any additional obligations were necessary. The audio recording of the Committee proceedings confirms this.
25. Had there been any such additional requirements by the Planning Committee it would have been good practice to specify them sufficiently so as to avoid the need for a subsequent report back to the Committee, and any such additions and/or amendments would have been clearly recorded in the Minutes.
26. In accordance with both normal and best practice, since the planning obligation agreement incorporates pre-existing obligations by reference to previous agreements creating them, the opportunity was taken to review those obligations and where applicable, to adapt them to ensure they comply with legislative requirements subsequent to the date of the entering into of the original agreement. As a result all planning obligations binding upon Stansted Airport Limited are Regulation 122 CIL Regulations 2010 compliant.
27. The Agreement has been approved, signed and sealed by all the other parties: Essex County Council as the local highways authority, Citicorp Trustee Company Ltd which has a Legal Charge on the Airport Property and Stansted Airport Ltd as the proprietor of the Airport Property with freehold title.

28. The requirement under section 70(2) of the Town and Country Planning Act 1990 to have regard to material considerations subsists until the issue of the decision notice. Since a period has passed between the Committee's resolution and the conclusion of the terms of the planning obligation and the decision notice, it is necessary to consider whether there have been any new material considerations or changes in circumstances since 14 November 2018 justifying a further report to the Planning Committee before the decision notice is issued.
29. The application was considered in the context of the National Planning Policy Framework (July 2018) and the Government issued an update to its National Planning Policy Framework in February 2019, but this related to housing matters and reflected case law regarding the protection on designated environment sites.
30. The case law in question had also been taken into account in the report before the Planning Committee on the Stansted Airport proposals. Therefore the new document does not raise any material differences to the July 2018 version considered by that committee.
31. A note is also attached to this report setting out officer's comments on a number of points made by SSE in correspondence to the Leader of the Council with copies to other group leaders and the Chief Executive. These address suggestions that there may be other changes in circumstances

## Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The risk analysis is covered in the body of the report			

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.