

Committee:	Council	Date:	
Title:	Stansted Airport Planning Application UTT/18/0460/FUL (Supplementary report addressing the submitted amendment,)	28 June 2019	
Report Authors:	Roger Harborough, Director of Public Services rharborough@uttlesford.gov.uk ; Simon Pugh, Assistant Director Governance Legal and Monitoring Officer spugh@uttlesford.gov.uk Tel: 01799 510457 or 510416	Item for decision:	Yes

If members wish to discuss the legal position and the advice received, or if they wish to seek further advice from Council officers, they are recommended to resolve to exclude the press and public from the meeting while this takes place pursuant to paragraph 5 of Schedule 12A, Local Government Act, 1972: Consideration of legal advice in public would involve the disclosure of Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Introduction

1. Members have before them a report considering the motion before the Extraordinary Council Meeting:

To instruct the Chief Executive and fellow officers not to issue the Planning Decision Notice for planning application UTT/18/0460/FUL until members have had an opportunity to review and obtain independent legal corroboration that the legal advice provided to officers, including the QC opinion referred to by the Leader of the Council on 9th April 2019, confirms that the proposed Section 106 Agreement with Stansted Airport Limited fully complies with the Resolution approved by the Planning Committee on 14 November 2018 such that officers are lawfully empowered to conclude and seal the Agreement without further reference to the Planning Committee.

2. Notice of an amendment has since been given. The proposed amendment would delete this text and substitute:

“In accordance with Section 70(2) of the Town and Country Planning Act 1990 as amended by Section 143(2) of the Localism Act 2011 to instruct the Chief Executive and fellow officers not to issue a Planning Decision Notice for planning

application UTT/18/0460/FUL unless and until the Council's Planning Committee have had a sufficient opportunity to consider in detail, as timely as possible:

- (i) the adequacy of the proposed Section 106 Agreement between UDC and Stansted Airport Ltd, having regard to the Heads of Terms contained in the resolution approved by the Council's Planning Committee on 14th November 2018;*
- (ii) any new material considerations and/or changes in circumstances since 14 November 2018 to which weight may now be given in striking the planning balance or which would reasonably justify attaching a different weight to relevant factors previously considered;*

And thereafter ask the Planning Committee to determine the authorisation of the issue of a Planning Decision Notice."

Officer advice

3. The main report to this meeting addresses issues raised around the adequacy of the proposed section 106 agreement. The detailed legal advice shared with all members on a confidential basis confirms, subject to one point, that the draft S106 Agreement with Stansted Airport Ltd faithfully reflects the requirements of the resolution approved by the Planning Committee on 14 November 2018 and there is no impediment to issue consent. The issue outstanding at the time advice was obtained related to the rail users' discount. This is addressed in the main report and the officer advice is that the draft section 106 agreement is fully compliant with the instructions of the Planning Committee.
4. The main report also addresses the question of whether there have been "any new material considerations and/or changes in circumstances since 14 November 2018 to which weight may now be given in striking the planning balance or which would reasonably justify attaching a different weight to relevant factors previously considered." The report considers considerations that have been raised and explains that there have been no new material considerations and/or changes in circumstances since 14 November that would justify reconsideration of the decision taken by the Planning Committee on that date. It is worth repeating the extract quoted in the earlier report from Mr Justice Sullivan's judgment in *Kings Cross Railways Lands Group v London Borough of Camden* in 2007:

"If a local Planning Authority which has decided only 8 months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable."
5. It may help members if they were to turn their minds to how the Planning Committee could now justify a different decision to that made in November. In particular, what reasons for refusal could possibly be justified now arising from

new considerations? Such reasons would have to be expressed in terms of the requirements of Section 70(2) of the 1990 Act as amended. These are:

(a) the provisions of the development plan, so far as material to the application,

(aza) a post-examination draft neighbourhood development plan, so far as material to the application,

(aa) any considerations relating to the use of the Welsh language, so far as material to the application;

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations.

Financial implications

6. The potential financial implications of:

- failing to issue a decision notice without reasonable justification or
- refusing the application on grounds that cannot be adequately evidenced, or
- taking into account considerations that are not material to planning, or any other unreasonable behaviour

leading to an adverse award of costs are such that officers will be advising Cabinet that there is insufficient headroom either within revenue budgets or the earmarked planning reserve to cover potential costs. As well as third party costs, the Council would also, have to meet its own costs in respect of representation at an appeal.

7. There is £641k in the Planning Reserve of which only £387k is unallocated. However, this balance needs to provide for the cost of **all** appeals against planning decisions as well as any unexpected or additional Local Plan costs. If a planning decision notice is not issued promptly in the terms authorised by the Planning Committee on 14 November 2019, the Section 151 officer will need to report to Cabinet on measures to ensure that the Council provides for the potential appeal costs relating to this application. Options include freezing the Strategic Investment Fund (£2,160k) until the issue that the Council faces is resolved.