

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