

Committee: Scrutiny Committee

Date:

Title: Stansted Airport Appeal - request from Full Council

Thursday, 17 June 2021

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Summary

1. This report follows the request by Full Council for Scrutiny to consider a review of the Stansted Airport Application Appeal process.

Recommendations

2. It is recommended that:
 - Members decide whether to conduct a review and if so
 - Whether they wish to establish a Task and Finish Group
 - Establish the membership of that group
 - Request the Task and Finish Group bring back terms of reference for approval by this committee by no later than the September 2021 meeting. If necessary, an additional meeting in July or August can be arranged
 - Request that the Terms of Reference include details of the proposed external support

Financial Implications

3. The external support is expected to cost in the region of £15,000 to £30,000. This is additional unbudgeted expense.

Background Papers

4. 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.

None

Impact

5.

Communication/Consultation	None for the purposes of this report
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	The Stansted appeal is still live
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. At the meeting of Full Council on 7 January the following resolution was passed:

“As all Members will be aware, it is unconstitutional for Members to direct officers on legal matters, including upon planning appeals. However it is agreed that it is vital that Members are able to question Council officers and their representatives fully about the Stansted Airport planning appeal process.

Council therefore calls for a full debate, by way of a further member briefing, allowing for additional full and democratic questioning concerning the appeal process, to take place immediately on conclusion of this council meeting. The briefing shall relate to the current status and process that has been followed by the Council’s Defence Team since January 2020 in order that members and officers may engage collectively and fully to further the understanding of all members.

The objectives of such a briefing would be to satisfy the Council of the soundness and objectives of the process to date and henceforth intended.

Furthermore, Council calls on the Scrutiny Committee, at the appropriate time, to consider whether there is a need to initiate a Member-led review and, if so, to engage with the Planning Advisory Service (PAS) or similar body to audit and scrutinise the process which commenced under the previous Administration in 2018.”

7. On 26 May 2021 the Stansted Airport Planning Appeal decision was announced with the Council losing the appeal and having full costs awarded against it.

8. The appeal is still 'live' as there are options open to the Council including Judicially Reviewing the decision. Therefore this work, should the committee agree it should be done, cannot proceed in any meaningful way as yet. However, it is felt that this committee can at least decide on the question put to it by Full Council.
9. Members should be mindful of advice previously given by the Centre for Public Scrutiny (now the Centre for Governance and Scrutiny). This advice, which was identical to advice given to members by the Council's previous Monitoring Officer (see link below), was that while there was real merit in reviewing the council's approach to major planning applications generally, using the Stansted application as an example, it was not within the gift of the committee to review the Stansted application/decision itself.
10. The Monitoring Officer's report on this matter, which preceded the CfPS advice, can be found on the agenda of the Extraordinary Scrutiny Committee meeting on 15 January 2019 here:
<https://uttlesford.moderngov.co.uk/documents/s9735/Scoping%20covering%20report.pdf>
11. The review of major planning applications, commissioned with the Planning Advisory Service and agreed by the current Scrutiny Committee in June 2019, was a response to the request for a review. However, as the committee is aware this review has been subject to delay caused mainly by the Covid 19 pandemic. In addition, PAS has confirmed it is unable to release its detailed findings while the Stansted appeal is still live.
12. Officers continue to work with PAS to produce some more general observations/recommendations which will inform the now-separate major planning applications scrutiny review.
13. All this said, officers do recognise the importance of the Stansted Airport application and appeal to the council and to the community and understand why members continue to press for a review.
14. The final paragraph of the Full Council decision sets out the debate for this committee.

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15. There is some ambiguity that will need to be resolved. The 'process' is clearly, as referred to earlier in the decision, the appeal process. However, that did not start under the previous administration, but rather it commenced after the refusal of permission in January 2020. It may however be appropriate for any review to look at the decisions made between the initial approval and subsequent refusal of the application.

16. If the committee decides that a Task and Finish Group is the appropriate approach several things need to be put in place:

- The membership needs to be confirmed
- A Lead Officer will need to be appointed; this would likely be the Monitoring Officer
- Terms of Reference would need to be developed by the group along with a proposed timescale. Consideration must also be given as to the purpose of the review, given the unique nature of this application and how far any lessons learned may be applicable to other major planning applications
- The group would also need to interview and recommend to the committee a suitable external expert to work with the investigation

17. The timescale will need to reflect both the wish for an early report but also the significant amount of work that will need to be undertaken by the appointed external investigator and the group. It is important that the Terms of Reference reflect the full scope of the work and that all involved stay within the boundaries of them. The exact role of the Task and Finish Group, given the requirement for an external investigator, will also need to be confirmed.