

Committee: Scrutiny Committee

Date:

Title: Report of the Task and Finish Group on Stansted Airport Review

14th July 2022

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Summary

1. This report from the Task and Finish Group on the Stansted Airport Review, and includes both the report of the independent expert reviewer, as well as our commentary on it, to aid the debate first at Scrutiny, and then at full Council.
2. The independent expert review report draws together the key chronology of events; adds an analysis compared to established good practice; and reaches informed conclusions and makes a range of recommendations thereon.

Recommendations

3. That Scrutiny receives the report of the independent expert reviewer.
4. That Scrutiny has its own debate on this report, aided and informed by the views expressed variously by this Task and Finish Group, as detailed later in this report.

Financial Implications

5. There are no further immediate financial costs associated with the presentation of this review report. Full Council will receive an action plan designed to deliver the important learning derived from this independent expert review. That action plan will have some modest financial implications (for example, around the introduction of further training) but will in the longer term provide for the avoidance of substantial further costs to the authority.

Background Papers

6. 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 of the independent expert review [appendix A]

Impact

- 7.

Communication/Consultation	The Task and Finish Group has considered the report prior to its publication, so there
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	has been no wider engagement at this stage. The independent expert reviewer did engage directly with various parties involved in the review.
Community Safety	None
Equalities	Smoother future operations of the planning function will benefit all residents generally, but particularly those with greatest relative disadvantage and influence.
Health and Safety	None
Human Rights/Legal Implications	The legal implications are dealt with extensively in the body of the report.
Sustainability	Smoother future operations of the planning function will aid maintenance and enhancement of a sustainable local environment
Ward-specific impacts	All wards
Workforce/Workplace	A number of workforce and staffing implications are dealt with in the body of the report.

8. Situation

8.1 Full Council in January 2021:

RESOLVED: 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. The substantive motion was carried 28 for, 2 against and 7 abstentions.**

- 8.2 In turn, Scrutiny established a Task and Finish Group to work with Officers to commission and deliver this independent expert review report to Scrutiny, with the following terms of reference:
1. **“what actually happened” from the start of pre application discussions in 2017 to the recommendation to approve the Planning Application, to its refusal through to appeal and PIN’s decision, up to the Full Council decision not to pursue and challenge the dismissal on the papers of the s288 application under the Town and Country Planning Act 1990;**
 2. **whether all steps and actions accord with the Councils Constitution;**
 3. **whether all steps and actions accord with best practice (planning and governance); and**
 4. **the lessons to be learnt and what recommendations should be made in relation to future applications and decisions.**
- 8.3 The members of that Task and Finish Group were Cllrs Coote, Criscione, Fairhurst, Khan, and chaired by Cllr LeCount. During the course of the work, Cllr Jones was appointed, and Cllr Coote left the group on joining the Cabinet, replaced by Cllr Driscoll. The lead officer supporting the Task and Finish Group was Jane Reynolds, and it was also assisted ably by colleagues from democratic services and latterly by the chief executive.
- 8.4 It’s important to reflect that the Terms of Reference were explicitly set after a discussion to focus initially on looking to the past to understand what happened but predominantly so as to look to the future to identify lessons that can positively be applied for the future. The Task and Finish Group approached this task collegiately, across party lines, and adopted this focus unanimously.
- 8.5 The next task for the Group was to work with Ms Reynolds to recruit an independent expert to undertake this review, consider all the evidence, and write their report.
- 8.6 The Group established clearly – and again unanimously – the skillset needed for this independent expert, namely an expertise and considerable experience in: planning law; good governance and decision-making; and in technical planning matters in particular.
- 8.7 We were delighted that Ms Reynolds was able to recruit Stuart Andrews from Evershed Sutherlands who is both an experienced planning lawyer as well as being dual-qualified also as a town planner and Member of the Royal Town Planning Institute.
- 8.8 The members of the Task and Finish Group assisted in scoping out the evidence bundle that our independent, expert reviewer worked his way through. Later, once the reviewer had completed his first draft, the Group considered the full list of evidence he had considered, including extra evidence he had identified during the course of his work, so as to sense check that this was sufficiently full.
- 8.9 In terms of the breadth of evidence considered, it is important to note that this was predominantly written, as the Task and Finish Group concluded,

aided by the advice from the independent expert reviewer that this was sufficient, and that the prospect of taking oral evidence from potentially a wide range and large number of Councillors, Officers and external parties involved would be prohibitively large to the point of being entirely impractical.

- 8.10 It would be appropriate to acknowledge that on this particular point – there has not been a consensus amongst the Group, with some members preferring that a much larger and extensive piece of work had been undertaken to take oral evidence to supplement the many thousands of pages of written documentation considered by the independent expert reviewer. The Chief Executive has advised that efforts to restart the independent review process at this stage with an extra oral evidence gathering phase would be high effort and high cost and cause considerable delay, but also be most unlikely to lead to any clear additional evidence – as interviewing dozens of members, former staff members and QCs/barristers no longer in Uttlesford’s employ, about several meetings over many hours of free-flowing discussion several years ago, unsupported by any useful official notes would lead to further confusion not further clarity.
- 8.11 Nonetheless, the review continued on the basis of the wide range of evidence available, and the independent expert reviewer considered that this was sufficient for him to be able to reach strongly evidenced conclusions.
- 8.12 Once the report was completed, the Task and Finish Group received it in confidence, and met twice to discuss it before it was presented to Scrutiny.
- 8.13 The Group, in those two meetings, made a range of comments and observations as recorded below, which are offered to Scrutiny to help shape the debate.
- 8.14 As indicated below, all of these points enjoy the consensus support of the cross-party Task and Finish Group. Notwithstanding that consensus on those points, a dissenting minority report from two of the six members of the Task and Finish Group is attached as an appendix, so that their concerns can be shared openly with other Councillors and members of the public.
- 8.15 We hope that these comments from the Cllrs who accepted and have closely together on this task will assist Members on Scrutiny, and then all Members at full Council in their debate.

	Consensus/ minority opinion [to be indicated for each item]
Good governance – good record keeping as the basis for good decision making ■ The Task and Finish Group strongly endorses the analysis that	Consensus

<p>informal briefing/Q&A sessions between Members and officers and/or external experts [in the case of this issue, various QCs] whilst useful in and of themselves, are potentially problematic should the specific outcomes of those meetings not be properly recorded – noting in this case that there was no proper audit trail. The Task and Finish Group therefore strongly advises that the Council adopts a formal new process to capture the relevant outcomes of such discussions, so that they can be available to and properly inform those taking key decisions, as well as there being a proper record.</p>	
<ul style="list-style-type: none"> ▪ Governance – clarity around officer and member roles ▪ The Task and Finish Group shares the analysis that it is problematic in terms of perception, understanding and lasting accountability when decisions of Planning Committee [in this case, to reject an application] once delegated to Officers to complete the Decision Notice and/or to defend at Appeal, seek to achieve the agreed Member intention by way of translating the decision into one to accept subject to strict and onerous conditions. The Task and Finish Group, without any criticism of Officers for using their professional endeavours in seeking to achieve the original intended outcome decided by Members in such cases once delegated to them, strongly endorses the need to introduce a proportionate system where any such changes of this fashion undertaken by Officers are appropriately reported back to the original Committee. 	Consensus
<p>Governance – rare cases in which it is appropriate to review existing formal decisions in light of emerging circumstances</p> <ul style="list-style-type: none"> ▪ The Task and Finish Group shares the analysis that there are on rare occasions in which a decision properly taken by Members is, on further analysis, going to develop risks of such serious negative implications to the authority that it would be wise to review that decision. The Task and Finish Group therefore strongly endorses the need to introduce a proportionate system that balances these emerging and evolving risks with the underlying democratic principle that decisions properly and lawfully taken by Members must ultimately hold sway. 	Consensus
<p>Governance – the tension between overall financial implications and the quasi judicial taking of individual planning decisions</p> <ul style="list-style-type: none"> ▪ The Task and Finish Group shares the analysis that it is right and proper that decisions taken by the Planning Committee when considering individual applications are quasi judicial, and must be taken on their own merits properly in accord with established good practice, considering all relevant factors and disregarding all irrelevant factors. In this context, the Task and 	Consensus

<p>Finish Group further shares the analysis that the ‘financial implications’ section of reports on specific planning applications must not overly sway the individual decision merely because of the potential direct cost of an appeal, and further potential costs that may be awarded on top thereof. The Task and Finish Group does though share the analysis that the overall risk to the authority from unreasonableness at a general level of costs from appeals where loss is assessed as substantially likely and costs assessed as large should be appropriately factored into Planning Committee Members’ general understanding as part of their overall mandatory training.</p>	
<p>Governance – the shared endeavour between members and officers, and supporting training in respective roles and their proper interaction</p> <ul style="list-style-type: none"> ▪ The Task and Finish Group endorses the analysis that Planning is a shared endeavour between Members and Officers, and that this needs to be a trusting and mutually-supportive partnership to achieve the best outcomes for local residents. The Task and Finish Group therefore endorses the need for measures in the action plan to further strengthen this relationship, and that this includes involving (at a proportionate, and lesser degree) Members who do <u>not</u> sit on the Planning Committee, but who do still have a role in planning, both in representing their residents, and at any times when a planning matter is referred up to full Council for decision to refer back to Planning Committee. 	Consensus
<p>Governance – management of future planning appeals</p> <ul style="list-style-type: none"> ▪ The Task and Finish Group shares the analysis that the management of the Planning Appeal in this case was lengthy, complex and ultimately at a seven figure cost to the authority (even before the airport’s costs awarded against the Council have yet been settled), and that with the benefit of hindsight there were substantial issues with how this was approached. The Task and Finish Group strongly endorses that the management of future Planning Appeals should be reviewed accordingly, with new systems introduced to quality assure as appropriate. 	Consensus

Risk Analysis

9.

Risk	Likelihood	Impact	Mitigating actions
Risk that the lessons that can usefully be	2	4	This independent expert review, its cross party oversight

<p>learned are not embedded in future behaviours in and beyond planning</p>			<p>and high degree of consensus achieved therein on learning points, and the officer action plan all mitigate this otherwise substantial risk.</p>
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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.