

Stansted Application Task and Finish group report.

Notes in dissent of the Task & Finish report on the MAG process.

1 Introduction:

- 1.1 In order to fully understand the subject of this report and thereby determine to what extent its fulfilment is brief, it is instructive to trace its origins back to its inception at Scrutiny in December 2018. One might then qualify to what extent the final report measures up to those initial expectations.
- 1.2 The main purpose of scrutiny must be to analyse the procedures followed and where possible identify failings that might be avoided in the future.
- 1.3 Another important purpose of scrutiny is to explain to residents what happened and how we arrived where we did. It is an historical record of process and outcome.
- 1.4 Residents will have to foot the final bill and are therefore entitled to transparent and robust assessment.
- 1.5 A further purpose might be to expose individual fault, if any is found, so as to address the Nolan Principles of good governance. However, it could be argued that to focus exclusively on blame would raise personal and political resistance impeding the productive and restorative value of the exercise. This does not mean that all fault finding should be avoided.
- 1.6 The request to the Scrutiny Committee for a full investigation of this matter was initially made after the Planning Committee's (Plancomm) first decision in 2018 to approve MAG's application which was seen to be highly controversial and raised several questions of form and best practice.
- 1.7 The request was made to the previous administration's Scrutiny Committee in late 2018, then chaired by Cllr Dean. However, at that time it was decided that owing to the ongoing nature of the application, this investigation should be postponed avoiding conflict and commercial prejudice.
- 1.8 It is laudable that this commitment to transparent and robust self-assessment was sustained over the protracted life of this matter.
- 1.9 Once MAG's Appeal had been upheld and the subsequent application to the High Court had been dismissed, the process was restarted and a T & F working group was formed.
- 1.10 The result was the current report produced by an objective, external qualified Solicitor.

- 1.11 However, from the outset there were questions about the scope and remit of the brief to the examiner.
- 1.12 It was decided that the scope should be limited to formal written evidence and would exclude at least two major sources of evidence for reasons of clarity, cost, and expediency.
- 1.13 The first major exclusion of evidence was that of valuable oral evidence by councillors, and specifically by members of either of the planning committees.
- 1.14 The second major exclusion of evidence was that of evidence of the content of the several “member workshops” that preceded the January 2020 Plancomm, and of the member “briefings” following the lodging of MAG’s Appeal and prior to the Appeal process.

It is submitted that these meetings which were deemed valuable to the framing of members’ views prior to determination and in preparation of the appeal were therefore valuable in understanding their frame of mind at those meetings. To exclude them would necessarily result in a diminished understanding of both outcomes.

- 1.15 At the T&F group these issues were raised and debated without effect. Again, the decision to narrow the scope was led by the officers and External advisor.
- 1.16 It is therefore small wonder that the report is perceived as somewhat limited and possibly even falls short of a full, robust assessment of a matter that warrants the fullest attention and transparency.

2 The report:

- 2.1 There are several questions that demand consideration by the Scrutiny Committee, and we would suggest the following as a start.
- 2.2 From the outset, in Art 2, it states that the assessor “ES” is asked to “identify any procedural error in the process and procedure followed in determination of the planning application, the conduct of the appeal proceedings and the subsequent High Court challenge as relates to the Proposal (as defined below)”.
- 2.3 This statement gives the clear impression that this was a full and comprehensive brief of the entire matter. As we have suggested, the scope and remit were purposely restricted, and this is not a full picture of all the salient issues.
- 2.4 It should be noted that this report represents an historic document that may be referred to in future as a complete history of the matter.
- 2.5 The life of STAL’s application, the subject of this investigation, has been prolonged and controversial and has profoundly affected the district, the council, and its many residents. The costs have been substantial, and one might argue that for that reason alone, it warrants a full and unlimited assessment. If it was confidently felt that all salient issues had been adequately addressed even given its limited scope, and that it represented a largely honest

and accurate understanding of the major issues, then the compromise might be justified.

- 2.6 However, this report assumes certain “facts” such as (in 3.2 and 5.6) that the 2018 Plancomm decision was complete and without question, (glossing over the casting vote loss of a motion to refuse and another casting vote in favour of approving) and ignores the several questions that remained unanswered in that forum. The report then effectively assumes that this unquestionable baseline is the point from which failures may be measured.
- 2.7 The report also assumes that all three legal opinions were independent opinions on the facts, rather than a single opinion endorsed by two subsequent QCs. This point is not clarified, nor is any reference made to the three briefs given to the QCs that would clarify this.
- 2.8 The report also assumes that STAL’s Appeal would ultimately have been upheld if the council had defended it. This is at best a qualified leap of faith. Until a matter has been fully tested in tribunal, the outcome must always be uncertain. In fact, SSE did try to argue for Plancom decision but was confronted by two larger parties arguing for approval.
- 2.9 There is no doubt that the council’s defence was to reinterpret the decision notice from refusal to approval with conditions and instead of defending the Plancom’s decision, was to contrive a compromise position in terms of Condition 15. This fact is well argued in the report. But to assume that the case was already lost is a flaw in reasoning that has implications for the members of Plancomm and indeed for its defence team.
- 2.10 The report concludes, based on this “evidence”, that the members arrived at the unanimous decision to refuse on political grounds rather than on the evidence. (S13).
- 2.11 It is impossible to determine what is actually in the subjective minds of all members of the committee without even interviewing them! This conclusion is therefore based on the writer’s own personal judgement of the facts as he was given them, rather than on any real evidence.
- 2.12 The evidence available to the writer was limited to written text (and apparently handwritten notes) and ignores the possibility that oral evidence might show something entirely different.

3 Briefings and workshops:

- 3.1 Consideration of briefings should have been included in this report. For example, whereas members were advised by a senior officer that the only intervening material consideration was climate change and that the S106 allocation might reasonably be substantially increased, this advice was given during briefings and served to guide members in their assessments. These comments were not considered by the writer and therefore form no part of his assessment of the merits of the case.

4 Members questions:

- 4.1 Other perhaps less crucial issues are erroneously alluded to such as the answers to 16 questions posed by a large cohort of members prior to the Appeal. This issue is glossed over and implies that answers were in fact given when they were not. S7.11 and This was the subject of an ECM and should therefore have formed part of the review. Had these questions been robustly debated and possibly been influential in the defence, the outcome of the Appeal might have differed. What it might also have shown is the commitment and enthusiasm members had for understanding the process and doing the right thing for the council. Regardless of its impact, this is one example where this report fails the members and muddies the water around this affair.

5 Written evidence:

- 5.1 The recommendations flow logically and constructively from the evidence considered but it would seem remiss to gloss over the failure to take adequate and judicious minutes in an application of this scale and not ensure the functioning of the audio-visual recording.
- 5.2 After all there was never any doubt that regardless of their reasoning, the applicant was always going to appeal a refusal. This fact is supported in the fact that the costs of a possible appeal was budgeted for a year earlier. But this this failure to adequately record important details goes to every element of the case.
- 5.3 Prior to the first Plancom meeting several meetings were allegedly held between officers, the applicant, and possibly other members.
- 5.4 The lack of records of these meetings was pointed out as far back as 2018. Yet this report makes no recommendations about those clear lapses of best practice.
- 5.5 The very vulnerability of this report lies in the lack of written evidence of all these dealings. Whilst we recognise the importance of cost cutting, this should not be done at the expense of facts and the conclusions drawn from such facts.

6 Endorsement by members of the T&F Group:

- 6.1 Whilst we would agree that the apportionment of blame is less important than transparent enquiry and setting solutions for the future, this report pretends to be a fair and even-handed assessment and will be taken as an objective assessment by members of the T&F group under the chairmanship of Cllr Le Count.
- 6.2 We would argue that it is a bold and perhaps valiant attempt at some understanding but that it does not go far enough to assess all the failures of the system truly and faithfully. Nor does it show a hard-working Plancomm or its members in a fair and objective light.

6.3 If we choose not to apportion blame, then why does this report feel so much like it does? And if we choose to understand the members' motives and frame of mind, wouldn't it be fairer to interview them and consider all the inputs that informed their decision?

7 Summary:

7.1 In summary, a common thread of failure that runs through this entire matter is the failure to make adequate record of meetings and discussions of the issues. This dates back to before the submission of the application and the meetings between officers, the applicant and even members. These meetings were cause for real controversy then and remain opaque.

7.2 The controversies of the decision to hear this application at the LPA rather than by the SoS and the first sitting of the Plancom were lost to history for lack of written record and the external examiner appears to begin his investigation from the start of the new administration. Yet even there there's is no comprehensive understanding of the various workshop that were deemed essential to informing members. Again, no record was kept of those meetings. The examiner has no record and proceeds to conclusion without reference to the advice given to members 2 months prior to the second plancom meeting.

7.3 His conclusion is therefore unaffected by essential guidelines given to members and is arrived at in a vacuum.

7.4 His conclusions about the preparation for the appeal are similarly based not on comprehensive minutes from the meeting (and no mention is made of this major oversight) and his grasp of members concern for the appeal is equally blind to the several serious briefings that members attended with the snr defence team. Again, no records were made. This does not mean they were not evidenced but simply that he had no access to that evidence.

7.5 The subsequent ECM and 16 questions are not adequately discussed, and the implication of full answers not debated.

7.6 This sustained lack of written record is a serious breach of good governance and renders the report inadequate, inaccurate, and unfair.

Cllr Paul Fairhurst
Cllr Ayub Khan

4th July 2022