

EXTRAORDINARY SCRUTINY COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 22 AUGUST 2023 at 7.00 pm

Present: Councillor N Gregory (Chair)
Councillors G Bagnall, B Donald, R Gooding, R Haynes, S Luck and A Reeve

Officers in attendance: D Hermitage (Strategic Director of Planning), P Holt (Chief Executive), T Howes (Locum Legal Services Manager and Deputy Monitoring Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: Councillors J Evans (Portfolio Holder for Planning), R Freeman (Ward Councillor for Saffron Walden Castle) and P Lees (Leader of the Council)

Public Speakers: D Buscombe, M Harrison (Written Statement), J Sharp, K Waters and S Wicks (Written Statement)

SC9 PUBLIC SPEAKERS

Introductory remarks were made by the Chair.

Written statements were read out by the Vice-Chair from Martin Harrison and Sophie Wicks.

Jane Sharp, Kate Waters and Debbie Buscombe also addressed the Committee.

Copies of all statements have been appended to these minutes.

Councillor Church arrived at 19:03

SC10 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received by Councillors Criscione and Sell.

Apologies for lateness were received from Councillor Church, who was substituting for Councillor Criscione.

The Deputy Monitoring Officer addressed the meeting to outline the legal advice which had been provided to the members.

SC11 PLANNING AND ENVIRONMENTAL HEALTH ISSUE - ELECTRICITY SUB-STATION, MORTIMER'S GATE, SAFFRON WALDEN

The Leader of the Council introduced the Cabinet report regarding the Planning and Environmental Health issue at the electricity sub-station at Mortimers Gate, Saffron Walden.

She highlighted that it had taken so long to get to the current position due to delays from Covid and paid tribute to Jane Sharp, along with ward Councillors Asker and Freeman, for their work and campaigning.

She said that at the heart of the matter, the Council were dealing with residents which had a persistent noise nuisance. It was confirmed that all Cabinet members had visited the site, along with Planning Officers and members of the Scrutiny Committee.

The Chief Executive provided members with an outline of the issue, which answered the following questions:

- What happened back in 2018, what was wrong with it, and what lessons have been learned to avoid this in future?
- What this means as of today in terms of noise nuisance?
- What is the engineering solution?
- Where does liability lie (inc Ombudsman recommendation acceptance issues)
- The governance process required to reach a clear decision now

The Leader of the Council confirmed that constitutionally, the decision laid with the Council's Cabinet however, following campaigning from the ward members, the view of Full Council would be sought first, before finally determining the matter. Scrutiny Committee were also invited to examine the technical evidence and offer their feedback.

The Chair highlighted that the decision could have been decided at officer level and he commended the Chief Executive and his team for allowing members the opportunity to decide.

Councillor Freeman then addressed the Committee as the ward member for Saffron Walden Castle, where the estate was located. He said that this was not a political issue, rather a moral issue as the public had a right for elected officials to do their job properly.

He said that the challenge before the Committee was a "nightmare scenario". He explained that the estate had been developed on a Brownfield site, which were much sought after by developers as they were usually cheaper and well-placed, but there was also a responsibility from the developer to mitigate any unacceptable features or liabilities. The substation in question was designed for the former Acrow galvanizing factory, but now powered half of Saffron Walden. It should have never been in the middle of a housing estate and whilst the noise could be mitigated for residents; the substation would never be silent.

He said that he personally felt that the Council had a moral duty to fix the problem, even if it was not a legal one. There was a large density of housing along the substation, most of which was affordable and social housing. The saying "let buyers beware" didn't work in this scenario as it was on a private site and buyers could not have gone to look at the surroundings before the homes were built.

He concluded by saying that it was not an easy solution, and the responsibility lay with the developer, but this couldn't be enforced. It was therefore for the Council to do their best to fix it.

Members discussed the proposals within the Cabinet report and the following was noted:

- The sub-station had been classified as a statutory noise nuisance which required action to be taken to mitigate. Should the Council agree to fund the remedial works, then the proposal would replace the existing acoustic fencing with a solid brick structure which would entirely surround the substation. The replacement would have a potentially bigger footprint than the existing, due to the inclusion of a roof. The mitigation would be funded using the strategic reserves over a number of years.
- Whether the Council agree to fund the works or not will result in some form of reputational damage. If members voted against officer advice, it is possible that the decision could have an adverse effect on the auditors' determination of 'use of resources' and therefore their 'value for money' assessment. The impact of a negative or qualified value for money assessment from our external auditors would generally reduce public confidence in the authority. Alternatively, voting in favour of officer advice would result in reduce public confidence elsewhere. It was officers' opinion that these risks potentially outweighed each other, and members needed to consider what they felt was right. Members argued that by doing the right thing would help restore public confidence.
- Whilst they only had an outline indication of cost, officers were cautious about getting a second opinion due to time and cost. Furthermore, they would have to use a builder approved by UKPN and there was only one.
- The Director of Planning had offered assurances to members that this situation would not happen again in the district; especially given the Planning department had undergone three peer reviews and an improvement programme since the permission was granted. He, along with the Portfolio Holder for Planning, were applying learning across the department and a report would be brought to the Planning Committee Working Group concerning the lessons learnt.
- The Ombudsman were only able to comment on the failings of public administration and not corporate bodies, such as the developer. It was clarified that the Council were provided with a copy of the draft report of the Ombudsman's findings, but this was to correct any errors and not challenge the decision. It was unfortunate that the Ombudsman subsequently then said the Council accepted the recommendations.

The Chief Executive clarified that during his discussions with Bloor Homes, he had consciously sought not to legally represent the residents of the Mortimers Gate estate. The Council were not in a position to advise the residents of a case against the developer as these were both third parties and commenting on such dispute ran the risk of the Council becoming a shadow litigator.

In addition, the Chief Executive confirmed that two figures had been presented to members; one was a cost estimate from the engineer, and another was an estimate which included a built-in contingency. He was confident that the higher figure would cover to funds required but if it could not be finished at this cost, then

it would be brought back to members to review.

Councillor Freeman summarised that it had been a balanced and calm debate. He said that he was still unchanged in his view that the Council had a moral duty to fix the noise nuisance and recommended that members voted for the higher figure in order to get on with the job as quickly as possible. He said the situation could be a learning exercise for Planning departments both here and across the country.

RESOLVED: that

1. Scrutiny recognises that behind this technically and legally complicated situation is a set of residents living all day and all night with a noise nuisance.
2. Scrutiny commends Mrs Jane Sharp for her assiduous campaigning on this issue.
3. Scrutiny invites Cabinet/Council to note that the current administration and senior officers are bringing forward for resolution a mess from 2018 not of their making and commends them for grasping this nettle.
4. Scrutiny commends the Cabinet and senior officers for their thoroughness in seeking to explore and exhaust every reasonable alternative route towards resolution.
5. Scrutiny commends the Ward Councillors for Saffron Walden Castle for their consistent campaigning on behalf of their residents.
6. Scrutiny advises Cabinet/Council to welcome the description of the complex governance position, which essentially places a double lock on any decision to step in and fund the necessary engineering solution and commends the Cabinet for being prepared to effectively invite all 39 members to take part in the primary debate and vote on this issue, rather than just taking them a Cabinet decision to approve on money grounds.
7. Scrutiny advises Cabinet/Council to accept that the independent external evidence provided on the ongoing scale and extent of the noise problem is thorough and objective.
8. Scrutiny urges Cabinet/Council to accept that officers have sought the advice of independent experts as to the necessary engineering solution as set out in the report, and as costed in the confidential appendix and to accept that this is what needs to be put in place to provide a credible and lasting solution to the noise nuisance experienced by residents.
9. Scrutiny urges Cabinet/Council to accept that the legal advice provided, including reflecting external KC advice, sets out clearly that the Council does not have liability for funding this engineering solution, but that simultaneously, the Council does have the discretion to authorise this funding.
10. Scrutiny further urges Cabinet/Council to accept that the legal advice provided, reflecting external KC advice, demonstrates clearly that there are no other legal recourses available to the authority to pursue, whether through litigation or regulatory action.
11. Scrutiny urges Cabinet/Council to accept that UK Power Networks have cooperated positively and consistently throughout this saga, and are neither responsible for the situation nor liable for its resolution.
12. Scrutiny urges Cabinet/Council to express its dissatisfaction in the

strongest terms with Bloor Homes' decision not to step up, take responsibility, and fund these necessary works itself.

13. Scrutiny notes that the Portfolio holder for Planning and Director of Planning will be working to ensure that suitable policies are brought forward to prevent an occurrence in the future.

The Chair proposed that the Scrutiny Committee support the option to fund the remedial works without acceptance of liability, subject to Council approving the additional expenditure.

He requested that a recorded vote be taken.

Cllr Bagnall	For
Cllr Church	For
Cllr Donald	For
Cllr Gooding	For
Cllr Gregory	For
Cllr Haynes	Abstain
Cllr Luck	For
Cllr A Reeve	For

RESOLVED: that Scrutiny Committee support the option to fund the remedial works without acceptance of liability, subject to Council approving the additional expenditure.

Meeting ended at 20.55