

<b>Committee:</b>	Scrutiny	<b>Date:</b>	15 January 2018
<b>Title:</b>	Handling Major Planning Applications		
<b>Report Author:</b>	Simon Pugh, Assistant Director, Governance and Legal <a href="mailto:spugh@uttlesford.gov.uk">spugh@uttlesford.gov.uk</a> 01799 510416	<b>Item for decision:</b>	Yes

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## Summary

1. Councillors Lemon and Light have asked for consideration of a Scrutiny review of issues arising from the recent Stansted Airport application. Officers believe that there is merit in looking at the processes adopted by the Council leading up to consideration of the application and at how the Council has approached other planning applications, with a view to identifying and developing best practice.
2. However, officers advise strongly that it is not appropriate for the Scrutiny Committee to scrutinise individual decisions made by or on behalf of the Council's regulatory committees, including decisions on individual applications made by the Planning Committee.
3. A scoping document is attached to this report for consideration.
4. Members are asked to note that, for reasons set out in the report, it will not be possible to make progress on a review before the next municipal year.

## Recommendation

5. That, if members wish to commission a Scrutiny review into the handling of major planning applications, they approve the scoping document attached to this report.

## Financial Implications

6. If the scoping document is adopted, there will be a cost, as yet undetermined, in commissioning an external expert body to undertake a review.

## Background Papers

7. There are no background papers to the preparation of this report.

## Impact

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Communication/Consultation	Officers have discussed the scoping document with Cllrs Lemon and Light, and with the Committee Chairman. One of the focuses of the scoping proposals is the effectiveness of
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	communication and consultation in respect of major planning applications.
Community Safety	None.
Equalities	None direct, although good equalities practice should inform all Scrutiny reviews.
Health and Safety	None.
Human Rights/Legal Implications	None direct.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

9. The Council's Planning Committee recently resolved to approve a major planning application made by the Manchester Airports Group in respect of Stansted Airport. It was a complex process, involving consultation, briefing and other forms of engagement with stakeholders. The overall objective in terms of engagement in this context is to ensure that stakeholders have the opportunity to gain a clear understanding of the nature and potential impact of large scale development proposals and also have the opportunity to express their views, so that these may be taken into account by the Planning Committee as the decision-making body.
10. Extensive work went into engagement with the public and with elected members. It will always be the case that some aspects of engagement will have been more effective than others. There are also potentially different approaches to engagement. There is therefore merit in reviewing what went well and what could be improved. Ideally this would involve feedback from stakeholders. There is also the potential to learn good practice from the approach taken by other local authorities to major planning applications.
11. There are other aspects of handling major planning applications set out in the proposed scoping document. These include the use of planning performance agreements and the terms of engagement with applicants for planning consent – in particular pre- and post-submission discussions.
12. Whilst there is merit in looking at the effectiveness of the Council's approach to engagement in relation to the Stansted application, and other major applications, officers strongly advise that the scope of any review should clearly exclude a review of the merits of the decision made by the Planning Committee, including any review of the merits of planning and other professional advice placed before the Committee. The Planning Committee is an expert, trained committee charged by the Council with making regulatory decisions on its behalf. Its work is supported by expert professional advice, both internally and externally. In the

Stansted application, for example, the report to the Planning Committee was reviewed in detail by a barrister expert in airport-related planning applications.

13. The relationship between the Planning Committee and the Scrutiny Committee is different to the relationship between the Executive and the Scrutiny Committee. The officer advice is that it is not good practice for a scrutiny committee to scrutinise individual decisions made by, or on behalf of regulatory committees, such as decisions relating to development control, licensing, registration, consents and other permissions. Regulatory decisions have their own separate legal framework and rights of appeal and challenge. It is common for councils which have more detailed terms of reference for their scrutiny committees explicitly to exclude review of regulatory decisions. The legislation providing for the “councillor call for action” by non-scrutiny members explicitly excludes any matter relating to a planning or licensing decision other than in respect of systemic failure. [The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012.]
14. The Stansted application is still “live” and it would not be appropriate to review it at the present time. The consent has not yet been issued and is on hold at the request of the Secretary of State. There is litigation under way regarding determination of the application, albeit that UDC is not a direct party to this. It would not be prudent to pursue a scrutiny review in parallel to live litigation. Finally, there is still the possibility of legal challenge to the Planning Committee’s decision, which will remain a risk until the expiry of six weeks from the issue of a planning consent.
15. There are other issues around the timing of a scrutiny review. There are resourcing issues even if external help is procured. Democratic Services Officers will be heavily committed from now in preparing for the local elections in May and for the induction and training of new members following the elections. They will not have time to support a major scrutiny review until things settle down following the May elections. Similarly a review, even with independent consultancy support, will place considerable pressure on planning officers at a time when much work is going into the Local Plan submission and hearing preparation. Finally, it will not, in any case, be practical to conclude a review before the new municipal year. The last Scrutiny Committee meeting of this year is 21 March. There is clearly insufficient time to commission, undertake and evaluate a review sensibly in time for this meeting.
16. If the Committee wishes to commission a review, officers recommend that it is undertaken by an independent expert body, such as the Planning Advice Service. This is partly to ensure an appropriate level of professional input and partly because this would be a substantial piece of work, beyond the internal professional resource available.

## **Risk Analysis**

17.

Risk	Likelihood	Impact	Mitigating actions
That a review is undertaken in a hurried manner and does not reach sound conclusions.	3	3	Allow adequate time for a proper review to be undertaken by providing for commencement in the 2019/20 municipal year.

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.

## Scoping Report for Scrutiny Committee Review

<b>Review Topic</b>	Handling Major Planning Applications			
<b>Scoping Report to go to meeting on</b>	15 January 2019			
<b>Review to take place at meeting on</b>	TBC			
<b>Review format required at meeting</b> <i>(tick as appropriate)</i>	Written report (to be supplied at least five working days before the meeting)	√	Presentation	
<b>Portfolio Holder</b>	Cllr Susan Barker			
<b>Lead Officer</b>	TBC			
<b>Stakeholders</b>	Councillors, Parish Councils, Members of the Public, Officers.			

<b>Suggested Terms of Reference</b>	<p>To review the following aspects of the Council's handling of large scale applications, including the recent Stansted Airport planning application, with a view to identifying good practice and improvements that would aid the Council in considering future large planning applications:</p> <ol style="list-style-type: none"> <li>1. Pre-application engagement with the applicant, including the purpose of pre-application meetings, whether meetings should be held on a confidential basis, whether meetings should be minuted and whether minutes should be published.</li> <li>2. The role of the planning performance agreement, the benefits and risks of PPAs and whether there was adequate transparency.</li> <li>3. Engagement with members of the Council. What briefings were provided, to which councillors and when? Were the briefings adequate to allow councillors to represent their communities?</li> <li>4. Engagement with Parish Councils and members of the public. What information was provided and when? Was it adequate to allow Parish Councils and members of the public to understand the application and respond to it? Were consultation arrangements adequate? Were public speaking arrangements adequate?</li> <li>5. What were the reasons for the deferral of consideration of the application? Were these</li> </ol>
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	<p>adequately communicated to stakeholders? Was the timeline sufficient to consider all aspects of the application, including whether reports were delivered in a timely fashion in order to be given due and adequate consideration by members of the Planning Committee?</p> <p>Outside the scope of the review: Consideration of the merits of any planning decision. Consideration of any technical evidence, planning advice and documentation, including consultants' reports, put before members. The conduct of any Planning Committee meeting.</p>
<b>Suggested Purpose and/or Objective of the Review</b>	To identify whether good practice has been followed at every stage of the application process. It is intended that as a result of the Scrutiny process, the Council will be able to draw up and implement a blueprint for best practice in handling planning applications.
<b>Methodology/Approach</b>	Appoint an independent organisation, such as the Planning Advisory Service, to carry out the review as per the scoping document and report back.
<b>Attendees Required</b>	TBC.