

A PERSONAL COMMENTARY ON THE ROLE OF UTTLESFORD DISTRICT COUNCIL'S (UDC) SCRUTINY FUNCTION AND RELATED ACTIVITY BY UDC FROM EARLY 2018 UNTIL MID 2022 WITH RESPECT TO A PLANNING APPLICATION AND SUBSEQUENT PLANNING APPEAL TO PERMIT EXTRA PASSENGERS TO PASS THROUGH THE LONDON STANSTED AIRPORT

WRITTEN BY THE FORMER CHAIR OF THE COUNCIL'S SCRUTINY COMMITTEE, CLLR ALAN DEAN, AND SUBMITTED TO UTTLESFORD DISTRICT COUNCIL'S ADJOURNED FULL COUNCIL MEETING PLANNED FOR THURSDAY, JULY 21ST, 2022.

(This report is being reissued to replace an initial version first provided for the Council's Scrutiny Committee that took place on July 14th, 2022.)

FOREWARD AND PERSONAL DECLARATION

I was Chair of Scrutiny for the Council that ran from May 2015 to May 2019. I was also Leader of the Liberal Democrat Group for the same period and until May 2021. I have never been a member of the Planning Committee during the whole of my thirty-five years of membership of this Council from May 1987 to the present day. I have made personal representations on many matters regarding Stansted Airport on behalf of my constituents in Stansted Mountfitchet during those 35 years, mostly as an individual Member of this Council. I am unaware of any pressure or instruction on how Members should vote being applied to any member of the planning committee who was a member of my political party during the duration of the subject application for planning permission by Stansted Airport Limited.

I am writing and submitting this report because I am a firm believer in and, to the best of my ability, practiser of the Nolan Principles of public life; in particular of HONESTY, OBJECTIVITY, OPENNESS AND ACCOUNTABILITY. Practising dishonesty, personal subjectivity, opacity and avoiding personal and collective accountability are to be abhorred and called-out.

I am surprised and shocked that the "ES" report before the Council on July 21st, 2022 should include false allegations of improper political interference in the planning application and of politicised decision making by the Planning Committee's members.

SUMMARY

What follows is a commentary on my personal assessment of the Council's handling of the planning application and, in particular, a critique of unsuccessful attempts by the Scrutiny Committee (through examination of the minutes of relevant Scrutiny Committee meetings since March 27th, 2018, (and that are appended at Appendix 1) when Scrutiny was attempting to oversee the relevant planning processes. I have evaluated that oversight committee's successes and failures. I have examined other council bodies in far less detail than Scrutiny, owing to the limited time availplanning to produce this commentary.

I have updated the report to Issue 2 since the Scrutiny Committee meeting of July 14th inst. (to which I sent Issue 1) to include my observations at that meeting. The section of the first issue of this report "Scrutiny Committee Process Issues and Failures" has been moved to Appendix 1 of this second issue.

I consider that the "ES" report commissioned by the Chief Executive ignores elements of organisation and cultural failure by both elected Members and employed officers, probably caused by internal inertia (an adversity to digging deep) or through deliberate obstruction to try to bury culpability.

The primary negative result has been a multi-million-pound (£X-million) award of costs against UDC and onto local council tax payers because of “unreasonable behaviour” by the Council. Much more evidence exists within the organisation that I have not seen and, therefore, can comment on herein. This should be revealed so that accountability can be properly exercised.

ISSUES IDENTIFIED

The following summarises the more significant issues and events, as far as I know them, contained in the Appendix 1 to this report. Section numbers are those used within the Appendix, as far as I know them. If missing information would change the interpretation of events, I apologise for my lack of that information.

A. Re Appendix 1, Sections 1 & 9:

The first request for an investigation into the Council’s handling of Stansted Airport’s planning application to increase passenger numbers was made at Uttlesford’s Scrutiny Committee on March 23rd, 2018. Nine months of obfuscation by officers elapsed before a decision was made at the Scrutiny Committee meeting of January 15th, 2019 to proceed with a scrutiny review entitled Handling Major Planning applications. It would include work relating to the airport’s expansion planning application UTT/18/0460/FUL. This agreement was stillborn because it was not carried out as agreed. Repeated commitments were made from the Scrutiny function about when an outcome would occur. Nothing positive emerged by the end of the 2015/2019 Council’s term in office, in whose final months a decision was made to approve the application of the Planning Committee’s casting vote. Many more promises were made about Scrutiny study outcomes during the early years of the new Council beginning in May, 2019. Nothing emerged into the light until a Scrutiny Committee meeting of July 14th, 2022, by then forty-two (42) months (or three years and six months) after a report was first commissioned.

By July 2022, the report had been transformed from a report by Scrutiny Members to a report commissioned by the Chief Executive with minimal or highly selective input from elected councillors. Uttlesford’s Scrutiny Committee and functionality were side-lined and consequently are at risk of becoming discredited.

The report from the Chief Executive is deemed by some Members as being discredited because it is viewed to be partial following the author’s exclusion (probably at the request of UDC officers, though almost certainly with the political compliance of the Administration/Council’s ruling political party) the opinions (See Note 1) of many Members of Council from being listened to by the “ES” report’s author(s). The report also makes unsound and improper allegations that councillors who were Members of the Planning Committee were acting “politically” when the decision to reverse the previous approve was made. I have to assume that this allegation implies impropriety by councillors through their being whipped by their respective political parties to vote to refuse the application at the second consideration following the 2019 local elections and change of Administration. I can only add that a nem. con. (with one abstention) decision to refuse would be difficult to achieve across multiple parties and that I know of no such pressure being applied by my own political group. Had the author interviewed enough Members, he may have been persuaded not to include that offensive and potentially unlawful allegation.

[Note 1: I have been informed by a reliable source that some Members of Council were interviewed by the “independent report author”. That evidence, if true, would contradict a claim at last week’s Scrutiny Committee meeting that no-one was

interviewed. This apparent contradiction needs to be explained by those with knowledge of what did and did not take place. I would be seriously concerned about political imbalance if it were a fact that a report that was “parented”, if not actually owned and overseen, by Scrutiny had been biased towards an Administration point of view by such partial behaviour in an attempt to save money. All Members deserve a complete explanation about who - Members and officers - made a personal input into the report through its author. The facts that the report may include some justifiable recommendations for process improvements is, in my opinion, no excuse for excluding contributions from any Member, and including from Opposition Members who were mostly or entirely excluded from providing evidence.]

Furthermore, I have seen correspondence dated October 26th, 2020 from the Cabinet Portfolio Holder for Planning, Stansted Airport, Infrastructure Strategy and the Local Plan in his capacity as a member of the Residents for Uttlesford Party. See Appendix 2. It is a very “I must do as I am told by officers” memorandum. If Cllr Evans was indeed mute, he was negligent in allowing a catastrophic outcome to occur on his watch. After, all Council Members are ultimately responsible for all acts of the local authority, whether performed by councillors or carried out on behalf of elected Members by officers. In his memorandum, Cllr Evans advises that “it was agreed that (the Chair of the Planning Committee) and I would receive weekly briefings from Officers as to developments in the Appeal”. He goes on to say “if UDC were to ‘behave unreasonably’ or lose (Note: not necessarily correct), MAG’s incurred costs could also be awarded against UDC”. This is repeated in the summary of the memorandum with, I believe, a more accurate wording.

So, the question that needs to be answered is: Why did the portfolio holder and maybe one or two close colleagues not heed the written warnings from ten Members from different political parties that was provided in 16 questions (see Appendix 2) that were submitted by me on behalf of all inquisitors on January 5th, 2021? The questions probed for the truth surrounding, amongst other matters, (i) the manipulation of the formal planning Decision Notice so that it did NOT reflect the actual decision of the Planning Committee (IT CLAIMED THERE HAD BEEN AN ACCEPTANCE OF THE APPLICATION RATHER THAN THE ACTUAL DECISION – **A REFUSAL!**), (ii) the failure of a council officer NOT to act in line with the same committee’s decision; (iii) The Council’s QC’s argument that UDC should seek approval with Conditions, which he claimed to be a **“shrewd” approach**. The questioning Members challenged that distorted, indeed manipulate approach. Why did Cllr Evans (a lawyer and aforementioned Cabinet Portfolio Holder for Planning etc.) not do the same to avoid £multi-million costs being awarded against UDC for “unreasonable behaviour”?; (iv) Answers to these questions were promised by the then Council Leader in January 2021. Answers were then denied. Answers have only been provided nineteen (19) months later in July 2022. Will Cllr Evans please provide a plausible explanation for the inordinate delay, including what went on behind the veil of secrecy within the corridors that are inhabited by political power brokers who have ultimate responsibility and accountability to the public for what happens at UDC?

- B. Re Appendix 1, Section 2: The claim that the Scrutiny Committee could not scrutinise the planning application process was assuredly untrue, as advised by the CfPS in January 2019. This was also confirmed internally at Appendix 1 Section 3, though again denied at Appendix 1, Section 17. These continual contradictions are worrying and undermine the confidence in the Council’s governance.

- C. Re Appendix 1, Section 6: Please note that the CfPS (now CfGS) was engaged on this work in 2019. It is the senior national body that advises on public sector scrutiny. Their involvement appears to have been terminated, because I have seen little further evidence of their involvement. Can an explanation of this please be given? It is important that this did not happen in order to put off Scrutiny Committee members from pursuing the then agreed (but much delayed and diluted) trail of evidence. I see at Appendix 1, Section 10 that the CfGS seems to have been replaced by PAS, The Planning Advisory Service. Why did this change take place? Appendix 1, Section 14 refers to a report from PAS due early in 2021. I have found no record of its existence and its being put to use. What happened to the report?
- D. Appendix 1, Section 9 again correctly asserts Scrutiny Members' legitimate role in examining planning process standards. The minute SC23 reference about the new Administration having an opportunity to wipe the slate clean and that "processes at Uttlesford were robust" seems not yet to have led to a positive change in culture. In fact, I venture to suggest that the culture has deteriorated significantly. The suggestion that a change of culture "would come when the new administration had settled in" still seems a long way off and consequently has been very costly to taxpayers' bank accounts. I suggest this needs to be addressed as a matter of great urgency.
- E. Re Appendix 1, Sections 13-15: Reference is made to a report promised by the Chair of Planning. Was it published? If so, when?
- F. Re Appendix 1, Section 16: Besides the reference to a two-and-a-half years' delay in producing any useful output by Scrutiny, there is reference to a suggestion that an independent input to the Scrutiny review was needed. This is where Scrutiny began totally to lose its locus and authority. There was an accusation that Scrutiny Members cannot be trusted to be objective. Why was the CfGS being invoked when they had been involved in January, 2019, but subsequently appears to have drifted away; or their services were terminated? This just adds to my feeling that there has been no firm hand on the tiller over the subject of Stansted Airport and Planning within the Scrutiny function. I am left with an impression that there were constructive efforts behind the veil of secrecy to incapacitate effective scrutiny at UDC.
- G. Re Appendix 1, Section 19-20: This part of the Appendix shows that Scrutiny was losing its authority and that the committee's and the Task & Finish Group's responsibilities were being taken over by officers and an external advisor at the end of 2021 and into 2022. What I have read suggests that Scrutiny was being neutered. This began at the committee meeting on February 3rd, 2022 and continued until and beyond when the Task & Finish Group briefly received a copy of the "independent" external report on June 20th, 2022. This was then taken to the July Scrutiny Committee that I described in Section A above.

CONCLUSIONS

The Scrutiny Committee has taken over four years to produce a report that is only partially complete. I have read the report and consider that it has correctly identified many flaws in the planning process that need to be addressed. However, a local authority scrutiny regime should be Elected Member-led and not taken over by paid officers of the Council, as seems to have been the case after work finally got underway by an external advisors' organisation.

However, that fact that Scrutiny Members have been side-lined during most of this exercise when active is, in my opinion, both unacceptable and a serious breach of the Cabinet/Scrutiny separation of responsibilities enshrined in legislation and good governance.

As a minimum, some Members should have been interviewed or given the opportunity to provide written input to the Scrutiny Task & Finish Group, whose overall work the final report should be. In my opinion, there is not yet a report that is complete enough and accurate enough to be submitted to a Council Meeting on July 21st inst. I believe that no self-respecting Scrutiny Committee would send the officers' report further in its currently incomplete state.

Cllr Alan Dean

Member for Stansted North and former Chair of the Scrutiny Committee

Issue 2: 19th July 2022

Encs: Appendices 1 & 2

Appendix 1

SCRUTINY COMMITTEE PROCESS ISSUES AND FAILURES

1. The first time that the matter of the subject planning application (UTT/18/0460/FUL) was raised at a Scrutiny Committee was during the last Council term on the 23rd of March 2018. According to the formal minute SC43, a committee member asked, when discussing the committee's work programme, for the "Scrutiny Committee (to) work alongside the process for Stansted Airport's application for planning permission to increase the maximum passenger throughput, as many concerns had been expressed that there was a lack of transparency about the process.

The recorded rationale was "concern was not about the application but about the planning process, as public mistrust needed to be countered by robust and visible scrutiny".

2. The minute continued: "The Assistant Director – Legal and Governance said there was limited scope for the Committee to scrutinise the process of the planning application, and that the Planning Committee had the authority to make the decision. He offered the assurance that the consultation period would be extended until the end of April. Any concerns could be taken up via the political route, or in person with officers or the Chairman of the Planning Committee. There was some merit, however, after determination, in looking at how the public were engaged at the preapplication stage, in order to draw lessons from the process. It was inadvisable, however, to do so in parallel at the same time."

Author's commentary: With the benefit of hindsight, it is now apparent that small and early alarm bells in early 2018 foretold serious issues four years hence that are now costing the Council and local taxpayers dearly.

3. Eight months later, at the 20th of November 2018 Scrutiny Committee meeting, when again Members were reviewing their work programme, at minute SC19 it was recorded: "With reference to the Stansted Airport application, the Director – Finance and Corporate Services said individual decisions of regulatory committees of the Council, such as those of the Planning Committee, could not be brought to Scrutiny. He said it was within Scrutiny's remit to look at the overall processes behind such decisions.
4. "The Chairman said Councillors Lemon and Light should work on this request outside of the meeting and to contact the Assistant Director – Corporate Services with their findings before the item could be formally added to the work programme."
5. At the January 15th, 2019 Extraordinary Meeting of the Scrutiny Committee to discuss this single topic it was agreed to proceed with a review entitled Handling Major Planning Application. **This was the first time a plan of action was agreed.** Minutes record:
 - The Chairman said the purpose of the meeting was to draw up terms of reference for a study in relation to the way in which Uttlesford District Council (UDC) processed major planning applications. He reminded members that the Stansted Airport planning application was still an open matter as it was currently with the Secretary of State. The purpose of this study was to look at all processes relating to major planning applications received by the Council.
 - The purpose of the independent study will be to identify improvements to the Council's processes for handling large planning applications. The process cases to be studied will include the application determined in November 2018 for increased

capacity at Stansted Airport as well as other large planning applications that will enhance the value of the study. The committee intends to report back expeditiously with a proposed Scoping Report and preliminary advice on how the study can be conducted effectively and independently. The committee wishes to achieve delivery of at least a draft report and draft recommendations by early summer 2019.

- RESOLVED to: i. Commission an independent study on large planning application processes. The committee will take account of the representations already made and any other representations it receives in formulating a Scoping Report for the independent study. The purpose of the independent study will be to identify improvements to the Council's processes for handling large planning applications. The process cases to be studied will include the application determined in November 2018 for increased capacity at Stansted Airport as well as other large planning applications that will enhance the value of the study. ii. The committee intends to report back expeditiously with a proposed Scoping Report and preliminary advice on how the study can be conducted effectively and independently. The committee wishes to achieve delivery of at least a draft report and draft recommendations by early summer 2019. The Scoping Report should contain a preliminary timetable showing provisional key milestones. Additional meetings of the Scrutiny Committee will be called if they are needed to ensure that the study work begins on time to meet the timetable. iii. A reference group comprising the committee chairman and vice chairman, plus Councillors Lemon and Light will be established to work in the background with officers to progress this initiative.
6. On January 26th, 2019 a meeting of the aforementioned reference group took place with a representative from the Centre for Public Scrutiny (CfPS). I have asked Democratic Services for any recorded notes because DS were represented at the meeting. What is instructive from my own notes written at the time is the following: CfPS believes in public scrutiny, including (of) planning. Live applications including appeals (are subject to) call-in. Care needs to be taken with legal processes. CfPS said that a road map for the work should be available for the work by March/April for a work programme to continue in Council year 2019/20.
7. At the Council Meeting on April 9th, 2019, I presented the Scrutiny Committee Annual Report authored by me. It contained the following extract: "Major Planning Applications, item 24. Two members of the Committee requested that a review be undertaken into the Council's processes with regard to major planning applications. This request was made following the decision on the Stansted Airport application, the most recent major application the Council has handled. 25. A reference group was established comprising four members of the Committee to develop this work. A scoping document, along with advice from the Monitoring Officer, was presented at a January 2019 meeting. This followed an informal meeting between the members and officers. The scoping document, prepared by officers, recommended an independent review of processes. However, the scoping document was not agreed, although the Committee did resolve to establish such a review. 26. Subsequently, officers engaged the Centre for Public Scrutiny to provide advice to the reference group. This advice, which reiterated that given by the Monitoring Officer, was reported back to the Committee at its March 2019 meeting. Officers have also been in discussion with the Planning Advisory Service (PAS) about whether it would be able to conduct the review and also assist in the initial scoping work. PAS has indicated it is likely that it will be able to do this."

Author's note: That was the last meeting in which I had any direct involvement with personal responsibility for this matter.

8. The Scrutiny Committee Meeting on September 29th, 2019 (nearly three years ago) received an update from an officer. This is recorded at Minute SC20: "The Assistant Director – Corporate Services said he had been in touch with the Planning Advisory Service, and he was due to have a meeting with representatives of the service and the Assistant Director – Planning in October. Councillor LeCount, the Chair of the Major Planning Applications Task Group, said it was necessary to wait until the Planning Advisory Service had completed its review before the task group could begin its work."
9. There was further reference at the same meeting about concerns raised by SSE, though these were dismissed by the committee chairman as being "not any issues that needed to be drilled into". The new committee's view at minute SC22 under the heading Probity in Planning was:

"Members noted that if there were issues of best practice that had arisen, these could be incorporated into the report of the Major Planning Applications Task and Finish Group. The Director – Public Services noted that the Probity in Planning protocols needed to be updated but that it was important for the Council's small legal team to prioritise its work. Compliance with the current protocol in the Constitution would continue to ensure that members did not breach the law."

The committee went further in a discussion with the Chief Executive to address concerns about Probity in Planning. The ChExec had concerns about work prioritisation, so could not commit to a timetable for their being addressed. The minute SC23 records: "The Director – Public Services noted that the Probity in Planning protocols needed to be updated but that it was important for the Council's small legal team to prioritise its work. Compliance with the current protocol in the Constitution would continue to ensure that members did not breach the law".

(Author's comment: There does seem to have been a contradiction in September 2019 between the importance of the Council acting properly and an apparent desire to avoid Members becoming too closely involved and so allegedly committing their potential unlawfulness, even though elected Members are ultimately responsible for all actions by the Council – whether by elected Members or by paid employees – the professional officer corps. I see this as an avoidance of internal scrutiny that led in due course to very serious financial and reputational damage to the Council that should have been avoided through greater trust between elected Members and paid employees.)

The minute SC23 went on: "Members said the new administration had an opportunity to wipe the slate clean. Processes at Uttlesford were robust, so it was possibly a matter of the culture of the organisation. There was only so long that the past should be dwelt on, and it was for every councillor and officer to look to change the culture. This would come when the new administration had settled in."

(Author's comment: Has anything changed since 2019 or has it become worse? There is a case to be made that the substantial damage has occurred since 2019 and that focus is needed by and on the current Council to ensure an objective outcome that is far from completed by the reports before the Scrutiny Committee today, the 14th of July 2022.)

10. At the Scrutiny Committee on the 5th of November 2019, it was minuted at SC34: "MAJOR PLANNING APPLICATIONS REVIEW UPDATE The Assistant Director – Corporate Services said he and the Assistant Director – Planning had had a useful meeting with the Planning Advisory Service. Onsite interviews would take place with relevant officers and members in either November or January. The Chair asked that the Committee be informed of the proposed date well in advance.

11. Nothing further was reported until March 10th, 2020, when minute SC47 recorded the following: “MAJOR PLANNING APPLICATIONS The Assistant Director – Corporate Services said the Planning Advisory Service had sat in on the Planning Committee meeting at which the application to expand Stansted Airport had been considered, and had conducted interviews with a number of members, officers and other stakeholders. A number of follow-up interviews still needed to be completed. It was expected that they would report in May or June (2020).”

(Author’s comment: In fact, nothing further was reported to Scrutiny until January 2021, ten (10) months after it was promised and three years less two months since the matter was first raised at a Scrutiny Committee. I can only conclude that there has been constructive obstruction on the part of elements within this Council to progress Scrutiny’s essential work; now made much worse by the financial calamity that has befallen local taxpayers.”)

12. At the Scrutiny Committee’s meeting on January 19th, 2021 a resident raised concerns about the planning process. She questioned the failure to record the Planning Committee’s decision properly the previous January and other planning system failures one year earlier. The minutes of this meeting recorded: The Chair summarised:- • The system had failed in a way that had not been anticipated. • The Covid situation caused an extended delay to Planning Committee meetings and therefore had delayed the approval of the minutes. • Assurances had been made that this would not happen again. • Detailed handwritten notes were taken at each meeting. • There was an evidence trail which showed the minutes were an accurate record of what took place.

(Author’s question: Was all the related evidence verified externally at the time that the system failure occurred such that the reason for the failure is known and documented?)

13. The same minute further records: “The Chair, Councillor LeCount and Councillor Merifield agreed to undertake a report”. Has the report been published and made available for inspection?

14. Minute SC52 records: “Councillor LeCount said the PAS report would be signed off by the end of January and brought to the next scrutiny meeting.”

15. At the subsequent Scrutiny meeting on January 4th, 2021, minute SC67 records: “Councillor Dean chased the written report promised to Ms Tealby-Watson. The Chair said he would contact Councillor Merrifield to find out when the report would be available and e-mail Ms Tealby-Watson to apologise for the delay.”

(Author’s comment: I am not aware whether this district resident did receive the promised report.)

16. The next time that the PAS/airport appeal issue work was raised was at Scrutiny was four-and-a-half months later on June 17th, 2021. By then, two-and-a-half years had elapsed since PAS was first identified for conducting an investigation. Minute SC24 reads: “STANSTED AIRPORT APPEAL - REQUEST FROM FULL COUNCIL Councillor Caton was invited to speak and he set out his concerns. He thought there were a number of governance issues as a result of the appeal, and said that there needed to be a comprehensive review, not only related to planning issues. He said an internal review would not be as transparent as an independent one. The Chair thanked Councillor Caton for his comments and agreed that the governance

issues were of great importance, as well as the decision-making process and transparency. He said that Scrutiny had a duty to residents to conduct the first review and then if required an external inquiry could follow on. He also agreed that seeking advice on governance matters from external experts would be important. Councillor Driscoll questioned whether the review should come after the final appeal had finished as he was concerned that it could produce a whole different outcome. The Chair said that the preparatory work could be carried out at this stage, and some historical aspects reviewed, not least to include the governance issues. Councillor Sell said it was important that the task and finish group had the resources, including financial, that were needed to carry out the work efficiently. Councillor Criscione agreed with Councillor Driscoll and said it should be sensitively managed; he supported moving to a review. The Chair read out paragraph 14:- "...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.

17. "In response to a suggestion from Councillor Criscione to ask for initial advice from the Centre of Public Scrutiny (CfPS), the Assistant Director – Corporate Services said that their view had previously been that planning issues were not a scrutiny function, therefore he questioned whether they would be the best option. RESOLVED to: I. Establish a Task and Finish Group in order to review the Stansted Airport Appeal process II. Appoint Councillors LeCount, Coote, Criscione, Fairhurst and a Liberal Democrat Member to the Task and Finish Group. III. Request that the Task and Finish Group bring back terms of reference for approval by this Committee no later than the September 2021 meeting. IV. Request that the Terms of Reference include any details of external support, if required."

(Author's comment: I am astonished that Scrutiny needed to set up yet another task group on this issue in mid-2021 (June) after one had previously been established in January 2019. This does leave me with the impression of drift and even avoidance of this highly serious and costly issue. Moreover, I have concerns about the statement in the previous paragraph that I have underlined and which I am continuing to investigate.

At the meeting of the Scrutiny Committee on June 23rd, 2021 the following was minuted: "The Chair provided an update to the Committee following the Scrutiny Committee held on 17 June 2021, on the latest position in respect of accessing information on the Stansted Airport enquiry. He said that detailed responses were still outstanding. Councillor Evans said that he would be speaking to the Director of Public Services on this matter the following day."

(Author's comment: I have no evidence about what happened the following day.)

18. The next reference to the investigation came almost four months later on October 7th, 2021, for which minute SC30 records: "STANSTED AIRPORT APPEAL REVIEW - VERBAL UPDATE Councillor Le Count was concerned that the members of the working party set up to review the appeal would struggle to be impartial given the Member motion of no confidence at the Council meeting the previous day. It was a cross party group of:- Councillor Fairhurst Councillor Criscione Councillor Khan Councillor Coote and himself, Councillor Le Count. He asked for some advice on how to progress. There was discussion and Members, and Officers made the following points: • The review must be objective. • In response to a question from

Councillor Sell, the Chair said that there would be independent advice provided to the group and Full Council had approved this way forward.”

(Author’s comment: I find this to be a shocking discourse unworthy of being taken at a Scrutiny Committee meeting. I have not had time to re-research the fundamental principles of public scrutiny and to set them out here, but it should be known that elected Members should be able to wear different hats depending on the roles that they are performing. This is bad governance in itself, in my opinion. See a link to the CfGS website in Section 23 below.

19. Next up was a report at the next month’s Scrutiny meeting on November 23rd, 2021, when it was minuted at SC33: “STANSTED AIRPORT APPEAL REVIEW Councillor LeCount said that the task and finish group had been set up, and on the advice of the Assistant Director Governance and Legal and Monitoring Officer there would be an independent panel which would consist of two legal experts who would scope the works and would report back to the task and finish group on a regular basis. The task and finish group would not be able to determine the content of the review and would be limited to discussions regarding progress. He said the panel would be in place within the next 2 weeks and the process would be finished by spring next year. In response to a question from Councillor Driscoll, he confirmed that the panel would also include the Assistant Director Governance and Legal and Monitoring Officer.

(Author’s comment: Scrutiny is a Member-led process, that is a fundamental democratic safeguard in any Council that operates a Cabinet/Executive system of governance. It seems from the above minute that the Council’s officers are taking over Scrutiny by side-lining the duly appointed Task and Finish Group. This should be anathema to any Members appointed to both the Scrutiny Committee and the Task and Finish Group.

20. The next appearance of this topic was at the Scrutiny Committee meeting on February 3rd, 2022, minute SC49: STANSTED AIRPORT APPEAL REVIEW. Councillor LeCount gave a verbal update to the meeting. He said that work had started and documents had been passed to the independent panel members. He said there would be a draft report later in February that would be presented to the working group. The main report would be ready by April 2022. The Chief Executive said that this was a sensitive subject due to the process of fee negotiations that were still on going with the Airport and therefore details could not be discussed more fully. He said that he appreciated the public interest in the report, which he said would be fully published, debated and lessons learnt. He said that necessary documents and evidence had been handed over and that part of the interim report process would be to test with Members of the Working Group that the list of documents was complete. Councillor LeCount said that he would be asking Members to provide questions to put to the independent group to ensure a robust process with the correct focus.

(Author’s comment: It has been reported to me that task group members did not receive a draft of the report in February, but much later on June 20th, 2022. Members had only a last-minute opportunity to see the report before it was published in July 2022). Councillor LeCount’s commitment that task group members would be able to put questions to the independent advisor to “ensure a robust process with the correct focus” is said by task group members to have not been possible or to have been extremely limited in value.

21. At the Scrutiny Committee meeting on March 21st, 2022, the following is recorded in minute SC55: “RESPONSES OF THE EXECUTIVE TO REPORTS OF THE COMMITTEE Councillor LeCount gave an update with regards to the Stansted Airport Appeal Review. He said that all documents were being reviewed by the consultants and there had been an opportunity for

the working group to look at them, comments had been received from Councillors Fairhurst and Khan. The full review and report would be available in April 2022.

(Author's comments: I understand that the received comments being referred to here relate to a list of documents, not the documents themselves, that Task & Finish Group members were asked to review and about which concerns were raised. How can a list of documents add value to the Scrutiny process when the contents of the documents have not been examined to allow for an adjudication of their value and whether others might be needed to provide a comprehensive and balanced assessment? This seems to me akin to Scrutiny in Blindfolds and Cufflinks!

22. (Author's comments: The Scrutiny Committee meeting of July 14th inst. was a strange hybrid. As yet, minutes have not yet been issued. It was not truly a scrutiny meeting because it was told by the Council's Chief Executive that it mattered not how the committee voted on an external report that he had commissioned on behalf of a Scrutiny Task & Finish Group, or even whether the committee voted at all. The Chief Executive would proceed with implementing the report's recommendations, regardless of the committee's views. The committee seemed to be redundant.

23. (Author's comments continued: I have consulted The Centre for Scrutiny and Governance. One important page of its website can be read here: <https://www.cfgs.org.uk/revisiting-the-four-principles-of-good-scrutiny/>

Scrutiny being "led by independent people" seems to me, from my observation of last week's Scrutiny Committee meeting, not to be adequately the case at Uttlesford District Council. I observed that one committee member attempted to silence another participant from continuing a discussion. The chairman rejected that attitude from a scrutineer who appeared to be bored with his role, or who wished to silence a point of view. So, I fear that there are members of the committee itself that do not understand their "independent" role. More significantly, the purpose of Scrutiny is to work with (mainly) Executive/Cabinet Members and also with council officers to improve service to the public by, amongst other methods, to challenge those primarily responsible for service delivery and to ensure their accountability for what they have done or what they intend to do. **That did not happen last week**, principally because the Chief Executive was allowed openly to impede the Scrutiny Committee's role by telling it what he intended to do, regardless of their opinions.

ENDS

Appendix 2

SIXTEEN QUESTIONS PROVIDED WITH TWO DAYS' NOTICE FOR ANSWERING BY UTTLESFORD'S CABINET AT AN EXTRAORDINARY COUNCIL MEETING ON 7TH JANUARY 2021

1) How did we get from a unanimous Planning Committee decision to “refuse on the basis that the application to expand Stansted was unsustainable” (based on MAG’s 13,000 pages of evidence), to an appeal ‘defence’ of “approval with conditions” as stated by the defence team at the most recent Briefing?

2) Shouldn’t the **Decision Notice** (by definition) be based on the **actual decision** of our Planning Committee? Planning Committee members agree that we did not decide to “refuse conditionally on insufficient evidence”. The decision to refuse was based on a vast amount of evidence.

This is especially significant as the QC has repeatedly stated that the Decision Notice serves as the foundation of our forensic strategy and that he cannot go beyond that.

3) We are told that **we have absolutely no input** into the defence as this is the sole prerogative of Roger Harborough as the Client. Surely as an officer of the council, he must act exclusively on the decisions of the Council. If he fails to adhere to the limits of, or goes beyond his delegated mandate, isn’t the Council ultimately accountable and therefore must reserve the power to withdraw the mandate or correct his actions?

Surely the cabinet must either accept responsibility for the outcome or intervene and not risk the reputation of this Council?

4) We were told by our QC that, regardless of the main parties’ submissions, the ultimate authority rests in the Inspectors. But if this is true and these submissions are of no value, why hold any hearing at all? Surely the inspector considers all elements of the case, including the various submissions and proofs of evidence and, based on these, arrives at a decision?

5) We are told that our “experts” make their own objective determination on facts provided and are not simply acting on the advice and arguments of each side. If this were true, why hold any hearing at all - why not simply call in an expert for each subject?

6) Is there any basis for a claim from outside the Council that UDC is not challenging MAG’s evidence on aviation forecasts and that the expert that UDC employed on this subject produced evidence that contradicted the current the agreed forecasts by MAG? Was this evidence excluded by our officers because it did not suit their line of argument? Was it in conformity with the Planning Committees expectations? Will the Cabinet insist that this allegedly suppressed evidence is made available to all

Members?

7) How is it possible that SSE, which is also arguing for an appeal dismissal, has 11 proofs of evidence and experts who are prepared to argue these points, whereas UDC's experts have conceded that they do not constitute grounds for dismissal? Are their experts using different "facts"? What about the MAG experts? Do they agree entirely with UDC experts? If so, why pay for more experts?

8) The QC has repeatedly stated that UDC's tactic to "approve with conditions" is shrewd. Why does this Council regard a change from "outright refusal based on current evidence" to "approve subject to conditions" as shrewd? How is capitulation shrewd?

It may prove to be shrewd in defining the efforts of the defence team 'less of a failure', or the decision to overturn the decision of the Planning Committee 'less embarrassing', but it will still be surrendering the position supported by the entire district, including all Parish and Town Councils.

Was this change initiated by the QC or by the client?

9) Surely "conditions" to be defined in the future will still need to be based on reasonable planning considerations and ITO CIL regs 22. They must therefore still be commensurate with harm, necessary and reasonable.

Surely, therefore, even if we had approved without conditions, where the airport's owners (current or future) exceed harms such as air quality, noise etc., they would always be subject to national laws and limits. So, what is the point of these yet to be defined 'conditions' and in what way does the Council keep control?

10) Now that UDC appears to have conceded the allowable 35mppa target, have we abandoned the Planning Committee's position that this was incompatible with the current "permissible" ATM? The fact that larger Aircraft are being discontinued surely increases this gap - wouldn't it have been more appropriate to set the target level at 274000 ATMs?

11) The QC argues that we cannot foresee or plan for the future of air traffic. Surely this is not for the Council to prove, but for the applicant/appellant who is seeking to increase the risks?

12) The improperly compiled Decision Notice says that the application was refused because the applicant "failed to demonstrate". When this was announced at the first briefing, it was argued that this might open the door to the appellant adducing further evidence to support its claim. At the time this was rebuffed as unlikely but if they did, we would have more evidence to refute.

When the appellant subsequently did submit their unreasonably large 'addendum', SSE objected on grounds that it was far too long to be an addendum and as it had been submitted after the deadline date, it was therefore inadmissible.

Oddly, our defence argued that 'this was a technicality'. Surely this should be the argument of the appellant and not of the Council?

As was warned, this has resulted in a dramatic increase in work and an increase in risk that the 'new evidence' might prove to be compellingly in favour of the applicant/appellant. Why would the Council consciously increase its costs, its risks and reduce its chances of defending its own Planning Committee's decision?

It is absurd to suggest that rules of evidence specifically prescribed for this appeal are irrelevant.

It now transpires that our 'experts' find the new evidence compelling and that they concede these points. How was this justified?

13) The Planning Committee Meeting on January 24, 2020 was not recorded, nor were minutes taken. This is especially worrying for such an important meeting.

Has the failure to take minutes during this important committee meeting, coupled with a unique loss of an audio recording been adequately explained? Has this happened before?

14) UDC has taken the extremely limiting decision to submit only 4 proofs of evidence, thereby confining our defence to compromise even before the case begins. Should we not now finally treat the SSE as a partner with a common agenda and work with them in their robust defence of the unanimous decision taken by our Planning Committee, so to meet the expectations of the residents of Uttlesford and beyond?

15) Why were we only told of this extremely controversial change in forensic strategy, in a briefing just a day after it was too late to change it before it had to be submitted to the Inspectorate? Shouldn't this have been discussed beforehand?

16) Considering the controversy and history of this application, the overwhelming support of the district and the amount of time and resources spent on the January Decision, hasn't this matter been allowed to fail without sufficient cabinet oversight?

Published on behalf of ten cross-party Members supporting the ECM and the tabled motion.

5th January 2021

END OF THE DOCUMENT