

TO: **PLANNING COMMITTEE - 3RD MAY 2006**

SUBJECT: **COVENTRY AIRPORT – OUTCOME OF ENFORCEMENT APPEAL**

FROM: **HEAD OF PLANNING AND ENGINEERING**

Introduction

The Council has received the decision of the Secretaries of State following the Public Inquiry into the erection of the Interim Passenger Facility (IPF) at Coventry Airport. The decision is wholly in line with the approach taken by the Planning Committee on enforcement action and the imposition of mitigation measures.

The Secretaries of State conclude:

(a) that development of the IPF was not undertaken within airport permitted development (pd) rights as claimed by the airport and its construction constituted a clear breach of planning control

Initial comment - This was the view of this Council from an early stage and formed the basis upon which enforcement action was authorized in early 2004. Success on this point is important, as had the IPF been found to have been developed within pd limits, there would have been no opportunity to consider whether permission should be granted and no means of securing any control and mitigation measures

(b) that permission should be granted for the IPF subject to a range of compensation and mitigation measures in order to bring a substantial measure of control over flying activities at what at is at present an entirely unrestricted airport.

Initial comment – This was the position adopted by the Council in July last year when it considered that the package of compensation and mitigation measures brought before it would be sufficient to satisfy the requirements of development plan policy. The package of measures considered acceptable by the Secretaries of State accords with that agreed by the Council.

The decision letter is attached to this report and the full Inspector's report (300 pages) is available for inspection at Riverside House.

Background

Your officers first became aware of development taking place at the South side of Coventry Airport in the latter part of November 2003. The airport was advised that a serious breach of planning control may have occurred and that in the absence of information/ planning application, the council would have no option but to take enforcement action. Notwithstanding the concerns of the Council,

construction work continued in order for the commencement of flights from what was clearly intended to be a passenger terminal by the 31st March 2004

The Council repeatedly issued warnings to the airport that the Council did not consider the works were permitted development. In the view of the Council, the development could not be considered to be permitted development because:

- The size of the terminal exceeded the 500 sq m limit for pd rights to be exercised
- The operation of the terminal was likely to have a significant environmental effect and would therefore fall to be considered under the relevant Environmental Impact Assessment Regulations, which remove permitted development rights in such instances

The airport continued to assert that the development could be undertaken under pd rights. A number of reports were made to Planning Committee advising members of progress on this matter, culminating in a report to the meetings of 31st March and 26th/27th April 2004, at which members resolved to undertake enforcement action to cease the use of the passenger terminal and to remove the unauthorized buildings.

At the same time, the Committee authorized injunction proceedings to secure the cessation of use of the buildings. The injunction proceedings were subject to a counter claim by the airport in the High Court which resulted in their being quashed in May 2004. This did not affect progress on the enforcement action. The airport subsequently appealed against the enforcement notices.

In summary form, the main grounds of appeal by the airport were that:

- the development had been undertaken within airport pd rights limits and therefore no express planning permission was required from the Local Planning Authority (the Ground "B" appeal)
- If, notwithstanding the above position, planning permission was found to be necessary, it should be granted (the Ground "A" appeal).

In addition, the airport claimed that the notices should be quashed on the grounds of nullity and invalidity, largely relating to procedural matters.

The Public Inquiry into the enforcement notices, dealing with the above grounds, commenced in February 2005. It concluded in July 2005, having been the longest planning enforcement appeal inquiry in the history of the planning system in the UK.

The appeal provided the opportunity for the Council and a wide range of other interested parties to put their concerns over the operation of the IPF to the Inspectors conducting the Inquiry.

The final decision on the enforcement notices was to be taken jointly by the First Secretary of State for the Environment and the Secretary of State for Transport as it involved considerations of both planning and transport policy. The

inspector submitted his report and recommendations to the Secretaries of State who issued their decision on 6th April 2006.

Outcome of Inquiry

In relation to the nullity and validity points, the Secretaries of State consider that the airport had not made out any grounds that there are such serious deficiencies in the notices that warranted their being quashed on these grounds.

It is necessary to examine the outcome of the two main grounds of appeal. As will be apparent, if the Ground "B" appeal had succeeded and the development was found to be permitted development, then there was no decision to be made on the Ground "A" appeal. The Ground "B" appeal therefore requires examination first.

Ground "B" Appeal

As members will be aware, because of its longevity and limited development to date, there was no planning control that could be exercised over the operation of the airport. It was possible to operate any aircraft at any time from the existing infrastructure without any planning constraint. For this reason, it was vital to counter the assertion of the airport that they could operate the IPF under permitted development rights. If that had been found to be the case, the airport could have operated however it wished from the IPF without any control being exercised by the Council and no mitigation or compensation measures being able to be put in place

Your officers, led at the inquiry by leading and junior Counsel and supported by specialist consultants submitted substantial evidence to support the Council's case. This was countered by many very extensive submissions and detailed and vigorous dissection of the Council's arguments by leading and junior counsel for the airport.

It is gratifying to be able to report that none of the arguments in support of the airport's assertion that the development was permitted development have been supported by either the Inspector or the Secretaries of State. The development is held to be a "clear cut breach of control".

Having established that the development did need permission, the question to be addressed, as in any enforcement inquiry, is "should permission be granted?" This is addressed through the ground "A" appeal.

Ground "A" Appeal

The primary concern of the Council in taking enforcement action in the first instance was to prevent development continuing without the opportunity for it to be considered properly through the planning process. As set out above, the airport had been requested to submit a planning application but had declined to do so. The ground "A" appeal was effectively a retrospective planning application for the development that had to be considered by the inspector and subsequently

the Secretaries of State. In responding to this part of the appeal, it was necessary, therefore, for the Council to consider how it would have considered a planning application for the development.

This matter was considered by the Planning Committee of 4th July 2005. It was reported to members that since the commencement of the inquiry, in accordance with normal inquiry procedures, discussions had been taking place on a “without prejudice “ basis in respect of the offer of a package of mitigation and control measures from the airport. The question for members was whether or not, in the light of the proposed mitigation package, the development of the IPF could be considered to be in accordance with the policies of the Development Plan (i.e. a combination of the Regional Spatial Strategy, the Structure Plan and, to a lesser extent, the current District Wide Local Plan 1995) and the Air transport White Paper.

In considering this matter, the committee addressed a range of environmental impact issues and took account of the potential “fall back“ position of the airport, i.e. that as an alternative to the IPF development, it could potentially increase the use of its existing infrastructure for additional flights, possibly for air freight, over which it would not be possible for the Council to exercise any control.

Taking into account all these factors, the Planning Committee concluded that the package of control, mitigation and compensation measures offered by the airport was reasonable for the scale of operation of the IPF and that the development could therefore be considered to be in accordance with the requirements of the development plan. This position was submitted to the inquiry.

The decision notice independently addresses the issues of environmental impact and the relationship of the IPF development with relevant policy. The decision concludes as follows (in summary):

- The development will have a beneficial socio-economic impact
- Its impact on cultural heritage is primarily one of noise, to be considered in connection with compensation measures
- Its visual impact on landscape is not of great significance
- It will cause no conflict with development plan policies intended to protect nature conservation interests
- It will have no adverse effect in terms of bird strike risk or other ornithological issues
- Risks to COMH sites and risk from wake vortices are within acceptable limits
- Airspace management is an issue that merits little weight
- There would be no opportunity to increase the number of flights arriving in the morning peak because of physical constraints of the IPF
- The mitigation package is sufficient to address any adverse air quality impact of the IPF operation
- Noise – while noise is an important planning factor against the development, the proposal will introduce mitigation measures intended to lessen the impact where none currently exist. The Secretaries of State consider that that the noise issues are significant, but are outweighed in

this case by the proposed mitigation measures. They consider that the mitigation measures offered by the appellant to lessen the noise impact will be greater than assumed by the inspector, since several of the noise mitigation measures would normally be expected at airports with a higher passenger throughput than is currently proposed. However, they agree with the inspector that noise impact is an important factor weighing against the grant of planning permission

- Car parking and traffic –
 - Planning permission for the car park to be tied to the IPF
 - Scheduling restrictions would ensure that the limited additional airport traffic would have no adverse effect on congestion at Tollbar End
 - The public transport measures proposed are the bare minimum to satisfy RSS policy T11
 - Overall, the package of measures are acceptable in connection with the provision of a modest passenger air terminal to encourage public transport use
- The White Paper offers no specific support for a passenger terminal of any size at Coventry Airport. It is noted that encouragement is given in the White Paper to the growth of regional airports and to making the best use of existing infrastructure
- The essence of RSS policy T11 is that new development at Coventry Airport will be acceptable provided its environmental impact is thoroughly assessed and any adverse impacts controlled. Additional reference is made to SP policy ER2 and T12. It is considered that the IPF development would meet the criteria set out in these policies and that the development is consistent with the Development Plan
- There is some reservation over some aspects of the S106 agreement. The fall back position should be accorded weight in assessing the adequacy of the mitigation package. With this in mind, the package offers an adequate degree of mitigation/compensation.

The Secretaries of State accordingly conclude that subject to the imposition of the package of mitigation, the development is in accordance with the development plan. They consider there are significant adverse effects in respect of noise and that public transport is poor. They conclude that there are significant benefits in terms of diversification of the local economy, job creation etc and the airport makes beneficial use of existing airport infrastructure and capacity in line with guidance in the White Paper.

The fact that operations are at present unrestricted is of importance in assessing the value of, and weight to be given to, the package in the section 106 agreement and the introduction of controls would be a substantial benefit to the local community.

Conclusions

The Council has addressed the issue of the construction and operation of the airport seriously and vigorously. It has directly addressed the issue of enforcement against development undertaken without the benefit of planning permission and has looked rigorously at the manner in which the policies of the

development plan should be applied to the IPF, in the context of an airport that had no constraints on its operation.

The decisions and action of the Planning Committee in both these areas have been wholly vindicated by the Secretaries of State.

As the IPF has now been granted permission subject to the package contained in the S106 and a range of conditions, it will now be necessary to develop detailed mechanisms for monitoring the roll out of the package and the discharge of conditions.