

COVENTRY AIRPORT, BAGINTON

Development of passenger terminal facilities and associated works subject of enforcement action.

PURPOSE OF REPORT

- 1. To provide Members with an opportunity to consider evidence placed before the Inquiry into the enforcement appeals on behalf of the Council;**
- 2. To consider the control and mitigation package submitted by the appellant in relation to the enforcement appeals; and**
- 3. To consider the compliance periods required by the enforcement notices**

BACKGROUND TO REPORT

- 1.1 The Planning Committee have previously considered reports during 2004 on February 17th, March 9th, March 31st, April 26/27th and June 15th in relation to the unauthorised development of a passenger terminal facilities and associated works at Coventry Airport.
- 1.2 At the meeting of the 26/27th April 2004, the Committee resolved to authorise the serving of enforcement notices in respect of the unauthorised erection of a passenger terminal and associated facilities. The Committee also resolved to issue a screening opinion (under Regulation 25 of the Environmental Impact Assessment (EIA) Regulations 1999) to the effect that the development was 'EIA development'.
- 1.3 The Notices and Screening Opinion were served on West Midlands International Airport Limited (WMIAL) on the 29th April 2004. These were appealed by WMIAL (the appellants) to the Planning Inspectorate on May 28th 2004 on the following grounds;

Ground A – that permission should be granted for what is alleged in the notices (i.e. in effect a retrospective planning application)

Ground B – that the breach of Control has not occurred as a matter of fact

Ground C – that there has not been a breach of control

Ground E – the notice was not properly served (since withdrawn)

Ground F – the steps to comply with the notice are excessive

Ground G – that the time to comply with the notice is too short

An Inquiry start date was subsequently set by the Inspectorate for the appeal to begin on the 1st February 2005.

- 1.4 Members will recall WMIAL also applied on the 2nd June 2004 to the Secretary of State for a screening direction, which in effect was an appeal against the screening opinion adopted by the Council that the development was ‘EIA development’.
- 1.5 On the 7th July 2004, the Secretary of State directed that the development was ‘unauthorised EIA development’ for the purposes of the Regulations and required that an Environmental Statement be submitted by the 7th October 2004.
- 1.6 The Council received copies of the Environmental Statement from the Inspectorate on the 18th October 2004. In accordance with guidance issued by the ODPM in May 2004, I instructed consultants (in respect of noise, air quality and aviation operations) to ensure the ES had addressed the relevant environmental issues accurately, clearly and systematically. As a consequence of difficulties obtaining aircraft movement data in order to verify monitoring undertaken by our consultants of the noise impact of the development, this exercise was only completed in early January. However, the assessment of the ES was completed in time to inform the Council’s submission of its evidence to the Inquiry in January.
- 1.7 At the time of our assessment of the ES and the preparation of evidence, the First Secretary of State issued what is known as a Rule 5 letter which set out the matters that he wished to be informed of for the purposes of his consideration of the Ground “A” appeal. These issues were as follows;

i. To what extent would granting planning permission for interim passenger handling facilities at Coventry Airport be consistent with the key national planning policies contained in PPG13: Transport, in particular with regard to:

- a) objectives to integrate sustainable transport;***
- b) to reduce the need to travel, especially by car, via accessibility in terms of multi-modal choice;***
- c) the impact of traffic on roads in the area, including surface accessibility; and***
- d) car parking provision.***

ii. To what extent would granting planning permission for the interim passenger handling facilities at Coventry Airport be consistent with Regional Planning Guidance Policy T11 on car parking and the availability of public transport to serve the airport.

iii. The environmental impact of the proposed development, including the extent to which any aircraft noise and air quality issues are consistent with national planning policy contained in PPG23: Planning and Pollution Control and PPG24: Planning and Noise.

iv. The extent to which the proposal is consistent with policies set out in PPS7: Sustainable Development in Rural Areas and PPG9: Nature Conservation.

v. If planning permission is considered appropriate, to what extent should this be subject to appropriate conditions and agreements, including an appropriate time-limit and taking account of those already proposed by parties, to mitigate any harmful effects of the proposed development

1.8 Separate from the enforcement action, Members will also recall that on September 11th 2004 they considered a planning application (W2003/473) for a passenger terminal and associated facilities at Coventry Airport. This application was for a 'permanent' passenger facility to cater for two million passengers per annum and incorporated car parking adjacent to the facility. The proposed development differed therefore from that which was the subject of enforcement action although there were clearly similarities. The application was refused by Members for the following reasons;

1, as directed by the Highways Agency, the District Planning Authority considers insufficient information has been provided by the applicant in support of the planning application to determine the vehicular impact of the proposed development on the highway network and thereby properly assess the impact of the proposal against the environmental and surface access criteria within Policy T11 of the Regional Planning Guidance for the West Midlands to 2021, Policies T.12 and ER.2 of the Warwickshire Structure Plan 1996-2011, Policy ENV3 of the Warwick District Local Plan 1995 and Policies SSP7, DP7 and DP8 of the Warwick District Local Plan 1996 – 2011 (First Deposit Version) November 2003;

2, the proposed mitigation measures would not provide sufficient mitigation of the likely adverse effects of the proposal resulting from noise generated by the proposed operation of passenger aircraft using the terminal, with particular respect to the Noise Quota Count Value and lack of air passenger transport movement limits, and would thereby conflict with the requirements of Policy T11 of Regional Planning Guidance for the West Midlands to 2021, Policy ER.2 of the Warwickshire Structure Plan 1996 – 2011, Policy ENV3 of the Warwick District Local Plan 1995 and Policy SSP7 of the Warwick District Local Plan (First Deposit Version), 1996 – 2011;

3, the emissions from both vehicles and aircraft using the proposed terminal would be likely to have adverse effects upon Air Quality, particularly in respect of Toll Bar End Junction, and would thereby conflict with Policies ER.1 and ER.2 of the Warwickshire Structure Plan 1996-2011, Policies ENV3 and ENV3A of the Warwick District Local Plan 1995 and Policies DP9 and SSP7 of the Warwick District Local Plan (First Deposit Version) 1996 – 2011;

4, the proposed operation of passenger aircraft using the terminal would be likely to have an adverse effect upon local bird populations and would thereby conflict with Policy ER.1 of the Warwickshire Structure Plan 1996 – 2011, Policies ENV3 and ENV27 of the Warwick District Local Plan 1995 and DAP4 of the Warwick District Local Plan (First Deposit Version) 1996 – 2011; and

5, the proposed operation of passenger aircraft using the terminal would be likely to have an adverse effect upon the character of both the wider rural landscape and towns and villages along their flight path and would thereby conflict with Policy ER.1 of the Warwickshire Structure Plan 1996 – 2011, Policies ENV3, ENV3A, ENV6, C1 and C8 of the Warwick District Local Plan 1995 and DP1, DAP3 and DAP10 of the Warwick District Local Plan (First Deposit Version) 1996 – 2011.

1.9 The appellant appealed this decision on the 11th October 2004 to the Inspectorate. It had been envisaged that the Inquiry into the enforcement appeals scheduled to start on the 1st February 2005 may also address the appeal against the refusal of the planning application. The Inspectorate decided on the 9th December 2004 that the Inquiry would only address the enforcement appeals. The appeal against the planning application would be heard at a second Inquiry (a date has yet to be set for this Inquiry).

Item 1 – Consideration of Evidence before the Inquiry into the Enforcement Appeal

2.1 The evidence prepared on behalf of the Council deals with each of the grounds of appeal referred to in paragraph 1.3. It is not normal practice to bring reports before Members on evidence to be placed before an appeal against a decision of the Planning Committee. However, as a consequence of the Secretary of State's Rule 5 letter, it is appropriate for Members to give consideration to the evidence submitted.

2.2 The date of receipt of the Secretary of State's Rule 5 letter (14th December 2004) and the need for our consultants to complete the required assessment of the Environmental Statement before being able to conclude on the matters raised by the Secretary of State in his letter, meant it was not possible to bring this matter before Members prior to the submission of evidence to the Inquiry on the 11th January 2005. However, the evidence prepared on behalf of the Council to the Inquiry in response to the Secretary of State's Rule 5 letter has had regard to a number of matters, including;

- the content of the relevant Planning Committee reports, Committee resolutions and the Enforcement Notices in respect of the development the subject of the enforcement notices;
- the screening opinion adopted by Members of the Planning Committee on April 26/27th 2004 in respect of the development the subject of the enforcement notices;
- the views of the Council expressed on September 11th 2004 on the planning application for a passenger terminal and associated facilities in so far as they are transferable to the development the subject of the enforcement notices; and
- the Environmental Statement submitted by the appellant.

2.3 The evidence is therefore founded on the Council's formal position established through the decisions of the Planning Committee.

- 2.4 The evidence before the Inquiry on behalf of the Council consists of a proof by the Council's first witness, Mr Stephens, which is summarised as follows and is attached in full as Appendix A.

Summary of Evidence

In respect of the validity of the enforcement notices in respect of whether they were lawfully issued, the Council does not accept this is a matter for this Inquiry and, in any event, the Council considers the notices were lawfully issued. In respect of the appeal by the appellant on ground E, the Council understands the appellant has now withdrawn this ground for appeal.

In respect of the appeal by the appellant on grounds B and C, the Council does not accept that the development is permitted by Class A of Part 18 of the General Permitted Development Order 1995 and considers that a breach of planning control has occurred in respect of the development for the following three reasons –

- 1. The development was commenced without prior consultation as required by paragraph A2 of Class A of Part 18 of the General Permitted Development Order 1995.***
- 2. The development includes the construction of a passenger terminal the floor space of which exceeds 500 square metres and is not permitted development within Class A of Part 18 of the General Permitted Development Order 1995.***
- 3. The development is "EIA development" within the meaning of the EIA Regulations and is not permitted development within Class A of Part 18 of the General Permitted Development Order 1995.***

In respect of the appeal by the appellant on ground A, the Council does not accept that planning permission should be granted for the development for the following three reasons –

- 1. The Council consider that granting planning permission for this development would not be consistent with planning policies within PPG13 or policy T11 of the Regional Planning Guidance (RPG) in relation to securing sustainable transport choices and reducing the reliance on the private car. Furthermore, the Council consider that granting planning permission would be contrary to policies T.1 and T.12 of the Warwickshire Structure Plan 1996-2011, policy ENV3 of the Warwick District Local Plan 1995 and policies SSP7, DP7 and DP8 of the Warwick District Local Plan 1996 – 2011 (First Deposit Version) November 2003 in respect of surface access, impact on local roads and car parking provision.***

- 2. The Council consider that granting planning permission for this development would not be consistent with planning policies within PPG24 in respect of noise or PPS23 in respect of air quality. Furthermore, the Council consider that granting planning permission would be contrary to policy T11 of Regional Planning Guidance for the West Midlands to 2021, policy ER.2 of the Warwickshire Structure Plan 1996 – 2011, policies ENV3 and ENV3A of the Warwick District Local Plan 1995 and policy DP9 and SSP7 of the Warwick District Local Plan (First Deposit Version), 1996 – 2011 in respect of the unacceptable environmental impacts of the development and the associated air and road movements.***

- 3. The Council consider that granting planning permission for this development would not be consistent with planning policies within PPS7, PPG15 and PPG9 in respect of its impact on the historic and natural environment of the surrounding rural area. Furthermore, the Council consider that granting planning permission would be contrary to policy ER.1 of the Warwickshire Structure Plan 1996 – 2011, and policies DP4, DAP3, DAP4, DAP10 and DAP13 of the Warwick District Local Plan (First Deposit Version) 1996 – 2011 in respect of the impact of the development and associated road and air movements on conservation areas, listed buildings, historic parks and gardens, scheduled monuments, areas of nature conservation importance and local bird populations.***

Accordingly, the Council requests the First Secretary of State to dismiss these appeals.

- 2.5 His evidence sets out the Council's case in respect of Grounds "A" to "E" and makes reference to other specialist evidence that is submitted in support of the Council's case, namely
- Noise – Evidence of Mr Cole of Cole Jarman Associates
 - Capacity of the development – Evidence of Mr Poole of Transport Research Laboratory
 - "Fall-back" position – Evidence of Mr Mackenzie-Williams of Transport Research Laboratory
 - Air quality – Evidence of Mr Richer of Faber Maunsell
 - A proof by the Council's second witness, Mr Duffett, in relation to the Grounds "F" and "G" aspects of the appeal.
- 2.6 The specialist's evidence feeds into the Council's case made in the proof of evidence of Mr Stephens. The one exception is in relation to the noise evidence, where the Inspectors allowed late submissions of evidence as a consequence of delay in obtaining aircraft movement data referred to above, and therefore the reference within Mr Stephens proof is an anticipatory one in advance of the noise evidence now submitted by Mr Cole. His evidence is attached as Appendix B and the other specialist's proofs of evidence are available to view in the Members Group Room and for public inspection in the Programme Officers office in the Town Hall.

Decision Required

- 2.7 Members are asked to confirm that the evidence in respect of Ground "A" as set out in the proofs of evidence of Mr Stephens and Mr Cole, as supported by the expert witnesses evidence, constitutes the Council's formal position in that planning permission for the development the subject of the enforcement notices should be withheld.

Item 2 – Consideration of Control and Mitigation Measures submitted by the appellant

- 3.1 As stated above, the Ground 'A' appeal effectively constitutes a retrospective application for planning permission for the development that is being enforced against. In this respect, the Inspectors will report to the First Secretary of State who will decide whether permission should be granted retrospectively and, in that event, what necessary controls or mitigation should be placed on any permission through conditions or planning obligation. Moreover, the First Secretary of State in his Rule 5 letter has requested views on to what extent this development should be subject to appropriate conditions and agreements to mitigate any harmful effects of the proposed development.

- 3.2 In its evidence to the Inquiry submitted on 11th January 2005, the appellant's planning witness included a Section 106 Planning Obligation – Draft Heads of Terms which has been offered as mitigation and control of future operations in respect of the appellant's ground A appeal. This is attached as Appendix C. Members should note that the draft Heads of Terms was not included within the ES received in October 2004 and therefore the Council's evidence submitted on the 11th January 2005 did not take it into consideration.
- 3.3 The appellant's offer is a significant material consideration to the Ground 'A' appeal and the Council is obliged to consider this in light of its decision to take enforcement action against the development.
- 3.4 It should be noted that the Inquiry started on the 1st February 2005 and the appellant began its case with expert witnesses in respect of their Ground 'A' appeal. In order that the Inquiry could proceed, the Chief Executive (in consultation with the Head of Planning and Engineering, the Director of the Environment and the Group Leaders) exercised her authority for the undertaking of urgent business between Committees to enable the Council's legal team and its witnesses to respond appropriately to the appellants evidence and, particularly, the package of mitigation and control measures.
- 3.5 Under the authority granted by the Chief Executive, the Council's witnesses were requested to comment on the package of mitigation and control measures. Their responses were incorporated into supplementary proofs of evidence submitted to the Inquiry on the 11th February 2005 to assist the Inquiry process. These are attached as Appendix D. Members will note that the views of your officers and the specialist consultants that the package of mitigation and control measures as proposed are not sufficient to mitigate or control the impact of the development. Members are requested to endorse these views and therefore maintain the Council's position as set out in Mr Stephens and Mr Cole's evidence in respect of the Ground "A" appeal.
- 3.6 The Inquiry is currently adjourned but will re-commence on the 1st March 2005 and Members should note that it is a requirement of the Inquiry procedures (as with all inquiries) that submissions are made by the main parties on the conditions/obligations that ought to be imposed on any grant of permission, in the event of the Inspector/First Secretary of State being minded to allow the Ground "A" appeal. Such submissions are made wholly without prejudice to the case that is being made at the appeal by the parties. This will therefore be undertaken as a technical exercise by your officers and consultants to meet the requirements of the Inquiry under the general authority granted to officers to pursue enforcement action.

3.7 Members should also note that the Inspectors have stated that towards the end of the Inquiry (likely in June) there will be an open session at which the package of control and mitigation measures will be discussed. This will be an opportunity for all parties to the Inquiry, including the Community Group, to put forward their views to the Inspectors as what should be included within the package of conditions/obligations should the Ground 'A' appeal be successful. In advance of that session, a report will be brought to the Planning Committee on the package of control and mitigation measures as offered by the appellant at that time in order that Members views are conveyed to the Inquiry during this session.

Decision Required

3.8 Members confirm the view that the package of control and mitigation measures as currently offered by the appellant is not sufficient to control or mitigate the impact of the development to the extent that planning permission for the development the subject of the enforcement notices should be granted.

Item 3 – Consideration of the compliance periods as stated on the enforcement notices

4.1 Members will recall at the Planning Committee of 26/27th April 2004 authorising enforcement notices requiring the cessation of use of the development within 7 days and the removal of the whole of the building (i.e. the passenger terminal building constructed) and making good the land within 28 days of the notices taking effect. The justification for the steps required to be carried out acknowledged that both notices were issued in April 2004 when the following factors were relevant:

- the Thomsonfly scheduled service had only just started and was initially going to only a limited number of European leisure destinations;
- the scope of the work which had been carried out on the south side of the airport without the benefit of planning permission had only recently been made evident;
- notwithstanding that numerous written requests had been made to WMIAL, no planning application, environmental information or certificate of lawfulness application had been provided to indicate how the environmental considerations associated with the large scale commercial air passenger operation were to be addressed;
- notwithstanding the dispute over the external size of the new terminal buildings and the associated site works the District Planning Authority's view was (and remains) that as the terminal development represented EIA development, that there was no Permitted Development 'fall-back' position applicable;

- the information known in April 2004 was that all air passenger long stay parking associated with Thomsonfly was within the airport on the north side (Airport West), adjacent to Baginton village and nowhere else.
- a shuttle bus service to transfer air passengers and staff from the north side parking (Airport West) to the new terminal on the south side was operating on a very regular basis every day throughout the day and the majority of the night periods

4.2 The development has now been in existence for nearly twelve months and during this time further investment has been made into the development and supporting services. The appellants recognise this within their evidence to the Inquiry and have suggested that an alternative compliance period of three months would be more appropriate. In light of the changed circumstances, it is considered appropriate to agree to a three month period for compliance with the requirement to cease the use of the development.

4.3 As a consequence, it will be necessary also to modify the time period for compliance with the requirement of the enforcement notices to remove the building constructed and make good the land. The appellants in their evidence refer to the requirement being wholly excessive and disproportionate in light of '*their ability to take the use of that structure for an alternative use.*' It is not considered that the requirement is excessive given the serious of breach planning control that has occurred and the need to wholly restore the status quo at the site.

Decision Required

4.4 Members confirm the modification of the time for compliance of both enforcement notices to require the cessation of use of any part of the buildings as a passenger terminal within 3 months, and the removal of the whole of the new buildings and make good the land within 4 months, of the notices taking effect.

Recommendations

1. That the Proposed Actions set out at paragraph 2.7, 3.8 and 4.4 be approved.
2. That a further report be made to a future Planning Committee.