

Investigation: ENF467/48/03

Town/Parish Council: Baginton

Case Officer: Mr. John Archer

COVENTRY AIRPORT, BAGINTON

Alterations to runway overrun area, construction of new buildings, engineering works including internal access road and importation of materials for hard standing areas and use of part of airport for the storage of new cars.

BACKGROUND TO REPORT

On February 17th, the Planning Committee approved a number of actions in relation to various works at Coventry Airport. These actions related to the following seven issues: -

1. Construction of new buildings on the south side of the airport
2. Importation of brick rubble material being crushed in the vicinity of Gate 4 on the south side of the Airport
3. Works to the runway overrun area adjacent to the threshold of runway 05 (Bubbenhall Road end)
4. Creation of an internal access road to the rear of Oak Close, Baginton
5. Storage of motor vehicles adjacent to the Royal Oak public house, Baginton
6. Works to nearby trees
7. Condition of security fencing

On March 9th, the Planning Committee approved further actions in relation to Issues 1 to 3 and further investigation of the storage of cars adjacent to Baginton village (Issue 5). On March 31st, the Planning Committee approved further actions in relation to Issues 1 and 2 and to maintain a watching brief on Issues 3 and 5. The actions included: -

- the issuing of enforcement notices in respect of the unauthorised development of a passenger terminal and associated facilities; and
- the instigating of proceedings for an injunction in the High Court to secure the cessation of the use.

This Report relates to an issue raised by WMIAL in relation to procedural matters relating to the Environmental Impact Assessment and subsequent enforcement action under Issues 1 and 2. Progress on Issue 4 will be reported to a future Committee. As set out in the previous Report, Issues 6 and 7 are not being pursued. Investigation of Issues is ongoing and further site inspections have been made regularly due to the evolving nature of some of the works.

Issues 1 & 2 – Erection of Passenger Terminal and Associated Works

Airport Permitted Development Rights

The Town and Country Planning General Permitted Development Order 1995 (Part 18 of the Order) sets out what constitutes permitted development (and therefore does not require express planning permission) in relation to development at an airport. Development (including the erection or alteration of an operational building) connected with the provision of services and facilities at an airport is permitted development subject to consultation being carried out before carrying out any development in particular cases. Furthermore, the use of buildings within an airport for purposes connected with air transport services or other flying activities at an airport is also permitted development. This includes buildings required in connection with embarking and disembarking of passengers at an airport.

These permitted development rights do not extend, however, to the construction of a passenger terminal with a floor space exceeding 500 square metres (not including “piers and satellites”). The floor space is an external measurement. Moreover, the above permitted development rights are withdrawn where the development would require an Environmental Impact Assessment (EIA) as set out in the Environmental Impact Assessment Regulations 1999. Therefore, even if a passenger terminal (involving the construction of one or more buildings) is constructed of less than 500 square metres it is not permitted development if the Council or the Secretary of State has stated that an EIA is required (the process of taking a view as to whether an EIA is required or not is referred to as a Screening Opinion).

Construction of Passenger Terminal

Members will recall my conclusions in relation to the passenger terminal constructed exceeding 500 sq metres. Members will also note the failure of WMIAL to consult with the Council prior to carrying out development on the site, a specific requirement of the permitted development regulations. In this regard, I am of the view that WMIAL cannot rely on their permitted development rights in respect of the passenger terminal constructed and this therefore constitutes a breach of planning control.

EIA Considerations

Members will recall that on 22nd March 2004 I sent WMIAL a screening opinion. This concluded that the development that had been carried out at the airport constituted EIA development. The Opinion was based, firstly, on my conclusions that the total area of works exceeded 1ha (as set out in the Report of the 31st March, 2004) and, secondly, my conclusions that the development would be likely to have a significant effect on the environment.

At the Planning Committee meeting on 31st March 2004, Members noted the issue of the 22nd March Screening Opinion (the Opinion was attached to the addendum papers). Members also authorised the taking of enforcement action in relation to the unauthorised development.

The 22nd March Screening Opinion was based on my understanding of the nature of the development as at that date. However, the Managing Director of WMIAL confirmed in a letter dated 31st March 2004 that the nature of the development had changed and that the valet parking operation had been suspended and replaced by passenger parking areas on the north side of the airport adjacent to Baginton Village.

This change in operation had significance in relation to the estimated increase in vehicle movements associated with this development. It was therefore appropriate to update the 22nd March Screening Opinion to reflect the true nature of the development as at the date on which the enforcement notices were to be served. It was also sensible to update the 22nd March Screening Opinion as it had erroneously referred to regulation 5 (instead of regulation 25) of the Environmental Impact Assessment Regulations.

I adopted a new Screening Opinion on 5th April 2004 and a copy of this Opinion is attached to this report. Members will see that my conclusion that the development at the airport is EIA development remains unaltered.

Since issuing the second Screening Opinion, WMIAL's solicitors have sought to challenge the authority by which the Opinion was issued. It is suggested that my delegated powers are not wide enough to cover the issuing of a screening opinion in connection with the service of an enforcement notice. Further, Regulation 25 of the EIA Regulations requires the Council to adopt a Screening Opinion before issuing an enforcement notice in respect of EIA Development. On the basis of these two points, it may be that WMIAL will argue that there was no delegated authority to issue the 5th April Screening Opinion and therefore the Enforcement Notices dated 13th April were not properly issued because the Council did not adopt a Screening Opinion before the enforcement notices were issued.

Enforcement Action

In light of the fact that the development is now operating, consideration of enforcement action is required. Members will recall the development plan policy context set out in the Planning Committee Report of the 17th February 2004. The adoption of a screening opinion stating that the development is likely to have a significant effect on the environment recognised the likely harm caused to the environment as a result of this development. The harm being caused to the local environment and community over a wide area, principally through increased air and road traffic, is now evident as the ThomsonFly operations have started.

Members will recall resolving to instigate proceedings for an injunction in the High Court to secure the cessation of the use. The injunction papers have been issued out of the High Court and served on the defendants. This Report does not affect the injunction proceedings.

The authority to serve further enforcement notices is therefore requested which require the cessation of use of the development within 7 days and the removal of the buildings and making good the land within 28 days of the notices taking effect.

Proposed Actions

To cover these points, and in order that the Planning Committee has all the current information before it and to ensure that there is no doubt that the 5th April Screening Opinion has been properly adopted Members are requested to:

- note that the 5th April 2004 Screening Opinion has been issued;
- resolve to issue a further Screening Opinion to the effect that the development is EIA development;
- authorise the service of further Enforcement Notices as set out above in respect of the unauthorised erection of the Passenger Terminal and the associated facilities at the Airport.

Recommendations

1. That the Proposed Actions set out in respect of Issues 1 and 2 be approved
2. That a further report be made to a future Planning Committee as necessary