

HAMBLETON DISTRICT COUNCIL

Directorate of Economy & Planning

Site: The Airfield, Bagby

Enforcement References: 18/00002/CAT3 and 18/00012/CAT3 (associated to 09/00128/COU)

Development Management references: Associated with 16/02240/FUL (in turn associated to 18/00524/FUL, Retrospective application for the temporary siting of a portable aircraft engineer's office and document storage cabin to the north east of Hangar B)

1.0 SUMMARY

1.1 This report considers whether or not to accept an amendment sought by agents for the applicant to planning application 16/02240/FUL to include two retrospective developments.

- 1) the permanent fuel facility (18/00002/CAT3)
- 2) the use of hangar B as an aircraft engineering premises (18/00012/CAT3)

1.2 Consideration is to be given to whether the application can be lawfully amended.

(Consideration has been given in two enforcement reports to whether in the light of section 70C of the Town and Country Planning Act 1990, which makes provision for a local planning authority to decline to determine a planning application relating to land on which there is a pre-existing enforcement notice, in this case relevant to Hangar B, the local planning authority should use its discretion to decline to determine a planning application. See reports relating to the two cases noted above.)

1.3 Consideration is also required, dependent upon the findings of the above, to the matter of whether the Council should use any discretion to not accept an amendment.

2.0 BACKGROUND

2.1 The airfield has a long and complex planning history that has been detailed in the appeal decision letters of Inspectors Braithwaite, Mapson, Lewis and Murray.

2.2 The Council received a planning application (16/02240/FUL) for development at Bagby Airfield in 2016

“Change of use and external alterations of the engineering building to be used as a clubhouse and control tower, replacement of storage hangar to be

used as engineering workshop and hangar, erection of a new tractor shed, erection of a new hangar, formation of a new access drive and the introduction of hard and soft landscaping. Works include the demolition of the existing clubhouse, control tower, hangars and storage buildings and partial demolition of one other hangar. Air Movements to be capped at a maximum of 8,787 per annum. Application is accompanied by an Environmental Statement.”

- 2.3 Subsequently developments without the benefit of planning permission have occurred within the application site boundary. The Council have resolved, following consideration of the matters in the light of the Local Enforcement Plan, that “course of action”, “d. Invite a regularising application” is appropriate and that the amendments proposed to be made to the application is should be considered in respect of both breaches 1) and 2) above.

3.0 CAN AN APPLICATION BE LAWFULLY AMENDED

- 3.1 There is no statutory scheme for the making of amendments to any application for planning permission. The NPPF does not address the issue of amendments. The National Planning Practice Guidance (NPPG) provides:

Can an applicant amend an application after it has been submitted?

It is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal. It is equally possible after the consultation period for the local planning authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be [reconsulted upon](#), or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.

Paragraph: 061 Reference ID: 14-061-20140306

Revision date: 06 03 2014

- 3.2 Case law sets out that a pragmatic approach is appropriate and gives further guidance noting particularly the importance of the description of development and that consultation on any amendment that is accepted to an application is properly undertaken in a way that is just to both the applicant and interested third parties.
- 3.3 Counsel has advised that the Council has scope to accept these amendments, subject to any consequential amendments to the Environmental Impact Assessment accompanying the application. It is considered lawful for the development proposed to be amended to include the details set out in the submission from the agents dated 14th March 2018.

4.0 SHOULD AN AMENDMENT BE ACCEPTED

- 4.1 Consideration has already been given in enforcement reports to the particular circumstances of the cases, these include that the “fuel facilities” and “use of hangar B” are both developments that have taken place and the amendments proposed would be seeking approval retrospectively for these developments. Additionally the “use of hangar B” is a development that is in breach of an enforcement notice that precludes the use of the hangar for commercial maintenance.
- 4.2 The details relating to hangar B are set out in the appeal decision of Inspector Mapson 2012, appeal 7 Ref APP/G2712/C/11/2167436 finding a breach of control:
- Without planning permission, change of use of the land from aircraft hangarage and/or parking to a mixed use of aircraft hangarage and/or parking and the commercial maintenance, repair and refurbishment of aircraft with ancillary office, mess room and storage (B2) (“the Unauthorised Development”).
- 4.3 The enforcement notice was upheld following appeal and makes the following requirement to:
- Stop using any part of the land for the commercial maintenance, repair and refurbishment of aircraft (B2).”
- 4.4 The applicant’s agents have supplied documents to make an amendment to the planning application and have provided an addendum to the Environmental Statement that was required for the application.
- 4.5 No amendment to the description of development has been proposed by the applicant. If the amendments are accepted as part of the revised details of the application it is considered that the description of development requires amendment to add reference to the addition of the operational development for the ‘fixed fuel facility’ and the use of Hangar B for aircraft maintenance. The cap on the maximum number of movements has also been revised down to 8440 per annum, the description should be amended to reflect this change. The other elements of the description could remain unchanged.

Proposal

Change of use and external alterations of the engineering building to be used as a clubhouse and control tower, replacement of storage hangar to be used as engineering workshop and hangar, erection of a new tractor shed, erection of a new hangar, formation of a new access drive and the introduction of hard and soft landscaping. Works include the demolition of the existing clubhouse, control tower, hangars and storage buildings and partial demolition of one other hangar. Air Movements to be capped at a maximum of 8,787 per annum. Application is accompanied by an Environmental Statement.

Amended proposal changes shown in red text and strikethrough

Change of use and external alterations of the engineering building to be used as a clubhouse and control tower, ~~replacement of storage hangar to be used as engineering workshop and hangar~~, erection of a new tractor shed, erection of a new hangar, formation of a new access drive, ~~and~~ the introduction of hard and soft landscaping ~~and amended on 15 March 2018 to include the creation of a fixed fuel facility and the use of Hangar B for aircraft maintenance~~. Works include the demolition of the existing clubhouse, control tower, hangars and storage buildings and partial demolition of one other hangar. Air Movements to be capped at a maximum of ~~8,787~~ 8440 per annum. Application is accompanied by an ~~amended~~ Environmental Statement.

- 4.6 Consultation on the amended Environmental Statement and amended planning application can be undertaken. The requirements of the EIA Regulations and the Council's Statement of Community Involvement indeed require that consultation must be undertaken in respect of the planning application and significant amendments to planning applications.
- 4.7 Accepting an amendment to the planning application allows for the consideration of the proposals as a whole and to allow the planning balance of the whole development to be considered. If a resolution of approval is reached it allows for the imposition of planning conditions and negotiation of planning obligations to be set for the whole development.
- 4.8 The acceptance of an amendment to the planning application and amendment to the ES would allow consideration to be continued to be made under the provisions of the EIA Regulations 2011. Action4Refusal have made representations to the Council that the amendment should not be accepted, that if a new application is made it would be considered under the EIA Regulations 2017 (effective 16 May 2017) that increase the requirements for addressing the matter of safety.
- 4.9 Additional commentary on the matter of "safety" can be provided to the LPA by the applicant and that evidence can be considered under the terms of the LDF policies and NPPF, albeit not as a discrete part of the ES. The primary consideration for the LPA is whether the proposed amendments can reasonably be considered within the context of the existing application. The implications of that decision, in terms of whether the 2011 or 2017 EIA Regulations would apply to the development, is not considered to carry significant weight in deciding whether or not to accept the amendments to the application.

ALTERNATIVE OPTIONS

- 4.10 Alternatively the Council could decline to accept an amendment to the application and either request that:
 - i. a fresh application is made for the whole development

- ii. that a further separate application is made for the two developments a) and b) or that two further applications are made to for planning permission for developments a) and b) as separate proposals.

- 4.11 The provision of a new fresh application for the whole of the development including the amended details would (save for the note above regarding the new EIA Regulations) not be significantly different from consultation and consideration of an amended form of the current application.
- 4.12 The provision of one or more separate applications to deal in a discrete way for the additional elements of development would be an additional burden upon the applicant, the community and the Council. Separate applications would not bring any significant benefits to any of the parties beyond those achieved from the consideration of an amended planning application. Furthermore, those applications would conflict with the un-amended detail of application 16/02240/FUL, giving rise to uncertainty, which would not be in the public interest.
- 4.13 The making of an application, or not, is a matter for the applicant. The Council cannot direct that an application must be made or that an application is amended in any particular way. If an amendment is not accepted or applications are not made the council may seek to pursue matters through the issue of an enforcement notice(s) following which rights of appeal would exist or to seek to prosecute for non-compliance with an enforcement notice subject to satisfying the requirements of the legal and public interest tests for prosecution.

5.0 RECOMMENDATION

- 5.1 That the council:
- i. accept the proposed amendments to the planning application 16/02240/FUL
 - ii. undertake consultation and notifications on the amended planning application and ES in accordance with the SCI and EIA Regulations 2011

6.0 OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014

- 6.1 The decision: as recommended at 5.1 above.
- 6.2 The reasons for the decision: as set out above.
- 6.3 Alternative options considered: as set out at 4.10 – 4.12 above.
- 6.4 Executive Members of the Council who have declared a conflict of interest in the decision: None
- 6.5 Dispensations in respect of Executive Members: None

7.0 AUTHORISATION

7.1 The above recommendation is agreed by the Head of Service.

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Date: