

Note on whether the noise monitoring stations committed in the Revised Noise Mitigation Plan [REP4-022] would be permitted development.



Section 16 of the Revised Noise Mitigation Plan makes provision for the installation of permanent fixed noise monitoring terminals (NMT) located under each of the aircraft departure flight paths at a distance of 6.5km from the start of take-off roll. Given the limited information regarding the details of the NMTs, such as size and scale, any proposed permitted development is subject to the final design of the NMTs meeting the conditions set out in the General Permitted Development Order 2015 (as amended) (GPDO).

Until the details of the NMTs are provided, it should be noted that the erection or installation of the NMTs may not constitute development as set out in section 55(1) of the Town and Country Planning Act 1990 (TCPA) and this will need to be established in the first place. Moreover, the works may be of such as small scale they may be held to be de minimis in which formal planning permission is not required.

Assuming that the erection or installations of the NMTs are development then Part 8 of the GPDO, which sets out the permitted development rights for transport related development, including development related to airports, may be applicable. Under Part 8 of the GPDO only Class H and J allows permanent development outside the perimeter of the airport depending on whether the development is being carried out by the relevant airport operator (Class H) or the air traffic services licence holder (class J). Both classes are subject to the same conditions but Class H requires the development to be within 8km of the perimeter of the airport.

Part 8, Class H – air traffic services development near an airport.

Class H allows permitted development for the carrying out on operational land outside but within 8km of the perimeter of a relevant airport by a relevant airport operator or its agent of development in connection with the provision of air traffic services.

Part 8, Class J – development by an air traffic services licence holder on operational land

The carrying out on operational land of an air traffic services licence holder by that licence holder or its agents of development in connection with the provision of air traffic services.

However, for development to be permitted under both class H or J, part O states the NMTs would need to fall under the definition of air traffic services as set out in section 98 of the Transport Act 2000 as follows:

For the purposes of this Part these are air traffic services—

- (a) providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions (whether in the air or on the ground);
- (b) providing instructions, information or advice with a view to securing safe and efficient flying;
- (c) managing the flow of air traffic with a view to ensuring the most efficient use of airspace;
- (d) providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft;
- (e) notifying organisations of aircraft needing search and rescue facilities, and assisting organisations to provide such facilities.

The definition of air traffic services does not explicitly incorporate noise monitoring although it could perhaps be linked to securing safe and efficient flying or surveillance of aircraft.

Furthermore, the permitted development can only be carried out on operational land. Section 263 of The Town and Country Planning Act 1990 (as amended) specifically defines operational land, subject to section 264, in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000, as land—

- which is used by the licence holder, or by a company associated with it, for the purpose of carrying out activities authorised by the licence, or
- in which the licence holder, or a company associated with it, holds an interest for that purpose.

Part (2C) adds If for the purposes of this Act a question arises whether land is operational land in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000 the question must be decided by the Secretary of State.

Therefore, if the NMTs fall under the definition of air traffic services and are to be installed or erected on operational land then it can be considered that the NMTs are permitted development subject to the conditions attached to Class H and J as follows:

- any building erected would be used for a purpose other than housing equipment used in connection with the provision of air traffic services;
- any building erected would exceed a height of 4 metres; or
- it would consist of the installation or erection of any radar or radio mast, antenna or other apparatus which would exceed 15 metres in height, or, where an existing mast, antenna or apparatus is replaced, the height of that mast, antenna or apparatus, if greater.

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