

**EXECUTIVE AND RESOURCES
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

Minutes of the meeting held at 7.00 pm on 5 January 2016

Present:

Councillor Simon Fawthrop (Chairman)
Stephen Wells (Vice-Chairman)
Councillors Douglas Auld, Nicholas Bennett J.P.,
Ian Dunn, Nicky Dykes, Judi Ellis, Ellie Harmer,
William Huntington-Thresher, David Livett, Russell Mellor,
Alexa Michael, Keith Onslow, Ian F. Payne and
Angela Wilkins

Also Present:

Councillor Graham Arthur, Councillor Julian Benington,
Councillor Eric Bosshard, Councillor Stephen Carr,
Councillor Robert Evans, Councillor Peter Fortune,
Councillor Hannah Gray, Councillor Will Harmer,
Councillor Charles Joel, Councillor Kate Lymer, Councillor
Peter Morgan, Councillor Chris Pierce, Councillor Charles
Rideout CVO, QPM, Councillor Richard Scoates,
Councillor Colin Smith, Councillor Tim Stevens J.P.,
Councillor Michael Tickner and Councillor Michael Turner

**239 APOLOGIES FOR ABSENCE AND NOTIFICATION OF
 SUBSTITUTE MEMBERS**

Apologies for absence were received from Councillor Tony Owen – Councillor Douglas Auld attended as his substitute. Apologies were also received from Councillor Melanie Stevens, Biggin Hill Ward Councillor.

240 DECLARATIONS OF INTEREST

There were no declarations of interest.

**241 CALL-IN: BIGGIN HILL AIRPORT LIMITED'S (BHAL)
 PROPOSAL TO VARY THE OPERATING HOURS**
Report CSD16010

At a special meeting on 25th November 2015, the Executive had considered a report on Biggin Hill Airport Limited's (BHAL) proposal to vary the operating hours of the Airport. The Executive had decided, following a recommendation from a special full Council meeting earlier the same night, to agree the proposal, subject to various concessions, conditions and obligations.

On 10th December 2015, notice of a call-in was received from Councillors Tony Owen, Douglas Auld, Eric Bosshard, Simon Fawthrop, Charles Joel, Russell Mellor, Alexa Michael, Keith Onslow, Angela Page, Chris Pierce, Richard Scoates and Tim Stevens J.P. The reasons given for the call-in were as follows –

“We believe that, at best, the decisions are premature and, at worst, misguided. Some of the reasons for the call in are:-

- 1. Non determination of all 18 recommendations (Who made the decision, in the last 48 hours before the special council meeting, that all 18 recommendations had reached an acceptable position on all counts?).*
- 2. Scrapping the 50,000 cap (supposedly the centrepiece of negotiations).*
- 3. Business, development and employment plans are not convincing.*
- 4. There is no risk assessment of potential infrastructure support costs and other matters.*
- 5. The adverse effect of the proposed additional hours has not been assessed properly.*

Insufficient weight was given to the legal opinion of Reuben Taylor QC, a barrister experienced in airport environmental issues, and Stephen Turner, a noise and airport consultant with exceptional knowledge, experience and qualifications.

- 6. The decision making process has not been transparent and is seen by local residents as heavily biased against them.*

Apparently negotiation boiled down to 3 meetings between the Executive and BHAL senior management, one of which was a demonstration, and 3 meetings (one being the same demonstration) and 2 conference calls between the LBB team, led by Marc Hume, and BHAL senior management. According to the Leader and the Chief Legal Officer there are no minutes in existence for any of these meetings.”

The two options before a PDS Committee when considering a call-in were –

- (i) to take no further action on the call-in; or
- (ii) to refer the decision back to the Executive giving reasons why it should be re-considered.

Before the debate on this item started, the Chairman responded to a question about whether he should chair the meeting as he had taken such a firm stand on the issues in recent months and was a signatory to the call-in. The Chairman stated that he would be careful to be fair to all parties and that it was his intention to continue to chair the meeting.

As the lead signatory to the call-in, Cllr Tony Owen, was absent, the Chairman invited Cllr Douglas Auld to read a statement on Cllr Owen's behalf. In the statement, Cllr Owen stated that the decision on BHAL's application was the first since he had been elected where he was totally perplexed, as he felt that the environmental protection enjoyed by tens of thousands of residents for over fifty years had been sacrificed for so little. The BHAL submission to the House of Commons Transport Select Committee had indicated an ambition for substantial expansion and they had been buying land adjacent to the airport – he suggested that it was unlikely that this was for diversification into farming. He stated that history had shown that the Airport's promises - such as the promise of a hotel – meant little and they were prepared to make challenges in the High Court to get their own way. Therefore, it was imperative that the contract following the recent Executive decision contained no loopholes and was drafted by an independent commercial contracts lawyer and should receive detailed scrutiny before it was signed - this was the reason for the call-in. Cllr Owen was puzzled that there had been no opportunity for pre-decision scrutiny at Executive and Resources PDS Committee; Member contributions had been restricted to a couple of minutes at full Council with no opportunity to challenge anything in detail. The relaxation of the operating hours had been proposed following a major PR campaign by the Airport highlighting the business and employment benefits, supposedly supported by a majority of residents. Residents had been promised by the Leader on several occasions that they would be protected by a 50,000 cap on flights and other stringent conditions. The original Airport pledge in their PR blitz was that there would be no more flights than in 2010 - subsequent events had shown that the whole proposal was based on a misrepresentation. Cllr Owen contended that there was evidence that the Council consultation had been manipulated, with thousands of responses submitted from a few IP addresses and the no votes being suppressed. At the Council meeting on 25th November Portfolio Holders had been unable to guarantee any extra revenue to compensate for the environmental sacrifices or identify the claimed benefits dependent on the extended hours. Cllr Owen suggested that the PDS Committee needed to take a close look at the following issues –

- Why had the 50,000 cap promised to residents, and the centre-piece of the negotiations, been dropped? What had changed?
- What was the evidence that all the conditions had been met? Were they all a binding part of the agreement?
- Why was there no written record of business negotiations – was this a deliberate act to avoid scrutiny?
- What evidence was there that the proposed extended hours were necessary to obtain the claimed benefits? If they were, should not such benefits be included in the final contract?
- What were the potential infrastructure support costs? Who would pay, and what were the risks for local tax payers?

- How many local residents, especially children, were likely to be woken at unsocial hours? What were the decibel readings at various points on the flightpath? What level did this drop to indoors? What level was likely to wake people? The generic 90 decibels relied on was not realistic in a low ambient noise level suburb?
- What effect did helicopter flights have?
- If the Airport had such a good case, why was it not presented in a straightforward manner and subjected to objective even-handed scrutiny and discussion? Why was a PR exercise necessary? Why was it necessary to manipulate the Council's survey? Why were Councillors bombarded by emails from the Airport mailing list? Why were Airport supporters bussed in to prevent residents from attending meetings?

Cllr Owen was so concerned that there was a hidden agenda that he had written to the Council's Chief Executive, Chief Legal Officer and Chief Negotiating Officer on 29th November asking for each of them to give a personal assurance that Council Members had been told the truth about the Airport's application. He queried why if the answer was yes it had required five days of discussion and a joint reply by a legal officer. He concluded that the uncertainty and distrust relating to the application would affect local residents for a hundred years.

The following motion was moved by Councillor Douglas Auld and seconded by Councillor Russell Mellor –

"That the Committee agrees recommendation 2 (ii) with the following reasons:-

- (1) That the contract is drafted by an independent commercial contracts lawyer nominated by the London Borough of Bromley.*
- (2) That all Biggin Hill pledges and 31,500 reasons are enshrined in the contract.*
- (3) That the contract is reviewed by the Contracts Working Group.*
- (4) That the contract is scrutinised by the Executive and Resources Policy Development and Scrutiny Committee.*
- (5) That the contract is subject to risk and environmental (noise and pollution) assessments that include helicopter flights.*
- (6) That the comments of the E&R PDS Committee in relation to the eighteen recommendations in para. 3.1, starting at page 41 of the agenda be incorporated into the legal document."*

In seconding the motion, Cllr Russell Mellor stated that the scrutiny role of Executive and Resources PDS Committee had been by-passed until the current meeting. The current decibel limit under the flightpath could not be

identified. The noise reduction plan had been accepted in principle, but he questioned the legality of the sub-leases that made the 50,000 cap on flights impractical, and called for this cap to be clearly set out in any deed of variation to the lease. The pledges made by BHAL, in particular the pledge not to increase flights above the 2010 level, had to be included into the variation of the lease. Actual movements had declined since 2008, leading to a loss of revenue. The extended hours proposed by BHAL were significant as they were attempting to attract new flights to the Airport.

The Chairman invited the Portfolio Holder for Renewal and Recreation, Cllr Peter Morgan, to respond to the request for call-in. Cllr Morgan addressed the reasons given for the call-in, and in particular the 50,000 movements cap and the various sub-leases which contained a limit of 125,000 flights; the business and employment plans, most of which were subject to commercial confidentiality, and the Airport's investment of around £3m; risk and issues around planning and air quality; the potential adverse effect of extended hours; and the supposed lack of transparency and scrutiny. He also addressed the 18 recommendations in the Consultants' report and emphasised that these had to be agreed to the Council's satisfaction. He concluded that pursuing the call-in would not be a good use of Council time.

Councillor Morgan was questioned by members of the Committee.

Cllr Judi Ellis moved that the motion be put; this was seconded by Cllr Nicky Dykes. Cllr Ellis' motion was carried, so the motion from Cllr Auld and Cllr Mellor was put to the vote and was lost.

The following motion was moved by Councillor Nicholas Bennett and seconded by Councillor Ian Payne –

“The Committee notes the reasons for the call in but declines to refer the matter to the Executive.

The Committee believes that the Council acted in a reasonable manner throughout the six month period following the decision, on a free vote, at the full Council meeting on March 25th 2015, by commissioning independent experts and, although not legally required to do so had conducted a detailed consultation exercise prior to that meeting and continued to receive and respond to representations afterwards.

The Executive debated the matter on November 25th 2015 at the conclusion of a full meeting of the Council in which members were free to vote without party whip. The meetings on 25th November were the culmination of many hours of debate and public and councillor questions at previous meetings of the full Council and the Executive and followed an hour's public questions on the subject at the meeting on November 25th. In addition the members of the Council had access to copious briefing notes from Flightpath Watch and other opponents of the proposal which covered all the points referred to in the call in.”

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This motion was debated and after a vote was carried.

RESOLVED that the motion moved by Councillor Nicholas Bennett and seconded by Councillor Ian Payne as set out above be supported.

The Meeting ended at 8.04 pm

Chairman