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DATE: 22 December 2015

To: Members of the
**EXECUTIVE AND RESOURCES
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

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

A special meeting of the Executive and Resources Policy Development and Scrutiny
Committee will be held at Bromley Civic Centre on **TUESDAY 5 JANUARY 2016 AT
7.00 PM**

MARK BOWEN
Director of Corporate Services

*Copies of the documents referred to below can be obtained from
<http://cds.bromley.gov.uk/>*

PART 1 AGENDA

Note for Members: Members are reminded that Officer contact details are shown on each report and Members are welcome to raise questions in advance of the meeting.

- 1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**
- 2 DECLARATIONS OF INTEREST**
- 3 CALL-IN: BIGGIN HILL AIRPORT LIMITED'S (BHAL) PROPOSAL TO VARY THE OPERATING HOURS (Pages 3 - 54)**

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Report No.
CSD16010

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: EXECUTIVE AND RESOURCES
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Date: 5 January 2016

Decision Type: Non-Urgent Executive Key

Title: CALL-IN: BIGGIN HILL AIRPORT LIMITED'S (BHAL)
PROPOSAL TO VARY THE OPERATING HOURS

Contact Officer: Graham Walton, Democratic Services Manager
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: All

1. Reason for report

- 1.1 At a special meeting on 25th November 2015, the Executive considered a report on Biggin Hill Airport Limited's proposal to vary the operating hours of the Airport. The Executive 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. The decision has been called-in and the Committee is asked to consider what action should be taken in response to the call-in.
-

2. **RECOMMENDATION(S)**

The Committee is recommended to agree one of the following options –

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

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment Vibrant, Thriving Town Centres
-

Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Not Applicable
 4. Total current budget for this head: £Not Applicable
 5. Source of funding: Not Applicable
-

Staff

1. Number of staff (current and additional): Not Applicable
 2. If from existing staff resources, number of staff hours: Not Applicable
-

Legal

1. Legal Requirement: The relationship between the Council and the Airport is governed by the lease dated 6th May 1994.
 2. Call-in: The decision has already been called in.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): See attached report at Appendix C
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 At a special meeting on 25th November 2015, and following a special meeting of full Council the same evening, the Executive considered the application from Biggin Hill Airport Limited (BHAL) to vary the operating hours of the airport. The Executive decided to follow a recommendation from Council to approve BHAL's proposals, subject to concessions, conditions and obligations.
- 3.2 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 -

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.

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

- (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.

In exceptional circumstances, a decision may be referred back to full Council for full Council to consider whether to refer it back to the Executive, but only where the Committee believes, on appropriate officer advice, that there is an intention by the Executive to take action that is contrary to law or the policy and budget framework of the Council.

3.4 The following appendices are attached to this report –

Appendix A: Minutes of the Executive on 25th November 2015

Appendix B: Minutes of full Council on 25th November 2015

Appendix C: Report to the Executive and full Council on 25th November 2015

In addition, Members will be aware that the report for the meetings on 25th November 2015 included extensive appendices which are available on the Council website -

[Agenda Pack - Council 25 November 2015](#)

3.5 Director of Regeneration and Transformation's comments -

The reasons for the “call-in” are noted. However, I believe that the concerns expressed were dealt with in the report to the Executive on 25th November 2015. Regarding the Legal Opinion of Reuben Taylor, QC, as far as I am aware the points he was raising with regard to the Airport's Commission were not considered to be relevant to the proposals under consideration, and were not therefore referred to in the November report. With regard to the discussions/negotiations between LBB and BHAL on the proposals and required mitigation, these necessitated numerous meetings, telephone conversations and correspondence between the interested parties and their advisers. The outcome of these discussions was comprehensively reported in the report to the Executive on the 25th November.

Non-Applicable Sections:	Policy/Finance/Legal/Personnel
Background Documents: (Access via Contact Officer)	See report at Appendix C

EXECUTIVE

Minutes of the meeting held on 25 November 2015 starting at 10.10 pm

Present:

Councillor Stephen Carr (Chairman)
Councillors Graham Arthur, Robert Evans, Peter Fortune,
Kate Lymer, Peter Morgan and Colin Smith

Also Present:

Councillor Vanessa Allen, Councillor Douglas Auld,
Councillor Julian Benington, Councillor Nicholas Bennett
J.P., Councillor Eric Bosshard, Councillor Katy Boughey,
Councillor Mary Cooke, Councillor Ian Dunn, Councillor
Judi Ellis, Councillor Simon Fawthrop, Councillor Peter
Fookes, Councillor Hannah Gray, Councillor Ellie Harmer,
Councillor Samaris Huntington-Thresher, Councillor
William Huntington-Thresher, Councillor David Livett,
Councillor Alexa Michael, Councillor Tony Owen,
Councillor Ian F. Payne, Councillor Sarah Phillips,
Councillor Neil Reddin FCCA, Councillor Catherine
Rideout, Councillor Charles Rideout CVO, QPM,
Councillor Diane Smith, Councillor Melanie Stevens,
Councillor Tim Stevens J.P., Councillor Michael Tickner,
Councillor Michael Turner, Councillor Stephen Wells and
Councillor Angela Wilkins

293 APOLOGIES FOR ABSENCE

All Members of the Executive were present and there were no apologies for absence.

294 DECLARATIONS OF INTEREST

There were no declarations of interest other than those already tabled for the Council meeting earlier the same night.

295 BIGGIN HILL AIRPORT LIMITED'S (BHAL) PROPOSAL TO VARY THE OPERATING HOURS

Report DRR15/097

At its meeting on 25th March 2015, the Executive had considered a proposal from Biggin Hill Airport Limited (BHAL) to vary the operating hours of the Airport, pursuant to the terms of the lease. Following a meeting of the full Council to consider the proposal, the Executive had resolved as follows -

“In consideration of proposals from Biggin Hill Airport Limited to vary the operating hours at Biggin Hill Airport it is RESOLVED to:

(1) agree the following recommendation from Council –

“That subject to agreement from the airport to all concessions, conditions, and obligations which can reasonably be required in consideration for agreeing a variation to the operating criteria in the third schedule to the lease, and subject to the Executive being satisfied with the concessions, conditions and obligations negotiated, the Executive should then agree in principle to the extension of hours and consult again with council before the final decision is made”; and

(2) the recommendation above is to be taken forward subject to negotiations with Biggin Hill Airport Limited on concessions, conditions and obligations, including a variation to operating hours for Saturdays, Sundays and Bank Holidays based on 8am to 10pm rather than the operating hours proposed by BHAL, namely 6.30am to 11pm on Saturdays and 8am to 11pm on Sundays.”

Extensive negotiations had been conducted by officers and the Council’s technical advisors with BHAL since then, and the modified proposals had been re-presented by BHAL. The Council had met earlier that evening to consider and make a recommendation on the latest proposals, and the Leader thanked Members for their contributions to a significant and valuable debate. The following motion (proposed by Councillor Nicholas Bennett and seconded by Councillor Julian Benington) had been passed by full Council –

“That this Council, noting its resolution at the meeting on March 25th 2015 to the Executive, and the subsequent negotiations; recommends to the Executive that BHAL’s proposals for an amendment of the operating schedule of the lease, subject to the concessions, conditions and obligations as detailed in the Council’s technical advisor’s report and any other matters which the Executive believes are necessary, be approved.”

The Executive considered the report, taking advice from senior officers and the Council’s noise consultant. It was noted that the Council did not have unfettered discretion in its negotiations with the airport, and under the terms of the Airport lease it should not unreasonably withhold its consent to variations in the lease. A key part of BHAL’s application was the introduction of a formal Noise Action Plan (NAP), which had been revised since the March meeting. This would be reviewed after 5 years. Noise monitoring and aircraft tracking systems would be introduced in conjunction with this.

The following issues, which had also been raised at the Council meeting, were considered in particular.

The Noise Consultant's Report

The Director of Regeneration and Transformation confirmed that of the 18 conditions, 8 were now satisfied (1-7 and 18); 3 required approval of statutory bodies, e.g. NATS with BHAL required to use reasonable endeavours to obtain the necessary approvals (12, 13 and 16); 4 required final details to be agreed with the Council before any change could take place (8, 14, 15 and 17); and 3 required final details to be agreed with the Council within 6 months of the commencement of the new hours, with failure to do so resulting in the hours reverting to the current situation (9, 10 and 11).

Some Members expressed concern that the expression "reasonable endeavours" was too vague, but they were advised that this was a recognised phrase which had judicial meaning.

Noise Envelope and Limit on Annual Movements

The Leader was concerned to ensure that if the figure of 50,000 aircraft movements per annum was likely to be exceeded then the Council would reserve the right to suspend the new hours pending further review. Some members of the Executive did not consider that the recommendation on aircraft movements was acceptable, and commented that it was essential that this limit was maintained.

The Council's Noise Consultant explained that the concept of the noise envelope offered a more effective way to control the aspect that concerned residents most – noise – than any limit on the number of movements. He also described proposals for new arrangements for runway 03 which would move around 30-35% of flights from the arrivals flightpath for runway 21.

Helicopters

The current lease offered no specific restrictions on helicopter movements although it was confirmed by the noise consultant that noise requirements applied to all aircraft, including helicopters. To avoid unnecessary noise disturbance from helicopters, the Leader was concerned that the Airport should be required to use the most noise efficient helicopter routing, which may include rising to a specified altitude in appropriate circumstances.

Consultation

The Leader acknowledged that the Council had always agreed that it should consult on the proposals, and the consultation exercises had been an effective way for residents and affected parties to make

comments and air their views. However, the consultation was not a referendum and the results could not give a significant steer to the decisions to be made.

Impact on the Princess Royal University Hospital (PRUH)

Since the meeting in March 2015, Kings College Hospital NHS Foundation Trust had been consulted and a review of noise levels at the PRUH had been carried out by an independent acoustic consultant. A statement from the Trust had been circulated confirming that they accepted that noise levels at the hospital did not exceed the levels deemed reasonable in the Government's Aviation Policy Framework. (Appendix A to these minutes)

The Lease

It was confirmed that save for the hours of operation the terms of the Lease would remain in place and the proposal did not remove any of the protections or restrictions that it contained particularly relating to aircraft noise in the Third Schedule.

Some members of the Executive were concerned that the proposals would lead to more disturbance for residents and that aircraft noise at 6.30am and 11pm would be intrusive, especially in the summer. They considered that the Council's duty was to protect residents from this and that the noise envelope would prove to be an insufficient tool to manage the promised 50,000 cap on movements. Other members of the Executive recognised the potential to attract business, employment and training opportunities to the borough and the potential to use the proposals to reduce noise disturbance to residents and the overall impact of the airport on the Borough.

Whilst accepting that there were genuine concerns, the Leader considered that on balance these could be addressed by the mitigation measures in the proposal which also included the ability to measure noise and monitor and track aircraft movements, sanction action against pilots/aircraft who did not adhere to flightpaths, a reduced environmental impact from less polluting aircraft, the potential economic advantages to the whole borough in terms of investment and jobs if the airport was successful in retaining and attracting business and the possible development of a training college.

To address concerns raised, the Leader suggested that the following additional/amended conditions should be imposed if the Executive was minded to grant the application:

- The level of fines to be based on a multiple of five times (rather than three times as is currently proposed) the standard landing fee applicable to the aircraft type concerned.
- No more than 50,000 movements per annum will be permitted without triggering a review of the Noise Action Plan and in these circumstances

the Council reserve the right to suspend the extended hours if it considered it appropriate to do so.

- Future reviews of the Noise Action Plan will not permit an increase in noise above the new proposed 50% of UDP noise limits.
- The Airport will be required to use the most noise efficient routing for helicopters, which would include rising to 1,000 feet or another specified height in appropriate circumstances before leaving the boundary of the airport.
- In the event of a successful challenge and if the Noise Action Plan falls for any reason, the Airport to revert to the original hours (pre-application).
- The Airport provides appropriate indemnities to the Council against any additional cost/loss incurred as a consequence of this decision.

The Leader also confirmed that the Council would require that there was no ground running before 06.30 on weekdays or before 08.00 at weekends, which would be consistent with the current position in the lease.

RESOLVED that the recommendation from full Council to approve BHAL's proposal be agreed subject to the concessions, conditions and obligations as set out in the report, and as amended above.

The Meeting ended at 11.05 pm

Chairman

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LONDON BOROUGH OF BROMLEY

MINUTES

of the proceedings of the Meeting of the
Council of the Borough
held at 7.00 pm on 25 November 2015

Present:

**The Worshipful the Mayor
Councillor Kim Botting**

**The Deputy Mayor
Councillor Alan Collins**

Councillors

Vanessa Allen	Peter Fookes	Sarah Phillips
Graham Arthur	Peter Fortune	Tom Philpott
Douglas Auld	Hannah Gray	Chris Pierce
Teresa Ball	Ellie Harmer	Neil Reddin FCCA
Kathy Bance MBE	Will Harmer	Catherine Rideout
Julian Benington	Samaris Huntington-	Charles Rideout QPM CVO
Nicholas Bennett J.P.	Thresher	Michael Rutherford
Ruth Bennett	William Huntington-	Richard Scoates
Eric Bosshard	Thresher	Colin Smith
Katy Boughey	Charles Joel	Diane Smith
Kevin Brooks	David Livett	Melanie Stevens
Lydia Buttinger	Kate Lymer	Tim Stevens J.P.
Stephen Carr	Russell Mellor	Michael Tickner
Mary Cooke	Alexa Michael	Pauline Tunnicliffe
Peter Dean	Peter Morgan	Michael Turner
Ian Dunn	Terence Nathan	Stephen Wells
Nicky Dykes	Keith Onslow	Angela Wilkins
Judi Ellis	Tony Owen	Richard Williams
Robert Evans	Angela Page	
Simon Fawthrop	Ian F. Payne	

The meeting was opened with prayers

In the Chair
The Mayor
Councillor Kim Botting

126 Apologies for absence

Apologies for absence were received from Councillors David Cartwright and David Jefferys.

127 Declarations of Interest

A schedule of declarations of interest relating to agenda item 6 had been circulated –

Cllr Teresa Ball

Free food in the VIP tent at the 2014 Air Fair (but bought own Air Fair Tickets)

Cllr Julian Benington

Council Deputy Representative on Biggin Hill Airport Consultative Committee

Trustee of Biggin Hill Memorial Museum Trust

Attended the Biggin Hill Festival Of Flight in June 2015 and made a donation to the RAF Benevolent Fund to the cost of my complimentary ticket.

Lives within, at the edge of, the noise envelope of Biggin Hill Airport

Cllr Nicholas Bennett JP

Governor of Bromley College – which has an interest in developing an avionics college on the airport.

Cllr Eric Bosshard

Council Deputy Representative on Biggin Hill Airport Consultative Committee

Cllr Mary Cooke:

Council Deputy Representative on Biggin Hill Airport Consultative Committee

Cllr Judi Ellis:

Complementary ticket to the 2014 Air Fair (but paid for it herself)

Cllr Robert Evans

Lives under the flightpath

Cllr Peter Fortune:

Complementary ticket to the 2014 Air Fair

Cllr Hannah Gray:

Running a business to business exhibition at Biggin Hill Airport on 16th September 2015 along with two fellow directors of Bank (Bromley and Kent) on Business

4 complementary tickets to Biggin Hill Air Show 2015

Cllr Charles Joel

Lives under the flightpath

Cllr Kate Lymer:

Four complementary tickets to the 2014 Air Fair

Four complementary tickets to the 2015 Festival of Flight

Cllr Peter Morgan

Council Representative on Biggin Hill Airport Consultative Committee

Cllr Melanie Stevens:

Council Representative on Biggin Hill Airport Consultative Committee
Shared with Cllr Tim Stevens JP –

Complimentary ticket to the 2014 Air Fair

Radio Two Music Night Show - 4 complimentary tickets (hosted by Rizonjet)
on 18th September 2015

2015 Air Show - 4 complimentary tickets for which we paid for 2

75th BoB Anniversary Show - 2 complimentary tickets, paid for 1

Expo Exhibition - attendance

Cllr Tim Stevens:

Shared with Cllr Melanie Stevens–

Complimentary ticket to the 2014 Air Fair

Radio Two Music Night Show - 4 complimentary tickets (hosted by Rizonjet)
on 18th September 2015

2015 Air Show - 4 complimentary tickets for which we paid for 2

75th BoB Anniversary Show - 2 complimentary tickets, paid for 1

Expo Exhibition - attendance

Cllr Pauline Tunncliffe:

2 Complimentary tickets to the 2014 Air Fair

Cllr Richard Scoates:

Council Representative on Biggin Hill Airport Consultative Committee

128 Questions from members of the public where notice has been given.

Twenty seven questions had been received from members of the public (although one had been withdrawn). It was agreed that the time for questions would be extended to one hour. The questions and replies given are set out in **Appendix A** to these minutes.

129 Oral questions from Members of the Council where notice has been given.

Two questions had been received for oral reply from a Member. The questions and replies are set out in **Appendix B** to these minutes.

130 Written questions from Members of the Council where notice has been given

Six questions had been received for written oral reply from Members. The questions and replies are set out in **Appendix C** to these minutes.

131 Biggin Hill Airport Limited's (BHAL) Proposal to Vary the Operating Hours
Report DRR15/097

The special Council meeting had been called to consider a proposal from Biggin Hill Airport Limited (BHAL) to vary the operating hours of the Airport pursuant to the terms of their lease. BHAL's original proposals had been considered by the Council on 25th March 2015, following which the Executive had resolved as following -

"In consideration of proposals from Biggin Hill Airport Limited to vary the operating hours at Biggin Hill Airport it is RESOLVED to:

(1) agree the following recommendation from Council –

"That subject to agreement from the airport to all concessions, conditions, and obligations which can reasonably be required in consideration for agreeing a variation to the operating criteria in the third schedule to the lease, and subject to the Executive being satisfied with the concessions, conditions and obligations negotiated, the Executive should then agree in principle to the extension of hours and consult again with council before the final decision is made"; and

(2) the recommendation above is to be taken forward subject to negotiations with Biggin Hill Airport Limited on concessions, conditions and obligations, including a variation to operating hours for Saturdays, Sundays and Bank Holidays based on 8am to 10pm rather than the operating hours proposed by BHAL, namely 6.30am to 11pm on Saturdays and 8am to 11pm on Sundays."

Extensive negotiations had been conducted by officers and the Council's technical advisors with BHAL since then, and the modified proposals had been re-presented by BHAL.

The Mayor explained to the meeting that for legal reasons the final decision on this matter would need to be taken by the Executive, which would meet, after a short adjournment, on the rising of the Council meeting.

The Mayor asked the Leader of the Council, Councillor Stephen Carr, to speak before the debate was opened up. He stated that executive members would not be speaking or voting on this issue, and that Conservative members had a free vote. He also thanked the public, Members, officers and the Council's consultants for their contributions.

The following motion was proposed by Councillor Nicholas Bennett and seconded by Councillor Julian Benington –

"That this Council, noting its resolution at the meeting on March 25th 2015 to the Executive, and the subsequent negotiations; recommends to the Executive that BHAL's proposals for an amendment of the operating schedule of the lease, subject to the concessions, conditions and obligations as

detailed in the Council's technical advisor's report and any other matters which the Executive believes are necessary, be approved.”

Members discussed the proposals and the motion. The following points were made in support of the BHAL proposals -

- The Airport was making a reasonable request and the Council had to consider the request and make a reasonable response.
- The airport was committed to best practice in agreeing to implement a Noise Action Plan, which would protect residents.
- There were currently no restrictions on the numbers of movements in the shoulder hours, and the proposals would give greater control.
- The proposals would reduce noise and introduce a system of sanctions and penalties.
- Flights over Chislehurst, Petts Wood and Farnborough would be reduced by around a third.
- The removal of the Heathrow Beacon by 2019 would remove many of the large jets stacked for Heathrow from the area.
- The Council had a duty to all of its residents and approving the proposals would be in the overall interests of the whole borough, bringing economic development and training opportunities.
- The proposed hours were a very modest extension which could bring up to 2,300 jobs, many of them highly skilled, and a specialist college.
- Of the 18 recommendations, 8 had been met and 4 needed submission of further details, but if they were not all complied with the Airport would have to revert to the current hours.

The following points were made against the BHAL proposals –

- The airport was bought by the Council in 1984 to protect the residents of the borough, and this should still be the Council's priority as a reasonable landlord.
- The results from the consultations carried out by the Airport and the Council were highly questionable and should be disregarded. Residents under the flightpath were overwhelmingly against the proposals.
- The Airport had not accepted any reduction in hours since the meetings in March.
- Changing the height of aircraft arriving and departing might help residents in Sidcup, but would have little impact closer to the airport in Farnborough and Crofton.
- Residents were having to suffer from bigger, noisier aircraft and this was an opportunity to reduce disturbance at anti-social hours.
- Although it was claimed that aircraft were now quieter than in the past, all aircraft were still noisy, especially at night and in the early hours of the morning.
- The issue of noise nuisance from helicopters needed to be addressed in the Noise Action Plan.

- The negative impact of the proposals on thousands of residents did not outweigh the limited economic benefits to the borough – these jobs and the new college were not guaranteed.
- It was unlikely that many of the jobs supposed to be created would actually go to local people, and unemployment was very low in the borough.
- The complicated noise envelope arrangements and noise averages masked the impact of more aircraft movements early in the morning.
- Only a few of the 18 recommendations had actually been fully met in the eight months since the meeting in March – residents could not rely on the Airport’s “best endeavours” to fulfil the remaining conditions.
- The Airport had received planning permission for a hotel several years ago, but it had not been built. Promises about jobs and a college could not be relied on.

The motion was put to the vote and CARRIED.

Voting on the motion was as follows –

For the motion: Vanessa Allen, Teresa Ball, Katherine Bance, Julian Benington, Nicholas Bennett JP, Ruth Bennett, Kevin Brooks, Mary Cooke, Peter Dean, Ian Dunn, Nicky Dykes, Judi Ellis, Peter Fookes, Hannah Gray, Ellie Harmer, Will Harmer, William Huntington-Thresher, David Livett, Terence Nathan, Tom Philpott, Neil Reddin, Catherine Rideout, Charles Rideout CVO QPM, Michael Rutherford, Melanie Stevens, Michael Turner, Stephen Wells, Angela Wilkins and Richard Williams (29)

Against the Motion:

Councillors Douglas Auld, Eric Bosshard, Katy Boughey, Lydia Buttinger, Simon Fawthrop, Samaris Huntington-Thresher, Charles Joel, Russell Mellor, Alexa Michael, Keith Onslow, Tony Owen, Angela Page, Ian Payne, Sarah Phillips, Chris Pierce, Richard Scoates, Diane Smith, Tim Stevens JP and Michael Tickner (19)

Abstaining from voting:

Councillors Graham Arthur, Kim Botting, Stephen Carr, Alan Collins, Robert Evans, Peter Fortune, Kate Lymer, Peter Morgan, Colin Smith and Pauline Tunnicliffe (10)

The Meeting ended at 9.54 pm

Mayor

COUNCIL MEETING

25th NOVEMBER 2015

QUESTIONS FROM MEMBERS OF THE PUBLIC FOR ORAL REPLY

- (1) From Iain Bull to the Portfolio Holder for Renewal and Recreation**
(As Mr Bull was not present a written reply was sent to him.)

Increase in pollution. I live under the flightpath and directly on Scadbury Nature Reserve. The increase in aircraft will increase the amount of pollution in the air.

Have you studied the impact of this on me and my family's health and that of the wildlife? If so could I please see this study?

Reply:

It should be noted that this application is not about any increase in overall aircraft movements. The Noise Action Plan (NAP) will positively impact on potential pollution levels experienced in the Borough by encouraging more fuel-efficient and less noisy aircraft movements, which will be of benefit to our residents and the environment.

The lease remains silent in respect of air quality and does not form part of the current application.

- (2) From Iain Bull to the Portfolio Holder for Renewal and Recreation**
(As Mr Bull was not present a written reply was sent to him.)

House prices. It has been incredibly difficult to get to where I am now with a house and a mortgage. My current house is a stepping stone to the next but an increase in flight traffic is going to put people off the area.

Have you studied the impact on housing prices under the flightpath? How are you going to compensate those affected when their houses have been devalued?

Reply:

There is a statutory compensation scheme in respect of public works (including airports) set out in Part I of the Land Compensation Act 1973. It applies to the operation of new works at an airport rather than any intensification of use. However it is for residents to seek their own advice as to whether they are entitled to make a claim. I would also suggest that if we have fewer, less noisy aircraft movements, it could be argued that house prices in the vicinity of the airport could actually go up, not down. Property prices in the vicinity of some other airports are actually more expensive.

(3) From Iain Bull to the Portfolio Holder for Renewal and Recreation
(As Mr Bull was not present a written reply was sent to him.)

The current levels of noise are tolerable and don't affect my young children. An increase in flight times is going to have aircraft over my house after their bedtime. Sleep in young children is essential for growth, healing and learning. A disturbance in this pattern is widely documented and can be read online.

Where is the study into the noise levels and its impact on the young?

Reply:

The sleep of young children is important and in all probability most young children are already in bed and asleep with the present operating hours, and therefore not affected currently. The Council has not received complaints about children not being able to sleep. The NAP essentially follows government advice which does deal with the whole issue of sleep, which is clearly important, not just for children but the entire population. It is for this reason that more stringent controls are proposed in what is officially designated as "night-time hours", which is specifically 06.30-07.00.

Controls are proposed that limit the level of flyover noise that can be generated during this period to values lower than those that can be generated under the present arrangements. In addition, properties expected to be regularly exposed (once per night on average) to night time flyover levels high enough to be linked to potential sleep disturbance will be eligible for a grant to enhance the sound insulation of bedrooms.

(4) From Will Curtis, Biggin Hill, to the Leader of the Council

Does the Leader agree that the proposed new Noise Action Plan introduces new noise controls for the airport and modernises the environmental management of the airport?

Supplementary Question:

Does the Leader agree that the proposed Noise Monitoring and Track Keeping System will make it much easier for the Council to oversee the airport and hold the airport to account?

Reply:

Yes, I do believe the proposed noise monitoring and track keeping will make it easier for the Council and residents to oversee the Airport's activities and to distinguish Biggin Hill and other aircraft movements including Heathrow. If approval is granted then we would impose a condition to ensure that there is full cost recovery to the Council for any additional responsibilities involved in ensuring compliance with the lease.

(5) From Colin Hitchins, Petts Wood, to the Leader of the Council

Does the Leader believe that the proposed new flight path for runway 03 at Biggin Hill Airport will significantly reduce air traffic over Petts Wood and Farnborough?

Reply:

I am aware that the proposals are expected to reduce the number of aircraft that fly over Petts Wood and Farnborough when landing on Runway 03 at the airport.

Supplementary Question:

Does the Leader agree that this is likely to reduce, not increase, disturbance in Petts Wood, Farnborough and surrounding areas?

Reply:

Disturbance is, of course, a subjective measure, however for those aircraft expected to approach Runway 03 the reduction in number of movements is expected to lead to a commensurate reduction in the overall noise measures.

(6) From Robert Walters to the Leader of the Council

Is the Leader able to confirm that following a noise survey at Darrick Wood, London Borough of Bromley Environment Officer Dr. Hedley Pugh recently reported that aircraft using Biggin Hill had little overall impact on noise levels in the Darrick Wood environs?

Reply:

Yes, I am well aware of the contents of the report by Dr. Hedley Pugh, which is attached to the paperwork as Appendix 7.

Supplementary Question:

Is the Leader further aware that Dr. Pugh concluded that aircraft using other airports had the potential to cause more impact than aircraft using Biggin Hill Airport?

Reply:

Yes indeed - I refer to my previous response which explains this.

(7) From Katy Woolcott to the Leader of the Council

Does the Leader agree that the recommendations of the Council's Noise consultant set out all necessary mitigation and noise controls as may reasonably be required in order to protect the local environment and amenities for the foreseeable future and does he have any points on which he has a different opinion?

Reply:

The Council retained a leading national independent expert, because it is very important that when we consider this issue we are privy to technical expert opinion which should inform our deliberations. We are guided by that advice, but not bound by it, as was demonstrated by the fact that the Executive determined that more restrictive operating hours than was recommended by our consultant should be adopted. The Airport have since accepted these more restrictive hours. I should confirm that it is proposed there is no ground running permitted before 06.30. Whether this is enough is a matter to be considered in the debate at this Council meeting and in the Executive at its meeting which will follow it.

(8) From Bethany Russell, Biggin Hill to the Leader of the Council

Is the Leader aware that there are currently a number of overseas aircraft service companies that are considering investing at Biggin Hill Airport if the revised operating hours are approved?

Reply:

I do not have first-hand knowledge, however I have been informed this is the case by the Airport management.

Supplementary Question:

Is the Leader aware that in late 2013 Bromley Council officers and the GLA were involved with Biggin Hill Airport in seeking to attract a major multinational aircraft service company to Biggin Hill which ultimately failed due to the existing overly restrictive airport operating hours?

Reply:

I am aware that there was such a proposal but I am unable to comment on the reasons as to why they withdrew.

(9) From David Calver to the Portfolio Holder for Renewal and Recreation

It is understood that Biggin Hill Airport is used by many Middle Eastern personnel to give them easier access to London.

Can the Council be sure that increased operating hours will not affect the long term security of this country?

Reply:

It is my belief that a change in operating hours will not impact on national security.

Supplementary Question:

Does the Council really know who is likely to be coming in to Biggin Hill Airport if the operating hours are extended and long-haul flights are allowed?

Reply:

There is no way of knowing exactly who is going to come in to an airport at any time in the future, but I can think of no good reason why a change in hours should affect the nature, number and individuality of the people who are coming.

(10) From Jason Polis to the Portfolio Holder for Renewal and Recreation

BHAL's proposal and the council report describe different "community funds". Neither demonstrate adequate funding for sufficient compensation, nor how & who would be paid.

If I lose work from lack of sleep or relocate my family home due to noise, who will decide how much compensation is paid and how ?

Reply:

The community fund to which reference is made in both reports is the fund into which any fines levied from the Noise or Track Violation schemes would be paid. BHAL identify that the Safety And Noise Abatement Review Board will be responsible for determining the level of fines, where they are considered appropriate. As is the case at other UK airports where such a system is in place, the fund into which the fines are placed is expected to be administered by an independent group that represents the interests of all stakeholder and affected parties. The make-up of that group will need to be agreed with London Borough of Bromley. It will be for the group to determine how the funds are used for the benefit of those affected and the wider community.

We would hope disturbance is less than it is at present and as a consequence payment to the fund would be modest. As is the case elsewhere we would look to the fund being administered by an independent body with the aim of funding being allocated to those with the greatest need.

Supplementary question:

How much compensation do you think is reasonable for each of how many households expected to be affected by late night noise nuisance?

Reply:

This is not within my gift and my opinion counts for nothing. There are national regulations laid down which are applied at many airports, for example Heathrow and Gatwick, and that is what will determine any level of compensation.

(11) From Jason Polis to the Portfolio Holder for Renewal and Recreation

As the loss of enjoyment due to the nuisance from aircraft noise in the proposed additional operating hours is reasonably foreseeable, would the council as landlord become directly liable in tort by effectively adopting this new continuing nuisance ?

Reply:

No it won't. First of all, I do not consider the position set out is "reasonably foreseeable". In any event, aircraft noise is not a statutory nuisance (s76(1) Civil Aviation Act 1982). Airports are similarly immune to claims in nuisance (s77 Civil Aviation Act 1982).

Supplementary Question:

The report mentions Wednesday reasonableness – matters which ought/ought not be considered. Is it reasonable for the Council to make a decision without evidence on the number of homes affected, or the extent to which they are affected?

Reply:

The Council has been extremely thorough. It is impossible and impractical to sit in every home with a noise measuring machine. I think the Council has been extremely thorough, we have employed the very best consultants and have the best information on which to make our decision.

(12) From Jason Polis to the Portfolio Holder for Renewal and Recreation

If as per item 3.7 in the report from March (DRR15/097), the council could not insist upon changes to the lease, how could extended operating hours be revoked by this or future councils?

Reply:

By making the consent conditional on compliance with specific conditions by specific dates, failing which the consent will lapse.

Supplementary Question:

Before making a final decision, which may or may not be irrevocable, provided there are certain conditions that are adhered to, would it be worthwhile to determine the extent and severity of the actual adverse impacts on residents and the Council, perhaps by a trial period or by at least ensuring that there are clauses to revoke extended hours?

Reply:

There will be clauses which will result in a revocation of any agreement. There will be a debate at which these issues will be raised.

(13) From Tony Trinick FREng, Vice Chairman, Flightpath Watch to the Portfolio Holder for Renewal and Recreation

When the Council bought the airport in 1974, it did so, among other reasons, to protect the Borough's environment and residents, and their amenities.

Why has the Council, in this report, reneged on this principle?

Reply:

No decision has yet been made, but whatever the outcome of tonight's debate the Council will in my opinion not have reneged on this principle. This decision, if taken, will result in lower noise levels. This is also the view of the Noise Consultant. Protecting the Borough's environment, its residents and their amenities does not equate to doing nothing. The proposed NAP gives the Borough greater powers to manage noise generated by the Airport and contains more stringent controls than those contained in the existing Lease. Through policing of the NAP, in addition to retaining the other control mechanisms already set out in the Lease, the Borough is protecting the environment and amenity of its residents.

Supplementary Question:

If the proposals go through, to give an example the operating hours at Farnborough Airport stand at 99 per week, City Airport at 93 per week, Northolt at 72 but Biggin Hill airport at 110.5 per week. Will the Leader confirm that the proposals will not protect residents under the flightpath and therefore should be refused.

Reply:

Gross hours are not the only issue – noise made by individual aircraft and the noise made in total at various times of the day. The Noise Action Plan produces a better result for residents than if we did not do anything.

(14) From Tony Trinick FREng, Vice Chairman, Flightpath Watch to the Portfolio Holder for Renewal and Recreation

After 6 months of negotiations, very little has been achieved, apart from a noise monitoring system which is irrelevant to the issue of operating hours at unsocial times.

How can Councillors ratify now the 25th March 'approval in principle' decision?

Reply:

During this time residents and others criticised the initial proposal because it was woolly and not precise, and what we have before us tonight is now essentially 18 recommendations that are legally enforceable, precise and specific, and this is what we are here, at least in part, to debate tonight.

Supplementary Question:

I cannot agree with that achievement of success. For example, the current lease is still better because it has take off, sideline and landing noise limits whereas the new NAP has averages. Another issue is the noise monitoring system - it is not relevant in that if we do not have any planes in these unsocial hours we do not have any noise to monitor. Where is the limitation on movements, the 50,000 movements? Can residents be assured that the proposals will be refused tonight?

Reply:

I cannot forecast the outcome. In my opinion, the protections offered by the Noise Action Plan are better and more effective than those in the Lease. The Lease is still there – this is a better control put on top of it.

(15) From Andrea Stevens to the Portfolio Holder for Renewal and Recreation

A press release from the airport stated that Petts Wood residents would see 30% fewer overflights due to the new GPS route to R03.

Do Councillors realise that this leaves an increase of approximately 50% over the current number of jet movements, thereby worsening the present situation for Petts Wood?

[To illustrate (from NAP pages 8 and 13):

19,750 Business Aviation movements in 2020 minus 11,500 BA current = 8250 less 2,475 (i.e. 30%) = 5775 or a 50% increase on current levels]

Reply:

I reiterate that no decision has yet been made. However, we will take into account the fact that the NAP limits the noise likely to be experienced by residents in all parts of Bromley including Petts Wood by virtue of the noise envelopes. The current Lease has no such limits and permits up to 125,000 movements per year by aircraft that could be much noisier than are forecast for 2020. The NAP therefore provides a greater degree of protection in this regard than currently exists. If the Executive is

mind to grant, we would seek to ensure through conditions that noise disturbance for residents does not increase when the NAP is reviewed.

Supplementary question:

Cole Jarman has confirmed that contrary to what is believed, noise is projected to increase by 38% by 2020 and will quadruple in the early hours. Is the proposal unjustifiable?

Reply:

My understanding of the advice is that in the 6.30 – 7am slot the noise will be considerably reduced and potentially enormously reduced because at the moment there is no control over the type of aircraft taking off. Taking off aircraft are noisier than landing aircraft and the noise envelope will effectively mean that an average of only two aircraft can take off in those hours.

(16) From Andrea Stevens to the Portfolio Holder for Renewal and Recreation

Council consultant Chris Smith has shown that BHAL is not disadvantaged against other comparable airports by conditions imposed by the Lease, operating hours being specifically mentioned - so what justification is there for Bromley residents to be treated worse than residents in the local authorities of such comparable airports?

Reply:

I would beg to differ. Mr. Chris Smith says in his report that "... the extension would improve the attractiveness of the Airport for business aviation movements and the many support companies upon which the segment relies." I conclude that the extension would indeed improve the attractiveness of the Airport to new investment opportunities. Whilst of course not guaranteed, if there were an increase in Business Rates or in profitability of the Airport that would give a financial benefit to the Borough.

Supplementary question:

An application at London City airport was refused the day after the Bromley decision 25th March – this was after the Mayor of London gave a direction to LB Newham to refuse on grounds of noise and the possible creation of a noise ghetto. Do you accept that if this proposal is allowed the affected residents of Bromley will see the same thing, particularly in the unsocial hours of the day.

Reply:

No, I disagree.

(17) From Bruce Anderson to the Portfolio Holder for Renewal and Recreation

(Question withdrawn)

(18) From Bruce Anderson to the Portfolio Holder for Renewal and Recreation

Will you please inform me how much of the loan of £1,583,469 to BHAL has been repaid to date, this being the cost of resurfacing the runway and lighting improvements? When will the outstanding balance be paid?

Reply:

This was not a loan - the amount of £1,583,469 relates to capital expenditure incurred by the Council on runway resurfacing and lighting improvements at the beginning of the Lease to make the airport let-able. There is provision in the lease for the receipt of 50% of any profit made by BHAL from certain developments on the premises, up to a maximum amount of £1.5m. There is no requirement for that money to be given to the Council by any specific date.

(19) From David Clapham to the Portfolio Holder for Renewal and Recreation

The Executive confirmed on 29th June that helicopter flights would be included in negotiations. Residents remain concerned that these are noisy and fly directly over homes at relatively low levels.

Has this aspect of the negotiations been completed and what was the outcome for helicopters?

Reply:

This issue is addressed in Section 19 of the Cole Jarman Briefing Note 15/0009/M09-4 dated 16 November 2015, which is Appendix 2A of the Report. As the NAP effectively requires the Airport to always look for quieter operations, I am recommending to them that, as part of this, helicopters will rise to 1,000 ft and then follow the prescribed and identified tracks.

Supplementary question:

Is that a recommendation or a fact?

Reply:

A recommendation – this will be enlarged on in the debate this evening.

(20) From David Clapham to the Portfolio Holder for Renewal and Recreation

Experts have demonstrated that the concept of the lesser evil was scaremongering, that the consultation was unsound, that noise will be doubling and that LBB cannot obtain additional payments from BHAL.

In this context, how would it be reasonable to sacrifice residents' quality of life and productivity?

Reply:

The concept of lesser evil has never been used by the Leader or the Executive. Our

intention is to achieve betterment for the residents of the Borough. In my opinion that quality of life would be better if the NAP is implemented than if it is not, so the premise of the question is unsound.

This could be used in addition to the above – or omitted. (Our independent noise expert has reviewed all concerns and reports submitted by Flightpath Watch, and has given us detailed commentary on the points raised. What we are confident about is that the NAP, if adopted, gives us controls over the future noise levels of the Airport that are consistent with Government policy and ensure that we can contain noise levels in the future to a much lesser value than they could be if only the provisions of the lease were in force).

Supplementary question:

Today, Councillors will collectively make a decision which may mark the beginning of a fundamental change for this borough. Before doing so I ask all of you, are you satisfied in your hearts that the link of the additional hours to the business case is conclusively made?

Reply:

Answering for myself, the case for the NAP producing a better quality of life has been made. The case for the betterment of the Airport's business is always on-going. It is always impossible to forecast what is going to happen in the financial world. It has a better chance of doing well if it has the extension of hours.

(21) From Bob Trott to the Portfolio Holder for Renewal and Recreation

Recommendation 17 (final paragraph) of Report DRR 15/097 infers the Council is aware of the need for prescriptive documentation for departures to avoid the inhabited areas around Orpington, as well as support any Noise Monitoring and Tracking (NMTK) System. The current situation whereby the majority of aircraft do not follow the BHAL website depicted route, needs attention.

Why are definitive proposals not being made available now, when BHAL and the Council have been aware of this problem for many months and work on the problem has taken place?

Reply:

The requirement for BHAL to acquire, install and operate a comprehensive Noise Monitoring and Track Keeping System with proper reporting and data feeds to Bromley Council is expected to transform the ability of the Borough to monitor and police movements to and from Biggin Hill. We cannot undertake this comprehensive monitoring without the full co-operation of the Airport.

Supplementary question:

That has not answered the question. I was asking for the prescriptive routing.

Reply:

We are giving attention by installing this Noise Monitoring and Track Keeping System and policing properly, ensuring aircraft do not depart from the advised track that they

are meant to be keeping. Routing is the responsibility of the Civil Aviation Authority, it is nothing to do with the Council.

(22) From Bob Trott to the Portfolio Holder for Renewal and Recreation

The Commentary in Recommendation 17 of the Technical Consultants Report does not specifically require BHAL to submit to LBB details of the actual tracks upon which the NMTK system will be based.

Will the Council include these as a mandatory element that has to be included as part of the final agreement and that they adhere to the principle of avoiding, as far as possible, residential areas ?

Reply:

The Council and any resident can find out from the UK AIP for Biggin Hill, what the flight tracks are supposed to be and where the noise preferential routes are clearly defined. In addition, the NAP contains a provision for ensuring that all Standard Operating Procedures are continuously monitored, and where new procedures are expected to produce a significant benefit to residents without compromising safety in any way, they will be modified accordingly.

Supplementary question:

The documentation from the AIP is not prescriptive enough to get aircraft to avoid the built up areas around Orpington.

Reply:

The actual tracking is not the Council's business - it is the responsibility of the Civil Aviation Authority and UK AIP.

(23) From Bob Trott to the Portfolio Holder for Renewal and Recreation

The NAP(Final) has been developed following discussions between BHAL and LBB. However, para 4.37 (h) states that fine revenues will be used differently from Recommendation 17 of the Technical Consultants Report.

What is the policy of the Council?

Reply:

The Airport's Safety and Noise Abatement Review Board will be responsible for determining the level of fines, where they are considered appropriate. As is the case at other UK airports where such a system is in place, the fund into which the fines are placed is expected to be administered by an independent group that represents the interests of all stakeholders and affected parties. The make-up of that group will need to be agreed with Council. It will be for the group to determine how the funds are used for the benefit of those affected and the wider community.

(24) From Hugh Bunce to the Portfolio Holder for Renewal and Recreation

With 90% of adult residents in twelve Bromley wards opposed to extended airport operating hours, will your Council please acknowledge that preserved sleep for

Bromley residents is a basic human right, and needs to be protected by retaining the operating hours in the current operating lease?

Reply:

The current operating hours include 6.30 to 7am as the shoulder hours where aircraft can take off if they are based at Biggin Hill. There is not much limit on what they might be and how many can take off in that time. As I would have stated in my answer to Question 3 from Mr Iain Bull, the assessment of the proposals included an analysis of the potential effects on sleep disturbance of flights during the night time period. The NAP proposal has more stringent controls for the 06.30-07.00 night-time period, precisely to protect sleep in line with the Government Guidelines in this area.

Supplementary question:

I feel thoroughly disenfranchised by this whole process which has included a consultation linking in one question three apparent positives with one overwhelming negative. Now one of those positives has been withdrawn. Will you now do a new comprehensive and controlled Council consultation amongst the 130,000 people living along the flightpath across Chislehurst, Petts Wood, Crofton, Farnborough and Biggin Hill to find out what people really want.

Please do a new consultation of residents within the flightpath.

Reply:

Consultation is only as good as the questions asked, and I think we have had far too many consultations producing answers that cannot be relied upon. There is nothing to gain from repeating the exercise.

(25) From Hugh Bunce to the Portfolio Holder for Renewal and Recreation

How can your Council believe that any of the proposals in your report can mitigate, or trade-off, for the loss of residents' sleep, and why have you chosen to negotiate with the airport and not with residents who are the biggest group of stakeholders involved with this issue?

Reply:

I refer to my previous answer. As to negotiation, the Council is legally obliged to respond to a request made by its tenant under the terms of the lease. I wish to emphasise that the Council has sought to ensure that we are as open and transparent as possible with residents, and take on board the many comments that they make both on this occasion and on others.

Supplementary question:

You have produced a 490 page report which in no way answers the threat to sleep for 130,000 of your residents, you have had two Council debates, spent hours discussing supposed mitigating schemes which still avoid the issue of hours. Why are you constantly ignoring the issue of noise and the effect of antisocial movements during people's sleep?

Reply:

We are not ignoring those things. As I have said before this evening, we are extremely keen to ensure that the situation is better not worse if these proposals go through. The shoulder hours already permit an unlimited number of take-offs between 6.30 and 7am. The new proposals will severely restrict that, as well as the noise of any individual aircraft taking off. I think we are addressing that, we are trying to make life better and we are trying to make sure that you do not get woken up between 6.30 and 7am.

(26) From Jo Johnson MP to the Portfolio Holder for Renewal and Recreation

Mr Johnson stated that he was also speaking on behalf of Bob Neill MP.

What assurances will the Council provide that the interests of residents living beneath the flightpath, whose quality of life will be most affected as a result of Biggin Hill Airport Limited's proposals to extend their operating hours, will be properly prioritised within the decision making process?

Reply:

Protecting the quality of life for residents under the flightpath, as I have said before this evening, remains a real focus regardless of any decision here tonight. It is for this reason though that the noise contours around the Airport in the proposals are so important, as noise elsewhere under the flight path will necessarily be less than this. For the first time the noise contours will be enforceable and are more restrictive than anything contained in the existing lease. With regard to the early morning contour, this effectively means that some aircraft currently allowed to fly in this period would be precluded. In addition, residents will be able to monitor movements themselves on-line stopping confusion with Heathrow-bound flights thereby bringing about greater transparency and accountability.

The Council does not have a free hand in deciding the application as the lease contains a provision which does not allow the Council unreasonably to refuse an application to vary the operating criteria. As the present report and the earlier one to the March 25th meeting set out, whilst there is more flexibility for the council to take into account matters which impact on third parties, any decision must be evidence-based and regard needs be given to the expert opinion the Council has sought. The work undertaken to date seeks to do all that is reasonable to mitigate the impact of the changes (if agreed) with the opportunity for real and enforceable noise monitoring systems and controls to be put in place for the first time.

Supplementary question:

I echo the concerns of some others that there appears to be some evidence of manipulation of the consultation results . Pending clarity on this matter- can the Council assure me that it will not be influenced by the consultation in making any decision this evening?

Reply:

The consultation that the Council instituted looks a bit strange in some of the ways that the responses came in. However, counting only the replies that came in not online, there is still a majority in favour. Consultations are only as good as the questions asked, and it is very likely that Members will probably not pay too much regard to all the consultations and make up their own minds on the basis of the evidence provided.

(27) From Richard Gibbons to the Portfolio Holder for Renewal and Recreation

If Councillors for Chelsfield & Pratts Bottom and neighbouring Wards are persuaded to favour extending operating hours at Biggin Hill Airport as proposed, what tangible benefits that are relevant to Orpington will candidates be able to offer the electorate in 2016, 2018 and 2020?

Reply:

I have been through some of what I consider to be the advantages, but I will repeat them for this question.

As I made clear in my answer to Jo Johnson MP, protecting the quality of life for residents under the flightpath remains a real focus regardless of any decision here tonight. It is for this reason, though, that the noise contours around the Airport in the proposals are so important as noise elsewhere, under the flight path, will necessarily be less than this. For the first time, the noise contours will be enforceable and are more restricted too, with the early morning contour effectively meaning that even some aircraft currently allowed to fly in this period would be precluded. Residents will be able to monitor movements themselves online stopping confusion with Heathrow bound flights thereby bringing about greater transparency and accountability.

Supplementary question:

Would the Portfolio Holder agree that as it currently takes as long to travel to Biggin Hill Airport from Orpington as to central London, a commitment to sustainable travel and rapid local transport to compliment potential airport expansion would benefit the health and wellbeing of the wider community, ease congestion and improve the environment.

Reply:

It is one of my dearest wishes to improve transport facilities throughout the borough, however, the money is very hardly likely to be available. Therefore I think this is a very nice hypothetical question and I cannot give you a positive answer.

COUNCIL MEETING

25th NOVEMBER 2015

QUESTIONS FOR ORAL REPLY FROM MEMBERS OF THE COUNCIL

1. From Cllr Nicholas Bennett to the Leader of the Council

How much has been saved in money and percentage terms in the revenue budget between 2010-11 and 2015-16 and what further savings will be required in money and percentage terms by 2020?

Reply:

The budget gap arises from a combination of the impact of inflation, additional cost and demographic pressures including new burdens as well as the impact of significant losses in government grant. Some of the savings identified were required to offset such cost increases within the overall net budget.

Savings of £74m have been included in the revenue budgets from 2010/11 to 2015/16 which equates to 38% of the baseline net budget. The extent of further savings will be dependent on the outcome of the finance settlement which will not be known until mid-December but, based on latest projections; further savings of £56m will be required by 2019/20 representing 28% of the net budget.

2. From Councillor Nicholas Bennett to the Portfolio Holder for Resources

What is the contribution to the Revenue Budget of;

(i) Investment income (and the average rate of return and percentage of total council income) from property assets purchased for this purpose;

Reply:

The 2015/16 budget for income from properties purchased to date from the Investment Fund is £3.02m and is expected to increase to over £4m by 2016/17 to reflect the full utilisation of the Investment Fund. The current yield provides an average return of 6.0%.

In addition, the 2015/16 budget includes income of £4.37m relating to other investment properties (including the Glades, Walnuts, Biggin Hill Airport and other sundry properties).

The total 2015/16 budget represents 1.35% of the Council's total income.

(ii) Income from money on deposit with financial institutions (and the average rate of return and the percentage of total council income).

Reply:

The 2015/16 budget includes income from investments of £2.7m representing 0.5% of the Council's total income. Latest projections are that £3.3m will be received equating to 0.61% of total income.

The average rate of return achieved on new “core” investments is 1.3% compared to 1% assumed in the budget. The average return on all “core” investments (existing and new) is 1.4% in the year to September 2015.

Further details are provided in the Treasury Management report to Executive and Resources PDS Committee on 26th November 2015.

Therefore, income from property investment this year will be £7.39m, and income from money on deposit is £3.3m, giving a total for investments held of £10.69m rising to £11.5m next year. This is equivalent to a Council Tax increase of 8.9%.

(iii) Income from all Council services in:

- 2000-1
- 2005-6
- 2010-11
- 2015-16 (estimate)

and the percentage of total income that this represents in each year?

Reply:

Budgeted income from Council services (ie. excluding council tax, business rates, government grants, housing benefit subsidy and interest earnings) was, for the financial years shown below -

Financial Year	Budgeted Income from Council Services	£m
2000/01		40.5
2005/06		51.0
2010/11		58.5
2015/16		61.9

Supplementary question:

We have a public meeting in a few hours’ time on the budget and it is very important that these figures are in the public arena. Does he agree with me that the different return we are getting from the purchase of properties of over 6% compared with 1% on loans to financial institutions shows the wise-ness of a policy of investing in property? Has he seen the rather strange figures alleging that we have £400m in reserves? Would he like to comment on the veracity of that please?

Reply:

The statement that we have that level of reserves is totally wrong. Our earmarked reserves are £111m, and we have a general reserve of £20m. What has happened in terms of the figure that was quoted is that it is our treasury management moneys. There is a lot of money that we carry as working capital, grant received up-front from central government, and so on. Those moneys are effectively lent to us and we can invest them and get a return on them. In terms of the current rate of return of 6% on the properties purchased, it is certainly comparable with anything you can get on treasury management at 1% or maybe 1.3% which is the standard. By adopting a widespread of portfolio investment which includes diversified growth funds we can spread the risk and at the same time get a far better rate of return.

COUNCIL MEETING25th NOVEMBER 2015**QUESTIONS FOR WRITTEN REPLY FROM MEMBERS OF THE COUNCIL****1. From Cllr Tony Owen to the Portfolio Holder for Resources**

If Biggin Hill Airport is granted the additional operating hours requested, what additional income is the London Borough of Bromley GUARANTEED, in each of the first 5 years, that can be attributed DIRECTLY to the changed hours?

Reply:

It is premature to speculate. The lease sets out the income the Council can receive.

2. From Cllr Tony Owen to the Portfolio Holder for Renewal & Recreation

Of the many benefits claimed by Biggin Hill Airport to result if extended operating hours are granted, please list those that are GUARANTEED. In each case what evidence is there that extended hours are ABSOLUTELY NECESSARY for the benefits to occur?

Reply:

Subject to Members' decision this evening, what is guaranteed is the NAP and everything that flows from it. It is clear that if the Council decides not to agree to the extended hours, the NAP will not come into force.

3. From Cllr Tony Owen to the Portfolio Holder for Resources

If Biggin Hill airport were sold for housing what capital receipt might the council expect? What would be the likely ongoing annual council tax receipt?

Reply:

The Airport is subject to a 125 year lease (commencing 7th May 1994) to BHAL. The only permitted use under the lease is "... an airport providing facilities for business aviation flight training and private flying and other airport and aviation-related uses ... etc".

4. From Cllr Nicholas Bennett to the Portfolio Holder for Renewal and Recreation

How many people were employed at Biggin Hill Airport and associated sites in;

2000
2005
2010

and at the latest available date?

Reply:

Approximate employment figures as follows:

2000	980
2005	1,115
2010	1,000
2015	980

5. From Cllr Nicholas Bennett to the Portfolio Holder for Renewal and Recreation

What estimates for future employment at Biggin Hill airport and associated sites have been made by BHAL and the Council if the lease is amended as requested by BHAL?

Reply:

Employment forecasts are as per the report by leading planning consultant Nathaniel Lichfield and Partners and as reviewed by the Council's consultant URS/DTZ. NLP forecast 2,300 new jobs likely to be created over 15 years with £230 million a year of GVA into the local economy by 2030. URS/DTZ conclude that this lies within a reasonable band of assumptions.

6. From Cllr Nicholas Bennett to the Portfolio Holder for Resources

What was the income from National Non Domestic Rate for Biggin Hill Airport and associated sites in:

2000-1
2005-6
2010-11

and for the current financial year?

Reply:

Please find detailed below NNDR liability for properties in the post code vicinity of Biggin Hill airport

Financial Year	Charges
2000/2001	£410,900.98
2005/2006	£800,907.42
2010/2011	£965,058.38
2015/2016	£1,536,822.20

Decision Maker: EXECUTIVE

Date: 25th November 2015

Decision Type: Non-Urgent Executive Key

Title: **BIGGIN HILL AIRPORT LIMITED'S (BHAL) PROPOSAL TO VARY THE OPERATING HOURS**

Contact Officer: Marc Hume, Director of Regeneration and Transformation
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Chief Officer: Marc Hume, Director of Regeneration & Transformation
Mark Bowen, Director of Corporate Services

Ward: All Wards

1. Reason for report

This report seeks Members' views on Biggin Hill Airport Limited's proposal to vary the operating hours at Biggin Hill Airport.

2. **RECOMMENDATION(S)**

Members are asked to consider Biggin Hill Airport Limited's (BHAL) proposal to vary the operating hours at Biggin Hill Airport and the Council's technical advisers' reports and recommendations and to decide whether to:

- 2.1 **Agree BHAL's proposal subject to the concessions, conditions and obligations as detailed in the Council's technical adviser's report and recommendations.**
- 2.2 **Agree BHAL's proposal with additional concessions, conditions and obligations;**
- 2.3 **Refuse BHAL's proposals.**

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment Vibrant, Thriving Town Centres:
-

Financial

1. Cost of proposal: N/A
 2. Ongoing costs £50k per annum – to be funded by BHAL
 3. Budget head/performance centre: Biggin Hill Airport
 4. Total current budget for this head: Cr £198k
 5. Source of funding: Existing revenue budget 2015/16
-

Staff

1. Number of staff (current and additional): Additional 1FTE
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None:
Further Details The relationship between the Council and the airport is regulated by the lease dated 6th May 1994.
 2. Call-in: Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Residents borough-wide could benefit from new employment opportunities created at the Airport linked to any changes in hours. However, residents who live close to the Airport/flight paths are likely to experience increased noise.
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Councillors' comments have been sought. All Members will have an opportunity to comment on the proposals at full Council.

3. COMMENTARY

Background

3.1 At its meeting on 25th March 2015 the Executive considered BHAL’s proposal to vary the operating hours of the Airport pursuant to the terms of the lease. BHAL’s original proposals together with the Executive Report dated 25th March and the minutes of that meeting and the Special Council Meeting which preceded it are attached as Appendix 1.

3.2 At its meeting on 25th March, the Executive resolved to:

(1) agree the following recommendations from Council:

“That subject to agreement from the Airport to all concessions, conditions and obligations which can reasonably be required in consideration for agreeing a variation to the operating criteria in the third schedule to the lease, and subject to the Executive being satisfied with the concessions, conditions and obligations negotiated, the Executive should then agree in principle to the extension of hours and consult again with the Council before the decision is made”; and

(2) “The recommendation above is to be taken forward subject to negotiations with BHAL on concessions, conditions and obligations, including a variation to operating hours for Saturdays, Sundays and Bank Holidays, based on 8.00 am to 10.00 pm, rather than the operating hours proposed by BHAL, namely 6.30 am to 11.00 pm on Saturdays and 8.00 am to 11.00 pm on Sundays.”

3.3 BHAL Proposed Operating Hours

BHAL included a table in their letter of 5th November setting out their proposed operating hours and restrictions. This table has been adapted following recommendations set by Executive meeting of 25th March and having regard to the way the Noise Action Plans have been adopted subsequently.

Days	Current Operating Hours		Proposed Operating Hours	
	Hours	Restrictions	Hours	Restrictions
Monday to Friday	6.30 am to 9.00 pm Shoulder hours 6.30-7.30 am and 9.00-10.00 pm	No landings permitted until 7.30am. However based aircraft may take off between 6.30-7.30am. No take offs permitted after 9pm.However based aircraft can land between 9-10pm	6.30 am to 11.00 pm	1. Cap of 8 movements between 6.30 am and 7.00 am subject to a noise envelope that is equivalent to an annualised average of not more than two movements by an aircraft not noisier than a LEAR 35 Business Jet. 2. Cap of 8 movements between 10.00 pm and 11.00 pm subject to a noise envelope that is equivalent to an annualised average of not more than three movements by an aircraft not noisier than a LEAR 35 Business Jet.
Saturdays/Sundays/Bank Holidays	9.00 am to 8.00 pm plus a maximum of 3 flight movements between 8.15 am and 9.00 am for a scheduled service to France		8.00 am to 10.00 pm	No flying training before 9.00 am or after 5.00 pm

** It should be noted that for 'based aircraft' in the morning and evening shoulder periods there are currently unlimited take-off movements allowed under the lease in the morning period and unlimited landings in the evening period. Under the current proposals the airport would be permitted to have up to eight additional movements a day in the shoulder periods. However, the proposal contains noise restrictions that are equivalent to a limit of these movements to a daily average of two in the morning period from 06h30 to 07h00 and three in the evening shoulder period from 22h00 to 23h00.*

Negotiations /Technical Discussions with BHAL

- 3.4 Following the Executive meeting on 25th March, an officer team comprising the Director of Regeneration and Transformation, the Director of Corporate Services, the Environmental Health Officer, Scientific Services, and the Communications Executive, met and corresponded with BHAL with a view to establishing whether the requirements and conditions as detailed in the Executive Report and minutes dated 25th March could be met.
- 3.5 The officer team was assisted by two technical advisers, Vernon Cole (Cole Jarman Limited), Acoustics Consultant, and Dr. Chris Smith (Chris Smith Aviation Consultancy Limited), Consultant on airport charges.
- 3.6 As was set out in the previous reports, the Council does not have unfettered discretion in what it seeks through negotiations with the Airport. Relationships between the Council and BHAL are regulated by the lease. Clause 2.11 of the Lease permits the Airport to seek variations to the Operating Criteria in the Third Schedule of the Lease. If the Council unreasonably withholds its consent BHAL can seek resolution by referring the matter to an independent Arbitrator. The Arbitrator in reaching a decision is required to consider whether the Council as landlord has taken into account matters which it ought not to have taken into account, or conversely has refused to take into account or neglected to take into account matters which it ought to have taken into account. In addition the Arbitrator must consider on review whether the decision of the Landlord to refuse its approval is so unreasonable that no reasonable local authority would have refused its approval. More detail on the principles involved is set out in the report considered by Special Council and the Executive on 25th March and Members are referred to that report. However in summary, the test is not dissimilar to what the courts would need to consider on a public law challenge in determining whether or not a decision is "Wednesbury reasonable". However even with the broader discretion conferred by the phrase "reasonable local authority" as opposed to the more usual reference to a "reasonable landlord", the Council would not be able to refuse consent by reference to any policy or objective, whether held for political reasons or otherwise, which had nothing to do with its role as landlord and had nothing to do with the Lease. However the terminology employed in the proviso to clause 2.11 is an acknowledgment that so long as the Council is the landlord under the Lease, recognition must be given to its character as a public body and the obligations and duties of the Council in that capacity. It is accepted by BHAL that any approval if given is not required to be unconditional. However any conditions imposed would need to be reasonable. Counsel has also advised that if the Council form the objective view, based upon expert evidence, that there would be negative effects by reason of the change of operating hours which could be eradicated or mitigated by noise reduction measures, then it would be reasonable to impose such conditions.
- 3.7 The Council would not be acting reasonably if it required changes to the terms of the Lease. Under Clause 2.11 of the Lease, the Council has already contractually bound itself to permit variations or amendments to the Operating Criteria within the existing parameters of the Lease. To insist upon changes to the Lease would be to require a new lease, to which the Council has no entitlement. The Council could not therefore insist upon changes elsewhere to the Lease as a condition of granting consent. This includes recalculating the basis on which rent is paid as is set out in the "Financial Matters" section of the report.
- 3.8 The Council's officers and advisers have given due regard to these principles and have sought conditions which are consistent with this "test" in Clause 2.11 and that best industry standards are followed.

Noise Action Plan

3.9 A key aspect of BHAL`s application is the introduction of a formal Noise Action Plan (NAP) for the Airport. There is no legal requirement for an airport with BHAL`s characteristics and usage to implement a NAP. However it has been put forward in the application and has been refined during the negotiation. The NAP has been given detailed scrutiny by the Council`s Acoustic Consultant and his views and recommendations are set out in full in his report which is attached as Appendix 2. This report follows his first report to the Executive in March 2015 (included in Appendix 1) which also considered the key issues relating to the version of the NAP which was current at that time. Since the March meeting detailed technical discussions have been held with BHAL and they have subsequently submitted a revised NAP (Appendix 3). The consultant`s report sets out his assessment of BHAL`s final variation of the NAP and determines whether the noise control provisions and technical recommendations made in their first report can be considered satisfied.

3.10 Paragraph 2.2.2 of the acoustic consultant`s report sets out their “method of assessment” which is considered consistent with the approach required under Clause 2.11.

“So far as reasonableness is concerned in relation to technical noise issues, we are bound to consider the potential noise impact by reference to Government policy, accepted publicised guidelines and noise control and mitigation practices that are adopted at other UK airports. Where BHAL`s proposals are consistent with best practice used at other such airports, this is indicative of a positive approach being proposed. It is questionable whether it would be reasonable to seek a greater degree of commitment.”

3.11 The consultant`s report includes a schedule which tabulates the 18 summary recommendations made in their initial report to Executive in March 2015. The status of each recommendation resulting from technical discussions and the latest version of the NAP is identified. This shows that all 18 recommendations have been classified as agreed “acceptable” subject to detailed implementation matters being agreed by the Council. For ease of reference these are set out in summary below and greater detail is provided in the consultant`s briefing note as Appendix 2A.

Recommendation	Status	Commentary
1 <i>Current (2014) Noise Levels</i> BHAL to quantify and agree with the Council existing noise levels, as they are a baseline measures of conditions experienced by people in the community around the Airport, and to produce and agree with the Council a set of noise contours that reflect these conditions.	Acceptable	2014 contours quantified and presented.

Recommendation	Status	Commentary
<p>2 <i>Future (2030) Noise Levels</i></p> <p>BHAL with the Council the limits on noise within which the Airport must operate and reasonable mitigation measures it shall be bound to implement</p>	Acceptable	<p>50% UDP contour established as the absolute not to be exceeded daytime contour through the foreseeable operating period at the airport.</p> <p>NAP now incorporates 5 year forecasts of movements and associated noise contours with commitment to use reasonable endeavours not to exceed them.</p>
<p>3 <i>Operating Hours</i></p> <p>Agree to a slightly modified variation to operating hours as follows:</p> <p>Weekday (as requested): 06h30 to 23h00,</p> <p>Saturday (2½ hours shorter than requested): 08h00 to 22h00.</p> <p>Sundays and Bank Holidays (1 hour shorter than requested): 08h00 to 22h00</p>	Acceptable	Executive Committee's modified hours accepted.
<p>4 <i>Noise Envelopes</i></p> <p>Operations at the Airport are controlled such that the 57dB L_{Aeq} contours submitted by Bickerdike Allen Partners (BAP) for the daytime, early morning and evening periods are treated as <i>noise envelopes</i> and the total areas they encompass shall not be exceeded at any time between grant of the Lease variation and the end of 2030</p>	Acceptable	Current version of the NAP contains forecasts and contours that now reflect the 5 year time horizon considered appropriate by BHAL. The noise envelopes that BHAL propose to use reasonable endeavours not to exceed are included.
<p>5 <i>Early morning departures and arrivals</i></p> <p>No aircraft departing the Airport between the hours of 06h30 and 07h00 shall generate higher noise levels or give rise to a larger 90dBA SEL footprint than those submitted by BAP for the relevant departure and arrival modes.</p>	Acceptable	<p>Commitment to absolute ICAO Chapter 4 noise limit and use of reasonable endeavours to ensure Lear 35 90dBA SEL departure and arrival are not exceeded.</p> <p>The consultants note in their report that BHAL is proposing that the take-off noise level limit is approximately 6dB lower at all over-fly locations for all early morning departures and arrivals than that permitted by the limits set out in the lease.</p>

Recommendation	Status	Commentary
<p>6 <i>Early morning departures and arrivals</i></p> <p>A grant for sound insulation enhancement to bedroom windows shall be made to those residences at which a noise level in excess of 90 dB SEL occurs at an annual average frequency of once or greater during the early morning period of (06h30 to 07h00). The grant is to be wholly funded by BHAL .</p>	Acceptable (subject to)	<p>This element now included, meaning the proposed mitigation measures are technically in line with best industry practice and people most affected by noise from operations during the night time period get the benefit of amelioration.</p> <p>Further analysis of early morning movements is required in order to define whether funding proposals are appropriate.</p>
<p>7 <i>Limit on annual movements</i></p> <p>A cap of 50,000 annual movements to be applied.</p>	Acceptable	<p>This cap is not considered essential for controlling noise. The noise envelopes and departure/arrival footprints are the primary tools used for this purpose.</p>
<p>8 <i>Control on types of aircraft permitted to use the Airport</i></p> <p>Noise limits to be agreed with LBB that reflect the maximum noise levels likely to be generated by the aircraft mix forecast to operate in 2030. All aircraft will be monitored against these limits and appropriate sanctions employed in the event of the limits being exceeded.</p>	Acceptable (subject to)	<p>Installation and implementation of the Noise Monitoring and Track Keeping system, with precise limits and sanctions procedures defined is subject to final agreement on the details.</p> <p>BHAL propose to update forecast and actual noise contours every year.</p>
<p>9 <i>Controls on flying training</i></p> <p>BHAL to agree with LBB details of the scheme that will incentivise operators of light and training aircraft to install noise suppression equipment or to replace noisy aircraft. They will also submit details of the new permitted operating hours for flying training flights on circuits.</p>	Acceptable (subject to)	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>
<p>10 <i>Working with existing operators to reduce noise levels</i></p> <p>BHAL to agree with LBB the proposed code of practice to minimise noise impacts from all operations and to formalise no fly zones.</p>	Acceptable (subject to)	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>

Recommendation	Status	Commentary
<p>11 <i>Introduction of GPS based runway guidance system</i></p> <p>BHAL shall continue to update LBB on the progress of, and timescale for, implementation of the scheme to improve the accuracy with which aircraft can be tracked and routed into and out of the Airport. Any amendment to the current hours is to be conditional on BHAL using best endeavours to achieve a successful implementation of the GPS system and agreeing a timetable for its implementation with the Council.</p>	<p>Acceptable (subject to)</p>	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>
<p>12 <i>Changing the height of arriving and departing aircraft</i></p> <p>BHAL shall continue to update LBB on the progress of, and timescale for, implementation of the scheme to adopt operating procedures that raise the height of all aircraft arriving at and departing from the Airport. Any amendment to the current hours is to be conditional on BHAL using best endeavours to achieve a successful implementation of the altered operating heights and agreeing a timetable for their implementation with the Council.</p>	<p>Acceptable (subject to)</p>	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>
<p>13 <i>Changing the “03 instrument approach”</i></p> <p>BHAL to update LBB on the progress of, and timescale for, implementation of the scheme that confines aircraft to much more tightly defined routes at specified heights when arriving from the north and routing onto a runway 03 landing. Any amendment to the current hours to be conditional on BHAL using best endeavours to achieve a successful implementation of the altered approach procedures and agreeing a timetable for that implementation with the Council.</p>	<p>Acceptable (subject to)</p>	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>

Recommendation	Status	Commentary
<p>14 <i>Controls during the new shoulder periods</i></p> <p>BHAL to agree with LBB details of the measures that will be implemented to ensure that the numbers and type of aircraft operating during the early morning period between 06h30 and 07h00 and also during the late evening period between 21h00 and 23h00 on weekdays and 20h00 and 22h00 on weekends and bank holidays give rise to noise levels that do not breach the relevant limits.</p>	<p>Acceptable (subject to)</p>	<p>Current version of the NAP contains forecasts and contours for the 5 year time horizon considered appropriate by BHAL. The noise contours that BHAL propose to use reasonable endeavours not to exceed are known.</p> <p>Details of measures to ensure they shall not be exceeded (subject to reasonable endeavours test) require to be submitted.</p>
<p>15 <i>Sanctions for non-compliance with noise abatement measures</i></p> <p>BHAL to agree with LBB detailed procedures for the setting of appropriate noise limits for all aircraft, how they are to be monitored and reported and the form of sanction that will apply. The agreed procedures will need to define how sanctions imposed on noisy operators can benefit the local community, who suffer the effects of the excess noise.</p>	<p>Acceptable (subject to)</p>	<p>BHAL must submit to LBB details of the scheme for final agreement.</p>
<p>16 <i>Relocating the VOR beacon</i></p> <p>BHAL to report to LBB on the progress of, and timescale for, implementation of the scheme to relocate the Biggin Hill VOR.</p>	<p>Acceptable</p>	
<p>17 <i>Noise monitoring and track keeping system</i></p> <p>BHAL to take responsibility for installing and running a suitable noise monitoring system. The system shall be suitable for accurately recording the individual flyover noise levels associated to each aircraft operation and for deriving the long term average aircraft noise levels for the purpose of validating the noise contours.</p> <p>The following procedure to be adopted:</p> <p>Maximum departure noise levels that would apply to operations during the daytime and during the early morning shoulder period.</p>	<p>Acceptable (subject to)</p>	<p>BHAL must submit to LBB details of the scheme for final agreement. details to include confirmation of the timing of the installation, program for commissioning, date on which the system shall be 'live' and confirmation that the procurement, installation and running costs will be met by BHAL.</p>

Recommendation	Status	Commentary
<ul style="list-style-type: none"> • These would typically be defined as Noise Violation Limits and built into a transparent system of monitoring and control. • Fines are paid into a 'community fund' for the benefit of those suffering the consequences of excessive noise. 		
<p>The system to be installed and operated in a manner that meets LBB's noise monitoring requirements and gives LBB officers direct access to real time data and simple summary reports on a defined or an ad hoc basis.</p>		
<p>BHAL are to operate a suitable noise inquiry and complaints handling system.</p>		
<p>BHAL will also be required to develop proposals for incorporating track keeping into the monitoring system. The system shall provide access to a real time display of aircraft movements with information on aircraft location and height being clearly displayed. The access shall be via the LBHA website or an extension to the LBB website.</p>		
<p>18 <i>Airport charges</i></p> <p>Any variation of hours are conditional on LBB seeking an increase in the amount payable by BHAL to reflect the increased level of business activity at the Airport including an element to reflect the increased level of noise generated during unsocial hours and to take into account any public purse expenditure required as a result of the increased business at the Airport. The 'unsocial hours' additional charges shall be consistent with those that are levied at other, comparable airports in order not to place an unreasonable burden on BHAL.</p>	<p>Acceptable</p>	<p>Addressed in CSACL Report <i>Biggin Hill Airport: Extended Operating Hours, London Borough of Bromley</i>, September 2015.</p>

- 3.12 In conclusion, the revised NAP is considered to be an improvement on the initial NAP as reported to the Executive in March and now contains firm proposals rather than mere aspirations.
- 3.13 At paragraph 7 of the report the consultant concludes: “We have identified a number of areas where further detailed work and agreement is required in order to fully implement the provisions of the Noise Action Plan. Subject to these being satisfactorily concluded, we consider that the Noise Action Plan submitted by London Biggin Hill Airport will satisfy the technical noise issues associated with the sought lease variation”.
- 3.14 **Members are asked to note that all recommendations, except those that require the agreement of other statutory bodies, eg NATS, will need to be implemented to the satisfaction of LBB. This will be covered by the inclusion of conditions and timescales appropriate to the various recommendations in the documentation which will be entered into to vary the lease. Failure to do so, or failure to implement or comply with any other aspect of the Noise Action Plan in accordance with those requirements will result in the agreement for additional hours being revoked.**

Timing for Implementation of the Recommendations

- 3.15 At paragraph 3.2 the consultant recommends the “Timing for implementation of the recommendations” as set out in the schedule to ensure that all practical matters are properly considered and agreed. Included in the consultant’s recommendations is that a condition of any agreement to vary the lease includes that BHAL take responsibility for installing and running a suitable noise monitoring system. Full details are set out in Appendix 2 and 2A and in summary the consultant’s advice is as follows:

The following guidance is offered in respect of the timescales appropriate for the recommendations set out in Schedule 15/0009/Sch 1/Rev 1. These need to be discussed and agreed with BHAL to ensure that all practical matters are properly considered.

Prior to Acceptance of the NAP

Recommendations 1 to 6 all require action and agreement between BHAL and LBB prior to final acceptance and sign-off of the NAP. In principle this is achieved. The position is clear on what the Airport needs to do. If they do not undertake the relevant work, any amendment to the lease (if granted) will not take effect.

Recommendations 7 and 18 are also closed satisfactorily.

Prior to Implementation of Change of Hours Operations

Recommendations 8, 14, 15 and 17 shall be implemented before BHAL is permitted to operate in the altered hours. Therefore for the avoidance of doubt, if these conditions are not fully implemented there will be no change to hours, even if a conditional approval is given. So far as recommendation 17 is concerned, the procurement and installation of the NMTK system shall be completed prior to any change of hours operations, and therefore a period of 3 months shall be agreed for the commissioning, calibration and development of suitable monitoring procedures.

Within 6 Months of Change of Hours

Recommendations 9, 10 and 11 shall be completed within 6 months of the commencement of modified hours operations, to the satisfaction of LBB.

As Soon as Reasonably Practical

Recommendations 12, 13 and 16 all require agreement between BHAL and statutory bodies such as NATS. BHAL shall therefore use all reasonable endeavours to secure the necessary agreements as soon as reasonably practical. Failure to implement these recommendations would not adversely impact on the reduction in noise proposed by the Airport as it is obliged to achieve the noise reductions through the other recommendations described above.

Financial Matters

- 3.16 Included in the Cole Jarman Schedule of Recommendations, Item 18 refers to “airport charges” and the need to ensure that (if supported) the Council seeks appropriate contributions from BHAL as part of wider mitigation measures.
- 3.17 Due to the very specialised nature of aircraft charging, Dr. Chris Smith (CSaCL) consultant, was appointed to advise the Council on the commercial context within which the Airport operates, and the potential funding mitigation the Council could expect to receive as a consequence of the application. Dr. Chris Smith’s report is attached as Appendix 4.
- 3.18 Counsel advice has also been sought and it is clear that it would be considered unreasonable for the Council to seek an improved financial offer (more than currently allowed under the lease) either as a condition of consent or by delaying its decision in order to negotiate. This would be inconsistent with the principles set out in paragraph 3.6 above. In addition, under Section 19 of the Landlord and Tenant Act 1925 a landlord cannot demand a sum of money purely as a condition of granting consent to the change of use in relation to the operating hours. Section 19(3) of the Landlord and Tenant Act 1927 prohibits the demand of a fine as a condition of consent to a change of use. The section provides that:-
“In all leases whether made before or after the date the commencement of this Act containing a covenant ... against the alteration of the user of the demised premises, without licence or consent, such covenant ... shall, if the alteration does not involve any structural alteration of the premises, be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of an increase of rent or otherwise, shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to him and of any legal or other expenses incurred in connection with such license or consent”.
- 3.19 However, seeking a financial sum and/or mitigating actions in order to avert any adverse impact on the community, and to prevent the public purse incurring costs as a consequence of the changes (if any) permitted, would be considered reasonable i.e as long as a financial sum is a *“reasonable sum in respect of any damage to or diminution in the value or the premises or any neighbouring premises belonging to him and of any legal or other expenses incurred in connection with such licence or consent” it will be lawful*”. Therefore, for example, whilst the Council cannot enrich itself through granting consent it is unlikely that an Arbitrator would consider it unreasonable for the Council to seek to prevent a commercial detriment through granting consent.
- 3.20 In accordance with the above principles BHAL have agreed to pay all the costs associated with the implementation of the NAP (as detailed in the CSaCL report, Table 4.4) estimated to cost £3.1m over the next 15 years

Cost Estimates of Implementing Noise Action Plan (Table 4.4)

Item	Cost	Comments
NMTKS purchase and installation	£250,000	15 year service life assumed
Sound Insulation Scheme (SIGS)	£225,000	£15k per annum for 15 years and beyond
Ground Noise Plan	£180,000	Noise bunds, engine running bay, additional taxiway holds, signage
NATS ATM Contracted Radar Feed	£495,000	NMTKS & higher flight paths - £33k per annum
ATM System Hardware	£110,000	Initial purchase and installation
Annual Calibration Costs	£225,000	£15k per annum
Staff Costs	£1,125,000	Tels. Dept./ATC/Noise Desk & NAP admin/Ground Services/Finance & Admin
Noise Consultants Fees	£120,000	Annual contours, 5 yearly NPR reports, Ground Noise Plan design advice
Equipment Finance Costs	£405,000	
Total Cost to LBHA	£3,135,000	Over 15 years

3.21 Our consultants conclude that these actions would satisfactorily meet BHAL's requirements to mitigate community impacts, subject to:

- i. BHAL satisfying the conditions identified by Cole Jarman consultant in its final report to the Council dated 3rd September 2015.
- ii. BHAL agreeing to meet LBB's legitimate and reasonable costs associated with LBB's ongoing monitoring of the NAP (estimated by LBB to cost £50,000 pa).
- iii. Any penalties incurred by aircraft operators as a result of improved monitoring of aircraft flight paths (tracks) and other noise violations to be distributed to the community on the basis of decisions made by an independent committee appointed for the task, consistent with normal best practice at UK airports.

3.22 Dr. Chris Smith estimates that the original funding proposal from BHAL as reported to the Executive in March would have generated an average payment of £100 per additional movement. The revised NAP requires BHAL to meet all the costs of implementation at a cost of c£3.1m. This equates to a payment of £190 per additional movement, nearly double what was offered previously.

3.23 If the Airport's projections are accurate, the Council could under the formulae for calculating rent in the lease benefit from an increase in business at the Airport and may benefit from an increased business rate take as is set out in the reports considered on 25th March. However the Council could not legitimately refuse consent if it considered that either sum was inadequate.

Limit on Annual Movements

3.24 Included in Cole Jarman's Schedule of Recommendations, Item 7 refers to a limit on annual movements. Advice from Cole Jarman confirms that their opinion is that the cap is not considered essential for controlling noise as the noise envelopes and departure/arrival footprints are the primary tools for this purpose.

Related Matters

3.25 Since the meetings on 25th March, the Council has received a considerable amount of correspondence from residents who are understandably concerned over the impact that the application could have if granted. A significant number of public questions (including supplementary questions at meetings) have been considered at Council and Executive meetings on 25th March 2015 (Special Council), 20th May 2015 (Executive), 10th June 2015 (Executive), 29th June (Council), 15th July 2015 (Executive), 9th September 2015 (Executive) 14th October (Executive) and 19th October (Council). Details of the questions and responses are set out as Appendix 5.

3.26 As well as general expressions of concern the key themes which have emerged are:

- Concerns have been raised about the accuracy of the Council's consultation exercise as reported to the Executive in March, including that the consultation outcome was influenced by canvassing. These concerns have been investigated and officers have not identified any significant inconsistencies or errors in either the consultation process or reported outcomes. The response rates were influenced by 'canvassing' but it has not been suggested that actual views were misrepresented. Further information is set out in Appendix 6.
- Continued concerns have been expressed about noise pollution levels and disturbance, particularly for those under the flightpath, affecting quality of life. Many correspondents have cited concerns about the possibilities of sleep deprivation for school children and for adults living locally to the Airport or under the flightpath. This issue has been addressed by Cole Jarman, with recommendations made. However it should be noted that concerns about disturbed sleep have been cited more often in recent correspondence.
- Suggestions that the airport may already be operating to the hours canvassed or is operating outside the terms of the lease. Here all complaints have been investigated and no evidence has been identified to support them.
- Concerns that any NAP or additional measure introduced will not give sufficient protection to residents or will give less control over operations those contained in the Lease, This aspect is covered in the Acoustic consultant's report.
- That additional financial contributions offered by the airport are inadequate. This is covered in Dr Chris Smith's report and the Financial Matters section of this report.
- That BHAL fails to manage aircraft which arrive/take off from the Airport. All complaints have been investigated and no evidence has been identified to support them.
- That some aircraft using the Airport are unacceptably noisy and should be prescribed under the lease. This is considered in more detail in paragraphs 3.27-3.29 below.

- That there is presently an adverse impact on Farnborough Hospital and this will only worsen if the application is approved. This is considered in more detail below.
- That the proposed Noise Monitoring and Track Keeping System will have little impact. This is covered in the Acoustic Consultant's report. It is considered that the system would deliver real benefits to local residents by identifying any aircraft that do not abide by prescribed procedures, allowing action to be taken against the operators of those aircraft, which may include sanctions/exclusions from the Airport.
- That the link between the proposed hours and economic development at the Airport is not proven. This is covered in the Consultant's report. Council Consultants URS/DTZ have reviewed plans for Biggin Hill Strategic Outer London Development Centre and have recommended support for BHAL's plans. Experience has also shown that an increase in operating hours is a critical factor to securing inward investment by aircraft maintenance companies and aircraft operators. The Airport's business case is based upon obtaining a better financial yield from each aircraft movement as opposed to simply increasing the number of movements.
- That the Airport's proposals are based on attracting larger or noisier aircraft. The strategy outlined by BHAL is clearly to attract newer, quieter, cleaner aircraft as specified in the NAP maximum noise controls.
- Helicopter movements are not regulated. The lease does not restrict helicopter movements at any time of the day. However, they have to fall within the noise limits allowable and follow the noise preferential routings and published London helicopter routes which are designed to keep noise on the ground to a minimum.
- Clarification was sought on the movements that would be permitted in the morning and evening shoulder hour periods under these proposals. The proposals would allow either departures or arrivals in these periods subject to the NAP noise limits and contours.

Complaints in Respect of Noisy Aircraft and Additional LBB Noise Monitoring

- 3.27 Since BHAL submitted their application to vary operational hours the Council has received a significant number of complaints about perceived noisy aircraft movements. These complaints were focussed on one particular aircraft, the Piaggio Avanti (but not exclusively) and flights over the Darrick Wood/Farnborough Park area. A number of residents have asked the Council to consider "prescribing" or banning the Piaggio Avanti as permitted by the Lease on the grounds that this aircraft is excessively noisy.
- 3.28 In response to these complaints the Council's Scientific Services Department has undertaken an acoustics survey within the Darrick Woods environs in order to determine aircraft-related noise levels.
- 3.29 The Scientific Services Department report (attached as Appendix 7) has concluded that data should be treated with caution, however, there was no evidence of excessively noisy aircraft requiring that the Council prescribes or bans any aircraft. After concerns expressed by residents a review was carried out of the work undertaken and the Scientific Services Officer remains satisfied with the overall conclusions.

Princess Royal Hospital (PRUH)

- 3.30 A number of residents have expressed concern that BHAL and the Council have overlooked noise levels experienced by patients and staff at the hospital.

3.31 To ensure that the hospital has been properly consulted and given the opportunity to raise any concerns over the proposed hours option, Council officers and our Noise Consultant met with the hospital's Communications Director and Head of Property. A further acoustic assessment for the Princess Royal University Hospital was commissioned by LBHA and a report by Bickerdike Allen Partners has been received. Additional commentary is given at Appendix 2A. The Council's acoustic consultant concluded that the noise levels are within the parameters which are deemed acceptable for a hospital and on this basis do not justify a refusal of the application.

Public Comments

3.32 In light of the considerable public interest in this application, the following arrangements were put in place to ensure that adequate time was given to allow residents the opportunity to comment on the report prior to the meeting of the Executive.

- i. The report to be published on the Council's website five weeks prior to the Executive meeting inviting comments.
- ii. All Resident Associations to be written to five weeks prior to the Executive meeting inviting comments.
- iii. Press release to be issued to local press and media five weeks prior to the Executive meeting inviting comments.
- iv. Councillors to be informed of the comments received prior to the Executive meeting.

Appendix 8 lists the changes made to the draft report.

4. POLICY IMPLICATIONS

4.1 Consideration of requests to alter the opening hours is subject to the requests of Clause 2 (11) of the Lease as detailed in this report.

5. FINANCIAL IMPLICATIONS

5.1 The 2015/16 Budget assumes estimated income of £206k from Biggin Hill Airport and estimated noise monitoring costs of £8k.

5.2 Counsel advice is clear that it would be considered unreasonable for the Council to seek an improved financial offer (more than currently allowed under the lease) either as a condition of consent or by delaying its decision in order to negotiate.

5.3 However, it was deemed reasonable for the Council to seek to prevent a commercial detriment through granting consent. In accordance with this principle, BHAL have agreed to pay all the costs associated with the implementation of the Noise Action Plan, estimated to cost £3.1m over the next 15 years.

5.4 In addition to this, BHAL should meet LBB's legitimate and reasonable costs associated with LBB's on-going monitoring of the Noise Action Plan, estimated to cost £50k per annum.

5.5 The consultant is also recommending that any income generated from the penalties, as highlighted in 3.18, should be set aside for future community use. The decision to distribute any of these funds would be made by an independent committee appointed for the task, consistent with normal best practice at UK airports.

5.6 BHAL previously provided significantly additional income projections which included the impact of more business being attracted to the airport and an increase in income from the turnover share. BHAL indicated that these significant sources of income would not be deliverable in the absence of the extended hours being approved. Any such income projections, as reported on 25th March 2015, should be treated with caution.

6. LEGAL IMPLICATIONS

6.1 Key legal implications are set out in the previous report which was considered on 25 March with other aspects being covered in the body of the report.

6.2 The key point for members is that the council does not have a “free hand” in determining the application as the relationship between the Council and BHAL is regulated by the lease dated 6th May 1994. The lease does enable the airport to seek variations or amendments to the operating criteria which includes hours of operation and the council can not unreasonably withhold agreement

6.3 If consent is refused then the airport can refer the matter to arbitration and the arbitrator will then decide whether or not the council has acted unreasonably. The key principles around this are set out in the earlier report. Given the nature of the application and the interest from two parties with conflicting views, then some legal advice may need to be given in private session.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]

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