

SECTION '2' – Applications meriting special consideration

**Application No :** 12/00849/RECON

**Ward:**  
**Darwin**

**Address :** Land East Of Milking Lane Farm Milking  
Lane Keston

**OS Grid Ref:** E: 541735 N: 161535

**Applicant :** Biggin Hill Airport Ltd

**Objections :** YES

**Description of Development:**

Removal of Condition 2 removing permitted development rights under Part 18 of Schedule 2 of the Town and Country (General Permitted Development) Order 1995 of permission DC/11/01304/FULL1 granted for the removal of existing security fence and hedgerow and erection of replacement repositioned security fence up to 67m west of the existing fence line and change of use from agriculture to airport

Key designations:

Special Advertisement Control Area  
Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
Green Belt

**Joint report with application ref. 12/00850**

**Proposal**

Members will recall two planning applications (11/01303 & 11/01304) were received by the Council to erect new sections of security fence at Biggin Hill Airport. Both these applications were granted by Plan Sub Committee by decision dated 25th August 2011, but with a planning condition imposed, removing Part 18 aviation permitted development rights. This reads as follows:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting this Order, no building, structure or alteration permitted under Part 18 of Schedule 2 of the 1995 Order (as amended), shall be erected or made within the curtilage(s) of the application site hereby permitted without the prior approval in writing of the Local Planning Authority”

The reason for imposing the condition was to prevent any aviation permitted development taking place so as to protect the openness of the Green Belt. New applications have now been received from Biggin Hill Airport Ltd (BHAL) seeking to

remove these conditions on the grounds that they are unreasonable, unnecessary, and irrelevant having regard to the advice set out in Circular 11/95: 'The Use of Conditions in Planning Permissions'.

The approved applications (11/01303 and 11/01304) involved removing sections of existing hedgerow and erecting a new perimeter fence. The fences would be a 2.4m galvanised chain link fence. The fence would be sited to the west of the existing boundary of the airport, which is currently defined by a hedgerow. The existing hedgerow would be removed and a new fence installed. BHAL stated the security fences have to be a certain minimum distance from the runway and there must be no obstructions within the safeguarded area between the runway and the boundary fence.

The earlier planning applications were made because BHAL had undertaken a comprehensive review of its perimeter fencing around the airport boundary, and had to upgrade sections to comply with regulations as required by the Civil Aviation Authority (CAA). It is understood these requirements are mandatory in order to hold an Aerodrome Licence.

### **Location**

The application site comprises an area of open countryside immediately adjacent to the airport. The site falls within the Green Belt.

### **Comments from Local Residents**

Nearby owners/occupiers were notified of the application and comments have been received that raise the following issues, including:

- conditions should not be removed

### **Comments from Consultees**

None received.

### **Planning Considerations**

The application should be determined in accordance with the following policies of the Unitary Development Plan:

BE1 New Development  
BH1 Local Environment  
BH2 New Development at Airport  
G1 Green Belt

National Planning Policy Framework (NPPF): especially "Protecting Green Belt Land"

Circular 11/95: 'The Use of Conditions in Planning Permissions'.

## Conclusions

The site falls within the Green Belt where there is a presumption against inappropriate development. The effect of constructing the fences in the position proposed is to enlarge the operational boundary of the airport. As noted when the earlier applications were submitted, this could potentially have further implications, specifically in terms of the area enjoying 'Part 18' aviation permitted development rights, since this extra land would fall within the 'operational boundary'. It was for this reason that the restrictive permitted development conditions were added on the earlier permissions, to stop further development taking place on Green Belt land.

It is BHAL's case that the conditions fail to meet the tests in Circular 11/95. This circular requires that conditions should be necessary, relevant to planning, relevant to the development granted, enforceable and reasonable in all other respects.

The nub of BHAL's case is that no development will be undertaken in future in this area, since it has to be kept free of obstacles because of its proximity to the runway. For this reason BHAL contends the conditions are unnecessary and not relevant. BHAL has also stated that the enlargement of the operational area is needed to satisfy mandatory Civil Aviation Authority (CAA) requirements. A certain minimum unobstructed area from the runway is required under CAA rules, and this is why the fence is to be located west of the existing boundary. The applicant also states that a security fence is required around the perimeter of the airport in accordance with the UK National Security Programme E 300 2010 together with the single Consolidation Direction 1/2010. Thus it is argued by BHAL, that given that no development can take place within these areas in any event, the restrictive conditions serve no purpose and are unnecessary or irrelevant and do not comply with the Circular.

It is further contended by BHAL that the conditions restrict its ability to undertake its statutory role as an airport authority which requires that it maintains the security fence at all times including when improving security arrangements. BHAL says that if works are required at short notice, the procedure of writing to the Council to secure approval may cause delays, and put it into conflict with the airport regulatory bodies. Thus it is contended that the condition is unreasonable.

Members will recall that the original proposals amounted to a change of use from agricultural land to operational land within the Green Belt. This is inappropriate development in terms of the NPPF. Very special circumstances were therefore required to justify inappropriate development. Members, having considered the earlier applications considered that, given the security fence was required under CAA regulations that are mandatory, very special circumstances existed to allow proposals within this Green Belt location. It was also considered that the erection of the fences would have no discernable effect on the openness of the Green Belt. Nonetheless, given the site's Green Belt location, it was considered appropriate to impose the conditions restricting permitted development, given that permitted development can, and has had, very significant effects on the Green Belt.

BHAL's case here does seem rather contradictory: on the one hand it is stated that it cannot undertake any development within these areas because of various airport regulations requiring they be kept entirely free of obstacles. On the other hand, it says that the restrictive conditions will restrict its ability to undertake its statutory role as an airport authority.

When the earlier applications were granted, there were concerns about enlarging the operational area of the Green Belt and that resulting inappropriate development could occur. Inappropriate development is by definition harmful. In order to make the applications acceptable, the restrictive conditions were therefore imposed. Had the condition not been imposed, it is highly likely that the applications would have been refused permission by the Plans Sub-Committee. Paragraph 86 of Circular 11/95 does allow conditions to restrict permitted development in certain circumstances, where this is justified. In this instance, given the sensitive location within the Green Belt, it is considered that the conditions are justified and meet the tests in the Circular. They are necessary, relevant to planning, relevant to the development granted, enforceable and reasonable in all other respects.

The aims and objectives of the above policies, national and regional planning guidance, all other material planning considerations including any objections, other representations and relevant planning history on the site were taken into account in the assessment of the proposal.

Background papers referred to during production of this report comprise all correspondence on files refs. 11/01303, 11/01304, 12/00849 and 12/00850, excluding exempt information.

## **RECOMMENDATION: PERMISSION BE REFUSED**

The reasons for refusal are:

- 1 The site falls within the Green Belt wherein there is a presumption against inappropriate development. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Condition 2 restricting Part 18 Aviation Permitted Development is required to protect the Green Belt and meets the requirements of Circular 11/95: 'The Use of Conditions in Planning Permissions'.

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