

**Decision Maker:** Executive

**Date:** 25<sup>th</sup> March 2015

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** Biggin Hill Airport Proposal to Vary the Operating Hours

**Contact Officer:** Marc Hume, Director of Regeneration and Transformation  
Tel: 020 8461 7987 E-mail: [marc.hume@bromley.gov.uk](mailto:marc.hume@bromley.gov.uk)  
Mark Bowen, Director of Corporate Services  
Tel: 020 8313 4355  
Andrew Rogers, Communications Executive  
Tel: 020 8461 7670

**Chief Officer:** Marc Hume, Director of Regeneration and Transformation

**Ward:** All Wards

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1. Reason for report

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

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2. **RECOMMENDATION(S)**

2.1 **Members are asked to consider Biggin Hill Airport Limited's proposals to vary the operating hours at Biggin Hill Airport and to decide whether to:**

- Support the proposals as proposed.
- Reject the proposals as proposed.
- Support some/all the proposals subject to conditions including those in paragraph 3.46–3.76 that Members deem appropriate.

## Corporate Policy

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

1. Cost of proposal: Potential additional income could be generated should the hours be approved. It has not been possible to gauge how realistic these projections are at this stage as no detailed submission was provided to support these projections.
  2. Ongoing costs: As above
  3. Budget head/performance centre: Biggin Hill Airport
  4. Total current budget for this head: Cr £206k
  5. Source of funding: Existing Revenue Budget 2015/16.
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## Staff

1. Number of staff (current and additional): No additional staff required
  2. If from existing staff resources, number of staff hours: In the event that Members approve some/all the proposals, it will be necessary for officers to have detailed discussions with the Airport on any conditions/requirements imposed by the Council.
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## Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None: Further Details
  2. Call-in: Applicable:
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## 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.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Comments from Cllr Benington and Cllr Mrs Stevens attached as Appendix 6. Cllr Richard Scoates has commented that he will provide any views at the relevant meetings.
3. All Councillors will have an opportunity to comment on the proposals at the Full Council Meeting to be held on the 25<sup>th</sup> March.

### 3. COMMENTARY

#### Background

- 3.1 On 5<sup>th</sup> November 2014 lawyers acting on behalf of Biggin Hill Airport Ltd. (BHAL) wrote to the Council (Appendix 1) proposing to vary the operating hours of the Airport pursuant to the terms of the Lease. Included with their letter was a document summarising the proposal entitled “Biggin Hill’s Future” (Appendix 2), a “Noise Action Plan” (Appendix 3) and a report on their Public Consultation (Appendix 4). Subsequently on 10<sup>th</sup> November BHAL’s lawyers wrote to the Council explaining how the proposed operating hours would increase the funding the Council receives from BHAL (Appendix 5). Members are asked to note that originally BHAL asked that the proposed funding implications as shown in Appendix 5, be treated as private and confidential. However, in the interests of openness and transparency, BHAL has agreed that this information should be incorporated into this report.
- 3.2 Biggin Hill Airport is owned by Bromley Council and leased to BHAL for a term of 125 years from 7<sup>th</sup> May 1994. The Council has a direct financial interest in the performance of the Airport. It receives an Index-linked base rent (£89,444 in 2014/15) and an additional rent at the higher of the amount by which (a) 3% of gross turnover or (b) 12.5% of net profits exceeds the base rent (£119,084 in 2014/15). The lease permits 125,000 movements per year (a movement being a landing or take-off). In 2013 there were 41,500 movements and the Airport does not expect to increase above 50,000 movements in the foreseeable future. The Airport is one of the largest employers in the Borough and accommodates 65 businesses, providing over 1,000 jobs. The Airport has been identified as a Strategic Growth Area by the GLA and BHAL plans indicate that the Airport could create up to 2,300 jobs over the next 20 years. BHAL’s economic growth plan produced in April 2014 calculated the wider economic benefits arising from the implementation of their plan as providing an annual business turnover of £468m, up from £225m, and a gross value added (value of goods and services produced) of £230m, up from £69m. The Airport’s management see its future as a business and general aviation airport and are proposing to extend business activity whilst staying within the current Airport’s boundaries.
- 3.3 The application is being made because the Airport believes it needs more flexible operating hours in order to achieve its growth potential and be competitive as a business and general aviation airport. If granted, the Airport believe they will attract more business aircraft owners to base themselves at Biggin Hill, providing trade to new and existing businesses at Biggin Hill leading to a significant increase in employment. The current operating hours were set 20 years ago and the Airport believes they are no longer fit for purpose and have hindered the realisation of the Airport’s true potential.
- 3.4 Subject to the Council agreeing to extend the operating hours, the Airport is proposing to introduce a Noise Action Plan “to reduce the Airport’s noise footprint with the aim to ensure that the Airport operates as quietly as possible, has minimum effect on neighbours, and has a process of regular reviews and improvements in place”.

#### Operating Criteria/Current Approved Hours

- 3.5 Paragraph (c) of the Operating Criteria in the lease provides as follows:

“Limit the operating hours of the Airport (including ground running of aircraft ) from between 07.30 am and 21.00 pm on weekdays, and 09.00 am and 20.00 pm on Saturdays, Sundays and Public Holidays, provided that:

- In respect of aircraft that are normally based at the Airport
  - (a) Departures from the Airport may take place additionally from between 06.30 am and 07.30 am on weekdays only, and

(b) Landings at the Airport may take place additionally up until 22.00 pm on week days only.

- Up to a maximum of 3 flight movements shall be permitted on Saturdays and Sundays between 08.15 am and 09.00 am to permit an operator based at the Airport to operate a scheduled service to France.”
- This limitation shall not apply to any emergency movements, that is when an aircraft has to land for reasons of safety of the aircraft or its passengers.

3.6 Since the lease is for a period of 125 years, and the nature of the business is clearly likely to change over such a long period, the lease includes provisions allowing the tenant to seek variations to the terms of the lease and imposes some conditions on how the landlord can deal with such requests. Consideration of requests to amend the Operating Criteria is subject to a specific provision in the lease. Clause 2(11) provides that the landlord cannot unreasonably withhold consent to requests for variation or amendment to the operating criteria, but goes on to include the following proviso which applies only while the landlord is the Council:

“Provided that should the tenant consider the Landlord is unreasonably withholding its agreement the tenant may refer the matter to arbitration and the arbitrator shall in reaching his decision consider whether the 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 account of matters which it ought to have taken account and shall consider whether the decision of the Landlord to refuse its approval is so unreasonable that no reasonable Local Authority would have refused its approval”.

#### BHAL Proposed Operating Hours

3.7 Included in BHAL’s proposal letter dated 5<sup>th</sup> November 2014 (Appendix 1) was a table (see below) stating their proposed operating hours/restrictions.

Days	Current Operating Hours 1		Proposed Operating Hours	
	Hours	Restrictions	Hours	Restrictions
Monday to Friday	6.30 am to 10.00 pm	No landings allowed before 7.30 am and no departures after 9.00 pm	6.30 am to 11.00 pm	1. Cap of 8 movements between 6.30 am and 7.00 am 2. Cap of 8 movements between 10.00 pm and 11.00 pm 3. Piston engine light aircraft (except military/medical flights) not permitted between 6.30 am and 7.00 am and between 10.00 pm and 11.00 pm
Saturday	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		As above	1. As per Monday to Friday 2. No flying training before 9.00 am or after 5.00 pm
Sunday	As above		8.00 am to 11.00 pm	1. Cap of 8 movements between 10.00 pm and 11.00 pm 2. Piston engine light aircraft (except military/medical flights) not permitted between

				10.00 pm and 11.00 pm 3. No flying training before 9.00 am or after 5.00 pm
Public Holidays	9.00 am to 8.00 pm		As above	As per Sunday

1 It should be noted that the Airport's "operating hours" are specified in the Operating Criteria as stated in paragraph 3.5

### BHAL Proposed Noise Action Plan

- 3.8 Subject to BHAL's proposed hours being approved, the Airport is proposing to use all reasonable endeavours to implement a 'Noise Action Plan' (Appendix 3) which seeks to follow best industry practice ensuring that the Airport operates as quietly as possible and with minimal effect on the locality.
- 3.9 In summary, the Noise Action Plan proposes the following noise reduction measures:
- a. Regular monitoring and reporting of aircraft noise.
  - b. Phasing out of noisier aircraft currently permitted under the Operating Criteria.
  - c. Working with the operators of training aircraft to install noise suppression equipment or replace aircraft with quieter models, as well as restrictions on training flights in the proposed operating hours.
  - d. Working with other operators to ensure adherence to noise control measures and review operational procedures (including formalising "no fly zones" where possible).
  - e. Investing in new GPS based runway guidance system for northern runway 03.
  - f. Working with National Air Traffic Services (NATS) to raise the height of aircraft arriving and departing from the Airport.
  - g. Working with NATS to introduce a new "instrument approach" procedure for runway 03 to replace the existing visual approach. BHAL state this would result in aircraft arriving at runway 03 being at a higher level over Farnborough Hospital and a reduction in the area overflowed to the west of the Airport.
  - h. Capping the number of flights before 7.00 a.m. and after 10.00 p.m. as detailed above in the proposed operating hours table.
  - i. Discouraging residential/noise sensitive development close to the Airport.
  - j. Introducing a system of fines and controls for aircraft not complying with the Airport's noise abatement regulations.
- 3.10 BHAL propose that the Noise Action Plan will be reviewed in five years' time and thereafter revised at five-yearly intervals or in the event that the annual number of movements does at any time approach 50,000 per year.

## BHAL Financial Proposals

3.11 On 10<sup>th</sup> November 2014 BHAL submitted “Private and Confidential” financial proposals to the Council (Appendix 5). As noted above, BHAL subsequently agreed to allow these proposals to be included in this report in the interests of openness and transparency.

3.12 BHAL’s financial proposals set out three potential streams of new funding to the Council, namely;

1. Additional rent payable by the Airport to the Council.

- BHAL estimates that £35,000 would be payable to the Council in 2016 rising to £626,000 in 2030.

2. Supplementary Community Payments for flights between 22.00 hours – 23.00 hours

- BHAL estimate that £29,000 would be payable to the Council in 2016 rising to £146,000 in 2030.\*

\* BHAL has recently written to the Council on 26<sup>th</sup> February 2015 indicating that they would be willing to also levy this charge in the period 06.30 hours to 07.00 hours. BHAL estimate that this would yield 50% more in revenues p.a., i.e. in 2016 it would yield £29,000 + £14,500 = £43,500 and so on as the years progress.

3. New rates generated by attracting more companies to the Airport under the Government’s 6-Year Incentive Scheme.

- BHAL estimate that £236,000 would be payable to the Council in 2017 rising to £718,000 in 2022.

3.13 The Airport has stressed that none of these additional sources of income would be deliverable in the absence of the hours proposal being approved.

## BHAL Public Consultation on its Proposals

3.14 Prior to submitting its proposals to the Council on 5<sup>th</sup> November, the Airport undertook an extensive engagement and consultation exercise regarding its proposals. In summary, the Airport reported that over 15,000 responses were received, 66% of respondents supported the proposed operating hours, 17% gave qualified support, and 17% opposed them. As could be expected, the analysis by Ward shows varying degrees of support or concern, and understandably residents living under or close to the flight path expressing most concern. In addition to the consultation, BHAL also engaged a polling and market research company, Populus, to conduct a telephone survey of Bromley residents. Populus interviewed 1001 adult residents, with results weighted to be demographically representative of all adults in in the Borough. The Populus poll showed that a total of 79% supported the proposals, with 43% showing strong support and 36% supporting the proposals with some reservations.

## Council Public Consultation

3.15 Following receipt of BHAL’s proposals, the Council issued a news release which confirmed that the Council had received a proposal from the Airport. Consultation did not commence at this stage as further details about the proposal were required. In anticipation that the Council would receive comments, the news release advised that anyone who wanted to respond could e-mail the Council. A small number of responses, both e-mails and letters, were received in this pre-

consultation phase, with all but one from respondents who stated their opposition to BHAL proposals.

- 3.16 Consultation started once additional information from BHAL had been received and after the Christmas period which is not an ideal time to start a consultation exercise. The Council's consultation period started on 16<sup>th</sup> January, with the 8 week period formally closing on 13<sup>th</sup> March.
- 3.17 The overriding objective of the consultation was to enable individuals to express their views quickly and easily, in an accessible way, with a deliberate intention not to exclude comments. The consultation encouraged respondents to consider both the context and detail of the proposal. To aid understanding and for context, the consultation sought to outline why the Council needed to consider the proposal and what BHAL had already done before submitting their application.
- 3.18 Some respondents have questioned this approach and commented that the survey and introductory text was biased and encouraged positive responses. For instance, some have commented that the introductory text did not list reasons to reject the application. It is important to note that the commentary merely sought to broadly summarise the proposals as they had been presented to the Council, inviting respondents to read the full details of the proposal on the Council's website and to form their views as they deemed appropriate.
- 3.19 It should also be noted that some respondents confused Biggin Hill Airport's website ([www.bigginhillfuture.co.uk](http://www.bigginhillfuture.co.uk)) with the Council's website, which also led some to raise questions of 'bias'.
- 3.20 The questions were designed to encourage respondents to consider all of the various aspects of BHAL's proposal before either stating a simple 'yes' or 'no'. The second question invited people to consider any factors which could change or affect their opinion, in recognition that some people may wish to change their view in certain circumstances. The comments box allowed respondents to both comment generally and list factors which individuals felt should be considered if they were to change their mind.
- 3.21 To ensure that all residents could comment, the survey and an accompanying letter were distributed to all residential properties within the borough. The same survey was also published online along with extensive documentation supplied by BHAL, including the results of their own consultation. It was recognised that not all respondents would read this documentation but it was an important principle that it was available and the accompanying letter specifically drew attention to the information that was available on the Council's website, easily accessed by going to [www.bromley.gov.uk/bigginhillairport](http://www.bromley.gov.uk/bigginhillairport).
- 3.22 The survey letter both alerted residents to the consultation and encouraged a response either by visiting the Council's website or by posting the postage paid survey form. The survey and letter were delivered in an envelope. To encourage an awareness that the envelope contained important information, the envelope, which included the Bromley Council logo, was overprinted with a message which invited residents to "Please open and respond to the important consultation about Biggin Hill Airport".
- 3.23 Although it was recognised that some residents may be more interested in responding to the consultation than others, the survey envelopes were delivered to all households in the borough. This gave all residents an opportunity to respond to the consultation without the Council excluding any stated opinion, with the intention that subsequent analysis could allow different views to be appropriately considered.

- 3.24 It was recognised that some residents could effectively respond twice by choosing, for instance, to complete both the 'paper' and 'online' survey. There are many reasons that duplicate responses may be received and although duplicate responses can potentially be identified, individual property response may be deemed a more reliable indicator of 'intent' as this will not contain multiple 'duplicate' responses.
- 3.25 Whilst the survey was specifically targeted at residents of the borough, any individual could respond to the survey, provided that they were sufficiently identified by supplying personal details, including address. In addition, neighbouring boroughs, district councils, parishes and county councils have also been contacted along with the borough's MPs. Some councils, including London Borough of Greenwich and Tandridge District Council, subsequently publicised the consultation within their Borough.
- 3.26 At the close of consultation, in total, 42,127 survey responses were received by the Council, making the response the largest single response to any Council consultation. When only one response from each property is used, there are 14,754 survey responses. The levels of response would be considered very good when compared generally with other consultation or feedback gathering exercises.
- 3.27 Whilst there is clearly significant public interest in BHAL's proposals, the response rates have been influenced by 'canvassing', with supporters 'for' and 'against' actively encouraging others to respond. Whilst some canvassing has been highly organised, some canvassing has been more informal, with neighbours talking to neighbours for instance. Canvassing may have effectively encouraged some residents to respond twice, with an initial response already given and then a subsequent response given at a later stage. It is also not possible to quantify how much influence 'canvassing' has had on generating responses or how this may have altered initial individual views.
- 3.28 Considerable attention has been focussed on ensuring that the data being analysed is robust and accurate, with 416 responses excluded from analysis because names and/or addresses were omitted and or because a 'yes' or 'no' preference was not indicated. Further information about the measures taken to ensure reliability of the data are outlined in Appendix 8. The possibility that there are 'duplicate responses' remaining in the existing data from some households, both 'yes' and 'no', means that the overall household or property response is a more reliable indicator of overall views.
- 3.29 In addition to the survey responses, the Council has also received a large number of additional correspondence, both in letter and e-mail format. This additional correspondence has ranged from pro-forma style letters to letters and e-mails from individuals, resident groups, companies and other organisations. It also includes a number of factsheets which have been published by BRAAD. Further detail about this correspondence is contained within Appendix 8 of this report.
- 3.30 In total, out of the 41,711 responses received, 31,500 or 76% indicated that they support BHAL's proposals, with 10,211 or 24% indicating that they were against the proposals.
- 3.31 The majority of responses, 39,202 or 94%, were received from residents across the Borough, with 2509 or 6% received from individuals not resident within the Borough or with unverifiable postcodes. Whilst many of the 'out of Borough' responses come from relatively local areas such as Tatsfield and Sidcup, some have come from overseas. Of the 'out of borough' responses, the ratio of respondents saying 'yes' and 'no' is similar to the general ratio of yes and no responses .
- 3.32 In total, there have been 39,202 yes or no responses from residents across the borough, with the attached map (Appendix 8) graphically showing the responses. When overall household

responses are considered, eliminating concerns about 'duplicate household responses', 14,754 yes or no responses were recorded. Households responses from across the borough have largely responded to the consultation by saying 'yes', with 11,196 or 76% responding 'yes' and the remaining 3,558 or 24% saying 'no'. Relatively few respondents chose to answer question two and therefore, these responses have not been quantified but the various comments are summarised in Appendix 8.

- 3.33 The responses rates and responses show considerable variation in different wards. Appendix 8 shows both individual responses by ward and household response by ward.
- 3.34 Just four wards (Biggin Hill, Chelsfield and Pratts Bottom, Farnborough and Crofton and Petts Wood and Knoll) account for 30% of all Bromley Borough resident responses, with these 4 wards being the highest responding wards too. Perhaps unsurprisingly, these four wards are all geographically near to Biggin Hill Airport or could be considered to be part of the flightpath. As a percentage of population, using the 2011 census data, depending on the specific ward, these response rates represent almost a quarter of all population in the ward.
- 3.35 In terms of absolute numbers, the Darwin response is one of the lowest individual ward responses, the response rate compared to the percentage of ward population is the highest of anywhere in the Borough, with just over a quarter of all residents responding. Again, this is perhaps not surprising given the proximity of the ward to Biggin Hill Airport. Although there are more 'yes' responses than 'no' responses in Darwin, the data shows that Darwin ward is most evenly split between 'yes' and 'no', with 745 (55%) 'yes' responses compared to 607 (45%) 'no' responses.
- 3.36 All but two wards in the borough have said 'yes', with Farnborough and Crofton and Petts Wood and Knoll wards saying 'no'.

#### Comments for:

- 3.37 Respondents have listed a range of reasons in support of the proposal with many respondents in favour of showing support for business in the borough. Respondents also cited the importance of the creation of jobs and support for local businesses during the currently difficult economic conditions. Many respondents would also welcome the prestige an aviation college would bring to the area.
- 3.38 Some of the respondents supporting the proposal highlighted the historical significance of the airport and felt the airport should be fully utilised, while safeguarding the airport's future.

#### Comments against:

- 3.39 Many respondents have listed a range of reasons against BHAL's proposals with many respondents citing increased noise pollution levels and disturbance, particularly for those under the flight path, which would affect their quality of life.
- 3.40 Other reasons against the proposals include concerns about an increase in pollution and emissions from planes and additional traffic. Further concerns were noted about an increase in traffic in an area and cited already poor transport links, including no railway station and only one road to the airport.
- 3.41 Although BHAL's proposals included a noise action plan, some respondents doubted that the noise reduction objectives could be achieved or they did not understand how the noise would be reduced.

- 3.42 Comments were also received citing scepticism about the creation of a significant number of jobs for local people. Many respondents also feel that there are already too many flights and would like to see a reduction in numbers.

Respondents also express concerns that if this proposed change was accepted, further changes would be requested in the future, with the airport changing further in 'character'.

- 3.43 Bromley being a clean, green and residential borough has also been listed, with others saying that the disadvantages for residents under the flight path outweigh any financial gain. References were made by some about safety and the potential for accidents, with previous aircraft accidents used as examples. It was also noted that the Princess Royal University Hospital (PRUH) is situated under the flight path, with patients likely to be disturbed.

### Consultation conclusions

- 3.44 Although a degree of caution should be exercised, there has clearly been significant interest shown in the consultation, which is evidenced by the response rates. The feedback shows higher response rates in areas nearest the airport, indicating understandable higher levels of interest in the proposals in those areas.
- 3.45 Whilst there is general support for BHAL's proposals, including the Borough as a whole, there is much less support in areas associated with being under the flightpath, with some of these areas, notably Petts Wood and Knoll and Farnborough and Crofton wards being 'against' the proposals.

### Council Assessment of BHAL's Proposals

- 3.46 Cole Jarman, Acoustic Consultants with expertise in the field of aviation, have been commissioned by the Council to advise on the adequacy of BHAL's proposals. Resulting from this assessment the Consultant's report (Appendix 7) sets out a series of conditions, controls and obligations which it is recommended are imposed on the Airport in return for any changes to the lease in order to satisfactorily control noise emissions. In summary, the consultants are recommending the following:

#### **Noise Levels**

##### Current (2014) Noise Levels

- 3.47 Noise levels generated by current operations have been submitted by Bickerdike Allen Partners (BAP) based on operational information supplied by BHAL.
- 3.48 RECOMMENDATION: 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. See paragraph 4.1.

##### Future (2030) Noise Levels

- 3.49 Noise levels generated by operations in the future have been submitted by BAP based on forecast operational information supplied by BHAL. These predicted noise levels for 2030 are very important as they are a 'statement of intent' by BHAL in terms of the noise levels it expects to generate if the variation in operating hours is permitted.

3.50 RECOMMENDATION: BHAL to establish and agree with the Council the limits on noise within which the Airport must operate and reasonable mitigation measures it shall be bound to implement. See paragraph 4.2.

### **Recommended Limits and Mitigation**

#### Operating hours

3.51 BHAL are applying to extend the hours of operation to allow for aircraft movement earlier in the morning and later in the evening on all days. The requested variations to the hours of operation are set out in paragraph 5.2.

3.52 RECOMMENDATION: agree to a slightly modified variation to operating hours as follows:

- Weekday (as requested): 06h30 to 23h00
- Saturday (1 hour shorter than requested): 07h30 to 23h00.
- Sundays and Bank Holidays (1 hour shorter than requested): 08h00 to 22h00

3.53 Any changes to the hours to be conditioned on the Airport

#### Noise Envelopes

3.54 RECOMMENDATION: 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 *noise envelopes* and the total areas they encompass shall not be exceeded at any time between grant of the Lease variation and the end of 2030.

3.55 During 2030, each contour will be revised based on projected operations for the following 15 year period. The revised contours will then act as the applicable *noise envelopes* and the total area they encompass shall not be exceeded at any time during that 15 year period. A downward only revision to the contours shall be permitted. See paragraphs 5.1.2 to 5.1.7.

#### Early Morning Departures and Arrivals

3.56 RECOMMENDATION: 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. See paragraph 5.1.8.

3.57 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. See paragraph 5.1.10.

#### Limit on Annual Movements

3.58 RECOMMENDATION: a cap of 50,000 annual movements to be applied. See paragraph 5.1.11.

### **Means of Control**

#### Control on types of aircraft permitted to use the Airport

3.59 RECOMMENDATION: 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. See paragraph 5.2.3.

### Controls on flying training

- 3.60 RECOMMENDATION: 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. See paragraph 5.2.4.

### Working with existing operators to reduce noise levels

- 3.61 RECOMMENDATION: BHAL to agree with LBB the proposed code of practice to minimise noise impacts from all operations and to formalise no fly zones. See paragraph 5.2.6.

### Introduction of Global Positioning System (GPS) based runway guidance system

- 3.62 RECOMMENDATION: 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. See paragraph 5.2.7.

### Changing the height of arriving and departing aircraft

- 3.63 RECOMMENDATION: 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. See paragraph 5.2.8.

### Changing the “03–Instrument Approach”

- 3.64 RECOMMENDATION: 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. See paragraph 5.2.9.

### Controls during the new shoulder hour periods

- 3.65 RECOMMENDATION: 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 23h00 on weekends and bank holidays give rise to noise levels that do not breach the limits set out in Section 5.1 of this report. See paragraph 5.2.10.

### Sanctions for non-compliance with noise abatement measures

- 3.66 RECOMMENDATION: 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. See paragraph 5.2.11.

## Relocating the VOR beacon

3.67 RECOMMENDATION: BHAL to report to LBB on the progress of, and timescale for, implementation of the scheme to relocate the Biggin Hill VOR. See paragraph 5.2.12.

### Noise Monitoring

3.68 RECOMMENDATION: 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.

3.69 The following procedure to be adopted:

- Maximum departure noise levels that would apply to operations during the daytime and during the early morning shoulder period.
- 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.

3.70 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.

3.71 BHAL are to operate a suitable noise inquiry and complaints handling system.

3.72 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 BHAL website or an extension to the LBB website.

See paragraph 5.3.

### Ground Noise

3.73 RECOMMENDATION: BHAL and BAP shall be requested to quantify the levels of ground noise currently generated by present day operations at the Airport. The exercise can then be repeated for the future operating conditions, and the results considered in both absolute and comparative terms. BHAL will be required to submit specific measures for limiting ground noise. See paragraph 5.4.

### Aircraft Charging Schedule

3.74 RECOMMENDATION: 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.

3.75 It is proposed that a *unit of surcharge* be set which attracts a scaling factor according to the time of day at which an aircraft actually operates. It shall be applied to both departures and arrivals.

The scale charges would mean that higher fees are paid at times when individuals are most sensitive to aircraft noise.

- 3.76 Full details of the forecast out of hours operations are not yet available, but once they are the total out of hours revenue likely to be generated can be determined based on the monetary value of the unit of surcharge that is considered most appropriate.

### Conclusion

- 3.77 For reasons stated in this report, it is important that the Council carefully weighs up the strengths and weaknesses of the proposals to vary the operational hours at the Airport. In so doing it must act reasonably and consider the application on its own facts and merits.
- 3.78 It is the case that residents living in or close to the flight path have expressed concern that any extension to the existing hours will have a negative impact on their quality of life. These and other concerns have been expressed in the public consultation initiatives undertaken by both the Airport and the Council.
- 3.79 The Airport's managers have described in their proposals their ambitious plan to expand business activity at the Airport potentially creating circa 2,300 jobs over the next 20 years. These aims are consistent with the Council's own plans and strategies which recognise the Airport as one of the Borough's key employment growth areas. In order to achieve this potential growth the Airport has made it clear that in its opinion the current operational hours will need to change.
- 3.80 It is recognised that this growth would increase the funding the Council currently receives through increased rent and Business Rates, which is to be welcomed. However, BHAL's proposed "Supplementary Community Payments" are not considered to be commensurate with the increased level of business activity that the additional hours will facilitate, or the increased noise generated at antisocial hours. BHAL's additional payments also need to take into account any public purse expenditure required as a result of the increased business at the Airport.
- 3.81 Cole Jarman consultants have identified that by 2030 the Council could expect to receive through a schedule of charges and payments and Aircraft Movement Surcharge during the extended hours between £450,000 per annum and £1.5 million per annum to reflect the increased level of noise generated in unsocial hours. The actual figure will depend on the individual out-of-hours charges that are deemed most appropriate at Biggin Hill.
- 3.82 In addition to the above, and prior to any variation in the hours being agreed, the Council needs to be satisfied that the Airport's funding to the Council fully reflects the level of business activity at the Airport that additional hours will facilitate. It is necessary therefore for the Council to obtain further specialist advice on the overall level of funding it can reasonably expect to receive in return for any variation to the hours.
- 3.83 Having considered the arguments for and against BHAL's proposals, together with the consultant's assessments and recommendations, Members are asked to consider whether they would be willing to approve BHAL's proposals, subject to BHAL agreeing to the conditions, controls and obligations as specified in the consultant's report and summarised in paragraph 3.46-3.76 including an agreement on a schedule of charges and payments which better reflects both the increased business activity that the additional hours will facilitate, and the increased noise generated during antisocial hours, as outlined in the Consultant's report.
- 3.84 Members will be aware of previous concerns about the general terms of the lease, for example the need to take in the Court of Appeal judgment when considering the user, and matters such as the provisions for the repayment of the runway resurfacing costs. While it would not be appropriate to make this a condition of consenting to the present request, Members may wish to

request officers to raise the issue of renegotiating the terms of the lease generally with BHAL once this matter has concluded.

#### **4. POLICY IMPLICATIONS**

- 4.1 Consideration of requests to alter the operating hours is subject to the requirements of clause 2(11) of the lease as detailed in the report.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 Biggin Hill Airport Ltd have provided forecast income projections shown in Appendix 5. These figures do represent a financial forecast and not a contractual commitment that the additional income will be received. It is not possible to gauge how realistic these projections are no detailed submission was provided to support these projections.
- 5.2 The key assumptions supporting the projections are that:
- (a) turnover will increase;
  - (b) the introduction of a supplementary community payment;
  - (c) more business will be attracted to the airport
- 5.3 Any income projections to the Council must be treated with caution. For example Appendix 5 refers to, for example, increase in rates from business but in such circumstances the council only receives a 30% share of any increase in business rates with the GLA and central government receiving the balance of 70%. However, increasing business in the borough does provide wider economic benefits.
- 5.4 However, the income identified, although a projection, remains significant and the Airport has stressed that none of these additional sources of income would be deliverable in the absence of the hours being approved.
- 5.5 The 2015/16 Budget assumes estimated income of £206k from Biggin Hill Airport. The financial projections provided by Biggin Hill Airport assume that this will increase by £772k per annum by 2030 if the hours are approved (increase to £845k after allowing for charge between 6.30am and 7.00am), however, these figures will have to be verified by officers.
- 5.6 The Noise Action Plan review identifies opportunities to introduce a surcharge for 'out of hours' with ranges identified from income of £450k per annum to £1.5m per annum. These are indicative values and will depend on the extent to which the airport is operating at full forecast capacity. As indicated in the report the supplementary community payments are not considered to be commensurate with the increase level of business activity that the additional hours will facilitate, or the increased noise generated at anti-social hours (see 3.80). Therefore the 'out of hours' surcharge reflects an alternative to the Biggin Hill Airport's suggested supplementary community payments. More work will be required to consider an appropriate level of charging, if this route was pursued.
- 5.7 On the 11<sup>th</sup> February 2015 Executive allocated a sum of £55k from the underspend within the Central Contingency to meet the cost of works for the Biggin Hill development. These works included a borough wide consultation with residents and a technical review of the airport's Noise Action Plan.

## 6. LEGAL IMPLICATIONS

- 6.1 As explained in paragraph 3.6 above, consideration of requests to alter the operating criteria is subject to the requirements of clause 2(11) of the lease which alters the level of obligation on the Council when considering such a request. The obligation on a landlord not to unreasonably withhold consent would normally have to be considered as a private law matter and in the light of guidance issued by the courts, since the meaning of reasonableness in the landlord and tenant relationship has been regularly and extensively litigated over the years. The courts have held that limitations on a tenant's ability to alter the use/alter the premises/assign their interest are there to protect a landlord's property interests so that a landlord could, generally speaking, only withhold consent to the relevant request where it can reasonably maintain that the proposal would be detrimental to its property interests or in conflict with the proper management of its land. This is relatively difficult to establish, particularly in the case of a long lease where the landlord's reversion is quite distant and therefore of limited value.
- 6.2 The effect of clause 2(11) is to widen the considerations that the Council can take into account in reaching a decision by importing public law concepts into the definition of reasonableness because any refusal would have to be considered by an arbitrator on the basis of whether the decision to refuse was so unreasonable that no reasonable local authority would have refused. This is the *Wednesbury* test of reasonableness, which derives from and applies to public law cases, as opposed to private law and sets a lower standard of reasonableness making it harder for a challenger to succeed in claiming that a decision is not reasonable. It means that the Council's decision would be judged on the considerations that it has (or has not) taken into account in its capacity as a local authority as well as its capacity as landlord, and a successful challenger would have to be able to show that the decision was so unreasonable that no reasonable local authority in that position would have been likely to reach the same decision. This approach was accepted by Lady Justice Arden in the Court of Appeal in the case of *Biggin Hill Airport v London Borough of Bromley*.
- 6.3 Members should be aware that BHAL now appear to broadly accept this interpretation of clause 2(11) unlike the approach taken on the Olympic proposals. It is still possible that a refusal may lead to a legal challenge to determine the interpretation of clause 2(11) so that the situation is then clear in case they wish to seek any future alteration to the terms of the lease. The Director of Corporate Services considers that the Council's interpretation is correct. The Council had concerns about the future use of the airport and used the lease to restrict it and avoid possible future problems. This is the only clause in the lease with such a provision added to it; it was clearly deliberately included when the lease was negotiated and for the provision to have any meaning the intention must have been that it should mean precisely what it says.
- 6.4 The provision allows the Council to take into account other considerations and not just the likely effect of the proposed changes on the Council's interest as landlord in the airport. The Council can therefore validly consider the effect of the proposed changes on both local residents and businesses and, given the location of the airport, the same effects in relation to the neighbouring boroughs. Considerations members might validly take into account would include, for example:-
- a. the likelihood and benefit of increased employment prospects for local residents;
  - b. the likelihood and benefit of increased business prospects for both the airport itself and airport based and other local businesses;
  - c. the possible effects on the local transport infrastructure of additional air traffic;

- d. the possibility of increased aircraft noise over an extended opening period and the implications of this on areas under the flight paths – for businesses as well as residents;
- e. the benefits of increased income accruing to the Council from the higher level of turnover rent likely as a result of extended hours and increased business at the airport;
- f. benefits likely to flow from the use of the proposed Community Levy
- g. other benefits or concerns arising out of responses to the public consultation

Considerations that might, on the other hand indicate an unreasonable and unjustifiable decision might include:

- any personal interest in the outcome of the application (such as owning shares in a rival airport)
- consideration of any electoral advantage or disadvantage
- a decision based purely on the number of comments received as part of the consultation for one particular course of action
- placing weight on representations for either course of action which are not supported by an evidence base
- refusing the request on the basis that it might create a precedent

6.5 Members should however be aware that the private law consideration of what is or is not unreasonable will still carry weight in any legal consideration of the Council's decision making under clause 2(11). In particular, the courts have held that it will not normally be reasonable for a landlord to seek to impose a condition which is designed to increase or enhance the rights that it enjoys under the lease. Furthermore, s19(3) of the Landlord and Tenant Act 1927 provides that a landlord cannot charge a fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, for or in respect of a licence or consent for a change of use, except in so far as it compensates for damage to the value of the landlord's reversion. While BHAL are not seeking a change of use as such, they are seeking a change in the conditions of the use of the Airport so that Council does need to be careful not to overstep the mark on what might be considered to fall within this statutory restriction. BHAL have specifically offered the Community Levy, and it is not something that will specifically benefit the Council/landlord, but rather will be a means of benefitting the local community to make up to some extent for any inconvenience caused by the longer opening hours proposed.

6.6 However, if, for example, the Council were to demand a higher level of rent as a consideration for agreeing to the alteration, it would almost certainly be considered unreasonable. Seeking a financial sum to mitigate the impact on the community and to prevent the public purse incurring costs as a consequence of the changes (if any) permitted would be a more reasonable position. Partly there is the risk of it falling within the prohibition in s19(3) of the 1927 Act, but also there is the general consideration of unreasonableness against seeking to increase or enhance rights under the lease. Bearing in mind that the rent provisions in the lease were negotiated by two parties of equal commercial standing, and also the fact that if the alteration in hours has the effect of increasing business as anticipated by BHAL, the rent payable will increase anyway because the main part of it is turnover based, there is a high risk that making any such demand as a condition of granting consent could be held to be unreasonable. BHAL's lawyers have also made clear in correspondence with the Director of Corporate Services that their client does not consider it would be reasonable for the Council to seek an improved financial offer either as a condition of consent or by delaying its decision in order to negotiate.

- 6.7 The issue of whether agreeing to any part of BHAL’s request would set a precedent was raised as an issue in considering a previous request. As advised at that time, any application must be considered on its own merits and whatever decision is made will be a decision on this specific request and will not bind the Council to reach a similar decision in determining any future requests to vary the terms of the lease. If a future request were made to extend the hours at the airport, members would be able to consider and determine that request on its own merits at that time without having to make the same decision as they make in this case. However, those arguing both for and against any such future request would be entitled to refer to the outcome of this application and (if consent were granted to all or any part of this request) to the effects, good and bad, of that decision. Provided that the Council acted reasonably in considering such a request it would not have to reach an identical decision.
- 6.8 As a part of the process then the Council has carried out an extensive consultation process. Members are reminded that this is precisely that – a consultation. It is not a ballot or referendum. The fact that there is on the face of it a majority of views one way or the other should not drive any decision taken and Members may choose to place different weight on the varying aspects of the responses received, depending on their relevance or evidence base.
- 6.9 Whilst regard needs to be given to the responses as a part of the decision making process, members of the Executive need to exercise independent judgement having regard to the factors outlined above.

<b>Non-Applicable Sections:</b>	Personnel
Background Documents: (Access via Contact Officer)	Appendices as attached to the report