

**Hogan  
Lovells**

Hogan Lovells International LLP  
Atlantic House  
Holborn Viaduct  
London EC1A 2FG  
T +44 20 7296 2000  
F +44 20 7296 2001  
www.hoganlovells.com

5 November 2014

By courier and email – Marc.Hume@bromley.gov.uk

The Mayor and Burgesses  
of the London Borough of Bromley  
Civic Centre  
Stockwell Close  
Bromley, BR1 3UH  
FAO Marc Hume

Mathew Ditchburn  
Partner  
mathew.ditchburn@hoganlovells.com  
D +44 20 7296 2294

Our ref            DITCHBM/4560705  
Matter ref        1X1621/000034

Dear Sirs

**BIGGIN HILL AIRPORT (THE "AIRPORT")**

**LEASE DATED 6 MAY 1994 AND MADE BETWEEN THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY (1) AND BIGGIN HILL AIRPORT LIMITED (2) (THE "LEASE")**

We are the solicitors and agents who act for Biggin Hill Airport Limited, the tenant of the London Borough of Bromley ("**you**" or the "**Council**") at the Airport pursuant to the Lease.

Our client proposes to vary the operating hours of the Airport pursuant to the terms of the Lease. We are instructed to make an application on our client's behalf for your agreement to the proposed variation. Please treat this letter as such an application.

**1. ENCLOSURES**

- 1.1 To assist you, we enclose a short document summarising our client's proposal entitled "Biggin Hill's future".
- 1.2 We also enclose with this letter:
  - (a) Noise Action Plan
  - (b) Public consultation report (including an independent control study conducted by Populus)

**2. THE LEASE**

- 2.1 The Lease is for a term of 125 years from and including 7 May 1994. There is an index linked base rent payable under the Lease plus an additional rent at the higher of the amount by which 3% of turnover or 12.5% of net profits exceeds the base rent. We understand that this amounted to a total rent of about £207,000 in the last financial year.
- 2.2 Pursuant to clause 5.21 of the Lease, our client covenanted:

Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639 and is authorised and regulated by the Solicitors Regulation Authority of England and Wales. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG.

"Hogan Lovells" is an international legal practice that includes Hogan Lovells International LLP and Hogan Lovells US LLP, with offices in: Alicante Amsterdam Baltimore Beijing Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Monterrey Moscow Munich New York Northern Virginia Paris Philadelphia Rio de Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Tokyo Ulaanbaatar Warsaw Washington DC Associated Offices: Budapest Jakarta Jeddah Riyadh Zagreb

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

*"To observe and perform or procure observance and performance by its Airport Manager or others of the Operating Criteria..."*

2.3 Under clause 2.11 of the Lease, the "Operating Criteria" means:

*"the matters set out in the Third Schedule or such variation or amendments thereto as may from time to time be agreed by the Landlord (such agreement not to be unreasonably withheld..."*

2.4 The Third Schedule to the Lease sets out the Operating Criteria. These include:

*"(c) 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:-*

*(i) In respect of aircraft which 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 weekdays only.*

*(ii) Up to a maximum of three 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 schedule service to France.*

...

*(d) Limit flight movements (a movement being a landing or a take-off) to 125,000 movements per year".*

2.5 Accordingly, our client requires your agreement to vary the operating hours set out in the Lease and the Council must not unreasonably withhold that agreement.

### 3. OPERATING HOURS

3.1 The operating hours in the Lease were set 20 years ago and have never been varied other than for one off events (and the majority of applications for such temporary variations have been refused). They are no longer fit for purpose and have hindered the realisation of the Airport's true potential. This is in contrast to other small airports which have absorbed more of the recent growth in business aviation.

3.2 In terms of boosting new employment opportunities and generating revenue, varying the operating hours is of paramount importance since it will enable the Airport to attract more aircraft based at the Airport as well as the main manufacturers and agencies.

3.3 Accordingly, our client seeks to vary the operating hours to those set out (and subject to the restrictions) in the column headed "Proposed operating hours" in the table below (the "**proposed operating hours**").

### 4. NOISE ACTION PLAN

4.1 As a condition of your agreement to the proposed operating hours, our client will voluntarily implement the enclosed Noise Action Plan. The Noise Action Plan has been prepared by our client with its expert noise consultants, Bickerdike Allen Partners, drawing on best industry practice and taking account of the EU Environmental Noise Directive (2002/49/EC), the Environmental Noise (England) Regulations 2006 and Defra guidelines. It is designed to manage noise issues and effects from aircraft arriving at and departing from the Airport, with the aim of ensuring that the Airport operates as quietly as possible and with minimal effect on the locality.

- 4.2 In summary, the Noise Action Plan includes 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 in the Lease;
  - (c) working with the operators of training aircraft (which carry out repetitive circuits of the Airport) to install noise suppression equipment or replace aircraft with quieter models, as well as the restrictions on training flights in the proposed operating hours detailed above;
  - (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 a 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 at and departing from the Airport;
  - (g) working with NATS to introduce a new "instrument approach" procedure for runway 03 to replace the existing visual procedure. 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 operational hours;
  - (i) discouraging residential/noise sensitive development close to the Airport; and
  - (j) introducing a system of fines and controls for aircraft not complying with the Airport's noise abatement regulations.
- 4.3 Our client will also work with NATS to ensure that the holding area or "stack" above the Airport used by aircraft seeking to land at Heathrow Airport in particular is replaced by continuous descent procedures. Although this has nothing to do with noise generated by the Airport, the noise resulting from the stack may be wrongly attributed to the Airport.
- 4.4 Further, our client does not currently anticipate the number of aircraft movements at the Airport increasing above 50,000 per year (i.e. beyond 2010 levels), which is only a fraction of the 125,000 movements per year permitted by the Lease. } cav?
- 4.5 The Noise Action Plan will be reviewed in five years' time. Thereafter, it will be reviewed at five yearly intervals or in the event that the annual number of aircraft movements does at any point approach 50,000 per year. } cav?
- 4.6 Our client is confident that implementing the Noise Action Plan alongside the proposed operating hours will over time produce a net reduction in the overall level of noise generated by the Airport.
- 4.7 It is recognised that implementing the change in aircraft height and new runway 03 approach are not matters within our client's absolute control and, in particular, will require NATS/Civil Aviation Authority approval. However, our client does not anticipate there being any issue with this and is prepared to agree to use all reasonable endeavours to achieve these measures as a condition of your agreement to the proposed operating hours.

## 5. AGREEMENT TO THE PROPOSED OPERATING HOURS

- 5.1 As a matter of law, it would not be reasonable for you to withhold agreement to the proposed operating hours on any ground not relating to the preservation of the benefit that the Council obtains from our client's covenant to comply with this part of the Operating Criteria. That benefit is the ability to control the noise impact of the Airport. This is apparent from e.g. the Biggin Hill Airport Review Working Party report from 1991 as well as the Operating Criteria in the Lease.
- 5.2 Our client considers that you cannot reasonably withhold agreement to the proposed operating hours, including because:
- (a) our client will implement the Noise Action Plan as a condition of your agreement to the proposed operating hours;
  - (b) as can be seen from the Noise Action Plan:
    - (i) the Airport produces relatively small noise contours and their location is over largely uninhabited areas;
    - (ii) community responses to aircraft noise from the Airport are minimal – only 30 comments were received in 2013, equating to 0.7 comments per thousand movements (compared with 10.5 per thousand for Luton Airport);
    - (iii) aircraft have become much quieter in the 20 years since the Lease was granted; and
    - (iv) the noise impacted area of the Airport is predicted to be 50% less than that adopted in the UDP (policy ER8) for land use planning;
  - (c) the annual number of movements at the Airport is well below the 125,000 permitted by the Lease. In 2013, the number was 41,500 and, as indicated above, it is not presently expected to increase above 50,000 in the foreseeable future;
  - (d) there has been a trend towards higher value, quieter users at the Airport. This further helps explain the steady decline in the number of noise complaints experienced in the last decade;
  - (e) the operating hours already permit departures from 6.30 a.m., Monday to Friday and departing aircraft in fact produce more noise than landing aircraft;
  - (f) our client is proposing a cap of 8 movements between 6.30 a.m. and 7.00 a.m. on Monday to Friday whereas there is currently no cap. It is also proposing a cap of 8 movements between 10.00 p.m. and 11.00 p.m.;
  - (g) our client is proposing a restriction on the type of aircraft that may take off and land between 6.30 a.m. and 7.00 a.m. whereas currently there is no specific restriction. It is proposing a similar restriction for take offs and landings between 10.00 p.m. and 11.00 p.m.;
  - (h) extending operating hours to 11.00 p.m. spreads the number of aircraft movements across a longer period avoids the "bunching" of flights currently experienced before 10.00 a.m. on weekdays and 8.00 p.m. on weekends and public holidays; and

- (i) in the present day it is not realistic to make a distinction between weekday and Saturday hours.
- 5.3 To be clear, varying the Operating Criteria to permit the proposed operating hours would not require a variation of the Lease. Flexibility is built into the Lease so that the Operating Criteria can be changed within its existing terms. This is not a negotiation for a "new deal" between the Airport and the Council, and it is not a planning application (which would not be required for the proposed operating hours). Varying the operating hours is simply an application of the terms agreed between our client and the Council when the Lease was granted in 1994.
- 5.4 It follows that the Council does not have a free hand in deciding whether to agree any changes to the Operating Criteria. It must act reasonably and in accordance with the terms of the Lease in its capacity as a private landlord. In the event of any disagreement, the Lease sets out a procedure for the matter to be resolved by referral to arbitration.
- 5.5 Accordingly, in our client's view, the Council should decide whether to agree the proposed operating hours based on its own reasonable assessment of our client's application and the information provided. It is not necessary or appropriate for the Council to go out to public consultation on the issue. That is not because our client is indifferent to the views of those in the local area – quite the opposite in fact, as is demonstrated by its own public consultation detailed below – but because that is not how the Lease was intended to operate.
- 5.6 Nevertheless, you have confirmed that the Council does intend to go out to public consultation. Whilst reserving our client's position on this, we are pleased to note that you consider this suitable for a shortened consultation period of 21 days in view of the quality and extent of the consultation already carried out by our client.
- 5.7 We would respectfully suggest that you use the "Biggin Hill's future" summary document as the basis for the public consultation as this presents our client's proposals in a short and concise form consistent with the Airport's own public consultation.

## 6. PUBLIC CONSULTATION

- 6.1 Without prejudice to our client's view that this should be a matter for agreement between them and the Council within the terms of the Lease, it has engaged the Forty Shillings communications agency to carry out an extensive public consultation on future proposals for the Airport, including varying the operating hours. The results of the consultation were presented to the Cabinet of the London Borough of Bromley at a meeting on 28 October 2014 and our client's report on the findings of the consultation are enclosed with this letter.
- 6.2 As you will see, the consultation drew 15,300 responses, reflecting strong support for our client's plans. In particular, some 66% (or 9884) of respondents supported the proposed operating hours, and a further 17% (2589) gave qualified support. Only 17% (2525) opposed them. The report analyses how these results break down on a ward by ward (Annex 1), borough (Annex 2) and constituency basis (Annex 3).
- 6.3 Further, our client has commissioned an independent control study by Populus, which surveyed over 1000 residents in the London Borough of Bromley. This, again, showed that many more residents support the proposed operating hours than oppose them, with 35% of respondents strongly supporting the proposed operating hours and 30% giving qualified support, compared to just 18% opposing them.

**7. URGENT APPLICATION**

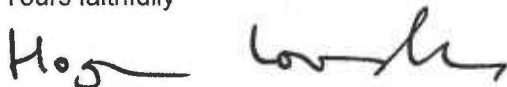
- 7.1 It was explained to you at the meeting on 28 October that this is an urgent application.
- 7.2 The proposal to change the Airport's operating hours became public knowledge as a result of its consultation process. Since then, our client has been approached by three major multinational business aircraft manufacturers expressing an interest in the Airport, provided the proposed operating hours are implemented.
- 7.3 In response to the increasing pressure on capacity at major London airports, these companies are currently in the process of deciding where they will base their London/Northern European service facilities for the next decade and beyond. The Airport has previously been outside their consideration due to its restricted operating hours. Now that there is the possibility of changing the operating hours, they are keen to engage with our client.
- 7.4 It must be stressed that these companies will not adhere to any timetable set by our client. Neither will they accept any political uncertainty. It is, therefore, essential that our client is able to give those companies absolute certainty in respect of the Airport's operating hours within the next few weeks if they are to stand any chance of securing their future business and investment in the Airport.
- 7.5 One company in particular has confirmed that, whereas, based on the current operating hours, they have previously chosen not to base their business at the Airport, they would reconsider the matter if the proposed operating hours are agreed in line with this application. Were all three companies to decide to base their activities at the Airport, it would cement our client's position in business aviation and deliver approximately 50% of their 15 year growth plan within the next 5 years.

**8. NEXT STEPS**

- 8.1 We consider that our clients have provided all the necessary information you need upon which to base your decision whether to agree the proposed operating hours.
- 8.2 If for any reason you would like further information then please let us know immediately and we will consider that request. In the interests of avoiding delay, kindly ensure that any requests for information are made at the same time and not in a piecemeal fashion.
- 8.3 We look forward to receiving the Council's confirmation that it agrees to the proposed operating hours as soon as possible and in any event within a reasonable time. Applying previous observations made by the Courts, we would expect that to be measured in weeks rather than months. On that basis we would be grateful to have your response by no later than Wednesday 10 December, which is shortly after the Executive meeting we understand is due to take place on Monday 8 December.
- \* 8.4 Should you have any queries, please do not hesitate to contact our Mathew Ditchburn by telephone at 020 7296 2294 or by email at [mathew.ditchburn@hoganlovells.com](mailto:mathew.ditchburn@hoganlovells.com).

We look forward to hearing from you.

Yours faithfully



Cc Mark Bowen, London Borough of Bromley (by email only – [mark.bowen@bromley.gov.uk](mailto:mark.bowen@bromley.gov.uk))



TABLE – PROPOSED OPERATING HOURS

Days	Current operating hours		Proposed operating hours	
	Hours	Restrictions	Hours	Restrictions
Monday to Friday	6.30 a.m. to 10.00 p.m.	No landings allowed before 7.30 a.m. and no departures after 9.00 p.m.	6.30 a.m. to 11.00 p.m.	<ol style="list-style-type: none"> <li>1. Cap of 8 movements between 6.30 a.m. and 7.00 a.m.</li> <li>2. Cap of 8 movements between 10.00 p.m. and 11.00 p.m.</li> <li>3. Piston engine light aircraft (except military/ medical flights) not permitted between 6.30 a.m. and 7.00 a.m. and between 10.00 p.m. and 11.00 p.m.</li> </ol>
Saturday	9.00 a.m. to 8.00 p.m., plus a maximum of 3 flight movements between 8.15 a.m. and 9.00 a.m. for a scheduled service to France.		As above	<ol style="list-style-type: none"> <li>1. As per Monday to Friday</li> <li>2. No flying training before 9.00 a.m. or after 5.00 p.m.</li> </ol>
Sunday	As above		8.00 a.m. to 11.00 p.m.	<ol style="list-style-type: none"> <li>1. Cap of 8 movements between 10.00 p.m. and 11.00 p.m.</li> <li>2. Piston engine light aircraft (except military/ medical flights) not permitted between 10.00 p.m. and 11.00 p.m.</li> <li>3. No flying training before 9.00 a.m. or after 5.00 p.m.</li> </ol>
Public holidays	9.00 a.m. to 8.00 p.m.		As above	As per Sunday