

**Decision Maker:** EXECUTIVE

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

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

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

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

**Ward:** All Wards

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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.

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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:
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## 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
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## Staff

1. Number of staff (current and additional): Additional 1FTE
  2. If from existing staff resources, number of staff hours: N/A
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## 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 6<sup>th</sup> May 1994.
  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? 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 5<sup>th</sup> November setting out their proposed operating hours and restrictions. This table has been adapted following recommendations set by Executive meeting of 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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.

<b>Recommendation</b>	<b>Status</b>	<b>Commentary</b>
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.

<b>Recommendation</b>	<b>Status</b>	<b>Commentary</b>
<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<sub>Aeq</sub> 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>

<b>Recommendation</b>	<b>Status</b>	<b>Commentary</b>
<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"> <li>• These would typically be defined as Noise Violation Limits and built into a transparent system of monitoring and control.</li> <li>• Fines are paid into a 'community fund' for the benefit of those suffering the consequences of excessive noise.</li> </ul>		
<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	
<b>Total Cost to LBHA</b>	<b>£3,135,000</b>	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 3<sup>rd</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> March 2015 (Special Council), 20<sup>th</sup> May 2015 (Executive), 10<sup>th</sup> June 2015 (Executive), 29<sup>th</sup> June (Council), 15<sup>th</sup> July 2015 (Executive), 9<sup>th</sup> September 2015 (Executive) 14<sup>th</sup> October (Executive) and 19<sup>th</sup> 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 25<sup>th</sup> 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 6<sup>th</sup> 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.

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