

Decision Maker: **Executive**

Date: **15th June 2016**

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
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Ward: (All Wards);

1. Reason for report

1.1 This report informs Members of BHAL's response to the various conditions that the Council has stipulated must be agreed before the Council would be prepared to vary the operating hours at the Airport and recommends that the extension to operating hours is granted.

2. RECOMMENDATIONS

2.1 The Executive is asked to:

- (i) Confirm that BHAL has satisfactorily met all the Council's conditions.**
- (ii) Agree that a Deed of Variation to the lease is entered into in the form appended to this report.**
- (iii) Agree that any sum received to reimburse the Council its reasonable costs incurred, will be ring-fenced for any potential future costs for the increased monitoring that will be needed for the revised operating hours of the Airport.**

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: Not Applicable: Estimated costs are up to £160k to end of March 2017, excluding officer time
 2. Ongoing costs: BHAL has agreed to pay the Council's reasonable and proper costs incurred in relation to the application.
 3. Budget head/performance centre: Biggin Hill Airport
 4. Total current budget for this head: Cr £200k plus carry forward sum of £55k
 5. Source of funding: Existing revenue budget 2016/17.
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Staff

1. Number of staff (current and additional):
 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 6th May 1994.
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Currently up to 125,000 movements p.a. allowed.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Councillor comments are sought and will be appended to the report to the Executive Committee.
2. Summary of Ward Councillors comments:

3. COMMENTARY

Background

3.1 At a special meeting on 25th November 2015, and following a meeting of Full Council the same evening, the Executive considered the application from Biggin Hill Airport Limited (BHAL) to vary the operating hours at the Airport.

3.2 The Executive resolved that:

“The recommendations from Full Council to approve BHAL’s proposal be agreed subject to the concessions, conditions and obligations as set out in the report and as amended.”

In addition to the conditions specified in the 25th November report, Members resolved that a further six conditions would also need to be met; namely:

(i) The level of fines be based on a multiple of five times the standard landing fee applicable to the aircraft type concerned.

(ii) No more than 50,000 movements per annum will be permitted without triggering a review of the Noise Action Plan and in these circumstances the Council reserve the right to suspend the extended hours, if it considered it appropriate to do so.

(iii) Further reviews of the Noise Action Plan will not permit an increase in noise above the new proposed 50% of UDP noise levels.

(iv) The Airport will be required to use the most noise efficient routing for helicopters, which would include rising to 1,000 feet or another specified height in appropriate circumstances before leaving the boundary of the Airport.

(v) In the event of a successful challenge, and if the Noise Action Plan fails for any reason, the Airport to revert to the original hours (pre-application).

(vi) The Airport provides appropriate indemnities to the Council against any additional cost/loss incurred as a consequence of this decision.

3.3 Following the Executive meeting on 25th November, the Council’s expert noise consultant, Cole Jarman Associates, were reappointed to provide continuing advice to the Council in respect of introducing the Noise Action Plan (NAP) and the revised operating hours proposal. The cost of this advice is estimated at £32,520, with further monies allocated for contingency. It was agreed to waive the Council’s financial regulations and appoint Cole Jarman without other quotes in light of their expertise and knowledge of Biggin Hill Airport and their previous expert advice to the Council on the hours proposal.

Council officers supported by Cole Jarman, met with representatives of BHAL to discuss the Council’s conditions and BHAL’s response.

These discussions have focussed on three documents:

- the Noise Action Plan (NAP), attached as Appendix 1, which details BHAL’s proposals. The NAP has not been altered since it was last referred to the Executive.
- a Management Information Letter (MIL), which sets out how BHAL will implement and manage the NAP and includes where appropriate BHAL’s response to the Council’s conditions including the six additional conditions agreed by the Executive on 25th November, and

- a Deed of Variation, which subject to the agreement of the Council/BHAL will incorporate the approved changes to the operating hours into the lease.

3.4 Management Information Letter

Council officers and Cole Jarman are satisfied that all the Council's conditions (including the six additional conditions at 3.2) have been agreed by BHAL, as set out in the MIL. The anticipated time frame for each action is highlighted in the right-hand column along with any additional comments or limitations. Where items are already completed/complied with this is also noted.

3.5 Deed of Variation

Council and BHAL lawyers have agreed a draft Deed of Variation which reflects the proposed changes and, subject to Members' approval, will be completed in order to vary the lease. It should be noted that both the NAP and MIL will be appended to the Deed of Variation, and as such will be enforceable under the terms of the lease.

3.6 Judicial Review Application

The Council received notice from the High Court in Manchester that proceedings in connection with the application had been issued. In light of this, the Council took legal advice, with the costs of this counsel advice and other preparation work being approximately £6,500. It is not now considered that these High Court proceedings will continue but Members will be updated as appropriate.

3.7 Monitoring the Agreement

In light of the revised operating hours increased monitoring will be needed, at least initially, to ensure that both the Council and local residents have confidence that the changes are being properly implemented by BHAL. It is therefore proposed that a member of staff will be employed on a temporary contract to assist with monitoring, with costs for this and other related costs, such as expert advice, being met from ring-fencing the monies BHAL pay to the Council for their application costs.

4. **POLICY IMPLICATIONS**

- 4.1 Consideration of requests to alter the operation hours is subject to Clause 2.11 of the lease.

5. **FINANCIAL IMPLICATIONS**

- 5.1 The 2016/17 Budget assumes estimated income of £208.6k 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 has agreed, and are contractually committed under the lease, to meet the Council's reasonable costs associated with this application. This should include any future costs of the additional monitoring that may be needed.

- 5.5 As at the end of March 2016, a sum of £102.3k has been spent, £30.3k on consultation with the public and £72k on consultants and Counsel advice for work undertaken on the Noise Action Plan. This figure excludes the cost of staff time involved in this application. It is estimated that the Council may have to spend a further £55k during 2016/17 and a request has been submitted to the Executive to carry forward this sum from the under spend within the 2015/16 budget for the Renewal and Recreation Portfolio.
- 5.6 It is recommended that any sums reimbursed by the Airport are ring-fenced to meet any future costs for the additional monitoring that may be required over the initial period of 2-3 years. The Noise Action Plan is due to be reviewed every five years and therefore the level of additional monitoring may change.

6. LEGAL IMPLICATIONS

- 6.1 Key legal implications are set out in the previous reports which were considered on 25th March 2015 and 25th November 2015.
- 6.2 The key point for Members is that the Council does not have a “free hand” in determining the application as the relationship between the Council and BHAL is regulated by the lease dated 6th May 1994. The lease does enable the Airport to seek variations or amendments to the operating criteria which includes hours of operation and the Council cannot 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 reports.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	Reports and appendices to previous Council and Executive meetings.