

Report
No.
DRR
19/062

London Borough of Bromley

PART ONE - PUBLIC

**Decision
Maker:** **EXECUTIVE**

Date: **Wednesday 15 January 2020**

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

Title: **BIGGIN HILL AIRPORT LIMITED (BHAL) – LANDLORD’S
CONSENT TO NEW HOTEL AND AVIATION COLLEGE**

**Contact
Officer:** Michael Watkins, Assistant Director – Strategic Property:
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Chief Officer: Sara Bowrey, Director Housing, Planning and Regeneration

Ward: Biggin Hill

1. Reason for report

BHAL have requested that the Council formally gives Landlords Consent under the terms of the Lease between BHAL and the Council for the development of a new Hotel and a separate Aviation College at the Airport.

2. **RECOMMENDATION(S)**

- 2.1 **The Executive is recommended to grant Landlord’s consent to the Hotel development**
- 2.2 **The Executive is recommended to agree to vary the terms of the lease to permit the development of the aviation college and that the Assistant Director – Strategic Property is delegated authority to finalise the conditions subject to which consent is given subject to the agreement of the Resources, Commissioning and Contract Management Portfolio Holder.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A:
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: N/A
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Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Contractual terms of lease – BHAL require consent and the Council cannot unreasonably withhold or delay consent in respect of the Hotel as it is considered Permitted Development in accordance with Lease User Clause. With regards to the Aviation College this is not considered Permitted Development in accordance with Lease User Clause and therefore the Council has an absolute discretion on whether or not to permit a new use/building and if so granting can seek additional consideration/conditions.
 2. Call-in: Call-in is applicable.
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No – however BHAL have undertaken the necessary Planning consultations and Ward Members are aware of these proposed developments.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Council entered into a lease for 125 years with Biggin Hill Airport Ltd (BHAL) on 6th May 1994. By virtue of clause 5.9 of the lease the airport operator is not permitted to use the leased premises otherwise than for the "Permitted User" namely;

"Airport providing facilities for business aviation flight training and private flying and other airport and aviation related uses (including one air fair or one air display in each year of the Term or such greater number as may have been previously approved in writing by the Landlord (such approval not to be unreasonably withheld))"

- 3.2 The lease also states that the Tenant shall not make any material alterations or additions of a structural nature to the buildings and shall not erect any new buildings without:-

- a) Obtaining and complying with all necessary consents of any competent authority
- b) Making an application to the Landlord for its consent (not to be unreasonably withheld or delayed)
- c) Entering into such covenants as the Landlord may reasonably require as to the execution of the works.

- 3.3 BHAL has obtained planning permission for the Hotel and the Aviation College and has requested the Council to formally provide its consent to the development of a new Hotel and an Aviation College at the Airport.

- 3.4 Consent for a building only needs to be given if the building is for a use falling within the permitted user clause of the lease. In these circumstances consent should not be withheld or delayed. In other instances the Council has a discretion on whether or not to permit a new use/building and if so granting can seek additional consideration/conditions.

- 3.5 3.6 The planning permission for the college includes the following condition;

The development shall be used only as an Aerospace and Technology College and for no other purpose including for community use unless otherwise agreed by the Local Planning Authority.

- 3.7 The Hotel permission is for a;

Hotel with 56 bedrooms, a restaurant (and associated kitchen/servicing areas), lounge, gymnasium and associated access road together with service area and car parking and a sub-station.

- 3.8 In seeking Landlord's consent to the above developments BHAL were of the opinion that these developments fell within the permitted user clause of the lease and therefore the Council should provide Landlords consent.

- 3.9 Officers sought and received Counsel's opinion as to whether or not these developments did indeed fall into the permitted user clause of the lease.

- 3.10 Counsel has advised that as the hotel is predominantly there to meet need from users of the airport the proposed hotel development is an airport related use within the meaning of the Permitted User clause. Notwithstanding that some custom may come from elsewhere

- 3.11 It is therefore recommended that the Executive approves the grant of Landlord's consent to the proposed Hotel as consent should not be withheld or delayed. Counsel has advised that it is possible to impose conditions under the lease which ensure that the hotel use remains within the permitted user.
- 3.12 It should be noted that the Lease provides for a Profit Share Premium which the Council is entitled to for any relevant Development which triggers such a share. The Bombardier Hanger development which received Landlord's consent in 2019 was the first such trigger development BAHAL had undertaken and a payment of £1.5M from BHAL is in the process of being paid in respect of this development. The lease provides for a cap of £1.5m for such developments in total and consequently there will not be further payments against relevant developments as the cap has now been met. Therefore the Hotel will not generate a Profit Share Premium. However it will contribute to the Council's share of Gross Turnover of the airport and adds to the value of the airport.
- 3.13 With regards to the proposed Aviation College, Counsel has advised that this does not fall within the permitted user and therefore the Council has a discretion on whether or not to permit a new use/building and if so granting can seek additional consideration/conditions.
- 3.14 The proposal is that the College is leased to South East London Colleges, outside the security of tenure protection of the Landlord and tenant Act 1954, for 40 years at a peppercorn rental. The courses offered will be specific to the aviation industry. The cost of the development is to be met by GLA. SELC will be tenant funding the scheme, and will be responsible under the lease for building the facility. SELC through the grant of lease rent free (albeit a peppercorn) from BHAL has been able to secure additional GLA funding for the site.
- 3.15 BAHAL have taken an approach that the wider benefit of having a training facility supplying the skills required by the businesses located at the airport that this will be long term asset contributing indirectly to added turnover by ensuring that the companies currently operating at the airport have access to locally sourced skilled labour.
- 3.16 As the proposed Aviation College went through the Planning Process including that of consultation, then there is not a further need to consult further on this proposal.
- 3.17 It is therefore considered that the proposed development has no commercial value which would trigger a premium payment to the Council as the only use permitted use for the scheme as a condition of Planning is for use as an Aerospace and Technology College and for no other purpose including for community use. This is reinforced in the terms of the Development Agreement between BHAL and SELC, limiting the use of the site to this purpose. As the aviation college falls outside of the permitted user then if the Executive is minded to agree the proposal there will be a need to vary the lease to facilitate this. Any variation would be subject to the necessary conditions that the proposed Aviation College should only be used as an Aviation College as such a consent would benefit the longer term sustainability of the airport and return to the Council.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 There is no impact on vulnerable Adults and Children to this consent.

5. POLICY IMPLICATIONS

- 5.1 A Council that manages its assets well

6. FINANCIAL IMPLICATIONS

The Hotel will not generate a Profit Share Premium. However it will contribute to the Council's share of Gross Turnover of the Airport. The Aviation College is considered to have no commercial value in terms of generating a premium payment.

The Council can recover its costs associated with an application for consent whether granted or not under the terms of the lease.

7. PERSONNEL IMPLICATIONS

N/A

8. LEGAL IMPLICATIONS

- 8.1 Under the terms of the lease between BHAL and the Council, BHAL are obliged to obtain the Council's consent, which the Council cannot unreasonably withhold or delay if a proposal falls within the Permitted user.
- 8.2 Counsel's opinion was taken and concluded that the proposed hotel development is an airport related use within the meaning of the Permitted User clause and that the proposed aviation and technology college is not an aviation related use, nor an airport related use.
- 8.3 Documentation will be prepared by the Council's Legal Team for a licence for alterations in respect of the hotel development, a deed of variation to the lease and a licence for alterations pursuant to the varied alterations clause for the Aviation College. Once approval has been granted, the documents will be progressed and completed.

9. PROCUREMENT IMPLICATIONS

N/A

Non-Applicable Sections:	Personnel & Procurement
Background Documents: (Access via Contact Officer)	