

2. Legal Framework

- 2.1 A Certificate of Existing Lawful Development is a legal document issued pursuant to s.191 of the Town and Country Planning Act 1990 (the Act), certifying that the operations or use specified in the Certificate are lawful. If granted by the Local Planning Authority, the Certificate indicates that enforcement action cannot be carried out in respect of the operations or use referred to in the Certificate.
- 2.2 The legal and policy framework for determining the application is set out under section 191 of the Act, the Town and Country Planning (Development Management Procedure) Order 2015 (the Order), National Planning Practice Guidance (NPPG) and relevant Case Law.
- 2.3 Section 191 of the Act provides that any person may apply to the Local Planning Authority (LPA) for a certificate of lawfulness (Certificate) to ascertain whether:
- any existing use of buildings or other land is lawful;
 - any operations which have been carried out in, on, over or under land are lawful;
 - any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.
- 2.4 Section 171B of the Act specifies time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

In summary the time limits are:

- in respect of a building, engineering, mining or other operations in, on, over or under land, carried out without planning permission - this development becomes immune from enforcement action four years beginning with the date on which the operations are substantially completed
- in respect of a change of use of a building, or part of a building, to use as a single dwelling house without planning permission – this development becomes immune from enforcement action after the end of four years beginning with the date of the breach
- for any other breaches of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach.

Once these time limits have passed, the development becomes immune from enforcement action and can, upon the receipt of a relevant application, be certified as lawful pursuant to s.191 of the Act.

- 2.5 If, on an application under section 191, the LPA are provided with information satisfying it that the alleged existing operations or use described in the application (or that description as modified by the LPA) are lawful at the time of the application, they shall issue a certificate to that effect. S. 191(4). In any other case the LPA shall refuse the application. Once a certificate has been granted following an application under section 191, it means that any existing use or development in accordance with it must be presumed as lawful: s. 191(6).

- 2.6 The NPPG (Paragraph: 007 Reference ID: 17c-007-20140306), provides that the applicant is responsible for providing sufficient information to support an application. An LPA is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence. No such call for evidence has been necessary in respect of this application.
- 2.7 The planning merits of the use, operation or activity referred to in the application are not relevant. The issue of a Certificate depends entirely on factual evidence submitted by the applicant about the planning status of the building or other land or use and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence, which, on the balance of probabilities, supports the application.
- 2.8 Therefore in determining this type of application it is fundamental to note that the issue is not whether the LPA would grant planning permission for the existing development. Rather, it is for the LPAP to decide whether or not the operations or use described in the application constitute a lawful operation or use of the land for the purposes of section 191 of the Act. Consequently, this type of application must not be and is not considered on its planning merits.
- 2.9 In the case of applications for existing development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a LPA to understand exactly what is involved. The LPA are satisfied that the description of development in this Application is sufficient.

3. The Permission

- 3.1 The Permission states at Condition 1 that it relates to *“the relaxation of operating hours at Leeds-Bradford Airport, (the airport), and the controls and limitations to be applied to night-time operations.”* It defines terms such as Summer Season, Winter Season, night-time period and aircraft movement. It continues:

e. Quota count means the value assigned to a take-off or landing of an aircraft which is related to its noise classification as defined in the Civil Aviation Authority UK NOTAM S45/1993

- 3.2 Condition 4 states:

No departures in the night time period shall take place by aircraft with quota counts of 1,2,4,8 and 16 on take off

- 3.3 Condition 5 states:

No landings in the night time period shall take place by aircraft with quota counts of 2,4, 8 and 16 on landing

- 3.4 Condition 6 states:

During the night-time period, (2300-0700), no aircraft movements shall take place other than by:-

- a. Landings by aircraft classified as falling within Quota Count 0.5 and 1 for arrivals as defined in UK NOTAM S45/1993 issued by the Civil Aviation Authority and any succeeding regulations or amendments/additions/deletions.*
- b. Departures by aircraft classified as falling within Quota Count 0.5 for departures as defined in UK NOTAM S45/1993 issued by the Civil Aviation Authority and any succeeding regulations or amendments/additions/deletions.*
- c. Aircraft which are approved by the Local Planning Authority and have, taking account of maximum take-off weights and stage lengths, an EPNdB value of not greater than 90 on departure.*
- d. Aircraft approved by the Local Planning Authority and which, by the demonstration of performance data collected at Leeds-Bradford Airport, have, taking account of maximum take-off weights and stage lengths, a 90dB(A) SEL noise contour. on departure the same or smaller than, the 90dB(A) SEL noise contour for a Boeing 737-300/757 as shown on plan 6.*
- e. Exempt aircraft defined by UK NOTAM S45/1993.*

3.5 Condition 7 states:

Subject to 7 (c) to (f) and 8 below, the maximum number of aircraft movements in the night-time period by aircraft specified in condition 6 (a) to (d) shall be limited to and not exceed:-

- f. Subject to the approval of the Local Planning Authority in writing, 2,800 for each Summer season with effect from and including 2002.*

3.6 Condition 8 states:

No more than 10% of the seasonal allocations defined by condition 7 may be transferred between consecutive seasons.

3.7 Condition 9 states:

Movements in the night time period by aircraft defined by conditions 4 and 5 will only be permissible in the following circumstances:-

- a) Delayed landings up to 0100 hours by aircraft scheduled to land at Leeds-Bradford Airport (LBA) between 0700 hours and 2300 hours.*
- b) An emergency i.e a flight where there is an immediate danger to life or health whether human or animal. Aircraft movements in these categories are exempt from night time restrictions and will not count against the night time period limits specified in condition 7.*

3.8 Condition 12 of the planning permission states:

'No aircraft movements in the night time period shall take place until a scheme has been submitted and approved in writing by the LPA for the monthly monitoring and

reporting to the LPA of the number of night time aircraft movements by type of aircraft. The scheme shall allow for reference to numbers of and reasons for delayed landings and emergency departures and landings.'

3.9 The reasons section (paragraph 16) of the Permission confirms that the reason for Conditions 4, 5, 7 and 9¹ was to “*minimise the potential for increased noise disturbance to residents in the vicinity of the airport*”. The reason for condition 12 is ‘*to assist the LPA in ensuring compliance with agreed operating procedures in the interests of amenity of residents in the vicinity of the airport*’.

4. Site and Surroundings

4.1 LBA is located to the north west of Leeds beyond the urban area of Yeadon. It consists of one runway with a crescent shaped terminal building which has been developed piecemeal since 1968. It has an airside apron for plane parking and movements on one side with short and long term car parking on the other side.

4.2 The whole of the airport is washed over by Green Belt but is also located within the airports operational land boundary (AOLB)

4.3 Permission has been granted for an extension to the terminal building pursuant to a separate permission ref 18/06788/FU.

5. Relevant Planning History

Current outstanding Certificate applications

23/07489/CLE – Application 1 - Confirmation of immunity against enforcement of condition 4 of the permission in respect of the departure of aircraft with a quota count of 1 during the night-time period, based on ten years of continuous breach. Pending consideration

23/07490/CLE – Application 2 - Confirmation of immunity against enforcement of conditions 6(a), 6(b) and 6(c) of the permission in respect of the prohibition of night time movements of aircraft with quota count of 0.25 based on ten years of continuous breach. Pending consideration

23/07491/CLE – Application 3 - Regardless of the cap on movements in condition 7, it is lawful for aircraft to take off and land at Leeds Bradford Airport during the hours of 2300-0700 where they fall within the definition of 'exempt aircraft' in NOTAM s45/1993 i.e (a) those aircraft with a maximum certified weight not exceeding 11,600 kg and (b) those propeller aircraft which on the basis of their noise data are classed as less than 87 EPNdB and which are indicated as exempt in part 2 of the schedule of NOTAM S45/1993 notice. Pending consideration

Withdrawn Certificate applications

¹ as well as 2,4,5,7,8,9,10, and 11

23/05440/CLE– Certificate of Existing Lawful Development to confirm immunity against enforcement of the departure of aircraft with a quota count of 1 pursuant to Condition 4 of permission 07/02208/FU (Application 1). Withdrawn 14/12/23

23/05441/CLE – Certificate of Existing Lawful Development to confirm immunity against enforcement of the departure of aircraft with a quota count of 1 pursuant to Condition 4 of permission 07/02208/FU (Application 1). Withdrawn 7/11/23

23/05442/CLE - Certificate of Existing Lawful Development to confirm immunity against enforcement of any prohibition of movements of aircraft with a quota count of 0.25 during the night-time period (Application 3). Withdrawn 14/12/23

23/05443/CLE – Certificate of Existing Lawful Development to confirm that 'exempt' is defined in Condition 6(e) of permission 07/02208/FU, by reference to the provisions of UK NOTAM S45/1993 (without updates) (Application 4). Withdrawn 14/12/23

23/05444/CLE - Certificate of Existing Lawful Development to confirm that condition 9 of permission 07/02208/FU allows delayed and emergency flights to land during the night time period regardless of their quota count, and such flights do not count against the cap on night time movements in condition 7. (Application 5). Withdrawn 14/12/23

Planning permissions

18/06788/FU – two/three storey terminal extension approved 29/1/2019

07/02208/FU – variation of condition 15 of application no 29/114/93/FU – removal of part highway improvement scheme (part c and e) approved 29/8/2007

29/0114/93/fu - removal of conditions nos 5, 7 and 15 of application no 86/29/00019 (hours of use) approved 19/1/1994

6. Statutory Consultation:

- 6.1 Given the nature of the Application there is no statutory requirement to consult with any third parties or publish any information other than to notify that an application has been received.
- 6.2 However, due to the significant public interest in the operations of Leeds Bradford Airport, full details of this Application, including the Application Statement, were published on the Council's Public Access and are publicly available. The Council did seek evidence from the public on other CLEUD applications made by the applicant at the same time.

7. Proposal:

- 7.1 The application reference 23/07493/CLE was received and validated on 14th December 2023.
- 7.2 The Application relates to the Permission.
- 7.3 The description of is the proposed lawful use is:

It is lawful for any aircraft, regardless of quota count and regardless of the cap on movements in condition 7 to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 0700 hours and 23 hours; and (b) any emergency flights, i.e a flight where there is an immediate danger to life or health, whether human or animal are permitted.

- 7.4 In accordance with Article 39(1) of the Order, an extension period in which the LPA must issue written notice of its decision was agreed between the applicant and the LPA.

8. The Applicant's case

- 8.1 As set out above condition 9 states:

Movements in the night time period by aircraft defined by conditions 4 and 5 will only be permissible in the following circumstances :

- a. *Delayed landings up to 0100 hours by aircraft scheduled to land at Leeds-Bradford Airport (LBA) between 0700 hours and 2300 hours.*
- b. *An emergency i.e a flight where there is an immediate danger to life or health whether human or animal.*

Aircraft movements in these categories are exempt from night time restrictions and will not count against the night time period limits specified in condition 7

(emphasis added)

- 8.2 Broadly and for the reasons set out in the Application Statement (section 5 pg 18 onwards) it is the applicant's claim that the last sentence (underlined) when referring to 'these categories' must refer to delayed landings and emergency flights by aircraft of any type.

- 8.3 The applicant submits that when the condition is understood in the context of the consent as a whole (including the purpose of the condition) this is the only logical and sensible reading of this condition. A contention that delayed and emergency landings of noisier flights (ie covered by conditions 4 and 5) do not count towards the night time period limits but the delayed and emergency landings of quieter flights do count towards the night time period limits would, it says, be nonsensical and unworkable.

- 8.4 The applicant has made the following points to support this application

- a) The Permission is a restatement of the 1994 planning permission (ref 29/114/92/FU) with the removal of certain conditions relating to highway works. The Applicant points out that despite no changes to any of the night time flying restriction in the 2007 permission, there was a formatting change to condition 9 which removed a line break between 9(b) and the final sentence clarifying that 'Aircraft movements in these categories are exempt from night time period limits as specified in condition 7'. This

unexplained formatting change has largely created the confusion over how to interpret this element of the condition. With the original line space in place it is clearer that the exemption relates to both delayed flights and emergencies.

- b) The last sentence of condition 9 refers to categories set out in (a) and (b). These are 'delayed landings upto 0100 by aircraft scheduled to land at LBA between 0700 hours and 2300 hours and emergency landings in the night time period'. Those categories are not limited to aircraft of any particular quota count.
 - c) If categories (a) and (b) were limited to aircraft with quota counts falling outside of condition 6 and only to aircraft within conditions 4 and 5 then the last sentence would be superfluous. Condition 7 sets out the maximum number of aircraft movements in the night time period 'by aircraft specified in conditions 6 (a) to (d), the maximum number of movements does not include any flights of aircraft specified within conditions 4 and 5. There the last sentence of condition 9 only makes sense if it also includes aircraft within conditions 6 (a) to (d).
- 8.5 The Applicant submits it is nonsensical to count delayed and emergency landings of quieter aircraft as part of the cap but not noisier aircraft. The condition acknowledges that sometimes there are events which are outside of the airports operator's control (ie delayed and emergency landings). These considerations apply to aircraft of any quota count.
- 8.6 If condition 9 were to be read as only applying to aircraft listed in condition 4 and 5 then, once the maximum number of movements on condition 7 had been reached, LBA could not accept an emergency or delayed landing without being breach of its planning permission. It would mean that if two aircraft (one restricted under condition 5 and one permitted under condition 6) are both approaching at the same time the louder, restricted aircraft is permitted to land and does not impact on the level of night time movements whilst the quieter permitted aircraft must be diverted to another airport as there are no spare movements under the limits imposed by condition 7.
- 8.7 The reason for condition 9 is 'to minimise the potential for increase noise disturbance to residents in the vicinity of the airport'. This further supports an interpretation that its final sentence does not simply apply to noisier aircraft listed in conditions 4 and 5 but also to aircraft listed in condition 6.
- 8.8 In light of Condition 12, the permission requires the reporting of delayed landings and emergency departures and landings. It does not require there to be separate reporting of such movements depending on their QC value. This further indicates that condition 9 is to be read as excluding all delayed landings and emergency movements from the night time limits in condition 7. Further it is relevant that NOTAM S45/1993 that disregarded aircraft (ie aircraft that do not count towards the overall caps) included delayed aircraft and emergency landings irrespective of QC values. The permission clearly had regard to NOTAM S45/1993 and expressly referred to it in condition 1 and 6. This supports the fact that condition 9 is to be read as excluding all delayed landings and emergency movements from the night time limits in condition 7.
- 8.9 Finally LBA has no control and cannot prejudge the number of delayed and emergency landings during the night time period in any summer season.

9. APPRAISAL

A – Legal Principles

9.1 In assessing the Application, officers have had regard to the legal framework and guidance set out in section 2 above, the submissions of the applicant and the correct legal interpretation of the conditions, including Condition 9.

9.2 In *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74 (Trump) and *Lambeth LBC v Secretary of State for Communities and Local Government* [2019] UKSC 33 (Lambeth), the Supreme Court considered the principles applicable to the interpretation of planning permissions. In *Trump*, Lord Hodge said [emphasis added]:

"34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."

9.3 In Lord Carnwath's concurring judgment at para 66 he added:

"Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved ... It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well established rules limiting the categories of documents which may be used in interpreting a planning permission ... But such considerations arise from the legal framework within which planning permissions are granted. They do not require the adoption of a completely different approach to their interpretation."

9.4 The principles of interpretation stated in *Trump* and repeated in *Lambeth* have been considered by Mrs Justice Lieven in *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924 (Admin) (*UBB Waste*). In the light of Lord Carnwath's warning about the dangers of setting down the principles of interpreting planning permissions, her ladyship set out, not the principles, but the relevant factors applied by her in that case (paras 52–57). These were as follows [emphasis added]:

"52. Firstly, permissions should be interpreted as by a reasonable reader with some knowledge of planning law and the matter in question. This does not mean that they are the "informed reader" of a decision letter, but equally the reasonable reader will understand the role of the permission, conditions and any incorporated documents.

53. As Lord Carnwath has said the permission needs to be interpreted with common sense. Mr Sharland points out with some justification that reasonable people may differ on what amounts to common sense. In my view references to common sense are really pointing to the planning

purpose of the permission or condition. If the interpretation advanced flies in the face of the purpose of the condition, and the policies underlying it, then common sense may well indicate that that interpretation is not correct. So, in Lambeth it was plainly contrary to that purpose for the permission not to limit the sale of food items, such an interpretation was contrary to common sense once one understood the planning background.

54. Secondly, it is legitimate to consider the planning "purpose" or intention of the permission, where this is reflected in the reasons for the conditions and/or the documents incorporated. The reasons for the condition should be the starting point, the policies referred to and then the documents incorporated. This is not the private intentions of the parties, as would be the case in a contractual dispute, but the planning purpose which lies behind the condition.

55. Thirdly, where as here, there are documents incorporated into the permission or the conditions by reference, then a holistic view has to be taken, having regard to the relevant parts of those documents. This can be a difficult exercise because where, as here, the permission incorporates the application (including the Planning Statement) and the Environmental Statement and Non-Technical Summary, there can be a very large number of documents to be considered. It may be the case that those documents are not all wholly consistent, and that there may be some ambiguity within at least parts of them. In my view the correct approach is to take an overview of the documents, to try to understand the nature of the development and the planning purpose that was sought to be achieved by the condition in question. The reasonable reader would be trying to understand the nature of the development and any conditions imposed upon it. It is not appropriate to focus on one particular sentence without seeing its context, unless that sentence is so unequivocal as give a clear-cut answer.

56. Fourthly, where documents are incorporated into the permission, as here, plainly regard can be had to them. Where the documents sought to be relied upon are "extrinsic", then save perhaps for exceptional circumstances, they can only be relied upon if there is ambiguity in the condition. In my view, even where there is ambiguity there is a difference between documents that are in the public domain, and easily accessible such as the officer's report that led to the grant of the permission and private documents passing between the parties or their agents.

57. The Court should be extremely slow to consider the intention alleged to be behind the condition from documents which are not incorporated and particularly if they are not in the public domain. This is for three reasons. The determination of planning applications is a public process which is required to be transparent. Any reliance on documents passing between the developer and the LPA, even if they ultimately end up on the planning register, is contrary to that principle of transparency. Planning permissions impact on third party rights in a number of different ways. It is therefore essential that those third parties can rely on the face of the permission and the documents expressly referred to. Finally, breach of planning permission and their conditions, can lead to criminal sanctions"

B - UK NOTAM S45/1993

- 9.5 Under s. 78 Civil Aviation Act 1982 (the 1982 Act) the Secretary of State has the power to impose restrictions on night-time flights at "designated aerodromes". These aerodromes are London Heathrow, Gatwick and Stansted.

9.6 The restrictions as they stood in 1994 were found in the document known as UK NOTAM S45/1993. Those restrictions were, from the outset, controversial and they have been updated on a number of occasions since then.

9.7 In practice, the restrictions have been based on:

- (1) Setting a limit on the overall number of night flights;
- (2) Placing restrictions on the noisiest aircraft types; and
- (3) Setting noise quotas which cap the amount of noise energy which can be emitted at night over the course of the regime .

In order to achieve these purposes, NOTAM S45/1993 defined various categories of aircraft by reference to a “quota count” – these were 0.5, 1, 2, 4, 8 and 16. In addition to the six categories defined at paragraph 3(1) and (2) of the notification, paragraph 3(1) and (3) defined a class of “exempt aircraft”.

9.8 Under paragraphs 4 and 5 of NOTAM S45/1993, aircraft with a quota count of 8 or more were excluded from take-off or landing between 2300-0600, with quota count 8 aircraft also excluded between 0600-0700

9.9 Under paragraph 7 of NOTAM S45/1993, overall limits on movements were imposed by reference to quota figures. Exempt aircraft were excluded from this quota. Since 2006, additional bands (first QC/0.25 and then others) have been introduced and the exempt category has been altered to be defined solely by reference to noise data.

9.10 The scheme of Conditions in the Permission is not the same as that of even the original NOTAM document (S45/1993). Whereas NOTAM S45/1993 imposed a quota for each airport to which different kinds of air movements counted to different degrees (i.e. a QC/1 movement was worth double a QC/0.5 movement), Condition 7 of the Permission does not. Instead, it imposes a limit on the absolute number of qualifying movements. Further, although Condition 6 borrows the definition of particular kinds of aircraft from NOTAM, those definitions are not used in the same way as under the NOTAM regime. For example, whilst the Conditions of the Permission impose an absolute movement limit they do not permit additional/alternative Noise Quota limits encouraging quieter aircraft, the Conditions simply use the NOTAM Noise Quota Count classification to define that only quieter aircraft can operate at all during the night and therefore caution must be applied to suggestions that the application of NOTAM at other airports is relevant in respect of Leeds Bradford airport.

C- Assessment

9.11 The LPA does not agree that Leeds Bradford Airport has the proposed lawful use as suggested by the Applicant. The application is premised on the interpretation of the Permission² (mainly Condition 9) and the LPA considers that interpretation is wrong.

² I.e. the Applicant is not seeking to rely on long use in breach of condition to claim operations are now lawful, as it is in other CLEUD applications that it made at the same time.

The wording of Condition 9

9.12 The opening part of Condition 9³ outlines when it applies. It specifically refers only to aircraft falling within Conditions 4 and 5, and then outlines two circumstances when movements by those aircraft are permissible (Condition 9 (a) and (b)). The LPA agrees with the applicant that the final sentence⁴ should have been a stand alone sentence and appears to have been combined with clause (b) as a formatting error. That final sentence, however, refers to aircraft movements “*in these categories*” which on the plain and clear wording of the text can only be a reference back Condition 9 (a) and (b). Condition 9 (a) and (b) are a limited carve out where the aircraft defined by conditions 4 and 5 – which would otherwise be entirely prohibited from night time movements by those conditions – can undertake some movements. Accordingly, on the plain wording of condition 9, the exemption from the cap in Condition 7 only applies to those aircraft defined by Conditions 4 and 5 in the limited circumstances outlined by condition 9(a) and (b).

The Permission as a whole

9.13 This accords with the scheme of the Permission as a whole. In summary:

- 9.13.1 Conditions 4 and 5 prohibit take off and landings by aircraft with quota counts set out within those conditions;
- 9.13.2 Condition 6 prohibits any aircraft movements other than those set out in 6 (a) – (e). Those aircraft in Condition 6(a)-(e) do not overlap with those in Conditions 4 and 5. All aircraft permitted by Condition 6 (a) – (d) are subject to a cap on the number of movements specified in Condition 7 (but those in Condition 6(e) are not).
- 9.13.3 Notwithstanding Conditions 4 and 5, emergency departures of aircraft with QC’s of 1 and above; emergency arrivals of aircraft of QC 2 and above, and delayed landings of aircraft with QC 2 and above, which were scheduled to arrive before the night time period (2300) but which in any event land prior to 0100 are permitted during the night time period and do not count against the movement limit specified in Condition 7.

9.14 So, condition 9 is required as a safety valve for circumstances beyond the Airport operator’s control in emergency and delayed flight situations, because the aircraft to which it applies (as set out in Conditions 4 and 5) are absolutely prohibited from night time movements. The same logic does not apply to aircraft covered by the cap (i.e. those in Conditions 6(a)-(d)): certain movements *are* permitted in the night time period, subject to the cap. The same safety valve is not required: the applicant can either ‘budget’ a proportion of the allowed movements as an

³ “Movements in the night time period by aircraft defined by conditions 4 and 5 will only be permissible” emphasis added

⁴ Aircraft movements in these categories are exempt from night time restrictions and will not count against the night time period limits specified in condition 7

estimate to cope with emergencies or delays, or consider transferring some of its seasonal allocations under Condition 8.

Purpose of the condition and permission

- 9.15 This also accords with the purpose of Conditions 4-9, which is to minimise the potential for increased residents in the vicinity of the airport. It is for the airport operator to budget a proportion of its movements under conditions 6(a)-(d) to delayed or emergency landings, rather than to assume that there will be none at all and allocate slots accordingly, only for residents to suffer increased noise disturbance from that erroneous assumption. While the airport operator indicates it cannot predict how many there will be in advance, the fact there will be some is obviously foreseen by Condition 9 and so it is for the airport operator to proactively budget accordingly.
- 9.16 In that context, the last sentence of condition 9 is not surplus to requirements – it makes clear (to the airport's advantage) that if there is a delayed or emergency landing of a condition 4 or 5 aircraft it will not come out of the cap on movements.
- 9.17 The approach is neither nonsensical nor unworkable – it makes sense in the scheme of the permission as a whole and reflects the balance between residents' interests and those of the airport operator struck when the Permission was granted.

Overall

- 9.18 Accordingly, it is not the case that

It is lawful for any aircraft, regardless of quota count and regardless of the cap on movements in condition 7 to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 0700 hours and 23 hours; and (b) any emergency flights, i.e a flight where there is an immediate danger to life or health, whether human or animal are permitted.

- 9.19 Instead:

- 9.19.1 Aircraft in Conditions 4 and 5 are absolutely prohibited from night time movements save in the limited circumstances in Condition 9. If Condition 9 applies they do not count towards the quota in Condition 7.
- 9.19.2 Aircraft in Conditions 6(a)-(d) are allowed night time movements but that is subject to the cap in Condition 7.
- 9.19.3 Aircraft in Condition 6(e) are allowed night-time movements and are not subject to the cap in condition 7.

9.20 Only in the specific circumstances set out in sub paragraphs 9.19.1 and 9.19.3 above do the aircraft movements not count against the night time period movement limit specified in Condition 7.

10. Conclusion

10.1 In conclusion, for the reasons set out above, Condition 9 only applies to aircraft movements falling within Conditions 4 and 5 and only those movements that meet the specific criteria set out in (a) and (b) of Condition 9 do not count against the movement limit specified in Condition 7.

10.2 Therefore it is not lawful for “any” aircraft as specified within the description of development in the Application, regardless of quota count and regardless of the cap on movements in Condition 7 to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 0700 hours and 23 hours; and (b) any emergency flights and the Application as submitted must be refused.

RECOMMENDATION:

Refuse for the following reason(s):-

- 1) It is lawful for any aircraft, regardless of quota count and regardless of the cap on movements in Condition 7 to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 07:00 hours and 23:00 hours; and (b) any emergency flights, i.e a flight where there is an immediate danger to life or health, whether human or animal are permitted.
- 2) Leeds Bradford Airport, Victoria Avenue, Yeadon

The evidence submitted with the application does not, on the balance of probabilities, support the applicants case.

The Local Planning Authority consider that it is not lawful for 'any' aircraft as specified in the description of development in the application, regardless of quota count and regardless of cap on movements in Condition 7 to land at the airport in the following circumstances

- (a) delayed landings upto 01:00 hours by aircraft scheduled to land at Leeds Bradford Airport between 07:00 hours and 23:00 hours and
- (b) any emergency flights .

Condition 9 only applies to aircraft movements falling within Conditions 4 and 5 and only those movements that meet the specific criteria set out in (a) and (b) of Condition 9 do not count against the movement limit specified in Condition 7.

The certificate is refused

For information:-

This recommendation relates to the following Refused Plans

Plan Type	Plan Reference	Version	Received
Site Location Plan/Red Line/OS Plan	LBA-MML-A- 100-XX-DR-35001		14.12.2023