

Debunking the myth that Leeds Bradford Airport can fly unlimited night-flights with certain types of planes

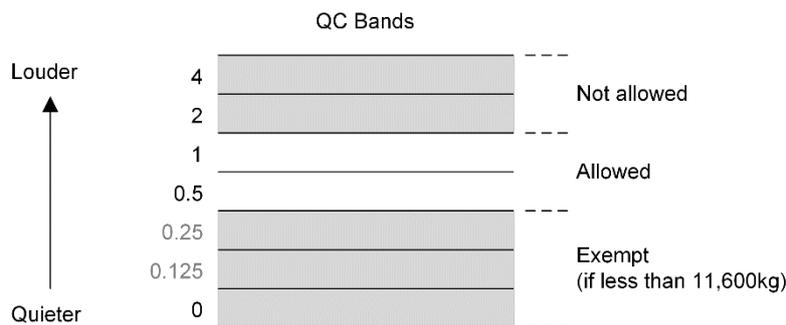
Now that LBA has withdrawn its application for a new terminal building and to change its flying hours, Mr Hodder, the CEO of LBA, has popped up on television claiming that by extending the existing terminal and taking "...the approvals that we already have and work with those in a really creative way...", LBA can still expand to seven million passengers per year.

The night-time restrictions operating at the airport began in 1993. They have been carried forward unchanged to today and apply to the current planning permission to extend the existing terminal. Mr Hodder says, "Those restrictions that we have on the number of flights operated during the night-time hours don't apply to the new generation of more efficient, quieter aircraft."

Let's take a look at this claim and see just how absurd it is.

A quick lesson in Quota Count

In 1993 planes were categorised into QC bands based on how much noise they make. The quieter the plane, the lower the QC band. As new planes have come into service, the QC bands have been constantly reviewed and adapted to take account of newer, quieter planes.



1993 QC bands

Shown in lighter text - QC/0.25 and QC/0.125 were introduced later

When the current planning conditions were written in 1993, QC/0.5 was the lowest category, and anything below that was classed as exempt **subject to a weight limit**.

Mr Hodder is 'creatively' interpreting these outdated rules to claim that newer planes with QC of 0.25 and 0.125 are exempt and therefore do not count towards LBA's cap of 4000 night-flights per year. If they don't count towards the night-time cap, an unlimited number can fly and, hey presto, LBA can get to seven million passengers. That sounds reasonable so far.

It would be if it we're not for the fact that he's forgetting about the weight limit! For a plane to be exempt it must weigh less than 11,600kg. This rules out all commercial jet airliners, meaning that none of the newer planes can fly; the opposite of what Mr Hodder says.

We don't know if Mr Hodder actually believes his own rhetoric or if he has been convinced by his colleagues, but LBA's position currently seems to be that if they repeat this claim often enough it will come true. This may be his wish, but you can be assured GALBA's legal team is on to it.

Current Conditions

These are the current relevant conditions concerning night-flights from planning decision 07/02208/FU:

Condition 6)

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.*

6a and 6b say that planes less than QC/0.5 cannot fly, so for LBA to claim that it is permitted to fly an unlimited number of flights of less than QC/0.5, it must rely on 6e which says that exempt planes can fly.

But NOTAM S45/1993 says there is an upper weight limit of 11,600kg on exempt planes, which means that not only are commercial passenger jets not exempt, they are not allowed to fly at all.

6c and 6d allow LCC to add definitions of newer planes to the conditions but they would be counted in the night-time cap as explained in Condition 7 below.

Interpretation of the Conditions

LBA and LCC do not agree on the interpretation of the conditions.

In one of their documents from the recently withdrawn planning application¹ LBA went to great length to explain how they reached their interpretation of the conditions following a legal letter to LCC by GALBA.

They propose three interpretations: the 'common sense' interpretation, the literal interpretation and the implied interpretation:

¹ 20_02559_FU-ENVIRONMENTAL_STATEMENT_-_FURTHER_INFORMATION-3542796

The 'common sense' interpretation

This is LBA's preferred interpretation. It ignores the weight limit by some very 'creative' logic and therefore an unlimited number of planes can fly.

But the problem for LBA with the 'common sense' interpretation is that in case law it must account for the reason for the condition when it was written. Luckily for us the reason for the condition is written alongside the conditions:

Reason for conditions 2, 4, 5, 6, 7, 8, 9, 10 and 11 :- To minimise the potential for increased noise disturbance to residents in the vicinity of the airport.

So LBA's 'common sense' approach fails because to fly unlimited numbers of planes at night does not minimise the potential for increased noise disturbance. Also, the interpretation of conditions must have regard for the "...overall purpose of the consent..." which clearly would not allow unlimited numbers of planes to fly at night.

The literal interpretation

In literal terms, if 6a or 6b do not allow a plane to fly, then 6e does, but the weight limit applies.

This means the none of the quieter planes can fly.

The implied interpretation

This is the interpretation put forward by LCC and is a compromise based on the fact that when the conditions were first introduced, the phrase:

...UK NOTAM S45/1993 issued by the Civil Aviation Authority and any succeeding regulations or amendments/ additions/deletions.

...implies that the conditions should take account of updates to the NOTAM document which add newer planes and a stricter definition of exempt planes referred to in 6e.

Condition 7 adds to condition 6, and says that:

...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:-

e. ... 1,200 for each Winter season with effect from and including 2001/2.

f. ... 2,800 for each Summer season with effect from and including 2002.

This is where the 4000 annual cap comes from. So in the implied interpretation, the newer planes can fly, but will be subject to the cap.

Other spurious arguments

Passage of time

LBA also say that it has been flying newer planes for 10 years and therefore as a result of the passage of time the use of the airport in this way would now be lawful. This is accepted in planning law but there has to be a continuity of use over the 10 year period. LBA have not provided any evidence of these flights and so have not demonstrated continuity of use.

GALBA has checked the flight statistics currently available to them and there were no such flights in 2018 and for most of 2019/2020 there was a severely cut back and sometimes nonexistent service, so the continuity of use argument fails.

Had the flights taken place as LBA claim, if the exempt flights plus the non-exempt flights did not exceed the 4000 cap, then no breach of conditions took place, therefore the 10 year passage of time test is irrelevant.

Condition 7

...the night-time period by aircraft specified in condition 6 (a) to (d) shall be limited to and not exceed:- [the 4000 cap]

LBA says that because the lower QC flights are not specified in 6a to 6d they are not subject to the cap imposed by condition 7. This is an entirely specious argument because both the 'common sense' and literal interpretations disallow the quieter planes via 6a and 6b. It makes no difference what condition 7 says about the 4000 cap, the planes are already disallowed. Condition 7 cannot work in isolation from the other conditions.

Implications for LBA

The implications for LBA are that if they are not allowed to fly any of the newer planes at night, they will not attract airlines who have these planes in their fleet. As airlines begin to phase out their older planes LBA will become less attractive.

The most likely outcome is that an agreement will be reached between LBA and LCC that allows the newer planes to fly subject to the night-time cap.

With the maximum carry over of 10% from the Winter allowance to the Summer allowance, this equates to just less than 14 planes per night in summer. Let's say that half take off between 6am and 7am and half land after 11pm.

This means that during the all-important 6-7am slot in the busy summer months, LBA can accommodate at most seven flights in the first wave of departures to European destinations. Compare this to LBA's predictions from the withdrawn application of 17 flights and you can see that they fall way short of what they need to achieve passenger growth to seven million per year.

It's very important for airlines to get that first wave of flights on their way to short-haul destinations because it means they can fly three or four rotations in a day, with the last flights returning in the early hours of the morning. This makes maximum use of their fleet and maximum revenue per plane.

By claiming they can fly unlimited numbers of planes at night, LBA are effectively circumventing the night-time restrictions. This goes against the intention and the spirit of the operating conditions and is clearly untenable in law.