

GALBA

Group for Action on Leeds Bradford Airport

Leeds City Council
110 Merrion House
Leeds
LS2 8BB

Attention: Chris Sanderson (Principle Compliance Officer, Planning Enforcement)

CC: Richard Crowther, Environmental Study Officer

By Email to: Chris.Sanderson@leeds.gov.uk; Richard.crowther@leeds.gov.uk

18 October 2022

Dear Mr Sanderson,

Breach of Night-Time Flight Quota

This is a formal complaint made by Group for Action on Leeds Bradford Airport ("**GALBA**") that Leeds Bradford Airport ("**LBA**") has, for the 2022 Summer Season, breached the cap on the number of night-time flights. Specifically, LBA has breached condition 7 of the operative planning permission granted on the 29th August 2007 (ref: P/07/02208/FU) ("**the 2007 Permission**").

Night-Time Flight Quota During Summer Season

1. LBA operates under a cap on night-time flights pursuant to the 2007 Permission. The 2007 Permission defines the Summer Season as the period of British Summer Time. For 2022 this is 27th March to the 30th October. The night-time period is defined as

2300 hours to 0700 hours local time. An aircraft movement is defined as a landing or a departure.

2. Condition 7 of the 2007 Permission sets an overall cap on the number of aircraft movements that are allowed to take place during the night-time period by aircraft specified in Condition 6 (a) – (d) (see below). At present, the effect of Condition 7 is to cap the number of night-flight movements in the Summer Season to 2800 and in the Winter Season to 1200.
3. Condition 8 states that:
“No more than 10% of the seasonal allocations defined by condition 7 may be transferred between consecutive seasons.”
4. Due to the impact of the pandemic on flights during the winter season, the cap of 1200 was not reached. Consequently, the limit on night-time flight movements during the 2022 Summer Season is 2920.

Permissible Night-Flight Movements

5. Condition 4 of the 2007 permission 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.”
6. Condition 5 of the 2007 permission states:
“No landings in the night-time period shall take place by aircraft with quota counts of 2, 4, 8 and 16 on landing.”
7. Condition 6 of the 2007 Permission prescribes the aircraft movements that are allowed to take place during the night-time period. It contains a closed list of aircraft types that are allowed to operate, in the following terms:

“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.”

8. In respect of aircraft with a quota count value of 0, 0.125 and 0.25, GALBA has on several occasions brought to the Council’s attention the proper interpretation of the 2007 Permission in regard to the limits on night-time aircraft movements imposed by Conditions 6 and 7. LBA has continued to argue, erroneously, that the overall cap imposed on night-time aircraft movements does not apply to aircraft that have a quota count value of 0, 0.125 and 0.25¹. This is based on a misinterpretation of the 2007 Permission and the UK NOTAM S45/1993 (“the 1993 NOTAM”) (i.e. the notice issued pursuant to the Civil Aviation Act 1982 and which is referred to in Condition 6 to the 2007 Permission).

¹ Most recently at the September Airport Consultative Committee. See minutes from Sept 7. CEO, Mr Hodder says: “The newer and quieter planes coming through the system however, will not count towards the night time restrictions”.

9. On 21st July 2022, GALBA sent a legal letter to the Chief Planning Officer, David Feeney (copying Planning Enforcement), setting out GALBA's understanding that, on whatever interpretation of the relevant conditions the Council adopts, the Council must accept that aircraft that have a quota count value of 0, 0.125 and 0.25 remain subject to the overall cap on night-time movements.

10. Conditions 4 and 5 describe aircraft types that cannot, under normal circumstances, fly during the night-time flight period. Condition 9 then describes exceptional circumstances under which these aircraft can fly:

“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.

11. These exceptional circumstances apply to aircraft that are not, under normal circumstances, allowed to fly during the night-time period. No exceptional circumstances exist for aircraft that are allowed to fly during the night-time period, which remain subject to the overall caps set by Condition 7.

In other words:

a. Aircraft with QC 2-16 cannot land except in an emergency or a delay up to 0100 and, in either case, these flights would not count towards the quota.

b. Aircraft with QC 1 -16 cannot take off except in an emergency and these flights would not count towards the quota.

- c. Aircraft with QC 0.5 can take off and must count towards the quota, under any circumstances, without exception.
- d. Aircraft with QC 0.5 & 1 can land and must count towards the quota, under any circumstances, without exception

12. We believe that there are no aircraft flying at LBA with a QC of 2 and above.

Therefore, technically, it is not wrong to say that there is an exemption carved out for delayed landings. However, practically, that exemption is not engaged because there are in fact no planes of QC2 or above flying at LBA.

Consequently, in practical terms, conditions 4,5 and 9 mean:

- a. Aircraft with QC 1 cannot take off except in an emergency and these flights would not count towards the quota.
- b. Aircraft with QC 0.5 can take off and must count towards the quota, under any circumstances, without exception.
- c. Aircraft with QC 0.5 & 1 can land and must count towards the quota, under any circumstances, without exception

Consequently, all aircraft movements, including delayed flights, for aircraft that are permitted to fly during the night-time period must count towards the quota.

13. We note that at the September Airport Consultative Committee, the LBA CEO was quoted as saying that delayed flights did not count towards the quota. LBA's interpretation of the relevant conditions is legally flawed and is not an answer to the complaint.

Night-Time Flight Numbers for 2022 Summer Season

14. In the letter to Mr Feeney on July 21st, GALBA informed Mr Feeney that we were monitoring night-time flight numbers at LBA for the Summer Season 2022. We have

recorded the live feed of all flights at LBA, including flight number, scheduled movement time and actual movement time.

15. Our analysis shows that up to 0700 Oct 17 2022, there have been 3339 night-time flight movements, well in excess of the quota of 2920.

16. We estimate at the current average run rate the total figure for Summer 2022 will be in the region of 600 flights in excess of the allowed quota.

17. The data is included in the accompanying pdf. ²

The Council's Interpretation of the Conditions

18. GALBA has previously written to the Council (including Planning Enforcement), setting out our understanding of the Council's view on conditions 6 and 7. In his response letter dated 5th August, Mr Feeney stated that the Council does not enter into open discussion or other correspondence with third parties on interpretation in respect of individual planning permissions "save for where an enforcement complaint is received" (emphasis added). This has led us to expect that the Council will provide the information when an enforcement complaint is received, so we ask that, when you reply to us, you make clear the Council's interpretation of the relevant conditions, specifically conditions 4,5,6,7,8 and 9 (both in isolation and in combination).

19. In his letter, Mr Feeney referred to the Council's Enforcement Plan. This states, at para 4.1: "It is important that the public have confidence in the planning system. The enforcement service investigates possible breaches of planning control and seeks to deal with them in a positive way either through negotiation or direct action."

² Our recording began in mid-April, after BST started on 27th March 2022. Consequently, for April we have used LBA's figure of 270 night flights as disclosed by LBA at their ACC meeting in May 2022.

20. The public cannot have confidence in the planning system, when a serious complaint of a breach has been made, without the Council explaining its understanding of the meaning of conditions 4,5,6,7,8 and 9 (both in isolation and in combination). GALBA is simply asking for the Council's understanding of conditions set in a planning permission that is in the public domain, and which is very important to thousands of citizens with the city.

Enforcement Action

21. Para 5.3 of the Enforcement Plan states that, in deciding whether it is expedient to take enforcement action, the Council will always have regards to:
- the “objectives of the development plan comprising the Core Strategy and Site Allocations Plan by ensuring that unauthorised development does not undermine the purpose and credibility of its policies and proposals”;
 - “planning permissions and consents by ensuring that developments are largely in accordance with approved plans, conditions and obligations”; and
 - “protection of residential amenity from undue disturbance resulting from commercial activities ... for example, noise”.
22. SP12, the main policy relevant to the airport, supports its development only subject to “management of any local impacts” and a key local impact (as the planning permission itself recognises) is noise impact from night flights. There can be no justification for the airport breaching protections put in place which specifically strike the balance between allowing the airport to operate and giving protection to the local community by regulating local impacts. The objectives of the development plan, as set out in SP12, are undermined if the airport operates in breach of condition 7. It also undermines the purpose and credibility of the key planning policy relating to the airport if the balance it strikes between allowing the airport to operate and preventing harm to amenity by limiting its operation at night, is ignored by the cap being exceeded.

23. The 2007 Permission states (para 16) that the reason for conditions 6 and 7 is “to minimise the potential for increased noise disturbance to residents in the vicinity of the airport and in the interests of amenity”. This objective is undermined if the airport operates in breach of condition 7.

24. Not only does noise cause disturbance and harm to the amenity of local residents, it also has serious health implications as described by LBA in their recently withdrawn application 20-02559, namely:

“13.2.61 Environmental noise (e.g. noise from road, rail, and air traffic, and industrial construction) has been linked to a range of non-auditory health effects including annoyance, sleep disturbance, cardiovascular disease, impairment of cognitive performance in children, higher BP, hypertension or the prescription of antihypertensives, ischemic heart disease (e.g., myocardial infarction), cerebrovascular disease (e.g., stroke), neuronal disorders (e.g., dementia), and cardiometabolic disease (e.g., diabetes mellitus).”³

25. Numerous studies have found effects of aircraft noise exposure at school or at home on children’s reading comprehension or memory skills: Evans & Hygge, 2007, Stansfeld et al, 2005, (Kuh & Ben-Shlomo, 2004, Clark et al, 2006.

Next Steps

GALBA believes that this is a serious breach of planning conditions, impacting thousands of Leeds residents. We also believe that it is expedient to take enforcement action for the reasons set out above. Given the urgency of the matter, we further request that you respond to us in writing within 7 days of this letter i.e. 25th October, providing GALBA with

³ Münzel, T. et al. The Adverse Effects of Environmental Noise Exposure on Oxidative Stress and Cardiovascular Risk. *Antioxidants & Redox Signaling* 28, 873-908, <https://doi.org/10.1089/ars.2017.7118> 2018

the required clarification as well as an update on the enforcement action that you intend to take.

Yours sincerely

Chris Foren (Chair) and Ian Coatman (Secretary)

On behalf of GALBA