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Date
12 June 2026

By email to [redacted] and [redacted]

Dear Sir / Madam

**Response to proposed claim in respect of purported decisions by Leeds City Council**

1. **INTRODUCTION**

1.1 This letter is sent on behalf of Leeds Bradford Airport Limited ("**LBA**") in response to your pre-action protocol letter dated 29 May 2026 ("**PAPL**"). For the reasons set out below, we consider the proposed claim to be without merit and any such claim will be strongly resisted by LBA. It is considered that the grounds raised are unarguable. We address each proposed ground below before making some additional comments on the letter dated 13 May 2026 which is the second "decision" you state is proposed to be challenged (PAPL para. 7).

2. **CLAIMANT**

2.1 The Group for Action on Leeds Bradford Airport ("**GALBA**"), an unincorporated association represented by Leigh Day, Panagram, 27 Goswell Road, London EC1M 7AJ.

3. **FROM**

3.1 Leeds Bradford Airport Limited of Leeds Bradford Airport, Whitehouse Lane, Leeds, United Kingdom, LS19 7TU, represented by Herbert Smith Freehills Kramer LLP of Exchange House, Primrose Street, London EC2A 2EG.

4. **DETAILS OF THE MATTER BEING CHALLENGED**

4.1 The PAPL at para. 7 specifies two purported decisions by Leeds City Council ("**LCC**") proposed to be challenged. This response addresses the nature of what the PAPL describes as the Second Decision below.

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## 5. RESPONSE TO THE PROPOSED CLAIM

**Proposed Ground 1 – alleged failure to give reasons under section 191(5)(c) of the Town and Country Planning Act 1990 (the "1990 Act")**

5.1 The reasons for the decision are stated on the face of the certificate in compliance with the statutory requirements. The underlying officer's report ("**OR**") provides more detailed reasons. The OR is available on LCC's website. It appears that your client was unaware of its existence when writing the PAPL. The reasons on the face of the certificate meet the statutory requirements, but the certificate together with the underlying OR clearly explain LCC's reasons for the decision in full detail. This includes why many of the points raised by your client were considered and rejected. The reasons are proper, intelligible and adequate and this ground is therefore unarguable.

**Proposed Ground 2 – alleged failure to consider material considerations and/or give reasons**

5.2 This ground alleges that LCC failed to have regard to submissions made by GALBA on 25 March 2026 in relation to certain aircraft (PAPL para. 29). LBA responded to GALBA's submission on 17 April 2026 (see attached response). LCC properly considered these documents as can be seen clearly from the OR. GALBA's submissions were summarised at para. 5.6 of the OR and LBA's response was summarised at paras. 6.3 – 6.5. LCC then went on to carefully assess the movements which had occurred for itself, as can be seen at paras. 8.5 – 8.14. The results as to movements are set out at 8.16 – 8.24.

5.3 It is therefore simply wrong in principle for GALBA to allege that LCC failed to have regard to its submissions. LCC properly considered those submissions together with all of the evidence before it. This ground of challenge is therefore unarguable.

**Proposed Ground 3 – alleged errors of fact**

5.4 By this ground GALBA seeks to allege four errors of fact, said to be:

5.4.1 treating B757-200 aircraft movements as counting towards a breach of condition 6;

5.4.2 treating E190 planes, E170-200 STD planes, and E170-100LR planes as amounting to breaches of condition 6;

5.4.3 reliance on planes which are exempt as breaching condition 6; and

5.4.4 treating certain small planes as breaching condition 6.

5.5 This allegation is without any merit. There was no error of fact as alleged capable of founding such a claim. The so-called "facts" you allege are not established facts at all, as the submissions of LBA demonstrate. They were contentious assertions which were wrong, save for the treatment of Cessna 421C movements which LBA accepted should be classified as exempt but which LCC determined to be unlawful.

5.6 First, with regards to B757-200 aircraft, this was addressed at paras. 5.2 – 5.3 of LBA's response:

> *5.2 GALBA 41: GALBA contend that B757 aircraft are not QC0.25 movements and refer to 2003 and 2020 reports appended to their statement. This is wrong. First, in respect of these reports:*

*5.2.1 The 2003 report is irrelevant – QC 0.25 was not introduced until 2006 and so this report is clearly unable to comment upon the proper classification of QC 0.25 aircraft;*

*5.2.2 The 2020 report is irrelevant – the report states that "results for several older aircraft types, including variants of B757-200 are shown to exceed their QC classification". The report (and GALBA) do not specify which specific variants exceed QC 0.25 and so this evidences nothing in respect of LBA's movement data. Secondly, the report refers to actual noise values and not certified noise values (which the QC system is based on). LBA and the Council can only determine EPNdB and therefore QC with reference to certified noise levels. GALBA has provided no evidence to show that B757-200 movements are not properly classified as QC0.25 based on their certified noise values.*

*5.3 GALBA 42-43: GALBA state that LBA's reporting of B757-200s did not refer to these movements as falling under QC0.25. As dealt with extensively during the appeal process, B757 aircraft were previously erroneously classified on LBA systems as QC 0.5 rather than QC0.25. In any case, such reporting has no bearing on the QC rating of actual movements flown – GALBA's commentary in this respect is irrelevant.*

5.7 Indeed, we note that GALBA itself identified in its evidence to the inquiry (document reference CD7.06A) that in information to which LCC had access between 2015 and 2019 that 3 B757-200 aircraft (Registrations GLSAD, GLSAJ and GLSAK) were contemporaneously listed as QC0.25 on arrival.

5.8 Second, with regards to E190 planes, E170-200 STD planes and E170-100LR planes, these were addressed at paras. 5.4 – 5.5 of LBA's response:

*5.4 GALBA 44-45: GALBA correctly identify that LBA's listed E190s are ERJ190-100 STD movements and that as a result of the number of different variants of this aircraft type it is not possible to categorically determine the correct QC rating. This is incorrect - LBA validated the full range of KLM E190s using an external database from LOOP (RDC Aviation). The data on LOOP is "managed by operator", meaning KLM manage their own database and submitted the values that LBA has used for their data. Full information is appended to this statement at appendix 2 showing the registration, engine type and noise classifications for these aircraft. The QC classification of these aircraft was validated by both LBA and LCC prior to the CLEUD appeal. The CAA aircraft database confirms that all variants of the E190-100 STD with a 45,000kg Maximum Takeoff Weight are below 87EPNdB. LBA calculated the QC value using the noise EpNDB (Lateral, Approach and Flyover data from LOOP) and has verified that this information is consistent with that in the CAA aircraft database.*

*5.5 GALBA 46-47: On the same basis, GALBA state that E170-200 STD movements contain many variants and so assert they are likely either QC0.5 or undetermined. As above, LBA obtained and validated this movement data using LOOP, as shown in the appended document. As evidenced by this document these movements are 0.25 movements and not ambiguous as GALBA claim.*

5.9 Third, with regards to the allegation that certain movements were exempt, LBA responded:

> *5.6 GALBA 48: GALBA refer to that Cessna 421C movements and Beech King Air movements as being classified as exempt aircraft under condition 6. In this respect:*
>
> *5.6.1 LBA has confirmed that Cessna 421C movements should be classified as exempt, but this is a negligible difference affecting only 7 movements from LBA's dataset. An updated summary of movements with these seven records removed is at appendix 1 to this document. For completeness, these tables supersede those tables provided at 7.1 and 7.2 of the application statement. But as will be clear, on each date with an amended movement, other movements occurred in breach of condition and as such this has no impact on continuity of breach.*
>
> *5.6.2 GALBA is incorrect in respect of its contentions about the Beech King Air aircraft classification. The 1993 NOTAM supplement lists Beechcraft King Air C90A and Beechcraft S/King Air 200 as exempt. The aircraft movements flown at LBA, however, are BEECH E90 Kingair and Beechcraft King Air 100, neither of which are listed on the 1993 supplement and therefore are not exempt under condition 6(e).*

5.10 Finally, with regards to the small propellor driven aircraft, these were addressed at para. 5.7 of LBA's response:

> *5.7 GALBA 49: GALBA refers to 289 small propellor driven aircraft. For clarity, it is not possible to obtain a standard noise certificate as these aircraft are certificated to a different ICAO standard, but it is not necessary to do so. Part 1 of the Schedule to Supplement to the United Kingdom AIP NOTAM S45/1993 clarifies in Paragraphs 1(b) and 2(c) that in the case of a propellor aircraft with a maximum take-off weight not exceeding 5,700 kg "the noise level indicated in relation to that aircraft is the noise data supplied for this purpose to the CAA". The CAA publishes a noise database of light propellor aircraft which includes all of the 289 small propellor aircraft referred to by GALBA which clarifies that the noise rating for all small propellor aircraft in the database is QC0 with no exceptions. This database is available on the CAA website and is titled "CAAdB Light Prop 01 April 2026". As a result, all light propellor aircraft not specifically listed as "Exempt" in S45/1993 are below 87EPNdB and were operated in breach of Condition 6.*

5.11 It is therefore misleading and simply incorrect for GALBA to claim that its assertions were uncontentious. This ground is therefore unarguable.

5.12 Ultimately, LCC carefully considered all movements, as is clear from the OR. This included consideration of GALBA's contentions and LBA's response. LCC determined (as it was lawfully entitled to do) whether movements were, on the balance of probabilities, in breach of condition 6. In fact, in respect of the Cessna 421C aircraft referred to in paragraph 5.9 above, LCC concluded in their analysis that the certified Maximum Takeoff Weight on the aircraft registration certificate for the specific aircraft (G-ISAR) is higher than the weight listed as exempt in Schedule 2 of the AIP Supplement S45/1993 and therefore determined that these aircraft were not exempt and did operate unlawfully (OR 8.23).

5.13 In summary, LCC's detailed analysis confirmed that all but 2 of the aircraft movements LBA claimed were operated in breach of condition 6 were indeed unlawful. LCC provided an updated summary of unlawful movements at Table 2 of the OR.

**Proposed Ground 4 – alleged error of law in finding a continuous breach**

5.14 Under this ground GALBA appears to allege that LCC was required to consider *"in a granular way the varying ways in which"* the breach occurred. The allegation appears to be that aircraft should have been divided up into different types by QC value. This allegation is hopeless and contrary to authority.

5.15 In *R (Ocado Retail Ltd) v Islington LBC* [2021] EWHC 1509 (Admin), at para. 60, Holgate J (as he then was) stated:

> *"Suppose permission has been granted for a caravan site subject to a condition restricting the number of pitches to 50. If the landowner can show that there has continued to be 55 pitches on the site for a 10-year period, he is entitled to a CLEUD legitimising the breach of that condition to the extent of allowing up to 55 pitches".*

5.16 The important point is that the relevant breach being discussed was the breach of the condition through the pitching of additional caravans. There was (as here) no basis for even contemplating, let alone requiring, that the breach should be framed by reference to any particular type of caravan or (for example) its size of engine. This reveals the logical fallacy of GALBA's approach.

5.17 The correct approach is to consider whether there has been a failure to comply with the relevant condition for the requisite period. Here, there has been a failure to comply with condition 6 for more than ten years through the movement of aircraft which do not fall within the permitted categories. That is the breach. *Ocado* is not authority for narrowing the breach to particular types of aircraft.

5.18 Moreover, it is wrong for GALBA to assert that QC0.25, 0.125 and 0 aircraft are vastly different from one another as that is not the case. As an example, the Fokker F28 Mk070 (Fokker 70), which is a commercial narrow body aircraft with 65 seat capacity that operated both arrivals and departures during the night period at Leeds Bradford Airport across the 10 years is rated as QC0 on arrival and either QC0.125 or QC0.25 on departure. This is not only a demonstration of aircraft being similar between the noise categories, it is the same aircraft in both categories. GALBA's assertion is unevidenced and simply factually incorrect.

5.19 In any event, the night-time movements of any of these aircraft was just as much a breach of condition 6 as was any other falling within those QC categories. The only common factor between the aircraft within each QC category is the noise envelope on which the QC is calculated.

5.20 Ultimately, the nature of the breach was properly and lawfully identified by reference to the specific condition as the flying of aircraft with an EPNdB value of less than 87 in the night at Leeds Bradford Airport, in breach of condition 6 – the condition is not phrased so as to limit movements tied to specific QC ratings and as such the CLEUD should not be tied to specific QC ratings.

5.21 This ground is therefore unarguable.

**Proposed Ground 5 – alleged failure to properly interpret condition 7**

5.22 GALBA seeks to allege that the CLEUD does not mean that the 941 aircraft movements approved under the CLEUD do not count towards the condition 7 cap. This ground is purportedly directed to the LCC letter of 13 May 2026.

5.23 For the avoidance of doubt, LBA considers that the letter is of no legal effect. No application for approval was made by LBA to LCC and there is no ability for LCC unilaterally to issue an approval which has not been sought. LBA's position remains that it has an accrued right to fly aircraft below 87 EPNdB during the night time. The effect of the CLEUD confirms and certifies an accrued right to fly 941 movements, but it does not purport to certify that it is unlawful to fly more and LBA's position remains that it also has an accrued right to fly more even though LCC has not certified an unlimited number. Any purported approval by LCC of aircraft under condition 6(c) cannot alter LBA's accrued rights. LCC does not have the power to "approve" aircraft under condition 6(c) absent any application from LBA.

5.24 Notwithstanding the analysis above, GALBA's interpretation of the CLEUD which has been granted and the letter issued by LCC is demonstrably wrong.

5.25 Conditions 6 and 7 provide:

> *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.*
>
> *7) **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:-***
>
> *a. 1,400 in Summer seasons.*
>
> *b. 600 in Winter seasons.*
>
> *c. Subject to the approval of the Local Planning Authority in writing, 900 for each Winter season with effect from and including 1996/7.*

*d. Subject to the approval of the local Planning Authority in writing, 2,100 for each Summer season with effect from and including 1997.*

*e. Subject to the approval of the Local Planning Authority in writing, 1,200 for each Winter season with effect from and including 2001/2.*

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

5.26 Condition 7 only regulates aircraft flown in the night time in accordance with condition 6. The flying of aircraft in breach of condition 6, and therefore necessarily outwith the terms of condition 6, are obviously not subject to the caps on movements in condition 7. The CLEUD application did not seek immunity against condition 7 as this would have been nonsensical. The movements in breach of condition 6 (and the consequential accrued rights) were not and are not caught by that condition in the first place.

5.27 At PAPL para. 46(c) GALBA alleges that the *"grant of the CLEUD brings the certified flights within the specification of Condition 6(c)."* This is obviously wrong. The CLEUD confirms the exact opposite, which is that those movements have been flown contrary to any part of condition 6 but there is now an accrued right to fly those movements into the future because of the continuous breach. There is no logical, legal or coherent basis for the CLEUD being understood or interpreted as a condition 6(c) "approval".

5.28 At PAPL para. 46(d) GALBA attempts to rely upon para. 170 of the Inspector's decision to allege that the cap in condition 7 applies regardless of the circumstances upon which the movements are brought within the condition 6 regime. This is clearly misconceived. DL 170 states:

> *However, it seems to me that the wording is clearly drafted to avoid ambiguity over whether movements by Condition 4 and 5 aircraft should count towards the movement cap in Condition 7. This seems logical, given the cap relates to movements in the night-time period and the outcome of Condition 7 is to allow movements in the night-time period. Condition 7 specifies the maximum number of movements in the night-time period by Condition 6(a) to (d) aircraft, implying it is a maximum. It is not expressed to be subject to Condition 9.*

5.29 Thus, the Inspector was patently not stating that the grant of a CLEUD would bring movements within the terms of condition 6. Rather, he was simply highlighting that condition 7 specifies the maximum number of movements by aircraft which fall within condition 6.

5.30 This ground of challenge is unarguable.

## 6. INFORMATION SOUGHT

6.1 Enclosed with this letter is the response by LBA to GALBA's submissions made on 25 March 2026.

## 7. AARHUS COSTS

7.1 It is assumed that your references to a protective costs order and CPR 45.43 are intended to be to an order by reference to CPR 46.26.

7.2 Your proposed challenge is not one which falls within the Aarhus cost protection rules. The grant of a certificate of lawfulness does not require the consideration of policies relating to

the environment. Rather, it is solely a question of whether or not lawful rights have been accrued.

7.3 In *HM Treasury v Global Feedback* [2025] EWCA Civ 624, the Court of Appeal considered the scope of Aarhus protection at para. 74 onwards. At paras. 92 and 96 the Court stated (emphasis added):

> *92. The scope of Art.9(3) is no different when applied to the decisions, acts or omissions of public authorities. Whether a claim is brought against a person or a public authority, **the key requirement is that the complaint is about a decision, act or omission which contravenes a national law which itself relates to the environment. It is insufficient for a claimant merely to say that his claim relates to the environment**, or to the protection of the environment, or to an effect on the environment.*
>
> […]
>
> *96. **There is nothing in Art. 9 or the Convention read as a whole to indicate that the ambit of Art.9(3) extends to any decision in breach of any national law so long as that decision has an effect or impact on the environment. Instead, Art.9(3) only applies to a contravention of a legal provision which concerns, or is to do with, the environment, its protection or regulation**.*

7.4 The Court of Appeal went on to discuss the authority of *Venn*. This emphasised that Sullivan LJ's reasoning in that case was that much of the provision for environmental protection in the UK was regulated through the planning system where certain policies were required to be taken into account through the operation of section 70 of the 1990 Act and section 38(6) of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**") (see paras. 102 – 103 of *Global Feedback*). The Court went on to state (emphasis added):

> *104. **Properly read, there is nothing in Venn which gives a broad meaning to the phrase "relating to". Instead "provisions of national law relating to the environment" can include a policy which that national law requires to be taken into account, in so far as the policy is for the protection (or regulation) of the environment**.*
>
> *105. Sullivan LJ stated at [11] that the concept of "environmental information" and hence "environment" in the Aarhus Convention is "arguably broad enough" to cover most, if not all, planning issues. But that is not the same thing as saying that a "challenge" to a particular decision, act, or omission falls within Art.9(3). **To engage Art.9(3), a challenge must allege a contravention of a legal provision relating to the environment, that is for the protection (or regulation) of the environment. The clear implication of Venn is that an allegation that a decision-maker has failed to take into account a material consideration in breach of s.70(2) of the TCPA 1990 without more does not fall within Art.9(3). Section 70(2) is not itself a legal provision "relating to the environment". Such a claim does not fall within Art.9(3) unless, in addition, the material consideration left out of account was a policy (or perhaps some other measure) for the protection (or regulation) of the environment. What Sullivan LJ envisaged was that the policies applicable to most, if not all, planning applications will include some policies for the protection (or regulation) of the environment**.*

*106. It should be remembered that in Venn the only provision of national law which the claimant said had been contravened was s.70(2) of the TCPA 1990 . The decision in Venn leaves open the possibility that a claim for judicial or statutory review in a planning case may be based upon other provisions of our national law which do relate to the environment.*

7.5 At paras. 133 – 143 the Court stated (emphasis added):

*133. Some situations are straightforward and require little discussion. For example, there are cases where the principles in Venn genuinely do apply. In other cases it may be alleged that there has been a contravention of a freestanding statutory requirement for the protection of the environment. Sometimes such a requirement may cut across or regulate the performance of other statutory functions, such as the "appropriate assessment" regime which the Conservation of Habitats and Species Regulations 2017 (SI 2017 No. 1012) imposes on a range of statutory functions. In addition, a law for the protection or regulation of the environment may be contravened through a breach of a public law principle, such as an irrational exercise of discretion (see [63] above). Such cases fall within Art.9(3).*

*134. But the present case raises this issue: **does Art.9(3) of the Aarhus Convention apply where a claim alleges that a defendant's decision or act under a legal provision not relating to the environment is vitiated by a public law error in some way connected to the environment or an effect on the environment?** It is difficult to reconcile some of the decisions in the High Court, notably Friends of the Earth and the FCA case, and indeed the decision in the present case.*

*135. Typically, the question posed in [134] above arises where a claimant alleges that the decision-maker failed to take into account a material consideration, such as the effect of his decision on the environment or some particular environmental issue, for example, climate change. Alternatively, in some cases a claimant may allege that the decision-maker acted irrationally in the manner in which he dealt with an environmental issue, having chosen to take the matter into account. **GFL and WWF maintain that a claim raising any public law error in some way connected with the environment falls within Art.9(3), even if it has been taken under a legal provision which does not itself relate to the environment. I disagree.***

*136. In R (Friends of the Earth Limited) v Secretary of State for Transport [2021] PTSR 190 the Supreme Court set out key principles on a decision maker's obligations to have regard to relevant considerations ([116]-[121]). First, there are considerations which a statute requires, whether expressly or impliedly, a decision-maker to take into account. Second, there are considerations which a decision-maker must take into account, because they are not merely relevant but are "obviously material", in the sense that it would be irrational not to take them into account. Third, there are considerations which are simply relevant and a decision-maker may choose whether or not to take them into account. However, in relation to that third category, a decision-maker is not obliged to go through every matter which could be relevant and to decide whether or not to take them into account. In my judgment it follows that the mere fact that a decision-maker does not take into account a consideration in the third category cannot found a*

*legal challenge. Finally, whether a decision-maker is required to take a consideration into account or whether he chooses to do so, the weight he gives to that matter, including whether to give it no weight, are matters for him, subject to review on the ground of irrationality.*

*137.* ***In determining the extent to which Art.9(3) may apply to any of the above scenarios, an essential question is whether the claimant is able to allege that the defendant has contravened a national legal provision for the protection or regulation of the environment. That will depend upon the wording, context and purpose of the provision under which the defendant has acted.***

*138. Take for example a defendant which has acted under a statute the purposes of which are not in general for the protection or regulation of the environment. The legislation may nonetheless contain a provision which requires a particular factor to be taken into account and the language or context demonstrates that the object of that provision is to protect or regulate the environment. In that situation Art.9(3) will most likely be engaged. But another piece of non-environmental law may simply impose a general obligation to take into account all relevant considerations without more. Venn indicates that a provision of that kind does not engage Art.9(3). I agree. The purposes of such a provision is not to protect or regulate the environment.*

*139.* ***An essential part of the reasoning in Venn was based upon the Court's understanding that Parliament had chosen to implement much of the UK's environmental protection through a statutory scheme, namely planning legislation, although that has the broader purpose of controlling land use by reference to planning considerations. In particular, Parliament envisaged that that protection would be provided through a requirement to apply relevant policies for the protection or regulation of the environment at both national and local level. Venn applies to such policies in two ways. Statutory development plan policies fall into the first category of material considerations, that is mandated considerations (see [136] above). But draft development plan policies, and national policies in the NPPF, fall outside that category. They must have been treated by the Court of Appeal as potential "obviously material considerations" in the second category.***

*140.* ***Accordingly, although s.70(2) of the TCPA 1990 and s.38(6) of the 2004 Act impose obligations to take into account statutory development plan policies and, in general, material considerations, but not environmental matters specifically, the court was able to infer that Parliament intended that environmental protection would be achieved through those provisions combined with relevant policies for the protection or regulation of the environment.***

*141. However, it cannot be assumed that the Court's reasoning in Venn , which was specific to the nature of the well-established role played by the planning regime in environmental protection, is transferrable to open-ended statutory requirements to take into account relevant considerations in other legislation enacted for non-environmental purposes, such as funding for overseas projects, financial market controls or international trading arrangements. Certainly, no argument was presented to us in the present case, which could justify reading*

*across this critical part of the reasoning in Venn to the 2018 Act . To read across Venn while disregarding this essential part of its ratio would result in an overly broad application of Art.9(3) and by the same token Art.9(4).*

*142. What should be the court's approach where a claimant alleges that a defendant, when acting under a legal provision not relating to the environment, failed to take into account an obviously material consideration, such as the alleged effect of his decision or action upon an environmental interest or issue? Here, by definition, the reasoning in Venn does not apply. As previously stated, the purpose of a bare principle of public law is not to protect or regulate the environment. Its purpose is to regulate the lawfulness of decisions, actions or omissions of public authorities, irrespective of the various functions they carry out. Therefore, a principle of public law, without more, does not form part of our law relating to the environment. It does not become so by being applied in a factual matrix which involves environmental impact or effect, nor could that matrix alter the non-environmental nature of the legal provision under which the defendant acts. Article 9(3) is not engaged. Indeed, if Art.9(3) were to be treated as applying to this type of situation, then it would have been unnecessary in Venn for the Court of Appeal to have relied upon the reasoning in [12] to [17] of its decision. Instead, the Court could simply and directly have said that a public law error in a decision which has an effect upon the environment, or an environmental issue, is sufficient to engage Art.9(3), irrespective of whether the legal regime under which the defendant acted served the purpose of protecting or regulating the environment. The Court did not do so.*

*143. The same analysis applies to the situation where an authority acting under a non-environmental legal provision takes into account an obviously material consideration or simply a relevant consideration, but acts irrationally in the handling of that matter. The mere fact that this concerns the environment, or an effect upon the environment, does not turn the breach of a public law principle into a breach of national environmental law. It does not alter the non-environmental nature or purpose of that legal provision. In such circumstances, Art.9(3) is not engaged.*

7.6 Thus, applying the reasoning in *Global Feedback*, the proposed claim is not one covered by article 9(3) of the Aarhus Convention. It is not one which is about an alleged decision, act or omission which contravenes a national law which itself relates to the environment. Unlike section 70 of the 1990 Act or section 38(6) of the PCPA 2004, section 191 of the 1990 Act does not require the taking into account of any environmental policies or material considerations. Rather, it is simply a decision which confirms whether an activity (already ongoing) is lawful. In such circumstances the proposed claim would not benefit from the Aarhus cost protection provisions.

## 8. ADDRESS FOR FURTHER CORRESPONDENCE AND SERVICE OF COURT DOCUMENTS

8.1 We are instructed to accept service of court documents in relation to this matter on behalf of LBA by email to [redacted] and [redacted]). Please ensure that the file size of any email does not exceed 50MB.

HERBERT SMITH FREEHILLS KRAMER

Date
12 June 2026
Letter to
Leigh Day

Yours faithfully

Herbert Smith Freehills Kramer LLP

**Herbert Smith Freehills Kramer LLP**

HERBERT SMITH FREEHILLS KRAMER

**LBA RESPONSE TO EVIDENCE SUBMISSIONS**

**CERTIFICATE OF LAWFULNESS PURSUANT TO S191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 IN RELATION TO CONDITION 6 OF PLANNING PERMISSION WITH REFERENCE P/07/02208/FU**

**LCC REFERENCE: 26/00926/CLE**

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## 1. INTRODUCTION

1.1 This statement is in response to submissions from Leigh Day on behalf of the Group for Action on Leeds Bradford Airport ("**GALBA**") dated 25 March 2026 (the "**GALBA Submission**") in the matter of an application for a certificate of lawful existing use or development (the "**CLEUD Application**") made by our client, Leeds Bradford Airport Limited, in relation to the planning permission (P/07/02208/FU, the "**Permission**") which governs the operation of Leeds Bradford Airport ("**LBA**").

1.2 LBA has taken the opportunity to review the submissions and makes the following response to the themes raised, with reference back to LBA's Application Statement where relevant.

## 2. GALBA SUBMISSION

2.1 GALBA has raised the following in respect of the CLEUD Application:

2.1.1 an assertion that the application does not accord with the Inspector's interpretation of condition 6 (GALBA 25-29);

2.1.2 an assertion that each QC rating should be taken as a singular category and any CLEUD granted should therefore be in respect of each specific QC category (rather than with reference to movements beneath 86.9 EPNdB as a whole) and with reference to a specific number of movements (GALBA 30-35); and

2.1.3 various comments as to the specific evidence data submitted (GALBA 36-50).

2.2 We address each of these in turn below. However, first, given GALBA's misguided approach it is necessary to step back and consider what the application is for.

2.3 Section 191(1)(c) of the Town and Country Planning Act 1990 ("**TCPA 1990**") provides that a person may apply for a CLEUD if they wish to ascertain whether "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 Under s171B TCPA 1990 a breach of condition which has occurred for ten years is lawful.

2.5 Properly understood against the statutory scheme, the application is to ascertain whether the failure to comply with condition 6 through the flying of aircraft at night in breach of that condition is lawful. Condition 6 of the Permission prescribes the aircraft which are permitted to fly at night. It opens with "no aircraft movements shall take place other than by….". The nighttime movement of an aircraft which does not fall within 6(a)-(e) is therefore a breach of the condition. There is no basis for dividing those aircraft into sub-categories of aircraft such as (for example) those painted red or those painted blue. Nor by the same token is there any basis for sub-dividing those aircraft into QCX and Y.

2.6 At paragraphs 16-19 of its submissions GALBA notes that QC values and EPNdB "are relevant across Condition 6" and then contends that "Conditions 6(a) and 6(b) are anchored by QC values". This does not take the matter any further. Conditions 6(a) and 6(b), together

with 6(c)-(e) set out the aircraft which are permitted to fly at night to and from the Airport. Any movements not falling within those categories are in breach. GALBA's submissions fail to acknowledge this and their submissions are therefore misconceived.

2.7 At paragraph 17 GALBA asserts that a certificate by reference to EPNdB cannot be properly granted because QC values may change in the future. This assertion does not make sense. The breach of condition in question occurred between 2010 and 2019 and it is by reference to activity in this period that immunity would be established by the CLEUD; it is not addressing questions relating to speculative QC value changes which may or may not occur in the future. Any future changes to the QC system would not affect the fact that throughout the relevant period any and every night time movement of an aircraft with an EPNdB of less than 87 at LBA was in breach of condition 6.

2.8 The application, which seeks to confirm the lawfulness of the flying of aircraft less than 87 EPNdB and not classed as exempt, relates to those aircraft which do not fall within 6(a)-(e) and whose night flights do not breach any other condition. Each movement by any one of these aircraft has amounted to a breach of condition 6 and therefore contributes to the continuous breach which has been demonstrated. As set out below this approach is entirely consistent with the Inspector's interpretation of condition 6 and GALBA's approach is irreconcilable with that interpretation.

## 3. INSPECTOR' S INTERPRETATION (GALBA 25-29)

3.1 The submissions set out at paras 25-29 of GALBA's submissions are difficult to understand and unfounded. GALBA correctly recognises that the Inspector held that the flying of QC0.25 aircraft during the night-time hours is a breach of condition 6 and GALBA goes on to accept (correctly) that the "Inspector noted that flying any aircraft which has a noise classification of 86.9EPNdB or below" is not permitted by condition 6. However GALBA goes on to assert that this "was not a statement of the meaning of Condition 6(a) and (b) for all time". It is entirely unclear what GALBA is seeking to suggest, but it is obviously wrong to contend that the correct legal interpretation of the condition can vary.

3.2 Whilst the natural focus of the Inspector's decision was on QC0.25 aircraft, because that was the subject of the application/appeal at the time, the interpretation of the condition was a matter of law and it is clear from the Inspector's decision that the flying of any aircraft with a noise classification of under 87 EPNdB was identified as a breach of the condition (see paragraph 5.2 of LBA's Application Statement). Moreover, the Inspector's decision cannot possibly be read as requiring breaches to be separated into particular categories of aircraft whether on the basis of the colour of their fuselage or whether on the basis of their QC rating and such an approach is misconceived.

3.3 The sole basis that GALBA now seeks to give for not counting all breaches of the condition together is an allegation that it "is bizarre to suggest that breaches by larger and noisier aircraft can be lumped together with breaches by smaller and much quieter ones to establish overall immunity from enforcement" (GALBA 28). It is not "bizarre" at all but simply giving proper effect to the interpretation of the condition. First, the allegation is factually incorrect in its own terms– these are not very different aircraft contrary to what GALBA alleges at para.29. All of the breaches are by aircraft which are quieter than those which are permitted through condition 6(a) and 6(b). Second, it is obviously wrong to allege that the condition is breached in "different ways". Each movement under 87EPNdB was an individual breach of condition 6 regardless of its QC rating – condition 6 is not tied to individual QC ratings and breaches cannot be either. GALBA's allegation is fundamentally wrong for a number of reasons.

## 4. IMPLICATIONS OF OCADO (GALBA 30-35)

4.1 At paragraph 30 GALBA states that "*Ocado* established the important principle that immunity extends only to what was actually done during the immunity period" and goes on at

paragraph 32 to state that "the distinct nature of the breach of a condition, namely the extent to which is breached, … defines the scope of any accrued right." GALBA then seeks to rely upon *Ocado* as some sort of authority to support its assertion that the breach should be categorised solely by reference to a particular QC value of aircraft. Again, this is misconceived and simply wrong.

4.2 The paragraph in *Ocado* on which GALBA seeks to rely appears to be paragraph of 60 of Holgate J's (as he then was) judgment which stated that: "[S]uppose permission has been granted for a caravan site subject to a condition restricting the number of pitches to 50. If the landowner can show that there has continued to be 55 pitches on the site for a 10-year period, he is entitled to a CLUED legitimising the breach of that condition to the extent of allowing up to 55 pitches".

4.3 This paragraph only serves to illustrate the basic fallacy in GALBA's approach, not support it. The important and obvious point is that the relevant breach being discussed was the breach of the condition through the pitching of additional caravans. There was (as here) no basis for even contemplating that the breach had to be framed by reference to any particular type of caravan (such as caravans of different size or capacity) or (for example) the size of their engine. This therefore reveals the logical fallacy of GALBA's approach.

4.4 The correct approach is to consider whether there has been a failure to comply with the relevant condition for the requisite period. Here, there has been a failure to comply with Condition 6 for more than ten years through the movement of aircraft which do not fall within the permitted categories. That is the breach. *Ocado* is not authority for narrowing the breach to particular types of aircraft.

4.5 At paragraph 33 GALBA asserts that "QC0.25, 0.125 and 0 aircraft are vastly different from one another in terms of physical size, EPNdB levels, and passenger capacity. It would be entirely inappropriate and unlawful to grant a certificate that fails to take account of this reality. Instead, any certificate that were granted should, following *Ocado*, be tailored to the breaches in question." This again contains a false assertion and generally makes no sense. The QC rating of an aircraft has nothing to do with the size or capacity of the aircraft, it is related purely to the level of noise energy, measured in EPNdB. QC 0.25, 0.125 and 0 aircraft are not "vastly different" from one another – they are all aircraft of less than 87EPNdB. In any event, the night time movements of any and each of these aircraft was just as much a breach of condition 6 as any other falling within those QC categories.

4.6 In any case, for the reasons detailed at paragraphs 10.2 to 10.5 of LBA's application statement the nature of the breach is properly described as the flying of aircraft with an EPNdB value of less than 87 in the night at LBA in breach of condition 6 – the condition is not phrased so as to limit movements tied to specific QC ratings and as such the CLEUD should not be tied to specific QC ratings.

## 5. MOVEMENT DATA (GALBA 36-50)

5.1 GALBA has submitted commentary as to specific movement data, which is addressed below. GALBA also refers the Council to the history of CLEUD applications made by LBA in respect of night movements. The issues with regards to the recording of data at the Airport have been thoroughly explained and it is inappropriate for GALBA to seek to argue that this has any bearing on the current application.

5.2 GALBA 41: GALBA contend that B757 aircraft are not QC0.25 movements and refer to 2003 and 2020 reports appended to their statement. This is wrong. First, in respect of these reports:

5.2.1 The 2003 report is irrelevant – QC 0.25 was not introduced until 2006 and so this report is clearly unable to comment upon the proper classification of QC 0.25 aircraft;

5.2.2 The 2020 report is irrelevant – the report states that "results for several older aircraft types, including variants of B757-200 are shown to exceed their QC classification". The report (and GALBA) do not specify which specific variants exceed QC 0.25 and so this evidences nothing in respect of LBA's movement data. Secondly, the report refers to actual noise values and not certified noise values (which the QC system is based on). LBA and the Council can only determine EPNdB and therefore QC with reference to certified noise levels. GALBA has provided no evidence to show that B757-200 movements are not properly classified as QC0.25 based on their certified noise values.

5.3 GALBA 42-43: GALBA state that LBA's reporting of B757-200s did not refer to these movements as falling under QC0.25. As dealt with extensively during the appeal process, B757 aircraft were previously erroneously classified on LBA systems as QC 0.5 rather than QC0.25. In any case, such reporting has no bearing on the QC rating of actual movements flown – GALBA's commentary in this respect is irrelevant.

5.4 GALBA 44-45: GALBA correctly identify that LBA's listed E190s are ERJ190-100 STD movements and that as a result of the number of different variants of this aircraft type it is not possible to categorically determine the correct QC rating. This is incorrect - LBA validated the full range of KLM E190s using an external database from LOOP (RDC Aviation). The data on LOOP is "managed by operator", meaning KLM manage their own database and submitted the values that LBA has used for their data. Full information is appended to this statement at appendix 2 showing the registration, engine type and noise classifications for these aircraft. The QC classification of these aircraft was validated by both LBA and LCC prior to the CLEUD appeal. The CAA aircraft database confirms that all variants of the E190-100 STD with a 45,000kg Maximum Takeoff Weight are below 87EPNdB. LBA calculated the QC value using the noise EpNDB (Lateral, Approach and Flyover data from LOOP) and has verified that this information is consistent with that in the CAA aircraft database.

5.5 GALBA 46-47: On the same basis, GALBA state that E170-200 STD movements contain many variants and so assert they are likely either QC0.5 or undetermined. As above, LBA obtained and validated this movement data using LOOP, as shown in the appended document. As evidenced by this document these movements are 0.25 movements and not ambiguous as GALBA claim.

5.6 GALBA 48: GALBA refer to that Cessna 421C movements and Beech King Air movements as being classified as exempt aircraft under condition 6. In this respect:

5.6.1 LBA has confirmed that Cessna 421C movements should be classified as exempt, but this is a negligible difference affecting only 7 movements from LBA's dataset. An updated summary of movements with these seven records removed is at appendix 1 to this document. For completeness, these tables supersede those tables provided at 7.1 and 7.2 of the application statement. But as will be clear, on each date with an amended movement, other movements occurred in breach of condition and as such this has no impact on continuity of breach.

5.6.2 GALBA is incorrect in respect of its contentions about the Beech King Air aircraft classification. The 1993 NOTAM supplement lists Beechcraft King Air C90A and Beechcraft S/King Air 200 as exempt. The aircraft movements flown at LBA, however, are BEECH E90 Kingair and Beechcraft King Air 100, neither of which are listed on the 1993 supplement and therefore are not exempt under condition 6(e).

5.7 GALBA 49: GALBA refers to 289 small propellor driven aircraft. For clarity, it is not possible to obtain a standard noise certificate as these aircraft are certificated to a different ICAO standard, but it is not necessary to do so. Part 1 of the Schedule to Supplement to the United Kingdom AIP NOTAM S45/1993 clarifies in Paragraphs 1(b) and 2(c) that in the case of a propellor aircraft with a maximum take-off weight not exceeding 5,700 kg "the noise level

indicated in relation to that aircraft is the noise data supplied for this purpose to the CAA". The CAA publishes a noise database of light propellor aircraft which includes all of the 289 small propellor aircraft referred to by GALBA which clarifies that the noise rating for all small propellor aircraft in the database is QC0 with no exceptions. This database is available on the CAA website and is titled "CAAdB Light Prop 01 April 2026". As a result, all light propellor aircraft not specifically listed as "Exempt" in S45/1993 are below 87EPNdB and were operated in breach of Condition 6.

5.8 GALBA's submissions therefore only affect a total of 7 classified movements, out of a total of 10,000 total movements in issue. This is clearly a negligible difference and patently does not undermine the data as a whole, which clearly shows a continuous 10 year breach.

**Herbert Smith Freehills Kramer LLP**

**17 April 2026**

HERBERT SMITH FREEHILLS KRAMER

## APPENDIX 1: UPDATED MOVEMENT TABLES

| Year | Arrivals | Departures | Total |
|---|---|---|---|
| **2010** | 513 | 504 | 1017 |
| **2011** | 571 | 504 | 1075 |
| **2012** | 484 | 542 | 1026 |
| **2013** | 713 | 430 | 1143 |
| **2014** | 844 | 430 | 1274 |
| **2015** | 519 | 442 | 961 |
| **2016** | 642 | 411 | 1053 |
| **2017** | 690 | 383 | 1073 |
| **2018** | 527 | 411 | 938 |
| **2019** | 582 | 374 | 956 |
| **Total** | **6085** | **4431** | **10516** |

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **2010** | 29 | 44 | 54 | 56 | 110 | 131 | 142 | 142 | 117 | 94 | 55 | 43 | 1017 |
| **2011** | 43 | 38 | 50 | 77 | 124 | 140 | 144 | 140 | 142 | 98 | 41 | 38 | 1075 |
| **2012** | 48 | 43 | 63 | 76 | 89 | 123 | 136 | 137 | 125 | 91 | 59 | 36 | 1026 |
| **2013** | 36 | 46 | 62 | 70 | 126 | 145 | 132 | 153 | 155 | 106 | 60 | 52 | 1143 |
| **2014** | 49 | 48 | 53 | 110 | 157 | 163 | 162 | 166 | 141 | 122 | 55 | 48 | 1274 |
| **2015** | 52 | 51 | 72 | 82 | 89 | 101 | 122 | 135 | 114 | 60 | 40 | 43 | 961 |
| **2016** | 48 | 43 | 53 | 64 | 107 | 134 | 157 | 167 | 136 | 65 | 39 | 40 | 1053 |
| **2017** | 37 | 35 | 47 | 53 | 106 | 162 | 177 | 168 | 157 | 71 | 33 | 27 | 1073 |
| **2018** | 35 | 31 | 34 | 34 | 84 | 134 | 153 | 155 | 135 | 67 | 46 | 30 | 938 |
| **2019** | 33 | 32 | 30 | 43 | 98 | 132 | 147 | 155 | 131 | 86 | 36 | 33 | 956 |
| **Total** | **410** | **411** | **518** | **665** | **1090** | **1365** | **1472** | **1518** | **1353** | **860** | **464** | **390** | **10516** |

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**APPENDIX 2**