



APPLICATION STATEMENT

CERTIFICATE OF LAWFULNESS: S191 TOWN AND COUNTRY PLANNING ACT 1990 IN RELATION TO CONDITIONS 4, 6 AND 9 OF PERMISSION P/07/02208/FU AND IMMUNITY FROM ENFORCEMENT IN RESPECT OF CERTAIN AIRCRAFT MOVEMENTS

1. INTRODUCTION

- 1.1 This statement supports four separate applications made by our client, Leeds Bradford Airport Limited, in relation to the planning permission (P/07/02208/FU, 'Permission') which governs the operation of Leeds Bradford Airport ("LBA"). A copy of the planning permission ("2007 Permission") is provided as Appendix 1.
- 1.2 A single supporting statement (the "Application Statement") is provided as the correct meaning of the relevant conditions and their enforceability is to some extent inter-related.
- 1.3 The nature of the development for which the CLEUDs are sought is as follows, taking account of the requirements of s191 Town and Country Planning Act 1990. In each case, we refer to the sections of the Application Statement and to the Appendices which are most relevant to the case being made by LBA.

Application	Relevant information and evidence
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.	Relevant sections of this Application Statement Section 2 of this Application Statement Relevant supporting data in Appendices Appendix 4 of this Application Statement, which lists all (and only) the QC1 departures between 2008 and 2019, and Appendix 4A which lists QC1 and QC2 departures between these years. See cross-reference to this data and see the summary tables (Tables A and B) in Vincent Hodder's Statutory Declaration. See also the cross-reference to Appendix 6 (Aircraft Movement Data and Aircraft Noise Data Provided to LCC) in the Statutory Declaration. The Addendum to this Statement and Appendices 14 to 19 are also relevant in explaining the data verification exercise conducted by LBA in order to provide the data in Appendices 4 and 4A.
Application 2: Confirmation of immunity against enforcement of Conditions 6(a), 6(b) and 6(c) of the Permission in respect of the	Relevant sections of this Application Statement Section 3 of this Application Statement (and relevant parts of Section 2



Application	Relevant information and evidence
<p>prohibition of night-time movements of aircraft with a quota count of 0.25, based on ten years of continuous breach.</p>	<p>summarising case law, as referenced in Section 3)</p> <p>Relevant supporting data in Appendices</p> <p>Appendix 5 of this Application Statement, which lists all of the aircraft movements made in the night-time period by aircraft with a quota count of 0.25 between 2008 and 2019. See the cross-reference to this data and see the summary table (Table C) in Vincent Hodder's Statutory Declaration (paragraph 7 of Appendix 2 of this Application Statement). See also the cross-reference to Appendix 6 (Aircraft Movement Data and Aircraft Noise Data Provided to LCC) in the Statutory Declaration.</p> <p>The Addendum to this Statement and Appendices 14 to 19 are also relevant in explaining the data verification exercise conducted by LBA in order to provide the data in Appendix 5.</p>
<p>Application 3:</p> <p>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.</p> <p>(a) those aircraft with a maximum certified weight not exceeding 11,600 kg and</p> <p>(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 to the NOTAM S45/1993 Notice</p>	<p>Relevant sections of this Application Statement</p> <p>Section 4 of this Application Statement.</p> <p>Relevant supporting data in Appendices</p> <p>Data not relevant as this Application merely seeks to confirm that the existing use is lawful in accordance with the meaning of this condition.</p>
<p>Application 4</p> <p>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:</p> <p>(a) delayed landings up to 0100 hours by aircraft scheduled to land</p>	<p>Relevant sections of this Application Statement</p> <p>Section 5 of this Application Statement.</p> <p>Relevant supporting data in Appendices</p> <p>Data not relevant, as this Application merely seeks to confirm that the existing</p>



Application	Relevant information and evidence
at Leeds Bradford Airport between 0700 hours and 2300 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	use is lawful in accordance with the meaning of this condition.

1.4 The Appendices to this Application Statement are listed below:

APPENDIX	Description
SUPPORTING INFORMATION	
Appendix 1:	Planning permission P/07/02208/FU
Appendix 2:	Statutory declaration of Vincent Hodder, Chief Executive of Leeds Bradford Airport
Appendix 3:	CLEUD Application Area
Appendix 4:	Data relating to departure of Quota Count 1 aircraft in the night-time period
Appendix 4A:	Data relating to departure of Quota Count 1 and 2 aircraft in the night-time period
Appendix 5:	Data relating to Quota Count 0.25 aircraft in the night-time period
Appendix 6:	Aircraft Movement Data and Aircraft Noise Data Provided to LCC
Appendix 7:	Reports produced by LCC
Appendix 8:	Reports of the Chief Planning Officer to the LCC Plans Panel
TITLE INFORMATION	
Appendix 9:	Craven College Further Education Corporation: Plan
Appendix 10:	Jet2.com Limited: Plans
Appendix 11:	Mulltflight Limited: Plan
Appendix 12:	Northern Powergrid (Yorkshire) Plc: Plan
Appendix 13:	Yorkshire Electricity Group Plc: Plans



DATA VERIFICATION ¹	
Appendix 14:	Raw Movement Data 2008 – 2019
Appendix 15:	Structured Movement Data 2008 – 2019 (with added columns for Season, Local Time Conversion & QC)
Appendix 16:	Structured Night Movement Data (as above but NIGHT only)
Appendix 17:	Reconciled additional aircraft as QC0.25 & QC1
Appendix 18:	Aircraft Data Table (AXIS)
Appendix 19:	Aircraft Data Table (Chroma)
Appendix 20:	AIP Supplement 061/2023

- 1.5 Before going on to address each application separately, it is worth setting out the legal context for interpreting planning permissions and their conditions. When interpreting planning conditions a court will ask 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" (*per* Lord Hodge in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 W.L.R.84 (at para.34)). The exercise is an objective one "in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, and any other conditions which cast light on the purpose of the relevant words and common sense" (*Trump* at para.34).
- 1.6 Whilst it may be necessary to imply terms into a planning condition the court will 'exercise great restraint' in doing so (*Trump* at para.35). In *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924 (admin) Lieven J summarised a number of principles applying to the interpretation of planning conditions:

"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. 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. This is not the private intentions of the parties, as

¹ An explanation of how the data in Appendices 14 to 19 was used to compile and verify the data in Appendices 4, 4A and 5 is set out in the Addendum



would be the case in a contractual dispute, but the planning purpose which lies behind the condition.

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." (emphasis added)

2. **APPLICATION 1: IMMUNITY IN RESPECT OF CONDITION 4 FOR AIRCRAFT WITH A QUOTA COUNT OF 1**
- 2.1 Condition 4 provides that "*No departures in the night-time period shall take place by an aircraft with quota counts of 1,2,4,8 or 16 on take-off.*"
- 2.2 In breach of this condition, aircraft with quota count of 1 departed from LBA during the night-time period for more than ten years. As confirmed by Vincent Hodder (LBA's Chief Executive



Officer) in his statutory declaration (**Appendix 2**), the numbers of QC1 departures in each year and the numbers of QC1 and QC2 departures were as follows:²

Year	Departures including QC1 aircraft only	Departures including QC1 and QC2 aircraft
2008	15	36
2009	8	19
2010	3	13
2011	2	4
2012	1	10
2013	4	14
2014	93	95
2015	61	61
2016	71	71
2017	10	10
2018	15	15
2019	7	7
Total	290	355

2.3 While LBA are not seeking immunity from enforcement in respect of aircraft with a Quota Count of 2, LBA considers that the QC2 departures are still relevant this Application 1 as they demonstrate further breaches of the condition. As such, the table above includes a column showing the numbers of QC1 and QC2 departures (combined), as well as a column showing the number of QC1 departures alone.

2.4 Such movements demonstrate a continuous breach of condition 4 for a period of more than ten years. The relevant law in relation to immunity from enforcement after ten years of breach is set out below.

Summary of LBA's case

2.5 The movements which have been set out above demonstrate a continuous breach of condition 4 over a ten year period. The period from 2008 to 2017 shows a sustained breach of the condition including unlawful movements in every calendar year.

² An explanation of how this data was obtained is included at the Addendum to this Application Statement



2.6 The fact that the breaches did not continue after 2019 (during the Covid years) is irrelevant. As Holgate J identified in *R(oao Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin) (see below) once a condition has been breached for ten years the breach need not continue thereafter in order to maintain immunity under s171B TCPA 1990.

2.7 Further, it can be noted that LBA was reporting its movements to LCC during every one of these years, and therefore LCC must have been aware that condition 4 was being breached. LBC could have taken enforcement action at any point during the ten year period (this is of particular significance, see *R(oao North Devon District Council) v The First Secretary of State* [2004] EWHC 578 (Admin) below). The nature of LCC's access to LBA's data is further detailed at paragraphs 7 – 14 of the Statutory Declaration of Vincent Hodder (LBA's Chief Executive Officer) at Appendix 2.

2.8 Condition 4 is therefore now unenforceable in so far as aircraft of quota count 1 are concerned.

The relevant principles from *North Devon* in relation to 'continuous breach'

2.9 In cases of a breach of planning control consisting of breach of a condition which by its very nature involves a breach that subsists continuously, the general position is that the breach of planning control or breach of condition will ordinarily need to be continuous for immunity under section 171B(3) TCPA 1990 to arise.

2.10 In *North Devon*, Sullivan J considered the effect of this provision in the context of a breach of condition which involved a temporal limitation, in that case a condition that provided that holiday bungalows shall only be occupied during the period from 15th March to 15th November in each year. The local planning authority in that case did not dispute that in breach of that condition, the claimant had occupied the property continuously throughout the year, winter and summer, for ten years. However, it was argued that while there had been a breach of the condition each winter, that breach ceased on the 15th March each year when occupation of the property had again been permitted for the spring, summer and autumn months. The local planning authority argued that each year there was a separate breach of the condition such that the ten-year period of continuous compliance could not accrue.

2.11 Reliance was placed on observations made in a decision of the High Court in *Nicholson*³ to the effect that: "If non-compliance ceases by discontinuance of the offending activity or otherwise, that breach is at an end. The condition, however, will in an appropriate case continue in force. If there is subsequent renewed non-compliance, that would, in my judgement, be a fresh breach. The period for enforcement against that breach under section 171B(3) will begin to run again."

2.12 Sullivan J rejected that analysis as follows:

16. "The council's submissions take the dicta in *Nicholson* out of context. Judicial dicta must be interpreted and applied in the context of the issue that was before the court. They should not be treated as though they were contained in an enactment of general application. *Nicholson* was not concerned with a seasonal occupancy condition. On any basis, on the facts of that case, the breach of the agricultural occupancy condition had not lasted for ten years and had ceased some four years before the application was made for the LDC

17. The *Rottenbury* case was also concerned with breach of an agricultural occupancy condition. In that case the occupancy had been breached each summer when the

³ (*Nicholson v Secretary of State for the Environment, Transport and the Regions* [1998] 2 PLR 6)



property was used for short-term holiday lets, but the property had remained unoccupied between October and April each year. The Secretary of State's decision in that case was quashed on the basis that he had not properly considered whether those facts demonstrated a continuing breach of the agricultural occupancy condition "throughout each year and therefore for the necessary period of ten years". Again, the Court was dealing with a condition which was capable of being breached "throughout the year".

18. The starting point must be section 171B(3). The underlying purpose of this provision was explained in *Secretary of State for the Environment v Holding and Thurrock Borough Council* [2002] JPL 1278 ...

[...]

21. It is plain, therefore, that Parliament in enacting section 171B(3) intended that all breaches of planning control other than those mentioned in subsections (1) and (2) should become immune from enforcement action after they had continued for ten years. Such a limitation period was felt to be fair to both parties, since it would give the local planning authority sufficient time to identify any significant planning problem arising as a result of the breach of planning control, whilst at the same time it would not place an undue evidential burden upon the landowner, who could rest assured that after ten years he would be free of the threat of enforcement action.
22. In many cases it will make little or no practical difference whether one refers to the breach of planning control having continued for ten years, or the breach of planning control having been continuous for ten years. Many conditions, such as agricultural occupancy conditions, are capable of being breached continuously throughout each year of the ten year period. However, that is not true of all conditions and section 171B(3) applies to all breaches of planning control save for those falling within subsections (1) and (2), where a four year period is prescribed.
23. In addition to seasonal conditions, such as condition (e) in the present case, conditions which prohibit a permitted use, for example, storage, parking or industrial, from taking place on Sundays, bank or public holidays, are relatively common place. Indeed, a model condition of that kind is to be found in paragraph 65 of appendix A to Circular 11/95.
24. If a factory subject to such a condition was operated on each and every Sunday for a period of ten years from March 1994-March 2004 it would be wholly unrealistic to suggest that there had been a fresh breach of conditions 52 times each year so that the ten year period for the purpose of section 171B(3) began to run afresh on each and every Sunday.
25. Applying the three-fold test in Nicholson above, if one, firstly, sought to identify the failure to comply, the answer would be: the factory is being used on Sundays. If one asked the second question, when as a matter of fact and degree did that failure begin: the answer would be "in March 1994", not "last Sunday". If one then turned to the third question and considered whether a period of ten years had expired, the answer would be "yes", the factory has been used on Sundays throughout the last ten years. I would accept that questions of fact and degree will inevitably arise, for example, where the factory in this example has not been used on each and every Sunday, but on a few, some, or most, Sundays during each year. Such questions of



fact and degree do not arise in the present case, and they will have to be resolved on a case by case basis.

26. This illustration does, however, show that it is necessary to focus upon the particular condition and the particular matter that is alleged to constitute the breach of that condition.
27. It is not appropriate to mechanically apply the dicta in Nicholson to those cases where the condition does not "bite" on the use of the property continuously throughout the year, and where it is, therefore, not possible for there to be a breach of that condition for 365 days in the year.
28. A useful way of testing the position in relation to an application for an LDC is to ask: what would be the outcome if an enforcement notice was issued in relation to the use which is applied for and an appeal was made against that enforcement notice on ground (d) in section 174(1) "that at the date when the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters." The outcome should be the same in both cases: if the ground (d) appeal against the enforcement notice would succeed, so should the application for the LDC. ..."

[...]

31. For the sake of completeness I should mention that Mr Edwards submitted that there might be practical difficulties in enforcing against a breach of a seasonal condition once the breach had ceased for that year. In this connection he referred to the terms of section 187A(2) which gives local planning authorities power to serve a breach of condition notice "if any of the conditions is not complied with." This provision was referred to in *Nicholson*. The learned deputy judge referred to the parties' agreement that such a notice could be served only where there is "existing non-compliance" and said that there was force in the submission that the power to serve an enforcement notice was similarly constrained (paragraph 9 above). The constraint is readily understandable in the case of a breach of condition notice. Service of such a notice is intended to be a short sharp remedy which may be used in a straightforward case as an alternative to issuing an enforcement notice. There is a clear contrast between the terms of section 187A(2) and section 172(1), which enables a local planning authority to issue an enforcement notice:

"... where it appears to them --

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

32. Thus in the present case the council in each of the ten years since the second defendant took up occupation in 1992 had power to issue an enforcement notice after 14th March in respect of the breach of condition over the previous winter, even though the second defendant's occupation had ceased to be in breach of the condition and would not be in breach again until the following November. In many cases where a breach of condition has ceased the local planning authority will conclude under paragraph (b) in 172(1) that it is not expedient to issue an enforcement notice, but there may well be breaches of condition, such as the breach of condition (e) in the present case, which the local planning authority



considers are likely to recur next season unless enforcement action is taken. In such cases the local planning authority may well conclude that it is expedient to take enforcement action, even though the breach of condition has ceased for that particular season."

- 2.13 The approach in *North Devon* was referred to with approval more recently in *Ocado*, discussed further below.

Whether the local planning authority could have taken enforcement action (*Ocado*)

- 2.14 In *Ocado* Holgate J referred to the position identified by Sullivan J in *North Devon* as follows:

"57. ... Some conditions are capable of being breached continuously. Others are not, such as conditions which do not prohibit or restrict an activity throughout the year but only during certain months, or on certain days (e.g. Sundays and bank holidays) (see [18] to [23]). A "seasonal" or a "time-limited" condition does not give rise to a fresh breach for the purposes of the immunity period each time it is broken. Instead, immunity from enforcement is attained if, throughout a period of 10 years, the condition was breached whenever it was capable of being complied with (disregarding exceptional compliance as a matter of fact and degree). The breach of planning control imposed by the condition would have continued throughout that 10-year period. The practical test in this situation is whether it would have been possible in any year of the 10-year period for the local planning authority to have taken enforcement action in respect of the non-compliance, to which the obvious answer is "yes" ([24]-[25] and [30])."

- 2.15 In LBA's case, there has been non-compliance with condition 4 throughout a ten year period. This constitutes a continuous breach for this period and LCC had access to the data demonstrating this breach as follows:

2.15.1 the information provided to LCC by LBA (described in Vincent Hodder's statutory declaration in Appendix 2) was self-evidently sufficient to allow LCC planning officers to be able to identify the existence of breaches of condition 4; and

2.15.2 LCC was clearly aware of breaches of condition 4 relating to departures by QC1 aircraft during the period in question.

- 2.16 LBA has clearly shown that LCC was able to identify QC1 breaches from the information provided by LBA. It is not necessary for LCC to have identified all QC1 breaches. The inclusion of the example report (Appendix 6) is more than sufficient evidence to demonstrate LCC's awareness. It is also noted that the quota count of any aircraft is related to the certification data for that aircraft. All movements include the registration number of the aircraft. The certification data of an aircraft is publicly available information that can be accessed from the CAA or equivalent bodies.

- 2.17 In any event, LCC already has access to all similar reports prepared by LCC officers and and it is clear that LCC had sufficient information from LBA to identify the existence of departures of aircraft with a QC of greater than 0.5 during the night period. The Reports of the Chief Planning Officer to the LCC Plans Panel included in Appendix 8 further confirms that LCC was aware of consistent breaches of condition 4, and indeed considered, but rejected the idea of taking enforcement action. The comments of the Chief Planning Officer to the Plans Panel highlight four important issues that relate to the interpretation of the planning conditions:

2.17.1 Section 4.6 of the Chief Planning Officer's report to the Plans Panel dated 7 October 2010 states "Members should be aware that the Local Planning Authority have determined to undertake formal enforcement action against LBIA with regard to these alleged breaches of planning control." This is in relation to three departures



of PIA aircraft during the period from February 2010 to August 2010. In this case, the Chief Planning Officer did not consider only three movements to be "de minimis". In making this determination the Chief Planning Officer was having regard to the continuous nature of the breaches dating back beyond 2005.

- 2.17.2 Section 5 of the Chief Planning Officer's report to the Plans Panel dated 28 April 2011 contains a detailed overview of why the Chief Planning Officer did not support taking enforcement action against LBA in relation to the continued breaches. Specifically highlighted are: the reduction in breaches, the economic impact to the city, the loss of benefit to residents of having these flights at LBA and the limited impact of the breaches in relation to the larger number of night movements.
- 2.17.3 The Chief Planning Officer's report to the Plans Panel dated 6 December 2012 reports a further increase in departures in breach of condition 4 and still proposes not to take enforcement action. The report highlights in section 4.7 that despite the aircraft departures in breach of condition 4 that the number of breaches of the night noise limits represent a very small percentage (1.7%) of all flights with an indiscernible difference in noise. The report highlights in section 3.5 that the 8 breaches during the period only resulted in 2 noise complaints being received from residents. Finally, the report highlights in Section 9 that breaches of night-time limits regularly occur at UK airports, with Bristol having 240 breaches in 2011 and East Midlands having 15 breaches in June 2012 alone.
- 2.17.4 In every report of the Chief Planning Officer to the Plans Panel in Appendix 8 the Chief Planning Officer reports the results of the noise monitoring activities. In each case there are a number of movements that were reported as exceeding the noise limits. In every case, the Chief Planning Officer has reported that these exceedances were immaterial in relation to the number of movements and in terms of the noise impact on residents. While the discussions in the reports related to the PIA aircraft are about only those specific reported breaches, the noise monitoring reporting includes all flights during the night period from LBA and includes both reported and unreported departures of aircraft with a QC greater than 0.5. This reinforces the fact that there has been no material impact on noise and residents' amenity caused by the additional QC1 departures in breach of condition 4 set out in Appendices 4 and 4A.
- 2.18 The lack of enforcement action taken by LCC does not mean that the QC1 breaches identified above are de minimis. The decision not to enforce a breach of condition is a decision for the local planning authority to make on a case-by-case basis, based on the materiality of the breach. The size of a breach is not a relevant consideration in the question of whether a breach has actually taken place. The breach of condition 4 has been continuous in that it has taken place on every occasion on which it was capable of taking place over the course of more than 10 years.
- 2.19 All of the above reinforces the point that LCC has been well aware of the continuous nature of the breaches but has decided not to take enforcement action due to a lack of concern regarding their impact upon amenity.
- Interrelation with Condition 9**
- 2.20 The prohibition of QC1 flights during the night-time period is not subject to the exceptions provided for in condition 9. It is clear that condition 9 provides no exceptions for departures, only arrivals. While condition 9(b) refers to 'movements' rather than 'departures', there are no material circumstances in issue here in which a departure from LBA could be classified as required to meet an "immediate risk to life or health, either human or animal". The only movements which would realistically fall within this exception would be emergency arrivals.

Further, the evidence provided in Appendix 8 shows that LCC was aware that none of the declared QC1 departures were for emergency reasons.

Once ten years' breach is established the right is not lost merely because the right is not subsequently exercised (*Ocado*)

2.21 At paragraph 162 Holgate J concluded as follows:

"162. The correct legal position is that a lawful planning right which has accrued upon the expiry of a time limit in s.171B is not lost merely because subsequently that right is not exercised for a period of time. That conclusion applies just as much to a right legitimising a breach of condition which prohibited a use as to a use right derived from a material change of use. The law does not require that such a right be exercised on the date when an application for a CLEUD is made (or an enforcement notice is issued), or that it has been exercised throughout the intervening period from the time when it accrued. Instead, the law requires that the right remains in existence at the date when the lawfulness of what it authorises is in issue. So an accrued planning right must not have been lost in the meantime because of a supervening event, such as abandonment. The legal arguments in this case did not address in detail what other events might suffice to terminate a planning right arising from a breach of condition. It may well be that events of the kind recognised as terminating a use right would also suffice here, but any further discussion of that point should await a case in which it arises for decision by the court and is therefore addressed more fully in argument."

2.22 There is no judicial authority as to what might constitute 'abandonment' of a right accrued over a ten year period, but it is clear that no such abandonment could have occurred here in any event. It is obvious that the absence of quota count 1 flights departing at night-time period during the Covid period was not an abandonment of an accrued right but a temporary position that arose from restrictions imposed by the Government to deal with the Covid pandemic.

2.23 Therefore, on the basis of all of the above, the continuous breach of condition 4 in respect of flights with a QC value of 1 over a ten year period means that condition 4 is no longer enforceable with regards to the departure of QC1 flights during the night time period.

3. APPLICATION 2: IMMUNITY IN RESPECT OF AIRCRAFT WITH A QUOTA COUNT OF 0.25

3.1 In Application 2, LBA seeks confirmation that it has immunity against enforcement in respect of the of movements of aircraft with a quota count of 0.25 during the night-time period, on the following basis:

- 3.1.1 Aircraft with a quota count of 0.25 are not covered by the arrival or departures pursuant to Condition 6(a) and/or 6(b);
- 3.1.2 Aircraft with a quota count of 0.25 have been operating during the night-time period (23:00 to 7:00) from LBA for a period of more than ten years, and during that period have not been approved to operate by LCC pursuant to condition 6(c); and
- 3.1.3 Therefore, the movement of aircraft with a quota count of 0.25 during the night-time is immune from enforcement as a matter of law.



- 3.2 The statutory declaration of Vincent Hodder at **Appendix 2** confirms that the number of movements of aircraft with a quota count of 0.25 during the night-time period between 2008 and 2018 is as follows⁴:

<u>Year</u>	<u>Movements</u>
2008	374
2009	239
2010	377
2011	407
2012	349
2013	677
2014	724
2015	377
2016	572
2017	541
2018	495
2019	535
Total	5567

- 3.3 For all of the legal reasons set out in relation to Application 1, this pattern shows a continuous breach for more than ten years, and that the movement of aircraft with a quota count of 0.25 during the night-time period is now immune from enforcement. For ease of reference, that case is summarised below, but please refer back to the summary of the relevant case law set out under Application 1 above.

Summary of LBA's case on immunity

- 3.4 The departure of aircraft with a QC value of 0.25 is now immune from enforcement:
- 3.4.1 The data provided shows that there has been a continuous breach of condition 6 with regards to the operation of flights with a QC value of 0.25 for more than ten years;

⁴ An explanation of how this data was obtained is included at the Addendum to this Application Statement



- 3.4.2 The fact that breaches did not continue through 2020 (during the Covid years) is irrelevant. As Holgate J identified in *R(oao Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin) (see earlier) that the once a condition has been breached for ten years the breach need not continue thereafter in order to maintain immunity under s171B TCPA 1990;
- 3.4.3 LBA was reporting its movements to LCC during every one of these years, and therefore LCC must have been aware that such aircraft activity was taking place as evidenced by the Statutory declaration of Vincent Hodder at Appendix 2;
- 3.4.4 It would have been simple for LCC to serve an enforcement notice on LBA at any point during the more than ten year period that the breaches took place; and
- 3.4.5 The activity in question is therefore immune from enforcement and LBA has accrued the right to operate aircraft with a QC value of 0.25 during the night time period.

Interpretation of Conditions 6(A) and 6(B)

- 3.5 LBA believes that the movements detailed at paragraph 3.2 of this Application Statement are not permitted under condition 6(a) and 6(b). As such, LBA believes that the operation of aircraft with QC values of 0.25 at LBA is now immune from any enforcement action by LCC.
- 3.6 LBA considers that neither condition 6(a) or 6(b) covers aircraft with a quota count of less than 0.5 (ie this condition does not include aircraft which today are rated as quota count 0, 0.125 or 0.25). Such aircraft are not "aircraft classified as falling within Quota Count 0.5 and 1 for arrivals as defined by UK NOTAM S45/1993 issued by the Civil Aviation Authority and any succeeding regulations or amendments/ additions /deletions" (6(a) or "aircraft classified as falling within Quota Count 0.5 for departures as defined by UK NOTAM S45/1993 issued by the Civil Aviation Authority and any succeeding regulations or amendments/ additions /deletions" (6(b)).
- 3.7 Reference is made to condition 6(a) as well as 6(b) throughout, as the point of interpretation is the same in relation to both. The parts of condition 6 which are relevant to this application state:

'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....'
- 3.8 Thus, at the time that the planning permission was adopted, the permission adopted classifications as set out in the UK NOTAM S45/1993 which was then in force. However, the condition recognised that UK NOTAM S45/1993 may be succeeded by updated regulations and provided for these to govern the acceptability of flights under s6(a) and (b). UK NOTAM S45/1993 and the NOTAM currently in force (2023 version) are addressed further below.
- 3.9 **NOTAM**
- 3.10 Under the Civil Aviation (Designation of Aerodromes) Order 1981 Heathrow Airport, Gatwick Airport and Stansted Airport are designated aerodromes for the purposes of section 78 of the Civil Aviation Act 1982 ('CAA 1982'). The Secretary of State issued NOTAM S45/1993 under section 78 of the CAA 1982. This document prohibits aircraft of specified descriptions from taking off or landing and limits the number of occasions on which aircraft may take off or land at the designated aerodromes during the night period.

3.11 Paragraph 3 of **Notam S45/1993** sets out 'Descriptions of aircraft' as follows:

(1) Aircraft taking off or landing at any of the London Airports shall be described in this Notice as follows:

- (a) exempt aircraft;
- (b) aircraft having a quota count of 0.5;
- (c) aircraft having a quota count of 1;
- (d) aircraft having a quota count of 2;
- (e) aircraft having a quota count of 4;
- (f) aircraft having a quota count of 8;
- (g) aircraft having a quota count of 16.

(2) Subject to paragraph 3 (3), the quota count of an aircraft on taking off or landing shall be calculated on the basis of the noise classification for that aircraft on take-off or landing as appropriate as follows:

Noise Classification	Quota Count
Less than 90 EPNdB	0.5
90 - 92.9 EPNdB	1
93 - 95.9 EPNdB	2
96 - 98.9 EPNdB	4
99 - 101.9 EPNdB	8
Greater than 101.9 EPNdB	16

(3) Exempt aircraft for the purposes of paragraph 3 (1) (a) above are:

- (a) those jet aircraft with a maximum certificated weight not exceeding 11,600 kg, and
- (b) those propeller aircraft,

which on the basis of their noise data are classified at less than 87 EPNdB and which are indicated as exempt in Part 2 of the Schedule to this Notice. The provisions of paragraphs 4, 5, 7, 8 and 9 of this Notice shall not apply to the take off or landing of such aircraft.'

3.12 The current (2023) NOTAM now includes the following provisions as 'Descriptions of aircraft':

3.1 Aircraft taking off or landing at any of the London Airports are described in this Notice as follows:

- a) Exempt aircraft;
- b) Aircraft having a quota count of 0;
- c) Aircraft having a quota count of 0.125;
- d) Aircraft having a quota count of 0.25;
- e) Aircraft having a quota count of 0.5;
- f) Aircraft having a quota count of 1;



	g) Aircraft having a quota count of 2;
	h) Aircraft having a quota count of 4;
	i) Aircraft having a quota count of 8;
	j) Aircraft having a quota count of 16.
3.2	Exempt aircraft for the purposes of paragraph 3.1(a) are light propeller-driven aircraft with a maximum certificated take-off weight not exceeding 8,618 KG, and which are being utilised to undertake essential airport safety checks. The provisions of paragraphs 4, 6, 7, 8, 9 and 10 do not apply to the taking off or landing of such aircraft.
3.3	Subject to paragraph 3.2, the quota count of an aircraft on taking off or landing is to be calculated on the basis of the noise classification for that aircraft on take-off or landing as appropriate as follows:
Noise Classification	
Quota Count	
Below 81 EPNdB	0
81 – 83.9 EPNdB	0.125
84 – 86.9 EPNdB	0.25
87 – 89.9 EPNdB	0.5
90 - 92.9 EPNdB	1
93 – 95.9 EPNdB	2
96 – 98.9 EPNdB	4
99 – 101.9 EPNdB	8
Greater than 101.9 EPNdB	16

Condition 6(a) and (b)

- 3.13 Condition 6 opens with the phrase "During the night-time period, (2300-0700), no aircraft movements shall take place other than by..." Therefore, during the night-time period the 2007 Permission only allows for flights which fall within categories (a)-(e) in condition 6. If a flight falls outside of these categories it is not permitted to fly during the night-time period.
- 3.14 Categories 6(a) and (b) allow for:
- 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.
 - 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.
- 3.15 Categories 6(c) and (d) allow LBA to approach LCC to ask for authorisation for certain other aircraft to fly.

The proper interpretation of condition 6(a) and 6(b)

- 3.16 Condition 6(a) and 6(b) have explicitly incorporated 'succeeding regulations' to the UK NOTAM S24/1993 which was in force at the date of the grant of the planning permission but is no longer in force. It is therefore the current version of NOTAM (2023) which governs the flights which come within conditions 6(a) and (b). A reasonable reader has no difficulty in understanding that condition 6 refers to aircraft "within" QC0.5 and 1 for landings, as defined by the most recent version of the regulations, in this case NATS AIP Supplement 061/2023.



- 3.17 Flights with a quota count of 0.5 or 1 in NOTAM 2023 are flights which have an EPNdB of 87-89.9 and 90-92.9 respectively. It is these flights which are covered by condition 6(a). Condition 6(b) authorises flights with a quota count of 0.5 (i.e. 87-89.9 EPNdB) to depart from LBA during the night time period. Flights which have quota counts below 0.5 (i.e. 0.25, 0.125 and 0) are not covered by condition 6(a) and/or 6(b).
- 3.18 This interpretation of condition 6(a) and (b) is based upon the clear words of those parts of the condition. Reading the condition as a whole also supports this interpretation. It can be seen that condition 6(c) gives LCC the ability to approve aircraft which have EPNdB values of not greater than 90 on departure (i.e. flights with QCs of less than 0.5). This part of the condition would be superfluous if those flights were already included in conditions 6(a) and (b).
- 3.19 Therefore, it is clear that condition 6(a) and (b) do not include flights with QCs of less than QC0.5.
4. **APPLICATION 3: LAWFULNESS OF MOVEMENTS BY EXEMPT AIRCRAFT OUTSIDE OF THE CONDITION 7 CAP (CONDITION 6(E))**
- 4.1 Application 4 seeks certification that condition 6(e) defines "exempt" by reference to the provisions of UK NOTAM S45/1993 (without updates). This means that the following aircraft are 'exempt' (and may fly during the night-time period):
- "(a) Those jet aircraft with a maximum certificated weight not exceeding 11,600kg;
and
(b) Those propeller aircraft;
which, on the basis of their noise data are classed at less than 87 EPNdB and which are indicated as exempt in Part 2 of the Schedule to this Notice"
- 4.2 This is clearly the correct interpretation of the condition. In contrast to condition 6(a) and (b) condition 6(e) does not refer to 'any succeeding regulations or amendments/ additions/ deletions' and there is no basis for reading those words into condition 6(e).
- 4.3 As set out above, whilst a Court may if necessary imply words into a condition it will exercise great restraint when doing so. In *Trump* the Court explained that "Interpretation of the words of a document is the precursor of implication. It forms the context in which the law may have to imply terms into a document, where the court concludes from its interpretation of the words used in the document that it must have been intended that the document would have a certain effect, although the words to give it that effect are absent" (*per* Lord Hodge at para.35).
- 4.4 Here, there is no basis for implying words into condition 6(e). The words are clear and plain to the reasonable reader. There is nothing about the ordinary meaning of the words in condition 6(e) which renders it unworkable or illogical. As such, aircraft which meet the definition of 'exempt aircraft' in UK NOTAM S45/1993 fall within condition 6(e).



5. **APPLICATION 4: LAWFULNESS OF EMERGENCY AND DELAYED LANDINGS (CONDITION 9)**

5.1 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."⁵

5.2 We seek certification via this Application that the last sentence of the condition (underlined above), when referring to 'these categories' must refer to delayed landings and emergency flights by aircraft of any type. 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 (i.e. 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 be nonsensical and unworkable.

5.3 The following points are made in support of this application:

5.3.1 The 2007 planning permission is a restatement of the 1994 planning permission (ref 29/114/93/FU) with the removal of certain conditions relating to highway works. LBA points out that despite no changes to any of the night-time flying restrictions in the 2007 planning 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 restrictions and will not count against the night-time period limits 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.

5.3.2 The last sentence of condition 9 refers to the categories set out in (a) and (b). These are "delayed landings up to 0100 hours by aircraft scheduled to land at Leeds-Bradford Airport (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;

5.3.3 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

⁵ It is clear that nothing can be read into the formatting of this condition. The formatting changed between planning permission 29/114/93/FU and the Permission. However, the condition is the same and there is no reason for this change.



specified within conditions 4 to 5. Therefore, the last sentence of condition 9 only makes sense if it also includes aircraft within conditions 6(a) to (d);

- 5.3.4 It is nonsensical to count delayed and emergency landings of quieter aircraft as part of the cap but not the noisier aircraft. The condition acknowledges that sometimes there are events which are outside of the airport operator's control (i.e. delayed and emergency landings). These considerations apply to aircraft of any quota count;
- 5.3.5 As far back as the 1977 planning approval for the operation of LBA, when night movements were prohibited, emergency landings were specifically permitted to take place at LBA during the night-period. 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 in condition 7 had been reached, LBA could not accept an emergency or delayed landing without being in breach of its planning permission. This demonstrates that such a reading is illogical and unworkable. It would also mean that if two aircraft (one restricted under condition 5 and one permitted under condition 6) are both approaching LBA at the same time, the louder, restricted aircraft is permitted to land as it does not impact on the level of night movements, while the quieter, permitted aircraft must be diverted to another airport as there are no spare movements under the limits imposed by condition 7. LBA has not been able to identify a single airport in the United Kingdom that imposes a restriction on the ability of an airport to permit an emergency landing. It defies common sense that there was any intent for Condition 9 to impose such a limit when the permission was granted;
- 5.3.6 The reason given for condition 9 is "[T]o minimise the potential for increased 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;
- 5.3.7 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 Local Planning Authority for the monthly monitoring and reporting to the Local Planning Authority of the number of night-time aircraft movements by type of aircraft. The scheme shall allow for reference to the numbers of and reasons for delayed landings and emergency departures and landings." The reason given for condition 2 is "to assist the local planning authority in ensuring compliance with agreed operating procedures in the interests of amenity of residents in the vicinity of the airport."
Thus, 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;
- 5.3.8 Further, it is relevant that NOTAM S45/1993 provided (at paragraphs 9 and 10) that disregarded aircraft (i.e. aircraft which 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 conditions 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; and



- 5.3.9 Finally, LBA has no control over and cannot predict the number of delayed and emergency landings during the night-time in any summer season. In correspondence, LCC has suggested that LBA should make, say, a 10% allowance for delayed and emergency landings in each summer season to account for this. However, the figure of 10% appears to be arbitrary.
- 5.4 Therefore, once condition 9 is understood in the context of the planning permission read as a whole, it is clear that delayed landings and emergency flights of any type of aircraft will not count towards the night-time movements limits set out in condition 7.

Herbert Smith Freehills LLP

13 December 2023



ADDENDUM: EXPLANATION OF DATA SOURCES

1. SOURCE OF LBA DATA

- 1.1 This Addendum sets out a brief explanation of the sources of the data provided at Appendices 4, 4A and 5 to this Application Statement.
- 1.2 In understanding the data it is useful to break the information into its component parts. These parts relate to: (i) particular years; and (ii) particular components of the data. In terms of time periods, the LBA data in the Appendices to this Application Statement come from three different sources that cover different periods of time:

Time Period	Data Source
2008	Airport 2020 Archive (Legacy AODB)
2009 – 2014	Axis Archive (Financial System)
2015 –2019	Chroma (Current AODB)

- 1.3 Collectively these records provide the most complete available listings of all aircraft movements that took place at LBA between 2008 and 2019, with the exception of November 2008 for which there is no stored archive. The movements reported have been verified against previous submissions to LCC between 2009 and 2015 and are an accurate reflection of the movement data previously submitted.

2. VERIFICATION OF AIRCRAFT TYPE AND QUOTA COUNT RATING

- 2.1 Appendix 18 to this Application Statement contains the original Aircraft Data Table from the Axis financial system that was used from 2009 to 2014. Appendix 19 to this Application Statement is the Aircraft Data Table from the Chroma system which covers the period from 2014 to 2019. Both tables include not only the information about assigned aircraft types and quota count information but also the log of the last time the data for particular aircraft was entered into the table.
- 2.2 When collating this data, LBA conducted a full review of the data provided by both sources. On reviewing the information contained in both tables at Appendix 18 and Appendix 19 it is clear that:
- 2.2.1 Information was typically entered into the tables once (when the aircraft first began to fly to LBA) and was rarely, if ever, updated at a later stage e.g. GFCLB, GFCLD, GFCLE, GFCLG and others were last updated on 09/08/2000;
- 2.2.2 Aircraft type information was frequently entered incorrectly, which can result in an incorrect quota count data record e.g. GCPEV recorded as 757-200 with RB211-535C engine (Arrival QC1 and Departure at QC0.5); GCPEU recorded as 757-200 with RB211-535E4 engine (Arrival QC0.25, Departure QC0.5); both aircraft are 757-200 with RB211-535E4 engines;
- 2.2.3 Quota counts for arrivals and departures were frequently entered as having the same number regardless of what the actual quota counts were for the aircraft and sometimes with both QC ratings being wrong eg GLSAJ was entered as “Exempt” for both Arrival and Departure on 18/08/2008; GLSAD and GLSAG were entered



as QC1.5 for both Arrival and Departure on 30/08/2008 (which does not actually exist); and

- 2.2.4 When LBA migrated from Axis to Chroma in 2014, the majority of the aircraft entries were simply copied across without any change from their previous record in Axis and were never updated even though such updates are relevant: e.g. no aircraft records were updated as a result of the changes to the London Heathrow, London Gatwick and London Stansted Airports Noise Restrictions Notice in 2007 which introduced the QC0.25 band. This is the largest single impact on the quota count of 757-200 aircraft as they were subject to a reduction in QC from 0.5 to 0.25 in November 2006.
- 2.3 This has inevitably resulted in consistently incorrect reporting of the QC rating for multiple different aircraft – in some cases over reporting, in other cases under reporting, but consistently incorrect, in some cases, for decades.
- 2.4 In preparing the data submitted in evidence in Appendices 4, 4A and 5 of the Application Statement, LBA has undertaken an aircraft by aircraft review and has been able to allocate to each aircraft registration its correct QC rating based on the aircraft noise certificate issued by the Civil Aviation Authority (CAA) and publicly available on the G-INFO database on the CAA website. The results of this exercise are included as Appendix 17 of this Application Statement.
- 2.5 This process has ensured that the data provided in Appendices 4, 4A and 5 is accurate both in terms of: (i) full accounting of all night departures of aircraft in Appendix 16 and (ii) in terms of the quota count assigned to each aircraft movement in accordance with the quota count ratings listed in Appendix 17.
- 2.6 A description of the content of Appendices 14 – 20 is provided in Table D in Vincent Hodder's statutory declaration in Appendix 2.



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APPENDIX 1

PLANNING PERMISSION P/07/02208/FU



APPENDIX 2

STATUTORY DECLARATION OF VINCENT HODDER

CHIEF EXECUTIVE OFFICER, LEEDS BRADFORD AIRPORT

I, VINCENT HODDER OF [REDACTED] DO
SOLEMNLY AND SINCERELY DECLARE AS FOLLOWS:

1. The facts and matters I refer to in this statutory declaration are within my own knowledge. Where the facts and matters are not within my own knowledge, I identify the source of my information or belief.
2. I am the Chief Executive of Leeds Bradford Airport ("LBA") and have held this post continuously since 1 February 2021.
3. This statutory declaration is made in support of the four Applications for Certificates of Lawfulness of Existing Use in relation to the operation of LBA, made to Leeds City Council ("LCC") in its capacity as local planning authority.
4. The location of LBA is shown edged red on the drawing marked "CLEUD Application Area", at Appendix 3.

Movements by quota count 1 aircraft in breach of condition 4

5. Now shown to me and marked "Appendix 4 – DATA IN RELATION TO MOVEMENTS OF QUOTA COUNT 1 AIRCRAFT", is data showing all movements of quota count 1 aircraft between 2008 and 2019. That data shows that the following aircraft movements of quota count 1 aircraft took place during those years:

Table A: QC1 departures in the night-time period	
Year	Number of Departures
2008	15
2009	8
2010	3
2011	2
2012	1
2013	4



Table A: QC1 departures in the night-time period	
Year	Number of Departures
2014	93
2015	61
2016	71
2017	10
2018	15
2019	7

Departures by quota count 1 and 2 aircraft in breach of condition 4

6. Now shown to me and marked "Appendix R4A – DATA RELATING TO DEPARTURE OF QUOTA COUNT 1 AND 2 AIRCRAFT IN THE NIGHT-TIME PERIOD", is data showing all departures of quota count 1 and 2 aircraft between 2008 and 2019. That data shows that the following aircraft departures of quota count 1 and 2 aircraft took place during those years:

Table B: QC1 and QC2 departures in the night-time period	
Year	Number of Departures
2008	36
2009	19
2010	13
2011	4
2012	10
2013	14
2014	95
2015	61
2016	71



Table B: QC1 and QC2 departures in the night-time period	
Year	Number of Departures
2017	10
2018	15
2019	7

Movements by quota count 0.25 aircraft in breach of condition 6(b) and 6(c)

7. Now shown to me and marked "Appendix 5 – DATA IN RELATION TO MOVEMENTS OF QUOTA COUNT 0.25 AIRCRAFT", is data showing all movements of quota count 0.25 aircraft during the night-time period (23:00 to 7:00) between 2008 and 2018. That data shows that the following night-time aircraft movements of quota count 0.25 aircraft took place during those years:

Table C: QC0.25 movements in the night-time period	
Year	Number of Movements
2008	374
2009	239
2010	377
2011	407
2012	349
2013	677
2014	724
2015	377
2016	572
2017	541
2018	495
2019	535



8. Now shown to me are the Appendices marked as shown in the left-hand column below. The right-hand column of the same table summarises what is shown in each of these Appendices. Each of these Appendices is provided with this Supplemental Statement. These Appendices evidence the process of data analysis that LBA has undertaken in order to derive Appendices 4, 4A and 5:

Table D: Description of Appendices 14 – 20

Appendices	Content
Appendix 14: Raw Movement Data 2008 – 2019	Contains the raw data from the archives (without any modification) – showing all aircraft movement records at LBA over the full period of the analysis from 2008 to 2019. This raw data is taken from the following sources used to store relevant data over the period 2008 to 2019: (iii) Jan 2008 to Dec 2008 (excluding November 2008): Aircraft 2020 – Legacy Airport Operations Database (AODB) (ii) Jan 2009 to December 2014: Axis Archive (Legacy financial system) (iii) Jan 2015 to Dec 2019: Chroma (the current AODB)
Appendix 15: Structured Movement Data 2008 – 2019 (with added columns for Season, Local Time Conversion & QC)	Contains the same data set as Appendix 14 but with columns added to categorise each movement according to: season (BST or not), night or day, hour of day, the local time, and QC rating
Appendix 16: Structured Night Movement Data (as above but NIGHT only)	Contains the same data set as Appendix 15 but filtered to show night-time movements only
Appendix 17: Reconciled additional aircraft as QC0.25 & QC1	Contains updated QC ratings for all relevant aircraft (commercial aircraft that have operated during the night-time period between 2008 and 2019) that are able to be interrogated



	Due to inconsistencies identified in data, LBA has undertaken an aircraft by aircraft review and has allocated to each aircraft registration its correct QC rating based on the aircraft noise certificate issued by the Civil Aviation Authority (CAA) and publicly available on the G-INFO database on the CAA website or equivalent data from other national regulators. The results of this exercise are included in Appendix 17.
Appendix 18: Aircraft Data Table (AXIS)	Contains the original Aircraft Data Table from the Axis financial system that was used from 2009 to 2014
Appendix 19: Aircraft Data Table (Chroma)	Contains the Aircraft Data Table from the Chroma system which covers the period from 2014 to 2019 (and continues to be used today)
Appendix 20: NATS AIP Supplement 061/2023	Contains the AIP Supplement as updated 21 September 2023

LCC access to data

9. LCC had access to data between 2008 and 2019 which would clearly have shown that aircraft with quota count 1 were departing at night-time, and that night-time movements were made by aircraft with quota counts of 0.25. The nature and extent of their access is set out in the following paragraphs.

2008-2014

10. Until 2014 LBA provided data files to LCC detailing aircraft movement data and aircraft noise data on a six-monthly basis. The files were drawn directly from LBA servers and provided to LCC via email. Now shown to me and marked "Appendix 6 – AIRCRAFT MOVEMENT DATA AND AIRCRAFT NOISE DATA PROVIDED TO LCC" are examples of the data provided to LCC.
11. The aircraft movement data includes details of all arrivals, departures, date and time, runway and aircraft type. This file was generated from the airport operational database in use until 2014. The noise data stems from four fixed noise monitors, captured via a modem.
12. At the time the LBA did not employ staff suitably qualified to review the noise data. Instead, the transport policy team at LCC would take the raw data from LBA, analyse the data and



produce reports which were sent to LBA. For each summer (May to October) and winter (November to April) season LCC would produce a report titled 'Noise and Track Keeping' and a report titled 'Night-time movements'.

13. Now shown to me and marked "Appendix 7 – REPORTS PRODUCED BY LCC", are examples of the reports prepared by LCC for the Winter 2011/12 seasons, along with an email from [REDACTED] of the Transport Policy Unit dated 22nd August 2012.
14. At paragraph 2.5 of the night-time aircraft movements report, it is noted that 5 movements of aircraft with a quota count rating of 1 took place during this season and that this information would be reported to the LCC planning authority. This is one example from one season, but clearly shows that LCC (1) had access to data showing night-time movements at LBA and (2) in this example were aware of and acknowledged a breach.
15. The movement data provided to LCC during this period has been verified against the movement data in the Appendices provided as supporting evidence with this application.

2014 Onwards

16. In 2014, LBA installed a third-party Noise Track Monitoring System (NTMS) provided by Casper NV. This system remains in place today and gives LCC direct access to aircraft movements and noise data using a web interface with login details. From 2018, LBA started to produce its own noise and movement reports. However, in any case LCC have had direct access to the NTMS since 2014.
17. LBA acknowledges that the NTMS does not report all movements that have taken place at the airport and that as a result LCC would not have been able to identify all quota count 1 and quota count 0.25 movements now reported, but which does include a large number of the movements contained in Appendices 4 and 5.
18. LBA only became aware of the shortfalls in the number of movements identified by the NTMS in December 2022.

No request for consent pursuant to condition 6(c)

19. No requests have ever been made by LBA to LCC for approval of the departure of quota count 0.25 aircraft during the night-time period.

Land interests

20. The freehold of the Property is owned in full by LBA, as shown edged with a red line on the Location Plan included at Appendix 3.
21. Based on the results of a Land Registry SIM search of September 2023, the following leasehold interests also form part of the Property, and are owned by:
 - a) Craven College Further Education Corporation (whose address is at High Street, Skipton, North Yorkshire) as trustee for Craven College, as shown edged red on the plan included at Appendix 8;



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- b) Jet2.com Limited (whose address is at Low Fare Finder House, Leeds Bradford Airport, Yeadon, Leeds, West Yorkshire, LS19 7TU), as shown edged red on the plans included at Appendix 9;
- c) Multiflight Limited (whose address is at Southside Aviation Leeds, Bradford Airport, Leeds, West Yorkshire, LS19 7UG), as shown edged red on the plan included at Appendix 10;
- d) Northern Powergrid (Yorkshire) Plc (whose address is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF), as shown edged red on the plans included at Appendix 11; and
- e) Yorkshire Electricity Group Plc (whose address is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF), as shown edged red on the plans included at Appendix 12.

22. The interests listed in paragraph 21 above have not been notified of this application.

Signed

Dated

Before

Solicitor



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APPENDIX 3
CLEUD APPLICATION AREA



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FREEHILLS

APPENDIX 4

DATA IN RELATION TO DEPARTURE OF QUOTA COUNT 1 AIRCRAFT IN THE NIGHT-TIME PERIOD



HERBERT
SMITH
FREEHILLS

APPENDIX 4A

DATA IN RELATION TO DEPARTURE OF QUOTA COUNT 1 AND QUOTA COUNT 2 AIRCRAFT IN THE NIGHT-TIME PERIOD



HERBERT
SMITH
FREEHILLS

APPENDIX 5

DATA IN RELATION TO MOVEMENTS OF QUOTA COUNT 0.25 AIRCRAFT IN THE NIGHT- TIME PERIOD



HERBERT
SMITH
FREEHILLS

APPENDIX 6

AIRCRAFT MOVEMENT DATA AND AIRCRAFT NOISE DATA PROVIDED TO LCC



HERBERT
SMITH
FREEHILLS

APPENDIX 7
REPORTS PRODUCED BY LCC



HERBERT
SMITH
FREEHILLS

APPENDIX 8

REPORTS OF THE CHIEF PLANNING OFFICER TO THE LCCS PLANS PANEL



HERBERT
SMITH
FREEHILLS

APPENDIX 9

CRAVEN COLLEGE FURTHER EDUCATION CORPORATION: PLAN



HERBERT
SMITH
FREEHILLS

APPENDIX 10

JET2.COM LIMITED: PLANS



HERBERT
SMITH
FREEHILLS

APPENDIX 11

MULTIFLIGHT LIMITED: PLAN



HERBERT
SMITH
FREEHILLS

APPENDIX 12

NORTHERN POWERGRID (YORKSHIRE) PLC: PLANS



HERBERT
SMITH
FREEHILLS

APPENDIX 13

YORKSHIRE ELECTRICITY GROUP PLC: PLANS



HERBERT
SMITH
FREEHILLS

APPENDIX 14

RAW MOVEMENT DATA 2008 – 2019



HERBERT
SMITH
FREEHILLS

APPENDIX 15

STRUCTURED MOVEMENT DATA 2008 – 2019 (WITH ADDED COLUMNS FOR SEASON, LOCAL TIME CONVERSION & QC)



HERBERT
SMITH
FREEHILLS

APPENDIX 16

STRUCTURED NIGHT MOVEMENT DATA (AS ABOVE BUT NIGHT ONLY)



HERBERT
SMITH
FREEHILLS

APPENDIX 17

RECONCILED ADDITIONAL AIRCRAFT AS QC0.25 & QC1



HERBERT
SMITH
FREEHILLS

APPENDIX 18
AIRCRAFT DATA TABLE (AXIS)



HERBERT
SMITH
FREEHILLS

APPENDIX 19

AIRCRAFT DATA TABLE (CHROMA)



HERBERT
SMITH
FREEHILLS

APPENDIX 20
AIP SUPPLEMENT 061/2023