Planning Inspectorate

# Appeal Decisions

Inquiry held on 11-13 March 2025, 14 April 2025 and 16 April 2025


**by J Whitfield BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**



**Decision date: 8 August 2025**


## Appeal A Ref: APP/N4720/X/24/3354210
## Leeds and Bradford Airport, Victoria Avenue, Yeadon, Leeds LS19 7TU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Leeds Bradford Airport Limited against Leeds City Council (the LPA).
- The application ref 23/07490/CLE is dated 14 December 2023.
- The application was made under Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is described as: "Confirmation of immunity against enforcement of Conditions 6(a), 6(b) and 6(c) of the Permission in respect of the prohibition of night-time movements of aircraft with a quota count of 0.25, based on ten years of continuous breach."

## Appeal B Ref: APP/N4720/X/24/3354216
## Leeds and Bradford Airport, Victoria Avenue, Yeadon, Leeds LS19 7TU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Leeds Bradford Airport Limited against the decision of Leeds City Council.
- The application ref 23/07491/CLE, dated 14 December 2023, was refused by notice dated 21 March 2024.
- The application was made under Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is described as: "Regardless of the cap on movements in condition 7, it is lawful for aircraft to take-off and land at Leeds Bradford Airport, during the hours of 2300-0700 where they fall within the definition of "Exempt Aircraft" in NOTAM s45/1993 i.e. (a) those aircraft with a maximum certified weight not exceeding 11,600 kg; and, (b) those propellor 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."

## Appeal C Ref: APP/N4720/X/24/3354218
## Leeds and Bradford Airport, Victoria Avenue, Yeadon, Leeds LS19 7TU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Leeds Bradford Airport Limited against the decision of Leeds City Council.
- The application ref 23/07493/CLE dated 14 December 2023, was refused by notice dated 21 March 2024.
- The application was made under Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is described as: "It is lawful for any aircraft, regardless of quota count and regardless of the cap on movements in condition 7, to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 0700 hours and 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."

**This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 18th July 2025.**

## APPEAL DECISIONS

## APPEAL A

1. The appeal is dismissed.

## APPEAL B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

## APPEAL C

3. The appeal is dismissed.

## PROCEDURAL MATTERS

4. The Inquiry opened in person on the 11 March 2025 and sat for three days to hear evidence. Closing submissions were heard virtually on 14 and 16 April 2025.

5. All evidence at the Inquiry was given on affirmation.

6. All parties agreed prior to the Inquiry that, given the nature of the three appeals, it was not necessary for me to carry out a site visit, either accompanied or otherwise.

## PLANNING HISTORY AND BACKGROUND

7. The appeals relate to Leeds and Bradford Airport (LBA) - a commercial UK airport. There are two operative permissions in respect of the site. One of those relates to the construction of an extension to the terminal building[1] which is not relevant to the matters before me.

8. The primary operative permission for the site is that granted on 29 August 2007 for the "variation of Condition 15 of application no. 29/114/93/FU – removal of part highway improvement scheme (part c and e)"[2] (the 2007 permission). The appeals relate to conditions imposed on the 2007 permission which I will return to in due course.

9. Prior to the 2007 permission, the site operated pursuant to the permission granted on 19 January 1994 for "the removal of conditions Nos 5, 7 and 16 of Application No 86/29/0019 (Hours of Use)" (the 1994 permission).[3]

10. The 1994 permission replaced an earlier permission granted on appeal by the Secretary of State on 14 August 1989 for the "proposed amendment of hours specified in conditions no's 5 and 7 attached to planning permission No. 77/28/00436 dated 17.12.80 which presently prohibit flights to and from the airport between 2200 and 0700 hours except in an emergency, and prohibit aircraft movements involving the running of engines or ancillary of power units between 2200 and 0630 hours, to restrict flights between 0100 and 0600 hours except in an emergency and aircraft movements to between 0100 and 0530 hours" (the 1989

[1] LPA Ref: 18/06788/FU
[2] LPA Ref: P/07/02208/FU
[3] LPA Ref: 29/114/93/FU

permission)[4]. The 1989 permission also replaced a 1980 planning permission for the "laying out of runway extension, with enlarged apron area and new roads system and new balancing reservoir site, to airport" (the 1980 permission)[5]. The two permissions were granted subject to conditions which prohibited all flights in the night-time period except for emergency flights.

11. Returning to the 2007 permission, the relevant conditions are agreed to be:

1) This planning permission relates to the relaxation of operating hours at Leeds-Bradford Airport (the airport) and the controls and limitations to be applied to night-time operations. For the purpose of this planning permission:-

a. The Summer Season is defined as the period of British Summer Time in any one year as fixed by or under the Summer Time Act*.

b. The Winter Season is defined as the end of British Summer Time in one year and the start of British Summer Time in the next.

c. The night-time period is defined as 2300 hours to 0700 hours local time. All references in this planning permission to a moment in time are to local time.

d. An aircraft movement is defined as a landing or a departure.

e. Quota count means the value assigned to a take-off or landing of an aircraft which is related to its noise classification as defined in the Civil Aviation Authority UK NOTAM S45/1993. *1972 c.6 The Summer Time Order 1992, (SI 1992/1729), provides for the periods of Summer Time in 1994.

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

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

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.

[4] LPA Ref: 86/20/0019 & Appeal Reference: YH/5114/219/P/APP/C87/N4720/09
[5] LPA Ref: 77/28/00436

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 1996/97.

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.

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

9) 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.

12. The reference to NOTAM in the conditions relates to the UK NOTAM S45/1993 (the 1993 NOTAM). It was issued by the Secretary of State for Transport under Section 78 of the Civil Aviation Act 1982 (the CAA). It applied to Heathrow Airport, Gatwick Airport and Stansted Airport which are designated aerodromes for the purposes of Section 78 of the CAA by virtue of the Civil Aviation (Designation of Aerodromes) Order 1981.

13. The NOTAM regime contains two elements – a movement cap and a quota cap – which operate together. The quota cap enables there to be a variation in the number of movements subject to the cap, depending on the noise of the aircraft.

Aircraft are given a Quota Count (QC) rating based on their noise levels, as measured by EPNdB[6].

## STATUTORY FRAMEWORK

14. Section 191(1) of the Act sets out that: "If any person wishes to ascertain whether – (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or, (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful; they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

15. Section 191(2) of the Act sets out that: "For the purposes of the Act, uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

16. Section 171(1) of the Act states that: "For the purposes of the Act, (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

17. The time limits for taking enforcement action are set out in Section 171B of the Act. Section 171B(3) states that, in the case of any other breach of planning control[7], no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

## APPEAL A

### Main Issue

18. The main issue is whether the LPA's deemed refusal of the LDC application was well-founded.

### Reasons

19. The appellant's case is predicated on the basis that night-time movements of aircraft with a QC of 0.25 have taken place in breach of conditions attached to the 2007 permission and thus, those movements comprise a breach of planning control under Section 171A(1)(b) of the Act. An LDC is sought on the grounds that the breach took place on or before 14 December 2013 and continued thereafter without interruption for 10 years. Consequently, at the time of the LDC application, it is submitted that the breach of planning control would have been lawful pursuant to Section 191(2) of the Act.

20. The main consideration is therefore whether, at the date the LDC application was made, the night-time movements of aircraft with a QC of 0.25 in breach of

[6] Effective Perceived Noise Level in Decibels
[7] i.e. those breaches of planning control which do not involve operational development or the change of use of a building to a dwellinghouse

conditions attached to the 2007 permission was lawful within the meaning of Section 191(2) of the Act, as (a) no enforcement action may then be taken in respect of them (because the time for enforcement action had expired); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

*Interpretation*

21. In determining whether or not such a breach has taken place, it is first necessary to establish the correct legal interpretation of the 2007 permission and the conditions attached to it. All parties accept that the conditions of the 2007 permission essentially repeat those imposed on the 1994 permission and that is the context in which they ought to be considered.

22. There is a broad body of case law regarding the interpretation of planning conditions. In *Trump*[8], the Supreme Court held that when the court is considered with the interpretation of words in a condition in a public document, "it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense." *Trump* endorsed the principle in *Fawcett Properties*[9] that it is for the courts to resolve ambiguities of language and to construe words as to "avoid absurdities or put up with them", and that this applies to conditions in planning permissions.

23. Moreover, the Court commented in *Trump* that "any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved."

24. In *Lambeth*[10], Lord Carnwath summarised existing case law on interpretation as "whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense." He reiterated the point made in *Trump* that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. Thus, as established in *Belize*[11] the admissible background for the purposes of construction must be limited to what any reader would reasonably be supposed to know. It cannot include extrinsic facts which were known only to some of the people involved in the original formation. My attention is drawn to one such example in *Opua Ferries*[12] where it was held that the background facts regarding the operations of a business should not necessarily inform the construction of a public document.

25. In *DB Symmetry*[13] the Supreme Court held that, as a planning permission is a document created within the legal framework of planning law, the reasonable

[8] *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74
[9] *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636
[10] *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd* [2017] EWHC 2412 (Admin), [2018] EWCA Civ 844, [2019] UKSC 33; [2020] JPL31
[11] *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988 [36]
[12] *Opua Ferries Ltd v Fullers Bay of Islands Ltd* [2003] UKPC 19
[13] *DB Symmetry Ltd v Swindon BC & SSHCLG* [2020] EWHC 292 (Admin)

reader is to be treated as being equipped with some knowledge of planning law and practice.

26. The reader can be assumed to have some knowledge of the matter in question, as held in *UBB Waste Essex Ltd*[14]. *UBB* also reiterated that applying "common sense" to interpretation, as outlined in *Trump,* means regard must be had to the planning purpose of the permission or condition, as is the legitimacy of considering the planning purpose of the permission. In *UBB* the Court held that where documents sought to be relied upon are extrinsic and not incorporated into the permission, then save perhaps for exceptional circumstances, they may only be relied upon if there is ambiguity in the condition. This is supported by *Ashford*[15] in which the court stated that, "if any ambiguity arises then extrinsic evidence may only be used to resolve that ambiguity and not for any other purpose."

27. The courts have established that it is possible for words to be implied into a planning permission. However, it was recognised in *Trump*, *Lambeth* and *DB Symmetry* that a court must exercise great restraint in implying terms into public documents which have criminal sanctions.

28. Turning first to the relevant policy context. The parties drew my attention to the 1985 Government Airports Policy White Paper (the White Paper) as a significant element of the policy background to the grant of the 1994 permission. It seems to me that the White Paper is relevant to the interpretation of the conditions insofar as it provides a policy context in which subsequent decisions for airports across the UK could be taken. Section 1 of the document makes clear that it deals with both the role of regional airports and policies to help their development, along with the environmental issues associated with airport development, in particular the problems of aircraft noise and night flying. Indeed Section 3 of the document sets out that the Government policy objectives would include: fostering a strong and competitive British airline industry by providing enough airport capacity where it is needed; to minimise the impact of airports on the environment generally; to make best use of existing facilities and provide new capacity only when this is economically justified; and, to encourage the use and development of regional airports so they can meet the maximum demand they can attract.

29. Overall, it seems to me that the objectives of the policy position at that time were to promote the benefits of increased aviation activity, whilst ensuring the appropriate protection of the environmental impacts arising from it.

30. A reasonable reading of the decision and the conditions attached to it would appreciate that it was taken within that policy context. Condition 1 sets out that the permission relates to the relaxation of operating hours at LBA and controls and limitations to be applied to night-time operations. Conditions 4 and 5 place a prohibition on night-time movements of QC2, QC4, QC8 and QC16 aircraft. QC1 aircraft are also prohibited from take-off.

31. Condition 6 concerns movements of aircraft in the night-time period for those aircraft not prohibited by Conditions 4 and 5. There is an overall cap on movements for aircraft falling under Condition 6(a)-(d) set out in Condition 7 whilst Condition 8 provides a 10% allowance to be moved between consecutive seasons. Condition 9 provides an exception to the prohibition of Conditions 4 and 5 for

[14] *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924 (Admin)
[15] *R v Ashford Borough Council ex p Shepway District Council* [1999] PLCR 12

delayed landings and emergency movements. Further conditions (10, 12 and 13) prohibit other types of aircraft, including Chapter 2 aircraft in Condition 13, and require details of monthly monitoring to be submitted and reported on.

32. The reasons given for the conditions were to minimise potential for increased noise disturbance to residents in the vicinity and in the interests of the amenity of residents in the vicinity of the airport.

33. Clearly, the 1994 permission allowed for increasing capacity at an existing regional airport in line with the overarching policy objectives of the White Paper. However, the conditions, including Condition 6, are designed to reduce environmental impacts, particularly on the local community, by restricting aircraft movements and associated noise during the night-time period. Again, that seeks to achieve the policy objectives of the time.

34. It is argued that the reasonable reader would be aware that at the time of the 1994 permission there was a general expectation that aircraft noise would reduce over time. Nevertheless, whilst the White Paper sets out that there had been to date reductions in aircraft noise, it only sets out that further reductions would be dependent on further advances in technology and used the example of airport charging to encourage the use of quieter aircraft.

35. Indeed, whilst there was an aim within the policy to minimise the environmental effects of airports, there was no articulated policy objective for airports to reduce noise over time. Thus, any expectancy that aircraft would get quieter over time is not entirely founded in the policy position. As a result, it seems to me that the primary purpose of the permission was to enable better use of the airport's capacity and increase flights. If it were not, then it begs the question, why would the permission need to have been granted at all?

36. Nevertheless, it is clear that the planning purpose of the relevant conditions is to ensure undue impacts on the living conditions of nearby residents with regard to noise are minimised. It thus seems to me that the purpose of the permission, when read as a whole with its conditions, was to increase the capacity of the airport whilst ensuring appropriate protection of the environment. That is consistent with the policy context in which the permission was granted.

37. Turning to the wording of the condition itself. When establishing whether the movement of an aircraft complies with Condition 6(a) or 6(b), a reasonable reader would ask themselves, "which aircraft are non-exempt and are classified as falling within QC0.5 and QC1 in the 1993 NOTAM?".

38. That would lead the reader to the 1993 NOTAM, in which paragraph 3(2) states that 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. It then identifies aircraft with a noise classification of less than 90 EPNdB as having a QC of 0.5 and aircraft with a noise classification of between 90 and 92.9 EPNdB as having a QC of 1.

39. The deliberate inclusion in the condition of the words "falling within" suggests the aircraft would be identified on a point between two parameters. The condition does not say "aircraft classified as QC 0.5 or QC 1". This is logical, since the QC values are derived from a range of noise classifications, rather than a single figure. To my mind, a reasonable reader would ask themselves, "where within the range of

QC0.5 or QC1 does the aircraft fall?". One would then look to the range of EPNdB values to establish that. An aircraft that falls within the range of less than 90 EPNdB is a QC0.5 and one that falls within the range of 90-92.9 EPNdB is a QC1. Thus, the landing of any aircraft in either range would comply with Condition 6(a), whilst the take-off of any aircraft within a range of less than 90 EPNdB would comply with Condition 6(b).

40. However, the matter is not as straightforward as that, because the condition, which must be read as a whole, makes clear that the aircraft must fall within QC0.5 and QC1 as defined in the 1993 NOTAM AND[16] any succeeding regulations or amendments/additions/deletions.

41. The CAA issued the Supplements to the UK AIP in August 2006 (herein referred to as 2006 NOTAM). This in effect updated the 1993 NOTAM. Paragraph 3(2) continued to state that 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. It also retained aircraft with a noise classification of between 90 and 92.9 EPNdB as having a QC of 1.

42. However, it introduced two new QCs. Those aircraft with a noise classification of below 90 EPNdB were no longer entirely captured as QC0.5. Instead, those between 87 and 89.9 EPNdB were now classified as QC0.5 and a new QC0.25 category for aircraft with a noise classification of between 84 and 86.9 EPNdB was created.

43. Moreover, a further UK AIP Supplement in March 2019, introduced a QC0.125 for aircraft with a noise classification between 81 and 83.9 EPNdB and a QC0 for all aircraft classified below 81 EPNdB. This remained in the AIP Supplement of February 2025.

44. It is submitted that the reference to, "and any succeeding regulations or amendments/additions/deletions", is to ensure that, where any succeeding regulations or amendments to NOTAMs come into effect, they are to be interpretated to ensure that aircraft with a noise classification embraced by the relevant QC categories in the 1993 NOTAM would continue to be so embraced notwithstanding the changes in regulations.

45. However, if the intention of the condition was to capture all aircraft classified below 90 EPNdB in perpetuity, then the condition would have explicitly said as much. Instead, it refers clearly to aircraft falling within Quota Count 0.5 or 1, rather than by reference to EPNdB value. This wording can be assumed to be deliberate, particularly since Condition 6(c) makes provision for exemptions to the overarching prohibition by reference to the aircraft's EPNdB value. Condition 6(d) makes provision for exemptions by reference to the equivalence of the aircraft's noise contours in comparison to a Boeing 737-300/757.

46. In establishing whether or not the condition requires compliance only with the latest NOTAM or with all NOTAMs, one must look to the operation of the condition as a whole. It is argued that Condition 6(c) is to allow operational flexibility for the airport by essentially providing a mechanism for QC1 aircraft which would operate in practice on a basis comparable in noise impact terms to a QC0.5 aircraft due to

[16] My emphasis

shorter stage lengths or lighter take off weights through the demonstration of collected performance data at LBA itself.

47. However, if Condition 6(c) was intended to operate as such, then one would expect it to make clear that the intention was for QC1 aircraft to be approved by the LPA if they have an EPNdB value of less than 90EPNdB, rather than applying to any aircraft as it does.

48. In any event, I heard at the Inquiry that there is little ability for the airport or indeed the LPA to establish actual take-off weights prior to departure. In addition, in practice the airport, or indeed the LPA, do not have the ability to continuously measure EPNdB values of aircraft in sufficient time prior to departure or landing in order that approval be granted for it ahead of time. Indeed, EPNdB values were described to me in essence as a creature of the aircraft certification regime with little use in practice outside of it.

49. It seems to me that a reasonable reader would have some basic knowledge or understanding of how take-off weights of aircraft are established. Ultimately, it seems to me to be common sense that aircraft are certified based on the maximum take-off weight they could be, rather than each individual flight having to be weighed before take-off and then approved. A reasonable reader would understand that actual take-off weights for each flight would not be known until just before departure when all passengers, crew, cargo and fuel are finalised.

50. Given the likely variation in actual take-off weights between flights and the lead-time that would be necessary to obtain approval under Condition 6(c) prior to the flights, it cannot be realistic that the purpose of Condition 6(c) is to allow for ad-hoc approvals of certified QC0.5 or QC1 aircraft that may have lower actual EPNdB values than those for which they are certified.

51. A broader scenario behind the purpose for Condition 6(c) is argued where the airport seeks to establish an aircraft which is certified as QC1 aircraft but which due to a shorter stage length, would have an EPNdB value equivalent to a QC0.5 aircraft. It is put to me that approval of such aircraft could be sought in advance of the movement because of the lead in time in slot allocation and scheduling.

52. However, there are difficulties with that proposition. Firstly, it was put to me at the Inquiry that EPNdB is solely useful in such circumstances to establish the QC value of an aircraft and is measured at classification stage prior to the aircraft's use. Furthermore, whilst the same aircraft type can have two different QC values, depending on maximum take-off weight and stage length, the evidence before me at the Inquiry was that a single aircraft can only be certified at one QC value. If, for example, a QC1 aircraft was certified at a lower maximum take-off weight and a shorter stage length than the maximum, then such an aircraft would be certified as a QC 0.5 aircraft and thus Condition 6(a) and 6(b) would apply. It would not need to undergo the approval mechanism in Condition 6(c).

53. Once a QC value is assigned to a particular aircraft, the QC value of that aircraft will not change by reference to the actual stage length or the weight of the aircraft engaged in the particular movement. Thus, an aircraft which is certified as QC1 but has an actual EPNdB value of less than 90 EPNdB, if indeed it could be measured, would be prohibited to take-off by Condition 4. Moreover, it's landing would be permitted in any event, by Condition 6(a). Thus, condition 6(c) would not assist in the suggested scenario.

54. Furthermore, I agree with the submissions of the appellant that the reference to "maximum take-off weights" in Condition 6(c) can only mean maximum certified take-off weights given the apparent lack of regular process for measuring actual take-off weights. Indeed, the uncontested evidence before the Inquiry was that it would not be possible for an EPNdB to be calculated by reference to the actual weight of a specific aircraft on a particular flight, as opposed to its certified weight which is based on maximum take-off weight. Whilst an aircraft type may be certified at different QC values based on different weights, that would not be possible for a specific aircraft which has been individually certified at a specific maximum take-off weight.

55. Whilst one may argue that an understanding of such matters amounts to extrinsic evidence that the reasonable reader need not have regard to interpret the condition, disregarding such matters leaves one in the unenviable position of reaching an interpretation of Condition 6(c) which foregoes the principles of *Trump*. The argument that a party with knowledge even beyond that of the 'reasonable reader' (i.e. the appellant) had adopted an interpretation at odds to the principles laid down in *Trump* is a moot point, regardless of whether I agree with the appellant's interpretation or not. It is not unreasonable for planning conditions to deal with technical issues and the fact that the conditions are worded accordingly would lead the reasonable reader to deduce that such expert evidence or knowledge would be necessary. Bluntly, the reasonable reader would likely have a limited understanding of the technical facets of the condition. Thus, I cannot agree that there is a limitation on the extent of knowledge or expertise the reader would reasonably seek in order to appropriately interpret the condition. The only limitation is that the reader cannot look to extrinsic facts which were known only to some of the people involved in the original formation of the permission. Those are two separate matters.

56. Condition 6(c) provides an exemption for aircraft from the prohibition through a mechanism for approval with the LPA for those aircraft which have an EPNdB value of not greater than 90 on departure. In essence, if conditions 6(a) and 6(b) were intended to always allow the movement of any aircraft with a noise classification of below 90 EPNdB through the reference to QC0.5 in the 1993 NOTAM, then there would be no need at all to undergo the approval mechanism, since compliance would be achieved through 6(a) or 6(b).

57. In contrast, the construction of Condition 6(a) and 6(b) with the word "and", and the use of Condition 6(c) is logical, since it allows for the actual scenario which has transpired here to be dealt with. In permitting what was at the time, everything quieter than 90 EPNdB to take-off or land, then the actual operation of Condition 6(c) can be interpretated as providing a mechanism for approval where such aircraft are subsequently recategorized in future NOTAMs. In essence, the way in which Conditions 6(a), 6(b), 6(c) and 6(d) work together is to allow for quieter aircraft (i.e. those below 90 EPNdB) to fly in the night-time period based on their QC categorisation at the time, with the mechanism to allow for the same, quieter aircraft to continue to fly with the LPA's approval should the QC values be recategorized. Essentially, this works jointly with the requirement to comply with the 1994 NOTAM AND subsequent NOTAMs to prevent noisier aircraft (i.e. those above 90 EPNdB) being able to fly should the QC parameters have increased.

58. Indeed, that is reinforced by the fact that the LPA at the time could not have known what, if any, lower QC values would have been incorporated into any future

NOTAMs. That seems to me to be the common-sense interpretation and is consistent with the overall purpose of the permission.

59. To that end, I cannot support the submission that the condition does not require the aircraft to meet the relevant QC definition in both 1993 NOTAM and subsequent NOTAMs. The correct interpretation of the condition is to the contrary. For any aircraft to be permitted by Condition 6(a) at the relevant date it must be within the noise classification range of a QC 0.5 and QC 1 aircraft as defined in the NOTAM 1993, NOTAM 2006, NOTAM 2019 and NOTAM 2025. That has remained the same for QC1 aircraft throughout, i.e. between 90 and 92.9 EPNdB. However, for the QC 0.5 aircraft, it must only be those aircraft which fall below 90 EPNdB in NOTAM 1993 and also fall between 87-89.9 EPNdB as defined in NOTAM 2006 and subsequent NOTAMS. The corollary is that any aircraft which has a noise classification of 86.9 EPNdB or below, are not permitted by Condition 6(a) or 6(b). Even if an aircraft fell below 86.8 EPNdB and would have been a QC0.5 in the 1993 NOTAM, the fact of the matter is that the natural and ordinary meaning of the words is the condition requires it also to be a QC0.5 in any succeeding regulations or amendments/additions/deletions. An aircraft below 86.6 EPNdB, is not a QC0.5 in any succeeding regulations or amendments/additions/deletions.

60. Again, that seems to me to be a common-sense approach to work together in tandem with Condition 6(c) and 6(d) to prevent noisier aircraft from flying in the event subsequent NOTAMs expanded QC 0.5 and QC 1 to a higher EPNdB range. The assertion in the LPA's closing submissions[17] that, if QC 0.5 was defined to relate to a higher EPNdB value then noisier QC 0.5 aircraft could lawfully land a night, actually supports the appellant's interpretation. It could only lawfully land at night if the LPA and Group for Action on Leeds Bradford Airport's (GALBA) interpretations were correct. On the appellant's interpretation, the necessity to comply with 1994 NOTAM and all other subsequent NOTAMs guards against this.

61. It also works in tandem with the movement cap in Condition 7, because the wording of Condition 7 applies to conditions 6(a) to 6(d). Thus, Condition 6(c) does not provide a mechanism for unfettered flights not captured by Condition 6(a) or 6(b). It is about ensuring aircraft below 90 EPNdB can fly, up to the maximum amount as set out in Condition 7, in the event that the QC values change, as indeed they have done.

62. This interpretation would be consistent with the purpose of the conditions to prevent environmental impacts on the local population in terms of noise. It would not, as suggested, work to the detriment of both the airport or the local community as the condition as a whole works together to maintain an upper noise limit for aircraft in perpetuity, whilst allowing flexibility for the movement of quieter aircraft depending on its classification at the relevant point in time.

63. It is submitted that such an interpretation would render movements which were lawful and acceptable in noise terms one day, unlawful the next because a new QC category has been defined. However, I am not convinced that is the case as such movements would be lawful provided the terms of Condition 6(c) are adhered to. To that end, I cannot see how that interpretation would undermine the planning

[17] Para 58

purpose of the condition by encouraging noisier aircraft to fly. In any event, that is the plain and ordinary effect of the words as written.

64. Moreover, even if there was an expectancy at the time of the 1994 permission that aircraft would become quieter over time, there was no guarantee of such. In addition, quite rightly, the permission provides sufficient protections to ensure that the noise environment would be protected should the NOTAM allow for noisier aircraft in the future. Indeed, it seems to me that the permission sought to establish an acceptable level of noise based on its operations, not to establish an ever-decreasing noise environment over time. Consequently, such an approach would not in my view undermine the planning purpose of the condition.

65. The parties have brought to my attention Mr Hodder's comments regarding approaching the existing planning permissions in a "creative way". However, there is no authority that I can see in the case law put before me in which the intentions or otherwise of an operator or user of land are a factor in interpretating a planning permission. Indeed, such an argument seems to counter the established principles of *Trump* et al. As such I afford that matter little weight.

66. Consequently, I find an aircraft with a QC of 0.25 as defined by NOTAM 2006 onwards, is not permitted to land at the airport during the night-time period by Condition 6(a) nor is such aircraft permitted to depart from the airport during the night-time period by Condition 6(b). To that end, the only way movements of QC0.25 aircraft in the night-time period could be permitted by Condition 6 (and indeed the permission as a whole) is if they are approved by the LPA under Condition 6(c).

67. There is no evidence of an application having been made or indeed approved by the LPA for the movement of QC0.25 aircraft during the night-time period under Condition 6(c) at any point in the relevant period.

*Whether a breach has taken place and whether it was continuous*

68. For movements of QC0.25 aircraft in the night-time period in breach of condition 6 to have accrued lawfulness, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the breach took place on or before 14 December 2013 and continued without interruption for a period of 10 years thereafter. The appellant's case is that a continuous period can be demonstrated between January 2008 and December 2019.

69. Condition 6 is a continuing requirement condition in the sense that it imposes an ongoing restriction on the movement of aircraft. To that end, where such a condition is breached, and then the offending activity is ceased, then the breach of planning control has also ceased. The ten-year clock will restart if, and when, the condition is breached again. However, that would only apply if the interrupting compliance were significant and not *de minimis* as a matter of fact and degree.

70. The question to be asked is whether enforcement action could have been taken against a breach of the condition during the period of compliant activity. The case of *Thurrock*[18] dealt with enforcement notices in respect of changes of use, nonetheless the principles established in respect of immunity apply to breaches of conditions. In *Thurrock,* Newman J held that the rationale of immunity is, that

[18] *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

throughout the relevant period of unlawful use the local planning authority, although having the opportunity to take enforcement proceedings, has failed to take any action and consequently, it would be unfair and/or could be regarded as unnecessary to permit enforcement. It must follow that, if at any time during the relevant period the local authority would not have been able to take enforcement proceedings in respect of the breach, for example, because no breach was taking place, then any such period cannot count towards the rolling period of years which gives rise to the immunity. That judgement was endorsed by the Court of Appeal. The point was re-emphasised in *Swale*[19].

71. In *North Devon*[20], the High Court considered the matter of continuity of breach in the circumstances where five holiday bungalows were subject to a condition restricting occupancy to only the period between 15 March and 15 November each year. The claimant occupied one of the properties year-round continuously from October 1992 and sought an LDC in November 2002. The LPA in that case did not dispute that occupation but rather argued that whilst a breach of condition had occurred each winter, the breach ceased on 15 March and a new breach took place on 16 November such that ten-years continuity could not be established.

72. In *North* Devon, the local authority sought to rely on the case of *Nicholson*[21], in which the Court said, "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."

73. However, Sullivan J (as he then was) rejected the authority's argument and reliance on *Nicholson*, stating that the local authority's reliance took *Nicholson* out of context. He established that the starting point must be Section 171B(3) and relied on the Court's reasoning in *Thurrock*. Sullivan J set out that, "if a factory subject to 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 condition 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".

74. He went on to apply the tests in *Nicholson* to that scenario, noting that in seeking to identify the failure to comply, the answer would be that the factory is being used on Sundays. Then, if the question was asked, 'when as a matter of fact and degree did that failure begin', the answer would be in March 1994, not last Sunday. Finally, if the question was asked whether the period of ten years had expired, the answer would be yes, as the factory had been used on Sundays throughout the last ten years.

75. Sullivan J then went on to set out a useful way of testing the position. He said, "what would be the outcome if an enforcement notice was issued in relation to the use which is applied for, 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

[19] *Swale BC v FSS & Lee* [2005] EWCA Civ 1568
[20] *North Devon DC v FSS & Stokes* [2004] JPL 1396
[21] *Nicholson v Secretary of State for the Environment and Malvern District Council* [1998] JPL 553

both cases: if the ground (d) appeal against the enforcement notice would succeed, so should the application for the LDC."

76. In the case before him, his analysis was thus. The matters constituting the breach would have been the occupation of the property between 16 November and 14 March every year. The steps required to be taken would be to cease the use between those dates each year. He went on to say that an enforcement notice could have been served alleging such a breach and contain such a requirement in each of the ten years prior to the application for the LDC and that in these circumstances it would subvert the underlying purpose of Section 171B(3) to construe it in such a way as to conclude that there could be no immunity from enforcement action.

77. He then went on to address points regarding the practical difficulties in enforcement against a breach of a seasonal condition once the breach had ceased for that year. He noted that there was nothing, in law, to prevent the LPA from issuing an enforcement notice after 14 March in respect of a breach over the previous winter and that ultimately, it would be a matter of expediency. In the end, the Court held that the breach was continuous over the ten-year period. The approach was also adopted by the Court in *Westminster*[22] in relation to the use of an area of pavement in front of a restaurant for the placing of tables and chairs.

78. On the matter of continuity, in *Ocado*[23] Holgate J (as he then was) carried out a review of the law and respectfully concluded that the point in *Nicholson* (and in *Ellis*[24]) that a failure to comply with the condition must be in existence at the date the LDC application is made should not be followed.

79. He held that, if a condition has been breached continuously for any ten-year period, without significant interruption, the breach will be lawful thereafter, unless that lawful right has been lost through some event sufficient to terminate it. It was also held that the breach does not have to be continuing at the date of an LDC application to become lawful. However, the condition is not expunged. The example was cited of planning permission 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, they are entitled to an LDC legitimising the breach of that condition to the extent of allowing up to 55 pitches.

80. Referring back to the judgement of Sullivan J in *North Devon* and his application of *Thurrock*, Holgate J drew a distinction between conditions which are capable of being breach continuously and those which 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. He noted that a "seasonal" or "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. The breach of planning control imposed by the condition would have continued through that 10-year period. Holgate J determined that the practical test in such a 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

[22] *Westminster CC v SSCLG* [2013] EWHC 23 (Admin)
[23] *R (oao Ocado) v Islington LBC* [2021] EWHC 1509 (Admin)
[24] *Ellis v SSCLG* [2009] EWHC 634 (Admin)

action in respect of the non-compliance. He went on to say that it is plain from, *Thurrock*, *Swale* and *North Devon* that the test of whether the local authority would have been able or entitled to take enforcement action during the immunity period is central to a decision on whether a lawful right has accrued.

81. Finally, in *Basingstoke and Deane*[25], on the facts, the Court held that a substantial period of non-occupation for refurbishment did not bring the breach of condition to an end. The Court looked to the activities which were ongoing during periods of non-occupation, such as marketing or the refurbishment works themselves, as all in furtherance of the breach of condition. Thus, were enforcement action taken during that period, it would have succeeded because those activities would have been properly regarded as breaches of the condition because that was the purpose behind the activities being carried out. The Court did recognise that intention by itself cannot lead to enforcement action, but if there had been work carried out after there had been a breach by occupation and activities thereafter were being carried out to further that breach, then the activities thereafter would be properly regarded as continuing the breach.

82. The overarching function of Condition 6 is to prohibit aircraft movements in the night-time period. I note that, in the exemptions to the prohibition, Condition 6(a) permits the landing of aircraft by reference to a different QC classification than those permitted to take-off under 6(b). However, I do not accept the LPA or indeed GALBA's propositions that one must divide up departures and landings to establish each as individual breaches.

83. An aircraft movement by a QC0.25 is a breach of Condition 6, because that is what the condition prohibits regardless of whether that movement is a departure or landing. Condition 1 makes clear that an aircraft movement is defined as a landing or a departure. Sub sections (a) and (b) provide for exemptions. Neither apply to QC0.25 aircraft. Thus, the departure or landing of QC0.25 aircraft would be relevant in considering whether a breach of Condition 6 has occurred.

84. The parties agree on the movements of QC0.25 aircraft from January 2008. That is the earliest evidence before me of such aircraft. The movements from that date until December 2019 are agreed.

85. There were three separate periods of 45 days or more when no QC0.25 aircraft movements occurred. There was also such a period of 55 days between 31 October 2008 and 26 December 2008 and a period of 47 days between 28 December 2008 and 14 February 2009. Moreover, no QC0.25 aircraft movements occurred at all during January and February 2012. According to the data presented by the appellant[26] the last flight in December 2011 was 26 December whilst the first in March 2012 was 11 March, resulting in a period of 75 days when there were no movements of QC0.25 aircraft in breach of Condition 6.

86. A further period of 41 days passed between 10 November 2012 and 22 December 2012, and 33 days between 14 January 2013 and 17 February 2014, without a movement. Most recently, a period of 31 days passed without a QC0.25 movement between 1 December 2014 and 2 February 2015. To my mind, they are significant periods of time in the context of an airport which was

[25] *Basingstoke and Deane BC v SSCLG & Stockdale* [2009] EWHC 1012 (Admin)
[26] CD5.10

continuing to operate with flights landing and departing on a daily basis. Indeed, I note there were only 24 nights throughout the period 2018-2019 when no night-time movements at all were recorded. The circumstances are not therefore comparable to the short periods of inactivity in a continuing use as found in *Westminster*.

87. As per *Ocado* the condition must have been breached whenever it was capable of being complied with, disregarding exceptional compliance as a matter of fact and degree. It was, as a matter of fact and degree, complied with during those aforementioned periods when no QC0.25 movements were recorded. As a consequence, subsequent movements of QC0.25 aircraft following those periods would have amounted to a fresh breach of planning control and the 10-year clock restarted. There were, in my view, significant periods of interruption in the breach.

88. Moreover, this is not a scenario where works or activities had been carried out during the periods when no QC0.25 movements occurred to further the breach in the future. The movements took place and ceased during the normal operations of the airport. During those periods when the breach had ceased, the normal operations of LBA, including the movement of aircraft, continued. Simply ceasing the movement of QC0.25 aircraft cannot reasonably be argued to have been an action undertaken to further the future movement of QC0.25 aircraft. There is no reason why such movements could not have occurred whilst scheduling was ongoing for future movements. Indeed, that will likely have been the case at some point.

89. I recognise that Condition 6 was imposed in the context of a planning permission for a regional airport which operates on a seasonal basis, with significantly more flights during the summer period than in the winter period. That is reflected in Condition 1 which defines the summer season and the winter season, as well as Condition 7 which places separate limits on night-time movements for the summer period and the winter.

90. I see no reason to disagree with the evidence of the appellant that the seasonal nature of flights is driven by consumer demand and that flights were scheduled to reflect that. I note that the consequence of that, is that there have been times during the relevant period when, during the winter season, no movements of QC0.25 aircraft have taken place. However, that does not assist given the number and extent of the significant periods when no movements took place.

91. The evidence of the appellant is that flight scheduling occurs between 180 and 330 days in advance of the flight taking place. Thus, it is said that, at any point during the relevant period, there would have been “hundreds” of QC0.25 aircraft scheduled to fly in the future. I accept the appellant’s point that, with investigation, it would have been apparent to the LPA that flights, and indeed flights of QC0.25 aircraft, would have been scheduled to occur during the night-time period for the coming months.

92. However, this cannot point to a continuing breach. Intention by itself cannot lead to enforcement action. Indeed, on the appellant’s own evidence, scheduled flights do not always arrive or depart at their scheduled time. As they have themselves identified, flights of QC0.25 aircraft scheduled to land in the night-time period in January 2009 and January 2012 landed outside of the night-time period because they arrived early.

93. Again, whilst such movements may reflect the pattern of seasonality of the airport, the fact of the matter is that those flights did not constitute a breach of Condition 6. Whilst the seasonal operation of the airport is reflected in the permission, the permission is not in itself a seasonal one. Nor indeed, is Condition 6. It does not preclude aircraft movements for any particular time of year. The plain and ordinary wording of Condition 6 is clear. It prohibits movements of aircraft in the night-time period, subject to the exemptions, at all times.

94. This not the factory analogy of Sullivan J in *North Devon* where, because of the periodic requirement of the condition, a continuous activity shifts between a breach and non-breach. Rather, is the opposite. It is a continuing requirement condition where the periodic nature of the activity shifts between a breach and non-breach.

95. The appellant says that, had the LPA served an enforcement notice during the ten-year period, the appellant would have had no basis for arguing that the breach of planning control had ceased. However, it is evident that the breach had ceased during the aforementioned periods.

96. It would have been reasonable for the LPA to have concluded that, with such a length of time having elapsed since the last movement of QC0.25 aircraft, that the breach had ceased, and it was not expedient to issue a notice. Whilst they may well have looked ahead to scheduled flights to see the potential or intention for a future breach, it would have been unreasonable and arguably, not expedient, to issue a notice just in case the breach was to occur again, particularly in the knowledge that the scheduling of flights does not necessarily result in an actual breach occurring.

97. Thus, applying the tests in *Nicholson*, the answer to the question, “what is the breach?”, is the movement of QC0.25 aircraft in the night-time period in breach of Condition 6. The last failure to comply began, at the latest in January 2015. Thus, a period of ten-years has not elapsed.

98. The appellant points to the LPA’s decision to issue a notice in September 2024 in respect of the movement of QC1 aircraft, despite the fact that the most recent movement of QC1 aircraft had been some five months previous in April 2024. However, the appellant does not say whether or not it was wrong of the LPA to do so. It would have been able to make the argument that it was. Furthermore, the decision of the LPA to take action in respect of a completely separate breach cannot dictate what it decides to do on the facts in respect of another.

99. Thus, it seems to me that there were times during the relevant period when the LPA would not have been able to take enforcement action in respect of the breach. As a result, those periods cannot count towards the continuous period of 10 years which gives rise to immunity.

100. Consequently, I conclude that it has not been demonstrated, on the balance of probabilities, that, at the date of the LDC application, no enforcement action may then be taken in respect of the movement of QC0.25 aircraft in the night-time period because the time for taking enforcement action had expired. Consequently, the breach of planning control would not have been lawful within the meaning of Section 191(2) of the Act.

## Conclusion

101. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the confirmation of immunity against enforcement of Conditions 6(a), 6(b) and 6(c) of the 2007 permission in respect of the prohibition of night-time movements of aircraft with a quota count of 0.25, based on ten years of continuous breach, that refusal would have been well-founded and that the appeal should fail. I will exercise the powers transferred to me under Section 195(3) of the 1990 Act as amended.

## APPEAL B

### Preliminary Matter

102. GALBA made submissions to the Inquiry that the application in respect of Appeal B was not properly made.

103. The description of existing use, existing operation or failure to comply with a condition or limitation given in the LDC application is:

> "Regardless of the cap on movements in condition 7, it is lawful for aircraft to take-off and land at Leeds Bradford Airport, during the hours of 2300-0700 where they fall within the definition of "Exempt Aircraft" in NOTAM S45/1993 i.e. (a) those aircraft with a maximum certified weight not exceeding 11,600 kg and (b) those propellor 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."

104. The description is not explicit regarding the use, operation or matter which is said to be lawful. GALBA argues that the LDC process is not a vehicle for applicants to establish the correct legal meaning of planning conditions, unconnected with any asserted failure to comply with the conditions. It is said that is what the LDC application seeks and thus, it cannot be properly regard as an LDC application under Section 191(1) of the Act.

105. However, despite the wording on the application form, I am satisfied that the LDC application was seeking to establish the lawfulness of the movement of "exempt aircraft" as part of the established use of the land as an airport. That is the nature of the evidence submitted both to the LPA and to the appeal before me.

106. I consider therefore that the application was correctly made on the basis that an LDC is sought for:

> "the existing use of Leeds Bradford Airport for aircraft which fall within the definition of "Exempt Aircraft" in NOTAM S45/1993 i.e. (a) those aircraft with a maximum certified weight not exceeding 11,600 kg and (b) those propellor 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, to take-off and land during the hours of 2300-0700".

107. I have determined the appeal on that basis.

## Main Issue

108. The main issue is whether the LPA's deemed refusal of the LDC application was well-founded.

## Reasons

109. As discussed, Condition 6 of the 2007 permission prohibits aircraft movements in the night-time period (2300-0700) other than by certain exceptions. They include Condition 6(e) – "exempt aircraft defined by UK NOTAM S45/1993".

110. The appellant's case is made on the basis that the provision in Condition 6(e) is fixed to the definition of "exempt aircraft" in the 1993 NOTAM and not any succeeding regulations, amendments/additions or deletions.

111. In contrast, the LPA and GALBA argue that the updating wording found in Conditions 6(a) and 6(b) should be applied in Condition 6(e) too, given the nature of the definition of exempt aircraft in the 1993 NOTAM and its interrelationship between the concept of an exempt aircraft and the definition of QC0.5 in the 1993 NOTAM.

112. The 1993 NOTAM defined "exempt aircraft" as: (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 the NOTAM.

113. Paragraph 2 of Part 1 of the Schedule says, "subject to paragraph 1 of this Schedule, the current noise classifications for aircraft on take-off or landing as appropriate are indicated in the tables in Part 2 of this Schedule, which are not exhaustive."

114. Thus, to be an "exempt aircraft", an aircraft must either be a jet aircraft with a maximum certified weight not exceeding 11,600 kg or propeller aircraft, which are classified at less than 87 EPNdB and are indicated as exempt in the Schedule in Part 2.

115. As a matter of fact, Condition 6(e) does not contain any words to the effect that exempt aircraft are to be taken as those defined in any succeeding regulations, amendments/additions or deletions to the 1993 NOTAM. The LPA and GALBA's interpretations do, essentially, imply those terms into the condition.

116. In *Trump*, the Supreme Court made clear that interpretation is not the same as the implication of terms. 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. While the court will, understandably, exercise great restraint in implying terms into public documents which have criminal sanctions, there is no principled reason for excluding implication altogether. To that end, whilst implication cannot be excluded entirely, great restraint is to be applied.

117. The reason for the imposition of Condition 6, as initially set out in the 1994 permission, was to minimise the potential for increased noise disturbance to residents in the vicinity of the airport. As I have set out in Appeal A, that is

consistent with my conclusion that the purpose of the permission overall was to facilitate an increase in the capacity of the airport whilst ensuring appropriate protection of the environment.

118. The effect of the appellant's interpretation is that any aircraft which are defined as "exempt aircraft" in subsequent NOTAMs are not exempt from the prohibition on movements in the night-time period.

119. The appellant submits that the position in 1994 was that "exempt aircraft" were omitted from the restriction on movements during the night-time period because such aircraft were deemed to be acceptable in noise terms given the definition set out in the 1993 NOTAM. That is a reasonable conclusion to reach in my view. If an aircraft is deemed to be acceptable to fly in the night-time period on the basis of its noise impacts in 1994, then there is no reason why the same aircraft would not be acceptable in the future, regardless of how they may or may not be defined as "exempt" in subsequent NOTAMs. That would be consistent with the purpose of the condition to minimise impacts on local residents in terms of noise by continuing to allow the movement of aircraft already deemed to be acceptable.

120. It is argued that if the exemption in Condition 6(e) did not update, it would undermine the purpose of the condition because, quieter aircraft which may be classed as "exempt aircraft" in the future would not be included.

121. However, much like my conclusions in respect of the interpretations of Condition 6(a) and 6(b), the fixing of the definition of "exempt aircraft" to the 1994 NOTAM guards against the potential scenario in the future where the NOTAM is updated to include aircraft which are more harmful in noise terms as "exempt aircraft". Prohibiting the potential for the movement of quieter aircraft in the future does not undermine the purpose of the condition in the context where an existing noise background has been established as acceptable. In contrast, the prohibition the potential for the movement of quieter aircraft guards against the potential for the movement of noisier aircraft in the future, is consistent with the purpose of the condition.

122. The LPA submits that the definition of "exempt aircraft" is integral to the classification of an aircraft as QC0.5. It is said that any aircraft which is less than 90 EPNdB but does not meet the other criteria of "exempt aircraft", would be a QC0.5 aircraft. It is said that means that, since Conditions 6(a) and 6(b) (which relate to QC0.5 aircraft) update, then it must follow that the approach to "exempt aircraft" is interpretated to do the same since one was integral to the other when the condition was imposed.

123. However, if such future aircraft are not covered by the definition of "exempt aircraft" in future NOTAMs then consideration of whether or not they are permitted to fly in the night-time period falls to be considered against the operation of Conditions 6(a)-6(d). If they do not meet the criteria in 6(a) or 6(b) then approval could be sought for their movement, on the basis that they meet subsequent definitions of "exempt aircraft". As with Appeal A, Condition 6(c) provides a mechanism to allow for the prospect of future quieter aircraft to be exempt from the prohibition of Condition 6. Indeed, given my conclusion in Appeal A that aircraft below 87 EPNdB would not be permitted under Condition 6(a) and 6(b), because they would not be QC0.5 in the 1993 NOTAM and subsequent NOTAMs, then

such aircraft would fall to be considered under the approval mechanism in Condition 6(c) and would not fall under Condition 6(a) and 6(b).

124. It is argued that NOTAMs and AIPs are not routinely stored once they are replaced. Indeed, the appellant's witness confirmed as much at the Inquiry. However, there is nothing before me which suggests the LPA were aware of that at the time of the 1994 permission.

125. To my mind, the logical assumption must be the authors of the 1994 permission, deliberately sought to exclude the updating clause from Condition 6(e) given such a provision had been deliberately included in 6(a) and 6(b). To do so would be consistent with the purpose of the condition and the permission overall because in granting the 1994 permission, the LPA determined that aircraft which were deemed to be exempt were sufficiently quiet that they could take-off and land at LBA in the night-time period without restriction, Condition 6(e) not being subject to the movement cap in Condition 7. That is what the permission, on its face, makes provision for.

126. The appellant argues that Part 2 of the Schedule to the 1993 NOTAM is expressly stated to be non-exhaustive. It is said that, when applying the definition of exempt aircraft, whilst aircraft meeting the definition in 1993 were "indicated" in the Schedule they were not exhaustively listed. It was put to the Inquiry that this is because when an aircraft received a noise certificate after the date of issue of the 1993 NOTAM, there was a period of time where it was exempt but not indicated in the schedule as it was only issued every six-months. Thus, it is said that Schedule 2 cannot be treated as exhaustive for exempt aircraft.

127. It is said that "Exempt" is a noise classification in the table set out under Part 2 – Noise Classification According to Type. However, it seems to me that "Exempt" (listed as "EXEMP") is a reference to the QC band of the aircraft, not of the Noise Level Band or noise classification which is contained in the row above by reference to the EPNdB value. The Exempt aircraft column does not assign any noise classification to exempt aircraft. Noise classification for the purposes of the NOTAM is measured in EPNdB. Part 2 of the Schedule lists only the aircraft falling within QC bands by reference to EPNdB. Furthermore, the definition of "exempt aircraft" in Paragraph 3(3) of the 1993 NOTAM requires the aircraft to be indicated as exempt in Part 2 of the Schedule. It cannot be indicated to be "exempt" but the list be non-exhaustive. The operation of the two together would lose all effect of the words as there would be no need to indicate "exempt aircraft" on a list if the list was non-exhaustive.

128. Thus, I find that it is the noise classifications which are not exhaustive, not the aircraft listed as suggested by the appellant. The only reasonable way to interpret this language is that the Schedule is not exhaustive in respect of the current noise classifications of aircraft but is exhaustive of aircraft in terms of whether they are exempt or not.

129. GALBA submits that, by fixing the definition in 1993, the same aircraft is either exempt or not exempt depending on the version of the aircraft the operator is using. Two main examples are used. First attention is drawn to the ATR72 series of aircraft, which are indicated as "exempt" in Schedule 2 because they are propeller driven and less than 87 EPNdB. It is said that in 1997, the ATR 72-212A was introduced as an upgrade to the -210 version. The aircraft is not "exempt"

today but the upgraded version is in regular use at LBA, with 72 such flights from November 2023 to November 2024. However, the ATR72-212A is not listed as "exempt". By definition, it could not have been, it was introduced four years after the 1993 NOTAM. Thus, the movement of such an aircraft would not be "exempt" under Condition 6(e).

130. Similarly, the Boeing 737 MAX 8 is not an exempt aircraft for the purposes of Condition 6(e) because it is not listed as such on the table in Schedule 2 of the 1993 NOTAM. Again, it can't have been if it had not been brought into use until years after the 1993 NOTAM was published.

131. To that end, I find Condition 6(e) exempts from the movement of aircraft in the night-time period, those aircraft which are defined as "exempt aircraft" in the 1993 NOTAM only. It does not relate to "exempt aircraft" in succeeding regulations or amendments/additions/deletions.

132. To be an "exempt aircraft" for the purposes of Condition 6(e), the aircraft must be: (a) a jet aircraft with a maximum certified weight not exceeding 11,600kg, or (b) a 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. An aircraft which is not explicitly listed as "Exempt" in the Table in Part 2 of the Schedule, is not an "Exempt Aircraft" for the purposes of Condition 6(e).

*Lawfulness*

133. There is no dispute between any of the parties that it is lawful for aircraft to take-off and land to and from Leeds Bradford Airport in accordance with the operative planning permissions for the site.

134. It is put to me that the movement of "exempt aircraft" (i.e. those meeting the criteria of Paragraph 3(3) AND listed in Schedule 2 of the 1993 NOTAM) has occurred during the night-time period at LBA on or before the date of the LDC application.

135. The appellant's evidence indicates that many such flights took place from 2008 up until the date of the LDC application with a peak of 209 such flights in 2009. They have, however, gradually reduced in time. Nevertheless, I see no compelling evidence from the LPA, Rule 6 parties or any other party which counters the appellant's evidence on this point.

136. There is no evidence before me that the use was in contravention of any of the requirements of any enforcement notice then in force.

137. Consequently, for the reasons given above, I conclude that the existing use of the land for aircraft to take-off and land during the hours of 2300-0700, provided those aircraft are defined as "exempt aircraft" in NOTAM 1993, that being any aircraft which meets the criteria in Paragraph 3(3) of the 1993 NOTAM, and is included in the list of exempt aircraft in Part 2 of the Schedule, would have been lawful at the date the LDC application was made.

## Conclusions

138. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of Leeds Bradford Airport for aircraft which fall within the definition

of “Exempt Aircraft” in NOTAM S45/1993 i.e. (a) those aircraft with a maximum certified weight not exceeding 11,600 kg and (b) those propellor 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, to take-off and land during the hours of 2300-0700 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

## APPEAL C

### Preliminary Matter

139. GALBA made submissions to the Inquiry that the application in respect of Appeal C was not properly made.

140. The description of existing use, existing operation or failure to comply with a condition or limitation given in the LDC application B is:

> “It is lawful for any aircraft, regardless of quota count and regardless of the cap on movements in condition 7, to land at the airport in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land at Leeds Bradford Airport between 0700 hours and 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.”

141. The description is not explicit regarding the use, operation or matter which is said to be lawful. GALBA argues that the LDC process is not a vehicle for applicants to establish the correct legal meaning of planning conditions, unconnected with any asserted failure to comply with the conditions. It is said that is what the LDC application seeks and thus, it cannot be properly regard as an LDC application under Section 191(1) of the Act.

142. However, despite the wording on the application form, I am satisfied that the LDC application was seeking to establish the lawfulness of the movement of any aircraft to land in the night-time period in accordance with Condition 9 as part of the established use of the land as an airport. That is the nature of the evidence submitted both to the LPA and to the appeal before me.

143. I consider therefore that the application was correctly made on the basis that an LDC is sought for:

> “the existing use of Leeds Bradford Airport for any aircraft to land in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land 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.”

144. I have determined the appeal on that basis.

### Reasons

*Interpretation*

145. Condition 9 of the 2007 permission states:

9) 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.

146. In the 1994 permission, the final sentence in Condition 9(b), was separate to the remainder of (b). Professor Bonsall argues that this is deliberate and thus limits the exemption from night-time restrictions to only emergency movements.

147. However, it seems to me that, on the balance of probabilities, the formatting change was an error and not a deliberate intention to reduce the exemption from night-time restrictions to only emergency movements. There is no evidence to suggest the change was deliberate in the context that the 2007 permission was unrelated to changes in the movements of aircraft in the night-time period and simply sought to bring forward the 1994 conditions. On that basis, I accept the submissions of the appellant, the LPA and GALBA that, properly construed, the condition is to be read with the final sentence as separate from part (b) of the Condition. A reasonable reader would be aware of the 1994 permission and the context in which the 2007 permission was granted.

148. The appellant's submission, in essence, is that circumstances (a) and (b) in Condition 9 are the only circumstances in which Condition 4 and 5 aircraft can make movements in the night-time period. Further, that the wording of the final phrase in the Condition means all aircraft movements in respect of delayed landings and emergency movements are exempt from night-time restrictions and do not count against the Condition 7 cap, not just aircraft movements prohibited by Condition 4 and 5.

149. It seems to me that the phrase, "Movements in the night-time period by aircraft defined by conditions 4 and 5" can only be talking about departures in the night-time period by QC1, 2, 4, 8 and 16 aircraft and landings in the night-time period by QC2, 4, 8 and 16 aircraft.

150. In my view, on a plain reading of the words, the reasonable reader would conclude in reading Condition 9 that the only circumstances in which those aircraft specified in Conditions 4 and 5 can make movements in the night-time period is if they are scheduled to land in the day-time period (i.e. 0700 to 2300) but delayed up until 0100; or, an emergency flight, having regard to the definition in Condition 9(b).

151. Turning to the final phrase of the Condition. The appellant submits that, in referring to "these categories", Condition 9 is referring to the two aforementioned sub-sections of Condition 9, that being "delayed landings" and "emergency movements". In doing so, it is said, the Condition is not limiting the application of the two circumstances to only the noisier aircraft covered by Conditions 4 and 5 but to all aircraft which are delayed landings or emergency movements.

152. The LPA, GALBA and Professor Bonsall argue that the reference to “these categories” must mean Condition 4 and 5 aircraft which are “delayed landings” or “emergency movements”, not all aircraft which fall in those categories.

153. The reason for the condition is to minimise the potential for increased noise disturbance to residents in the vicinity of the airport. I am satisfied that is the planning purpose of the condition and thus the correct interpretation is that which achieves that purpose.

154. It is said that the condition mirrors the planning position prior to the grant of the 1994 permission whereby delated landings were permitted up to 0100 and emergency movements allowed at any time. I agree that a reasonable reader would be aware of the background to the 1994 permission and be able to take that into account.

155. The appellant argues it would be unprecedented and illogical for a permission to be construed such that it would be unlawful for an airport to accept an emergency movement in the night-time period. It is put to me that the night-time period regime would be unworkable because to be compliant, the appellant would have to apply arbitrary buffers within the Condition 7 movement cap to allow for the potential for emergency movements or delayed landings of non-Condition 4 and 5 aircraft i.e. Condition 6 aircraft. Evidence given at the Inquiry was that it is very difficult, if not impossible, to confidently predict the number of delayed and emergency landings every year. It is, by definition, highly variable.

156. Moreover, it would mean the appellant would, having reached its cap and faced with the prospect of a delayed landing or emergency movement, have to turn away such aircraft in order to be compliant with the condition. In respect of delayed landings, that could mean diverting a delayed flight to another airport, which would have significant effects on passengers and crew, as well as the operations of the airline. Likewise, turning away an emergency movement where there is a risk to life or health of a person or animal could have grave consequences.

157. However, it seems to me that the appellant can practicably make allowance for delayed landings or emergency movements within the Condition 7 cap. Furthermore, whilst it may be difficult for the appellant to operate in such a manner and perhaps not commercially advantageous to be able to fully schedule the entirety of the movement cap in Condition 7, it strikes me that is not impossible to do so within the parameters of the permission.

158. Indeed, it seems to me that allowing for delayed landings and emergency movements within the cap, to the extent that movements in some years may not completely maximise the cap, still complies with the policy objectives of the 1985 White Paper. Whilst the White Paper sets out the policy objective of encouraging the use of regional airports so that they can meet the maximum demand they can attract, it also sets out to encourage the best use of existing facilities, not necessarily the maximum use of facilities. It also sets out to minimise the impact of airports on the environment generally. To that end, the approach taken by the permission and Condition 9 therein to have a maximum cap on all permitted movements in the night-time period, including delayed landings and emergency movements, would reflect an appropriate balance of those policy objectives.

159. In addition, Condition 8 provides for the ability of the appellant to transfer up to 10% of the seasonal allocations in Condition 7 between consecutive seasons.

Thus, it would be open to the appellant, when faced with a situation where delayed landings and emergency movements would result in a breach of the Condition 7 cap, to bring forward part of the subsequent allocation to ensure those movements can be accommodated lawfully. Indeed, I heard at the Inquiry that this provision is already used for aircraft delayed beyond 0100, maintenance flights and charter flights such that, whilst undesirable, it is not impossible for the appellant to make allowance for delayed landings and emergency movements within the overall cap.

160. The LPA also argues that there is no reason why the appellant cannot take a flat percentage approach in an attempt to ensure it does not breach the movement cap. Whilst that seems a somewhat arbitrary approach, and I note the LPA does not suggest what level would be appropriate, it nevertheless seems to me that the historical scale of emergency movements and delayed landings is such that it could be accommodated within the cap.

161. I note that the appellant has recorded only one emergency movement, and in 12 years of the 14 year period, the total delayed landings was below 200. That is 5% of the total 4,000 night-time flights allowed for under Condition 7. Thus, it cannot be unreasonable to account for such low levels within the movement cap.

162. Furthermore, I also note that the Environmental Impact Assessment (EIA) process was undertaken on the basis of the total number of movements accounted for in the cap and thus, an interpretation of Condition 9 which would allow for the movement of Condition 6 aircraft above that cap, was not properly assessed.

163. The LPA's witness did suggest that there would be no significant environmental impact arising from movements above the cap. However, there is no such environmental assessment before me. It seems to me that the function of the movement cap, in the context of the planning purpose of the permission, was to provide a maximum noise envelope within which LBA could operate whilst minimising noise impacts. It seems to me to be logical that it would include delayed landings and emergency movements within that envelope, acknowledging that predicting the quantities of those is difficult and not an exact science.

164. The appellant argues that the alternative interpretation would not minimise night noise more than the appellants interpretation because, if quieter aircraft could not be delayed until 0100 but noisier aircraft could, airlines would be incentivised to fly noisier aircraft on movements scheduled to land later in the day-time period in the knowledge that they could lawfully land until 0100 if delayed. Thus, the condition would permit noisier aircraft for delayed landings and emergency movements without a cap but prohibit quieter aircraft for delayed landings and emergency movements unless they were within a cap.

165. Ultimately, the effect of the LPA's interpretation is that delayed landings and emergency movements of quieter aircraft are subject to a cap but the delayed landings and emergency movements of louder aircraft are unconstrained. It is argued that cannot be correct in the context of a condition which has the purpose of minimising potential noise disturbance.

166. However, Condition 6 aircraft, i.e quieter aircraft, are already permitted to fly in the night-time period up to the cap whereas Condition 4 and 5 aircraft are completely prohibited. That is the basis of the noise assessment which led to the grant of the initial 1994 permission.

167. Condition 9 provides for circumstances outside of the appellant's ability to plan for emergency movements or delayed landings because Condition 4 and 5 aircraft are wholly prohibited from any movements in the night-time period without exception. Other aircraft, i.e. those in Conditions 6(a)-6(d) are permitted to make movements in the night-time period, subject to the Condition 7 cap, so that provision is not required.

168. Whilst I note the point that airlines may be incentivised to fly noisier aircraft on later schedules, there is little evidence before me that airlines have indeed been incentivised to do so to take account of the ability to land such aircraft up to 0100 hours. Even if that were the case, to my mind the function of the condition is to allow LBA to operate that way in any event and that must have been taken into account in the overall balance between the airport operations and the impact on the noise environment.

169. The appellant submits that, in the alternative interpretations, the final sentence of the condition would make no sense, since Condition 4 and 5 aircraft do not fall within the Condition 7 movement cap anyway.

170. 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.

171. Indeed, if the Condition was intended to provide a blanket exemption for delayed landings up to 0100 and emergency movements for all aircraft regardless of noise rating, then there would have been no need at all for the opening passage of the condition to draw attention to Condition 4 and 5 aircraft. Quite simply, it could have omitted the words, "defined by conditions 4 and 5", to reach the interpretation the appellant has reached. To that end, the reasonable reader would take the inclusion of those words as a deliberate intention to provide an exemption for Condition 4 and 5 aircraft in the context that there is a blanket prohibition on their movement in the night-time period through those conditions.

172. Indeed, the reference to, "these categories are exempt from night-time restrictions" can only apply to Condition 4 and 5 aircraft since there are no night-time restrictions for Condition 6 aircraft.

173. The corollary of that is that a reasonable reader would conclude the latter part of the condition is to be read in the context of providing an exemption for Condition 4 and 5 aircraft, not all aircraft. In doing so, the reasonable reader would reach the conclusion it is not necessary for Condition 9 to do so, given Condition 6(a), (b), (c) and indeed (e) aircraft are permitted in the night-time period.

174. Thus, the delayed landing up to 0100 hours by any aircraft, other than those specified in Conditions 4 and 5, scheduled to land at LBA between 0700 hours and 2300 hours on or before the date of the LDC application would not have been in compliance with Condition 9 of the 2007 permission.

175. Likewise, the emergency movement of any aircraft on or before the LDC application date, other than those specified in Conditions 4 and 5, in the

circumstances where there had been an immediate danger to life or health, whether human or animal, would not have been in compliance with Condition 9 of the 2007 permission.

*Lawfulness*

176. The logical consequence of determining that any aircraft outside of Condition 4 and 5 aircraft is not permitted to make an emergency movement or delayed landing by Condition 9, would be that the emergency movement or delayed landing of such aircraft is not lawful.

177. However, such movements would have been lawful had they complied with Condition 6 in terms of exemptions to the prohibition on movements in the night-time period and provided the overall cap on movements in Condition 7 had not been exceeded.

178. It is put to me that emergency movements and delayed landings of non-QC1, 2, 4, 8 and 16 aircraft (for departures) and the landing of QC2, 4, 8 and 16 (for landings) have occurred on or before the date of the LDC application. That would include QC0.25 aircraft.

179. However, in Appeal A, I have concluded that it has not been demonstrated that the movement of QC 0.25 aircraft was lawful under Condition 6. Such aircraft are only permitted where they are approved under Condition 6(c). The appellant's evidence is that was not done. Those movements would include the delayed landing and emergency movement of such aircraft.

180. Thus, it cannot be concluded that, at the date of the LDC application, in the context of Condition 9 only permitting the delayed landing and emergency movement of QC1, 2, 4, 8 and 6 aircraft for departure and QC2, 4, 8 and 16 aircraft for landings, that it was lawful for all aircraft, regardless of quota count, to make emergency landings up to 0100 and emergency movements at any time.

**Conclusion**

181. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the existing use of Leeds Bradford Airport for any aircraft to land in the following circumstances: (a) delayed landings up to 0100 hours by aircraft scheduled to land 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 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act (as amended).

*J Whitfield*

**INSPECTOR**

## APPEARANCES

### FOR THE APPELLANT:

James Straughan KC, 39 Essex Chambers — instructed by Leeds Bradford Airport Ltd

Assisted by:

Victoria Hutton of Counsel, 39 Essex Chambers

Called:

| | |
|---|---|
| Vincent Hodder | CEO, Leeds Bradford Airport |
| Rupert Thornely-Taylor | Head, Rupert Taylor Ltd |
| Edmond Rose | Aviation Consulting Director, ASM |

### FOR THE LOCAL PLANNING AUTHORITY:

Reuben Taylor KC, Landmark Chambers — instructed by Leeds City Council

Assisted by:

Nick Grant of Counsel, Landmark Chambers

Called:

| | |
|---|---|
| Richard Crowther | Team Leader, Transport Planning, LCC |
| Carol Cunningham | Team Leader, Planning, LCC |

### FOR GROUP FOR ACTION ON LEEDS BRADFORD AIRPORT (GALBA)

Estelle Dehon KC, Cornerstone Barristers — instructed by GALBA

Assisted by:

Ruchi Parekh of Counsel, Cornerstone Barristers

Called:

| | |
|---|---|
| Andrew Tait | Committee Member, GALBA |

### FOR PROFESSOR PETER BONSALL

Professor Peter Bonsall

## DOCUMENTS SUBMITTED AT THE INQUIRY

1) E-mail exchanges of 4 March 2025 and 11 March 2025 and accompanying flight schedules
2) Appellant Opening Statement
3) LPA Opening Statement
4) GALBA Opening Statement
5) Professor Bonsall Opening Statement
6) Appeal Notification Letters and Lists
7) LPA Legal and Closing Submissions
8) GALBA Legal and Closing Submissions
9) Professor Bonsall Closing Submissions
10) Appellant Legal and Closing Submissions

Planning Inspectorate

# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

**IT IS HEREBY CERTIFIED** that on 14 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of Section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing use of the land for those aircraft which are defined as “exempt aircraft” in NOTAM 1993 to take-off and land during the hours of 2300-0700 - “exempt aircraft” being an aircraft which is: a jet aircraft with a maximum certificated weight not exceeding 11,600 kg; or, a propeller aircraft; which is classified at less than 87 EPNdB and is explicitly listed as “exempt” in Part 2 of the Schedule to the 1993 NOTAM - would have been lawful at the date the LDC application was made, because: (a) enforcement action may not then have been taken in respect of it, because the use is in accordance with the terms of planning permission P/07/02208/FU; and, (b) it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

*J Whitfield*

**Inspector**

Date: 8 August 2025
Reference: APP/N4720/X/24/3354216

***First Schedule***

The existing use of Leeds Bradford Airport for aircraft which fall within the definition of “Exempt Aircraft” in NOTAM S45/1993 i.e. (a) those aircraft with a maximum certified weight not exceeding 11,600 kg and (b) those propellor 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, to take-off and land during the hours of 2300-0700.

***Second Schedule***

Land at Leeds and Bradford Airport, Yeadon, Leeds LS19 7TU

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Planning Inspectorate

# Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 August 2025

**by J Whitfield BA (Hons) DipTP MRTPI**

**Land at: Leeds and Bradford Airport, Yeadon, Leeds LS19 7TU**

**Reference: APP/N4720/X/24/3354216**

Scale: Not to Scale