

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 78 OF
THE TOWN AND COUNTRY PLANNING ACT 1990

BRISTOL AIRPORT, NORTH SIDE ROAD, FELTON,
WRINGTON BS48 3DP

NORTH SOMERSET COUNCIL'S POSITION ON SLOTS &
GRAMPIAN CONDITIONS

I. INTRODUCTION

1. This Note sets out the position of North Somerset Council ("**the Council**") in respect of slot control at Bristol Airport ("**BA**") and the consequential effect of this for the consideration of conditions in this case.
2. In summary, in the absence of BA operating as a fully co-ordinated airport, Bristol Airport Limited ("**BAL**") do not have any effective mechanism available to constrain the demand for flights at BA and thus conditions requiring compliance with a contour cap or a QC quota or an Air Traffic Movement ("**ATM**") limit would be (1) unenforceable and (2) unreasonable, as BAL could not deliver compliance in the event of further growth.

II. BAL'S HISTORIC APPLICATION FOR CO-ORDINATION

3. BAL applied to be a year-round slot co-ordinated airport pursuant to Council Regulation 95/93 ("**the 1993 Regulation**") and the Airport Slot Allocation Regulations 2006 ("**the 2006 Regulations**") in November 2019. The Secretary of State's consultation document provides:

'9. In November 2019, Bristol Airport's operator contacted the Department for Transport requesting formal designation as fully "coordinated" on a permanent year-round basis in accordance with article 3 of the regulation, from the IATA winter 2020/2021 season onwards.

10. The airport operator concludes that this would put in place effective controls to allow projected commercial traffic growth to make more efficient use of the airport's existing infrastructure on a year-round basis, and thereby remain within current planning conditions set by North Somerset Council.'

4. The application was supported by a capacity analysis from Mott Macdonald (see Enclosure 1) which materially states on p.5:¹

‘This study assesses the need for Bristol Airport to be designated as a Level 3 ‘coordinated’ airport during all hours in both summer and winter seasons. It considers two environmental constraint scenarios:

- Current planning conditions limiting the airport to 10 mppa throughput and current night restrictions; and*
- If the airport’s planning application is granted, permitting growth to 12 mppa but with revised night restrictions’*

5. And on p. 8:

► *The only mechanism available to constrain demand for flights at an airport is through the slot process governed by EU Regulation 95/93.*

► *There are precedents for using the slot process to manage planning conditions limiting annual traffic at an airport:*

- Heathrow’s 480,000 annual ATM cap, which is a Terminal 5 planning condition that took effect in upon the opening of the terminal in 2008 [...]*
- To manage the annual passenger limit, Bristol Airport should be designated as a ‘coordinated airport’ for all passenger flights on a year-round basis (summer and winter).*
- Given that the 10 mppa limit is expected to be reached (and may be exceeded if controls are not in place) during 2021, designation as a ‘coordinated airport’ should take effect from the Winter 2020/21 season.’*

6. And on p. 11:

- To manage an annual night movement limit, Bristol Airport should be designated as a ‘coordinated airport’ for night flights on a year-round basis (summer and winter seasons).*

7. And on p. 37:

The conclusions of this Bristol Airport Capacity Analysis are:

¹ <https://www.bristolairport.co.uk/about-us/environment/capacity-assessment>

- *That the current partial designation of Bristol Airport as a 'coordinated airport' for summer seasons only between 23:00 to 07:00 local time (implemented from Summer 2018) has been effective in managing night flying within available environmental limits, but that full designation as a 'coordinated airport' at all times during both summer and winter seasons is now necessary.*
- *This conclusion is on the basis that:*
 - *There is an immediate need for Bristol Airport to effectively manage demand within its existing planning condition (environmental constraint) of 10 million passengers per annum (mppa)*
 - *In the event that a new planning permission is granted to allow growth beyond 10 mppa, the new annual night movement limits will require management of night flying demand during both summer and winter seasons*
 - *The airport's physical terminal and aircraft stand capacities are both operating at or very close to capacity and that slot controls are required to manage growth within acceptable levels of congestion and delay and to ensure smooth airport operations*
 - *The airport's runway capacity is not yet a primary constraint, but managing demand through effective slot controls will enable maximum runway throughput to be achieved progressively in line with demand*
 - *The voluntary 'schedule facilitation' process currently available outside of the coordinated summer-season hours is insufficient to manage demand within Bristol Airport's environmental and physical capacity constraints*
 - *There are no possibilities of resolving these problems in the short term through changes to the environmental limits, new or modified infrastructure, operational changes, or any other realistic changes in the use of facilities.*

8. The application has since been withdrawn. See the Chief Executive's April 2021 report to the BA Consultative Committee ("**BACC**") (see Enclosure 2):

'In November 2019, Bristol Airport made an application to the Department for Transport (DfT) to change its status to become Level 3 coordinated - this was to give the Airport greater control over timings and number of passengers by using the industry standard of greater coordination of flights. This is particularly important to ensure that Bristol Airport remains within its current planning permission previously granted to handle 10 million passengers per year. Without this mechanism in place the airport would be unable to fully control the demand for flights and passenger numbers.

In February 2020, the Department for Transport commenced a 6-week consultation; the DfT extended the consultation deadline from 3 April 2020 until 26 June 2020, to

allow more time due to the impact of COVID-19, therefore allowing all consultees further time to respond to the consultation.

In light of the devastating impact of COVID-19 on the industry and the unprecedented temporary reduction in passenger numbers, Bristol Airport has decided to withdraw its application at this time. However, given that we fully expect passenger numbers to recover when travel restrictions ease, we intend to resubmit our application ahead of Bristol Airport returning to the record passenger numbers of 2019 to ensure that we can effectively manage operations at the Airport into the future.’ (emphasis added)

9. From these passages, it is clear that BAL’s accepts that it is not possible to control aircraft movements/types in line with environmental controls without becoming a co-ordinated airport.

III. EVIDENCE TO DATE IN THIS INQUIRY

10. The Council has sought to explore the effects of this matter with Mr Brass and Mr Williams. Neither were able to provide any assistance. Further, the draft Note provided by BAL on the issue of slot control is silent on this aspect of the interrelationship between slot control and the imposition of environmental controls. These matters have only furthered NSC’s concern on this issue.
11. In re-examination of Mr Brass, Mr Humphries QC appeared to suggest that contracts can be used to impose controls. If this is what is proposed by BAL, this is not the Council’s understanding of the legal position, does not reflect the basis on which BAL applied to the secretary of State for co-ordination (see above) and is inconsistent with the report from BAL’s CEO to the BACC in April 2021 (see above).
12. As to the legal position, the Council highlights the following matters:
 - (a) As a certificated airport, BA must be open to public use. See Commission Regulation (EU) 139/2014 (“**the 2014 Regulations**”) and Commission Regulation (EU) 2018/1139 (“**the 2018 Regulations**”). Both the 2014 Regulations and the 2018 Regulations are retained EU law.
 - (b) BA is presently co-ordinated in the summer night-time and in the remainder of the year it is schedules facilitated under the 1993 Regulation and the 2006 Regulations. Importantly, when operating as a schedules facilitated airport, the schedules facilitator only has the power to advise air carriers and recommend

alternative arrival and/or departure times when congestion is likely to occur; whereas the co-ordinator is the sole person responsible for the allocation of slots (see art. 4 of the 1993 Regulation, as amended).

IV. CONSEQUENCES FOR THE CONDITIONS IN THIS INQUIRY

13. Since the proposed conditions restricting throughput, ATMs, the contour and QC count can only be complied with if the Secretary of States designates BA as a co-ordinated airport year round and throughout the day, the Council's position is that these conditions must be coupled with a pre-commencement condition which prohibits development until BA has been so designated.
14. If such pre-commencement condition was to be omitted, BAL would be unable to secure compliance with the aforementioned conditions, as explained in BAL's own material (see above). In this circumstance, the aforementioned conditions would (1) be unreasonable as BAL could not comply with them; and/or (2) would be unenforceable as there would be no mechanism by which the Council could require BAL to comply with these conditions.

**REUBEN TAYLOR QC
MATTHEW HENDERSON**

**Landmark Chambers
180 Fleet Street,
London, EC4A 2HG.**

12 August 2021