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6 July 2011

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (AS AMENDED BY
SECTION 10 OF THE PLANNING AND COMPENSATION ACT 1991)
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT - WA/2011/0520

Waverley Borough Council as Local Planning Authority **DO HEREBY** signify their **REFUSAL** to grant a Certificate of Lawfulness for the use specified in the form of application deposited by you with the Council on 4 April 2011 and described in the First Schedule.

FIRST SCHEDULE

Certificate of Lawfulness under Section 191 use of the application land as an aerodrome for aviation activities, including for the start up, taxiing, engine testing, ground running, take off and landing of aircraft, without condition, restriction or limitation as to:

Number of aircraft

Number of take offs and landings

Type of aircraft (whether fixed wing or rotary civil or military, commercial or private, training or non-training, and whatever the origin or destination of the flight)

Size of aircraft

Weight of aircraft

Number of crew and passengers

Type and amount of freight

Duration

Period of use (hours, days, nights, weeks, weekends etc)

Surface traffic generation

Number of employees employed on or off the application land or persons generally on or off the application land

Noise, air quality other emissions and environmental effects

Or otherwise.

(as amplified by additional information received 10/05/11, 02/06/11 and 23/06/11)

Dunsfold Aerodrome, Stovolds Hill, Cranleigh

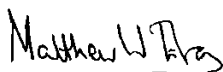
SECOND SCHEDULE

The reasons for the decision of the Council to refuse to grant a Certificate of Lawfulness are:

1. The lawful use of the application land on the appointed day was as part of a larger planning unit comprising the whole of Dunsfold Aerodrome for an operating, repair and maintenance depot for an air transport undertaking. The planning unit that accommodated that lawful use of the Dunsfold Aerodrome on the appointed day no longer exists in functional terms. The buildings in the northern sector of Dunsfold Aerodrome that were vital to its operation have since been put to materially different uses as part of a multi occupancy business park. There is no subsisting existing use right to use the application land in isolation from the Aerodrome as a whole, for the flying activities described in the application.
2. The flying activities described in the application are materially different and far wider in character from the flying activities on the application land at the appointed day. Those flying activities were part of the then depot use of the Aerodrome as a whole, as described in reason 1 above. The use of the application land alone, for the very wide range of aviation activities described in the application, would involve a material change on the use of the application land from the use to which it was put, as part of that larger planning unit, on the appointed day.
3. The use of Dunsfold Aerodrome materially changed with the introduction of Hawker Aircraft Limited's operations in 1951. The flying activities on the application land from that date onwards formed part of that development. They were authorised by the grant of planning permission 4624 for the use of the Aerodrome for the erection, repair and flight testing of aircraft on 13 April 1951. That planning permission was necessary to enable Hawker lawfully to begin its use and occupation of the Aerodrome as a whole and was implemented by Hawker for that purpose.
4. The 1951 planning permission was required to authorise the making of a material change in the use of Dunsfold Aerodrome from use as an operating and maintenance depot for an air transport undertaking (including staff living accommodation) (Skyways) to use as an aircraft manufacturing, repair and flight testing facility (Hawker/BAe). Hawker required the 1951 planning permission in order to carry out that development. Hawker could not rely for that purpose on the existing use rights created by Skyways' use of the Aerodrome on the appointed day. The applicant cannot rely on the said existing use rights to authorise the use of the application land for the flying activities described in the application.
5. The 1951 planning permission was a permanent permission. It was spent following Hawker's commencement of its use and occupation of the Aerodrome. No further material change was made in the use of the Aerodrome during Hawker's and later BAe's occupation, from 1951 until the

early 2000s. The flying activities on the application land during that period formed part of that authorised use.

6. The use of Dunsfold Aerodrome has changed materially since 2002. The planning unit now functions as a multi-occupancy business park, with a range of commercial, industrial and other uses in the northern sector of the Aerodrome, many of which have no or no significant functional connection with flying activities on the application land. That change of use of the Aerodrome is material for planning purposes. It has changed the character of the use of the Aerodrome and of the application land within it. It has planning consequences that reinforce the materiality of that change.
7. The 1951 planning permission cannot be relied upon to authorise a material change in the use of the application land as distinct from the Aerodrome as a whole, for general aviation activities unrelated to the design, development, flight testing, assembly, production and maintenance of aircraft: Cynon Valley Borough Council v Secretary of State [1986] 85 LGR 36.
8. The material change in the use of Dunsfold Aerodrome since 2002 has been authorised by the grant of planning permissions since that date. In particular, a sequence of temporary planning permissions has been granted which authorise the use of many of the buildings within the Aerodrome for light and general industrial purposes and for storage purposes. Those planning permissions have been implemented. The applicant is on record in 2009 as stating that one of those planning permissions is the basis for the current use of many of the buildings at Dunsfold Aerodrome.
9. Those planning permissions impose valid and effective conditional controls on flying activities at Dunsfold Aerodrome. For planning purposes, those conditions presently regulate the use of the application land for flying activities. The use of the application land for the flying activities described in the application would amount to a breach or one or more of those conditions. It cannot, therefore, be a lawful use for planning purposes, by virtue of section 191(2) (a) of the Town and Country Planning Act 1990.
10. Section 57(2) of the Town and Country Planning Act 1990 does not support the application. The Council's analysis of the planning history shows that there is no arguable basis for contending that the 'normal' use of the application land prior to the grant of the temporary planning permissions which currently govern the use of Dunsfold Aerodrome was for the flying activities described in the application.



Matthew Evans
Head of Planning Services

NOTES: Your attention is drawn to the provisions of Section 195 of the Town and Country Planning Act 1990, and if you are aggrieved by this decision, you may appeal to the Office of the Deputy Prime Minister. Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.