

Application for Deregistration of Common

Land at Blackbushe Airport, Camberley GU17 9LQ

**Supporting Statement**

## **1 BACKGROUND**

- 1.1 The Applicant, Blackbushe Airport Limited, operates a civil aerodrome on land at Blackbushe Airport, Camberley GU17 9LQ. The totality of the land leased by the Applicant at Blackbushe Airport is shown edged blue on the plan appended to the application (the "Application Plan").
- 1.2 Blackbushe Airport is situated on land that forms part of Unit CL24 of Yateley Common, which is common land, subject to common rights, both matters having been registered under the Commons Registration Act 1965. The Commons Registration Authority is Hampshire County Council ("HCC"). Provisional registration was made by HCC on 16 May 1967. The registration was considered by a Commons Commissioner and confirmed by his decision on 26 March 1975 (Exhibit CO7).
- 1.3 The Applicant believes that the land at Blackbushe Airport was wrongly registered as common land and is therefore submitting an application to deregister it under Schedule 2, paragraph 6 of the Commons Act 2006 ("the Act").
- 1.4 The onus of proof is on the Applicant to prove each of the elements of the tests arising under paragraph 6 on the balance of probabilities.

## **2 THE STATUTORY BASIS FOR AN APPLICATION TO DEREGISTER BUILDINGS WRONGLY REGISTERED AS COMMON LAND (SCHEDULE 2, PARAGRAPH 6 OF THE ACT)**

- 2.1 This application is made under paragraph 6 of Schedule 2 in respect of the land at Blackbushe Airport shown edged red on the Application Plan ("the Application Land"). The Application Land includes the terminal building (the "Terminal"), coloured purple on the Application Plan, and its curtilage, which comprises all the land outlined in red on the Application Plan.
- 2.2 Paragraph 6 states that "*if a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land*".
- 2.3 For paragraph 6 to apply, the requirements are as follows:
  - (a) the land must have been provisionally registered between 2 January 1967 and 31 July 1970;
  - (b) the registration must have become final;
  - (c) when it was provisionally registered, the land must have been covered by a building or within the curtilage of building; and
  - (d) the land must still be covered by a building or within the curtilage of a building when the application is made (*In the Matter of Fleetwood, Race Hill, Bissoe, Cornwall (2014)* (Reference COM 462) confirmed that the building does not have to be exactly the same as the original one but there must not be a significant period where no building was in place).

### **Registration of the Land**

- 2.4 HCC's common land register and map (Exhibit CO6) show that the Application Land is part of land known as Yateley Common. It was provisionally registered on 16 May 1967 and the registration became final on 4 April 1978, so conditions (a) and (b) are satisfied.

## Existence of the Terminal and Clubhouse on the Application Land

- 2.5 The Application Plan shows the Terminal coloured purple and the Bushe Café and flying club building (the "Clubhouse") coloured orange. The evidence shows that both the Terminal and the Clubhouse were in existence in the locations shown on the Application Plan at the time of the common land registration and have remained on the land since.
- 2.6 The post WW2 airport plan at PB1, the historic OS maps dated between 1962 and 1979 at Exhibit PB7 and photographs from the 1950s – 1980s at Exhibits PB3 – PB6, ML8 and ML10 – ML12 appended to the statutory declarations of Peter Brown and Michael Lambert, clearly show that both the Terminal and the Clubhouse were situated on the Application Land both prior to and after May 1967, when the land was provisionally registered. This is confirmed by Peter Brown in his statutory declaration at paragraphs 15 - 18. The existence of these buildings was also acknowledged in the Commissioner's decision to confirm the registration in 1975 (see the first paragraph of page 3, last paragraph of page 6 and last paragraph of page 7 at Exhibit CO7). Condition (c) above is therefore satisfied in respect of the Terminal and the Clubhouse.
- 2.7 The Terminal and the Clubhouse have remained on the Application Land since provisional registration. The buildings can be clearly seen today and there is significant evidence of the existence of both buildings from provisional registration to present day in the statutory declarations of Michael Lambert (at paragraphs 10 – 19) and of Peter Brown (at paragraphs 15 – 18). In particular, their existence can be clearly tracked through the CAA licences and current AIP entry at Exhibits ML5, ML6 and ML7, various historic photographs at Exhibits ML11—ML17, PB3 – PB6 and PB8 and the post WW2 plan and historic OS maps at Exhibits PB1 and PB7. Condition (d) is therefore satisfied in respect of the Terminal and the Clubhouse.

## The Meaning of Curtilage

- 2.8 The term 'curtilage' is not defined in legislation but has been the subject of considerable case law over the years. It is generally interpreted to mean an area which is ancillary to the main building and which is used for the comfortable enjoyment of it and must serve the purpose of the building in some necessary and reasonably useful way (*Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195. Furthermore, the curtilage is not restricted to an area immediately surrounding a building. The concept of 'smallness' is not relevant to the determination of curtilage, and it may include other ancillary buildings (as per the Court of Appeal in *Secretary of State for the Environment, Transport & the Regions v Skerrits of Nottingham Ltd* (2000)). What is classified as curtilage will depend on the facts of each case, for example in the case of *Attorney General ex rel Sutcliffe v Calderdale MBC* (1983) 46 P. & C.R. 399 a mill's curtilage was found to include a whole terrace of cottages, even though they were "separately owned, separately occupied and separately rated". The Calderdale case sets out that the factors to be taken into account include the physical layout of the land and buildings, ownership and use and function.
- 2.9 Whilst there are no cases specifically defining curtilage in the context of an airport/aerodrome, there are decisions and other legislation from which analogy can be drawn and therefore provide potentially helpful guidance for what should be considered to fall within the airport curtilage. For example, *PIK Facilities Ltd v Watson's Ayr Park Ltd* 2005 S.L.T. 1041 dealt with whether or not a person was trespassing within the airport ground. The "airport ground" is described as the "ground comprised within the airport ... covered by, inter alia, terminal buildings, roads, pavements, car parks and other airport facilities". When describing the airport ground the judge would have considered similar factors to those that are relevant to the determination of the curtilage such as the relationship between the buildings, land and infrastructure in terms of their layout, ownership, use and function. This description of the "airport ground" is analogous to defining the curtilage of an airport.

- 2.10 It is also relevant that, in planning law, the operational area (including the operational buildings) of an airport is generally treated as the relevant planning unit for the purposes of granting planning permission for airport development. In particular, Schedule 2, Part 8 and Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") grants permitted development rights for "the carrying out on operational land by a relevant airport operator or its agent of development (including the erection or alteration of an operational building) in connection with the provision of services and facilities at a relevant airport". The GPDO confirms that an "operational building" means *"a building, other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at a relevant airport."* When considering whether something falls within the airport's operational area for planning purposes and therefore the relevant planning unit, the decision maker must take into account similar factors to those relevant to the determination of curtilage, such as whether or not there is physical and/or functional unity between the land, buildings and other infrastructure claimed to make up the planning unit (*Burdle v SSE* [1972] 3 All ER).
- 2.11 Similarly, whilst rating decisions are concerned with what falls within a single hereditament (the taxable unit) and it is clear that more than one hereditament can make up the curtilage of a building, when a Valuation Officer determines whether property comprising more than one building falls within a single hereditament, she or he has to consider similar factors to those relevant to determining whether or not land and buildings are within the curtilage of another building. With regards to the rating of civil airports, section 250 of the Valuation Office Manuals/Rating Manual Volume 5: Civil Airports, practice note 1 sets out that, *"the unit of assessment should include everything within the perimeter fence and any other contiguous hereditament but excluding any premises so let out as to be capable of separate assessment whether on ground lease, lease or exclusive licence"*. In the 2014 rating appeal decision for Blackbushe Airport (Exhibit ML1), paragraph 7 and Appendix A to the decision confirm that the Blackbushe Airport hereditament comprises the buildings and infrastructure that fall within the operational area i.e. the Terminal, apron, runways, taxiways and the majority of the car park. These items are then subject to discounts/exemptions for valuation purposes with the way in which the airport operates and uses these elements being relevant to that assessment. Whilst the Clubhouse and part of the car park fall within the operational area, they are not treated as falling within the same hereditament for ratings purposes as they are let out and rated separately.

### **The Curtilage of the Terminal**

- 2.12 Taking the above into account and for the reasons set out below, the curtilage of the Terminal should be taken to be the Airport's existing operational area.

### Use and Function

- 2.13 At Blackbushe Airport the main airport building is the Terminal. The Terminal is, and has been since the 1960s, the central hub of the airport. It houses the control tower, from which air and ground traffic at the airport are controlled, and provides facilities for passengers, pilots and staff. The control tower has been housed within the Terminal since 1962, as described by David Lee in his book "Action Stations Revisited Volume 3" at Exhibit ML2, as the original control tower was removed in 1960. According to Robert Belcher it was moved to Edinburgh Airport in around 1960 (page 76 of his book 'An Airfield Focus Special' at Exhibit ML4).
- 2.14 As noted by Mick Lambert at paragraph 23 of his statutory declaration *"you cannot realistically operate a licensed aerodrome without a control tower. The control tower is essential for safety purposes as it gives an elevated view over the whole of the licensed area, enabling the control tower operators to see what is happening and to advise taxiing aircraft of any obstruction which may impede or present a hazard to their safe movement"*.

- 2.15 The key purpose or function of the Terminal, therefore, is to enable the safe operation of the Airport on the land. The apron, runways, taxiways, car park and other buildings are intimately connected by use and function to the Terminal and are dependent on the proper functioning of the Terminal and its integral control tower which has been the case since it was opened for civil use in 1962. The apron, runways, taxiways, car park and other buildings together with the Terminal make up the Airport's operational area and it could not realistically function without the existence of the Terminal.

#### Physical Layout of the Land and Buildings

- 2.16 The current CAA licensed area is shown on the map appended to the CAA licence dated January 2015, at Exhibit ML6, and the whole operational area and layout of the Airport is shown on the Blackbushe AIP Entry dated 28 May 2015, at Exhibit ML7. It can be seen from these exhibits that there is a link between the physical layout of the Terminal and its ancillary infrastructure. On the airside, the Terminal is linked to the taxiways and runways by the airport apron which directly abuts the Terminal. The apron allows pilots, crew and passengers to access their aircraft from the Terminal and use the taxiways and runways to take off and land. On the landside, the car park is adjacent to the Terminal and users of the Terminal can freely flow from the Terminal through the car park to the Clubhouse.
- 2.17 In his statutory declaration (at paragraphs 9 and 10), Michael Lambert explains that the existing operational area has always been part of the Airport's operational land which can be seen from the historic CAA licences at Exhibit ML5 and the historical narratives at Exhibits ML2 – ML4. This is also confirmed by Peter Brown in his statutory declaration at paragraphs 15 - 20.

#### Ownership

- 2.18 The Terminal and the rest of the operational area comprising the Application Land are within the same ownership registered at the Land Registry under title numbers HP623124 and HP707673 at Exhibits CO1 – CO4. The Applicant leases the whole of the Application Land and has day-to-day control over it (see Exhibit CO5).
- 2.19 Taking the above into account, it is clear therefore that there is an intimate connection between the Terminal, the apron, the taxiways, runways, car park and other buildings on the land in respect of their joint use and function as an Airport. In addition, the physical layout and connection between the buildings and infrastructure, and the fact that the existing operational area is, and has been since 1961, within the same landholding, all further indicate that the land upon which the apron, runways, taxiways, car park and other buildings are situated should be considered ancillary to the Terminal. The existing operational area of Blackbushe Airport should therefore be treated as falling within the curtilage of the Terminal.
- 2.20 It is also clear that the land upon which the apron, runways, taxiways, car park and other buildings are situated has been part of the current operational area since the early 1960s. The Application Land was therefore within the curtilage of the Terminal on 16 May 1967, the date of provisional registration, and is still covered by the Terminal and its curtilage at the date of this application. Therefore conditions (c) and (d) are also satisfied in respect of the Application Land.

#### **The Clubhouse**

- 2.21 As noted at paragraph 2.5 above, the evidence shows that the Clubhouse was in existence both prior to and after May 1967. Whilst the Clubhouse falls within the operational area and should be treated as falling within the curtilage of the Terminal and deregistered under Paragraph 6 of Schedule 2 on that basis, the Clubhouse also meet the statutory criteria of Paragraph 6 in its own right. In the event the Clubhouse were considered in isolation, the curtilage to the Clubhouse should be taken to comprise the existing outside café seating and viewing area, which is today delineated by a wooden fence, together with the car parking area to the east of the entrance off the A30.

### **3 CONCLUSION**

- 3.1 Paragraph 6 of Schedule 2 of the Act states that any land registered as common land to which paragraph 6 applies, is to be removed from the register of common land.
- 3.2 The evidence contained in the statutory declarations of Michael Lambert, Peter Brown and Cameron Ogden, made on behalf of the Applicant, together with the supporting documents demonstrates that paragraph 6 applies to the Application Land. Criteria (a) – (d) of paragraph 6 are met:
- (a) the Application Land was provisionally registered between 2 January 1967 and 31 July 1970, on 16 May 1967;
  - (b) the registration became final on 4 April 1978;
  - (c) when it was provisionally registered, the Application Land was covered by the Terminal and its curtilage which for the purpose of an airport should be regarded as its operational area; and
  - (d) the Application Land is still covered by the Terminal and its curtilage (i.e. its operational area) at the date of this application.
- 3.3 This demonstrates that the Application Land (comprising the Terminal and its curtilage) is land to which paragraph 6 applies. The Applicant has discharged the onus of proof for paragraph 6 and the Application Land should therefore be removed from the register of common land.

**Burges Salmon LLP**  
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Editing Note:

18 July 2017 – provisional and final registration dates amended to accurately reflect the dates recorded in the Land Section of Hampshire County Council's Register of Common Land.