

DATED

10th February

2004

**BIRMINGHAM INTERNATIONAL AIRPORT LIMITED**

-and-

**THE METROPOLITAN BOROUGH OF SOLIHULL**

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Section 106 Obligation (Amendment)

Birmingham International Airport

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Michael Blamire-Brown LL.B.  
Solicitor to the Council  
P.O.Box 18  
Council House  
Solihull  
B91 3QS



CONTENTS

CLAUSES

1. INTERPRETATION .....	3
2. STATUTORY PROVISIONS. ....	4
3. AMENDMENT OF THE SECTION 106 AGREEMENT .....	4
4. OBLIGATIONS OF THE AIRPORT COMPANY .....	5
5. NOTICES.....	5
SCHEDULE.....	7

THIS DEED is made

tenth day of February

2004

**BETWEEN:**

- (1) **BIRMINGHAM INTERNATIONAL AIRPORT LIMITED** whose registered office is at Birmingham International Airport, Birmingham B26 3QJ (hereinafter called "**the Airport Company**") and
- (2) **THE METROPOLITAN BOROUGH OF SOLIHULL** of The Council House, Solihull, B91 3QS (hereinafter called "**the Council**")

**WHEREAS:**

- (A) The Council and the Airport Company entered into an agreement ("The Section 106 Agreement") under Section 106 of the Town and Country Planning Act 1990 dated 3<sup>rd</sup> July 1996
- (B) On 3<sup>rd</sup> July 1996 the Council issued outline planning consent ("the Planning Consent" pursuant to application number 95/1331 for the expansion of passenger terminal facilities (i.e. the Eurohub and Main Terminal Passenger Terminals) together with related airside infrastructure (including aprons and taxiways) landside infrastructure (including internal circulatory roads and car parking) improvements to the surface access infrastructure (including new dedicated access roads to/from A45 Coventry Road) and improvements to the surface water and polluted water drainage systems (to provide increased capacity) subject to (inter alia) condition A3 requiring an application for the approval of reserved matters to be made to the Council on or before 2<sup>nd</sup> July 2003 and condition A4 requiring that the development be commenced on or before 2<sup>nd</sup> July 2003 or before the expiration of two years from the date of the last of the reserved matters to be approved whichever is the later
- (C) On 30<sup>th</sup> June 2003 the Airport Company made an application ("the Section 73 application") to the Council pursuant to Section 73 of the Town and Country Planning Act 1990 under reference number 2003/1424 to vary conditions A3 and A4 attaching to the planning consent granted pursuant to application number 95/1331 so



as to extend the time limits referred to in recital (B) above to on or before 2<sup>nd</sup> July 2008

- (D) The Council has agreed to grant the Section 73 application provided that the Section 106 Agreement is amended so that dates and time limits therein which are dependent upon the dates set out in the Section 106 Agreement are varied as set out herein

NOW THIS DEED WITNESSES as follows:

1. **Interpretation**

- 1.1 In this Deed the following words and expressions shall (where the context so requires or admits) have the following meanings:

**“the Section 106 Agreement”** means the agreement made under Section 106 of the Town and Country Planning Act 1990 between the Airport Company and the Council and dated 3<sup>rd</sup> July 1996

**“the Planning Consent”** means the consent issued pursuant to application number 95/1331 dated 3<sup>rd</sup> July 1996

**“the Section 73 Application”** means the application under Section 73 of the Town and Country Planning Act 1990 made under reference number 2003/1424

- 1.2 In this Deed unless otherwise provided or where the context so requires all expressions in this Deed shall have the same meaning as set out in the Section 106 Agreement

- 1.3 In this Deed unless otherwise provided or where the context so requires:

(a) the singular includes the plural and vice versa



- (b) references to clauses and schedules are references to clauses and schedules in/to this Deed
- (c) headings are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- (d) references to the Airport Company shall include its successors in title to the Airport Site

## 2. **Statutory Provisions.**

2.1 This Deed is made pursuant to the provisions of Section 106 of the Town and Country Planning Act 1990 to the intent that the obligations on the part of the Airport Company in the Section 106 Agreement as amended by this Deed are planning obligations for the purposes of that Section and are enforceable by the Council as the Local Planning Authority in relation to the Airport Site

2.2 Insofar as the obligations in this Deed do not fall within the scope of Section 106 of the Town and Country Planning Act they are entered into pursuant to Section 111 of the Local Government Act 1972 and all other enabling powers or enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained

## 3. **Amendment of the Section 106 Agreement**

3.1 The provisions of the Section 106 Agreement as set out the second column of the Schedule shall with effect from 3<sup>rd</sup> July 2003 be deemed to be replaced by the provisions set out in the third column and thereby incorporated into the Section 106 Agreement provided that any breach or non-observance of the Section 106 Agreement before 3<sup>rd</sup> July 2003 shall not be deemed to be waived by virtue of any amendment made by this Deed and the Airport Company shall remain under an obligation in respect thereof



3.2 This Deed shall be registered as a Local Land Charge

#### 4. **Obligations of the Airport Company**

4.1 The Airport Company hereby covenants with the Council to observe and perform the obligations and other provisions contained in the Section 106 Agreement as amended by this Deed with effect from 3<sup>rd</sup> July 2003

4.2 The Airport Company shall pay to the Council upon the date of completion of this Deed and in respect thereof the reasonable and proper legal costs of the Council

#### 5. **Notices**

5.1 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party

5.2 Any notice certificate or other communication to be served upon the Council shall be addressed to the Director and any notice certificate or other communication to be served upon the Airport Company shall be served upon the Managing Director

5.3 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted

5.4 Any notice certificate or other communication delivered personally or sent by facsimile transmission shall be deemed to have been delivered on the day of its



despatch if transmitted during or prior to normal business hours but otherwise on the next business day thereafter

IN WITNESS whereof the parties have respectively sealed this Deed as a deed on the day and year first before written



**THE SCHEDULE**  
(Amendments to the Section 106 Agreement)

Page	Schedule/Clause	Amendment
5	Clause 1 (Interpretation)	Delete "The Director" and the interpretation thereof and insert:- "the Director" means the Head of Planning Services of the Council or such other person as shall be nominated by the Chief Executive or if no other person shall be nominated the Chief Executive"
11	Clause 4.3(b)	Delete Clause 4.3(b) and insert: "(b) in respect of the costs of the Council to be incurred at its discretion in monitoring the performance of the obligations imposed upon the Airport Company and in producing an annual report thereon by this Deed nine annual payments of £25,000 and a further three annual payments of £30,000 to be paid as to the first payment on the Commencement of Development and for each successive payment on each anniversary of the Commencement of Development"
23	Schedule 4 (Noise Control)	Delete paragraph 2 and insert: "The Airport Company shall not make any reduction in the area benefiting from the Noise Insulation Scheme before 31 <sup>st</sup> October 2008"
23	Schedule 4 (Noise Control)	Delete paragraph 5 and insert: "The Airport Company shall make available an annual budget of £250,000 from 1st April 1997 to 31st March 2001 and £200,000 from 1st April 2001 to 31st March 2009 in relation to the Noise Insulation Scheme such budget to be used for the purposes of insulating eligible residential properties and (subject to paragraph 4) School Premises"



THE COMMON SEAL of THE )  
METROPOLITAN BOROUGH )  
OF SOLIHULL was hereto affixed in )  
the presence of:- )



342104

Solicitor to the Council

THE COMMON SEAL of )  
BIRMINGHAM INTERNATIONAL )  
AIRPORT LIMITED was hereto )  
affixed in the presence of:- )





# Solihull

METROPOLITAN  
BOROUGH COUNCIL

**VARIATION OF CONDITION  
DECISION NOTICE**

Planning Services, P.O. Box 11652, Solihull, West Midlands B91 3YA  
Telephone 0121 704 6000 Fax 0121 704 6592

Our Ref.: LAWRENCE OSBORNE APPLICATION NO.: 2003/1424

Date: 16 February, 2004

Site: BIRMINGHAM INTERNATIONAL AIRPORT PLC BICKENHILL LANE BICKENHILL SOLIHULL

Proposal: APPLICATION TO VARY CONDITIONS A3 AND A4 OF OUTLINE PLANNING PERMISSION 95/1331 IN ORDER TO EXTEND THE TIME PERIOD FOR COMMENCEMENT OF DEVELOPMENT AND THE SUBMISSION OF RESERVED MATTERS BY 5 YEARS TO JULY 2008, AND TO AMEND RELEVANT DATES OF THE EXISTING S.106 PLANNING AGREEMENT.

Applicant: BIRMINGHAM INTERNATIONAL Submitted by:  
AIRPORT LTD

Date Registered: 30/06/03

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## DECISION NOTICE

The Local Planning Authority hereby **APPROVES THE VARIATION** in the Condition(s) No(s) A3, A4 contained within Planning Permission reference No.95/1331 dated 3/7/1996 as requested in the application numbered as shown above.

The approved variation of that/those condition(s) is/are as follows:

- (1) A3. Application for the approval of Reserved Matters shall be made to the Local Planning Authority before the 3rd July 2008.
- (2) A4. The development hereby permitted shall be begun before 3rd July 2008 or before the expiration of two years from the date of approval of the last of the Reserved Matters to be approved whichever is later.
- (3) Within six months of the date of this permission a detailed phased scheme for the erection of Airport Passenger Terminals shall be submitted to and approved by the Local Planning Authority.

To secure a progressive expansion of the Airport commensurate with additional supporting facilities.

Signed

P.R. WATSON B.A.(Hons.), Dip.T.P., M.R.T.P.I  
HEAD OF PLANNING SERVICES