

**PROPOSED MODIFICATION OF PLANNING AGREEMENT  
BETWEEN DEPARTMENT OF ENVIRONMENT AND  
GEORGE BEST BELFAST CITY AIRPORT  
Statement of Case by Belfast City Airport Watch Limited**

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### **ABOUT BELFAST CITY AIRPORT WATCH (BCAW)**

BCAW is a voluntary body combining 15 Residents' Associations, Community Groups and a Trade Union Branch and has, in addition, 741 Individual Associate Members. A list of Member Bodies is attached (Appendix 1). It is set up as a Company limited by guarantee (NI 071313 ). It derives its income from donations, from individuals and charities. To finance its participation in this Public Inquiry it has raised to date £5,875 by holding an appeal. In addition it is relying on significant pro bono assistance.

### **STRUCTURE AND CONTENT**

This Statement of Case is structured on a topic basis. It has 22 Appendices including previous detailed submissions and other explanatory and supporting evidence which requires to be read in conjunction with it.

### **THE APPLICATION**

1. This is a request by George Best Belfast City Airport (GBBCA) to vary the terms of their Planning Agreement with the DOE dated 14/10/08. The modifications proposed essentially are:
  - (a) Removal of the "Seats for Sale" limit.
  - (b) The introduction of a different noise control cap placed upon the area falling within the 57dB LAeq 16 hr contour (here after referred to as the 57 Leq Contour ) set at 7.5 square kilometres; and
  - (c) The introduction of other noise control measures.
  
2. The Application was couched in terms that suggest there is no need to retain the seats for sale limit once an effective operational noise management system is in place. It fails to recognise that such a system ought to already be in place under the current agreement and is not in place only because GBBCA has failed to comply with its obligations under the Agreement. Presumably it is for this reason that GBBCA also wishes to delete the requirements of paragraph 4.3 of Part III of the First Schedule of the Article 40 Agreement. This is a requirement that has not been complied with. It would be a rather unique, and we say untenable, situation if a party to a planning agreement was able to utilise its unlawful failure to comply with obligations under the planning agreement as a valid legal basis for a modification of that planning agreement.

3. It is also submitted that the present Application by GBBCA is “irretrievably flawed” to quote the phrase expressed by Mr Justice Horner in his recent decision relating to the application to develop Casement Park , Belfast.

As transpired in the Casement Park application there is in the present case an “inadequate and unlawful “ approach by the Applicants by their inexplicable failure to meet their planning obligations under the 2008 Planning Agreement and their dereliction in failing to agree an indicative noise control contour in line with the recommendation of the Examination in Public Panel ( EIP)and the provisions of the 2008 Planning Agreement. This overt and blatant failure to agree a base noise control contour clearly makes it unachievable and impractical for either the concerned public or a decision making body to assess the actual impact of aircraft noise on the environment if the Application was allowed.

## **LEGISLATIVE FRAMEWORK**

This is set out at Appendix 2.

It is the respectful submission of BCAW that there are two fundamental flaws in the Appicant’s case that cannot be remedied.

- 1) The deliberate failure by an applicant to comply with an obligation cannot be used as a basis for contending that the obligation does not serve a useful purpose.
- 2) No decision making body could possibly determine whether the obligation would serve that purpose equally well if it had effect subject to the proposed modification without adequate and full information of the practical effect of the existing obligation under the Agreement.

## **THE 2008 AGREEMENT IN CONTEXT AND THE EIP**

1. The provisions of the 2008 Planning Agreement find their genesis in the recommendations contained within the EIP Panel Report dated 31.08.06. The Panel was appointed to conduct an Examination in Public of the issues relating to the 1997 GBBCA Planning agreement. The principal term of reference was to conduct an independent EIP of the key issues relating to the existing Belfast City Airport Planning Agreement which controlled certain aspects of GBBCA operations. GBBCA felt the existing Planning Agreement was unreasonably restrictive and sought a relaxation. The present Planning Agreement is dated 14.10.08 and the key provisions relevant to the present hearing are:

- (i) First schedule, Part II, paragraph 3.

Seats:

Not to permit operations using this aerodrome to offer for sale a Scheduled Flight more than 2,000,000 seats from the Aerodrome or any period of 12 months.

This is described within the Agreement as a Restriction.

- (ii) First schedule, Part III, paragraph 4.3.

An indicative control contour shall be agreed by the company and the Department in line with the recommendations of the EIP.

This is described within the agreement as an Obligation.

2. There were other Obligations and Restrictions which are also relevant and the PAC will be fully cognizant of the contents of the Agreement.
3. The EIP Panel Report is detailed, comprehensive and while not giving all sides what they wanted, broadly fair. It followed hearings lasting a number of days, evidence from 16 close participants (including GBBCA), 63 others and cost £81,678. Three overriding principles of considerable importance to the current inquiry are enshrined within the report and repeatedly emphasised:
- (i) The need for a system that would be accepted as transparent, fair and reasonable and one on which people could rely, a system which in time would become a solid foundation upon which a degree of mutual trust could be developed between the parties.
- (ii) That the Restrictions and Obligations within the Planning Agreement as recommended were interdependent and collectively were to achieve the balanced approach needed at GBBCA.
- (iii) The primary useful purpose of the Agreement is to limit the impact of noise disturbance on local residents.
4. The recommendations of the panel included the recommendation that the Restrictions and Obligations should be adopted in their entirety as they were considered to be interdependent. This included the Obligation that the indicative control contour should be produced and be set at 15% greater than the 57 Leq Contour for the current (2005) ATM level and aircraft mix in conjunction with the installation and operation of an integrated noise and track keeping system. The reasons for this latter recommendation are set out at paragraph 5.7.49 of the Report. This Obligation is inextricably linked to the Seats for Sale Limit.

5. The 2008 Agreement does not fully reflect the EIP recommendations because the indicative noise contour was to be agreed between GBBCA and DOE rather than being fixed by DOE /DRD. Nonetheless the obligation mandated an agreement and it was not difficult to set the indicative control contour in line with the EIP recommendations. This has never been done and is an example of bad faith on the part of GBBCA. The modifications proposed by GBBCA can only be made if they serve the same useful purpose as the Restrictions and Obligations currently within the Agreement considered collectively. That useful purpose was to limit the environmental impact of the airport operations and in particular to limit the impact of noise disturbance on individuals.

## **MERITS**

6. BCAW has compiled an Historical background and Listing of Significant Planning and Legal Events (the History) which is at Appendix 3. It can be seen that GBBCA (formerly BCA) has a long history of planning applications and attempts to improve their position relative to the 1991 Adoption Statement and the 1994, 1997 and 2008 Planning Agreements (Appendix 4 letter from Johnson 14.02.03 to Chief Executive, Planning Service).
7. A Consultation on the Seats for Sales Restriction Limit was held in 2010. BCAW replied as per Appendix 5. This was accompanied by Petitions with 1285 signatories, the 2009 Noise Survey and a note on Air Pollution (Appendix 5).

We rely on what we said and in particular:

- The purpose of the Seats for Sale Limit is regulation of environmental impact
- It controls aircraft mix, limits numbers of large aircraft and thus noise, passenger numbers and traffic

8. The proposal now under consideration by the Inquiry was launched in the “Request“ dated 23.2.12 (History point 46). BCAW responded to this in some detail and a copy of the response is at Appendix 6.

We rely on what we said and in particular:

- This is an attempt to overthrow the 2008 Agreement and the EIP Report
- The proposed contour sizes and affected populations exceed the stipulated tolerance limit.
- That the SFSR is a limitation on the scale of operation at the Airport not a relic of the previously demolished terminal building

9. The Environmental Statement (ES) was issued in December 2013. This was followed by several Addenda. The BCAW responses to these are at Appendix 7. As pointed out at History point 46, It is not clear to BCAW how the ES relates to the Request. This creates great difficulty in formulating a response, and we believe it has caused difficulty and confusion for those potentially affected.

We rely on what we said and in particular:

- That there is missing information and a misleading and wrong base case
- That the public are confused and should have been notified individually if potentially affected
- That the projected noise levels exceed the tolerable limit.

10. In summary, it is the respectful submission of BCAW that the Applicant's proposals must be rejected for the following reasons:

### **NOISE, ANNOYANCE and LOSS of AMENITY**

- (i) The ES submitted in support of the application uses as a baseline a noise contour that is not in line with the indicative noise control contour recommendation by the EIP Panel. The PAC is accordingly not capable of determining whether the modification to the agreement will serve the same useful purpose.
- (ii) The EIP Panel when making it clear that the Restrictions and Obligations were interdependent emphasised that the then Seats for Sale Limit would only be increased because the indicative noise control contour was to be fixed as recommended. What is now proposed will, in effect, remove any meaningful control on noise impact other than the ATM restriction.
- (iii) The EIP Panel report made it clear that the seats for sale limit should only be revisited when the noise management system had been fully implemented and was fully operational. Integral to this was the fixing of the indicative control contour.
- (iv) In fixing this indicative control contour, the EIP Panel determined the maximum number of people who should be exposed to the outer limit of tolerable noise. Any increase beyond these limits must be presumed intolerable. The indicative control contour is defined as "the maximum extent of the tolerable noise footprint around the airport" (EIP Report para 5.7.20). The EIP recommendation was generous to GBBCA permitting 5,100 people (calculated on the basis of all noise from 06.30 to closure) to be exposed to this level of noise. This compares with 3,700 people at Gatwick Airport and 1,900 people at Stansted Airport (calculated as daytime noise) (source; Airports Commission Discussion Paper no 5, Aviation Noise).

*Whereas the EIP Report, the Annual Noise Reports produced by GBBCA and used by the public, and the original 2012 Request to alter the Planning Agreement all used noise figures based on all noise from 06.30 to closing, the ES divides noise into Day noise (07.00 to 21.00) and night noise (21.00 to 07.00). The ES then fails to supply figures for the EIP recommended contour expressed in day and night noise. This makes comparison with the proper base case impossible. Day noise numbers for GBBCA will be lower than numbers computed on an all noise basis because of the exclusion of noise between 06.30 and 07.00.*

The GBBCA proposal, if permitted, is said to expose up to 18,100 people in East, South Belfast and North Down to noise at 57 Leq or above (calculated as day-time noise). It is also said to expose 11 Schools to noise at 57 Leq or above. The 57 Leq contour has been recognised by Government for many years as the onset of significant community annoyance.

- (v) The BCA proposal would expose 6,100 people to noise at 60 and above (calculated as daytime noise). The EIP Recommendation had only 140 so exposed (an all noise basis). As stated above we have not been supplied with the correct base case figures for daytime noise but believe the number exposed to noise at 60 and above will be below 140 and probably none at all if the EIP recommendation was expressed as daytime and night time noise.
- (vi) Nothing has happened since 2006 when the EIP Report was published to suggest that the “tolerable limit” should be increased. Research since 2006 has in fact found that the onset of significant community annoyance occurs at below 57 Leq, that adverse effects on schools start at below 57 Leq and that adverse health effects occur below 57 Leq. (see BCAW response to the 2012 Request , para 2.10 Appendix 6). See also Report on Potential Health Effect at Appendix 18.
- (vii) The Aviation Policy Framework, published March 2013, has a clear objective “to limit and where possible reduce the number of people significantly affected by aircraft noise”. The GBBCA application would increase people significantly affected and is inconsistent with the objective.
- (viii) No less than 1308 objections to the GBBCA Request were received by DOE by the end of 2012. There were 7 letters of support. This suggests

the EIP conclusion on the extent of the “tolerable limit” was indeed generous. The GBBCA Noise Report for 2012 shows the area inside the 57 Leq contour at that time was 3.45 sq km. That is below the 4.2 Sq Km said to be the size of the EIP contour as incorporated in the 2008 Planning Agreement.

- (vix) In the same year, 2012, BCAW commissioned the respected market research and survey company, Perceptive Insight, to carry out an objective and robust survey which examined the health and quality of life impacts of aircraft noise directly under and very close to the approach path to GBBCA which traverses parts of south, east and central Belfast. 423 face to face interviews were carried out with a representative sample of adults over the age of 16. It should be borne in mind that, while the survey area included streets also traversed by one or more of GBBCA’s take-off paths, the survey did not include all areas under or close to the take-off paths as we understand them. It does not, therefore, represent a complete picture of the full population impact of GBBCA’s aircraft noise in Belfast in 2012. (Full Survey at Appendix 8, Highlights at Appendix 3, point 45). Nevertheless, even within the area in which the survey was carried out, the findings demonstrate that aircraft noise had a significant impact on sleep patterns and quality of life. The survey’s findings are of concern because they show that, in a year when the 57 LAeq contour was said to have an area of 3.45sq km, as above:
- 38% of respondents described the noise from planes, when at home, as “very high”, compared to just 4% who described traffic noise, when at home, in the same terms
  - 25% of respondents said planes had woken them up or stopped them getting to sleep “quite often” or “very often”
  - 20% of respondents with children aged 11 or under said their childrens’ sleep was interrupted “quite often” or “very often”.
- (x) Perceptive Insight’s 2012 survey also found that adverse noise effects were significant in areas not directly under the immediate approach path and outside the 57% LAeq contour in 2012. . The findings show that, in areas such as Stranmillis and upper Ormeau, which are some distance from the runway and which, in 2012, were outside the 57 LAeq contour, there was significant annoyance (39% and 30% respectively in those areas described aircraft noise as “very high”).
- (xi) The survey findings strongly suggest that the night noise and sleep loss problem is understated in GBBCA’s ES. 25% of respondents replied that they were woken up or prevented from getting to sleep “quite often” or “very often”. Given that the estimated population inside the survey area was 20,809, the survey findings indicate that some 5,202

people could have been experiencing difficulty in sleeping in 2012 in the surveyed area alone.<sup>1</sup>

The survey also shows that, even in 2012, sleep disturbance extended well beyond the 90 dB (A) SEL footprint as mapped in the ES. For example, 17% of respondents in Stranmillis and 20% in upper Ormeau said that noise from aeroplanes had woken them up or stopped them getting to sleep “quite often” or “very often”.

- (xii) At Appendix 9 are 13 letters from residents explaining how noise, disturbance and loss of amenity caused by the airports current level of activity adversely affects them and their families. There is also concern about the effect on house values. Names and addresses have been redacted but are available to the PAC.
- (xiii) The provisions of the 2008 Agreement, while not exactly what was recommended by the EIP, were nevertheless workable and enforceable. The failure to fix the indicative control contour lies with GBBCA’s refusal to do so and the absence of enforcement by the DOE/DRD. The indicative control contour was capable of being agreed because the formulaic basis had been spelt out in the EIP, and in the absence of agreement, could either have been fixed or enforced by the DOE/DRD.
- (xiv) GBBCA has been under an obligation to produce a proper noise control and management system since 2008, an obligation it has failed to fulfil. It is now using its own failure and bad faith as a bargaining counter in an attempt not only to remove the seats for sale limit but also to virtually double the extent of the noise control contour.
- (xv) The EIP made it clear that the seats for sale limit would have to remain until an indicative control contour and noise management system as stipulated in the report had been implemented and public confidence had been restored by the system being operated in a clear and transparent manner including full compliance with the interdependent Restrictions and Obligations imposed by the agreement. Far from public confidence being restored, it has suffered serious further damage.
- (xxvi) The ES is misleading because comparisons are made with figures that are not compliant with the Planning Agreement thereby generating a higher and incorrect base case. Planning law in this context is clear – an appropriate base case must be used. Without comparisons with the workings of the Planning Agreement indicative control contour one

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<sup>1</sup> We accept that this is an approximation in that the 25% figure in the survey related to adults aged over 16. However, it should be borne in mind that 20% of respondents with children aged 11 or under stated that their child or children’s sleep was interrupted “quite often” or “very often”, and that, in some instances, this would have included more than one child. Therefore, we believe the approximate estimate of 5,202 adults and children with disrupted sleep to be a fair one in the light of our survey data and in the absence of any more specific and robust survey data to the contrary.



cannot know how many more thousands of people might be adversely affected. Furthermore, it is impossible for those potentially affected people to understand their predicament and make appropriate representations.

- (xvii) The GBBCA- Environmental Noise Directive- Round Two- Noise Action Plan 2013-2018 ,at para 5.5 “ Any limit values in place “ lists “ agree an indicative noise control contour with DOE ( Planning )in line with the recommendations of the Examination in Public ( EIP) which reported in August 2006 “ as one of the “ obligations and restrictions “ on the operations at GBBCA. A reader of the Plan would be entitled to assume the existence of this obligation is being cited as part of the current Noise Action Plan.
- (xviii) The deficiencies in the proposal and base case were identified by BCAW as far as 3rd March 12 June and 27 August 2014 in the BCAW responses to the consultation on the ES (Appendix 7). The same base case error was identified even further back in a letter of 19 May 2011 from Johnsons to the PAC concerning the then proposed runway extension (Appendix 10). GBBCA has had since that time to produce the correct information and has refused to do so. It is not hard to imagine the inference that should be drawn from this failure.
- (xvix) GBBCA in practice appears to have accepted that the aircraft movement Restriction (ATM limit) is a binding condition. The Seats for Sale Limit has not been afforded the same practical consideration despite warranting equal importance in the agreement. GBBCA has implicitly sought to vary the agreement in practical terms since 2008. The fallout from this is that GBBCA has not presented scenarios that are fully compliant with the agreement so that these can be properly compared with scenarios that would exist without the Seats for Sale Limit. The Civil Aviation Authority concluded that a substantial breach of the Seats for Sale Limit will result in noise exposure contours that are larger than would otherwise be the case (Appendix 11, para 15) This proposed change to the Planning Agreement therefore cannot serve the same useful purpose and any such modification would be unlawful.
- (xx) The abandoned runway extension planning application did not include any proposal to amend the Planning Agreement. An Environmental Statement was produced ostensibly suggesting a level of operation in accordance with the Planning Agreement. Other parties, however, identified that the scenarios put forward totally misrepresented or ignored the Seats for Sale Limit and the indicative control contour (Appendix 12). GBBCA accepted that both of these conditions within the Planning Agreement were included to reduce the impact of noise pollution.
- (xxi) The EIP report made the following observation about the seats for sale limit at paragraph 2.4.2.

“The need for a restriction on seats for sale could be reconsidered once an effective noise monitoring and management system has been established in which the local community has faith”.

At a later stage the report indicated that the opportunity to reconsider this Restriction would be when the next planning application is submitted for some of the works referred to in the Masterplan.

Rather than improve , local community faith and confidence is at an all-time low because GBBCA has continually acted in bad faith;

- (a) The Seats for Sale Limit has been ignored when commercially viable. For example 2,359,133 seats in 2010.
- (b) GBBCA have even withheld the data necessary for monitoring from DOE (Appendix 9 DOE letter to Johnsons 26.7.10 )
- (c) The purpose of the Seats for Sale Limit has been misrepresented (Appendix 14 letter from GBBCA Community Fund sent anonymously to BCAW and see Appendix 3, History)
- (d) The prescribed contour area has been exceeded on a number of occasions. For example 6.10 sq km in 2010. Then 4.68 sq km in 2013. <sup>2</sup> It appears to be this later figure, changed into day noise, which is incorrectly used as a base case.
- (e) The use of the airport outside the permitted hours continues to be a significant and unjustified regular occurrence. There were 405 delayed ATMs after 21.30 recorded by GBBCA in 2013 and 369 in 2012. (Appendix 15 ). GBBCA maintains that these flights occur only in “exceptional circumstances”, but the majority of these delays are of the type that is under the control of the airlines and can be regarded as routine issues. They cannot be “exceptional “for this reason and also because there are so many of them.
- (f) GBBCA has failed to agree the indicative control contour as required by the Agreement.
- (g) In its Noise Action Plan 2013 to 2018 , required under the END, GBBCA deemed “acceptable “a level of noise

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<sup>2</sup> Source GBBCA Annual Noise Reports

which residents regard as not acceptable and then failed to designate “noise management areas”. BCAW have protested about this to DOE as per the attached letter of 25 August 2013, consultation response to the draft Plan and letter dated 20 February 2014 with reply (Appendix 16). The PAC is referred to the Belfast International Airport Noise Action Plan, 2013-2018, page 24, where it will be seen an effort has been made to comply with the requirements properly.

(h) GBBCA’s ES in support of the runway application stated that the application in no way altered or affected the Restrictions and Obligations within the current Agreement. GBBCA promised to continue to operate within the SFSR limit. Even without the runway extension, it did not fulfil this Obligation.

(i) Then on 20/9/10 Brian Ambrose of GBBCA wrote to Planning Services saying among other things:

“... we have been in discussion with Planning Service to agree an indicative control contour that is well progressed...”

On that basis he requested the removal of the seats for sale restrictions and the Minister unlawfully acceded to the request. The well progressed discussions to agree the indicative control contour seem to have foundered.

(j) After a protracted legal challenge the removal of the Seats for -Sale Limit was declared unlawful and the runway extension application was withdrawn. The minutes of the meetings to agree an indicative control contour, as supplied to BCAW by DOE are at Appendix 17, together with the exchange of letters between DOE and Johnsons. They are dated 20/4/09, 21/5/09, 30/7/10, 14/10/10, 3/2/11, 28/6/11, 18/8/11 and 25/8/11. These minutes clearly demonstrate the GBBCA intention to avoid its Obligation under the Agreement in relation to the indicative noise contour.

## **IMPACT ON HEALTH, SLEEPING and EDUCATION**

(xxii)

For the purposes of informing this Inquiry, BCAW commissioned a report which has examined the potential effects on health, sleeping and education. This has been prepared by Professor Eberhard Greiser MD, PhD.

It shows that the information in the ES is far from adequate. On the basis of published research and experience elsewhere:

- adverse effects start at lower levels of noise than have been considered
- effects on health could be expected at current noise levels
- these could be expected to increase at projected noise levels
- these could include excess cases and deaths
- adverse effects on education could be expected at current noise levels. This is supported by the BCAW 2008 Schools Survey (Appendix 19)
- there is a relationship between increasing aircraft noise and a linear decrease in reading, comprehension and recognition memory.

## **UNSUITABLE LOCATION OF GBBCA**

(xxiii) Both the annoyance and health effects are consequences of GBBCA being located in a densely populated residential area. GBBCA was designated a “City Airport” under EEC directive 2002/ 30 /EC. The definition of a “City Airport” is “ an airport in the centre of a large conurbation ..... where a significant number of people are objectively affected by aircraft noise and where any incremental increase in aircraft movements represents a particularly high annoyance in the light of the extreme noise situation”. The 2012 Request, issued by GBBCA, shows just how sensitive a location GBBCA is in. Table C2 of the Request shows up to 46, 000 people could be inside the 54 Leq 16h contour in some situations. Bearing in mind this is a measurement of noise averaged over 16 hours, and does not count individual noise events or their severity, this is an alarming indication.

## (xxiv) TRANSPORT

BCAW do not have the resources to have the transport effects of this application assessed. We do note, however, that the base case used is incorrect in that the indicative control contour as incorporated in the 2008 Planning Agreement has not been used as the starting point for assessing incremental requirements for parking and access to and from the Sydenham by-pass. We would also comment that the parking charges at GBBCA are considerable. Two, four and 7 day rates in longstay (the cheapest listed on 10 February 2015) in March and August are showing as £29.95, £44.95 and £41.95 respectively. These compare with €14.95 = £11.21 (@.75), €23.95=£17.96 and €33.5=£25.12 for the Express/Long Term at Dublin Airport (Appendix 20). (Dublin Airport then has an even cheaper car park). This has two effects;

- (1) to greatly increase the number of taxi and other drop offs which then multiplies movements for those passengers in site and on and off the by-pass by 2
- (2) To demonstrate that the difference in car parking charges for longstay between GBBCA and Dublin Airport, which is something under GBBCA control, is of the same scale as the Air passenger Duty differential on flights of the length flown from GBBCA (£13 for a flight of up to 2,000 miles) and additional to it.

#### **ABSENCE of ECONOMIC BENEFITS**

- (xxv) BCAW consider it is unlikely there will be any net economic benefits to Northern Ireland to offset the damage to amenity, quality of life and health which could occur, even if such offsetting were really acceptable. BIA has two runways and, in the past, has handled over 5 million passengers. It therefore has very considerable excess capacity. BIA is only 17 miles from Belfast and 19 miles from GBBCA. It is located in open countryside, can handle any size of aircraft and is estimated to have only 184 people within its 55 Leq 16h contour (see BIA's Noise Action Plan 2013-2018 Table 3). It is able to operate 24 hours per day with minimal adverse effects. There is, therefore, no argument for increasing permitted noise at GBBCA on grounds of shortage of airport capacity, or need, for Northern Ireland or for Belfast. Neither can there be an argument based on equal or remotely equal damage to amenity, quality of Life or Health being likely to occur because the alternative was also unsuitable.
- (xxvi) BCAW consider that insufficient thought has been given to the downsides for Northern Ireland in further dividing the air services for a population of only 1.85 million. There is already a strong and direct correlation between the growth of GBBCA and the transfer of passengers from BIA to GBBCA. As shown in the History (Appendix 3) growth at GBBCA has been fuelled by the moving of BMI (now BA), BMI Baby and Aer Lingus from BIA to GBBCA. The GBBCA schedules and also the projected schedules also contain a number of flights which directly parallel services already in place at BIA. BCAW questions whether this is really sensible and in the interests on Northern Ireland as opposed to the financial interests of GBBCA. The comments on the DOE Briefing Note 13.2.03 after the announcement of the move of the BMI Heathrow service appear very apt "Northern Ireland's obsession with cultivating competitive (as opposed to complementary) airport services in a constrained market environment has done nothing to develop the range of access available to the region.....policy and planning guidelines must be reliably in place". (Appendix 21)
- (xxvii) It seems highly unlikely, therefore, that expansion at GBBCA will create offsetting net economic activity. It may move jobs from BIA to BCA and create the impression of new jobs but that creates no net benefit.

(xxviii) The attached paper for BCAW written by Dr Mark Bailey (Appendix 22) further suggests that were any net new jobs to be created, which is unlikely, they would be of lower economic value than is assumed.

(xxvix) GBBCA suggests that it can reclaim passengers from Dublin Airport and that this will be an economic addition to Northern Ireland. However, they fail to provide any analysis of the reasons why these passengers were lost in the first place, what services at Dublin Airport are attracting passengers from Northern Ireland, and whether and how the services GBBCA proposes will have the effect that it claims of persuading Dublin Airport users from Northern Ireland to use GBBCA instead. As can be seen, Dr Bailey, in his analysis, casts doubt on GBBCA's attraction to passengers using Dublin. He also doubts if the flights attracting Northern Ireland origin passengers to Dublin would be viable if flown from GBBCA.

If it is Dublin Airport's long haul flights which attract Northern Ireland passengers, then it is self-evident that GBBCA cannot attract these passengers back. This is because of runway length, the curfew which is essential because of the surrounding residential areas, and the compact and constrained nature of the site.

Should it be the fact that Dublin Airport users can change from international long haul flights to domestic and European short haul flights, it is evident again that GBBCA cannot get these passengers back, because it cannot handle long haul.

Should it be the frequency that Dublin is able to sustain because of its catchment area, it is self-evident that further dividing the traffic between BIA and GBBCA as would result from GBBCA's Application, cannot help.

Should it be because they find it easier and quicker to access Dublin Airport than GBBCA, then GBBCA will remain relatively unattractive and may become more so if the projected rail link to Dublin Airport is built.

We do not know any of these answers. What we can be sure of is that it is not lack of airport capacity in Northern Ireland that is the problem, because there is no lack of airport capacity.

## **WINDFALL GAIN**

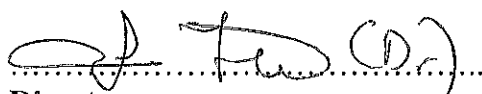
(xxx) While there will be damage to the environment, amenity, quality of life and health, if there is to be a gainer from removal of the Seats for Sales Limit and a larger contour it will be the owners of GBBCA, the Eiser Infrastructure Limited and associated equity partners. This will be in the nature of windfall planning gain.

The airport must have been purchased with knowledge of the 1997 Planning Agreement (the airport is reported as being sold on 5<sup>th</sup> September 2008). Then under the new owners the airport willingly signed the current Planning Agreement on 14 October 2008.

## CONCLUSIONS

BCAW's position is not simply that the modifications should not be allowed for the reasons given, although those reasons are compelling. It is that if they were allowed they would be unlawful and outside the legal parameters of Article 40 of the Planning Order (NI) 1991. The PAC should bear in mind that if the 2008 Agreement had been modified by increasing the Seats for sale limit in the absence of a requirement to agree the indicative control contour, the Agreement would have been unlawful. The reason the increase in the Seats for Sale limit in 2008 was not challenged in a public law court was because there was a corresponding and interdependent Obligation to fix the indicative contour noise contour. The EIP panel recognized that an increase in the Seats for sale limit without the balancing check of an indicative noise control contour at the level recommended, would have been unlawful. Such a modification would not have served the same useful purpose equally well, bearing in mind the purpose is to minimize the environmental impact from airport operations.

**Belfast City Airport Watch Limited**

A handwritten signature in black ink, appearing to be 'J. F. (D.)', written over a horizontal dotted line.

**Director**