

ENF No:
23/100B

COMHAIRLE CONTAE FHINE GALL
FINGAL COUNTY COUNCIL

S153 CE 1
TO ISSUE

RECORD OF CHIEF EXECUTIVE'S ORDER

IN THE MATTER OF THE LOCAL GOVERNMENT ACT 2001 (AS AMENDED)

AND IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

SECTION 153 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

Section 153 – Decision on Enforcement

SUBJECT

Whether to issue an Enforcement Notice

Lands: Dublin Airport, Co. Dublin

Planning Permission: Planning Authority Reg. Ref No: F04A/1755
ABP Ref. No: PL 06F.217429
North Runway Permission - Condition 5

Enforcement Complaint: Unauthorised development comprising development carried out in non-conformity with Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429)

WHEREAS Dublin Airport Authority plc (“*daa*”) obtained a grant of planning permission, following an appeal to An Bord Pleanála, for development comprising, *inter alia*, the development of the North Runway (“*the North Runway Permission*” - Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429) – the said grant of permission was subject to 31 Conditions, including Condition 5 which provides:

“On completion of construction of the runway hereby permitted, the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5th day of March, 2007.

Reason: To control the frequency of night flights at the airport so as to protect residential amenity having regard to the information submitted concerning future night time use of the existing parallel runway.”

The application documentation, including the EIS and information provided by way of further information, the Inspector's Report and the Board Order provide the context to the imposition of Condition 5;

AND WHEREAS a complaint was received by Fingal County Council ("*the Council*"), on 24th March 2023, and subsequent complaints followed, in relation to alleged unauthorised development at the Lands – being non-compliance/non-conformity with Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429) and including an alleged exceedance over the permitted number of night time aircraft movements;

AND WHEREAS pursuant to s.152(1)(a) of the Planning and Development Act 2000 (as amended) ("*the 2000 Act*"), having considered the said complaint, the Council issued a Warning Letter, dated 25th April 2023, to the daa in respect of the alleged unauthorised development – being alleged non-compliance/non-conformity with Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429);

AND FURTHER WHERE the daa responded to the said Warning Letter, pursuant to s.152(4)(b) of the 2000 Act, setting out its response to the allegation of unauthorised development by way of correspondence, dated 23rd May 2023 – which included support documentation;

AND WHERE, as part of the Council's investigation into the matter, further information/clarification was sought from the daa by way of correspondence, dated 9th June 2023 and 15th June 2023, and the daa responded to same by way of correspondence, dated 14th June 2023 and 19th June 2023;

HAVING CONSIDERED, *inter alia*, the complaint received and the responses from the daa, including supporting documentation (including the aforesaid) and having considered the Council's Planning Report, dated 18th July 2023, together with the Appendices to same, prepared as part of the Council's investigation into the alleged unauthorised development and the recommendation therein;

AND NOTING that the Council's Planning Report, dated 18th July 2023, provides, *inter alia*: a summary of the relevant planning history to the Lands – including matters relevant to Condition 5; a summary of the complaint received per s.152; details on the Warning Letter issued pursuant to s.152; outlines and considers the various responses/arguments made by daa in response to the said Warning Letter; a response

to the said responses/arguments made by daa; outlines an interpretation of Condition 5 of the Planning Permission;

AND HAVING NOTED AND CONSIDERED the requirements of section 153 of the 2000 Act, including *inter alia* the following provisions which provide, *inter alia*:

“(1) As soon as may be after the issue of a warning letter under section 152, the planning authority shall make such investigation as it considers necessary to enable it to make a decision on whether to issue an enforcement notice or make an application under section 160.

...

(3) A planning authority, in deciding whether to issue an enforcement notice shall consider any representations made to it... and any other material considerations.

...

(7) Where a planning authority establishes, following an investigation under this section that unauthorised development (other than development that is of a trivial or minor nature) has been or is being carried out and the person who has carried out or is carrying out the development has not proceeded to remedy the position, then the authority shall issue an enforcement notice under section 154 or make an application pursuant to section 160, or shall both issue such a notice and make such an application, unless there are compelling reasons for not doing so...”;

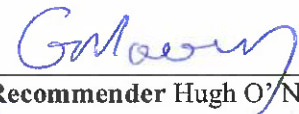
RECOMMENDATION of the SENIOR EXECUTIVE PLANNER: Accordingly, in accordance with section 153(1) of the 2000 Act, having considered the proper planning and sustainable development of the administrative area of Fingal County Council including the preservation and improvement of the amenities thereof, and having carried out an investigation such as to enable it to make a decision in accordance with section 153(1) of the 2000 Act and having considered representations made to it under **section 152(1)(a)** and submissions or observations made under **section 152(4)(b)** and any other material considerations, I recommend that an enforcement notice issue pursuant to section 154 of the Planning and Development Act for the following reasons:

- The use of the airport for night-time aircraft movements was, for the reason of protecting residential amenity, limited by An Bord Pleanála in the consent of the North Runway. Night-time use of the airport was limited by Condition 5 to levels of activity submitted by the daa in the course of the application;

- Residential amenity is protected by Condition 5 by way of mitigation of an identified significant impact through the control of the frequency of that impact, to an intensity of use forecast by the daa at the time of the application to extend the airfield by construction of the North Runway. An Bord Pleanála confirmed and determined the magnitude of night-time flights acceptable in its consideration of proper planning and sustainable development. The night-time use was limited in this manner by An Bord Pleanála to address concerns regarding the cumulative impact of the proposal in combination with existing development;
- The North Runway has been constructed and became operational on the 24 August 2022. A scheduling and slot allocation process was undertaken and a summer 2023 operating schedule was determined and is currently in operation;
- The summer schedule which is being carried out is in breach of the limit applied in Condition 5;
- Taking account of the foregoing, it is therefore concluded that by virtue of the scheduled and actual operations reported, the frequency of night flights in Dublin Airport is not in conformity with Condition 5 of the North Runway permission and is for that reason unauthorised development. The 2000 Act, including s.154(5)(a)(ii) provides that the planning authority can issue an Enforcement notice to require the daa, to proceed with a development in conformity with Condition 5;
- Unauthorised development is occurring and will continue to occur in non-conformity with Condition 5 and that unauthorised development is occurring at the Lands and development is not being carried out in conformity with Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429);
- The daa has not sought to remedy the said unauthorised development, there are no compelling reasons for not taking enforcement action, having regard to the nature of the unauthorised development at issue and the nature of Condition 5, including the reason/purpose of same;
- In circumstances where unauthorised development is occurring and will continue to occur at Dublin Airport, contrary to Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429) comprising the continued and ongoing exceedance of the permitted average number of night-time (between 2300 hours and 0700 hours)

aircraft movements at the airport – being a permitted average of 65 aircraft movements per night when measured over the 92-day modelling period;

- Noting the nature of the unauthorised development and the evidence presented and matters discussed in the aforesaid Report dated 18th July 2023 and appendices thereto, it is considered that a period of 6 weeks for compliance with the terms of the Enforcement Notice is reasonable and appropriate in the circumstances.



Recommender Hugh O'Neill

P.P. Senior Executive Planner

ORDER:

The report entitled *Informing a “decision on enforcement” under Section 153 of the Planning and Development Act 2000 (as amended)* from the Senior Executive Planner dated the 18th July 2023 and the appendices attached thereto have been considered. The findings and recommendations and the reasons set out therein **to issue** an enforcement notice pursuant to section 154 of the Planning and Development Act are hereby **ACCEPTED** and **ADOPTED** in this decision.

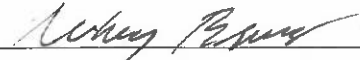
In accordance with section 153(1) of the 2000 Act, having considered the proper planning and sustainable development of the administrative area of Fingal County Council including the preservation and improvement of the amenities thereof, and having carried out an investigation such as to enable it to make a decision in accordance with section 153(1) of the 2000 Act and having considered representations made to it under **section 152(1)(a)** and submissions or observations made under **section 152(4)(b)** and any other material considerations the Planning Authority hereby **DECIDES** and **SO ORDERS** that an enforcement notice issue pursuant to section 154 of the Planning and Development Act for the following reasons:

- The use of the airport for night-time aircraft movements was, for the reason of protecting residential amenity, limited by An Bord Pleanála in the consent of the North Runway. Night-time use of the airport was limited by Condition 5 to levels of activity submitted by the daa in the course of the application;
- Residential amenity is protected by Condition 5 by way of mitigation of an identified significant impact through the control of the frequency of that impact, to an intensity of use forecast by the

daa at the time of the application to extend the airfield by construction of the North Runway. An Bord Pleanála confirmed and determined the magnitude of night-time flights acceptable in its consideration of proper planning and sustainable development. The night-time use was limited in this manner by An Bord Pleanála to address concerns regarding the cumulative impact of the proposal in combination with existing development;

- The North Runway has been constructed and became operational on the 24 August 2022. A scheduling and slot allocation process was undertaken and a summer 2023 operating schedule was determined and is currently in operation;
- The summer schedule which is being carried out is in breach of the limit applied in Condition 5;
- Taking account of the foregoing, it is therefore concluded that by virtue of the scheduled and actual operations reported, the frequency of night flights in Dublin Airport is not in conformity with Condition 5 of the North Runway permission and is for that reason unauthorised development. The 2000 Act, including s.154(5)(a)(ii) provides that the planning authority can issue an Enforcement notice to require the daa, to proceed with a development in conformity with Condition 5;
- Unauthorised development is occurring and will continue to occur in non-conformity with Condition 5 and that unauthorised development is occurring at the Lands and development is not being carried out in conformity with Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429);
- The daa has not sought to remedy the said unauthorised development, there are no compelling reasons for not taking enforcement action, having regard to the nature of the unauthorised development at issue and the nature of Condition 5, including the reason/purpose of same;
- In circumstances where unauthorised development is occurring and will continue to occur at Dublin Airport, contrary to Condition 5 of the North Runway Permission (Planning Authority Reg. Ref No: F04A/1755 / ABP Ref. No: PL 06F.217429) comprising the continued and ongoing exceedance of the permitted average number of night-time (between 2300 hours and 0700 hours) aircraft movements at the airport – being a permitted average of 65 aircraft movements per night when measured over the 92-day modelling period;

- Noting the nature of the unauthorised development and the evidence presented and matters discussed in the aforesaid Report dated 18th July 2023 and appendices thereto, it is considered that a period of 6 weeks for compliance with the terms of the Enforcement Notice is reasonable and appropriate in the circumstances.



Approver Malachy Bradley

Senior Planner

28/07/2023 Dated

thereunto empowered by order of the Chief Executive, Fingal County Council C.E No 8539 delegating to me all powers, functions and duties in relation to the Council of the County of Fingal in respect of this matter.