



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307198-20

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<b>Development</b>	Change of use of a karting motor racing track to a car rental storage car park and maintenance/cleaning facility.
<b>Location</b>	Kart City, Turnapin Great, Santry, Dublin 9.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0547
<b>Applicant(s)</b>	Flynn Bros. Rent A Car Ballygar.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Flynn Bros. Rent A Car Ballygar.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	24 <sup>th</sup> of September 2020.
<b>Inspector</b>	Stephanie Farrington

## **1.0 Site Location and Description**

- 1.1. The appeal site is located approximately 50 metres north of the M50 motorway, close to the point where it crosses the Old Airport Road. The site has a stated area of 2.99 hectares, is accessed via a 200-metre-long, private lane, off the west side of the Old Airport Road R132. The site falls from the northwest to southeast and existing levels vary from c.60mAOD to 55.6mAOD.
- 1.2. The appeal site forms part of an existing karting complex which comprises outdoor racing tracks. The site is adjoined by a part single-storey, part two-storey building which houses an indoor track and ancillary facilities. The River Mayne is located to the north of the site.
- 1.3. Existing development in the vicinity of the site includes existing agricultural lands to the west, car storage area to the south, industrial uses and residential unit to the east and playing pitches to the north.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises change of use of an existing karting motor racing track to a car rental storage car park and maintenance/cleaning facility. The development will comprise change of use to provide 1132 car parking spaces, a single storey maintenance/cleaning building of 294 sq.m. including an external car wash and refuelling area, 4 staff car parking spaces, demolition of an existing single storey pavilion/corridor building (476sq.m.), revised site boundaries and site development works.
- 2.2. The proposed Site Layout Plan illustrates that the car parking spaces are split into several zones, divided by paved areas and internal access roads.
- 2.3. The following documentation was submitted in conjunction with the application:
  - Planning Report – O' Connor Whelan Planning Consultants
  - Completed Application form and copy of public notices
  - Architectural Drawings – Architects Workshop Limited

- Landscape Plan- Landmark Designs Ltd.
- Engineering Drawings and Planning Report– Muir Associates

2.4. In response to Fingal County Council’s request for further information the following documentation was submitted:

- Amended Landscaping Plan – Landmark Designs Limited.
- Environmental Impact Assessment Screening Report – O’ Connor Whelan Planning Consultants
- Appropriate Assessment Screening - Moore Group Environmental Services
- Noise Impact Assessment – AWN Consulting
- Site Specific Flood Risk Assessment – prepared by Muir Associates Limited
- Updated Engineering Information and Drawings provided by Muir Associates Limited.
- Updated Architectural Drawing and Lighting Plan illustrating Lux Levels prepared by Architects Workshop Limited.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Fingal County Council refused permission in accordance with the following reasons and considerations:

1. *Having regard to a) the “wide scope and broad purpose” of the Environmental Impact Assessment (eia) Directive (2011/92/EU as amended by 2014/52/EU); b) Schedule 5 (Part 2) 10. Infrastructure Projects (b) (ii) of the Planning and Development Regulation 2011, as amended, “Construction of a car park providing more than 400 space, other than a car park provided as part of, and incidental to the primary purposes of a development, and c) the proposed car park with provision for 1100 spaces which cannot be considered to be “incidental” to the primary purpose of the development and which cannot be considered to be essential to the role and primary purpose of both the functioning and operation of the proposed development, the Planning*

*Authority is not satisfied on the basis of the documentation submitted with the planning application, that the proposed development would not require a mandatory EIA.*

In the absence of this substantive EIA documentation to adequately inform the decision of the Planning Authority and having regard to the precautionary principle that a Planning Authority do not grant permission for proposed development requiring EIA, the proposed development is considered to be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

##### Initial Report dated 20<sup>th</sup> of January 2020

- Uses car park and car holding area are not listed as either “permitted”/not permitted on lands zoned for General Employment purposes. Proposal will be assessed in terms of contribution to achievement of zoning objective.  
Proposed use is considered acceptable having regard to the location of the site within 2km of the airport, existing road network and connections to public transport.
- Scale of the proposal is modest and visual impact is considered acceptable as the development will be largely screened by boundary treatment.
- The application documentation does not identify the Mayne River along the northern boundary of the site. Appropriate Assessment is required.
- No screening for EIA is submitted.
- The character of the area is primarily industrial/commercial. It is not envisaged that the proposed development would have a negative impact on the amenities of the area. A residential property is located in proximity to the site and hours of operation should be limited.

Additional information is recommended in relation to the following:

- An Appropriate Assessment Screening/ Natura Impact Assessment shall be submitted.

- Applicant shall submit the information identified in Schedule 7A of the 2001 Regulations in order to facilitate a formal EIA screening.
- Transportation Issues- sightline drawing showing 65m sightlines to the south of the junction of the access road and the R132, Lux drawing identifying glare on M50 Swords road, details of the hours of operation.
- Water Services – details regarding flood risk, connection to foul services, surface water proposals and details of measures to protect against groundwater pollution.
- Provision of a riparian corridor of 10-15mm minimum along the Mayne River.
- Revised Landscaping Plan – indicating location of River Mayne along northern boundary, additional planting and protection of existing hedgerows and watercourses.
- Revised drawings which address discrepancies in layout, height and boundary treatment.
- Noise assessment report having regard to the location of the site within Noise Zone B.
- Clarification regarding proposed quantum of car parking spaces.

Report dated 8<sup>th</sup> of April 2020

- Changes to the proposal are noted including the reduction in car parking spaces from 1,132 to 1,100 no. spaces.
- The AI response has sufficiently addressed issues relating to the sightlines, anomalies in application drawings, floodlighting, flood risk, surface water drainage, landscaping and noise.
- Insufficient information within the Screening Report for Appropriate Assessment relating to impact on sites other than the Baldoyle SPA/SAC, indirect impacts from foul water discharges, impact of pollution incident, and in combination impacts.

- While the car park is provided as part of a car rental business, it cannot be described as “not a car park per se” or being incidental to the primary purpose of a development. It is stated that the car park provides an essential role and purpose in facilitating the functioning and operation of the development.
- The proposed development falls within the provisions of Class 10 b (ii) of Part 2 and Schedule 5 of the Planning and Development Regulations which requires a mandatory EIA.
- A EIA Screening Determination is not required as the development falls within the thresholds for a mandatory EIA.
- Further information is required in relation to the operation of the proposed car rental storage car park in conjunction with the existing Kart City use.
- Works to provide for foul sewer are indicated outside of the application boundary and it is not clear if adequate consent has been given for these works.
- Fundamental difficulty exists with the submitted application in relation to EIA. The planning authority is not satisfied on the basis of the information submitted that a mandatory EIA is not required. It is recommended that permission is refused on this basis.

### 3.2.2. Other Technical Reports

#### Transportation Planning Section

Initial report January 2020 –further information in relation to sightlines at site entrance.

AI report- Lux levels are not excessive and adequate sightlines have been demonstrated. No objection subject to condition.

#### Parks and Green Infrastructure

Initial report December 2019 – condition recommended relating to revised landscaping proposals. AI report – April 2020 – no objection to revised landscaping proposals subject to condition.

#### Water Services Planning Section

Initial Report – November 2019 – Additional Information requested in relation to flood risk, foul sewer and surface water proposals.

Environment and Water Services Department

No objection to the proposed development subject to conditions including submission of a Construction and Demolition Waste Management Plan.

Environmental Health Air and Noise Unit

No objection subject to condition.

Archaeology

No objection on archaeological grounds.

### 3.3. **Prescribed Bodies**

Dublin Airport Authority – Additional information in recommended in relation to noise sensitive uses within Zones B and C. Planning Authority is requested to have regard to Public Safety Zones associated with Dublin Airport, Objectives DA13 and DA14 of the County Development Plan and recommendations of ERM report. Reference to nature of the flood and street lighting relates to traffic and aviation safety.

Irish Aviation Authority – No observations

National Transport Authority – No objection

Transport Infrastructure Ireland – No observation

### 3.4. **Third Party Observations**

None received within the statutory observation period.

## 4.0 **Planning History**

Appeal Site

PA Ref F01A/1367, ABP Ref PL06F.128553 – Planning permission granted by Fingal County Council and refused on appeal to An Bord Pleanala in August 2002 for enclosure of existing outdoor karting track and new extension housing ancillary

accommodation at Kart City, together with internal and elevational alterations to existing buildings in accordance with the following reason:

*“Having regard to the observations of the Irish Aviation Authority dated the 19<sup>th</sup> day of December, 2001, it is considered that the proposed development, owing to its size and location within the Red (Safety) Area for Runway 34 of Dublin Airport, would expose occupants/visitors to increased risk in the event of an aircraft accident”.*

PA Ref F98A/0438, ABP Ref PL06F.112070: Permission refused for an extension to the kart centre by way of a new indoor centre by Fingal County Council and An Bord Pleanala in November 1999 for the following reason:

*“having regard to the observations of the Irish Aviation Authority, received by the planning authority on 22nd June 1999, it is considered that the proposed development, owing to its size and location within the inner protected zone for Runway 34 at Dublin Airport, would interfere with the safety of the aircraft and increase the level of risk to persons who would use this facility.”*

PA Ref F00A/1147: Permission refused by Fingal County Council in December 2000 for a temporary use of portion of lands as helicopter tour base with associated landing pad, fuel storage and other ground works at Kart City. Reasons for refusal related to impact on operations on Dublin Airport and traffic hazard.

PA Ref F93A/0782: Permission granted for change of use of existing warehouse to indoor karting centre.

PA Ref F92A/1414, ABP PL06F.093682: Permission refused by An Bord Pleanala in September 1993 for the retention of offices, store and septic tank.

PA Ref 88/0255: Permission granted for outdoor go-track.

### Santry Business Park

PA Ref F17A/0044: Planning permission granted by Fingal County Council in May 2017 for a new single storey car maintenance facility of and temporary off-season hardstanding for a maximum of 350 fleet cars at Santry Business Park Turnapin Great.



## 5.0 Policy Context

### 5.1. Development Plan

The appeal site is located within the administrative boundary of Fingal County Council. The Fingal County Development Plan 2017-2023 is the operative development plan for the area.

### 5.2. Fingal County Development Plan 2017-2023

- 5.2.1. The site is zoned Objective GE – “General Employment” purposes within the Fingal County Development Plan. This zoning objective seeks to *“provide opportunities for general enterprise and employment”*.
- 5.2.2. The vision for this zoning objective is *“to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible”*.
- 5.2.3. The use “car park” or “car hire holding area” are not listed as uses which are either permitted/not permitted on lands zoned for GE purposes. Vehicle Servicing/Holding Area is listed as a permitted use.
- 5.2.4. The following definitions are set out within Appendix 4 of the Development Plan:
- Car Park – Non-Ancillary– A building or land for the purposes of stand-alone car parking e.g. long-term car parking. Such use would not include a public road used for the parking of vehicles or use of a car park which is ancillary to the principal use.
  - Car Hire Holding Area - A building and/or land used for the storage of cars available for rent.
  - Vehicle Servicing/Maintenance Garage - The use of a building and/or land for the maintenance and repair of small motor vehicles and vans (excluding HGV’s and buses).
- 5.2.5. The Development Plan outlines that “uses which are neither ‘Permitted in Principle’ nor ‘Not Permitted’ will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision”.

- 5.2.6. The appeal site and adjoining lands located within the boundary of the Dardistown Local Area Plan Area. The relevant LAP is the Dardistown Local Area Plan 2013.
- 5.2.7. The site is located within Dublin Airport Noise Zone B, the Aerodrome Operators Safeguarding Map surfaces and the Outer Public Safety Zone. A portion of the site is located within the Inner Public Safety Zone.
- 5.2.8. A Cycle/pedestrian route is identified along the R132 c.200m to the east of the site.
- 5.2.9. The following policies and objectives are of relevance to the proposal:
- Objective Z02: Prepare and implement Local Area Plans where required.
  - Objective PM03: Identify obsolete and potential renewal areas within the County and encourage and facilitate the re-use and regeneration of derelict land and buildings in the County's urban centres.
  - Objective DMS 171: Ensure that no development, including clearance and storage of materials, takes place within 10m – 15m as a minimum, measured from each bank of any river, stream or watercourse in the County.
  - Objective ED31: Ensure that the required infrastructure and facilities are provided at Dublin Airport so that the aviation sector can develop further and operate to its maximum sustainable potential, whilst taking into account the impact on local residential areas, and any negative impact such proposed developments may have on the sustainability of similar existing developments in the surrounding area, and the impact on the environment, including the climate.
  - DMS 03 Submit a detailed design statement for developments in excess of 5 residential units or 300 sqm of retail/commercial/office development in urban areas. The design statement is required to:
    - Explain the design principles and design concept.
    - Demonstrate how the twelve urban design criteria (as per the 'Urban Design Manual - A Best Practice Guide') have been taken into account when designing schemes in urban areas.
    - Each of the twelve criteria is of equal importance and has to be considered in an integrated manner.

- Outline how the development meets the Development Plan Objectives, and the objectives of any Local Area Plan, Masterplan, Urban Centre Strategy, Framework Plan or other similar Plan affecting the site.
  - Include photographs of the site and its surroundings.
  - Include other illustrations such as photomontages, perspectives, sketches.
  - Outline detailed proposals for open space and ensure the provision of open space is designed in from the beginning when designing a new scheme.
  - Outline a detailed high-quality open space and landscape design plan including specifications, prepared by suitably qualified professionals.
  - Outline how Green Infrastructure integrates into the scheme.
- Objective ED89 - Prepare and/or implement the following Local Area Plans during the lifetime of this Plan: Dardistown Local Area Plan.

### 5.3. Dardistown Local Area Plan 2013

5.3.1. This plan relates to approximately 154 ha of lands bounded by Dublin Airport to the north and the M50 to the south. The Duration of this Local Area Plan was extended to November 2022 in 2017.

5.3.2. The vision for the area as set out within the LAP will be a strategic employment node, including office, research and development and high technology manufacturing. It is envisaged as maximising opportunities presented by its location close to existing and planned transport network.

5.3.3. The site is located within the Eastern Corridor as identified within the LAP. The LAP set out the following guidance in respect of development within this area:

*“This character area comprises all lands within the crosswind flight path Inner Public Safety Zone and east thereof fronting onto the Swords Road (R132). This zone is characterised by established commercial, leisure and amenity uses. The majority of these lands fall both within the Inner and Outer Public Safety Zone, Uses will be appropriate to these designations and the zoning of the lands and could potentially include logistics, warehousing, commercial car parks and transport depot(s). These uses require larger building plots resulting in a coarser urban grain with limitations on*

*building heights due to public safety zone constraints. Greater flexibility exists at the southern end of the corridor area where public safety zone restrictions do not apply to provide greater potential intensity employment / commercial type uses”.*

- 5.3.4. Table 8.1 of the LAP sets out the Phasing strategy for the LAP lands. The appeal site is located within Zone 1C. An indicative plot ratio in the range of 0.30 minimum to a maximum of 0.75 is identified. Indicative development quantum in the range of 58,995 sq.m. to 147,488 sq.m. is identified.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The appeal site is not located in or in the immediate vicinity of any sites with a natural heritage designation. The nearest European Sites to the appeal site include:

- Malahide Estuary SAC (Site Code 000205) – 6.34km
- North Dublin Bay SAC (Site Code 000206) – 6.58km
- South Dublin Bay SAC (Site Code 000210) – 8.43km
- Ireland’s Eye SAC (Site Code 002193) – 11.4km
- Rockabill to Dalkey SAC (Site Code 003000) – 11.27km
- North Bull Island SPA (Site Code 004006) – 6.56km
- Rogerstown Estuary SPA (Site Code 004015) – 10.48 km
- Baldoyle Bay SPA (Site Code 004016) – 6.63km
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) – 5.54km
- Malahide Estuary SPA (Site Code 004025) – 6.35km
- Howth Head Coast SPA (Site Code 004113) – 12.57km
- Irelands Eye SPA (Site Code 004117) – 11.18 km

#### **5.5. EIA Screening**

The subject matter of the appeal is whether the development is of a class specified in Schedule 5 (Part 2) of the Planning and Development Regulations 2001. This is addressed in Section 7 of this report.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

O' Connor Whelan Planning Consultants have prepared a first party appeal which addresses the points raised within the decision of Fingal County Council to refuse planning permission for the development. The following provides a summary of the grounds of appeal.

- The proposed development is consistent with the Development Plan which emphasises the importance of airport and related facilities to Fingal and the State.
- The proposed development is a “car hiring holding area” as opposed to a car park. It is ancillary to Dublin Airport i.e. incidental to its primary purpose as opposed to a car park. The development is not a car park that is open to the public. The development will replace existing car hire storage areas located on existing lands incidental to the airport that are being displaced due to ongoing redevelopment at Dublin Airport.
- A “Car Hire Holding Area” is a specific use class defined in the Development Plan, which as a matter of fact thereby distinguishes it differently from a car park.
- The proposed development complies with the requirements for EIA as detailed in the EIA Screening Report. The EIA Screening report was not taken into consideration by Fingal County Council.
- The development is in overall compliance with the EU publication “Interpretation of definitions of project categories of Annex I and II of the EIA Directive”.
- The various reports submitted in conjunction with the application including traffic, drainage, environmental and AA report prove that the development can occur without impacting on the existing site or environment.

## 6.2. Planning Authority Response

Fingal County Council's response to the grounds of appeal outlines the following:

- Central issue is whether the proposed development falls under the project category of a car park and therefore whether it is mandatory for an EIA to be undertaken prior to any decision to identify and assess the possible likely significant effects the project may have on the environment.
- The car park provides a core function in the operation of the proposed development and cannot therefore be described as being incidental to the primary purpose of the development. It is concluded that the proposed development should be subject to the requirements of EIA under the provisions of Class 10 (b) (ii) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended which requires mandatory EIA for infrastructure projects with a car park of more than 400 no. spaces.
- Planning Authorities must not grant planning permission for EIA development unless an EIA has been carried out and taken into consideration. As such on the basis of the precautionary principle it is recommended that planning permission is refused for this development.
- On the basis of the information provided it is not clear if the proposed development would not adversely affect the integrity of European sites in view of the sites Conservation objectives. Additional information is required in relation to the AA Screening of the proposed development including impacts on sites other than Baldoyle Bay SPA/SAC, analysis of indirect impacts on European sites arising from foul discharges and surface water management during operation would be required, in combination effects with development by DAA at Dublin Airport and impacts of potential pollution incident.
- Provision should be made for Section 48 Development Contribution in the instance that planning permission is granted for the development.

## 6.3. Observations

None

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Environmental Impact Assessment
- Appropriate Assessment
- Other Issues

### 7.2. Environmental Impact Assessment

7.2.1. Fingal County Council issued a decision to refuse permission for the proposed development on the basis that the Planning Authority is not satisfied on the basis of the information submitted in conjunction with the application that the proposed development would not require a mandatory EIA.

7.2.2. In the reason for refusal the planning authority cites a) the “wide scope and broad purpose” of the Environmental Impact Assessment (EIA) Directive (2011/92/EU as amended by 2014/52/EU); b) Schedule 5 (Part 2) 10. Infrastructure Projects (b) (ii) of the Planning and Development Regulations 2011, as amended, *“Construction of a car park providing more than 400 spaces, other than a car park provided as part of, and incidental to the primary purposes of a development”* and (c) the proposed car park with provision for 1,100 spaces which cannot be considered to be “incidental” to the primary purpose of the development and which cannot be considered to be essential to the role and primary purpose of both the functioning and operation of the proposed development.

7.2.3. The planner’s report which informs the decision of Fingal County Council to refuse planning permission for the development cites the “wide scope and broad purpose” of the EIA Directive in interpreting the scope of Annex II (10) (b). Specific reference is made to the guidance set European Commission publication “Interpretation of definitions of project categories of Annex I and II of the EIA Directive” which outlines that:

*“Projects with similar characteristics to car parks and shopping centres could be considered to fall under Annex II (10) (b). This could be the case for example, of bus*

*garages or train depots, which are not explicitly mentioned in the EIA Directive, but have similar characteristics to car parks”.*

7.2.4. Central to the determination of whether an EIA is required for the development is (1) the definition of the proposal and consideration as to whether the proposal has similar characteristics to a car park and would therefore fall within the class specified in Schedule 5 (Part 2) 10. Infrastructure Projects (b) (ii) and (2) whether the proposal could be considered as incidental to the primary purposes of the development. These points are considered in turn as follows.

(i) Definition of the Proposal

7.2.5. The application documentation sets out a rationale for the proposal together with details of the proposed use and operation of the facility which is summarised as follows:

- The applicant currently operates 3 facilities within the airport environs for Avis and Budget Travel including the car rental collection at Terminals 1 and 2, Dublin Airport and Car Rental Collection at Eastland’s and a 350-vehicle fleet car facility at Santry Business Park.
- The peak season for car hire is primarily from June to September, with the busiest months between July and August. There is an excess of vehicles within the fleet during the period outside of the summer peak season. Outside the peak season the excess fleet of cars are stored in a number of locations around Dublin Airport as well as the main facility at Eastland’s and the satellite facility at Santry Business Park.
- The continued expansion of Dublin Airport has seen the continued increased demand for offices and other aviation linked facilities, is limiting the availability of land for secondary activities such as car rental and storage. At present excess cars are located in Dublin Airport overflow car parks but with the expansion of the airport these facilities will become unavailable to the car hire operators.
- Expansion of Dublin Airport has seen continuing increasing demand for the facility at Dublin Airport. The proposal will support the development of Dublin



Airport and by providing essential services outside of, but in the immediate vicinity of the airport.

- The development would allow for the ongoing maintenance and cleaning of cars during off season periods and will allow for the ongoing maintenance of cars about to be absorbed into private ownership when de-fleeted. While 1132 no parking spaces are proposed it is stated that the facility will normally operate at half of this capacity during off peak season.
- Access to the site will not be provided to members of the public. The cars will be stored, maintained and cleaned on site and will be brought to and from the site by staff members either individually or by car transporter. 95% of the vehicles will be transported to the facility via vehicle transporter and 5% will be driven to the facility. For de-fleeting 100% of cars will be removed via car transporters.

7.2.6. A case is made within the first party appeal that there is no requirement for an EIA as the proposed development is not a car park “per se” but a car storage and maintenance facility incidental to a car rental business that serves Dublin Airport. It is stated in the appeal that a “Car Hire Holding Area” is a specific use class defined in the Development Plan, which as a matter of fact thereby distinguishes it differently from a car park.

7.2.7. The case made by the applicant that the proposal is not a car park “per se” is noted. However, the development description for the proposal as set out in the public notices describes the proposal as a car park i.e. “*change of use of an existing karting motor racing track to a car rental storage car park and maintenance/cleaning facility*”. (author emphasis added).

7.2.8. On review of the application documentation I consider that the proposal would be classified as a Car Hire Holding Area and Vehicle Servicing/ Maintenance Garage as defined within Appendix 4 of the Fingal County Development Plan.

7.2.9. I note that these uses are identified as distinct uses from a car park use within the use classes as identified within the Fingal County Development Plan. Fingal County Council accepted the classification of the proposal under these categories in considering compliance of the proposal with the zoning objective. However, such

classes are defined for the purposes of assessing compliance with various zoning objectives.

7.2.10. I accept that the operation of the development would be different to that of a commercial car park particularly in relation to the fact that the proposal would not be accessible to the public and the manner in which vehicles would access the site i.e 95% of vehicles to the proposal would be via vehicle transporter. However, in all other respects I consider the proposal to function as a car park.

7.2.11. The proposed use of the site is for the storage and maintenance of vehicles. I note the wording of Schedule 5 (Part 2) 10 (b) (ii) which relates to “*construction of a car park providing more than 400 spaces*”. This definition does not distinguish between a commercial car park or car park used for the storage of vehicles.

7.2.12. A total of 1,100 car parking spaces are proposed, as amended from 1,132 parking spaces within the response to the request for further information. The quantum of parking spaces proposed is clearly over and above the threshold of 400 parking spaces identified within Schedule 5 (Part 2) 10 (b) (ii).

7.2.13. I would also refer to the guidance set European Commission publication “Interpretation of definitions of project categories of Annex I and II of the EIA Directive”. This details that projects with similar characteristics to car parks could be considered to fall under Annex II (10) (b) and specific examples of a bus garage and train depot are cited in this regard.

7.2.14. Having regard to the nature and characteristics of the proposed development I consider the operation of the proposal which relates to storage and maintenance of vehicles would have similar characteristics to a bus garage. I consider, therefore, that the proposal falls within the scope of the Schedule 5 (Part 2) 10 (b) (ii) of the Planning and Development Regulations 2001 as amended.

*(ii) Incidental to the primary purposes of the development*

7.2.15. A case is made within the first party appeal that the proposed development is incidental to a car rental business associated with Dublin Airport. While I note that the proposed development is provided as part of a car rental business associated with the airport, I do not consider that the development would be incidental to the primary purpose of the proposed development.

7.2.16. The appeal site is physically separated from the car hire business and the car park storage area provides an essential role and purpose in facilitating the functioning and operation of the development as currently proposed.

7.2.17. I note the requirements of Article 109 (1) of the Planning and Development Regulations which outlines that:

*“Where an appeal received by the Board relates to a planning application for a class of development specified in Schedule 5 which equals or exceeds, as the case may be, a quantity, area or other limit specified in that Schedule for that class of development, and an EIAR was not submitted to the planning authority in respect of the planning application, the Board shall require the applicant to submit an EIAR to the Board”.*

7.2.18. In addition, I consider that the principle of the proposed use should be assessed in light of policies and objectives of the Dardistown Local Area Plan 2013. These points are addressed in further detail in Section 7.3.

#### *Sub Threshold EIA*

7.2.19. The applicant was requested to submit information relating to Schedule 7A within Fingal County Council’s request for further information. An EIA Screening report prepared by O’ Connor Whelan was submitted in response to the request for further information. The Report concludes that: *“the likelihood of significant impacts resulting from the proposed scheme is low to negligible”.*

7.2.20. Schedule 7A of the Planning and Development Regulations as amended relates to “Information to be provided by the Applicant or Developer for the purposes of screening sub-threshold development for Environmental Impact Assessment”.

7.2.21. The planner’s report prepared in respect of the request for further information concluded that a screening determination is not required in instances where there is a requirement for a mandatory EIA.

7.2.22. In this regard, I consider the subject matter of the appeal is whether the development is of a class defined under Schedule 5 (Part 2). The specified threshold of 400 parking spaces for mandatory EIA is clearly exceeded within the proposal which includes provision of 1,100 parking spaces. The issue of the requirement for a sub threshold EIA or EIA Screening does not, therefore, arise in this instance.

### 7.3. Appropriate Assessment

7.3.1. An AA Screening Report was submitted in response to Fingal County Council's request for further information. This identifies that the proposed development is not located within or directly adjacent to any SAC or SPA.

7.3.2. The following sites are identified in the vicinity of the proposal:

- Baldoyle Bay SAC (Site Code 000199) - 6.58km
- Howth Head SAC (Site Code 000202) – 10.46 km
- Malahide Estuary SAC (Site Code 000205) – 6.34km
- North Dublin Bay SAC (Site Code 000206) – 6.58km
- Rogerstown Estuary SAC (Site Code 000208) – 10.11km
- South Dublin Bay SAC (Site Code 000210) – 8.43km
- Ireland's Eye SAC (Site Code 002193) – 11.4km
- Rockabill to Dalkey SAC (Site Code 003000) – 11.27km
- North Bull Island SPA (Site Code 004006) – 6.56km
- Rogerstown Estuary SPA (Site Code 004015) – 10.48 km
- Baldoyle Bay SPA (Site Code 004016) – 6.63km
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) – 5.54km
- Malahide Estuary SPA (Site Code 004025) – 6.35km
- Howth Head Coast SPA (Site Code 004113) – 12.57km
- Irelands Eye SPA (Site Code 004117) – 11.18 km

7.3.3. The Screening Report identifies that nearest European sites to the appeal site are the Baldoyle Bay SAC and SPA. In terms of pathways to the proposal the Screening Report identifies that the River Mayne which runs to the north of the site towards Baldoyle Bay.

7.3.4. The Screening report identifies that there is a potential connectivity to the offshore European sites outside Baldoyle Bay but having regard to the distance and

intervening dilution factor that potential impacts are unlikely. These sites are screened out of the assessment at preliminary screening stage.

7.3.5. The Screening report provides a summary of the Conservation Objectives and qualifying interest of the Baldoyle Bay SAC and SPA as follows:

- Baldoyle Bay SAC (000199) - Conservation Objectives *“To maintain the favourable conservation condition of the qualifying interests in Baldoyle Bay SAC, which is defined by a list of attributes and targets”*. Qualifying interests: Mudflats and sandflats not covered by seawater at low tide, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows (*Glauco - Puccinellietalia maritima*) and Mediterranean salt meadows (*Juncetalia maritimi*).
- Baldoyle Bay SPA (004016) - Conservation Objectives: *“To maintain the favourable conservation condition of the waterbird population and wetland habitat in Baldoyle Bay SPA, which is defined by a list of attributes and targets”*. Qualifying interests: Light-bellied Brent Goose (*Branta bernicla hrota*), Shelduck (*Tadorna tadorna*), Ringed Plover (*Charadrius hiaticula*), Golden Plover (*Pluvialis apricaria*), Grey Plover (*Pluvialis squatarola*), Bar-tailed Godwit (*Limosa lapponica*) and Wetlands.

7.3.6. The report identifies that there will be no direct impacts on the Baldoyle Bay SAC and SPA and there will be no habitat loss or fragmentation as a result of the proposal.

7.3.7. A worst case scenario indirect impact associated with the proposal is identified as a detrimental change in water quality of the River Mayne and Baldoyle Bay European sites either alone or in combination with other projects or plans as a result in indirect pollution. It is stated that this effect would have to be considered in terms of changes in groundwater or surface water quality which would affect the species and/or habitats or food sources for which the Baldoyle Bay sites are designated. Such impacts are deemed as unlikely on the basis of the proposed riparian corridor on the northern boundary to protect the River Mayne from any development impact and the conclusions of the Flood Risk Assessment which deem that the site is not subject to flooding and the proposed development would not have interactions with the River Mayne in terms of flood risk.

- 7.3.8. In combination effects are identified on the basis of existing development/extent permissions within the vicinity of the site.
- 7.3.9. The AA Screening report concludes that: *“it can be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site”*.
- 7.3.10. While not cited as a reason for refusal, the planner’s report which accompanies the decision of Fingal County Council to refuse permission for the proposal raised concern in relation to the content and scope of the AA report and considered that insufficient information was included within the AA Screening in relation to the following:
- Further evidence on how and why impacts on the sites other than Baldoyle Bay SPA/SAC are screened out.
  - An analysis of potential indirect impacts on European sites arising from foul discharges (and surface water management) during operation would be required.
  - Clarification and explanation that in the event of a pollution incident that reached the Mayne the dilution effect and dynamics of the Baldoyle system would be such that any effects would be imperceptible;
  - In relation to in combination effects, regard should also be had to all the developments being undertaken by the DAA at Dublin Airport – particularly those with potential links to Baldoyle Bay i.e. all those with a surface water link to the Mayne or Sluice catchments;
- 7.3.11. These concerns raised within the planner’s report have not been addressed within the submitted appeal documentation. On review of the contents of the AA Screening Report, I consider that further justification/clarification should be provided in relation to the points raised by the planning authority in particular in relation to the impact of a potential pollution incident together with an analysis of potential indirect impacts on European sites arising from foul discharges (and surface water management) during operation. As detailed in Section 7.4 of this report, further clarification is also required in relation the operation/use of the facility including details of dual use as set out within the application.

7.3.12. Having regard to information deficiencies within the AA Screening Report, I am is not satisfied, on the basis of the information submitted with the planning application and the appeal, that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Baldoyle Bay SAC (000199) or the Baldoyle Bay SPA (Site Code 004016) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

#### **7.4. Other Issues – New Issues**

7.4.1. While not cited in the planning authority's reasons for refusal the planner's report which accompanies the decision of Fingal County Council details a number of further concerns in relation to information deficiencies in the application documentation which are briefly summarised as follows.

##### *Proposed Dual Usage with Kart City*

7.4.2. The appeal site forms part of an existing karting complex which comprises outdoor racing tracks. The racing tracks will be removed to facilitate the proposed development and a vehicular maintenance and storage facility is proposed in its place. The existing indoor racing track building to the south of the site is not included within the application boundary.

7.4.3. Reference is made within the applicant's response to the request for further information to dual usage of the proposal with the Kart City premises. However insufficient information is provided within the application in this regard. Full details of the proposed use the appeal site including any dual use should be comprehensively addressed.

##### *Foul Sewer Connection*

7.4.4. The proposed development includes provision of a new gravity foul drainage connection which will connect to the existing foul drainage system located on the R132 Swords Road east of the proposed development site. The proposed connection is illustrated in Drawing no. D1904-C-03 prepared by Muir Associates.

7.4.5. Concerns are raised within the planning authority's planner's report that the proposed foul sewer connection extends to lands outside of the application boundary

and no consent has been provided for such works. This point is not addressed within the appeal documentation.

#### Compliance with Dardistown Local Area Plan 2013

- 7.4.6. In addition to the points raised by the planning authority I note that the appeal site is located within an area subject to a Local Area Plan. Objective Z02 of the County Development Plan seeks to “*Prepare and implement Local Area Plans where required*”. The Dardistown Local Area Plan Area 2013 is the relevant LAP. The lifetime of the Dardistown LAP has been extended by Fingal County Council to 2022.
- 7.4.7. No reference to the Local Area Plan is included within the application documentation or assessment of how the proposal would accord with the policies, objectives and site development parameters set out therein. The compatibility of the proposed use with future land uses envisaged in the LAP should be considered and addressed in any future application.

## **8.0 Recommendation**

- 8.1. In view of these significant information deficiencies, I recommend that planning permissions is refused for the proposed development in accordance with the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. Having regard to (a) the description of the development as a “car rental storage car park” set out within the public notices (b) Schedule 5 (Part 2) 10. Infrastructure Projects (b) (ii) of the Planning and Development Regulations 2011, as amended, “*Construction of a car park providing more than 400 space, other than a car park provided as part of, and incidental to the primary purposes of a development*”,(c) the proposed car park with provision for 1,100 spaces which cannot be considered to be “incidental” to the primary purpose of the development and (d) the guidance set out within the European Commission publication “*Interpretation of definitions of project categories of Annex I and II of the EIA Directive*”, the Board considers that the proposed development falls within the scope of Schedule 5 (Part 2) 10. Infrastructure



Projects (b) (ii) of the Planning and Development Regulations 2001 as amended under which a mandatory EIAR is required. In the absence of this substantive EIAR documentation to adequately inform the decision of the Board, the Board is unable to carry out an environmental impact assessment and is precluded from granting permission.

2. On the basis of the information provided with the application and the appeal, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Baldoyle Bay SAC ( Site Code 000199) or the Baldoyle Bay SPA (Site Code 004016), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
3. On review of the application documentation, the Board considers that there are significant information deficiencies within the application in relation to the following:
  - a) Nature and extent of the proposed use of the development in light of the references to dual use with the existing Kart City Building.
  - b) An assessment of how the proposal is in accordance with the policies and objectives of the Dardistown Local Area Plan 2013 together with an assessment of the compatibility of the proposed use with future land uses envisaged in the LAP.
  - c) Works are proposed outside of the application site boundary for connection to drainage system and no consent has been provided for such works.

The Board is not satisfied therefore that the proposed development would be in accordance with the proper planning and sustainable development of the area.

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Stephanie Farrington  
Senior Planning Inspector  
9<sup>th</sup> of October 2020

