



An
Bord
Pleanála

Inspector's Report ABP-302457-18.

Question

Whether the revision of the position of the visual navigational aids (runway markings) and the decommissioning of part of a parallel taxiway is or is not development or is or is not exempted development.

Location

Dublin Weston Airport, Junction 5, M4, Lucan, Co. Dublin.

Declaration

Planning Authority

South Dublin Co. Co.

Planning Authority Reg. Ref.

ED18/0018.

Applicant for Declaration

Weston Aviation Academy Limited.

Planning Authority Decision

None.

Referral

Referred by

South Dublin County Council.

Owner/ Occupier

Weston Aviation Academy Ltd.

Observer(s)

Ms. Catriona McClean

Date of Site Inspection

13th November, 2018.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. Weston Airport is located within the administrative boundaries of both Kildare County Council and South Dublin County Council. The airport is located between Leixlip and Celbridge, to the south of the M4. The River Liffey is located to the north and east of the site and Lucan Golf Club to the south east. The wider area comprises a variety of uses including residential of varying densities.
- 1.2. Access to the airport is via Cooldrinagh Lane to the north and north east while the remaining boundaries comprise fencing and trees. The Weston Airport site covers an area of 102ha. The existing runway extends across both jurisdictions. The airport administration building, tower, flight academy building, hangar and car parking are all located to the north of the site. The existing runway runs in almost an east – west direction, with the taxi-way to the north of the runway.

2.0 The Question

Whether the revision of the position of the visual navigational aids (runway markings) and the decommissioning of part of a parallel taxiway is or is not development or is or is not exempted development, all at Dublin Weston Airport, Junction 5, M4, Lucan, Co. Dublin.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority made no declaration following a Section 5 request from Future Analytics Consultants Ltd., on behalf of Weston Aviation Academy Limited on the 9th July, 2018. The Planning Authority decided that the application be referred to the Board on the 7th of August, 2018. The applicant referred the question to An Bord Pleanala on the 3rd of September, 2018.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report on file notes the planning history of the site and seeks to detail the relevant legislative provisions. The report acknowledges the differing declarations issued on similar matters between the two local authorities and the request of the owner/occupier that the question be referred to the Board for a single comprehensive view. The report recommends that the question be referred to the Board.

3.2.2. Other Technical Reports

None noted.

4.0 Planning History

The Board will note that there is an application for Leave to Appeal for substitute consent for development at Dublin Weston Airport currently with the Boards Legal Department.

There is an extensive planning history pertaining to Weston Aerodrome which is provided in the appendix to this report. The following planning history relates to the runway:

Final Decision Date	Description	Reg Ref	ABP Ref	Grant / Refuse
Dec 2010	Realignment of Runway 07 / 25	08/2018	PL09.235146	Refuse
Sept 2009	Realignment of Runway 07 / 25	SD08A/0779	PL06S.232683	Refuse
February 2009	Retention of Tarmacadamed Hard Shoulder to Runway and Stopway / Clearway	06/334	PL09.218796	Grant
March 2008	Retention of Tarmacadamed Hard Shoulder to	SD05A/0924	PL06S.216262	Grant

	Runway and Stopway / Clearway			
1998	Provision of Stopway / Clearway	98/0876		Grant
1992	Widening of Runway by 5 metres	92A/1242		Grant
1985	Retention of Over-Run to Tarmac Runway	85A/1406		Grant
1983	Tarmac Resurfacing of Existing Grass Runway	YA1268		Grant
1980	Construction of 800m paved runway	TA532		Grant

The Board will also note that there are a number of enforcement files pertaining to the full landholding associate with Weston Airport.

In terms of historical Section 5 Requests, the Board is referred to South Dublin County Council, Ref ED.14/0038. Kildare County Council. The owner / occupier of the Aerodrome posed the following questions to both South Dublin County Council and Kildare County Council ref ED.14/00535 refers. The question posed to both was:

Whether implementation of measures described below is or is not development or is or is not exempted development:

1. Revision of the position of the visual navigational aids (runway markings) to facilitate the inclusion of Runway End Safety Areas (RESAs) at both ends of the licenced runway of Dublin Weston Airport (DWA) as required by EU Regulation 139/2014 and the Irish Aviation Authority (IAA) the competent authority for the purposes of licensing and regulating airports and aerospace in Ireland.
2. The installation of additional visual navigational aids (consisting of runway lighting and precision approach pathway indicators or PAPIs)

3. The decommissioning (closure) of part of a parallel taxiway that is not currently required.
4. The section of the licensed, permitted runway, as referred to by An Bord Pleanála inspector Robert Speer in the assessment of South Dublin County Council Reg. Ref.SD08A/0779 and Kildare County Council Reg. Ref. 08/2018, and indicated on the image included within appendix one of this document, having regard to the planning history and factual circumstances described more fully below.

2(a): Section of Exempted Development Regulations under which exemption is claimed (if known): Section 32

Both Authorities returned different declarations as follows:

<p style="text-align: center;">Kildare County Council, Ref ED. 14/00535</p>	<p style="text-align: center;">South Dublin County Council, Ref ED. 14/0038</p>
<ol style="list-style-type: none"> 1. It was concluded that the revision of the position of the visual navigational aids would constitute development and although referred to in Class 32 of the regulations, would represent a material change of use of the existing permitted stopway and clearway and thus, resulted in a change of activity of the same and the change raised sufficient planning considerations. 2. It was determined that the runway contravenes 	<ol style="list-style-type: none"> 1. Accords with Class 32(b), is development and is exempted development. 2. Accords with Class 32(c), is development and is exempted development. 3. Accords with Class 32(b), is development and is exempted development. 4. The section of runway referred to is development and is not exempted development.

<p>condition no. 2 of Kildare County Council decision Ref 98/876 and condition 2 of Kildare County Council decision Ref 06/334, and would be inconsistent with the uses specified for the stopway and clearway in both permissions. It was therefore concluded that they would constitute development and not exempted development under Class 32 by reason of restrictions on exemptions in Article 9(1)(a)(i) of the Regulations.</p>	
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In relation to the above, the Board will note that Kildare County Council decision ref 06/334 was appealed to the Board, PL09.218796 refers. Condition 2 of the Boards decision states as follows:

2. The stopway/clearway shall not be used for the take-off of aircraft.

Reason: In the interest of clarity and the protection of the amenities of the area.

In addition to the above, Weston Aviation Academy Limited sought leave to apply for substitute consent in 2016, ABP ref LS06S.0024 refers, for the runway in full given that there was uncertainty regarding the planning status for the full runway. No decision appears to have issued in relation to this application.

5.0 Policy Context

5.1. Development Plan

The South Dublin County Development Plan 2016-2022 is the relevant policy document pertaining to the subject site. Section 7.8.0 of the Plan deals with Aerodromes & Airports with section 7.8.2 deals with Weston Aerodrome. Infrastructure and Environmental Quality (IE) Policy 9 deals with Weston Aerodrome and states as follows:

It is the policy of the Council to have regard to the advice of the statutory bodies responsible for the control and safety of operations at Weston Aerodrome, to prevent encroachment of development around the Aerodrome which may interfere with its safe operation, in the context of the proper planning and sustainable development of the area and the protection of amenities.

The following objectives are considered relevant:

IE9 Objective 1: To ensure the safety of air traffic, present and future, en route to and from Weston Aerodrome with full regard for the safety of persons on the ground as well as the necessity for causing the least possible inconvenience to local communities.

IE9 Objective 5: To restrict any further effective lengthening of the operational runway or over-run areas.

The site is zoned RU – To protect and improve rural amenity and to provide for the development of agriculture.

Protected structure Westonpark House, is located within the site boundaries.

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is located approximately 1km to the north of the site, being the Rye Water Valley/Carton SAC, Site Code 001398.

The Liffey Valley pNHA, Site Code 000128, is also located to the north of the site.

6.0 The Referral

6.1. Referrer's Case

Future Analytics Consulting Limited, on behalf of Weston Aviation Academy Limited, submitted a declaration request to South Dublin County Council pursuant to Section 5 of the Planning and Development Act, 2000 as amended. The Local Authority did not make a declaration and the applicant has sought same from the Board. It is submitted that a consistent approach is sought and a single declaration by the Board on the planning status of the items described within each referral to both local authorities.

The original submission to South Dublin County Council is also included in the documents to the Board. The submission states that the purpose of the referral to the Board is to seek a consistent approach, and a single declaration on the planning status of the items described within each referral. Previous declarations provided from both Kildare Co. Council, ED14/00535 refers, and South Dublin County Council, ED14/0038 refers, in January 2015 highlighted a disparity between the conclusions reached by the two local authorities. The inconsistencies leave WAAL without a comprehensive decision on the planning legitimacy of the works.

It is submitted that the reason for the discrepancy is due to the complex and nuanced planning history of the aerodrome as a result of the site extending across the two functional areas. Each local authority make assessments in isolation and limited to their respective jurisdiction.

6.2. Planning Authority Response

The Planning Authority has not responded to this referral beyond submitting their original planning report.

6.3. Other Submissions

- 6.3.1. Kildare County Council responded to a request for comments on the referral advising no comments.

6.3.2. Ms. Catriona McClean submitted an observation in relation to the referral. The submission is summarised as follows:

- The Regulations cited, EU139/2014 need not apply to Weston Aerodrome on the basis of Article 4(3b) of EC216/2008. The current level of passengers is below 10K per annum.
- Ms. McClean lives under the flight path and jets are too noisy and disturb the peace.
- If the runway is extended, a greater number of jets overhead is the likely outcome which will take from the quality of life of residents living close to the aerodrome.
- There is a level of public concern on the matter.

There are a number of enclosures with the observation.

6.3.3. Future Analytics Consulting Limited, on behalf of Weston Aviation Academy Limited, submitted a response to Ms. McClean's submission, which is summarised as follows:

- The matter raised by the observer relates to Commission Regulation (EU No. 139/2014, which lays down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) NO. 216/2008. Article 5(3)(b) refers to possible exemptions regarding cargo traffic.
- The legislative reference of the exemption is founded on an expressed concern of 'greater traffic volume than currently is the case'.
- Weston Aerodrome falls under the applicable rules as referenced above, and in order to comply with the regulations, seeks to address the issues raised in this referral through the planning process.
- It is submitted that the Board should disregard matters outlined in the submission as they are not within the scope of what should and can be considered planning matters, and therefore should not be considered within the remit of what can be addressed by the Board.
- The two items described in the Section 5 referral come under the full range of planning responsibilities. Matters relating to licencing criteria and issues

should be dealt with elsewhere and remedied accordingly through the competent authorities.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

In Section 2 (1) of the Act “works” are interpreted as including *“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”*.

7.1.2. Section 3 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

7.1.3. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act,

provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 32 is relevant, and states as follows:

<p style="text-align: center;">Column 1</p> <p style="text-align: center;">Description of Development</p>	<p style="text-align: center;">Column 2</p> <p style="text-align: center;">Conditions and Limitations</p>
<p>CLASS 32</p> <p>The carrying out by any person to whom an aerodrome licence within the meaning of the Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order, 1998 (No. 487 of 1998) has been granted, of development consisting of --</p> <p>(a) the construction or erection of an extension of an airport operational building within an airport,</p>	<p>1. Where the building has not been extended previously, the floor area of any such extension shall not exceed 500 square metres or 15% of the existing floor area, whichever is the lesser.</p> <p>2. Where the building has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions, shall not exceed 15% of</p>

(b) the construction, extension, alteration or removal of aprons, taxiways or airside roads used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport,

(c) the construction, erection or alteration of visual navigation aids on the ground including taxiing guidance, signage, inset and elevated airfield lighting or apparatus necessary for the safe navigation of aircraft, within an airport,

(d) the construction, erection or alteration of security fencing and gates, security cameras and other measures connected with the security of airport infrastructure, within an airport, or

(e) the erection or alteration of directional locational or warning signs on the ground, within an airport.

the original floor area or 500 square metres, whichever is the lesser.

3. The planning authority for the area shall be notified in writing not less than 4 weeks before such development takes place.

Further to the above, Class 39 is also considered relevant and it provides as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
CLASS 39 The erection, placing or keeping on land of any lighthouse, beacon, buoy or other aid to navigation on water or in the air.	Any such lighthouse, beacon, buoy or other navigational aid shall not exceed 40 metres in height.

7.3. Other

In terms of referrals relating to similar questions, the Board is advised of referral PL.RL2251 which relates to Weston Aerodrome. The question raised was 'Whether the installation of VOR/DME (Radar Approach Navigation System) and PAPI (Approach Angle Guidance System) at Weston Aerodrome, Leixlip, County Kildare is or is not exempted Development'. The Board issued a split decision concluding as follows:

An Bord Pleanála has concluded that -

(a) in the absence of any locational particulars or other specific information relating to the installation of a PAPI (Precision Approach Path Indicator) system within the aerodrome, it is not in a position to decide whether the said development is or is not exempted development, within the meaning of the Planning and Development Act, 2000, and

(b) the installation of the VOR/DME aircraft navigation system comes within the scope of article 6(1) of the Planning and Development Regulations, 2001 insofar as it comprises development under Class 32(c) of Part 1 of Schedule 2 to these Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said installation of a VOR/DME aircraft navigation system at Weston Aerodrome, Leixlip, County Kildare is exempted development.

8.0 Assessment

The question posed is as follows:

‘Whether the revision of the position of the visual navigational aids (runway markings) and the decommissioning of part of a parallel taxiway is or is not development or is or is not exempted development, at Dublin Weston Airport, Junction 5, M4, Lucan, Co. Dublin.’

8.1. Is or is not development

8.1.1. Section 2 (1) of the Act defines “works” as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”. I am satisfied that, in accordance with the above definition, the subject referral relates to ‘works’.

8.1.2. In terms of Section 3(1) of the Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.” I am satisfied that the said ‘works’ comprise ‘development’. This determined, consideration is required as to whether the ‘works’ would constitute “exempted development”.

8.2. Is or is not exempted development

8.2.1. Having established that the ‘works’ undertaken amount to ‘development’, the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being ‘*exempted development*’. There is no class of development described which would equate to the works to be carried out in this instance. Therefore, the works cannot be considered to be exempted development under the provisions of Section 4(1) of the Planning & Development Act, 2000 – 2013.

8.2.2. In terms of the Planning & Development Regulations, Article 6 relates to Classes 32 and 39 of Part 1, Schedule 2. The detail of both classes is provided above. In terms of the elements the subject of this referral, Class 32 provides that

The carrying out by any person to whom an aerodrome licence within the meaning of the Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order, 1998 (No. 487 of 1998) has been granted, of development consisting of --

b) the construction, extension, alteration or removal of aprons, taxiways or airside roads used for the movement of aircraft and the distribution of vehicles and equipment on the airside, within an airport,

(c) the construction, erection or alteration of visual navigation aids on the ground including taxiing guidance, signage, inset and elevated airfield lighting or apparatus necessary for the safe navigation of aircraft, within an airport,

In addition, Class 39 provides for 'The erection, placing or keeping on land of any lighthouse, beacon, buoy or other aid to navigation on water or in the air.'

8.2.3. In relation to the 'revision of the position of the visual navigational aids (runway markings)', I am satisfied that the proposed works come within the scope of Class 32(c).

In terms of 'the decommissioning (removal through planning over and grassing out) of the western taxiway that is no longer required, while retaining a 5m wide section for use as an emergency vehicle access route', I am satisfied that the proposed works come within the scope of Class 32(b).

8.2.4. I refer the Board to the concurrent referral, ABP-302415-18 refers, with regard to the area of Weston Aerodrome which lies within the jurisdiction of Kildare County Council. While in principle, it would appear that the works proposed in this referral would constitute exempted development Classes 32(b) and 32(c) of Part 1 of Schedule 2 to these Regulations, I note the specific condition 2 attached to ABP ref PL09.218796 (KCC), which states the stopway/clearway shall not be used for the take-off of aircraft, in the interest of clarity and the protection of the amenities of the area. Having regard to both the current referrals before the Board pertaining to Weston aerodrome, the proposed revision of the position of the navigational aids within the Kildare County Council jurisdiction, will result in the runway moving to the

west and into the stopway/clearway as described in the above condition. As such, I consider that the 'restrictions on exempted development' as set out under article 9(1)(a)(i) of the Planning and Development Regulations, 2001, are relevant in the case as it relates to the revision of the position of the visual navigational aids (runway markings), within the jurisdiction of Kildare County Council.

8.2.5. In principle, the revisions of the position of the visual navigational aids, (runway markings) within the jurisdiction of South Dublin County Council would, in my opinion, constitute exempted development Classes 32(c) of Part 1 of Schedule 2 to these Regulations. It should be noted however, that the result of such revisions would result in a reduction of the length of the existing runway, given that I have considered that the revision of the position of navigational aids within Kildare County Council is not exempted development.

8.2.6. I am further satisfied that the decommissioning of part of a parallel taxiway comes within the scope of article 6(1) of the Planning and Development Regulations insofar as it comprises development under Class 32(b) of Part 1 of Schedule 2 to these Regulations. This element of the question posed therefore, is considered to be development and exempted development.

9.0 Recommendation

I recommend that the following decision issue in relation to the question posed and that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the revision of the position of the visual navigational aids (runway markings) and the decommissioning of part of a parallel taxiway is or is not development or is or is not exempted development at Dublin Weston Airport, Junction 5, M4, Lucan, Co. Dublin, is or is not development or is or is not exempted development:

AND WHEREAS Weston Aviation Academy Limited requested a declaration on this question from South Dublin County Council and the Council did not issue a declaration;

AND WHEREAS Weston Aviation Academy Limited referred the question to An Bord Pleanála on the 31st day of August, 2018 in accordance with Section 5(3)(b) of the Planning & Development Act, 2000, as amended:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 32(b) and 32(c) of Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) Planning history of the site
- (e) Concurrent Section 5 request, ABP-302415-18 refers

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Revision of the position of the visual navigational aids (runway markings) within the jurisdiction of South Dublin County Council comes within the scope of article 6(1) of the Planning and Development Regulations insofar as it comprises development under Class 32(c) of Part 1 of Schedule 2 to these Regulations,
- (b) The decommissioning of part of a parallel taxiway comes within the scope of article 6(1) of the Planning and Development Regulations insofar as it comprises development under Class 32(b) of Part 1 of Schedule 2 to these Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that

1. Revision of the position of the visual navigational aids (runway markings) within the jurisdiction of South Dublin County Council is development and is exempted development.
2. The decommissioning of part of a parallel taxiway is development and is exempted development.

A. Considine
Planning Inspector
21st November, 2018