



An
Bord
Pleanála

Inspector's Report ABP-305458-19

Question

Whether the three questions posed in the body of the referral in relation to the use by passengers of the airport in excess of 32 million passengers per annum is or is not development or is or is not exempted development at Dublin Airport

Location

Dublin Airport, Co. Dublin

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/036/19

Applicant for Declaration

Dublin Airport Authority (DAA)

Planning Authority Decision

No declaration

Referral

Referred by

Fingal County Council

Owner/ Occupier

Dublin Airport Authority (DAA)

Observer(s)

Omega Air Services

Inspector

Conor McGrath

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1.0 Introduction

- 1.1. A request for a declaration under S.5 in relation to three questions was submitted by the Dublin Airport Authority to Fingal County Council as the planning authority for the area. The planning authority did not make a declaration on the request and have referred the question to the Board under S.5(4) of the Planning and Development Acts. This referral relates to the numbers of passengers moving through Dublin Airport and the nature of those movements.

2.0 The Question

- 2.1. The questions as put to the planning authority are as follows:
- a) Is the use of the “airport” in excess of 32 million passengers per annum (mppa) constitute “development”, if the combined capacity of Terminal 2 as permitted, together with Terminal 1 does not exceed 32 mppa and if so, is it exempt development?
 - b) Is the use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa) constitute “development” if those connecting passengers are facilitated by the separately permitted transfer facility and the combined capacity of Terminal 2 as permitted together with Terminal 1 does not exceed 32 mppa?
 - c) Currently a connecting passenger using Dublin Airport is double counted, as both an arriving and departing passenger (for the purposes of aviation security measures). If a connecting passenger is counted singly for the purpose of planning, is this development, and if so, is it exempt development?

The planning report on the request, recommended that the declaration be referred to the Board.

3.0 Planning History

PA ref. F6A/1248 ABP ref. PL06F.220670

Permission granted on appeal for phase 1 of the development of a new airport passenger terminal (T2) of circa 92,049-sq.m., a three-storey Pier building (Pier 4) circa 24,052-sq.m., and associated works including the demolition of Corballis House (a protected structure).

The following was to be included within the passenger terminal and pier –

check-in areas, passenger services and associated terminal support facilities, departure lounge, baggage processing hall, baggage reclaim area, retail facilities, catering facilities; two no. public houses, airline security, immigration and customs offices; links to a future multi-storey car park and the existing passenger terminal; security check-in and arrival areas, associated plant, circulation and toilet space.

Condition no. 3 of the permission states the following:

The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission

Reason: Having regard to the policies and objectives of the Dublin Airport LAP and capacity constraints (transportation) at the eastern campus.

Phase 2 of the Proposed Development was refused for the following reason:

The proposed development of Phase 2 of the terminal building would be premature pending the determination by the road authority of the detailed road network to serve the area and the commitment by the planning authority to design and fund all the external transport elements detailed in the Environmental Impact Statement to facilitate Phase 2. In these circumstances, to expand further the terminal capacity at this location would contravene the objectives EA2, EA3 and TP10 of the Dublin Airport Local Area Plan which seek to provide balanced road infrastructure to manage traffic and to cater for the comprehensive development of the airport.

ABP ref. PL06F.220670 Section 146A

In 2018, the Dublin Airport Authority made a request to the Board under S.146A to amend the wording of condition no. 3 in order to remove connecting passengers from the scope of the condition. The amended wording sought included the words highlighted as follows:

3. The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million **origin-destination** passengers per annum unless otherwise authorised by a further grant of planning permission.

The Board Direction of August 2018 stated:

It is considered that the alteration sought would be material in planning terms, and cannot, therefore be considered under S.146A of the Act. The Board considered that the proposed alteration would enable greater throughput of overall passenger numbers through the airport. This greater level of activity would have material planning consequences (in terms of movement and access to the airport, airport capacity, and also in relation to planning policy relation to the airport) and would go beyond what was permitted in the permission granted.

PA ref. F06A/1843 ABP ref. PL06F.223469

Permission granted on appeal in January 2008 for construction of an extension (7,427 sq.m) to the north of the existing main terminal building (T1) and west of existing link building which extends from main terminal to Piers A and D and build temporary compound

Consistent with the decision under PL06F.220670, Condition no. 2 of the permission required the following:

2. The combined capacity of Terminal 1 (including the extension authorised by this grant of permission) and Terminal 2 granted permission under planning register reference number F06A/1248 (ABP ref. PL06F.220670) shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission

Reason: Having regard to the policies and objectives of the Dublin Airport LAP and capacity constraints (transportation) at the eastern campus.

PA ref. F16A/0200 ABP ref. PL06F.247135

Permission granted on appeal in December 2016 for a Passenger Transfer Facility comprising a three-storey extension to the south eastern elevation of Pier 4, subject to 3 no. standard conditions. The facility had gross floor area of circa 1,772-sq.m. including include facilities for security screening, passenger processing, circulation, plant and other services.

The stated purpose of the Passenger Transfer Facility was to facilitate easier transfer of passengers from First State countries who do not require to be screened again prior to connection to an onward flight. This would reduce congestion in the existing Passenger Transfer Facility in Terminal 2, which would still process transfer passengers from Third State countries.

There was no specific consideration given to airport capacity issues or implications in this appeal.

4.0 Policy Context

4.1. Development Plan

4.1.1. Fingal County Development Plan 2017 - 2023

The plan notes that government policy is to develop Dublin Airport as a vibrant secondary hub airport, competing effectively with the UK and other European airports. A hub airport combines local passengers with transfer passengers enabling airlines to operate services to more destinations and more frequently than could be supported by local demand alone.

Objective ED30: Engage and collaborate with key stakeholders, relevant agencies and sectoral representatives to ensure that Dublin Airport is developed and promoted as a secondary hub to capitalise on the associated wider economic benefits for Fingal and the wider region.

4.1.2. **Dublin Airport LAP 2006**

This LAP expired in June 2015. There is a current draft LAP for the Airport.

The Local Area Plan divided the Designated Airport Area into two strategic development zones, referred to as the Eastern Campus and the Western Campus. It concluded that the development of a second terminal and piers on the Eastern Campus is the most effective way forward to provide the necessary capacity for short term requirements up to 30 mppa. It proposed that the development of any further terminal capacity will be located on the Western Campus. The land use plan developed for the Western Campus seeks to provide development zones to cater for the various facilities required in order to allow the airport to reach the maximum development potential for a twin parallel runway system.

Objective TP10: To reserve lands to the west of the north-south runway 16/34, between the two parallel runways for the future expansion of the airport to the full potential of the twin parallel runway system, and to define a development box in which the appropriate terminal, pier and apron facilities can be provided.

4.1.3. **Draft Dublin Airport LAP 2020 – 2026**

Section 3.2.1, *Capacity Constraints During the Plan Period*, notes that the most immediate capacity constraint affecting the Airport is that of congestion of the surface access to the Airport.

Section 3.2.1.2, *Passenger Terminals*, notes that the terminal buildings are part of the core infrastructure for Dublin Airport facilitating inter-modal change for travellers. The building facilitates the departure and arrival passenger processes including Check-in, Security, Boarding Gates, Immigration, Customs, Meet & Greet and Retail, Food & Beverage.

Since its opening, T2 has begun to develop as a hub primarily associated with flights travelling between Europe and the United States.

The current permitted combined passenger capacity for T1 and T2 is 32 mppa..... (which).... capacity is approaching. There is, however, sufficient space within the existing terminal infrastructure of T1 and T2 to accommodate short to medium term growth to 40mppa subject to the reconfiguration of different parts of the terminal

processing areas to alleviate bottlenecks (arrival, departure processing facilities, immigration, baggage reclaim and US pre-clearance facilities). The DTTAS Review¹ recognises that this kind of incremental expansion of T1 and T2 throughput is desirable to relieve the capacity issues identified in the short to medium term.

Section 7.2 relates to Enabling infrastructure to facilitate Airport growth. Section 7.2.1, *Terminals*, notes that the DTTAS Review identifies the need for a third terminal to facilitate anticipated growth in the longer term. The timing around a third terminal, however, needs to consider any measures to remodel T1 and T2 beyond approximately 40 mppa. The DTTAS Review cites a target date of 2031 for the delivery of T3. In this regard, the DTTAS Review identifies 3 no. potential locations for T3 within the 'DA' Dublin Airport zoned lands.

4.2. **Natural Heritage Designations**

The appeal site is not subject to any natural heritage designations. The closest sites of interest to the airport are:

- Malahide (Broadmeadow) Estuary SAC (000205) and SPA (004025), approx. 3.7km northeast of the airport lands.
- Baldoyle Bay SAC (000199) and SPA (004016), approx. 6km to the east.
- Feltrim Hill (Proposed) Natural Heritage Area is located approx. 2.2km east of the airport lands.

5.0 **The Referral**

5.1. **Requester's Case**

Dublin Airport Authority make the following points in their submission to Fingal County Council.

General points

¹ "Review of Future Capacity Needs at Ireland's State Airports" - <https://assets.gov.ie/22659/d2cbb36779534741adde4be4f0943a7d.pdf>

- Use of the airport, as opposed to Terminal Buildings, by more than 32 mppa is not development as it does not constitute a material intensification of the permitted use having regard to the scope of the permitted development.
- National Aviation Policy promotes Dublin as a Secondary Hub and connecting passenger numbers have increased to 2.1m in 2018 / 6.6% of total passengers.
- Connecting passengers may constitute Transfer Passengers who transfer between planes or Transit Passengers who stop in Dublin but do not exit the aircraft.
- The airport has developed over time but capacity restrictions were only imposed in Condition no. 3 of ABP ref. PL06F.220670 and condition no. 2 of PL06F.223469.
- Those permissions specifically constrain Terminal 1 and 2 buildings but do not constrain other development within the airport, such as the Pier elements.
- Airport terminals control Origin - Destination (OD) passenger numbers.
- Condition no. 3 of PL06F.220670, omitting Phase 2 and restricting passenger capacity was imposed due to uncertainty regarding external transport infrastructure.
- Transport assessments submitted with that application were based on a planned capacity of 35mppa.
- Capacity restrictions were not included in subsequent permissions, including PL06F.247135 relating to the Passenger Transfer Facility and the Board found that that facility would not negatively impact on terminal operations.
- Condition no. 3 of PL06F.220670 should not be applied to the subsequently permitted transfer facility as connecting passengers do not impact on the road network.
- Transfers of up to 3mppa were envisaged within the 35mppa limit included in the Terminal 2 application.
- A S.146A application was lodged to amend condition no. 3 of PL06F.220670 to refer specifically to origin-destination passengers.
- The volume of activity being carried on is consistent with the permission granted under PL06F.20670 and PL06F.247135 such that a material change of use has not occurred.

Question 1: Is the use of the “airport” in excess of 32 million passengers per annum (mppa) constitute “development”, if the combined capacity of transfer 2 as permitted, together with Terminal?

- The decision on the S.146A application confirms that the limit of 32mppa applies to any passenger type in the terminal buildings.
- The question is whether connecting passenger operations beyond terminal buildings are a material intensification of use over that permitted under PL06F.220670.
- That permission considered overall airport capacity of up to 35mppa and only restricted terminal building capacity. The passenger transfer facility would operate within this 35mppa limit.
- There is no intensification of use beyond what was envisaged in previous permissions.
- The use of the airport in excess of 32mppa, when the capacity of Terminals 1 & 2 does not exceed 32mppa, is not development.

Question 2: Is the use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa) constitute “development” if those connecting passengers are facilitated by the separately permitted terminal facility and the combined capacity of Terminal 2 as permitted together with Terminal 1 does not exceed 32 mppa?

- Passenger activity at the airport includes activity outside of Terminals 1 & 2.
- The EIS submitted in respect of PL06F.220670 considered passenger activity of up to 35mppa. The permission granted only restricted capacity of the terminal buildings and not the wider airport.
- Permission for the passenger transfer facility exists in addition to the earlier permission.
- Condition no. 3 of PL06F.220670 has been superseded by the grant of permission for the passenger transfer facility.
- That application was clearly to cater for transfer passengers and not capacity within the terminal.

- Use of the airport by up to 3m connecting passengers in excess of 32mppa outside of Terminals 1 & 2 is not a material change of use.
- The figure of 3mppa in this question relates to 1.5m persons both arriving and departing.

Question 3: Currently a connecting passenger using Dublin Airport is double counted, as both an arriving and departing passenger (for the purposes of aviation security measures). If a connecting passenger is counted singly for the purpose of planning, is this development, and if so, is it exempt development?

- Counting of airport passenger numbers is subject to international convention. A connecting / transfer passenger is counted as two passengers, arriving and departing.
- In 2018, 31.5m passengers were facilitated at the airport, of which 29.4m were processed through Terminals 1 & 2.
- 1.8m transfer passengers equate to 0.9m persons, which are double counted.
- If the airport was to process 32.9mppa, where 1.8m related to (double-counted) transfer passengers, would this constitute development?
- No works or change of use are involved in this query, and no intensification of use can arise due to the enumeration method. The effect of such double counting is regarded as de minimis.
- If the airport exceeds 32mppa due to double counting of transferring passengers, no development occurs.
- No change of use can occur as a result of an immaterial deviation from condition no. 3 of P06F.220670.

5.2. Owner / occupier's response

DAA make the following comments on the referral of the question by the planning authority:

- The capacity of the terminals was restricted under PL06F.220670 as they cater for origin – destination passengers.

- The restriction applies to passengers who impact on the local road network.
- Condition no. 3 should not be applied to passengers who do not use Terminals 1 or 2 and who do not impact on the road network.
- The condition applies to terminals and not to any other element of the airport or passengers not using the terminals.
- Use of the airport beyond 32mppa does not constitute intensification of use.
- Double counting of passengers is not development.
- This S.5 referral seeks to confirm the spatial extent of condition no. 3

6.0 Observations

Omega Air Services make the following observations on the referral:

- Conditions no. 3 of PL06F.220670 and no. 2 of PL06F.223469 require a further grant of permission if the combined capacity of T1 and 2 exceeds 32mppa. They do not require a section 5 declaration.
- The implication of these conditions is that use in excess of 32mppa is development and is not exempted development.
- The appropriate planning unit in this case is the Terminals and not the airport and the observers query the substitution of the term “airport” for Terminals 1 and 2 in the three questions.
- The conditions must be viewed in the context of the transportation infrastructure and the objectives of the Airport LAP, including those relating to the western airport campus.
- The conditions sought to ensure that development at the existing eastern campus did not prejudice delivery of a new western campus.
- At the time of granting permission, terminal capacity was regarded as synonymous with overall airport capacity, and the issue was compliance with the objectives of the LAP.
- The questions should be reworded appropriately.
- Transit and connecting passengers are likely to create demand for services and associated staff and traffic movements and should therefore be counted in the Terminal capacity.

- Section 5 process is not the appropriate mechanism to address question no. 3.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 sets out the following definitions:

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

“works” includes 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.

Section 3 (1) In this Act, “development” means..... the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 5 (1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. Planning and Development Regulations, 2001

Article 5 contains the following definitions:

“*aerodrome*” means any definite and limited area (including water) intended to be used, either wholly or in part, for or in connection with the landing or departure of aircraft;

“*airport*” means an area of land comprising an aerodrome and any buildings, roads and car parks connected to the aerodrome and used by the airport authority in connection with the operation thereof;

“*airport operational building*” means a building other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at an airport;

Article 6.(1)

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 Restrictions on exemption.

- (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—
 - (a) if the carrying out of such development would—
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

Schedule 2, Part 1, Class 32 refers to the carrying of development consisting of:

- (a) the construction or erection of an extension of an airport operational building within an airport,
- (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.

8.0 Assessment

8.1. Three questions have been put before the Board for consideration. I have some difficulty with the wording of the questions and recommend some rewording thereof in order to clarify the matters under consideration.

8.2. Before considering each question specifically, I note some common points:

- In order to avail of the exempted development provisions of the Planning and Development Acts, a development must clearly and unambiguously fall within the scope of those provisions.
- Passenger use of Dublin Airport is a permitted activity. Activity at the airport has been the subject of numerous previous grants of planning permission which establish the context of this referral. The definition of “airport” in legislation is broad and includes all operational buildings.
- The referral arises primarily from the limits on passenger capacity imposed by conditions attaching to PL06F.220670 and PL06F.223467. This limit of 32 mppa was imposed having regard to landside transportation constraints as well as the objectives of the LAP then pertaining to this area.
- The conditions do not distinguish between passenger types, whether origin-destination or connecting / transfer passengers. The determination of the Board decision on the PL06F.220670 S.146A application confirmed that the limit of 32mppa under condition no. 3 applies to any passenger type.

- A Passenger Transfer facility under PL06F.247135 was granted permission subsequent to PL06F.220670. I note however, that connecting passengers are not limited solely to use of this transfer facility. Other transfer passengers use alternative transfer facilities within the terminal buildings.
- There is no definition of “connecting passengers” in planning legislation. The referencers describe Connecting passengers as either:
 - o Transferring passengers who arrive on an inbound flight and connect to an outbound departing flight; or
 - o Transiting passengers who land at the airport but do not exit the aircraft before departing again.

The application under PL06F.247135 also describes a distinction between connecting passengers from First and Third State countries, and how they are processed in the airport.

8.3. Question 1:

8.3.1. Is the use of the “airport” in excess of 32 million passengers per annum (mppa) constitute “development”, if the combined capacity of Terminal 2 as permitted, together with Terminal 1 does not exceed 32 mppa and if so, is it exempt development?

Note: The wording of this question should be amended to read as follows:

“**Whether use** of the “airport” in excess of 32 million passengers per annum (mppa) constitutes “development”,

8.3.2. The question refers to the broad definition of “airport”, defined as an area of land comprising an aerodrome and any buildings, roads and car parks connected to the aerodrome and used by the airport authority in connection with the operation thereof. This definition would cover the entire airport lands (including eastern and western campus) and including all terminal building, pier structures and transfer facilities.

8.3.3. The Airport and its associated activities, including passenger movements, comprise permitted development. There is no current limit on passenger numbers per annum

using the “airport”. Current specified limits apply only to specific areas of the “airport”.

- 8.3.4. As per section 3 of the Planning and Development Act, 2000, as amended, development is defined, except where the context otherwise requires, as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land. Use of the “airport” in excess of 32 million passengers per annum does not entail the carrying out of works or the making of any material change in the use of any structure or land, and is not therefore development.

8.4. **Question 2:**

- 8.4.1. **Is the use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa) constitute “development” if those connecting passengers are facilitated by the separately permitted transfer facility and the combined capacity of Terminal 2 as permitted together with Terminal 1 does not exceed 32 mppa?**

- 8.4.2. This question reflects Question no. 1 but applies a spatial and numerical limit on the question. In the interests of clarity, I would recommend that this question be reworded as follows:

“Whether use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa), if those connecting passengers are facilitated by the Pier 4 passenger transfer facility and the combined capacity of the facility together with Terminal 2 as permitted and Terminal 1 would exceed 32 mppa, is or is not development and is or is not exempted development?”

- 8.4.3. The use of the passenger transfer facility does not require the carrying out of any works. As noted above, there is no current limit on passenger numbers per annum using the overall “airport”. Current limits on passenger capacity were applied in applications associated with Terminals 1 & 2, due to landside transportation

constraints and in order not to compromise objectives of the LAP for the longer-term development of the airport. The relevant conditions under PL06F.220670 and PL06F.223469 do not distinguish between passenger types, whether origin-destination or connecting / transfer passengers and the determination of the Board on the S.146A application confirmed that the limit of 32mmpa applies to any passenger type.

- 8.4.4. In considering this question and the implications of condition no. 3 of PL06F.220670, it is necessary to look at the reasons and rationale for that condition. While it can be accepted that connecting passengers will not impact directly on landside transportation, they may have indirect impacts in terms of additional services, staffing requirements etc.. The limit on passenger numbers condition was also imposed, however, in order to adhere to the objectives of the LAP with regard to the potential future development of a western campus / terminal.
- 8.4.5. The referrers adopt a narrow interpretation of condition no. 3 of PL06F.220670 and the question seeks to distinguish between passenger movements through the Passenger Transfer Facility / Pier 4 and those through Terminal buildings. Pier 4 was permitted as part of the same permission as Terminal 2 (PL06F.220670) and is not a stand-alone facility. It facilitates the operation of and is served by Terminal 2. Having regard to the above, it is my view that they cannot be separated out for the purposes of this question. Similarly, the passenger transfer facility granted under PL06F.247135, is effectively an extension to Pier 4, and it does not operate as a stand-alone facility. That permission did not place any restriction on the numbers of passengers moving through it, however, the application did note that its use would alleviate the volume of passengers using the single transfer facility in Terminal 2 and improve efficiency of passenger movement through the terminal. I do not concur with the referrer's submission that this permission superceded condition no. 3 of PL06F.220670.
- 8.4.6. The extent of transfer passenger growth was not considered directly in the determination of capacity under PL06F.220670. At time of granting of permission under PL06F.220670 and PL06F.223469, connecting passenger movements were estimated as 1 – 3% of total passenger numbers. The use of the airport by 3m connecting passengers as referenced in this question would constitute an increase of over 9% above the current limits of 32 mppa. I consider that the implication of the

referrers question would be to relate the Terminal Capacity limit of 32mppa to Origin-Destination Passengers and Third-Country Connecting Passengers only. It would exclude First-Country Connecting passengers. This would therefore indirectly increase capacity within terminal buildings and increase passenger numbers on the eastern airport campus, which would be contrary to condition no. 3 of PL06F.220670.

8.4.7. The intent and purpose of the condition no. 3 was to limit activity on this eastern campus of the airport rather than just within terminal buildings, which is clear from the conclusions of the Inspectors Report in that case (extracts below).

- *The issue of the capacity of Terminal 2 is relevant mainly in the context of compliance with the objectives of the LAP to achieve a balanced development of two campuses, and optimal use of the terminal and pier facilities. It is also important in the context of traffic generation and impact on the carrying capacity of the road network in the area, and in relation to proposed demolition of Corballis House a Protected Structure.*
- *Having regard to the provisions of the LAP, and the findings of various studies carried out both by DAA and Fingal County Council, I am satisfied that a capacity of approximately 30mppa as indicated in the LAP is appropriate for the eastern campus. This would also be in line with the figures indicated in the NDP.*
- *Having regard to the inefficiencies arising from the provision of two separate terminals, and the need for some headroom during the refurbishments of T1, it would be appropriate to allow some flexibility whereby the capacity provision is higher than 30mppa and in the region of 32ppa.²*

Having regard to the above, I conclude that use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa), if those connecting passengers are facilitated by the Pier 4 passenger transfer facility and the combined capacity of the facility together with Terminal 2 as permitted and

² An Bord Pleanála Inspectors Report, PL06F.220670

Terminal 1 would exceed 32 mppa, would be contrary to condition no. 3 of PL06F.220670 and is therefore not exempted development.

8.5. Question 3:

8.5.1. Currently a connecting passenger using Dublin Airport is double counted, as both an arriving and departing passenger (for the purposes of aviation security measures). If a connecting passenger is counted singly for the purpose of planning, is this development, and if so, is it exempt development?

8.5.2. I do not consider that this is a valid question for the purposes of Section 5. Based on the referrer's submission, I therefore recommend that it should be reworded as follows.

Whether the use of the "airport" in excess of 32 million passengers per annum (mppa) constitutes "development", if the exceedance arises only from the counting of each transfer passenger as both an arriving and departing passenger and if so, is it exempt development?

8.5.3. I refer to my conclusion under Question no. 1 above. The question refers to the broad definition of "airport" covering the entire airport lands including all terminal building, pier structures and transfer facilities etc.

8.5.4. The Airport and its associated activities, including passenger movements, comprise permitted development. There is no current limit on passenger numbers per annum using the airport. Use of the "airport" in excess of 32 million passengers per annum does not entail the carrying out of works or the making of any material change in the use of any structure or land, and is not therefore development. There is no requirement therefore to make a determination on the manner of counting of passengers in this case.

9.0 Screening for Appropriate Assessment

9.1. The questions before the Board relate to the numbers of passengers using Dublin Airport. There are no works proposed or included in the scope of the referral. The proposed development is not related to or necessary for the management of any European Site and there will be no land-take or direct loss of habitat within any Natura Site. European sites within 15km of the appeal site include the following:

- Malahide (Broadmeadow Swords) Estuary SPA 004025
- Malahide Estuary SAC 000205
- Baldoyle Bay SPA 004016
- Baldoyle Bay SAC 004016
- Rogerstown Estuary SAC 00208
- Rogerstown Estuary SPA 004015
- South Dublin Bay and River Tolka Estuary SPA 004024
- North Dublin Bay SAC 00206
- North Bull Island SPA 004006
- Rockabill to Dalkey Island SAC 003000
- South Dublin Bay SAC 00210
- Irelands Eye SPA 004117
- Irelands Eye SAC 002193
- Howth Head SAC 00202
- Howth Head Coast SPA 004113
- Lambay Island SAC 00204
- Lambay Island SPA 004069
- Rye Water Valley / Carton SAC 001398

European sites in closest proximity to the referral site include:

Malahide Estuary SPA 004025	approx. 3.7km northeast
Malahide Estuary SAC 000205	
Baldoyle Bay SPA 004016	approx. 6km east
Baldoyle Bay SAC 004016	

- 9.5. The Conservation Objectives relating to these sites are:
- Malahide Estuary Broadmeadow SPA & Baldoyle Bay SPA: The objective is generally to maintain the favourable conservation condition of the qualifying interests in each site. Details on the qualifying interests and conservation objectives are available here: <https://www.npws.ie/protected-sites/spa/004025>
<https://www.npws.ie/protected-sites/spa/004016>
 - Malahide Estuary SAC: The objective is to maintain or restore the favourable conservation condition of the habitats and a set of attributes and targets are identified for each habitat in this regard. Details on the qualifying interests and conservation objectives are available here: <https://www.npws.ie/protected-sites/sac/000205>
 - Baldoyle Bay SAC: The objective is to maintain the favourable conservation condition of the habitats and a set of attributes and targets are identified for each habitat in this regard. Details on the qualifying interests and conservation objectives are available here: <https://www.npws.ie/protected-sites/sac/000199>
- 9.6. The existing airport complex has been the subject of previous planning approvals, including PL06F.247135 relating to the passenger transfer facility and PL06F.220670 relating to Terminal 2, Pier 4 and associated works. The lands are fully serviced and are remote from any European site. The referral does not relate to any change to existing structures or services and will not result in any loss of land or habitat.
- 9.7. On the basis of the information available, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that the use of existing permitted airport facilities the subject of this referral individually or in combination with other plans or projects will not be likely to have a significant effect on European sites Malahide (Broadmeadow Swords) Estuary SPA 004025, Malahide Estuary SAC 000205, Baldoyle Bay SPA 004016, Baldoyle Bay SAC 004016, or any other European site in view of the site's conservation objectives, and that Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.
- 9.8. In reaching this conclusion I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Site.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS questions have arisen as to;

- a) Whether use of the “airport” in excess of 32 million passengers per annum (mppa) constitutes “development”, if the combined capacity of Terminal 2 as permitted, together with Terminal 1 does not exceed 32 mppa and if so, is it exempt development?
- b) Whether use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa), if those connecting passengers are facilitated by the Pier 4 passenger transfer facility and the combined capacity of the facility together with Terminal 2 as permitted and Terminal 1 would exceed 32 mppa, is or is not development and is or is not exempted development?
- (c) Whether the use of the “airport” in excess of 32 million passengers per annum (mppa) constitutes “development”, if the exceedance arises only from the counting of each transfer passenger as both an arriving and departing passenger and if so, is it exempt development?

AND WHEREAS Dublin Airport Authority requested a declaration on these questions from Fingal County Council,

AND WHEREAS Fingal County Council referred this question to An Bord Pleanála on the 17th September 2019 under section 5(4) of the Planning and Development Act, as amended.

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history relating to the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Use of the airport for passenger movements is a permitted use;
- (b) Use of the “airport” in excess of 32 million passengers per annum does not entail the carrying out of works or the making of any material change in the use of any structure or land,
- (c) The use of the passenger transfer facility does not require the carrying out of any works and falls within the permitted use of the facility,
- (d) Use of Pier 4 and the passenger transfer facility cannot be considered in isolation from the associated Terminal buildings for the purposes of calculating passenger capacity, as to so do, would be material in planning terms and would result in an increase in passenger capacity contrary to condition no. 3 of PL06F.220670.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the Planning and Development Act 2000, as amended, hereby decides that:

- (a) Use of the “airport” in excess of 32 million passengers per annum is not development, irrespective of the manner of calculation passenger numbers.

(b) Use of the “airport” by up to 3 million connecting passengers in excess of 32 million passengers per annum (mppa), if those connecting passengers are facilitated by the Pier 4 passenger transfer facility and the combined capacity of the facility together with Terminal 2 as permitted and Terminal 1 would exceed 32 mppa, would contravene condition no. 3 of PL06F.220670, and is therefore not exempted development.

Conor McGrath
Planning Inspector

10/01/2020