



An
Bord
Pleanála

Inspector's Report ABP312476-22

Development	Extend north apron at Dublin Airport to facilitate 12 aircraft stands and ground equipment on 19.2ha.
Location	Dublin Airport at Cloghran, Corballis, Forrest Great, Forrest Little, Collinstown and Rock, Fingal County Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0550
Applicant(s)	
Type of Application	Permission
Planning Authority Decision	Grant with Contribution Condition.
Type of Appeal	Applicant vs Financial Contribution
Appellant(s)	Dublin Airport Authority.
Observer(s)	None
Date of Site Inspection	None
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The proposed development comprises works to facilitate the provision of 12 aircraft stands and ground support equipment storage on a site of 19.2ha at Dublin Airport at Cloghran, Corballis, Forrest Great, Forrest Little, Collinstown and Rock, Fingal, County Dublin.

2.0 Proposed Development

The proposed development comprises.

1. The expansion of North Apron at Dublin Airport to provide twelve replacement Code C aircraft stands and ground servicing equipment storage area.
2. Construction of a 520m long by 6m high blast fence on the northern and western boundary of the extended Apron and ground servicing equipment area.
3. Construction of a 20m long by 6m high blast fence south-west of the Apron.
4. Construction of a 550m service road immediately to the north of the twelve replacement Code C aircraft stands to provide access for service vehicles.
5. Rehabilitation of existing pavement.
6. Construction of two new underground attenuation tanks on 9000m² of existing grassland.
7. Provision of a total organic carbon analyser enclosure.
8. Provision of drainage and electrical infrastructure.
9. Provision of Aerodrome Ground Light (AGL) installation this includes underground ducting to provide power to centreline lights and new edge lights.

10. Provision of 26 No. High Mast Lights.

11. Modifications to internal airside fencing, service road infrastructure and provision of construction site security fencing.

12. Provision of a temporary construction site compound and modification to the Airfield security fence to temporarily change part of the construction site from 'airside' with access restrictions to 'landside'.

13. Provision of road and stand pavement markings, Stand id-signs and High mast lighting (HML).

14. The application includes all associated site development works and services.

15. This planning application is accompanied by an Environmental Impact Assessment Report (EIAR).

2.1. at Cloghran, Corballis, Forrest Great, Forrest Little, Collinstown and Rock, Fingal, County Dublin.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted planning permission subject to a number of conditions. Condition number 11 is as follows.

The applicant shall pay the sum of €5,028,035.00 (updated at date of commencement of development, in accordance with the changes in the Tender Price Index), to the planning authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting the development in the area of the planning authority as provided for in the contribution scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to commencement of development.

Reason: It is considered reasonable that payment of a contribution be required in respect of the public infrastructure and facilities benefitting the development in the area of the planning authority and which is provided, or which is intended to be provided by, or on behalf of the local authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended a grant of permission with the conditions set out in the manager's order.

The planning authority's reports do not provide a detailed basis for the condition.

3.2.2. Other Technical Reports

3.2.3. Not relevant.

4.0 Planning History

4.1. There is an extensive planning history relating to the airport lands, but none are directly relevant to this application.

5.0 Policy and Context

5.1. The **Development Management Guidelines for Planning Authorities (2007)** are issued under section 28 of the Planning and Development Act 2000, as amended, and provide guidance in relation to development contribution schemes at paragraph 7.12. The Guidelines, *inter alia*, make the point that a contribution scheme under Section 48 should clearly set out how the relevant terms are interpreted and applied to the proposed development.

5.2. **Development Contributions Guidelines for Planning Authorities (DoEHLG 2013)** are issued under section 28 of the Planning and Development Act 2000, as amended. The Guidelines make the point that a key aim for development

contribution schemes must be to promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity.

5.3. Section 48 of the Planning and Development Acts, provides that planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.

5.4. The Guidelines advise that when planning authorities are drawing up development contribution schemes that “in order to achieve a standard basis on which rates could be determined, broad estimates of the floor area (m²) of anticipated development should be prepared, including the assumptions and any other relevant factors which have shaped the estimates” (see page 17 of the Guidelines).

5.5. **Development Plan**

5.6. The Fingal County Development Plan 2021 – 2027 is the relevant County Development Plan for the area.

5.7. The **Fingal County Development Contribution Scheme 2021 – 2025** is the relevant Section 48 Development Contribution Scheme.

5.8. **Natural Heritage Designations**

Not relevant.

5.9. **EIA Screening**

Not relevant.

6.0 The Appeal

6.1. Grounds of Appeal

- The development contribution scheme was not correctly applied.
- Apron areas serves as parking, loading, refuelling, boarding and maintenance of aircraft and as a landuse are directly comparable to car parking.
- The planning authority is incorrect in applying a building floor space to these areas.
- There is no specific category in the Fingal Development Contribution Scheme (FDCS), the closest category is ancillary parking and that is exempt from charges under section 11(m) of the FDCS.
- Under a previous permission (PL06F.220760) the planning authority did not charge for ancillary areas because such areas are exempted development under Class 32 (b) of the Planning and Development Regulations. If the planning authority had not required submission of an EIAR this development would also be exempt from planning permission.
- In similar circumstances within the administrative area of Fingal permission was granted for a Dublin Inland Port (a 5ha depot for storage of empty containers) where the development contribution was charged solely for buildings not ancillary areas.
- Development Contribution Schemes must be interpreted solely on the basis of the adopted scheme. Since there is no category in the scheme covering areas such as the present therefore no charge can be levied under the FDCS.

6.2. Planning Authority Response

- 6.3. The FDCS does not make provision for exempting development of the type proposed from payment of a contribution.

6.4. Further Responses

None

7.0 Assessment

7.1. The Adopted Scheme.

- 7.2. Section 48 of the Planning and Development Acts 2000-2021 provides that a planning authority should adopt a development contribution scheme which must provide the basis for contributions from persons who have received planning permission under Section 34 and where that development would benefit from public infrastructure and facilities in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority.
- 7.3. Fingal County Council has adopted a scheme under section 48 – the Fingal County Council Development Contribution Scheme 2021-2025.

7.4. Calculation of the Amount.

- 7.5. Relying on the copied emails and calculations by Fingal County Council submitted to the Board (and copied for comment to the planning authority) as part of the appeal it appears that the planning authority took an area of works as 60,484m² and applied a rate of €83.13 per m². This figure (€83.13 per m²) is the index linked figure of €76.69 given for 1st January 2021 in the adopted FDCS.
- 7.6. The applicant did not query the area of the works being levied or the indexation of the monetary figure. I note in this context that the proposed development represents 13.09% (462,000m²/60,484m²) of the projected total floor area in the Fingal County Council administrative area in the 5-year period up to 2025 as projected in Appendix 1- Table A of the FDCS.

7.7. Gross Floor Area as Basis for Calculation.

- 7.8. The appeal makes the point that the scheme has been misinterpreted because the scheme relates to floor area and no floor area is proposed in this case.
- 7.9. Section 48(3)(c) of the P&D Acts states that “a scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme”. The Development Contributions Guidelines for Planning Authorities on drawing up development

contribution schemes make a similar point that “in order to achieve a standard basis on which rates could be determined, broad estimates of the floor area (m²) of anticipated development should be prepared, including the assumptions and any other relevant factors which have shaped the estimates”. Furthermore “a development contribution scheme must state clearly the level of contributions to be payable under the scheme, including any different levels of contributions in respect of different classes or descriptions of developments” and that “transparency in the drawing up of schemes and in the application of the development contributions collected are essential elements in achieving cross community and cross sectoral support”.

- 7.10. The FDCS states that the basis for the determination of a contribution under the scheme shall be (see paragraph 6(b)) “the aggregated floor areas in square metres of projected development in the years to 2025” and I conclude that the planning authority fulfilled the terms of Section 48(3)(c) of the P&D Acts and the Guidelines by basing its calculations on projected floor area and is thereafter bound to levy a contribution in respect of ‘floor area’ only.
- 7.11. Elsewhere the FDCS (see note 3 page 7) states that the calculation of the floor area of proposed development “where buildings are involved” shall be calculated as gross floor area. It may be argued that this leaves open circumstances, other than where floor areas are involved, where a levy could be imposed but nowhere else in the scheme are such circumstances identified or enumerated. I note in section 11 of the FDCS that certain exemptions from the imposition of a levy are set out and in section 11 (ii) a number of instances (including private medical centres, third level educational institutions and fee-paying schools) are specifically listed as liable for a levy “for clarification purposes”.
- 7.12. Having considered the matters above I conclude that an applicant is entitled to rely on the statement within the FDCS that it is based on floor area calculations. If there are other grounds for levying a contribution it must be explicit in the scheme and I conclude that the planning authority has not correctly applied the scheme.

7.13. Exempted Development Under the Regulations.

7.14. The appellant makes the case that the proposed development comprises exempted development under Class 32 of Schedule 2 of the Planning and Development Regulations 2021, as amended and that an application for planning permission was necessary only because the planning authority sought an EIAR in relation to the scheme and thereby forced the appellant to make an application.

7.15. Class 32 of the Regulations provides as follows:

7.16. 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—

- (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.
- (f) the construction, erection or alteration of alteration of temporary awnings, marquees, portable cabins or covered pedestrian or set down areas connected with the management of airport passenger movement in a State airport (within the meaning of Part 2 of the State Airports Act 2004 (No. 32 of 2004) for purposes connected with the prevention of transmission of Covid-19 (within the meaning of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (No. 1 of 2020)).

7.17. These provisions are subject to the conditions that;

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.

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 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.

7.18. It is possible to agree with the appellant that the works proposed fall into this Class of exempted development but once a planning permission is sought (even for otherwise exempted development) the planning authority is required by Section 48 to apply the provisions of the scheme and therefore, in this instance, the appellant cannot rely on the exempted development regulations to escape the implications of the FDCS.

7.19. Exemptions Within the Scheme.

7.20. The appellant makes the case that the proposed development is directly comparable car parking and that therefore it is exempt under article 11 (m) of the FDCS. Article 11 provides that the following categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the scheme.

Article 11(m) Ancillary, surface and underground car parking is exempt. (i.e. Council's Development Plan standards).

7.21. The appellant points to no other exemptions in the FDCS that might be appropriate to consider in this case.

7.22. Having reviewed the scheme I note that exemption 11(f) exempted non-build elements of large scale outdoor recreational developments such as golf courses, sports pitches and tennis complexes. In this context it is also noteworthy that the scheme (see article 11(ii) (a) to (d)) sets out clarifications that exemptions shall not apply to special development contributions, certain medical uses, 3rd level education institutions and fee-paying schools.

7.23. Again, it is possible to agree with the appellant that the proposed works are somewhat comparable to car parking, but the application is not for car parking. Where Article 11(m) references the Council's Development Plan standards it refers to Chapter 12 of the current County Development Plan where it refers solely to "Car Parking Standards" and includes table 12.8 which makes no reference to aircraft parking areas in airports. Therefore, I conclude that the appellant may not rely on a comparison of aircraft parking with car parking to escape the implications of the FDOS.

8.0 Recommendation

8.1. I recommend that the Board removes condition 11 and the reason therefor for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Section 48 of the Planning and Development Act 2000, as amended, requires planning authorities to make development contribution schemes which provide for the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority. Additionally, Section 48(3)(c) of the Act requires that a scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities. The Fingal County Council Development Contribution Scheme 2021 – 2025 takes as its basis for applying a contribution the aggregated floor areas in square meters of projected development within its administrative area. This application comprises development which does not include a floor area and, therefore, the Development Contribution Scheme does not apply and the planning authority has not correctly applied the scheme. The Board directs that condition 11 be removed.

Hugh Mannion
Senior Planning Inspector

8th December 2022.