

SMTW Environmental DAC
C/o Liam O'Gradaigh,
Ward Cross, The Ward,
Co. Dublin

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902
2nd September 2022

AN BORD PLEANÁLA	
LDG-	<u>056866-22</u>
ABP-	_____
02 SEP 2022 <i>GB</i>	
Fee: €	<u>270</u> Type: <u>Card</u>
Time:	<u>2:34</u> By: <u>hand</u>

RE: APPEAL REGARDING FINGAL COUNTY COUNCIL'S DECISION TO GRANT PERMISSION FOR PLANNING APPLICATION F20A/0668 AND ANCA'S REGULATORY DECISION FOR THE RELEVANT ACTION AS SUBMITTED BY DAA

Dear Sir/ Madam,

We wish to appeal the regulatory decision made by the Aircraft Noise Competent Authority (ANCA) dated 20th June 2022, and Fingal County Council's decision to grant permission for planning application F20A/0668.

We refer to the attached correspondence from ANCA confirming that we made a submission (ref FIN-C338-ANCA-316) on the draft regulatory decision and therefore meet the requirements of a relevant person under the act, and also correspondence from Fingal County Council dated 2nd February 2021 and 28th October 2021 confirming our submissions to Fingal County Council Planning Authority with reference to reg. ref F20A/0668.

We also confirm that we include with this appeal the appropriate fee and confirm that this appeal has been lodged with An Bord Pleanála before the expiration of the appropriate period as defined at Section 10(18) of the Act. We also confirm that we include the appropriate fee for an Oral Hearing request.

Please find attached the main appeal document accompanied by supplementary material that is referenced in the main document. Also included is a USB stick with the material in electronic format.

We also would like to bring your attention to the breach of article 6(3) of the habitats Directive:

"Breach of article 6(3) of habitats Directive.

In Its AA screen determination Fingal Co Council states:

"In accordance with the European Habitats Directive (Article 6(3)) and Section 177U of the Planning and Development Act 2000 (as amended), Fingal County Council has made an Appropriate Assessment (AA) Screening Determination on the 'Relevant Action (RA)' application by daa in accordance with the European Habitats Directive (Article 6(3)) and

Section 177U of the Planning and Development Act 2000 (as amended) which is set out in the Report and Recommendation as follows: An Appropriate Assessment Screening Report was submitted for the relevant Action (RA) application. A revised Appropriate Assessment Screening Report was submitted at further information stage following a request for further information by the Planning Authority. **Following ANCAs setting of a Noise Abatement Objective** and its making of a Regulatory Decision (RD) on 20th June 2022 and in accordance with the Habitats Directive and Birds Directive, the Planning Authority is required to carry out an Appropriate Assessment Screening of the Relevant Action as varied by the Regulatory Decision. Fingal County Council has made an Appropriate Assessment (AA) Screening Determination on the 'Relevant Action (RA)' application as varied by the Regulatory Decision as varied by the Regulatory Decision. Having examined both the original and updated Appropriate Assessment Screening Reports and all other documentation submitted by the applicant in relation to the Relevant Action, as amended by **and incorporating the Regulatory Decision, as well as the documentation associated with the Regulatory Decision and Noise Abatement Objective published by ANCA (the Aircraft Noise Competent Authority)**, and in light of best scientific knowledge, and in the absence of mitigation measures, Fingal County Council is satisfied that the Relevant Action, as amended by **and incorporating the Regulatory Decision**, is not likely to have a significant effect on any European sites, either alone or in combination with other plans or projects. Therefore a Stage 2 Appropriate Assessment is not required". (emphasis added.)

Above Fingal CC have confirmed that they took into account the mitigation of the ANCA Regulatory Decision and Noise abatement objective into consideration when deciding NOT to carry out a stage 2 appropriate assessment. This approach is contrary to law article 6(3) of the Habitats Directive 1992/43/EEC must be interpreted as meaning that, when carrying out a screening for Appropriate Assessment, it is not appropriate to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European Site. Therefore by relying on the mitigation of the Regulatory Decision and Noise Abatement Objective. In *People over Wind*, The CJEU decided that the term must be understood as meaning any measure that is '*intended to avoid or reduce the harmful effects of the envisaged project on the site concerned*', being the European Site potentially affected by the proposed development.

If there is a source-pathway-receptor connection between the proposed development and the qualifying interests of a European site and potential harmful effects have been identified, measures to avoid or reduce those effects must be excluded from the screening analysis. If there is no source – pathway – receptor connection, the potential for harmful effects can be excluded. If there is a source-pathway-receptor connection, the Habitats Directive requires a precautionary approach such that measures intended to avoid or reduce the potential for harmful effects should not be taken into account when screening for likely *significant* effects.

FCC impermissibly relied on mitigation measures contrary to article 6(3) of the Habitats Directive and *People over Wind* The European sites in question would be Baldoyle Bay SPA, Malahide SPA, Ireland's Eye SPA and Howth Head SPA. See *Eoin Kelly v. An Bord Pleanála* [2019] IEHC 84 ('Eoin Kelly'), *People Over Wind and Sweetman v. Coillte Teoranta* (Case C-323/17) ('*People Over Wind*'). Therefore the Board must overturn the grant of planning as Fingal County Council failed to adhere to article. 6(3) of the habitats directive."

Yours sincerely,

Liam O'Gradaigh
On behalf of SMTW Environmental DAC