

File With _____

SECTION 131 FORM

Appeal NO: ABP 314685

TO: SEO

Defer Re O/H ☐Having considered the contents of the submission dated/ received 23/12/22
fromU.S. Dept of Transport recommend that section 131 of the Planning and Development Act, 2000
~~be~~ not be invoked at this stage for the following reason(s): no w l s dE.O.: [Signature]Date: 8/1/23

To EO: _____

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached
submission

to: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No.: ABP _____

M _____

Please treat correspondence received on _____ as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP _____

3. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐

Amendments/Comments

4. Attach to file

(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☐RETURN TO EO ☐

EO:

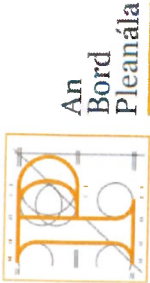
Plans Date Stamped ☐Date Stamped Filled in ☐

AA:

Date:

Date:

Lodgement Cover Sheet - LDG-077143-25



Details

Lodgement Date	23/12/2024
Customer	Ú.S Department of Transportation
Lodgement Channel	Email
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-077143-25
Map ID	
Created By	James Sweeney
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	F20A/0668

Categorisation

Lodgement Type	Observation / Submission
Section	Processing

PA Name	Fingal County Council
Case Type (3rd Level Category)	Normal Planning Appeal PDA2000

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Paid	0.00
Refund Amount	

Observation/Objection Allowed?	Yes
Payment	
Related Payment Details Record	

Observation

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	A proposed development comprising the taking of a 'relevant action' only within the meaning of Section 34C of the Planning and Development Act 2000, as amended, at Dublin Airport,
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Run at: 08/01/2025 12:10

Run by: James Sweeney

Co. Dublin, in the townlands of Collinstown, Toberbunny, Commons, Cloghran, Corballis, Coultry, Portmellick, Harristown, Shanganhill, Sandyhill, Huntstown, Pickardstown, Dunbro, Millhead, Kingstown, Barberstown, Forrest Great, Forrest Little and Rock on a site of c. 580 ha. The proposed relevant action relates to the night-time use of the runway system at Dublin Airport. It involves the amendment of the operating restriction set out in condition no. 3(d) and the replacement of the operating restriction in condition no. 5 of the North Runway Planning Permission (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No. PL06F.217429 as amended by Fingal County Council F19A/0023, ABP Ref. No. ABP-305289-19), as well as proposing new noise mitigation measures. Conditions no. 3(d) and 5 have not yet come into effect or operation, as the construction of the North Runway on foot of the North Runway Planning Permission is ongoing. The proposed relevant action, if permitted, would be to remove the numerical cap on the number of flights permitted between the hours of 11pm and 7am daily that is due to come into effect in accordance with the North Runway Planning Permission and to replace it with an annual night-time noise quota between the hours of 11.30pm and 6am and also to allow flights to take off from and/or land on the North Runway (Runway 10L 28R) for an additional 2 hours i.e. 2300 hrs to 2400hrs and 0600 hrs to 0700 hrs. Overall, this would allow for an increase in the number of flights taking off and/or landing at Dublin Airport between 2300 hrs and 0700 hrs over and above the number stipulated in condition no. 5 of the North Runway Planning

PA Case Number	Development Description	<p>Permission, in accordance with the annual night time noise quota. The relevant action pursuant to Section 34C (1) (a) is: To amend condition no. 3(d) of the North Runway Planning Permission (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No.: PL06F.217429 as amended by Fingal County Council F19A/0023, ABP Ref. No. ABP-305289-19). Condition 3(d) and the exceptions at the end of Condition 3 state the following: '3(d). Runway 10L-28R shall not be used for take-off or landing between 2300 hours and 0700 hours except in cases of safety, maintenance considerations, exceptional air traffic conditions, adverse weather, technical faults in air traffic control systems or declared emergencies at other airports.'</p> <p>Permission is being sought to amend the above condition so that it reads: 'Runway 10L-28R shall not be used for take-off or landing between 0000 hours and 0559 hours except in cases of safety, maintenance considerations, exceptional air traffic conditions, adverse weather, technical faults in air traffic control systems or declared emergencies at other airports or where Runway 10L-28R length is required for a specific aircraft type.' The net effect of the proposed change, if permitted, would change the normal operating hours of the North Runway from the 0700hrs to 2300 hrs to 0600 hrs to 0000 hrs. The relevant action also is: To replace condition no. 5 of the North Runway Planning Permission (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No.: PL06F.217429 as amended by Fingal County Council F19A/0023, ABP Ref. No. ABP-305289-19) which provides as follows: 5. On completion of construction of the runway hereby permitted, the average number of night</p>
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time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5th day of March, 2007. Reason: To control the frequency of night flights at the airport so as to protect residential amenity having regard to the information submitted concerning future night time use of the existing parallel runway'. With the following: A noise quota system is proposed for night time noise at the airport. The airport shall be subject to an annual noise quota of 7990 between the hours of 2330hrs and 0600hrs. In addition to the proposed night time noise quota, the relevant action also proposes the following noise mitigation measures: - A noise insulation grant scheme for eligible dwellings within specific night noise contours; - A detailed Noise Monitoring Framework to monitor the noise performance with results to be reported annually to the Aircraft Noise Competent Authority (ANCA), in compliance with the Aircraft Noise (Dublin Airport) Regulation Act 2019. The proposed relevant action does not seek any amendment of conditions of the North Runway Planning Permission governing the general operation of the runway system (i.e., conditions which are not specific to nighttime use, namely conditions no. 3 (a), 3(b), 3(c) and 4 of the North Runway Planning Permission) or any amendment of permitted annual passenger capacity of the Terminals at Dublin Airport. Condition no. 3 of the Terminal 2 Planning Permission (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No. PL06F.220670) and condition no. 2 of the Terminal 1 Extension Planning

PA Decision Date	08/08/2022
County	
Development Type	
Development Address	Dublin Airport, Co. Dublin
Appellant	
Supporting Argument	

	<p>Permission (Fingal County Council Reg. Ref. No. F06A/1843; ABP Ref. No. PL06F.223469) provide that the combined capacity of Terminal 1 and Terminal 2 together shall not exceed 32 million passengers per annum. The planning application will be subject to an assessment by the Aircraft Noise Competent Authority in accordance with the Aircraft Noise (Dublin Airport) Regulations Act 2019 and Regulation (EU) No 598/2014. The planning application is accompanied by information provided for the purposes of such assessment. An Environmental Impact Assessment Report will be submitted with the planning application. The planning application and Environmental Impact Assessment Report may be inspected or purchased at a fee not exceeding the reasonable cost of making a copy, at the offices of the Planning Authority during its public opening hours of 9.30 - 16.30 (Monday – Friday) at Fingal County Council, Fingal County Hall, Main Street, Swords, Fingal, Co. Dublin.</p>
Applicant	
Additional Supporting Items	Yes

Dillon Corcoran

From: Landart, Joseph (OST) <joseph.landart@dot.gov>
Sent: Monday 23 December 2024 16:00
To: ethna.brogan@transport.gov.ie; Peter Mullan; Appeals2
Cc: Baraban, Cindy (OST); Taylor, Benjamin (OST); Gatlin, Kristen (OST); Alford, Eugene (OST); Gomez, Heidi N; Sullivan, Harry R; Beranek, Ladislav; caroline.kaufman@trade.gov; nicola.hayes@transport.gov.ie; Niamh O'Brien (Transport); Filip Cornelis - Directorate-General for Mobility and Transport (filip.cornelis@ec.europa.eu); Carlos.BERMEJO-ACOSTA@ec.europa.eu; gzim.ocakoglu@ec.europa.eu; Georg.HASSLINGER@ec.europa.eu
Subject: U.S. Department of Transportation letter An Bord Pleanala Case ABP-314485-22
Attachments: USDOT Letter An Bord Pleanala Case 314485 122324.pdf

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Dear Ms. Brogan and Mr. Mulla,

For your consideration, please find attached a letter from Cindy Baraban, Deputy Assistant Secretary for Aviation and International Affairs at the U.S. Department of Transportation. We kindly request government-to-government confidential treatment for the attached.

Best regards,

Joe Landart
Office of International Aviation
U.S. Department of Transportation
Desk: 202-366-8161 | Cell: 202-320-2530
joseph.landart@dot.gov





U.S. Department
of Transportation

Office of the Secretary
of Transportation

1200 New Jersey Avenue, S.E.
Washington, DC 20590

December 23, 2024

Ethna Brogan
Assistant Secretary, Aviation
Department for Transport
2 Leeson Lane
Dublin 2, D02 TR60, Ireland

Peter Mullan
Chairperson
An Bord Pleanála
64 Malborough Street
Dublin 1, D01 V902, Ireland

Delivered via email: appeals@pleanala.ie

Dear Ms. Brogan and Mr. Mullan,

The U.S. Department of Transportation (the Department) respectfully wishes to submit its views on the An Bord Pleanála draft decision in case ABP-314485-22 issued on September 17, 2024, (the Draft Decision) on the application by the Dublin Airport Authority (DAA) for a proposed development at Dublin Airport (DUB). DAA's proposed development sought to: 1) amend condition 3(d) of the North Runway (NR) planning permission to change the curfew hours of the NR from 23:00-07:00 local to 00:00-05:59 local; 2) amend condition 5 of the NR planning permission to replace the numerical cap of 65 aircraft movements per night as measured over the 92 modelling period with a Noise Quota System (NQS) and an annual noise quota of 16,260¹ between the hours of 23:00 and 06:59 local;² and, 3) adopt a noise insulation grant scheme for eligible dwellings within specific night noise contours and a detailed noise monitoring framework to monitor noise performance. The Draft Decision grants permission for the proposed development with these conditions as well as additional conditions added by An Bord Pleanála as described below.

The Department appreciates the intricacies associated with the DAA's proposed development and the issue of nighttime noise at DUB. We wish to underscore that our concern is not about the goal of reducing noise emissions – a goal that the U.S. Department of Transportation fully shares, as evidenced in our own Aviation Climate Action Plan adopted in November 2021. Our primary motivation in providing a response to the Draft Decision is to ensure that any action taken at DUB be consistent with Ireland's obligations under the 2007 U.S.-EU Air Transport Agreement, as amended (the Agreement), as well as EU Regulation (EEC) 598/2014 with respect to U.S. air carriers.

The Draft Decision

As stated in the Draft Decision and as explained in the accompanying Inspector's Report, An Bord Pleanála would retain the DAA's proposed development as modified by the FCC decision. In addition, An Bord Pleanála proposes to: 1) add an additional condition 3(e) to the NR

¹ The annual noise quota figure was updated from 7990 as part of the Fingal County Council (FCC) decision. See Paragraph 5.1.3. of the Inspector's Report, at 38.

² Annual noise quota hours were updated from 23:30-06:00 local as part of the FCC decision.

planning permission that would require the NR to be used for departure only between the hours of 06:00-08:00 local;³ and, 2) subject DUB to an annual aircraft movement limit of 13,000 between the nighttime hours of 23:00-06:59 local with aircraft movements split between 3,900 in the Winter and 9,100 in the Summer to allow for extra flights during the 92-day peak of the Summer traffic season.⁴

The Operational Restriction Outside the Scope of the Balanced Approach

The annual nightly aircraft movement limit of 13,000 at DUB proposed by An Bord Pleanála would result in an operational reduction of 20,000 aircraft movements at night at DUB based on the 33,000 nighttime aircraft movements total at DUB in 2023.⁵ A noise-related operational restriction of this nature, proposed unilaterally and outside the context of the Balanced Approach, raises significant concerns.

Ireland, as a Party to the Agreement and as an EU Member State subject to EU law, has an obligation to follow the Balanced Approach when considering noise mitigation at Irish airports. As established through ICAO Assembly Resolution A37-18, ICAO Annex 16 Volume 1, and ICAO document 9829, a complete application of the Balanced Approach consists of an assessment of noise levels at a particular airport, the definition of a noise-related objective, a provision for consultation, identification of all the measures available to reduce the noise impact, evaluation of the likely costs and benefits of the various measures available in order to identify the relative cost-effectiveness of the measures, a selection of measures, an adequate public notification of intended actions, an implementation of measures, and a provision for dispute resolution available to all stakeholders.⁶

The Department understands the choice by An Bord Pleanála to question the FCC decision granting the DAA's proposed development, subject to conditions, as informed by the Regulatory Decision taken by the Airport Noise Competent Authority (ANCA).⁷ However, the Department objects to the decision by An Bord Pleanála to introduce unilaterally an operational restriction as part of its Draft Decision and thus outside of the framework of the Balanced Approach. ICAO Assembly Resolution A37-18 urged ICAO Contracting States to "adopt a balanced approach to noise management, taking full account of ICAO guidance, relevant legal obligations, existing agreements, current laws, and established policies, when addressing noise problems at their international airports."⁸ Additionally, Article 5.2 of EU Regulation 598/2014 specifies that "Member States shall ensure that the Balanced Approach is adopted in respect of aircraft noise management at those airports where a noise problem has been identified." In the context of the Agreement, Article 15.4 specifies that "[t]he Parties to the Agreement reaffirm the commitment of the Member States and the United States to apply the Balanced Approach principle."

It is the Department's view that the ANCA establishing a Noise Abatement Objective (NAO) and applying the Balanced Approach subsequent to the identification of a noise problem⁹ in the DAA's proposed development was consistent with Article 15.4 of the Agreement and EU Regulation 598/2014. Conversely, the Department considers that An Bord Pleanála unilaterally

³ Draft Decision, at 11.

⁴ Draft Decision, at 18.

⁵ "An Bord Pleanála rules Dublin Airport must cut night flights by 20,000," available at <https://www.irishexaminer.com/new/s/aid-4477692.html>

⁶ See Paragraph 1.2.4 of ICAO Doc 9829.

⁷ See Paragraphs 12.2.58-12.2.60 of the Inspector's Report, at 163-164.

⁸ See Paragraph 2.a) of Appendix C of Assembly Resolution A37-18.

⁹ See Section 4.0 of the Inspector's Report, at 33-37.

proposing an operational restriction as part of the Draft Decision without applying the Balanced Approach is inconsistent with Ireland's commitment to apply the Balanced Approach principle under Article 15.4 of the Agreement and the provisions of EU Regulation 598/2014.

The Department is furthermore concerned that the proposed annual nightly aircraft movement limit of 13,000 may be more restrictive than necessary and may be arbitrary. In the context of the imposition of new mandatory noised-based operating restrictions at airports having more than 50,000 movements per calendar year, Paragraph (c) of Article 15.5 of the Agreement requires that "[o]perating restrictions shall be (i) non-discriminatory, (ii) not more restrictive than necessary in order to achieve the environmental object established for a specific airport, and (iii) non-arbitrary."

In the Inspector's Report, the An Bord Pleanála Inspector argues that "as stated throughout [their] assessment and the Vanguardia Report, it is important for the NQS to be supplemented with a restriction on aircraft movements during the nighttime hours."¹⁰ The Inspector uses a "conservative estimation for the aircraft restrictions," by determining that "87 flights per night"¹¹ for the 92-day busy period (8,004 flights for the Summer) adjusted to [circa] 11,434 yearly when considering 70% of the flights during the Summer busy period,"¹² The Inspector then states that they "consider that it is reasonable and practical to restrict the aircraft movements to the proposed aircraft movements in the applicant's [Environmental Impact Assessment Report] (EIAR) which is 13,000 per year."¹³ However, no justification is provided for why the annual nightly aircraft movement limit of 13,000 is "reasonable and practical" and the Department questions whether it corresponds to the "proposed aircraft movements in the applicant's EIAR."¹⁴ Additionally, the calculations used in the Inspector's Report to determine the annual nightly aircraft movement limit were not based on an environmental objective¹⁵ as provided for by Article 15.5(c) of the Agreement, Paragraph 3.1.12 of ICAO document 9829, and by Article 5.2(a) of EU Regulation 598/2014. Accordingly, the Department estimates that the annual nightly aircraft movement limit of 13,000 may be more restrictive than necessary and may be arbitrary.

Additional Draft Decision Considerations

It is worth highlighting that the decision to supplement the NQS with a 13,000 annual nightly movement cap in the Draft Decision may effectively curtail the NQS, rendering it moot. Paragraph 1.10.4 of the Inspector's Report states that An Bord Pleanála's noise expert estimated that the NQS with an annual noise quota of 16,260 would translate to 31,755 annual nightly flights. Consequently, a 13,000 annual nightly flight limit would make it impossible for carriers to utilize the full annual noise quota of 16,260 of the NQS, thereby failing to incentivize carriers to utilize quieter aircraft with lower quota count values.

¹⁰ See Paragraph 12.4.48 of the Inspector's Report, at 184.

¹¹ The annual noise quota of 16,260 was estimated to translate to 31,755 annual nightly flights or 87 flights per night. See Paragraph 1.10.4 of the Inspector's Report, at 19.

¹² See Paragraph 12.4.49 of the Inspector's Report, at 184.

¹³ See Paragraph 12.4.52 of the Inspector's Report, at 185.

¹⁴ As presented in the DAA's EIAR Supplement, the figure of 13,000 movements corresponds to the estimated annual overall (day+night) increase in air traffic movements for 2025 at DUB from what is currently permitted (227,000 annual movements) to what the DAA proposes in its application (240,000 annual movements). Accordingly, we fail to see why An Bord Pleanála chose this figure to limit the annual night movements at DUB. See table 13-1 of the DAA's EIAR Supplement and see Paragraph 1.10.2 of the Inspector's report, at 19.

¹⁵ We note that that An Bord Pleanála chose not to update the NAO initially set by ANCA as part of its Balanced Approach but highlighted the need for additional operational restrictions based on an awakening report and other supplementary information. See paragraphs 12.2.49 and 12.2.50 of the Inspector's Report at 161-162.

Air Transport Services Considerations

An operational restriction in the form of an annual aircraft movement limit of 13,000 between the nighttime hours of 23:00-06:59 local would force carriers that operate within that timeframe to either heavily reduce their services at DUB or transition their services to the daytime.¹⁶ The operational restriction may therefore disproportionately affect all-cargo carriers vis-à-vis combination carriers, given that all-cargo carriers are dependent on nighttime operations for their deliveries during the day and thus unable to viably transition their services to the daytime. Against this backdrop, the operational restriction may undermine the ability of all-cargo carriers to compete fairly against combination carriers that transport belly freight. The Department expects that Ireland will ensure that U.S. and Irish all-cargo carriers operating in the U.S.-Ireland air transport market benefit from a fair and equal opportunity to compete with U.S. and Irish combination carriers carrying belly freight in the same market.

Conclusion

The package of proposed noise measures included in the Draft Decision represents a fragmented and piecemeal approach to addressing noise at DUB that could drastically affect all categories of stakeholders that depend on the airport. Upon reviewing the Draft Decision accompanying the Inspector's Report, it would seem that An Bord Pleanála is unilaterally proposing a noise-related operational restriction outside the framework of the Balanced Approach. Such a development would be inconsistent with Ireland's commitment to apply the Balanced Approach pursuant to Article 15.4 of the Agreement. Additionally, we estimate that the annual nightly aircraft movement limit of 13,000, decided in the absence of an updated noise abatement objective, may be arbitrary and more restrictive than necessary to achieve the environmental objective for DUB, contrary to Ireland's obligations under Article 15.5(c) of the Agreement.

We urge that in pursuing noise reduction goals affecting the U.S.-Ireland air transport market, Ireland do so through processes that fully implement the Agreement, applicable EU regulations, and the ICAO Balanced Approach principle. As such, we ask that the Government of Ireland intervene to suspend the Draft Decision and consider mitigating noise emissions at DUB through a new Balanced Approach proceeding with a new NAO and a neutral outlook toward the combination of noise-mitigating measures to achieve it, in a manner consistent with Paragraph 1.2.3 of ICAO document 9829 and with Article 5(3) of EU Regulation 598/2014.

The Department appreciates the opportunity to provide feedback and we remain at your disposal to discuss further the Draft Decision, the Balanced Approach, and mitigating noise emissions at DUB.

Sincerely,



Cindy A. Baraban
Deputy Assistant Secretary
For Aviation and International Affairs
U.S. Department of Transportation

¹⁶ We note that the EU Slot Regulation (EC 95/93) provides no legal basis for a broad reduction of historic slots, other than through enforcement of 80/20 usage criteria as specified in Article 14.6.

cc: Heidi Gomez, Harry Sullivan, Ladislav Beranek (U.S. State Department);
Caroline Kaufman, Alexandra Duffy (U.S. Department of Commerce);
Nicola Hayes, Niamh O'Brien (Department of Transport – Ireland);
Filip Cornelis, Carlos Bermejo, Gzim Ocakoglu, Georg Hasslinger (DG MOVE);