

File With _____

SECTION 131 FORM

Appeal NO: ABP-314485-22Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission received 17/10/22 fromDAA I recommend that section 131 of the Planning and Development Act, 2000be not be invoked at this stage for the following reason(s): No new issues raisedE.O.: Date: 19/10/22

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: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

CORRESPONDENCE FORM

Appeal No: ABP-314485-22

M s McCormack

Please treat correspondence received on 17/10/22 as follows: as follows:

1. Update database with new agent for Applicant/Appellant

2. Acknowledge with BP 20

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

DAA response to Raymond and Carmel Fox appeal

4. Attach to file

(a) R/S ☐ (d) Screening ☐

(b) GIS Processing ☐ (e) Inspectorate ☐

(c) Processing ☐

RETURN TO EO ☒

Carlye

EO:

Carlye

Date:

14/10/22

Plans Date Stamped ☐

Date Stamped Filled in ☐

AA:

Pata Bu

Date:

19/10/22

From: Orla O'Callaghan <orlaoc@tpa.ie>
Sent: Monday 17 October 2022 13:00
To: Appeals2; Bord
Subject: First Party Response to Third Party Appeal - ABP Ref. PL06F.314485.
Attachments: First Party Response to Third Party Appeal ABP Ref. PL06F.314485 _Raymond and Carmel Fox_Final.pdf

Good Afternoon,

On behalf of daa plc, please find attached First Party Response to a Third-Party Appeal by Raymond and Carmel Fox against a Notification of a Decision to Grant Permission by Fingal County Council (FCC) dated 8th August 2022 (Fingal County Council Reg. Ref. F20A/0668 /ABP Ref. PL06F.314485).

Can you please confirm receipt of this First Party Response to the Appeal?

Regards,

Orla O'Callaghan
Senior Planner

Tom Phillips + Associates
Town Planning Consultants



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The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

17, October 2022
[By email - appeals@pleanala.ie]

Dear Sir/Madam,

Re: Proposed relevant action (S.34C of P&D Acts) to amend/replace operating restrictions set out in conditions no. 3(d) & no. 5 of the North Runway Planning Permission (ABP Ref. No.: PL06F.217429) as well as proposing new noise mitigation measures at Dublin Airport, Co. Dublin

First Party Response to Third Party Appeal
ABP Ref. PL06F.314485; Fingal County Council Reg. Ref. F20A/0668.

1.0 Introduction

daa plc have retained Tom Phillips + Associates¹ along with a multi-disciplinary team to prepare this First Party Response to a Third-Party Appeal by Raymond and Carmel Fox against a Notification of a Decision to Grant Permission by Fingal County Council (FCC) dated 8th August 2022.

2.0 Executive Summary

The appeal submitted by Raymond and Carmel Fox relates to a notice of decision by FCC to grant an application made on behalf of daa plc for 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, Co. Dublin. The proposed relevant action is to amend/replace operating restrictions set out in conditions no. 3(d) & no. 5 of the North Runway Planning Permission (ABP Ref. No.: PL06F.217429) as well as proposing new noise mitigation measures at Dublin Airport, Co. Dublin.

It is noted that issues raised in this appeal are addressed in our client's First Party Response to a Third-Party appeal submitted by Saint Margaret's The Ward Residents Group (SMTWR). Notwithstanding the aforementioned, we enclose a response to issues raised by Raymond and Carmel Fox in their appeal.

¹ 80 Harcourt Street, Dublin 2, D02 F449.



3.0 Appeal Context

This First Party Response on behalf of the applicant relates to an appeal by Raymond and Carmel Fox against FCC planning permission Reg. Ref. F20A/0668. FCC issued a notification to grant permission for the proposed development on the 8th August 2022 with 5 conditions attached.

The issues raised in this appeal primarily relate to the effects from the north runway on sleep. The appellants state that no noise review was carried out at their property before the runway opened and that they are recording noise levels of 80-100 decibels. Concern is raised with regard to impact on sleep if the night time operational times are extended, in particular that deprivation of sleep would be a safety issue for one of the appellants, a HGV driver.

The appeal makes reference to the previous objection made to ANCA that set out health implications associated with aircraft noise and notes that one of the appellants has since been diagnosed as having diabetes.

The appeal raises issue with the buyout scheme being for dwellings only and states that this needs to be revisited for each individual need.

The appeal notes that conditions 3(d) and 5 were put in place in the original planning permission to protect the residents and that it is unacceptable for FCC to allow this to be revisited.

The appeal requests that conditions 3(d) and 5 are not overturned. The appellants refer to the health and safety reports that have been carried out.

4.0 Response to Items Raised in Third Party Appeal

Raymond and Carmel Fox have raised several concerns in their grounds of appeal with regard to the proposed relevant action. This response does not seek to re-iterate the detailed assessments that have been carried out as part of the application and we refer the Board particularly to the following assessments which have been prepared with the application and suitably respond to the issues raised by Raymond and Carmel Fox in both their observation to FCC and their 3rd Party Appeal to the Board:

- Dublin Airport North Runway Relevant Action Application – Revised Environmental Impact Assessment Report (EIAR), prepared by AECOM, dated September 2021.
- Dublin Airport North Runway Relevant Action Application – Revised EIAR Appendices.
- Planning Report, prepared by Tom Phillips + Associates, dated September 2021.
- Response to ANCA Direction 01 in relation to planning application F20A/0668, Aecom, September 2021 including appendices.
- A Technical Report 'A11267_19_RP035_4.0 NOISE INFORMATION – ANCA REQUEST FEBRUARY 2021', prepared by Bickerdike Allen Partners.
- Revised Regulation 598/2014 Assessment which Includes the following:
 - 'Dublin Airport North Runway Relevant Action Application, Regulation 598/2014 (Aircraft Noise Regulation) Assessment Non-Technical Summary'.
 - 'Dublin Airport North Runway, Regulation 598/2014 (Aircraft Noise Regulation) Forecast Without New Measures and Additional Measures Assessment Report' (Revision 2 – September 2021) Ricondo and Associates Inc.



- 'Dublin Airport North Runway, Regulation 598/2014 (Aircraft Noise Regulation) Cost Effectiveness Analysis Report' (Revision 2 – September 2021) Ricondo and Associates Inc.

It is suggested that the Board should read this response in conjunction with the First Party response to the Third Party Appeal made by St. Margaret's The Ward Residents Group.

What follows is an overview of the responses to the key grounds of appeal raised by the Appellants.

4.1 Health impacts of Aircraft Noise from the Proposed Development have been adequately considered and assessed

The main concern raised in this Third Party Appeal relates to the potential health and safety impacts of the proposed development caused in particular by impacts of aircraft noise on sleep. We refer the Board to the revised EIAR dated September 2021 that was submitted to FCC which considered in detail the health impacts of aircraft noise.

Specifically, Chapter 7 of the EIAR Population and Human Health details the findings of an assessment of the likely effects on population and human health as a result of the proposed Relevant Action. Chapter 7 presents a literature review of existing scientific literature to confirm the potential health impacts of the proposed Relevant Action, in accordance with the Institute of Public Health in Ireland's Health Impact Assessment Guidance². Based on the scientific literature reviewed in this section, the strength of evidence is strong for a direct causal relationship between noise disturbance and health outcomes and quality of life effects, although this is dependent on the level of disturbance. Emerging from the evidence base are a number of key health outcomes, including noise annoyance, sleep disturbance, cardiovascular health, mental health, and children's learning.

Chapter 7 finds that sleep disturbance, potentially induced by aircraft noise, can, in the short-term, impair mood and cognitive performance. The long-term effects of sleep disturbance can influence glucose metabolism, appetite regulation, memory immune response and endothelial dysfunction, which can act as precursors for high blood pressure, cardiovascular disease, diabetes and obesity. However measuring sleep is challenging as there is no one physical, physiological or psychological measure that is considered reliable. As such, there is little evidence evaluating the relationship between aircraft noise and sleep disturbance.

Section 7.8 of Chapter 7 consider the residual significant effects of air noise, ground noise, and vibration after allowing for the benefit of the existing and proposed sound insulation schemes offered by the Applicant. It is noted that there are a number of people assessed as experiencing residual significant adverse effects within Chapter 13: Aircraft Noise and Vibration. The chapter has also identified the number of people who would be highly annoyed or highly sleep disturbed by the implementation of the proposed Relevant Action. The impact of the proposed Relevant Action on air quality, noise and vibration and neighbourhood amenity as a determinant of human health and well-being is assessed as negative (-) for all assessment years of the EIAR (2022, 2025 and 2035). By Order dated 10th February 2021, the Aircraft Noise Competent Authority (ANCA), identified that a noise problem would arise at Dublin Airport from the taking of the Relevant Action for the following reasons:

² Institute of Public Health in Ireland, (2009). Health Impact Assessment Guidance.



- The application proposes an increase in aircraft activity at night, when references against the situation that would otherwise pertain, which may result in higher levels of human exposure to aircraft noise;
- The application proposes a situation where some people will experience elevated level of night time noise exposure for the first time which may be considered to be harmful to human health;
- The EIAR accompanying the planning application indicates that the proposed Relevant Action will give rise to significant adverse night time noise effects. This indicates that the noise effects of the proposed development are a material consideration. Mitigation in the form of a night time noise insulation scheme is proposed by the application. The provision of such mitigation is an indication that the proposed development may give rise to a noise problem.

Having identified that a noise problem may arise, ANCA proceeded to define a Noise Abatement Objective (NAO) and apply the 'Balanced Approach'.

The function of the NAO which seeks to *"limit and reduce the long-term adverse effects of aircraft noise on health and quality of life, particularly at night, as part of the sustainable development of Dublin Airport"* is to implement a long term management plan to reduce the noise effects of aircraft operations on communities in the vicinity of Dublin Airport.

It is noted that the NAO includes targeted and measures noise outcomes which aim to reduce the number of people who will be impacted by noise by 2030, 2035 and 2040, when compared to the situation existing in 2019. The NAO also seeks to reduce the number of people exposed to noise levels above set threshold levels within the timelines outlined. It is noted that the Regulatory Decision issued by ANCA followed detailed analysis, modelling, assessment and consultation to quantify negative impacts.

The Planning Authority assessment of the revised EIAR submitted for the proposed development states that the main significant direct and indirect effects on the environment of the Relevant Action as amended by and as incorporating the Relevant Direction are noise and human health and well-being effects. It is noted that these will be managed over time by appropriate abatement and mitigation measures. The assessment concludes that:

"The Relevant Action Application, as amended by and incorporating the Regulatory Decision, together with the NAO has over time, the potential to reduce overall noise generation, including night time noise generation, at the airport. This has the potential for longer term reduction of noise, the progressive reduction in residential dis-amenity and the amelioration of noise related human and well-being. This would arise as a result of a number of factors. The First Condition of ANCA's Regulatory Decision sets a night time noise generation based restriction on the operation of aircraft for the first time at the airport. The condition would also effect further restrictions on the night time use of noisier aircraft, which would both restrict their use and would also encourage transition to more modern quieter aircraft fleet. The Third Condition of the Regulatory Decision would provide for a voluntary sound insulation scheme specifically focused on reducing night time noise effects. In addition the NAO would set specific expected outcomes for the reduction of all noise from aircraft operations (i.e. day, evening and night) with monitoring and assessment to ensure achievement of these outcomes. The inclusion of specific short, medium and long term health based outcomes go beyond EC guidance and yet are considered achievable. Specific outcome reductions in noise generation would result in beneficial effects for human health relative to medium and



*longer-term. ANCA will monitor the effectiveness of these measures with regard to noise through the requirements of the NAO*³.

The Planning Authority assessment concludes that the *“Relevant Action application as amended by and incorporating the Regulatory Decision, would not have unacceptable direct or indirect effects on the environment subject to the implementation to the mitigation measures and conditions”*⁴.

The health related concerns raised by the Appellants are noted. It is considered that these impacts have been adequately considered in the planning application and further information submitted to FCC by the Applicant and in the assessment of the application by the Planning Authority and ANCA.

Having assessed the impacts of the proposed Relevant Action ANCA’s Regulatory Decision sets out 3 no. conditions which have been included the decision issued by FCC.

Condition no. 3 which sets out detail of the Noise Quota Scheme has been imposed *“to limit the impact of the aircraft noise at Dublin Airport on sleep disturbance in the interest of residential enmity and to ensure the effective implementation of the Noise Abatement Objective for the Dublin Airport by means of noise-related limit on aircraft operations”*.

Condition no. 4 which sets out the night time restriction on the use of runway 10L/28R except in exceptional circumstances has been imposed *“to permit the operations of the runways in a manner which reduces the impacts of aircraft night time noise, whilst providing certainty to communities as to how they will be affected by night time operations from the North Runway, while also providing continuity with the day-time operating patterns set down by Condition 3(a)-(c) of the North Runway Planning Permission”*.

Condition no. 5 covers details of the voluntary residential sound insulation grant scheme which has been imposed *“to mitigate the impact of aircraft night time noise as a result of the use of the airport’s runways”*.

In summary, the concerns related to health as a result of aircraft noise from the proposed development are considered to have been sufficiently addressed in the planning application and its assessment by FCC and ANCA. Appropriate conditions have been included in the decision to limit and mitigate aircraft night time noise insofar as possible. The Applicant welcomes the imposition of these conditions and will ensure they are complied with.

4.2 Proposed Development is in accordance with Section 34C(1)(a) of the Planning and Development Act 2000 (as amended)

The appeal notes that conditions 3(d) and 5 were put in place in the original planning permission to protect the residents and that it is unacceptable for FCC to allow this to be revisited.

Pursuant to Section 34C(1)(a) of the Planning and Development Act 2000 (as amended), *“The person in whose favour a relevant permission operates, may by virtue of this subsection and notwithstanding any other provision of this Act (including section 34), make an application*

³ Our emphasis

⁴ Our emphasis



under section 34 to the planning authority where application is only for a relevant action to be taken.”

Section 34C(23) defines a ‘Relevant Action’ as: “ ‘Relevant Action’, in relation to a relevant operating restriction the subject of a relevant application, means –

- a) To revoke the operating restriction,*
- b) To amend the terms of the operating restriction in the manner specified in the application,*
- c) To replace the operating restriction with the alternative operating restriction specified in the application,*
- d) To take an action referred to in paragraph (a), (b) or (c) together with introducing new noise mitigation measures or revoking, revoking and replacing, or amending the terms of, existing noise mitigation measures, or a combination thereof,*
- e) If the relevant application relates to 2 or more relevant operating restrictions, to take any combination of any of the actions referred to in paragraphs (a) to (d),*
or
- f) To take an action referred to in paragraph (a), (b), (c), (d) or (e) together with revoking, revoking and replacing, or amending the terms of, a condition of the relevant permission.*

‘relevant application’ means an application referred to in subsection (1)(a); ‘relevant operating restriction’, in relation to a relevant permission, means an operating restriction included in that permission; ‘relevant permission’ means a permission granted under section 34 –

- a) For development at the airport, and*
- b) That includes an operating restriction.”*

The relevant permission (FCC Reg. Ref.: F04A/1755; ABP Ref: PL06F.217429) allows for development at the airport and includes operating restrictions (including Conditions 3(d) & 5). These ‘relevant operating restrictions’ control the night time operation of the runways at Dublin Airport. Furthermore, it is noted that the relevant permission benefits the applicant in the operation of Dublin Airport, therefore this application may be made to the Planning Authority to undertake a Relevant Action and it is appropriate that FCC can revisit these conditions.

The Planning Officers assessment states that *“it is considered that the application relates to proposed amendments to operating restrictions in respect to a permission granted for development at the airport and the provisions under Section 34C are applicable”* confirming that the making of the planning application is appropriate in accordance with the legislative provisions.

4.3 Buyout Scheme

In response to the issue raised about the buyout scheme it is noted that this was conditioned under ABP Ref. No.: PL06F.217429. We refer the Board to condition 9 of that permission which states:

"Prior to commencement of development, a scheme for the voluntary purchase of dwellings shall be submitted to and agreed in writing by the planning authority. The scheme shall include all dwellings predicted to fall within the contour of 69 dB LAeq 16 hours within twelve months of the planned opening of the runway for use. Prior to the commencement of operation of the runway, an offer of purchase in accordance with the agreed scheme shall have been made to all dwellings coming within the scope of the scheme and such offer shall remain open for a period of 12 months from the commencement of use of the runway".

This condition is being implemented by daa and biennial reviews are included within the scheme to allow for eligibility to be reassessed on an ongoing basis every 2 years after opening of the North Runway. The applicant did not propose any changes to the buy-out scheme as part of the application and feels that the scheme approved under Condition 9 is appropriate. It should also be noted that ANCA did not introduce any changes to the buy-out scheme in the Regulatory Decision.

5.0 Conclusion & Recommendations

As indicated in the above submission and the material submitted with the application, it is considered that the proposal as determined by the planning authority and competent authority (ANCA) is appropriate. The proposed Relevant Action is fully in compliance with multi-governmental strategic objectives and policies that seek to facilitate the growth of Dublin Airport and foster the airport's connectiveness to the UK, Europe and wider global environment. By comparison, the permitted operating restrictions which this application seeks to amend/replace run contrary to these strategic objectives and policies.

The potential for impacts on local communities as a result of the proposed Relevant Action has been assessed in great detail through the course of preparing this application and subsequent response to FCC's request for FI and ANCA's Direction's. In this regard, the proposed Relevant Action seeks to apply a balanced outcome. As a result, in addition to amending/replacing the above referenced operating restrictions the proposed Relevant Action also seeks to propose a preferential use of the runway system, a noise insulation grant scheme, a night noise quota system and a noise monitoring framework.

This package of measures will ensure that the overall noise effects of the proposed Relevant Action will not exceed the noise situation from 2019. In this regard the proposed Relevant Action is fully in accordance with the proper planning and sustainable development of the area and we respectfully request that Board not allow the appeal and direct permission to be issued without delay.

We note that the 3rd party appellant has requested that ABP conduct an Oral Hearing in relation to this matter. Our client has no objection to this request.

Yours Sincerely



Director
Tom Phillips + Associates