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11th February 2017

Mr. Paul Reid, Chief Executive,
Ms. AnnMarie Farrelly, Director of Services,
Fingal County Council,
Main St.
Swords
Co. Dublin

by email

Re: Application F04A/1755/EI to extend duration of permission F04A/1755 for third runway at Dublin Airport

Dear Paul, AnnMarie,

I write to express my concern about this application and draw your attention to two legal aspects of the application before the Council.

1. Bona fides

It appears that the application for an extension to the permission is not made in good faith as the Dublin Airport Authority (DAA) do not intend to comply with all of the conditions of the permission.

The planning system imposed conditions 3 and 5 of permission F04A/1755 which restrict nighttime use of the proposed and existing runways in the interests of public health and residential amenity. This was done following extensive and expensive engagement by local residents seeking to protect their health and residential amenity.

As you know, DAA have been very willing to meet Councillors and Council officials. At those meetings they have described conditions 3 and 5 as unacceptable to them. For many years they said that they would not develop the runway under those conditions.

In 2008 DAA lodged application 06F.PC0056 with An Bord Pleanála seeking to amend condition 3 and delete condition 5 of their planning permission using the legal provisions for Strategic Infrastructure Development. In response, An Bord Pleanála ruled "that the proposed alterations to planning permission ref. PL 06F.217429 do not constitute strategic infrastructure." and that "[a]ny planning application for the proposed alterations should be made in the first instance to Fingal County Council."

However, no such application has been made to Fingal County Council.

In 2016, the DAA, knowing that the 10-year planning application is about to expire, took steps to comply with 'prior to development' conditions and formally commenced the development. Minor works have been done to date.

The DAA has now made clear that it intends to build the runway but not to comply with conditions 3 and 5. It intends to achieve this by convincing the Minister for Transport Tourism and Sport, and the Oireachtas, to bring in legislation which will either directly invalidate the conditions or will empower the Irish Aviation Authority to overrule or vary the conditions.

S. 42 of the Planning and Development Act 2000, as amended by the Planning and Development (Amendment) Act 2010, under which this application is made, provides that the authority shall "extend the appropriate period by additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed", provided that various requirements are met."

In these circumstances, the application for extension of the time period of the permission which contains conditions 3 and 5 is made in bad faith. The Council is being asked to extend by "an appropriate period" which it "requisite to enable the development to which the permission relates to be completed" in circumstances where applicant is assuring the Council, local residents, and elected representatives that two key conditions of the permission are to be set at nought by a process outside the planning system. To grant an extension of time in these circumstances would undermine the integrity of the planning system and the faith of the public in the system.

2. Obligations of Fingal County Council under s.15 of the Climate Action and Low Carbon Development Act 2015, in the exercise of its functions under s.42 of the Planning and Development Act 2000

Fingal County Council, like all other public authorities, is subject to the obligation in s.15 of the Climate Action and Low Carbon Development Act, 2015:

15. (1) A relevant body shall, in the performance of its functions, have regard to—

- (a) the most recent approved national mitigation plan,
- (b) the most recent approved national adaptation framework and approved sectoral adaptation plans,
- (c) the furtherance of the national transition objective, and

(d) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

While no national mitigation plan is yet in place, (c) and (d) are effective.

S.42(a)(ii) of the Planning and Development Act, under which this extension application has been made, requires that the planning authority is satisfied on a number of conditions including

(II) that there have been no significant changes in the development objectives in the development plan or in regional development objectives in the regional planning guidelines for the area of the planning authority since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area,

and

(III) that the development would not be inconsistent with the proper planning and sustainable development of the area having regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section,

There is no specific reference in these conditions requiring assessments of policy compatibility to climate change. However, the subsequent provisions of the Climate Action and Low Carbon Development Act 2015 are clear. The obligation to have regard to the furtherance of the national transition objective and to the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State applies to the exercise by Fingal County Council of *all* of its functions. This includes functions from previous legislation whether or not they were, before the 2015 Act, to be exercised subject to an obligation to have regard to climate issues. The Council's power under s.42 of the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2010 is such a function.

In having regard to the furtherance of the national transition objective and the objective of mitigating greenhouse gas emissions, the following are relevant:

The plan for a third runway is based on predictions for increased aviation demand and passenger numbers which are incompatible with the 1.5 degree target agreed in the Paris Agreement.

The Paris Agreement commits signatories to for economy-wide reductions, which rules out an increase in emissions from aviation.

Please see the attached study for the European Parliament on *Emission Reduction Targets for International Aviation and Shipping*, available online at

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569964/IPOL_STU\(2015\)569964_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569964/IPOL_STU(2015)569964_EN.pdf) with the following abstract:

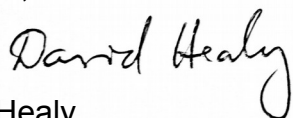
“This study provides an overview of potential CO2 mitigation targets for international aviation and maritime transport and analyses which targets would be compatible with the global long-term goal of keeping the temperature increase below 2°C compared to pre-industrial levels. The analysis supports the view that it is important to establish targets for both sectors which clearly indicate that emissions cannot grow in an unlimited and unregulated way.”

In addition, please note the decision of the Austrian Federal Administrative Court of 2nd February 2017 refusing permission for a further (parallel) runway at Vienna Airport because of climate impact and Austria's obligations to tackle climate change. I attach a copy of that decision, available online at

https://www.bvwg.gv.at/amtstafel/291_ERKENNTNIS_2.2.17_ee.pdf?5spp26

I hope you will take these significant legal issues into account in dealing with the application from the Dublin Airport Authority.

Best regards,



Cllr. David Healy