

Annex F3: Ombudsman Key Correspondence (OMB-158504-Q7T9Q4)

Source

Compiled from Ombudsman correspondence files, Case OMB-158504-Q7T9Q4 (Fingal County Council, Planning Enforcement). Full email archive in: 2025/Ombudsman (Dept Transport)/Ombudsman-comms/

Case Overview

- Case Number: OMB-158504-Q7T9Q4
- Complaint against: Fingal County Council
- Subject: Failure to enforce Condition 1 of planning permission F04A/1755 (flight paths)
- Filed: 25 April 2025
- Caseworker: Ahmed El Baradie
- Status as of February 2026: Still open, repeatedly stalled by Fingal's non-cooperation

Key Document 1: Original Complaint (25 April 2025)

Allegations of maladministration by Fingal on two levels:

1. "Failure to act on a known and documented planning breach"
2. "Misuse of process to avoid scrutiny, frustrate access to information, and evade statutory responsibility"

Enclosed the OCR transcript of Fingal's September 2022 warning letter (see Annex F1) formally acknowledging: "Aircraft flight paths not in accordance with the permission," "Non-compliant mode of runway operation," "Noise levels outside the permitted environmental impact."

Key quote: "This 'open file' has become a pretext for silence."

Key Document 2: O'Brien Technical Summary to Ombudsman (27 May 2025)

Verbatim summary provided during a phone call with Ahmed:

- "The original EIS entirely depends on a departure route of 5 nautical miles straight ahead, climbing 3,000ft before any turns."
- "100% of aircraft are presently turning at the end of the runway, immediately after take-off."
- "They turn between 30 and 86 degrees and the resulting environmental impact falls on a fundamentally different area."
- "Our estimate is the environmental impact in terms of number of people directly overflown is 335% of that which was permitted."
- Core question: "Is Fingal going to enforce this fundamental breach of the planning permission or not and if not why not?"

Key Document 3: Fingal's Report to Ombudsman (22 July 2025)

Fingal argued:

- No decision yet made on enforcement
- "Nuances regarding the interpretation of Condition 1"

- Flight paths were never fixed: cited the 2004 EIS language that "the tracks shown in Appendix G3 cannot be considered to be definitive"
- Condition 1 may not cover flight paths, citing *Diamrem Limited v Cliffs of Moher Visitors' Centre* [2021] IECA 291
- Fingal's position: "there is no specific condition imposed in the North Runway Permission regarding flight paths and/or regulating same."
- 12-week enforcement deadline is "aspirational"
- Warned the Ombudsman: "the Council is anxious to ensure that the investigation of the complaint by your Office does not prejudice any decision made on enforcement"

Key Document 4: Ahmed El Baradie's "Not Satisfied" Finding (8 October 2025)

After receiving Fingal's second report, the Ombudsman caseworker stated: "I have received the Council's report but am not satisfied with the contents of same."

This is significant: the Ombudsman investigator rejected Fingal's response as inadequate.

Key Document 5: O'Brien's Legal Rebuttal (21 August 2025)

Key arguments:

- "The current early-turn departure route from Runway 28R is a material deviation from the Noise Preferential Routes assessed in the 2007 EIS and upon which permission was granted. This constitutes unauthorised development under Condition 1."
- "In the present Relevant Action, daa did not apply for permission to retain or regularise the altered route."
- "ABP's jurisdiction is confined to determining the application actually made. It has no authority to permit a materially different development element which has not been applied for."
- "Fingal County Council's reliance on ABP's 2025 decision as a reason to delay or avoid enforcement action is misplaced."

Timeline of Fingal's Obstruction

Date	Event
21 September 2022	Fingal issues Warning Letter acknowledging breach
25 April 2025	Ombudsman complaint filed
27 May 2025	Ahmed requests report from Fingal
22 July 2025	Fingal provides legalistic report (approximately 2 months)
28 August 2025	Ahmed requests further info, gives 2 weeks
8 October 2025	Ahmed receives 2nd report: "not satisfied"
14 November 2025	Ombudsman seeks face-to-face meeting with Fingal
Late November 2025	Meeting takes place
December 2025	Fingal fails to meet Christmas deadline

23 December 2025	Ombudsman office hit by cybersecurity incident
14 January 2026	Fingal cites "unforeseen circumstances"
13 February 2026	Fingal cites "change in staff dealing with the matter"
19 February 2026	Ahmed promises update "next week"

Total elapsed since September 2022 warning letter: 173+ weeks with no enforcement action.

Aarhus Relevance

This correspondence demonstrates that the domestic remedy (enforcement by the planning authority) has been exhausted in practice, if not in law. The planning authority issued a formal warning letter in September 2022 acknowledging the breach, then took no enforcement action for over three years. When the Ombudsman intervened, Fingal engaged in a pattern of delay, obstruction, and legal argument designed to avoid any enforcement decision. The Ombudsman investigator found Fingal's responses unsatisfactory. This pattern of institutional inaction is precisely the type of access to justice failure that the Aarhus Convention is designed to address.