

Our reference: OMB-163150-M3X3H8

19 March 2026

Mr. Eoin Keary

Sent by email only to: eoin@edgescan.com

Dear Mr. Keary,

I refer to your complaint to this Office concerning Fingal County Council regarding the delay in pursuing planning enforcement action in relation to flight paths from Dublin Airport's North Runway that are not in keeping with those contained in the Environmental Impact Statement (EIS) of condition 1 of planning permission F04A/1755.

Your complaint was one of a large number of complaints received by this Office concerning this matter. In that regard, we have dealt with the issues concerned under one single investigation, and we provide you with the below information relating to the investigation conducted and the outcome of same.

Having investigated the matter, I wish to inform you that this Office is not in a position to uphold the complaint. I have set out the reasons for this below. However, I do hope that the additional information provided and the commitments that this Office has obtained from the Council, are of assistance to you in some way.

Council's First Report

On commencing this investigation, I requested a report from the Council, details of which I have outlined below for your information.

Background and General Overview of Council's Position

The Council says by way of general overview, it has not yet made any decision under Part VIII of the Planning and Development Act 2000, as amended ("the PDA") on enforcement arising from the complaint. The Council have provided several reasons for the delay in making this decision, including, inter alia:

- Nuances regarding the interpretation of condition 1 of planning permission F04A/1755 – including the legal interpretation and the extent to which same could be enforced;
- complexities surrounding the legal and regulatory framework governing flight paths and noise at Dublin Airport; noting the technical nature of the substance of the complaint (flight paths), the need to engage with specialist consultants to assist in considering same (noting that the Council would not typically have access to such consultants internally); and

- the evolving status of regulatory consents governing operations at Dublin Airport – such as the Relevant Action application and decision (discussed below), which considered the issue of flight paths at Dublin Airport, including by reference to the role of other regulatory bodies such as the Irish Aviation Authority and Air Traffic Control.

The Council says the investigation into the complaint remains ongoing and it hopes to be in a position to make a decision on the matter in the ‘medium term’ – noting that further consideration (which may include consultation with expert consultants engaged by the Council to-date) has to be given to a number of issues, including the recent Relevant Action decision.

Noting the broad power under section 153(1) of the PDA, which allows the Council to conduct such investigations as it (as opposed to any third party) considers necessary to make a decision on enforcement (discussed below), the Council highlight that whilst the complaint referred to herein was made in 2023 – the Relevant Action application (which the Council considers a relevant consideration to the investigation of the complaint) was made in 2020 and has been progressing through the regulatory process in the interim – before the Aircraft Noise Competent Authority (ANCA) at first instance (F20A/0668); and An Coimisiún Pleanála (ABP-314485-22), on appeal.

The Council says, as outlined below, the issue of flight paths was considered in this process – including in the more recent extensive decision of An Coimisiún Pleanála, dated 17 July 2025, which the Council is now in the process of considering. The Council says this is a very lengthy decision and requires consideration by all stakeholders.

The Council maintain that the subject matter of the complaint is complex and requires careful and thorough investigation prior to making any decision on enforcement.

Noting that the complaint relates to the enforcement functions of the Council under the Part VIII of the PDA, they highlight that the Supreme Court has specifically identified the important role played by the Council in enforcing planning laws. They cite *Meath County Council v Murray* [2017] IESC 25 (§60 et seq), [2018] 1 I.R. 189 where it was stated that:

“The planning authority has a unique role in the planning process. Part of that role unquestionably lies in the enforcement of the code.....the overarching supervisory guardian of planning control at executive level must be the statutory body established to that end and vested with the powers to that effect...”

Noting the foregoing; the nature of the enforcement process under the PDA (discussed below); and the public interest in allowing the Council to carry out its enforcement functions in a manner which it considers appropriate; the Council was/is anxious to ensure that the investigation of the complaint, made by your Group, does not prejudice any decision made on enforcement. The Council notes that in these circumstances, whilst endeavouring to respond to your queries, and noting that the investigation is ongoing, it cannot disclose the outcome of any of its deliberations to-date.

The Council says, for completeness, insofar as the complaint seeks the Council to take action in relation to alleged unauthorised development, it remains open to any person to take enforcement proceedings seeking to compel compliance with any breach of planning permission pursuant to section 160 of the PDA.

The Council's more specific responses to the various matters raised, in our request for further information in relation to this complaint, are set out hereinafter.

Condition 1 of the North Runway Permission

The Council says Planning Permission F04A/1755 (ABP Ref. No. PL06F217429) – which was granted permission by the Council at first instance, and on appeal by An Bord Pleanála (now An Coimisiún Pleanála) ("the Commission") pursuant to the provisions of the PDA - is the relevant consent/permission for the construction and operation of the North Runway at Dublin Airport ("the North Runway Permission").

Condition 1 of the North Runway Permission provides:

"The development shall be carried out in accordance with the plans and particulars and the Environmental Impact Statement lodged with the application as amended by the further plans and particulars received..... except as may otherwise be required in order to comply with the following conditions. Reason: In the interest of clarity."

The Council says the North Runway permission included a series of specific conditions aimed at addressing potential noise impacts/issues arising from the proposed development, including the operation/use of Dublin Airport – see for example: Condition 5 (night-flights – recently replaced by the Relevant Action Decision of the Commission, dated 17 July 2025); and Condition 7 – voluntary noise insulation scheme.

The Council says in this context, it should be observed that there is no specific condition imposed in the North Runway Permission regarding flight paths and/or regulating same. The Council says the information included within the submitted EIS with the North Runway Permission points to certain assumptions and uncertainties around the flight paths. Section 16.1.3.4 notes:

*"The flight tracks associated with the existing 10/28 runway, the existing 16/34 runway and the existing 11/29 runway are in accordance with AIP Ireland as published by the Irish Aviation Authority. For the proposed runway, assumed that the aircraft would join up with the tracks used for the existing 10/28 runway which was agreed with the Irish Aviation Authority to be a **reasonable assumption** at this stage. Appendix G3 shows the track data used."*

Section 16.1.3.5 notes caution over the precision of the aforementioned assumption:

*"It should be noted that the absolutely precise route that an aircraft will adopt is very dependent on factors such aircraft performance, weather, instrumentation accuracy and pilot skill. **Therefore the tracks shown in Appendix G3 cannot be considered to be definitive.** However the logarithmic nature by which sound is described, and the averaging process of the assessment procedure,*

means that the resultant inaccuracies are relatively small."

The Council say these paragraphs indicate that there was uncertainty over the location of the flight paths upon which the noise assessment was based; that a range of parameters exist which may influence adherence to any flight path; and that the flight paths in question were based on the working assumption that departure routes from the new North Runway would merge with those from the existing main runway.

The Council adds that the interpretation of Condition 1 also presents difficult legal questions of interpretation, insofar as it is contended in the complaint that this condition regulates the ongoing use (flights and flight paths) of the land at Dublin Airport. The Council cited the Court of Appeal in *Diamrem Limited v Cliffs of Moher Visitors' Centre* [2021] IECA 291, in considering an assertion that condition 1 regulated the use of a car park in the context of a planning enforcement case (section 160 of the PDA), outlined (at sections 72 & 73):

"In my opinion, the respondents are correct in their submission that such a condition must relate to the day-to-day terms upon which the ongoing use of the land is to be permitted, such as conditions regarding hours of operation, noise levels, and so forth. Condition 1 is not that type of condition, and is, therefore, not a condition 'concerning the ongoing use of the land'."

The Council note that similar comments were made by the High Court more recently in *Leitrim County Council v Dromaprop Ltd* [2024] IEHC 233.

The Council also reference the complex and evolving nature of noise regulation at Dublin Airport, referencing the Relevant Action application – which as of 17 July 2025 – was determined by the Commission (see Relevant Action Order ABP-314485-22). They claim the overlap between the complicated (including regulatory context) and fluid nature of the issue of flight paths is illustrated by reference to section 4.2 of the Inspector's Report, prepared as part of the Relevant Action decision. The Council is currently considering the Relevant Action decision and how that may be relevant to any decision on enforcement.

The Council clarified that the above information was provided with a view to demonstrating the complexity of the issues which arise in this complaint – i.e. whether the complaint is premised on a correct interpretation of condition 1; whether condition 1 regulates flight paths – and, if so, the extent of such regulation; and based on the determination of the aforesaid issues, whether there is an evidential basis for any enforcement.

Enforcement Procedure

The Council says the enforcement procedure which applies, upon receipt of a complaint of unauthorised development, is provided for by Part VIII (sections 151-164) of the PDA. Section 152(3) of the PDA provides that a "planning authority shall issue the warning letter under subsection (1) as soon as may be but not later than 6 weeks after receipt of the representation under subsection (1)", and a Warning Letter did issue in this case and was responded to by the developer.

The Council confirmed that it is then required to carry out an investigation on the alleged unauthorised development pursuant to section 153 of the PDA, the – with section 153(1) empowering the Council to *“make such investigation as it considers necessary to enable it to make a decision...”*. In that regard, the Council are continuing to carry out such investigations as they deem necessary to enable it to make a decision on enforcement.

The Council adds that section 153(2) of the PDA sets out aspirational time-periods for enforcement, where it notes that decision should be *“taken as expeditiously as possible”*, with the *“objective”* to ensure a decision is taken within *“12 weeks”*. They cite the High Courts affirmation of this interpretation in *Lagan Asphalt Limited v Hanly Quarries Limited* [2021] IEHC 450.

The Council says that this aspirational, as opposed to mandatory, time period, is consistent with the discretionary nature of the Council’s powers to *“make such investigation as it considers necessary to enable it to make a decision”* – with investigations likely to differ in complexity depending on the subject matter of the complaint. also It was further noted that this is consistent with an outer time limit of 7 years for enforcement action in cases of certain unauthorised development, provided for under section 157 of the PDA (which does not apply in this case) .

The Council provided the above as a brief summary of the enforcement investigative process under the PDA, which is ongoing in this case. Once the investigation is complete, the Council must place a copy of its decision on the planning register – pursuant to section 7 and section 153(4) of the PDA, which is available to members of the public to access.

Council’s Second Report

I subsequently requested a further report from the Council, the details of which I have outlined below for your information.

Prioritisation of planning enforcement cases

The Council says each enforcement complaint is managed on a case-by-case basis. Warning Letters and Enforcement Notices are issued in respect of alleged unauthorised developments or alleged breaches of planning permissions throughout the county. Site inspections by Planning Inspectors are undertaken to ascertain the enforcement action to be initiated. In some cases, investigations are more protracted and involved and it can take a number of site inspections to establish the level of enforcement action required. In certain cases, further information may be sought and issues that arise can be of a highly technical nature, requiring specialist consultant expertise. In that regard, files can remain open for ongoing monitoring until resolution or where legal costs are being discharged.

The Council says that this Enforcement file would be categorised as one of a highly complex and technical nature, requiring careful and thorough investigation by the Council prior to making any decision on enforcement. There are numerous stakeholders involved and, it is a complex evolving situation.

Further details on the time taken to deal with the matter

The Council says, noting that your complaint alleges non-compliance with a use permitted and regulated by Condition 1 of the North Runway Permission, the court cases (noted previously) highlighted a potential difficulty (which requires investigation and consideration) in interpreting and enforcing Condition 1, as a condition regulating the use of land. The Council considers that the legal principle identified in the cited case law is a relevant consideration which it should factor into its deliberations and investigation.

The Council also says, as previously outlined, that the Relevant Action decision addresses, to varying extents, the issue of flight paths, albeit the primary focus of the Relevant Action application related to night flights. The Council says the extent to which night time flights may be permissible may generally impact on the volume and timing of flights at the airport, which may have implications for precise flightpaths. This forms part of the relevant planning history of the site and concerns the use and operation of the airport.

Updating complainants

That Council says that it did not put the matter into abeyance pending the outcome of the Relevant Action but rather the investigation remains ongoing. There is no obligation, by reference to the enforcement provisions contained in the PDA, to provide periodic updates to a complainant in respect of an ongoing enforcement investigation. The Council says that while complainants perform a valuable function in drawing potential unauthorised development to the attention of the planning authority, it is not the case that complainants have ownership of an enforcement file. The Council says that enforcement is a function which the planning authority has been mandated to carry out in the public interest, rather than in the interests of a particular complainant. The Council says complainants will be informed if no enforcement action is taken when the investigation concludes, and it makes a decision on the related matter.

For complete clarity, all of the information provided in the sections of this letter up to this point represent the views and position of the Council, in response to our requests for information during our investigation of this complaint.

The role of the Ombudsman

The Ombudsman may examine actions carried out by certain public sector providers, where there is evidence to suggest that improper, incorrect or unfair administration has occurred and, the action complained of has had an adverse effect on the complainant. Where the evidence shows that improper, incorrect or unfair administration and adverse effect have occurred, the Ombudsman may recommend that the body take a certain course of action to provide redress to the complainant. In the absence of evidence of that improper, incorrect or unfair administration and adverse effect, there is no basis for pursuing a complaint with a body.

For avoidance of any doubt as to this Office's exact role, specifically in the area of planning enforcement, I should explain that local authorities have discretion, under the PDA, on whether to take enforcement action in cases of breach of planning legislation. In deciding to take such action they usually take account of the extent of non-compliance, if any, and the likelihood of

successfully pursuing the matter through the courts. In light of this discretion, and also the non-legally binding nature of Ombudsman recommendations, this Office cannot direct a planning authority to take any particular enforcement action in such cases. The role of the Ombudsman in cases like this is to consider whether the Council has used its discretionary powers in a reasonable manner. Where there is strong evidence that the Council have used their discretion unreasonably, this Office is limited to recommending that the Council reconsider its position. However, the Council is not compelled to accept this recommendation and where they do, they are not compelled to reach an alternative conclusion. This Office can also examine delays by Councils in pursuing planning enforcement action but this must be with regard to the relevant timeframes contained in the PDA.

The Ombudsman's View

I am satisfied that planning legislation does not oblige a Council to make a decision on whether to issue an Enforcement Notice within 12 weeks of the Warning Letter issuing. Specifically, section 153(2)(b) of the PDA says that it shall be the objective, i.e. the aim of the Council to ensure a decision is made within that timeframe. As no legislative obligation on this matter exists, to which the Council must abide, I cannot uphold this aspect of your complaint. The role of this Office is to therefore examine whether the reasons offered by the Council for the time taken to deal with the matter are reasonable, given all the particular circumstances of this case.

Having examined the matter in detail, I consider that the Council has provided a reasonable explanation that the legal principle cited regarding the interpretation of the ongoing use of land is a material consideration for its deliberations regarding whether to issue an Enforcement Notice, or alternatively to close the file. Noting again the Council's position that their investigation remains ongoing, and accepting that the applicable legislation provides Councils with discretion to conduct investigations to the extent that they need to, in order to reach a decision, I can only seek to ensure that the information I have been provided with proves that such an investigation is in fact active and ongoing. From the reports provided to this Office, I am satisfied that this is the case.

Nonetheless, I undertook to discuss this point directly with representatives of the Council, noting the overall timeline, the broader public interest in this case and number of people effected by the substantive issues under investigation. I met with a number of Council representatives involved in the case and discussed the contents of their reports further.

Additionally, the Council clarified that it was not awaiting the outcome of the Relevant Action before making a decision on the matter. However, I cannot fault the Council's rationale for why it considers the Relevant Action had a consequential bearing on its enforcement investigation. I therefore must also take account of the fact that the Relevant Action Decision was only issued in late July 2025. In that regard, I cannot find it unreasonable that the Council might seek [both] technical [and legal] opinion on the decision itself and would also need additional time to consider such opinions and the impact they may have on the broader issues in question in this case. The Council elaborated further, explaining that a dedicated multidisciplinary team meets regularly and has access to both inhouse and outside legal professionals to assist with progressing this case.

In follow up to our meeting, the Council informed me that it will endeavour to ensure that a decision on enforcement is made within the next 6 months. Furthermore, the Council has undertaken to communicate this information directly to you, and other complainants, in the next two weeks. In my response to the Council, I will note that this Office will engage with the Council again in the intervening months, to satisfy itself that the investigation remains live and that the 6 month timeline remains realistic and feasible. I will also note that if there was, for any reason, to be a delay to the timeline provided, there is an obligation on the Council to communicate clear information on that delay to any interested parties.

While I fully appreciate your view, that the matter is more straightforward from an enforcement perspective, I cannot find the Council's position, that it must carefully consider all pertinent information available before making an informed decision, given that the subject matter of the complaint comprises of technical elements, to be unreasonable. For these reasons, I am not in a position to find the Council's explanation, for the time taken to deal with the matter to be unreasonable in the context of our role and remit regarding such matters which does not extend to issues of technical expertise.

Additionally, I am satisfied that planning legislation only requires a Council to notify a complainant when a Warning Letter and/or Enforcement Notice has issued. Given that the Council has now provided a timeframe to make a decision on the matter, and my position on the broader complexities of the case as noted above, I am not in a position to pursue this issue further.

Conclusion

In summary, this Office takes the view that the time taken to deal with the matter, while undeniably extensive, is not unreasonable, in the context of evidentiary threshold required to form a view that unauthorised development has taken place from a technical perspective, by virtue of legal principle cited and, adjudications by the Commission affecting the North Runway. We also take this view in light of the reassurance provided by the Council to this Office, concerning the timeframe to make the decision as it relates to pursuing enforcement action.

I do appreciate that you may be disappointed with the outcome of our investigation. Based on the information available, and the limitations of this Office with regard to planning enforcement cases as set out above, this Office is not in a position to pursue the matter further with the Council. However, the Ombudsman has undertaken to follow up with Council on this matter, to ensure that the commitments given to this Office are actioned. I hope the above clarifies the position for you, that the additional information provided is of benefit, and that the timelines provided as a result of this Office's engagement with the Council are of assistance to both you and others impacted by the issues in this case. Accordingly, I will now close our file in relation to your case.

Yours sincerely,

Ahmed El Baradie
Investigator
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