



[2024] IEHC 589

THE HIGH COURT  
PLANNING & ENVIRONMENT

[H.JR.2023.0000383]

IN THE MATTER OF SECTION 50, 50A AND 50B OF THE PLANNING AND DEVELOPMENT  
ACT, 2000 AS AMENDED

BETWEEN

DAA PLC

APPLICANT

AND

FINGAL COUNTY COUNCIL

RESPONDENT

**JUDGMENT of Humphreys J. delivered on Thursday the 17th day of October 2024**

1. In making the development plan, the members of the council here voted to zone a sports complex (operated by ALSAA at Dublin Airport) as Community Infrastructure (**CI**), whereas the landowners, daa, wanted it zoned Dublin Airport (**DA**). The development plan is challenged on a number of grounds, and on a separate basis regarding an issue of noise insulation, but the critical question is whether extraneous non-planning issues were considered in making the ALSAA zoning decision.

**Facts**

2. The geographical context and the basic sequence of steps for the adoption of the plan is set out in *Friends of the Irish Environment v. Minister for Housing* [2024] IEHC 588 (Unreported, High Court, 17th October 2024) and the two judgments should be read together. The following are particularly relevant to the present case.

3. Dublin Airport hosts among other things a sporting facility, ALSAA (originally the Aer Lingus Social and Athletics Association), which began in 1948 as a facility for Aer Lingus staff but is now open to the general public. It consists of two properties, a main complex and a pool.

4. The pool is zoned High Technology (**HT**) and the use of that land for recreation isn't expressly permitted or prohibited by the uses set out in the development plan, so development is considered on a case by case basis.

5. There has been an ongoing dispute between the owners and occupiers of the site. As mentioned, daa are the owners of this landholding. The current operators, ALSAA, are in place under licence. The previous licence expired on 30th April 2022 and they had been given a notice to vacate (expiring May 2023). The licence has since been extended. Daa informed the council that:

"It is daa's intention (as confirmed several times with all parties) to retain the facilities as sports and leisure facilities and daa's priority is to ensure continued use by existing members. There is currently no intention to close the facilities but to review the functionality of the facilities and the operator into the future. The opportunity for the future operation is being offered to all interested 3rd parties (including the existing operator ALSAA) - to ensure the best outcome for the facilities into the future."

6. The primary zoning applicable to Dublin Airport was DA, which the adopted plan defines as follows:

"ZONING OBJECTIVE 'DA' DUBLIN AIRPORT

Objective

Ensure the efficient and effective operation and development of the airport in accordance with an approved Local Area Plan.

Vision

Facilitate air transport infrastructure and airport related activity/uses only (i.e. those uses that need to be located at or near the airport). All development within the Airport Area should be of a high standard reflecting the status of an international airport and its role as a gateway to the country and region. Minor extensions or alterations to existing properties located within the Airport Area which are not essential to the operational efficiency and amenity of the airport may be permitted, where it can be demonstrated that these works will not result in material intensification of land use.

Air Transport Infrastructure includes: aircraft areas, air traffic control/tower, ancillary health, safety and security uses, aprons, cargo handling, maintenance hangers, meteorology, retail - airside/duty free, runways, taxiways, terminals and piers."

7. DA does not encompass sporting facilities, so a general objective not specific to any given lands applies:

"1.3 Non-Conforming Uses

Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid

planning permissions, or which are un-authorised but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.

**Objective ZO3 – Non-Confirming Uses**

Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.”

**8.** At the issues paper stage, daa sought an expansion of DA zoning to additional lands. This wasn't accepted by the chief executive (**CE**). We aren't concerned with the merits of that for present purposes.

**9.** At the draft plan submission stage, ALSAA made a submission which included the following: “ALSAA Swimming Pool

ALSAA Swimming Pool, located within the campus at Dublin Airport, has been a part of the social, sporting and cultural fabric of the communities within our County since the late 1960's.

Our pool has provided learning opportunities to generations of children and adults throughout Fingal; those who have learnt to swim, learned to compete, completed lifesaving and water safety courses, as well as those who completed their aviation industry practical swim skill courses, along with the generations of swimming teachers and coaches who have completed their studies at our facility.

In the absence of public swimming pools within Fingal, the ALSAA pool has been a centre of aquatic learning for over a half a century, catering to the needs of a wide range of users across the county. We have 6,700 members in ALSAA, while we also provide facilities for schools and colleges, groups with special needs, Special Olympics athletes, Master swimmers, competitive clubs, sub-aqua enthusiasts, aqua aerobics groups, parent & toddler swim groups and an endless list of other groups and individuals, in both structured and casual formats.

We recognise our pool as an essential and long-standing asset, absolutely dedicated to the people and communities of Fingal. We earnestly recommend to Fingal County Council that our pool building and the associated car-parking area (as outlined in blue on the attached map) should maintain its current use in the future. We strongly recommend, on behalf of our own members, as well as on the part of all our pool users, current and future, that Fingal County Council should ensure and enshrine the continued existence of our pool, by way of appropriate zoning or through any other means available to the Council.

We at ALSAA have provided sporting, social and cultural opportunities to and for the people and communities of Fingal, on a not-for-profit basis, for over fifty years. In an ever-changing environment, through the social and economic upheaval of the last half century, in the time of challenge that we all faced through the Covid 19 pandemic and with a focus to the challenges that lie ahead, it is our mission to continue to serve our community for the next fifty years. We look forward to achieving our goals in collaboration and partnership with Fingal County Council, as well as with all of the bodies involved in the successful, safe and sustainable operation at Dublin Airport.”

**10.** ALSAA main complex also made a submission:

“ALSAA Main Complex, located in Toberbunney (opposite the Airport Oil Tanks) has been a part of the social, sporting and cultural fabric of North County Dublin, used by thousands of Airport staff members and Fingal residents since 1982 when the Bowling Alley was built and since 1985 when the Main Complexes multiple facilities and the grounds attached to it were opened. Prior to 1985, we were located where hanger 6 is now from 1971.

Our indoor and outdoor sporting and leisure facilities cater for a wide-ranging customer base, including Badminton, Basketball, Volleyball, Table Tennis, Taekwondo, Gymnastics, Indoor Football, Bridge, Chess, Darts, Snooker, Drama, Various Dancing Classes, Gym & Fitness Classes while our outdoor facilities cater for Hockey, Athletics, Soccer, Lawn Bowls, Tennis, Rugby, Softball and Cross Country.

In addition to our own members, we have Special Needs Groups, Primary and Secondary Schools, Clubs, Businesses, Special Olympics, Irish Transplant Association, and many more using our facilities.

These facilities have enabled our Clubs and individuals to represent Ireland and hopefully will continue to do so long into the future.

We recognise our Complex as an essential and long-standing asset, absolutely dedicated to the people and communities of Fingal. We earnestly recommend to Fingal County Council that our complex building and land surrounding it (as outlined in red on the attached map) should maintain its current use in the future. We strongly recommend, on behalf of our own 6,700 members, as well as on the part of all of our users, current and future, that Fingal

County Council should ensure and enshrine the continued existence of our Complex, by way of appropriate zoning or through any other means available to the Council.

We at ALSAA have provided sporting, social and cultural opportunities to and for the people and communities of Fingal, on a not-for-profit basis, for over fifty years. In an ever-changing environment, through the social and economic upheaval of the last half century, in a time of challenge that we all faced through the Covid 19 pandemic and with a focus to the challenges that lie ahead, it is our mission to continue to serve our community for the next fifty years. We look forward to achieving our goals in collaboration and partnership with Fingal County Council, as well as all of the bodies involved in the successful, safe and sustainable operation at Dublin Airport."

**11.** Daa also made a submission seeking a zoning of additional lands as DA:

"5.1 Extension of DA Zoning Objective

As indicated in section 2 of this submission there is a need for additional DA zoning designation at a number of locations adjacent to the existing DA zoning boundary. These extension requirements are necessary for a number of reasons:

- To accommodate strategically located construction security screening compounds.
- To reflect daa land ownership, its responsibilities for airport management and promote a comprehensive, cohesive and plan-led approach to the planning of all airport lands.
- Provide DA zoned land at strategic locations for other airport related development in line with defined airport need and in recognition of considerable constraints on much of the existing DA zoned lands (safety issues – Public Safety Zones and Obstacle Limitation Surface areas; locational issues – need for certain locational requirements with regard to roads and public transport access, landside, airside issues etc).
- Rationalise planning policy approach – remove the need for unnecessary LAPs / Masterplans – and allowing for comprehensive planning of airport lands and airport needs.
- Avoid potential unnecessary requirements for material contravention or variations of the Development Plan to facilitate necessary airport / aviation development necessary to support the development of the airport as a hub and to enhance international connectivity.
- Ensure alignment with higher tiers of planning and Government policy which supports growth in connectivity as well as movements and passengers (NSO6 of the NPF and growth targets of the DTTAS, 'Review of Future Capacity Needs'.
- Promote transparency in the planning system ensuring the public and location communities are properly appraised of the extent of lands which are strategically required for the medium – long term operation and development of Dublin Airport.
- To reflect existing airport related uses (a number of existing car parks.)
- To accommodate future strategically located parking requirements for both passengers and staff.

We note the provision at Page 43 of the Draft Plan which identifies that as part of its preparation, a detailed analysis of the zoning maps was undertaken to identify lands that required changes to zonings under four main categories. Two of these categories were:

- The need to update the zoning where development is now complete.
- The need to amend small scale anomalies and discrepancies.

With regard to lands at Dublin Airport which daa now seeks a rezoning to DA, it is noted that in the case of those lands which accommodate existing airport parking, the Dublin Airport development is already complete / in place. On the other lands, in the context of the overall DA lands, daa ownership and the location of the lands identified immediately adjacent to existing DA zoning, it is submitted that these can reasonably be considered to comprise of small-scale anomalies and discrepancies.

Figure 1 below identifies the general areas of DA zoning expansion sought. Each of these are discussed in greater detail in the following sections.

Most of these lands identified are currently zoned objective GE – General Employment in the Draft Plan.

It is submitted that the uses permissible under DA are somewhat comparable to those permissible under GE. Certainly, it is submitted, it is the case that lands which are deemed suitable for General Employment could reasonably be deemed to be suitable for Dublin Airport related uses. However, use classes 'Aerodrome/Airfield', 'General Aviation' and 'Air Transport Related Infrastructure' are specifically 'not permitted' under the GE zoning. On this basis and for the reasons listed above it is requested that the identified lands be rezoned from GE to DA.

In the event that the Planning Authority is not minded to re-zone some, or all of the plots of land as requested, daa requests that, in the alternative, the Development Plan be amended to permit the use classes 'Aerodrome/Airfield', 'General Aviation' and 'Air Transport Related Infrastructure' on GE zoned lands in the vicinity of the airport only. This would require a

reclassification of these uses from 'Not Permitted' to 'Permitted in Principle' under the GE zoning. A caveat could be attached to these use classes in the zoning tables (Section 13 of the Draft Plan) stipulating that such airport uses must be within 2km of lands zoned 'DA Dublin Airport'. This would ensure changes to the GE zoning objective do not unduly influence development of GE land elsewhere in the county and remote from Dublin Airport. Two areas which are requested to be rezoned to DA are currently zoned 'GB Greenbelt'. It is noted that these plots are immediately adjacent to either the existing DA or GE zoned lands.

All of the lands which are requested to be rezoned to DA are geographically proximate to the airport, and are subject to the same environmental considerations and operational constraints (such as noise zones, Public Safety Zones and OLS) as the existing DA zoned lands – and these existing constraints on development will not change following any rezoning. It is appropriate for the reasons listed above that they be rezoned."

- 12.** The CE report referred to submissions seeking to rezone ALSAA lands:  
 "It is submitted that the provision of a sports hub in Swords should be an objective in the Development Plan, having regard to the projected population increase for the town. It is requested that the ALSAA Complex and Sporting Facilities and Swimming Pool (or replacement Pool) be protected from any change of use within the airport complex without compensatory sports and recreational facilities being provided."
- 13.** The CE did not envisage amendments to the plan as being required:  
 "Regarding the request for a specific objective to be included in the Development Plan for a sports hub in Swords, it is noted that the delivery of specific community and recreational facilities, such as the project referenced in the submission, should be considered within the context of a delivery document such as a Capital or work programme. Two multi-code Recreational Sports Hubs are already provided for in Swords, one in the Ward River Valley Regional Park and one in the Swords Regional Park at Oldtown Mooretown. A significant number of pitches with related facilities are also provided at Ridgewood. Consideration will be given to the provision of additional Sports Hubs in the context of the preparation of the Parks Development Project for the Ward River Valley Regional Park which will commence in the coming weeks."
- 14.** At the material amendment stage in respect of the ALSAA lands, three motions were received from elected members on the CE's report on submissions on the draft development plan – specifically: agenda item 653 - motion 82109; agenda item 783 - motion 81999; and agenda item 784 - motion 82000:  
 "COMHAIRLE CONTAE FHINE GALL  
 FINGAL COUNTY COUNCIL  
 FINGAL DEVELOPMENT PLAN 2023-2029  
 TUESDAY, 20TH SEPTEMBER 2022  
 Sheet 11 Fingal South  
 Motion from Councillor Darragh Butler : 82109  
 ALSAA - Community Infrastructure  
 That Fingal County Council resolves that the lands outlined in red on the attached map at ALSAA, Toberbunny, be zoned Community Infrastructure.  
 REPORT:  
 The subject site is located on the eastern side of the R132, to the west of the M1 and just north of Dardistown Cemet[e]ry. The site, as indicated in the map submitted with this motion, is approximately 19.22 hectares (47.5 acres) and is currently zoned DA – Dublin Airport in the current Development Plan. This zoning objective is carried through to the Draft Plan.  
 Permissible uses within the DA zoning designation include community type uses such as: Childcare Facilities, Open Space, Place of Worship, Restaurant/Café.  
 Community Facilities and Recreational/Sports facilities are not listed as permitted or not permitted and are therefore open for consideration  
 The current use on site Aer Lingus Social and Athletic Association (ALSAA), is a members-led sports and social organisation.  
 Provision exists within the Draft Plan for the protection and expansion of nonconforming uses. Throughout the County there are uses which do not conform to the zoning objective of the area. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria. Objective ZO3 (Non-Conforming Uses) seeks to 'generally, permit reasonable intensification of, extensions to and improvement of premises accommodating nonconforming uses, subject to normal planning criteria.'

In terms of the requested zoning designation CI – Community Infrastructure, the objective of this zoning designation is to ‘provide for and protect civic, religious, community, education, health care and social infrastructure.’ The uses that a CI zoning designation seeks to provide such as religious, community and education uses, would typically be better utilised if they were in or close to town/village centres and this is typically where CI zoned land parcels would be located currently within the County. The remote nature of the subject site, not directly adjacent to any urban centres would present an issue in this regard.

It should also be noted that the site is located within Airport Noise Zone A. Noise Zone A seeks to resist new provision for residential development and other noise sensitive uses. All noise sensitive developments within this zone may potentially be exposed to high levels of aircraft noise, which may be harmful to health or otherwise unacceptable. The provision of new noise sensitive developments will be resisted.

The location of the subject site in Airport Noise Zone A will restrict uses usually permitted in principle in the Community Infrastructure zoning designation. As such, it is considered that the DA zoning adequately caters for the protection of the existing structures on site and allows for the existing (community) use on site. A change to another zoning objective is not necessary in this instance.

**RECOMMENDATION:**

No change to the Draft Plan  
COMHAIRLE CONTAE FHINE GALL  
FINGAL COUNTY COUNCIL  
FINGAL DEVELOPMENT PLAN 2023-2029  
TUESDAY, 20TH SEPTEMBER 2022  
Sheet 11 Fingal South

Motion from Councillor Brigid Manton, Councillor Darragh Butler : 81999

ALSAA Land Rezoning (1)

Motion – Strategic Objective

That Fingal County Council resolves to rezone the lands at Dublin Airport which house the ALSAA Playing pitches from DA to OS

In order to preserve these lands for the use of the community in Fingal

**REPORT:**

A map with a clearly defined boundary was not submitted with this motion.

It is not possible to adequately assess or provide a planning report on this motion, as the area it relates to has not been clearly defined. For the Elected Members to make a determination on a motion that cannot be adequately assessed would prejudice any decision stemming from this motion and in doing so could undermine any amendments to the Draft Plan, which must be in accordance with Section 12 of the 2000 Act, as amended.

Accordingly, the motion cannot amend the Draft Plan.

**RECOMMENDATION:**

No change to the Draft Plan.  
COMHAIRLE CONTAE FHINE GALL  
FINGAL COUNTY COUNCIL  
FINGAL DEVELOPMENT PLAN 2023-2029  
TUESDAY, 20TH SEPTEMBER 2022  
Sheet 11 Fingal South

Motion from Councillor Brigid Manton, Councillor Darragh Butler: 82000

ALSAA Land Rezoning (2)

Strategic Objective

That Fingal County Council resolves to rezone the lands at Dublin Airport which house the ALSAA Buildings from DA to CI

In Order to preserve these lands for the use of the community in Fingal

**REPORT:**

A map was not submitted with this motion.

It is not possible to adequately assess or provide a planning report on this motion, as the area it relates to has not been clearly defined. For the Elected Members to make a determination on a motion that cannot be adequately assessed would prejudice any decision stemming from this motion and in doing so could undermine any amendments to the Draft Plan, which must be in accordance with Section 12 of the 2000 Act, as amended.

Accordingly, the motion cannot amend the Draft Plan.

**RECOMMENDATION:**

No change to the Draft Plan.”

- 15.** When the amendments came before the councillors, the first motion was passed with an amendment:

"FDP2/653/22 (Agenda Item No 653)

Motion from Councillor Darragh Butler: ALSAA - Community Infrastructure. AI082109

The attached motion in the name of Councillor D. Butler, was proposed by Councillor D. Butler, seconded by Councillor A. Henchy:

The attached report by the Chief Executive which had been circulated was CONSIDERED:

An amendment was proposed by Councillor D. Butler, seconded by Councillor D. Whooley to:

Reduce the Map to the area outlined in orange.

The amendment was AGREED.

Following discussion, the amended Motion was AGREED."

- 16.** Following adoption of amendments to the plan, the council made a determination in relation to Strategic Environmental Assessment (**SEA**) of the material amendments:

"Determination for the Need for Strategic Environmental Assessment (SEA) under Section 12(7)(aa) of the Planning and Development Act 2000, as amended for:

Proposed Material Alterations to the Draft Fingal Development Plan 2023-2029

A determination for the need for Strategic Environmental Assessment (SEA) is being made by Fingal County Council in respect of the proposed Material Alterations to the Draft Fingal Development Plan 2023 - 2029.

The proposed Material Alterations have been prepared following a review of the issues raised during the prescribed public consultation period for the Draft Plan from 24 February 2022 to 12 May 2022 and subsequent consideration by the Elected Members of Fingal County Council at Special Meetings on September 20th, 21st, 26th, 29th and October 3rd, 4th, 7th, 11th, 12th, 13th, 14th, 17th, 18th and 19th.

A number of these alterations constitute a Material Alteration to the Draft Fingal Development Plan. Accordingly, the Council resolved to place the Material Alterations on public display for public consultation.

Section 12(7)(aa) of the Act, requires a determination to be made as to whether the Proposed Material Alterations to the Draft Plan require the undertaking of a Strategic Environmental Assessment.

The existing Draft Plan has already been informed by a Strategic Environmental Assessment and an Environmental Report has been prepared outlining the likely environmental effects of the Plan, in accordance with the SEA Directive 2001/42/EC and the Planning and Development (Strategic Environmental Assessment) Regulations 2004 & 2011. Measures have been already integrated into the Draft Plan that provide for and contribute towards environmental protection, environmental management and sustainable development.

The Material Alterations proposed to be made to the Draft Plan were examined and assessed for their potential to have significant / uncertain environmental effects having regard to the criteria set out in Schedule 1 of the 2004 Regulations & 2011.

The majority of proposed material alterations to the Draft Plan do not give rise to significant / uncertain environmental effects as they are either neutral or are positive and protective in nature.

The examination of the Proposed Material Alterations, has found, however, that a number of material alterations have the potential for potential significant or uncertain environmental effects on aspects of the environment, including on biodiversity, water, air, climate, material assets, cultural heritage, and landscape and therefore, require Strategic Environmental Assessment. These are listed in Table 1 below."

- 17.** The ALSAA amendment was not included in the table. The amendment is PA SH 11.7 (in effect planning authority sheet 11 amendment no. 7).

- 18.** The SEA report itself acknowledges that positive impacts are taken into account:

"8.1 Introduction

The SEA process ensures that the environment is central to all decisions on the future development of Fingal County.

The purpose of this chapter is to highlight the potential conflicts, if they are present, between the stated objectives contained in the Draft Plan and the proposed amendments, with the SEA Strategic Environmental Objectives (SEOs). Furthermore the assessment examines the potential impact arising from the Plan's implementation of its policies and objectives on sensitive environmental receptors.

The process of SEA and the Plan formulation is an iterative one and as such environmental considerations have informed all stages of plan preparation carried out to date in order for the potential for significant adverse effects arising from implementation of the plan to be minimised.

Nonetheless, it is possible that some individual plan objectives will create such effects. Where the environmental assessment identifies significant adverse effects, consideration is given in the first instance to preventing such impacts and where this is not possible for stated reasons, to lessen or offset those effects through mitigation measures outlined in Chapter 9 (Mitigation Measures) of this report.

In accordance with SEA Guidelines the assessment identifies 'impact' under four headings. Firstly the quality of impact is addressed using the following terms:

Potential Positive Impact - a change which improves the quality of the environment.

Potential Negative Impact - a change which reduces or lessens the quality of the environment.

Uncertain Impact - the nature of any impact cannot be ascertained at this stage.

Neutral or No Relationship - a change which does not affect the quality of the environment.

In some instances there is little or no relationship between the various Plan policies / objectives and the respective environmental receptor. Where this occurs, the potential impact is regarded as neutral and no further discussion is deemed necessary.

19. The environmental report does however actually address the amendment as follows:

Material Amend. Reference	Section	Text (including Proposed Material Amendments)* *additions are shown as underlined Green text while deletions are shown as strikethrough Red. Relocated text is shown in Blue	(SEA) Environmental Assessment against SEOs (Strategic Environmental Objectives)	Mitigation Required?	SEA Screening Conclusion
PA SH 11.7	ALSAA	Amend the zoning from DA-Dublin Airport to CI-Community Infrastructure	No significant environmental effects on SEOs likely	No	Screens Out

20. Following advertisement of the amendments, a submission was received in relation to material alteration PA SH 11.7 from daa, which stated *inter alia*:

"EXECUTIVE SUMMARY

1. Dublin Airport is a national strategic infrastructure asset, recognised as a global gateway and essential to Ireland's economy, competitiveness and future prospects. The National Planning Framework (NPF) firmly charges Dublin Airport with a central role in achieving Strategic National Objective 6: 'High Quality International Connectivity'. Achieving this objective will need a strategic and forward-thinking development plan to guide airport development – over the next 6 years and beyond.

2. daa welcomes the general support for Dublin Airport in the Draft Plan, in particular the proposed Chapter 8, which acknowledges the airport's significance nationally and locally, and safeguards for future growth in the national interest. daa also welcomes the opportunity to make a submission to Stage 3: Material Alterations currently on display.

3. This submission sets out the serious concerns of daa with two of the Proposed Material Alterations, specifically:

- Material Alteration PA SH 11.7 proposing a rezoning of a portion of daa lands from 'Dublin Airport' (DA) to 'Community Infrastructure' (CI); and
- Material Alteration PA CH 8.1 proposing a policy on airport related noise and mitigation.

4. daa acknowledges and supports the clear recommendation of the Senior Planner on behalf of the Fingal County Council Chief Executive during the Council discussions of these motions not to amend the Draft Plan to incorporate these alterations. Notwithstanding these recommendations, which were grounded on proper planning principles, these recommendations were passed by resolution.

5. It is submitted that the proposal to rezone 'DA Dublin Airport' land to CI Community Infrastructure' (PA SH 11.7):

- Is in direct conflict with the National Planning Framework which calls for 'careful land-use management of land-side areas to focus on the current and future needs of the airport'.
- Is in conflict with the Midland and Eastern Regional Economic Strategy which *inter alia* requires 'Spatial planning policies in the vicinity of the airport shall protect the operation of Dublin Airport in respect to its growth and the safe navigation of aircraft from non-compatible land uses...' (RPO 8.19).

- Conflicts with the Development Plan's own core strategy, which provides that the plan will be consistent with both the NPF and the RSES.
- Does not accord with the statutory obligations of Fingal County Council under the Planning and Development Act 2000 (as amended) ('PDA') including s.9(6), s.10(1A), s.12(11), s.12(18), s.27(1).
- May have been improperly influenced by a private property dispute between daa and the existing occupier of the subject lands (ALSAA), rather than grounded fully and wholly in the proper planning and sustainable development of the area.
- While daa requested additional DA Zoned lands at Draft Plan stage to facilitate airport development – without success – if the proposed alteration is passed, the airport will in fact have less zoned land than at the start of the review process (a substantial 6.7hectares less).
- Is unnecessary, as there is adequate provision within the Draft Plan for existing non-conforming land uses (such as the ALSAA Sports Complex sited on these lands) to continue, and even intensify and extend their use.
- Completely ignores the fact that additional CI zoned land can be provided anywhere in the county – and more appropriately within or beside centres of population. Zoned and available land adjoining Dublin Airport for Air transport related uses is a finite resource."

**21.** The submission went on (at p. 6-7):

"In the course of consideration of the Draft Development Plan by the Members of Fingal County Council a motion was brought to the Council by Councillor Darragh Butler (Motion No. 653) 'that Fingal County Council resolves that the lands outlined in red on the attached map at ALSAA, Toberbunny, be zoned Community Infrastructure'. The motion incorrectly and misleadingly referenced lands other than those in occupation by ALSAA. Further and for clarity, the lands are owned by daa. An amendment to the motion was proposed by Councillor Butler to revise the map identifying the lands to be rezoned to ensure it only included sporting facilities. It was noted that the rationale and justification in describing the revised map was to ensure that it was 'only sporting facilities we are protecting'. The Chief Executive recommended that the motion should not be adopted. However, the motion was voted upon and adopted by the Councillors on 17 October 2022.

Motion No. 653 as amended was opposed by the Chief Executive for a number of reasons explained by Senior Planner Ms. Róisín Burke. In brief these were:

- The ALSAA facility comprises a non-conforming use within the existing DA zoning objective and the Development Plan already has provisions to allow for the ongoing operation and extension of such uses, if necessary. (In this regard we note Objective ZO3 of the Draft Plan which relates to Non-Conforming Uses and which seeks to 'Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria'.
- CI Zoning is most appropriate in towns and villages close to populations and therefore the CI zoning is not appropriate in this area.
- The existing sports facility is supported by policies and objectives in the Development Plan.
- It is in Noise Zone A which limits some uses.

For these reasons, Ms. Burke recommended that a change in zoning was not necessary or appropriate, and requested that the Chief Executive's recommendation be upheld.

Councillor Butler responded that 'there were concerns over the ongoing use of that [the ALSAA site] remaining as a sporting facility', and accordingly that he would like to 'agree the motion to change to CI to protect the facilities and keep them as such'.

On 20 September 2022, in the opening meeting to discuss the Material Amendments to the Draft Fingal County Development Plan, Senior Planner Ms. Róisín Burke spoke to the Council Members about the 'importance of adopting a legally robust plan', and quoted the Planning and Development Act, 2001 (as amended) Section 12(11) of which states:

'in making the development plan the members shall be restricted to considering the proper planning and sustainable development of the area, statutory obligations, and relevant policies of the Government or any Minister.'

She also quoted Section 12(18) of the Planning and Development Act which states:

'Statutory obligations include that the plan is consistent with national and regional development objectives in the NPF and RSES.'

Daa considers that Cllr Butler's purported justification for the rezoning of this daa owned land is not consistent with either of the above statements reiterating the statutory requirements made by the Senior Planner in the Chamber. Cllr Butler's concern is with retention of a sporting facility and does not appear to be guided by proper planning and



sustainable development, neither does he offer any planning justification for protecting a sporting facility as this site and accordingly for his motion seeking a rezoning of the lands. Despite the expert planning reasoning and recommendation presented by the Senior Planner during the discussion of the motion, the members carried the motion.

As the Council is aware it is a mandatory obligation imposed on it, in making a development plan, to ensure consistency with the NPF and regional spatial and economic strategy (RSES). We note section 2.2.1 of the Draft Plan, which is headed 'Core Strategy' to ensure that the quantum and location of development is consistent with National and Regional policy states as follows:

'The Core Strategy sets out a spatial settlement strategy for the County which is consistent with the Housing Strategy, the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES), Specific Planning Policy Requirements (SPPRs) required under Section 28 Guidelines and takes account of policies of the Minister in relation to national and regional population targets'. Moreover, section 1.9 'Policy Context' provides as follows: The Draft Plan has been prepared in accordance with Project Ireland 2040 and the Regional Spatial and Economic Strategy (RSES) for the Eastern & Midland Region.

Despite this statement, it is submitted that proposed Material Alteration PA SH 11.7 which would reduce the quantum of DA zoned land within the daa strategic landholding and replace it with a CI zoning objective which is inappropriate at this location, would be inconsistent with the NPF and the RSES.

### 2.3 Potential Influence of Private Commercial Matter on Development Plan Matters

Daa did not comment on the ALSAA occupied lands in its submission on the original Draft Fingal Development Plan 2022-2028, as the Draft Plan proposed to continue zoning the ALSAA lands objective DA (along with all the other existing DA zoned lands). The question of rezoning the ALSAA lands was first mooted in two submissions by ALSAA (Submissions No. FIN-C453-1017 and No. FIN-C453-1025) on the Draft Fingal Development Plan. These submissions sought that Fingal County Council should 'ensure and enshrine the continued existence' of the pool and complex 'by way of appropriate zoning or through any other means available to the Council'. daa was not concerned in relation to these submissions as when the Chief Executive's report on submissions was issued to the Elected Members of Fingal County Council in July 2022 it addressed the ALSAA occupied lands by succinctly stating 'There is no change to the land use zoning associated with the ALSAA Complex.' Given this recommendation of the Chief Executive daa was surprised at the subsequent content of Motion 653.

Despite the presence of a sports facility at the ALSAA occupied lands for over 25 No. years, the Planning Authority has never in the past deemed it appropriate to propose a rezoning of this plot of land within the overall daa strategic landholding. There therefore appears to be a strong correlation between the timing of proposed rezoning of the ALSAA occupied lands under proposed Material Alteration PA SH 11.7 and the request from ALSAA that Fingal County Council 'ensure and enshrine the continued existence' of the pool and complex and the ongoing property dispute between daa and ALSAA (the current operators of this facility) described in section 2.2 above.

It would appear that the proposal to rezone the ALSAA lands may have been influenced by knowledge of this ongoing matter. Indeed, we are advised by daa that the upcoming development plan and the power to rezone was raised at meetings between local councillors and daa representatives during discussions in relation to ALSAA occupation of the lands. Despite the planning reasons recommended by the Chief Executive and Senior Planner against rezoning (as noted in section 2.2 above), the Council member proposing Motion No. 653 maintained his proposal for rezoning. His explanation for the proposal referenced 'concerns over the ongoing use of that remaining as a sporting facility', and that the map would show the sporting facilities 'we are protecting'. We note that there was no discussion by Councillors of a strategic need, or justification on the basis of proper planning and sustainable development, for a sporting facility within the overall Dublin Airport precinct.

As explained by Ms. Burke in the Council meeting of 17 October 2022, the Development Plan already makes provision for continuance of use and indeed even extensions of non-conforming uses. The draft plan objective ZO3 relating to 'Non-Conforming Uses' seeks to 'Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria'. Rezoning would not be necessary to 'protect' this use if ALSAA were in continued occupation. Daa is therefore concerned that the 'concerns over the ongoing use of that [ALSAA] remaining as a sporting facility' expressed in the Council meeting of 17 October 2022 may have been influenced by a commercial dispute between daa and ALSAA.

If the proposal by Councillors to amend the zoning of the ALSAA lands was influenced by a private property dispute rather than by considerations of the proper planning and sustainable development of the area, this would represent a clear dereliction of their statutory remit. The provisions of Section 12(11) of the Planning and Development Act (as amended) are clear. Councillors are restricted to considerations of the proper planning and sustainable development of the area.”

**22.** Under the heading of Strategic Need for Dublin Airport Zoned Land, the submission continued:

“Daa is tasked with managing Dublin Airport and planning for its current and future operational requirements. Particular challenges include the long lead-in time for infrastructure delivery as provided for and supported in the strategic policies and objectives of the Dublin Airport LAP 2020, the Draft Fingal Development Plan 2022 and the Fingal Development Plan 2017. In order to plan and deliver this infrastructure in a logical and timely manner it is necessary that strategic policy provision is supported in practical terms with sufficient levels of zoned and appropriately located lands to meet the airport’s needs. Accordingly, in order to safeguard for the future needs of Dublin Airport and to fulfil its statutory obligation in respect of land use zoning, it is submitted that Fingal County Council needs to ensure the planning policy framework for Dublin Airport anticipates a longer horizon period than the current standard 6-year Development Plan period. It is respectfully submitted that Fingal County Council’s decision not to extend the DA zoning as requested at Draft Stage, is short-sighted, it hampers daa’s ability for long term strategic planning and accordingly does not align with National objectives for airport expansion. Despite daa’s request for additional DA zoning, the Chief Executive’s report provided no specific planning reasoning as to why the existing daa long-term car parks(a vital component of the airport’s surface access needs (serving a national catchment)) and other daa owned lands (which are functionally and geographically within the Dublin Airport precinct) were not proposed to be rezoned for airport uses.

The publication of the Proposed Material Alterations under submission has compounded these concerns. Not only are daa’s additional zoning requests rejected, but the Proposed Material Alterations now seek to do the very opposite by reducing the extent of DA zoned lands by a substantial 6.7hectares and replace it with a Community Infrastructure zoning. It is acknowledged that the Planning Authority is obliged to appropriately plan and provide for local interests within its administrative area. Equally, the Planning Authority is statutorily obliged to plan and provide for the national interests at Dublin Airport. Taking into account this obligation, it is troubling that the ill-conceived protection of a local sporting facility, which is already supported by policies and objectives in the Draft Development Plan, has trumped the need to protect strategic DA – Dublin Airport zoned land, the development of which is a Strategic National Objective. The NPF includes high-quality international connectivity as a National Strategic Outcome (NSO 6) and recognises the crucial role that the provision of high-quality connectivity has for overall international competitiveness.

The proposed rezoning is also at odds with Fingal County Council’s own stated policy. Nowhere in the strategic policy statements of the current Fingal Development Plan 2017, the Dublin Airport Local Area Plan 2020 or the Draft Fingal Development Plan 2020 are sports uses or local community infrastructure identified as necessary activities or land uses within the Dublin Airport precinct. The strategic policy provisions of all of these land use documents provide for the safeguarding and facilitation of core airport and aviation related uses.

The provision of a Community Infrastructure zoning objective in the middle of an international airport precinct is contrary to logical and proper planning and sustainable development principles. Community uses provided for under this zoning objective are more appropriately provided for elsewhere in the county in close proximity to residential communities and town centres. Such a land use zoning objective is inappropriate at this location, as also attested to by FCCs own Senior Planner in the Council meeting of 17 October 2022 during the discussion of Motion No. 653. Airport uses and infrastructure however, can of course only be accommodated within the vicinity of Dublin Airport.

Implications of the Proposed Material Amendment

The implication of the Proposed Amendment is that it will classify the ALSAA occupied lands as no longer being Dublin Airport (DA) zoning replacing it with CI zoning. The objective of the CI zoning under the Draft Plan is to ‘provide for and protect civic, religious, community, education, health care and social infrastructure’.

‘Air Transport Infrastructure’ and ‘General Aviation’ are use classes which are expressly listed as being ‘Not Permitted’ under CI zoning. If adopted by the Council, this CI zoning will clearly inhibit the potential development of Dublin Airport for the duration of any such zoning and also significantly the strategic long term planning for the overall airport lands.”

- 23.** The submission also alleged breach of the 2000 Act:  
 “Section 27(1) as substituted, provides that a Planning Authority shall ensure, when making a development plan, that the plan is consistent with any regional spatial and economic strategy in force for its area.  
 Accordingly, it is a mandatory obligation of FCC in making a development plan to ensure consistency with the NPF and RSES. Whilst subsection 10(1A) provides that a core strategy in the written statement of a development plan must show that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the NPF and RSES, there is no such ‘practicability’ refinement in sections 12(18) or 27(1). Furthermore, sections 12(18) or 27(1) refer to the entire development plan, not only to the core strategy.  
 For this reason, it is useful to consider the contents of section 2.2.1 of the Draft Plan, which is headed ‘Core Strategy’ to ensure that the quantum and location of development is consistent with National and Regional policy and states as follows:  
 ‘The Core Strategy sets out a spatial settlement strategy for the County which is consistent with the Housing Strategy, the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES), Specific Planning Policy Requirements (SPPRs) required under Section 28 Guidelines and takes account of policies of the Minister in relation to national and regional population targets’  
 Moreover, section 1.9 ‘Policy Context’ provides as follows:  
 The Draft Plan has been prepared in accordance with Project Ireland 2040 and the Regional Spatial and Economic Strategy (RSES) for the Eastern & Midland Region”
- 24.** Breach of the National Planning Framework (**NPF**) was also raised:  
 “The interpretation of national planning policy and regional planning policy to the local context is an important context for the members to consider in making a development plan, including the determination of the currently Proposed Material Alterations. The NPF was published in February 2018 setting out a vision for Ireland in land use and planning terms to 2040. It seeks to create a single vision with a set of shared goals for every community across the country. These goals are expressed in the NPF as 10 No. ‘National Strategic Outcomes’ (NSOs).  
 One of these goals, NSO 6 is for ‘High-Quality International Connectivity’. The importance of such ‘High-Quality International Connectivity’ is recognised as follows:  
 ‘This is crucial for overall international competitiveness and addressing opportunities and challenges from Brexit through investment in our ports and airports in line with sectoral priorities already defined through National Ports Policy and National Aviation Policy and signature projects such as the second runway for Dublin Airport and the Port of Cork - Ringaskiddy Redevelopment.’  
 The NPF recognises that the country’s key ports and airports are a key infrastructure for national and regional development and a Strategic Investment Priority. It includes a number of specific objectives for development at Dublin Airport and other main airports as follows:
- The development of additional runway and terminal facilities such as the second runway for Dublin Airport for which planning permission has been approved;
  - Enhancing land-side access, particularly in public transport terms, such as through the Metro Link project in Dublin; and
  - Careful land-use management of land-side areas to focus on the current and future needs of the airports.
- There is a clear inconsistency therefore between Proposed Material Amendment PA SH 11.7 and the NPF.  
 The NPF also recognises the importance of Dublin City and Metropolitan Area to Ireland’s overall competitiveness. In turn it acknowledges the role of strategic infrastructure in supporting Dublin’s continued strategic performance. It states that,  
 ‘Dublin’s continued performance is critical to Ireland’s competitiveness. Improving the strategic infrastructure required to sustain growth will be a key priority as part of the Metropolitan Area Strategic Plan (MASP), and will include enhanced airport and port access and capacity, expansion and improvement of the bus, DART and Luas/Metro networks and several national public service delivery projects, such as the Children’s Hospital, that will also serve the country as a whole.’  
 The proposal to rezone DA- Dublin Airport lands to CI – Community Infrastructure is clearly contrary to the policies and objectives of the NPF, particularly in light of the fact that Dublin Airport land is a finite resource.  
 Reducing the amount of land available to Dublin Airport, stifles its ability to achieve the aims of National policies and objectives.”

**25.** It was also alleged that the amendment was contrary to the Regional Spatial and Economic Strategy (**RSES**):

"2.4.2.3 Proposal is not Consistent with Regional Development Objectives of the Regional Spatial and Economic Strategy

The Dublin region is the main global gateway to Ireland, with Dublin Airport one of the fastest growing in Europe.

The Regional Spatial and Economic Strategy (RSES) seeks to determine at a regional scale how best to achieve the shared goals set out in the National Strategic Outcomes (NSOs) of the NPF. To this end, it sets out 16 Regional Strategic Outcomes (RSOs), which are aligned with international, EU and national policy and which in turn are intended to set the framework for city and county development plans.

There are 16 RSOs identified across three key principles of Healthy Placemaking, Climate Action and Economic Opportunity. A number of these can be supported through appropriate development of Dublin Airport. These are:

RSO 6 – Integrated Transport and Land Use

'Promote best use of Transport Infrastructure, existing and planned, and promote sustainable and active modes of travel to ensure the proper integration of transportation and land use planning. (NSO 2, 6, 8,9)'

RSO 14 – Global City Region

'Promote Dublin as a global city region and protect and enhance international connectivity, including ports and airports and promote the Region as a gateway to Ireland. (NSO 6)'

RSO 15 – Enhanced Strategic Connectivity

'Protect and enhance international connectivity and regional accessibility to support economic development, build economic resilience and support strengthened rural communities and economies including the bluegreen economy and tourism. (NSO 2, 3, 6)'

Growth Enablers and Guiding Principles for growth in the Dublin City and Metropolitan Area identified in the RSES include:

'Protect and improve access to the global gateways of Dublin Airport and Dublin Port for the Region and to serve the Nation, and safeguard and improve regional accessibility and service by rail, road and communication, with a key focus on the Dublin-Belfast Economic Corridor.'

'Dublin as a Global Gateway – In recognition of the international role of Dublin, to support and facilitate the continued growth of Dublin Airport and Dublin Port, to protect and improve existing access and support related access improvements'

The RSES also sets out more detailed Regional Policy Objectives (RPOs), a number of which relate specifically to Dublin Airport and which establish clear policy support for the strategic needs and growth of Dublin Airport.

A number of these are noted in particular below:

'RPO 8.17: Support the National Aviation Policy for Ireland and the growth of movements and passengers at Dublin Airport to include its status as a secondary hub airport. In particular, support the provision of a second runway, improved terminal facilities and other infrastructure.'

'RPO 8.19: Spatial planning policies in the vicinity of the airport shall protect the operation of Dublin Airport in respect to its growth and the safe navigation of aircraft from non-compatible land uses...'

The proposal to zone lands for a local community use within the strategic daa DA zoned lands is clearly contrary to these policies and objectives of the RSES."

**26.** The CE reported on the submissions, including as follows:

"PA SH 11.7:

Amend the zoning from DA-Dublin Airport to CI-Community Infrastructure at ALSAA.

Submissions Received:

FIN-C532-36

Summary of Issues:

This submission does not support the proposed material alteration for a change in zoning from DA-Dublin to CI-Community Infrastructure.

The proposed amendment is contrary to the national and regional policy and objectives of the NPF and RSES, and to Section 28 Guidelines and the Core Strategy at local level, relating to Dublin Airport, a strategic national gateway asset and specifically to the safeguarding of current and future operations at the Airport and to the careful land-use management of landside areas to facilitate the future sustainable growth and development of Dublin Airport. The submission also contends that in the context of the already limited quantum of DA zoned lands and where a CI zoning objective would render specific airport uses as non-permitted as well as the adequate provision with the plan to cater for the continuation and intensification of non-conforming uses and the best practise approach to locating community

infrastructure close to centres of population as well as its location with Noise Zone A, the proposed material alteration would be seriously injurious to the future sustainable growth of Dublin Airport and would be contrary to the requirements of the Planning and Development Act 2000, as amended relating to the making of a Development Plan and to proper planning and sustainable development. It is requested that the proposed material alteration be omitted.

Chief Executive's Response:

The contents of the submission are noted.

The current FDP 2017-2023 and the Draft FDP 2023-2029 within Chapter 8 Dublin Airport is explicit in acknowledging the strategic importance of this primary gateway Airport at international, national and local level and in this regard, includes supportive policy and objectives based on the relevant national and regional policy context to facilitate the sustainable growth of Dublin Airport including objectives for safeguarding operations and the careful land-use management of public (land-side) areas to focus on the current and future needs of the Airport as key infrastructure for national and regional development.

Provision exists within the Draft Plan for the protection and expansion of non-conforming uses. Throughout the County, there are uses which do not conform to the zoning objective of the area. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.

Objective ZO3 (Non-Conforming Uses) seeks to 'generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.' In terms of the CI zoning objective, this objective seeks to 'provide for and protect civic, religious, community, education, health care and social infrastructure.' The uses that a CI zoning designation seeks to provide such as religious, community and education uses, would typically be better utilised if they were in or close to town/village centres. The remote nature of the subject site, not directly adjacent to any urban centres is contrary to this best practice locational approach.

It should also be noted that the site is located within Airport Noise Zone A. Noise Zone A seeks to resist new provision for other noise sensitive uses. All noise sensitive developments within this zone may potentially be exposed to high levels of aircraft noise, which may be harmful to health or otherwise unacceptable.

Having consideration to the above, it is considered appropriate to retain the DA-Dublin Airport zoning objective for the subject lands.

Chief Executive's Recommendation:

It is recommended that the Development Plan be made without the proposed Material Alterations as displayed."

**27.** At the final amendment stage, motions were received on the, *inter alia*, proposed material alteration PA SH 11.7, including: agenda item 183, proposed amendment SH 11.7; and agenda item 184, motion AI087969.

**28.** The critical discussion was as follows:

"COMHAIRLE CONTAE FHINE GALL  
FINGAL COUNTY COUNCIL  
FINGAL DEVELOPMENT PLAN 2023-2029  
WEDNESDAY, 15TH FEBRUARY 2023  
Sheet 11 Fingal South

Motion from Councillor Darragh Butler, Councillor Brigid Manton, Councillor Adrian Henchy, Councillor Brian Dennehy, Councillor Eoghan O'Brien, Councillor JK Onwumereh:  
87969 PA SH 11.7

'That this Council resolves to accept proposed Material Alteration PA SH 11.7 to amend the zoning from DA-Dublin Airport to CI-Community Infrastructure at ALSAA, the planning rationale being that the CI land use zoning is more appropriate for the community facility currently as this location.'

Please see attached planning rationale.

REPORT:

The content of the motion is noted. The planning rationale provided can be summarised as:

- The CI zoning is most appropriate at this location, having regard to the existing facility here.

The Fingal Development Plan 2017-2023 and the Draft Development Plan 2023-2029 explicitly acknowledge within Chapter 8 Dublin Airport, the strategic importance of the Dublin airport at international, national and local levels and contain supportive policy and objectives to facilitate its sustainable growth, including objectives to safeguard operations and sustainably manage land-use (landside).

Provision exists within the Draft Plan for the protection and expansion of nonconforming uses. Throughout the county there are uses which do not conform to the underlying zoning objective and reasonable intensification, including extensions to and improvement of premises accommodating such uses will generally be permitted subject to normal planning criteria.

Facilities at ALSAA are subject to the above provisions where Objective ZO3 (Non-Conforming Uses) of the Plan seeks to 'generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.

The Community Infrastructure 'CI' land use zoning objective seeks to 'provide for and protect civic, religious, community, education, health care and social infrastructure.' Typical land uses include churches, schools, community centres and other social infrastructure which benefit from proximity to town/village centres, afford a mix of complementary uses and benefit from good public transport links. In relation to the subject site, the lands in question are not contiguous to a town centre, perform a single land use function and are predominantly served by private car.

Furthermore, the lands are located within Airport Noise Zone A which seeks to resist new provision of noise sensitive uses. All noise sensitive developments within this zone may potentially be exposed to high levels of aircraft noise.

Having regard to the foregoing, it is considered that a change in land-use zoning to CI at the subject site is inappropriate and DA-Dublin Airport zoning objective for the subject lands should be retained.

**RECOMMENDATION:**

It is recommended that the Development Plan be made without the Material Alteration PA SH 11.7 as displayed."

**29.**

The applicant prepared a transcript of the meeting:

"Fingal County Council, Meeting of Elected Members, 20 February 2023

Agenda Item 184

Mayor: Councillor Butler, your next motion is 184. It is attached to 183. Proposed. Seconded by Councillor O'Brien.

Senior Planner: This motion relates to alteration 11.7, which is to amend the zoning from DA-Dublin Airport to CI-Community Infrastructure. The Report outlines that the current Development Plan and the new Development Plan explicitly acknowledge the strategic importance of Dublin Airport at an international, national, and local level, and contain supportive policy and objectives to facilitate its sustainable growth. Provision exists within the Draft Plan for the protection and expansion of non-conforming uses. We have a specific policy, facilities at ALSAA will be subject to the provisions for objective ZO3 seeks generally to permit reasonable intensification of and extension to premises accommodating non-conforming uses subject to normal planning criteria. The Community Infrastructure land seeks to provide and protect civic, religious, community, education, healthcare, and social infrastructure. Typical land uses include churches, schools, community centres, all of which would benefit from proximity to town and village centres, and benefit from good public transport links. In relation to the subject site, the lands in question are not contiguous to a town centre, perform a single land use function, and are predominantly served by private car. The lands are located within Airport Noise Zone A, which seeks to resist the provision of noise sensitive uses. It is recommended the Development Plan be made without the material alteration as displayed.

CIlr Henchy: We debated this at length at the last stage. ALSAA is located in a highly desired location. It is along national and regional transport hubs, and has been in operation at its current location for over the last 42 years. There are no proposals now in the future to relocate the use of ALSAA from these lands. The daa and Aer Rianta had supported in all of the above time period the continued use and operation of the ALSAA complex as a major regional, community recreational facility. It has been acknowledged by the daa that the complex has not been any threat to the operation or safety of the Airport area. There are no policy provisions in the national or regional policy, NPF or the RSES, which would disallow the operation of the ALSAA complex for community recreational usage. Moreover, and very importantly, what is probably a huge point, the OPR made no observations on the re-zoning of these lands to CI, which clearly indicates that there are no strategic or other issues arising from the rezoning of these lands to CI. The CI zoning, we had a good debate on it in previous meetings, enables full conformity with the established community recreational use of the lands, and provides strong development plan zoning policy protection for the lands. The CI zoning would therefore reflect the historic use of these lands as a sub-regional community recreational facility. ALSAA has fully funded and borne all responsibility for the financing

and management of all infrastructure and built facilities on the lands, which runs into multiple millions of euro. Furthermore, the matter of airport noise raised, the report is [?] on the issue of noise for residential and other noise sensitive uses. It is to be noted that there are long established, multiple commercial use activities operating within Airport Noise Zone A, including two major hotels having day and overnight sleeping accommodation. The ALSAA lands under the Articles of Establishment are to be solely used for indoor and outdoor community recreational use, with no potential for residential or commercial type use in contrast to the existing facilities. The issue of noise therefore has no relevance to the community recreational use operating within the ALSAA lands. The daa within their land bank has to be strategic there. I also think, as Members, ALSAA has historically very important community and sporting usage and I think by zoning it CI that reinforces that into the future.

Cllr Guerin: I would like to support this motion. There are a couple of things we have to take into account when we are considering it. The people in ALSAA want this zoning and they are looking for it because, let's be honest, there is the animal in the room where the daa have been trying to make life very difficult for ALSAA and they talking about changing them, or moving them, or whatever. This CI zoning will help that according to the people in ALSAA, so I would take that on board. I would certainly be doing it because I think really and truly messages need to be sent to the daa that it is not an entity unto itself, and that they have to take into account the needs of the community, people, neighbours, and so forth. I would be very much supporting this particular motion. One other thing, the other night we had a very informative debate on nursing homes, and one thing we learned was CI is a very previous zoning. We would be zoning it here for community use where there it is established in serving the community. I hope this motion gets through with agreement.

Cllr McDonagh: I agree with everything that both of the other speakers have said. I think it is absolutely vital that we protect the usage of this land. We have got a shortage of recreational facilities and where there is even the slightest dangerous [sic] of the current usage being undermined, where we have a dispute or disputes over tenancy and usage and the potential for change of use driven by commercial ambition, I think we need to support the people who have been providing recreational facilities on this site. There is no danger or no worry or no concern that any other use is going to be allowed on this site. There will be no schools or churches or anything else here. This is about ensuring that the daa recognise their wider responsibility in a manner which I think they seem to have forgotten about over the last few iterations of the daa. They are losing a connection with the people, which they would have had much stronger previously, and I think they need to have a good look at that.

Cllr O'Leary: I will be supporting the motion. This is located beside Dublin Airport and if I remember rightly there are 12,000 people working there. So it is right beside them and it was put there to provide sports facilities for Dublin Airport. It is beside Swords with 45,000 population and they get use of it too. There is more potential in the vicinity of this sports facility, which it's proposed to zone it CI. It is an existing building, sports facility, community facility. It should be CI so the motion to zone it CI makes sense. It's logical. I repeat again, there is more potential in the area for more activity here and I think it is a good move to copper fasten this.

Cllr Manton: I think there is a great opportunity here to be able to add to our CI that we spoke about having such a shortage of the last day. The loss of this to the community in Fingal would be huge. I have to say the community in Fingal supports the daa probably at every level and this is kind of the single, big contribution that the daa have made back to the community. The buildings and sports facilities were paid for out of the weekly wages of over 7,500 people who live in Fingal. The daa have been less than forthcoming with what they their plans are for this particular area. So, if their plans are to continue with the sporting here and make into a financially viable sporting area, let them come forward and tell us that. If they are planning for something else, let them come forward with alternatives for the people who have actually paid and put all of the infrastructure there, from bowling alleys to swimming pools to what have you. As I say, I will be supporting this motion for all those reasons.

Cllr Mulligan: I understand where the Senior Planner was coming from in respect of the zoning objective and it is kind of pigeon holing ourselves that CI zoning is traditionally in local areas, near churches and other recreational facilities. I think that the problem is that the zoning is so restrictive in its parameters in some contexts that we don't really look at it from the open ended prospective that Fingal County Council is. There is an urban rural divide and this is a CI hub. This is a community facility with direct transport links that are used by the community and I think it does need its own zoning separate to the daa's zoning.

They are looking for that autonomy. If you go there, and as someone that frequents it quite a lot, two thirds of the back fields are not used, where the old pitch and putt golf club was. They essentially let that grass grow, cut it, and sell it on for silage every year. It is absolutely wasted. They need to develop it. They need to zone it. They need to have a plan in place to go forward and actually become the community facility that they want to be. As other councillors have said, members of Aer Rianta and Aer Lingus over the years made this what it is. It was not the daa. It is not the daa. This is a community hub and community facility. If you were to knock on any door in Swords, they would tell you that this is part of their community.

Mayor: Members, I would like you to work with me on this. Some of you were not here earlier. It looks as if we are in here tomorrow. I have seven speakers, which is another fifteen minutes on a motion which I can clearly see is agreed, even by myself. I am asking you to work with me. You don't have to. You can come in if you want to.

Cllr Graves: I support the motion. We have had long discussions in the past about putting protections in place for ALSAA and the members and to continue the use as part of community facilities. I think quoting noise issues is a bit moot considering the daa do whatever the hell they want to do when it comes to noise. They just ignore residents and ALSAA as well. I think the CI zoning is appropriate in this instance.

Cllr O'Brien: While we certainly would not be looking at this site for CI zoning if it was a green field site in the vicinity of the Airport, what the CI zoning will do is reflect the long standing use of the land. It will also ensure that, should the daa want to put forward a proposal for the use of the lands, they can come to the table with all the stakeholders and seek a variation to the Plan if there is an issue with keeping these lands in community use. That is really what this motion will safeguard.

Cllr Dennehy: I would like to support the motion. I think that Cllr Guerin is spot on there. If you had any doubt listening to the debate the other night about CI land, then I wrote down some of the quotes. 'One of the most important zonings in the county' and also 'we need to insulate our CI lands from commercial pressures'. I commend the motion and I ask everyone to support it. I think it makes absolutely perfect sense.

Cllr Humphreys: I support the motion. The only thing I am slightly disappointed about is that we did not have the foresight to also zone the swimming pool as well.

Cllr Newman: I want to speak on this because I have been asked by ALSAA members and the people that run that ALSAA complex to support them and I just want them to know that I am supporting them. If this is not CI, there is nothing out there that matches it. The work that these people have put in over the years, the clubs they serve, when you look at the different schools that go there, badminton, Irish Kidney Association, Special Olympics. The service that they have given to this community, and I have been a member there myself for many a year, and we need to support this CI, and get ALSAA ready for the next stage when the daa are going to come along and try to take that building off them. I fully support the motion.

Motion 184 was passed by a vote of 39 for, 0 against, and 0 abstentions."

**30.** Maybe worth saying for the avoidance of doubt that the penultimate speaker is no relation.

#### **Procedural history**

**31.** The proceedings were issued on 17th April 2023.

**32.** An *ex parte* application was opened before me on 18th April 2023. An order was made granting liberty to issue a motion for admission to the List returnable to 8th May 2023 with liberty to file an amended statement of grounds.

**33.** An amended statement of grounds was filed on 24th April 2024.

**34.** The motion for admission was issued on 28th April 2024.

**35.** The matter was opened on 8th May 2023, and I granted entry and leave.

**36.** The originating notice of motion was issued on 16th May 2023.

**37.** On 22nd May 2023, I ordered by consent that the parties adhere to the directions timetable and the matter be adjourned to 9th October 2023 for mention.

**38.** The respondent filed its statement of opposition and affidavit on 16th October 2023.

**39.** The applicant filed its written submissions on 30th July 2023.

**40.** The respondent filed its written submissions on 10th September 2024.

**41.** While the matter was heard together with *Friends*, the two cases were addressed sequentially. This case was opened on 26th September 2024 and was completed within that day, and judgment was reserved.

**42.** At the outset it was agreed that:

- (i) core ground 5 and core grounds 8, 9 and 11 insofar as related to the noise issue could be postponed depending on what happened in *Friends* – if the State won in



- Friends* these points would not arise, and if the applicant won then there would be a second module on these;
- (ii) core grounds 1 to 4 and 10 which overlap with the issues in the *Friends* case would be argued but the decision would effectively be given in the *Friends* judgment (and thus it follows that the decision arises in the procedural context of that judgment); and
  - (iii) core grounds 6 and 7, and core grounds 8, 9 and 11 insofar as related to the ALSAA issue would be dealt with in the present judgment.

### **Relief sought**

**43.** The reliefs sought in the amended statement of grounds are as follows:

"D. Relief sought:

- (i) An order of certiorari by way of an application for Judicial Review quashing the Fingal County Council Development Plan 2023 - 2029 made on 22 February 2023 and/or insofar as it relates to and such part thereof comprising:
  - a. PA CH 8.1: Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309)
  - b. PA SH 11.7: Map Sheet 11
- (ii) Such Declarations of the legal rights and/or legal position of the Applicants and/or persons similarly situated and/or the legal duties and/or legal position of the Respondents as the Court shall consider appropriate.
- (iii) If necessary, an Order remitting the matter to Fingal County Council to be considered and determined in accordance with law and in accordance with such directions as the Court considers appropriate.
- (iv) A Stay on the coming into force and/or operation of those parts of the Fingal County Council Development Plan 2023 -2029 comprised in PA CFI 8.1: Section 8.5.7 and PA SFI 11.7: Map Sheet 11 until the determination of the within proceedings.
- (v) Such further or other Order as to this Honourable Court seems appropriate.
- (vi) If necessary, a Declaration that section 50B of the Planning and Development Act 2000 (as amended), and/or sections 3 and 4 of the Environment (Miscellaneous Provisions) Act 2011, and/or the interpretative obligation set out in Case C-470/16 *North East Pylon Pressure Campaign Limited v. An Bord Pleanala* whereby in proceedings where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, apply to these proceedings.
- (vii) An Order providing for the Applicant's costs of the proceedings."

### **Grounds of challenge**

**44.** The core grounds of challenge are as follows:

"Domestic Law

1. The making of the Fingal County Council Development Plan 2023 - 2029 ('the Development Plan') with PA CH 8.1: Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) contained therein was ultra vires the powers of the elected members of the Respondent, Fingal County Council, pursuant to section 10 and section 12 of the Planning and Development Act, 2000 as amended as the said objective is a noise mitigation measure within the meaning of Regulation (EU) No. 598/2014, the Aircraft Noise (Dublin Airport) Regulation Act, 2019 and/or section 34A of the Planning and Development Act, 2000 as amended, the regulation of which is the subject of a specific regime established by the 2019 Act and sections 34A - 34C of the 2000 Act. The elected members of Fingal County Council have no jurisdiction to set noise mitigation measures in respect of Dublin Airport. Therefore, the inclusion of PA CFI 8.1: Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) in the Development Plan is invalid, unlawful, ultra vires, irrational and/or unreasonable.
2. PA CFI 8.1: Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) is contrary to section 3(7)(a) of the Aircraft Noise (Dublin Airport) Regulation Act, 2019.
3. The inclusion of PA CFI 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) in the Development Plan is unlawful, invalid and ultra vires Fingal County Council in that there was a failure by Fingal County Council to have any or any proper regard to the International Civil Aviation Organisation's 'A Balanced Approach to Aircraft Noise Management', to which Dublin Airport is subject, and a failure to have any or any appropriate regard to the measures which comprise the Balanced Approach. Fingal County Council (including the elected members) failed to apply the Balanced Approach as required by law.

4. The inclusion of PA CFI 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) in the Development Plan is unlawful, invalid and ultra vires as it is contrary to the European Communities (Environmental Noise) Regulations 2018 and to the Noise Action Plan for Dublin Airport 2019 - 2023. The inclusion of PA CFI 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) is invalid, unlawful and ultra vires as it is inconsistent with the Noise Action Plan for Dublin Airport 2019 - 2023 and purports to revise that plan other than in accordance with Article 12 of the European Communities (Environmental) Noise Regulations 2018. In adopting PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and including same in the Development Plan as made, Fingal County Council failed to have any or any proper regard for the Noise Action Plan for Dublin Airport 2019 - 2023. In that regard, the adoption and inclusion of PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) breaches section 9(6) of the Planning and Development Act 2000, as amended.

5. The inclusion of PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) in the Development Plan is inconsistent with and/or different from the Aircraft Noise Competent Authority's Noise Abatement Objective for Dublin Airport and the decision to adopt same and to include it in the Development Plan was made without any or any appropriate regard being had to the Noise Abatement Objective. PA CH 8.1: Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) is therefore invalid, void, unlawful and/or ultra vires the powers of Fingal County Council.

6. PA SH 11.7: Map Sheet 11 is inconsistent with relevant national and regional policies, including the National Planning Framework and the Regional and Spatial and Economic Strategy, and its inclusion in the Development Plan is therefore ultra vires, unlawful, invalid and contrary to section 9(6), section 10(1A), section 10(2A)(a), sections 12(11) and 12(18) and/or section 27(1) of the Planning and Development Act 2000, as amended.

7. The inclusion of PA SH 11.7: Map Sheet 11 in the Development Plan is invalid, unlawful, ultra vires and in breach of section 12(11) of the Planning and Development Act, 2000 as amended as its adoption and inclusion was motivated by considerations other than that of the proper planning and sustainable development of the functional area of Fingal County Council, the statutory obligations of Fingal County Council or any relevant policies and objectives of the Government or any Minister of the Government.

8. In making the Development Plan, the elected members of Fingal County Council failed to have any or any proper regard to the submissions made on behalf of the Applicant and failed to properly address those submissions and failed to give reasons for not accepting the submissions made on behalf of the Applicant in respect of PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and PA SH 11.7: Map Sheet 11 respectively.

9. In making the Development Plan, and in particular PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and PA SH 11.7: Map Sheet 11, Fingal County Council failed to give any or any adequate reasons as to why it was lawful, necessary or appropriate to adopt those material alterations, or each of them, and include those provisions in the Development Plan and failed to properly consider and/or address the recommendations made by the Office of the Planning Regulator and/or the Chief Executive. European Law

10. The making of the Development Plan with PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) contained therein was unlawful, invalid and ultra vires Fingal County Council as there was a failure to comply with Regulation (EU) No. 598/2014 on the establishment of rules and procedures with regard to the introduction of noise related operating restrictions at Union airports within a Balanced Approach and a failure to adopt a Balanced Approach prior to and/or in relation to the introduction of a noise mitigation measure.

11. The decisions to adopt PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and PA SH 11.7: Map Sheet 11 and make the Development Plan with these provisions included were taken without the provisions, or each of them, having first been the subject of any or any proper environmental assessment in accordance with the requirements of Council Directive 2001/42/EC."

#### **Domestic law issues**

**45.** It makes sense to look at the more general objections first starting with the basic issue of reasons (core ground 9) and the related issue of lack of regard to submissions (ground 8) and of breach of planning documents (ground 6), and then turn to the very fact-specific issue of consideration of irrelevant considerations in core ground 7.

#### **Core ground 9 - reasons**

**46.** Core ground 9 is:

- "9. In making the Development Plan, and in particular PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and PA SH 11.7: Map Sheet 11, Fingal County Council failed to give any or any adequate reasons as to why it was lawful, necessary or appropriate to adopt those material alterations, or each of them, and include those provisions in the Development Plan and failed to properly consider and/or address the recommendations made by the Office of the Planning Regulator and/or the Chief Executive."
- 47.** The parties' positions as recorded in the statement of case are summarised as follows:  
 "DAA  
 There was a failure by the Elected Members to give any or any adequate reasons as to why it was lawful, necessary or appropriate to adopt the material alterations or how it was consistent with their statutory powers to adopt those alterations. The Elected Members comply with the standard that material alterations be properly evidenced and justified, and no reasons were given for the adoption of the material alterations contrary to the recommendations of both the Chief Executive and the OPR.  
 FCC  
 It is clear that in respect of both material alterations:  
 (a) there was a proper and full documentary record which sufficiently explained the rationale for the decisions of the Elected Members;  
 (b) the principal reasons for the decisions of the Elected Members were consistent with the requirements of the Planning Acts and  
 (c) the reasons given adequately explained the rationale for the decisions made.  
 In focusing solely on the comments of some of the Councillors, the daa's reasons-based complaint 'inappropriately overlooks and... mischaracterises the reasons actually given' (per Jones)."
- 48.** What an applicant is entitled to is the main reasons on the main issues. As far as the stated planning rationale is concerned, and leaving to core ground 7 the issue of extraneous considerations, the members favoured CI zoning as they thought it was appropriate to support the existing use. Implicitly, that necessarily involved the proposition that that consideration outweighed such features of the situation as favoured the DA zoning. Daa complains that multiple sub-aspects of their submissions weren't considered – that's true but that isn't the standard. As in *Killegland Estates Ltd v. Meath County Council* [2023] IESC 39, [2023] 12 JIC 2109 (Unreported, Supreme Court, Hogan J., 21st December 2023), nobody could be in doubt as to the essential reason set out in the planning rationale. The members wanted to support and continue the existing social and recreational use.
- 49.** The level of reasons for the decision has to be read in context. The context was:  
 (i) both ALSAA and daa proposed to continue the existing sporting and recreational use, so the context was a lack of a live dispute about that issue;  
 (ii) that existing use which was proposed to be continued was non-conforming with the existing zoning which impliedly created an argument for aligning the zoning with the use, if the use was to be continued;  
 (iii) there were 164 material amendments making it impracticable for there to be extensive reasons for each individual motion; and  
 (iv) more generally, the political, collective, deliberative nature of the decision-making process at issue in the adoption of material or other amendments to a development plan also made it impracticable for there to be elaborate reasons.
- 50.** Daa's submission expressly stated that they did not intend to change the existing use. The daa submission on material amendments states expressly at p. 5 (emphasis added in bold):  
 "For clarity, daa are the owners of this landholding. The current operators, ALSAA, are in place under licence - which expired on 30 April 2022 and they have been given a notice to vacate (expiring May 2023). **It is daa's intention (as confirmed several times with all parties) to retain the facilities as sports and leisure facilities and daa's priority is to ensure continued use by existing members.** There is currently no intention to close the facilities but to review the functionality of the facilities and the operator into the future. The opportunity for the future operation is being offered to all interested 3rd parties (including the existing operator ALSAA) – to ensure the best outcome for the facilities into the future."
- 51.** The lack of a live dispute about that reduced, on these facts, the need for a more detailed set of reasons. That is also reflected in the members' unanimity on the zoning – as noted above the motion was passed 39-0 with no abstentions. That isn't decisive in itself but merely illustrates the lack of a live dispute about whether the ALSAA lands should continue to be used for recreational and sporting purposes. Since that use was non-conforming to the DA zoning it made sense for the members to adopt a zoning that had the effect that the use would be conforming. More sparse and skeletal reasons are legitimately acceptable in such a factual context.

**52.** Another factor is the fact that there were 164 material amendments put forward. Given that the bar for reasons would have to be multiplied by that number of motions, one has to be realistic about how much detail is practicable without a disproportionate or impractical expenditure of energies. Analogously to how it was for Hogan J. in *Killeglad*, the real question ultimately is whether the applicant could be in any real or genuine doubt about what the reason for the CI zoning is. The answer to that is clearly not.

**Core ground 8 – lack of regard to submissions**

**53.** Core ground 8 is:

“8. In making the Development Plan, the elected members of Fingal County Council failed to have any or any proper regard to the submissions made on behalf of the Applicant and failed to properly address those submissions and failed to give reasons for not accepting the submissions made on behalf of the Applicant in respect of PA CH 8.1 Section 8.5.7 Ensuring Environmental Protection and Sustainability (page 309) and PA SH 11.7: Map Sheet 11 respectively.”

**54.** The parties’ positions as recorded in the statement of case are summarised as follows:

“DAA

On 13 December 2022, a submission was made on behalf of daa in respect of both PA CH 8.1 and PA SH 11.7 in which it was argued that the Development Plan should be adopted without both material alterations. The submission made on behalf of the Applicant was not properly or adequately addressed by the Elected Members at the Special Meetings of 15 February 2023 or 20 February 2023 at which they voted to adopt both material alterations. The record of those meetings shows that there was no reference made by the Elected Members at the Special Meetings to either the fact of the submission or its contents. Decisions of the Elected Members are required to be properly evidenced and justified (per *Killeglad Estates*) and there was a failure by the Elected Members to discharge that obligation.

FCC

The Elected Members had regard to and considered the Chief Executive’s Report which summarised the daa’s submissions in respect of both MA PA CH 8.1 and MA PA SH 11. Furthermore, it is apparent from MA PA SH 11.7, the motions relevant to same and the discussions/deliberations of the Elected Members that the substance of the daa’s submissions was considered and not accepted. The Elected Members considered and clearly did not agree with the Chief Executive’s Recommendations in respect of the two material alterations and were fully entitled to do so.”

**55.** The factors set out under core ground 9 are also relevant here.

**56.** Insofar as lack of regard is concerned, the submissions were considered. Obviously submissions were conflicting. The members preferred ALSAA’s views to daa’s – that isn’t unlawful. The complaint of lack of “proper” regard to the daa submission is a merits complaint. The complaint of reasons is addressed under that heading.

**57.** Again, the lack of an actual dispute as to the intention of either the owner or operator of the lands to change the sporting use, combined with the fact that the council were aware that the use was non-conforming, meant that the essential planning rationale was quite simple which was bringing the zoning and the existing use into harmony. That doesn’t constitute lack of regard or adequate regard to the submissions, lack of reasons, or anything else.

**Core ground 6 – breach of NPF/RSES**

**58.** Core ground 6 is:

“6. PA SH 11.7: Map Sheet 11 is inconsistent with relevant national and regional policies, including the National Planning Framework and the Regional and Spatial and Economic Strategy, and its inclusion in the Development Plan is therefore ultra vires, unlawful, invalid and contrary to section 9(6), section 10(1A), section 10(2A)(a), sections 12(11) and 12(18) and/or section 27(1) of the Planning and Development Act 2000, as amended.”

**59.** The parties’ positions as recorded in the statement of case are summarised as follows:

“DAA

PA SH 11.7 is not consistent with National Strategic Outcome 6 in the NPF or RPO 8.17 and/or RPO 8.19 in the Regional Spatial and Economic Strategy (‘the RSES’) for the Eastern and Midland Region in respect of Dublin Airport, both of which ostensibly seek to protect lands which are zoned ‘DA’ for the purposes of the future development of Dublin Airport. The changing of the zoning is not consistent with the identified objects of the NPF or RSES, which seek to protect the lands around the airport to allow for growth and to ensure that the focus of land use for those lands is on the current and future needs of the Airport.

FCC

The complaint that MA PA SH 11.7 is inconsistent with the objectives set out in the NPF and the RSES is without foundation and lacks any evidential basis. Neither the NPF nor the RSES

dictate how the lands should be zoned, which is a decision vested in the Council – pursuant to the requirements of the PDA. Neither NSO 6, RPO 8.17 nor RPO 8.19 preclude a change in zoning and there is nothing to suggest that the change implemented by MA PA SH 11.7 has any negative impact on the current or future needs of the airport. The Council detailed the planning rationale for the change in zoning, ascribing a zoning which was consistent with the actual use of the lands – in respect of which there was an identified need. The planning authority has a wide discretion in deciding on the zoning of lands under section 10(2)(a) of the 2000 Act, which refers to the zoning ‘in the opinion’ of the planning authority, which requires to be indicated.

The new zoning is consistent with the historical, continuous and ongoing use of the lands, a use which, in accordance with the DAA’s submissions on the Development Plan, it does not intend on changing therefore the change in zoning does not impact or alter the operation of the airport in circumstances where the use has been in place and operating for a number of decades.”

**60.** The factors set out under core ground 9 are also relevant here.

**61.** The problem with this argument is that it is in substance a merits-based disagreement with the decision of the council in the exercise of its evaluative judgement. Whether a CI zoning that would have preserved the existing sporting use of the ALSAA lands is in conflict with NPF or RSES provisions to support Dublin Airport and ensure that lands in the vicinity of the airport is in the first instance a matter for the judgement of the council. Such judgement can be implicit rather than express – a decision-maker, especially a collective political assembly, doesn’t have to write an essay or answer objections point by point. There isn’t anything inherently irrational about an evaluative judgement which has the implication that sports facilities on the airport campus don’t undermine the airport use. Self-evidently, many of the vast number of people employed on or who use the airport campus have a need for accessible social and recreational facilities, and it is open to a reasonable council in the exercise of its evaluative judgement to consider that social provision is not in conflict with objectives related to the development of the airport. All work and no play is not a recipe for a successful enterprise.

**62.** Before the council was a submission from ALSAA main complex which stated expressly that “ALSAA Main Complex, located in Toberbunny (opposite the Airport Oil Tanks) has been a part of the social, sporting and cultural fabric of North County Dublin, used by thousands of Airport staff members ...”. So acceptance of the change sought in effect by ALSAA amounted in the circumstances to an implied endorsement of the expressly stated benefit to, and user of the facility by, airport staff. The ALSAA facility is not something completely separate from the airport – its existence and availability supports the airport in effect by supporting its staff. That’s self-evident anyway but for good measure it has a basis in material before the members which was impliedly accepted and to which regard can be had in assessing the reasons.

**63.** Insofar as the planning rationale is sparse, to the effect that “[t]he CI zoning is most appropriate at this location, having regard to the existing facility here”, it is obviously implicit in that that the members are having regard to the use of the existing facility, and think that the appropriateness of the CI zoning having regard to the existing facility is not in conflict with, or outweighs, such other evaluative matters as may point to a different conclusion. That implication arises from the context particularly where all of the submissions were before the members. The decision has to be read in a manner that makes sense and renders it valid rather than the opposite.

**64.** As I stated earlier, the decision has to be read in context, various reinforcing elements of which I have enumerated above.

**65.** In such circumstances where members decided to bring zoning and use into alignment, it is implicit that they consider that the desirability of doing so outweighs and is not prohibited by other factors including the NPF or RSES or related considerations that had been raised in the process, which fall under the heading of unnecessary sub-reasons particularly given the context here as set out above. Nobody could be in doubt as to what the reason was – provided we are confined to the stated planning rationale. Of course, additional detail is often helpful even bearing in mind the need for balance between saying too much or not enough.

#### **Core ground 7 – extraneous considerations**

**66.** Core ground 7 is:

“7. The inclusion of PA SH 11.7: Map Sheet 11 in the Development Plan is invalid, unlawful, ultra vires and in breach of section 12(11) of the Planning and Development Act, 2000 as amended as its adoption and inclusion was motivated by considerations other than that of the proper planning and sustainable development of the functional area of Fingal County Council, the statutory obligations of Fingal County Council or any relevant policies and objectives of the Government or any Minister of the Government.”

**67.** The parties’ positions as recorded in the statement of case are summarised as follows:  
“DAA

The Lands the subject matter of the zoning objective in PA SH 11.7 are owned by daa but are currently occupied by the Aer Lingus Social and Athletic Association ('ALSAA') under a licence from the Applicant which expired on 30 April 2022. The record of the Special Meeting of the Council held on 20 February 2023 demonstrates that the adoption of PA SH 11.7 was driven by a desire to 'help' ALSAA and because 'messages need to be sent to the daa' and to ensure 'that the daa recognise their wider responsibility in a manner which I think they seem to have forgotten about over the last few iterations of the daa'. The record of the Special Meeting makes reference to the dispute between daa and ALSAA and to the objective of 'supporting' ALSAA in order to get them 'ready for the next stage when the daa are going to come along and try to take that building off them'.

Section 12(11) of the 2000 Act limits the Elected Members to considering the proper planning and sustainable development of the area when making a development plan. The resolution of a private dispute does not form part of the proper planning and sustainable development of the area nor does it relate to the statutory obligations of the Council or any relevant policies or objectives of the Government or a Minister.

FCC

A planning rationale was attached to motion on MA PA SH 11.7 to amend the zoning from DA-Dublin Airport to CI-Community Infrastructure indicating that 'CI zooming is most appropriate at this location, having regard to the existing facility here'.

The selective quotations referenced by the daa do not alter the reasons advanced for the material alteration – the deliberations of the Elected Members and statements made in this regard do not alter the fact that there was a clear planning rationale underpinning the Council's decision – with which no issue is actually taken."

**68.** The council in effect argued that the stated written rationale was determinative. But that is too rigid a position. The court should be able to look at all of the evidence.

**69.** The council relies on *Killegland Estates Ltd v. Meath County Council* [2022] IEHC 393, [2022] 7 JIC 0106 (Unreported, High Court, 1st July 2022):

"94. Insofar as Clarke J. in *Christian [v. Dublin City Council (No. 1)]* [2012] IEHC 163, [2012] 2 I.R. 506] seemed somewhat sceptical about looking at the comments of members, that is expressly qualified by saying that that is 'on the facts of this case' (p. 544). I prefer to read that as meaning that the minutes in that particular case did not in fact add to the reasons, rather than as a statement that one cannot look at all the context including minutes or the statements of the moving councillor if appropriate to determine the reasons. As noted above there is detailed English authority allowing recourse to minutes, and no authority was cited under this heading in *Christian*. In fact, in other Irish caselaw since it is clear that recourse to the minutes has been accepted, for example *McCarthy Meats* where Heslin J. did look at the minutes (at para. 51), *Farrell v. Limerick County Council* [2009] IEHC 274 (Unreported, High Court, 17th June, 2009), where McGovern J. did examine the minutes (at para. 20). It is true that McGovern J. went on to say (at para. 28) that reasons had to be in the resolution itself, but again no authority was cited for that and the law has been clarified in the meantime as set out above. Blayney J. had regard to council minutes in *Flanagan v. Galway City and County Manager* [1990] 2 I.R. 66 and *Griffin v. Galway City and County Manager* [1990] 10 JIC 3102, (1991) WJSC-HC 626 (Unreported, High Court, 31st October, 1990), two decisions relied on by the applicant for what it is worth (submissions at para. 114).

95. Broadly the principle is that courts should not look at individual councillor's opinions if they contradict the official record. But the court can and should look at the official record such as the minutes and can look at other documents if the minutes do not state reasons, or if the minutes expressly or by implication direct the reader to other documents."

**70.** But that was a very different context. The context was the argument that the minutes didn't contain a reason at all, so the issue was whether the court was precluded from looking at other documents to find the reasons – the answer was generally No.

**71.** If the minutes do state a reason, that generally stands as the reason and is not to be contradicted by a different and incompatible reason set out in other documents. But that doesn't in itself address the issue of irrelevant considerations.

**72.** The issue here is not lack of stated reasons – there is an expressly stated planning rationale which is a valid reason – but the argument that in coming to that otherwise valid and reasoned decision, extraneous and impermissible matters were taken into account.

**73.** In the light of the issues discussed above, all would have been well if the members at the critical meeting had not gone outside the stated planning rationale.

**74.** However that didn't happen. The governing analysis is *Killegland Estates Ltd v. Meath County Council* [2023] IESC 39, [2023] 12 JIC 2109 (Unreported, Supreme Court, Hogan J., 21st December 2023) which also considers previous cases. The critical conclusion is as follows:

"83. Here one might note that unlike earlier cases such as *Flanagan* or *Griffin* there was no suggestion that the decision to de-zone had been adopted for irrelevant personal reasons. Nor was there any suggestion that unlike those cases or cases such as *Farrell* that the proposed de-zoning would be inconsistent with the proper planning and development of the area or (again as in *Farrell*) that it would jeopardise existing heritage conservation or environmental objectives. Again, unlike the situation in *Farrell*, the reasons given for disregarding the advice of the officials were for the most part planning-based reasons.

84. It is, however, true that an examination of the minutes and the transcript of various meeting discloses that at least some of the council[ors] believed that these lands were in the ownership of the Roman Catholic Church and that this was the reason why up to that point no application to develop this site had materialised. This, however, was not only a factual error – because in the meantime the lands had been purchased by Killekland – but because as cases such as *Flanagan* and *Griffin* show, questions of the identity of the owner of lands are in general an irrelevant consideration in planning matters. Planning and zoning decisions should, generally speaking, at least, be blind as to issues of ownership. It is also true that the council[ors] wrongly believed that a 'swap' of the Giltinane lands was necessary to facilitate the de-zoning of the Killekland lands. In this the council[ors] were mistaken, since these latter lands could have been de-zoned on a stand-alone basis.

85. It is true that both of these considerations – the issue as to the ownership of the lands and the necessity to 'swap' the lands – were irrelevant to the planning decision which the council[ors] were required to make. Unlike the situation disclosed by earlier cases such as *Flanagan* and *Griffin*, it may be said that these considerations were not absolutely central to the de-zoning decision. On the facts of the present case, they were really at best marginal considerations, and they cannot be said to have thereby vitiated the overall decision to dezone."

**75.** So the mention of irrelevant considerations isn't fatal in itself – that's realistic because a collective group of non-lawyer councillors debating a quasi-political issue in a political forum is almost never going to completely stick to a legal script. But the issue is whether the irrelevant considerations is marginal or more central. That involves a fact specific look at the particular comments made.

**76.** Here the transcript illustrates a number of comments that pushed at the boundaries of what was permissible by referring to personal or non-planning factors, including non-exhaustively the following:

- (i) "The people in ALSAA want this zoning and they are looking for it."
- (ii) "There is the animal in the room where the daa have been trying to make life very difficult for ALSAA and they talking about changing them, or moving them, or whatever. This CI zoning will help that according to the people in ALSAA, so I would take that on board."
- (iii) "I would certainly be doing it because I think really and truly messages need to be sent to the daa that it is not an entity unto itself, and that they have to take into account the needs of the community, people, neighbours, and so forth."
- (iv) "[I]t is absolutely vital that we protect the usage of this land. We have got a shortage of recreational facilities and where there is even the slightest danger[...] of the current usage being undermined, where we have a dispute or disputes over tenancy and usage and the potential for change of use driven by commercial ambition, I think we need to support the people who have been providing recreational facilities on this site."
- (v) "This is about ensuring that the daa recognise their wider responsibility in a manner which I think they seem to have forgotten about over the last few iterations of the daa. They are losing a connection with the people, which they would have had much stronger previously, and I think they need to have a good look at that."
- (vi) "The daa have been less than forthcoming with what they their plans are for this particular area. So, if their plans are to continue with the sporting here and make into a financially viable sporting area, let them come forward and tell us that. If they are planning for something else, let them come forward with alternatives for the people who have actually paid and put all of the infrastructure there, from bowling alleys to swimming pools to what have you."
- (vii) "I think quoting noise issues is a bit moot considering the daa do whatever the hell they want to do when it comes to noise. They just ignore residents and ALSAA as well."
- (viii) "I want to speak on this because I have been asked by ALSAA members and the people that run that ALSAA complex to support them and I just want them to know that I am supporting them. If this is not CI, there is nothing out there that matches

it. The work that these people have put in over the years, the clubs they serve, when you look at the different schools that go there, badminton, Irish Kidney Association, Special Olympics. The service that they have given to this community, and I have been a member there myself for many a year, and we need to support this CI, and get ALSAA ready for the next stage when the daa are going to come along and try to take that building off them.”

**77.** Some of these comments are relevant to a degree – keeping the existing use for example. Taking into account the submissions and views of ALSAA in itself isn’t necessarily irrelevant and indeed the council has to take into account submissions, especially bearing in mind that there were conflicting submissions, albeit with the requirement to disregard non-planning matters. But some comments place reliance on supporting a particular occupier and supporting that occupier in its dispute with daa. Land use objectives are about a particular use, not supporting a particular user, or indeed about sending a message to a particular landowner. So these comments are not valid planning considerations, and are not so marginal as to be capable of being essentially disregarded. The fact that they are not part of the stated planning rationale isn’t a complete answer if regard actually was had to them. In *Killegland* there was an effort made to identify non-planning considerations that were mentioned and expressly affirm that they would be disregarded. While this isn’t expressly repeated in the Supreme Court judgment on appeal I did refer to it at para. 210 of my judgment:

“Insofar as it is claimed that certain matters raised at the meeting of 20th September, 2021 fell outside the planning considerations required by s. 12(11) of the 2000 Act, it is equally clear on the record that the legal advice provided to members was that only planning considerations could be taken into account and that non-planning considerations were, therefore, withdrawn. No basis has been made out to suggest that relevant policy documents were not considered.”

**78.** Such an exercise doesn’t seem to have happened here. No criticism of the officials in this case intended but speaking generally, and especially in a context where members are disagreeing with a CE, best practice would suggest the following steps:

- (i) members would be given a general briefing or refresher at each stage as to what is and is not a proper planning consideration that can be raised;
- (ii) officials would monitor the contributions, identify any significant non-planning considerations and point out that irrelevant comments should be disregarded;
- (iii) if significant irrelevant comments are made, the chair would be advised that the members concerned could be invited to withdraw the comments or if they fail to do so, to recuse themselves from the motion concerned.

**79.** As with a jury that is presumed to be able to follow directions, it can be presumed unless otherwise proved that members can follow such advice properly.

**80.** Also, ideally, any lack of detail in a motion’s planning rationale should be also pointed out and the rationale updated accordingly – this would address pre-emptively any argument that issue with the CE’s reasoning had not been lawfully joined by members.

**81.** We have to be realistic in a political context about how much absolute discipline in comments a court could reasonably expect from an elected assembly. Some dubious or inappropriate comments at the margin shouldn’t be exaggerated into being central if they aren’t central. But there was just too much material of that nature here.

**82.** Ultimately bearing in mind:

- (i) the non-peripheral number of “personal” (to use Hogan J.’s term in *Killegland*) contributions on the motion; and
- (ii) the lack of these being identified and withdrawn (in distinction from *Killegland*),

it follows from the Supreme Court’s analysis that the adoption of the material amendment did not comply with the obligation to consider only planning considerations.

**83.** In concluding under this heading, this is an administrative law issue about what can be taken into account, and shouldn’t be taken as criticism of the members. No elected representative wants a transcript of their remarks pored over in a courtroom and reviewed line by line in terms of compliance with caselaw. It’s not a procedure I find particularly congenial to implement, if that’s any consolation, but I am doing so because that’s what follows from the relevant Supreme Court precedent. On any future go-around, members need to be aware, and ideally reminded by officials, that only planning considerations and not personal considerations can be taken into account. Any dubious comments should be ideally identified and withdrawn. Separation of powers involves a degree of mutual sympathy and respect between different branches of public administration, and that applies here. Obviously being neutral on the merits one can sympathise with the viewpoints of daa and ALSAA also.

**EU law issues**



**84.** Having regard to the conclusion on the domestic issues, the EU law issues don't need to be decided.

**Consequential orders**

**85.** There are a number of aspects to consider under the heading of consequential orders:

- (i) the grounds relating to noise;
- (ii) the appropriate relief in relation to ALSAA lands;
- (iii) whether the plan should be amended by order;
- (iv) implications of any order for planning enforcement pending variation;
- (v) whether remittal is appropriate; and
- (vi) costs.

**86.** Firstly, as regards the **grounds relating to noise**, even if any of those had been made out as a ground of challenge, it wouldn't be necessary to consider quashing the noise insulation clause of the plan (whether on the grounds that overlap with *Friends* or the grounds unique to this case) because that has simply been overtaken by the ministerial direction which is being upheld in *Friends*.

**87.** As regards **relief in respect of the ALSAA issue**, the applicant hasn't pleaded the precise relief sought in the event of *certiorari*, but I think a simple order of *certiorari* would be sufficient and a declaration that the land would have no zoning in the meantime.

**88.** The option of **amending the plan** under s. 50A(9) of the 2000 Act would be more attractive if there was consent to that, which there isn't. Indeed nobody applied for that.

**89.** As regards the implications of **planning enforcement in the interim period** pending the assignment of any land use objective to the plan, that may be fairly theoretical but one can't be entirely sure about that, so I would provisionally consider that it is in the interests of both daa and ALSAA that the order of *certiorari* should not be a basis for enforcement action in that interregnum, should that be an issue. So the effect of the *certiorari* and declaration would, provisionally, be stayed pending variation but only insofar as concerns planning enforcement. Obviously I am open to counter-argument on that. But if there is counter-argument it would seem necessary to join ALSAA as a notice party (I did consider whether they should be a notice party on the substance of the case but as their position is only that of a licensee rather than owner of a more substantive real property interest, it did not seem strictly necessary although I accept that that is borderline perhaps).

**90.** We turn then to **the question of remittal**. As between making no additional order beyond a declaration that the land is unzoned in the meantime versus remittal, the tie-breaker is the separation of powers. The Oireachtas has prescribed a mechanism for variation of a plan. The court's intervention is neither needed nor welcome – to swing in to action with remittal would require the creation of a proto-statutory procedure which would among other things clearly cut across the statutory process – which involves a number of actors not before the court. Insofar as it did not cut across the statute it would pointlessly replicate that. If *Christian* was an experiment in that regard, it is not one that should be repeated particularly given the elaborate architecture since enacted for the involvement of the OPR for example. Indeed more recent authority militates against micro-management at the remittal stage which is what we would be plunged straight into if any sort of remittal order was made in the event of quashing any provision of a development plan (see *Crofton Buildings Management CLG and Bourke v. An Bord Pleanála* [2024] IESC 12 per Donnelly J).

**91.** A variation process might also have the benefit that daa might get a further hearing on any additional adjustments they wish to have considered to the zoning of other parcels within the airport campus. Again I amn't expressing a view on the merits but there may be something to be said for direct or even facilitated dialogue and discussion between stakeholders on such issues, possibly with a view to looking creatively at all options to maximise consensus on the best land use options for the campus. Maybe that's wildly over-optimistic but I hope not.

**92.** Relatedly, one can note in passing that the question of whether the HT zoning for the ALSAA pool was the appropriate one was raised in submissions but apparently not pursued. If the daa's suggestions for additional DA zonings were to be considered and reviewed as part of a variation process, maybe one couldn't rule out such a review also looking at ALSAA's suggestion that the pool zoning and that of the associated car park area could be considered at as well if that's still an issue.

**93.** Finally, s. 50A(9A) of the 2000 Act on mandatory remittal doesn't apply because it only covers judicial review of "a decision or other act to which section 50(2) applies, made or done on an application for permission or approval". The latter clause means individual development consents and the like, not the adoption of measures of general application like development plans.

**94.** I can also suggest a **provisional order as to costs**, which would be that daa get its costs against the council, but limited to the issue on which they succeeded and in particular limited to a one-day hearing. The *Friends*-related points were only argued insofar as they duplicated grounds in *Friends* and don't warrant a costs order here merely because the applicants in *Friends* are costs-protected. The points would have been argued anyway, so no real additional costs under that heading are properly attributable to the order being made now. All that is subject to the possibility

of counter-argument, although perhaps in fairness I could say that if counter-argument is unsuccessful, one could in these commercial circumstances look at a set off of the costs of that against the costs proposed to be awarded for the hearing.

### Summary

**95.** In outline summary, without taking from the more specific terms of this judgment:

- (i) An interested party such as the applicant is entitled to the main reasons on the main issues. That was provided herein in the sense that there was one central reason which impliedly outweighed the counter-considerations. Nobody could be in any real or significant doubt as to the rationale for the zoning change which was set out expressly in the planning rationale document.
- (ii) An applicant is not generally entitled to micro-sub reasons. The context here was the lack of any live dispute as to the future use of the land, daa's stated intention to continue the sporting and recreational use, and the fact that this was a non-conforming use giving rise to a case for aligning the zoning with the current and intended future use. The large number of amendments to be dealt with and the political, collective, deliberative nature of the decision-making process also reduced the need for further detail in the reasons given here.
- (iii) The submissions both for and against the change in zoning were considered. The members were lawfully entitled to prefer ALSAA's views to daa's. The complaint of lack of "proper" regard to the daa submission is a merits complaint that does not give rise to a right to relief by judicial review in this case.
- (iv) Where members acted on a clear reason to bring zoning and use into alignment, it is implicit that they considered that the desirability of doing so outweighed and was not prohibited by other factors including the NPF or RSES or related considerations that had been raised in the process, which fall under the heading of unnecessary sub-reasons particularly given the context here as set out above.
- (v) Even accepting and finding that a clear, lawful, reason was provided, a decision can still be condemned if irrelevant considerations are taken into account. In deciding that, the court is not confined to the stated reason and can look at the contributions of members at the relevant meeting. In this case a significant and repeated feature of very many contributions was the introduction of non-planning personal factors related to the identity of the current operator and its potential differences with daa. These were not peripheral considerations, looking at the transcript of the discussion overall.
- (vi) A remittal order is not appropriate given that it would either cut across the statutory procedure for variation or would be otiose given the availability of that procedure. The gap in the plan created by certiorari can be addressed by existing statutory mechanisms for variation, which do not require and would not benefit from supplementation or assistance by order of the court.

### Order

**96.** For the foregoing reasons, it is ordered that:

- (i) there be an order of *certiorari* by way of an application for judicial review quashing that part of the Fingal County Council development plan 2023 - 2029 made on 22nd February 2023 as relates to the CI zoning for ALSAA lands as outlined in orange in the material amendment FDP2/653/22 (Agenda Item No 653) Motion regarding ALSAA - Community Infrastructure. AI082109 and as incorporated at PA SH 11.7 on map sheet 11;
- (ii) there be a declaration that the lands concerned be treated as unzoned until such time as the plan is varied to adopt a land use objective;
- (iii) unless any party applies otherwise by written legal submission within 14 days from the date of this judgment, the foregoing order be perfected forthwith thereafter with a stay on the order pending the assignment of a zoning objective to the lands or further order, limited to applying only for the purposes of planning enforcement, and on the basis that there be an order for costs (including the costs of written submissions and certifying for two counsel in respect of all relevant court applications) to the applicant against respondent on the basis of the paperwork and interlocutory costs being limited to the costs of the issue of the taking into account of irrelevant considerations when zoning ALSAA lands as CI, and the hearing-related costs being based on the costs of a one day hearing; and
- (iv) the matter be listed on Monday 4th November 2024 to confirm the foregoing.