



An
Bord
Pleanála

Inspector's Report ABP-305746-19.

Development	Kilkenny County Council Compulsory Purchase Order No.3 of 2019. Proposed N24 Tower Road Junction Improvement Scheme
Location	Garrynarea to Belline and Rogerstown, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Type of Application	Local Authority Project
Objectors	1. Mr. Pierce Malone 2. Mr. Joseph Malone
Observer(s)	None.
Date of Site Inspection	20/02/2020 & 10/03/2020.
Date of Oral Hearing	11 th March 2020
Inspector	A. Considine.

Contents

1.0 Introduction.....	4
2.0 Part 8 Development Process	4
3.0 Legal Status & Details of the CPO.....	8
4.0 Site Inspection and Description	9
5.0 Proposed Works	10
6.0 Planning Policy Context.....	12
6.1. National.....	12
6.2. Regional.....	12
6.3. Local	13
7.0 Objections to the Order.....	14
8.0 Oral Hearing	15
8.2. Kilkenny County Council Submission.....	16
8.3. Objectors Submissions	17
8.4. Inspectors Questions & Responses	22
8.5. Questions Between Parties.....	24
8.6. Closing Statements	26
9.0 Assessment.....	27
9.1. CPO Demonstration	27
9.2. Is there a community need that is to be met by the acquisition of the site in question?.....	28
9.3. Is the particular site suitable to meet that community need?.....	30
9.4. Would the works to be carried out accord with or at least not be in material contravention of the provisions of the statutory development plan?	30

9.5.	Have any alternative methods of meeting the community needs been considered?.....	31
9.6.	Other Issues.....	32
10.0	Conclusion	35
11.0	Recommendation & Decision	35
12.0	Reasons and Considerations	36

1.0 Introduction

- 1.1. This report addresses Kilkenny County Council Compulsory Purchase Order No. 3, 2019 (Proposed N24 Tower Road Junction Improvement Scheme) with respect to works from Garrynarea to Belline and Rogerstown.
- 1.2. Kilkenny County Council, in exercise of the powers conferred upon them by Section 76 of the Housing Act, 1966 and the Third Schedule thereto, as extended by Section 10 of the Local Government (No 2) Act, 1960 and amended and extended by the Planning & Development Acts, 2000 – 2018 including Section 213 of the Planning and Development Act, 2000, Local Government Acts, 1925 – 2014 including Local Government (No. 2) Act, 1960, Roads Acts 1993 – 2015, and all other Acts, have made an order entitled as above. If approved, the local authority will acquire compulsorily, the land described for the purposes of the construction of the Proposed N24 Tower Road Junction Improvement Scheme with ancillary works including the extinguishment of public rights of way described in Part II of the Schedule hereto.
- 1.3. An oral hearing to consider the objections / submission to the CPO case was held on the 11th of March 2019 in the Kilkenny Ormond Hotel, Kilkenny having been considered an appropriate location with facilities to accommodate the hearing. A copy of the agenda that issued to all parties is enclosed as an appendix for the Boards reference. An attendance sheet for both days is also enclosed with the documents pertaining to the hearing.

2.0 Part 8 Development Process

- 2.1. The proposed road upgrade project has been subject to the process set out under Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended (Planning Authority Reg. Ref. Part 8 – Planning Reference 03/19 refers). The Board will note that a full suite of documents associated with the Part 8 Process was provide at the Oral Hearing following a request for same, as they were absent from the CPO file sent to the Board.
- 2.2. As part of the Part 8 process, Atkins Consulting Engineers carried out surveys and studies before preparing a set of reports including as follows:

- Appropriate Assessment Stage 1 Screening Report
- Architectural Heritage Impact Assessment Report
- Archaeological and Cultural Heritage Impact Assessment
- Environment Impact Assessment Screening Report
- Preliminary Construction Environmental Management Plan
- Preliminary Construction Ecological Appraisal.

2.3. The Part 8 documents were submitted to the Council on the 8th of February 2018 and were available for public inspection at 4 locations from the 8th of February to the 22nd of March 2018, as well as being available on the Councils website. A number of statutory bodies were contacted as part of the process and referrals were made to the Environment Section, Area Engineer Piltown Municipal Area and the Conservation Officer within the Council. Eight submissions were received from members of the public while Inland Fisheries Ireland also made a submission. The members of Kilkenny County Council approved the N24 Tower Road Junction Improvement Scheme on the 15th day of April 2019.

2.4. The development was subject to AA screening noting that the Garrynarea River is located approximately 280m to the north east of the site and that the river is a tributary of the River Pil 16, which itself, forms part of the Lower River Suir SAC, Site Code 002137, located approximately 570m to the south east of the site. The AA Screening determined, given the localised nature of the project, that the proposed road improvement scheme would not have any impacts, either directly or indirectly on the conservation objectives or status of the SAC and, either alone or in combination, the project poses no likely significant effects on the Natura 2000 sites. Accordingly, a Stage II Appropriate Assessment is not necessary.

2.5. A Preliminary Ecological Appraisal was also carried out for the proposed road scheme which included field surveys. These surveys concluded that no protected areas or habitats were identified within the survey area and that the habitat types encountered are common and widespread both locally and nationally. The survey did not identify any protected or other notable species with no invasive species noted. The report notes that the development will require the removal of sections of

managed hedgerow and recommends that additional hedge planting should be included in the designs to compensate for this loss.

- 2.6. In terms of species, the Preliminary Ecological Appraisal identifies a number of mature trees which have features that are suitable for roosting bats which will be affected by the proposed development either directly or through impacts on the network of hedgerows connecting the trees within the wider area. A detailed survey does not appear to have been not carried out. Bats are afforded legal protection under the Wildlife Act 1976 as amended and under the EU Habitats Directive (92/43/EEC). Therefore, the destruction, alteration or evacuation of a known bat roost is a notifiable action and a derogation licence has to be obtained from the National Parks and Wildlife Services before any works can commence.
- 2.7. In addition to the bats, signs of badger activity were recorded, including badger scats, a mammal run and mammal hole that may be attributed to badger, during the survey. The Ecological Appraisal also noted that the grassland area on the site provide suitable foraging habitats for badgers and it is likely that badgers are using the area for foraging and commuting within the wider landscape. Again, badgers are listed as a protected species, including their sets, under the provisions of the Wildlife (Amendment) Act 2000. With regard to birds, the appraisal notes that the areas of trees / hedgerows and scrub provide suitable nesting sites and foraging areas for a range of common bird species. The appraisal concludes recommending that a number of further surveys are required to ensure the protection of protected species and nesting birds.
- 2.8. The scheme was also screened for EIA, concluding that the proposed road improvement scheme did not exceed any of the thresholds prescribed in the Roads Act or Roads Regulations that would trigger a mandatory requirement to conduct an EIA and prepare an EIAR. The EIA Screening Report included a sub-threshold screening assessment and the report describes the background to the scheme, traffic; the impact of the proposed development on human beings and population; biodiversity / flora & fauna; land and soils; water; noise; air quality; climate; landscape and visual; cultural heritage and material assets. The report concludes that mandatory EIA is ruled out and having regard to the scale and nature of the project, the overall probability of impacts on the receiving environment arising from the proposed development is considered low.

2.9. An Archaeological and Cultural Heritage Impact Assessment Report was prepared for the proposed scheme which notes that there are no National Monuments or sites with Preservation Orders located within the vicinity of the proposed scheme. The site does however extend through the general location of the 15th Century Battle of Piltwon (KK039-079----).

2.10. The scheme extends close to two structures of architectural heritage significance as follows:

- To the east of the scheme - Piltown Tower (Ponsonby Memorial Tower), Protected Structure ref C211 and is of national significance by the NIAH, ref 12325028.
- To the west of the scheme – Gate Lodge known as The Ink Bottle (or Turret), Protected Structure ref. C1060 and is of regional significance by the NIAH, ref 122403820.
- The Ink Bottle lies within the curtilage of Belline House, protected structure ref C318, and was originally intended as one of a pair flanking a central gateway, the second no longer extant, forming a picturesque landmark at the entrance to the grounds of Belline House estate.

2.11. The Archaeological and Cultural Heritage Impact Assessment Report concludes as follows:

Archaeology: As the proposed scheme is located within the environs of the recorded location of the Battle of Piltown, the potential exists for the presence of artefacts, and perhaps burials, associated with this battlefield site within the footprint of the proposed scheme. The level of impacts is not quantifiable but may be potentially direct, negative and significant in nature in terms of archaeology.

Architectural Heritage: The Report concludes that the development will not directly impact the two protected structures of architectural heritage significance, but the construction of the proposed roundabout and link road will result in an indirect, moderate, negative impact on the setting of Piltown Tower. While the hedgerow forming the southern boundary of the field containing the Ink Bottle, and will somewhat screen the structure from the proposed new link road, the scheme will result in the loss of the former access

route from the gate lodge to Belline House, and will result in a slight, indirect, negative impact on the existing setting of the protected structure.

Cultural Heritage: The proposed development will cross the line of townland boundaries, and will result in a direct, slight, negative impact on a historic boundary feature.

- 2.12. The Archaeological and Cultural Heritage Impact Assessment Report recommends that a geophysical survey is carried out followed by a programme of archaeological test trenching of the proposed scheme. The site investigations should be carried out as far in advance of the construction phase as is feasible.
- 2.13. A Chief Executives Report was prepared in April 2019 for the consideration of the Elected Members in relation to the Part 8 Scheme. The report includes 3 appendices and Appendix C comprises the Planning Report for the scheme. Nine submissions / observations were made on the Part 8 application and were addressed in the planning report, with a response to each issue included. The report concluded with a recommendation that the road project proceed. At a meeting of 15th April 2019, the Council declared the resolution to proceed with the proposed development as circulated. No amendments to the scheme were proposed and the scheme was formally adopted by the elected representatives of Kilkenny County Council. The CPO drawings and particulars reflect those as detailed in the adopted Part 8 design.

3.0 Legal Status & Details of the CPO

- 3.1. Under Section 213(2)(a) of the Planning and Development Act, 2000 (as amended), a local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.
- 3.2. Compulsory Purchase Orders are made pursuant to the powers conferred on the local authority by section 76 of the Housing Act, 1966, and the Third Schedule thereto, as extended by section 10 of the Local Government (No. 2) Act, 1960, (as substituted by section 86 of the Housing Act 1966), as amended by section 6 and the Second Schedule to the Roads Act, 1993, and as amended by the Planning and

Development Act, 2000-2018. Orders are served on owners, lessees and occupiers in accordance with Article 4(b) of the Third Schedule to the Housing Act, 1966.

- 3.3. To facilitate the implementation of the Proposed N24 Tower Road Junction Improvement Scheme, the CPO will entail the permanent land acquisition of 52 plots of land involving 19 landowners, including Kilkenny County Council, who are identified as being affected by the CPO. The Housing Act of 1966 provides if an objection has been made to a compulsory purchase order, the Board will facilitate the person making the objection to state their case at an Oral Hearing.
- 3.4. Eight objectors initially challenged the CPO, including 1 non-landowner. The objections pertain to the proposed acquisition of lands identified as Plots 102a, 103, 105a, 107, 110a and 114a. The objections relate to the excessive acquisition of land, access, proximity to houses, access to services, drainage and impacts to farming practices. Prior to the holding of the hearing six objectors withdrew their objections.
- 3.5. Following a Part 8 Process, which concluded on the 15th day of April 2019, the Compulsory Purchase Order had the seal of the Council affixed on the 21st October 2019 and was advertised in the Kilkenny People on the 25th of October 2019. Formal notices of the CPO were issued by Kilkenny County Council and served on the individual landowners, lessees and occupiers of the lands affected by the CPO.

4.0 Site Inspection and Description

- 4.1. I carried out a site inspection over a couple of days in both February and March of 2019. The site covers approximately 12ha in area and lies to the west of the village of Piltown, with Carrick-on-Suir Co. Tipperary approximately 3km to the south west, and along the National Road, the N24. The site comprises a section of the N24 including hard shoulders, grass verges and connecting local roads including the L3432 Tower Road, L1038 and L1039. The site also includes an area of third-party lands along the route which include primarily agricultural lands.
- 4.2. The objective of the proposed junction improvement works is to address existing safety concerns in the local road infrastructure and to facilitate site junction improvements. The N24, which connects the cities of Limerick and Waterford. This section of the route was completed in 2002, comprising a wide single carriageway which bypassed the villages of Piltown and Fiddown. In the period 2002-2006, there

were a number of fatal collisions, serious injury collision and a number of minor injury collisions. In 2006, a two plus one (2+1) carriageway retrofit was carried out as a pilot project trialling this type of cross section and resulted in road safety improvements along the route.

- 4.3. However, a number of minor collisions were recorded from 2007-2009 and in 2010, a low-cost scheme was introduced to reduce the collision rates at the junctions. This involved the channelling of eastbound traffic down to one lane in advance of and past the Tower Road junction. In addition, visibility improvements and measures to restrict overtaking were introduced. Further improvements were undertaken in 2014, to include the installation of delineator posts to prevent right turns out of Ink Bottle Junction and further interim works to the existing layout in 2017.
- 4.4. Following the safety improvement works above, a Road Safety Impact Assessment was carried out to determine the most appropriate long-term solution for improving road safety at this section. Between 2011-2016, there were two fatal collisions, three serious injury collisions and eight minor collisions along the 1.3km section of the road. Ultimately, the current proposed scheme was identified as the preferred option to significantly reduce the number of collisions while also providing improved facilities for vulnerable road users such as cyclists and pedestrians using the junctions. It is submitted that improvements to these junctions are necessary to ensure the safety of all road users.
- 4.5. I have included photographs of the site and its environs taken during the course of my site inspections which provide a visual account of the surrounding landscape.

5.0 **Proposed Works**

- 5.1. The description of the proposed development is included in the Part 8 Development report and entails:
 - Upgrade of existing Tower Road Junction (which contains a structure included in the Record of Protected Structures – Memorial Tower ref C211) to a compact grade separated junction including an overbridge spanning the N24 national road.

- Removal of existing Tower Road roundabout and replacement with a new roundabout to the north west of Piltown Tower.
- New 750m link road connecting the Ink Bottle Junction to the Tower Road Junction with closure of the Ink Bottle Junction access to the N24 for all vehicles except cyclists (which contains in proximate a structure included in the record of Protected Structure reference at Gage Lodge (The Turret or Ink Bottle) Reference C1060).
- Widening of the current 2+1 N24 carriageway to a 2+2 carriageway for 1.8km.
- Provision of cyclist and pedestrian facilities.
- Public lighting improvements.
- Installation of road markings and signage.
- Surface water drain system.
- Hard and soft landscaping.

5.2. It is submitted that, subject to planning approval, the project will aim to commence construction in mid-2020 with the opening of the new junction in 2021/2022. It is expected that the construction phase will last for a maximum of 12 months and will include the following stages:

Pre-earthworks: Fencing of study area boundary, clearance, topsoil strip.

Earthworks: Cut and fill, borrow to fill, cut to tip, capping.

Drainage & Services: pre-earthworks, temporary earthworks, carriageway drainage, services and footpaths

Structures: Foundations, sub-structures, superstructures, finishing.

Carriageway: Sub-base construction, road base, wearing course, footpath construction.

Finishings: Traffic signs, road markings, safety fencing.

6.0 Planning Policy Context

6.1. National

6.1.1. National Planning Framework

The National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development of our country out to the year 2040. The Framework seeks to set goals which are expressed as National Strategic Outcomes (NSOs) and sets out various policies under National Policy Objectives which were developed as a result of extensive analysis and consultation, setting out a new way forward for regional and local planning and sustainable development policy.

NSO 2 deals with Enhanced Regional Accessibility and states that 'Building on a more compact approach to urban development requirements, enhancing connectivity between centres of population of scale will support the objectives of National Planning Framework'. In this regard, the NPF sees to maintain the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

National Policy Objective 27 seeks to "ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages."

6.2. Regional

6.2.1. Regional Planning Guidelines for the South-East Region 2010-2022

The Regional Planning Guidelines set out a comprehensive vision for the development of the South-East Region on the Country and in Section 1.3.1 deals with Regional Authority Plans and Programmes including:

N24 PRIORITISATION STUDY

The current N24 is of variable standard and is certainly not consistent with its status as a National Primary route. This results in a number of problems,

principally arising from congestion and safety issues. The Study, published in 2008, sets out the case for upgrading the route on the grounds of safety, efficiency and strategic importance of the route for the economic performance of the region. It is an objective of the Regional Authority to prioritise upgrading of the N24.

In addition, section 2.3.1 of the Guidelines note that the NDP lists the improvement to a suitable standard of the N24 (amongst others) is essential for the sustainable development of the South-East Region. The Regional Development Strategy, details in Section 3.2 the Strategic Goals, where SGC seeks 'to progress towards an accessible region with efficient and fully integrated transport system by:

C8: Upgrading of the key N24 National Primary route linking the Gateways of Waterford and Limerick and connecting them to the urban settlements of Carrick-on-Suir, Clonmel, Cahir and Tipperary in the region.

Section 4.10.7 of the Guidelines deals with Priority Actions and includes infrastructure where a number of routes are identified for improvement, including the N24 – various improvement schemes along the N24 route.

6.2.2. Regional Spatial and Economic Strategy (RSES) for the Southern Region

The RSES sets out the strategic regional development framework for the Region. The primary aim of the RSES is to implement Project Ireland 2040 - the National Planning Framework, at the regional tier of Government and to support NPF policy for achieving balanced regional development.

6.3. Local

6.3.1. Kilkenny County Development Plan 2014-2020

The Kilkenny County Development Plan 2014 – 2020 is the relevant policy document pertaining to the subject site. Chapter 11 of the Plan deals with Transport and section 11.7 with Road Network. Section 11.7.6 deals with Road Improvement Projects and states that 'the Council, with the support of the NRA, is progressing/developing a number of schemes within County Kilkenny as follows:

- N24 Mooncoin bypass
- N24 Tower Road Overbridge
- N24 Carrick on Suir bypass

Section 11.7.8.1 Road Objective 11G seeks to support the implementation of the NRA projects as outlined above.

7.0 **Objections to the Order**

There were 8 objections submitted in relation to the CPO. On the Friday before the hearing, the six submissions from FBA Consultants were withdrawn and the Board was advised that they would not be making representations at the Oral Hearing as follows:

1. Ms. Mary O'Brien (Plot 114a)
2. Mr. & Mrs. Nigel & Michaela Back, (Plot 110a)
3. Mr. Robert Dowley, (Plot 102a)
4. Enda Dowley (Plot 118a)
5. Daphne Dowley (Plot 105a)
6. Mr. & Mrs. James & Catherine Byrne (Plot 107)

The following are the valid objections in relation to the CPO

7.1. **Mr. Joseph Malone**, (Plot 103)

- Inadequate schedule of accommodation works
- Impact proposed land acquisition on retained lands
- Alternate design of N24 Tower Road Junction Improvement Scheme would minimise the land take from Joseph Malone
- Need for cycle lane and / or pedestrian walkway.

The submission advises that he will elaborate on the objection at the oral hearing.

7.2. Mr. Pierce Malone

The Piltown Bypass in no way comes near the standard of other bypasses in the county. It has dangerous junctions and following a number of serious and some fatal accidents, all right-hand turns are now closed off.

- There is no objection to the crossover bridge.
- A roundabout should have gone in at the outset.
- The closure of the Turrets Junction, which links the L1038 with the N24, is a very extreme measure as it is a key junction. The current partial closure is very inconvenient.
- The junction should be upgraded to a roundabout which would be the best and most cost-effective option.
- The Tower Road Junction is congested as it stands, and the proposed enlarged roundabout will impact immediate residents.
- There is no need for the proposed link road which could become a dangerous speedway, with only one entrance on it, to Malones farm.
- Objects to the extinguishment of the public right of way associated with the land marked for the CPO.

8.0 Oral Hearing

8.1.1. An oral hearing was held in the Kilkenny Ormond Hotel, Kilkenny, on 11th March 2019. The hearing commenced at 10.00am and an audio recording of the proceedings was made.

8.1.2. The following parties made submissions to the oral hearing:

a) On behalf of Kilkenny County Council

Mr. Dermot Flanagan, Barrister

Mr. Denis Malone, Senior Planner, KCC

Mr. John Ryan, Civil Engineering with Atkins

b) Objectors

- Mr. Pierce Malone
- Mr. Joseph Malone Snr, (Plot 103)
- Mr. Joe Malone Jnr
- Mr. Ned Nagle on behalf of the Malone Family

8.1.3. The main points arising during the course of the oral hearing are summarised below.

8.2. **Kilkenny County Council Submission**

8.2.1. **Mr. Dermot Flanagan:**

Mr. Flanagan, Legal Council, introduced the proposed road scheme and the speakers on behalf of the Council.

- Advised that the application to acquire the land to implement works which have been subject to a Part 8 process, where the elected members approved the works for the road scheme.
- One objection remains.
- The relevant legislation and sections of the P&D Act cited.
- Mr. Flanagan also sought to amend the description of two plots of land in the Schedule – plots 103g and 110a. (OH Doc. 1 KCC).

8.2.2. **Mr. Denis Malone, Senior Planner:**

- Statement of Evidence submitted (OH Doc. 2 KCC)
- Mr. D. Malone presented details of his qualifications and experience and provided details of the scheme.
- The submission deals with the planning aspects of the proposed development with references to the Regional Planning Guidelines and County Development Plan policies. The submission also notes the heritage aspects of the wider area and includes comments on AA and EIA.
- It is concluded that the proposed development facilitates and gives effect to the provisions of the Kilkenny County Development Plan 2014-2020 and is

therefore in accordance with the proper planning and sustainable development of the area.

8.2.3. **Mr. John Ryan, Atkins:**

- Statement of Evidence submitted (OH Doc. 3 KCC)
- Mr. Ryan presented details of his qualifications and experience and provided details of the scheme and outlines the need for the junction improvement works.
- 6 options were considered by Tramore House Regional Design Office in the 2017 Road Safety Impact Assessment for the junction improvement works. The proposed option provides the best combination of minimising land take, reducing collisions, economy and functionality.
- A description of the proposed works is detailed including technical details.
- The issues raised in the objectors' submissions are also addressed by Mr. Ryan in particular the issue of Rights of Way.
- Mr. Ryan concludes that the lands included in the CPO are necessary, sufficient and suitable for the construction, operation and maintenance of the proposed road development to which the scheme relates. All land included is required for the purposes of the scheme.
- There is an urgent public need for the improvement scheme, and it is the most appropriate proposal to improve safety and reduce collisions at the junctions.

8.3. **Objectors Submissions**

8.3.1. **Mr. Pierce Malone**

Statement of Evidence submitted (OH Doc 4 Mr. P. Malone)

- Mr. P. Malone restates his shock at the proposed scheme.
- Always thought the Piltown Bypass a dangerous road with dangerous junctions from the beginning. The issues have sought to be addressed 6 times. The original scheme should have had proper junctions and should include roundabouts.

- Discussed other dual carriageways considered dangerous, including the original Naas bypass and noted the Kilkenny Bypass as a good example of a bypass. A diagram of the Kilkenny bypass was submitted as a visual aid. Mr. Malone discussed plans for the closure of the Johnswell Road Junction which were resisted by the residents – and discussed in the book, pg. 90 by Billy Moore, From Ironmills to Higginstown, a copy of which was submitted at the OH. A roundabout installed instead and has improved traffic movements on the road. Similar discussion in relation to the Hebron Road and Hennebry's Cross.
- No issue with the overbridge but considers that a roundabout would have been just as good.
- There are 34 houses on the R698 and lots of housing / residential areas including schools.
- The Turret / Ink Bottle Junction takes the traffic from a large hinterland area – identified in Diagram D submitted by Mr. Malone. Closing the access cuts off the option for residents and will increase traffic volumes through Piltown.
- Closing the Turret / Ink Bottle Junction closes off access / exit to the Piltown area, leaving only one – Tower Junction. Mr. Malone questions what happens if there was an accident.
- There is no need for the large land take from the Malone Farm and alternative designs should be considered – discussed.
- A second slipway is needed.

8.3.2. **Mr. Joseph Malone Snr.**

- The Malone Farm is land locked and the Council are taking essential land from the farm. There is no land adjacent to the farm available to expand the dairy farm.
- The taking of the land means an awful lot and is taking from the family's livelihood. 5 acres was taken in the 1990s.

- In 2010/2011, out of the blue, 2 people arrived on the farm putting out feelers about surveys / land take. Mr. Malone said no to the land take but that they could do the surveys.
- When the plan of what was proposed were advised to Mr. Malone, he questioned why the other side of the road wasn't considered. There were other alternatives.
- The TII engineer did not do a site visit before drawing the plans for the road.
- The main objection is not to a change of the road for safety purposes, but the amount of waste ground left between the road and the railings is unreal and the waste area has become a dump.
- A lot of the accidents on the road are caused by people driving and taking a chance. The design of the junction at the Tower makes it difficult to see the N24.
- There are 11 roundabouts between Whitefield Hospital and Ardkeen and the Council should put roundabouts at the two junctions in question.
- The proposed scheme will remove the existing access to the Malone Farm at the Ink Bottle Junction. If removed, it will cause significant issues for the running of the farm and for silage.
- The proposed new gate 50 or 60 yards will make it difficult for silage and the movement of cattle and there will be a serious accident. It is requested that the existing gate be left where it is which is at an angle and there is enough room to facilitate it because the gate is situated at an angle. If lost, the changes needed to the paddock will be unreal and unnecessary.
- There is no scope for the Malones to expand the farm as the farm is land locked. If the Council take the land, they will have to reduce their farm operations.
- Mr. Malone is very disappointed that the Council are taking two trees that have been there for many years and wishes them to be retained.

- In terms of the Tower junction, it has been suggested to the Council to remove the humps which will improve visibility for traffic. Map submitted to Inspector (OH Doc. Mr. J. Malone 5 – Map dated November 2011).
- The ICMSA and IFA recommends that no dealings with the Planning Authority unless issues of compensation have been dealt with. (The Inspector advised re: CPO v compensation processes).

8.3.3. **Mr. Joseph Malone Jnr.**

- The proposed speed on the 750m straight link road is to be 80kph. The only junctions on the road are into the Malones farm and house. Any potential accidents will involve members of his family and it is requested that the speed limit be reduced on the link road to prevent it becoming a speedway.
- Concerns raised in relation to the security of the farm, including bio-hazards. There is an existing 5m wide ditch which forms the boundary to the farm, and this is to be replaced with a 6-inch railing which will be easily accessible to anyone.
- The issues with the road have been ongoing for 10 years and the Council have not been flexible and have no interest in compromise.
- The road is going to be a motorway – there should be 2 overbridges to plan for the motorway.
- Bad driving is the cause of driving issues. Cars turning right at the Ink Bottle is an illegal traffic movement and the Malones are being punished for this.
- The County Development Plan includes the Tower Road overbridge only. It does not include any link road or the Ink Bottle Junction. None of the link road is located within Piltown.
- The cycle lanes proposed is excessive.
- Reference to Kilheffernan Roundabout in Clonmel with 3 National Routes which works perfectly and no accidents.

- Public lighting has been an issue for years – light up the junction. It would have stopped a lot of the accidents as people driving into a lighted area tend to slow down.
- The scale of the roundabout at the Tower Junction is too big.
- The maps from the 2012 proposal submitted and the land take from the Malone farm goes from 7 acres currently sought to approximately 2.5 acres under the previous proposal. This map never got the CPO stage due to the recession. This proposal solves both junctions. (OH Doc. Mr. J. Malone Jnr 6)
- The previous plan had there not been a recession would have been constructed.
- The impact of the process has had a significant impact on the Malone family, including Mr. J. Malone Jnr parents and has been very stressful having to go through a second CPO process.

8.3.4. Mr. Ned Nagle on behalf of the Malone Family

- The Malone farm is land locked and the proposed scheme will result in the loss of 5.5-6 acres which will have an impact on the number of animals on the farm.
- Compensation is one thing, but if land is not available for dairy farming it impacts on the ability of the Malones to farm. This is not about money.
- Issue of illegal dumping raised.
- Sight distances at the new entrance to the farm and at the Ink Bottle are not clear.
- Speed limit on the link road is raised as an issue.
- The security of the farm is a serious issue that needs to be addressed. Fencing and planting proposals is inadequate.
- The need for the cycle lane is questioned.

It is requested that the alternatives presented by the Malones are considered.

8.4. Inspectors Questions & Responses

- 8.4.1. I sought clarity on the term used by Mr. Ryan (KCC) 'Consistency of Junctions' – means that on a National Primary Road, the type of junction you would expect would not have right turning movements across lanes.
- 8.4.2. I asked if the issue of alternatives considered as part of the Part 8 process had been submitted. It was agreed that a discussion on this issue would be had in the afternoon.
- Mr. Flanagan discussed the issue of alternatives in terms of the requirements of legislation. The issue of alternatives was considered as part of the process of preparing the Managers Report for the Part 8 process associated with the scheme. The issues raised in third party submission were addressed at that stage. The 2017 technical report was not part of the Part 8 process.
 - The Inspector noted from Mr. Ryans earlier submission that 6 options were considered in the preparation of the Part 8 scheme and from my report viewpoint, and the demonstration of the need for the scheme, it should include a consideration of alternatives.
- 8.4.3. Mr. Ryan presented the journey of the scheme and alternatives considered. The consideration of the alternatives was an organic process over the last decade. The options were considered as follows:
- One option comprised the 2012 proposal as per Mr. J. Malone Jnr submission. The proposal retained the Ink Bottle Junction and creating a link to the Tower Road Junction. Issues relating to this proposal:
 - Dealt with only 1 type of collision
 - The link road was too close to the N24 and junction to national road is too close.
 - The existing tower roundabout is below standard and is too small
 - In terms of the land for the provision of the cycle lane, as proposed in the current scheme, amounts to 0.03ha and uses land that would have been acquired for the road regardless.

- Another option considered not closing the Ink Bottle Junction but it would not remove the issue of weaving of traffic between the junctions, which is less than 900m. The proposed scheme has been future proofed for the upgrading of the N24 in the future.
- Consideration was also given to the omission of the link road, but this would have led to the severance of the population at the Ink Bottle Junction to get to Piltown. The population to the south of the road – which has a left in / left out system -has also been provided for.
- In terms of the proposals by the Malone family regarding the consideration for the provision of roundabouts, it was determined that at grade separate junctions is safer option of a junction and there would be issues with levels. The road is a dual carriageway and traffic flows are 11,000 vehicles on the main line going straight through, with small numbers coming off the main line. The provision of roundabouts would also impact on front gardens.

8.4.4. Mr. D. Flanagan presented details of a judgement of the High Court, Justice Clarke, which related to a CPO under the Gas Act, which related to alternatives. Essentially, the judgement decides that the specific issue to be decided is not whether an alternative may be preferable, but whether the acquisition should be made. It is submitted by Mr. Flanagan that there is no basis for the rejection of the chosen route, and it is justifiable to close Ink Bottle Junctions and provide a link road. It is further submitted that the land take is proportionate to ensure the short comings in the previous Part 8 are met. Any changes to the proposal would have implications to the scheme in terms of the provision of the link road and the closure of the Ink Bottle Junction.

8.4.5. Mr. Ryan and Mr. Flanagan sought to address other issues raised by the third parties as follows:

- Lighting: Would not alone address the collision issues as most of the accidents happened during daylight hours.
- Speed: 80kph proposed in accordance with standards but could be reduced by the elected members of Kilkenny County Council.

- Fencing: Security issues will be dealt with as part of the accommodation works and potentially compensation.
- Sightlines: At all entrances to the Malone family farm and home have improved as part of the scheme.
- CDP Compliance: The proposal accords with the requirements of the CDP in relation to the N24 and the Tower Road Junction. It is submitted that the scheme adequately complies with all relevant objectives of the Plan.
- Removal of trees: Mr. Ryan advised that it was not possible to retain the trees as to do so would move the road further into the Malone lands.
- Issues raised by Mr. Malone during the Part 8 process was read out at the Meeting of the Council when the proposal was approved. The points raised were therefore considered by the elected members.

8.5. Questions Between Parties

8.5.1. Objector – Mr. Joseph Malone Snr, (Plot 103) Questions for PA

Mr. J. Malone Snr asked questions in relation to fact that the surveys were not completed before the plans were prepared and boreholes were not completed. Also questioned why roundabouts were not considered.

- Mr. Ryan for KCC advised that roundabouts are not the safest option as the traffic is direct on the N24. It was further advised that they have enough information on land types in terms of geotechnical surveys on lands in the vicinity.
- In response to the issues raised in relation to the access to the farmland and house, Mr. Flanagan for KCC provided a map showing the proposed location of the new farm access at the Turret. Mr. Ryan advises that the access has been located as close to the junction as possible, but it cannot be retained in its current location. The proposed new access to the house also shown on plans. The plans submitted were returned to Mr. Ryan as the plan submitted to the Hearing were draft form for discussion purposes with the Malones and did not form part of the CPO.

- In terms of the waste land to the south of the road, Mr. Ryan advised that they cannot tighten into the land any more due to the alignment and levels of the road. To do so would negate the safety aspects of the scheme.
- In relation to the arrangements with ICMSA and IFA regarding issues of compensation, the process would not commence until after the CPO process has been completed and the scheme approved.
- Mr. Malone, regardless of Mr. Ryans comments, remains adamant that the junction at the Ink Bottle is the safest option.

Mr. Malone further requested that the Ink Bottle entrance to the farm be retained as is. The proposal will lead to accidents. It is requested that the Council look to the other side of the N24 to make the changes needed.

8.5.2. **Objector** – Mr. Joe Malone Jnr, (Plot 103) Questions for PA

Mr. Malone again came back to the speed limit on the link road, given that the nature of the discussion of the day is around road safety.

- There would be no impact on front gardens at the Ink Bottle Junction.
- The roundabout at the tower will not have any extra traffic if the Ink Bottle is retained.
- The current land take is 2.7 times higher than the 2010 proposal from the Malone farm and is not insignificant.
- Of the fatal accidents, one happened during the day and one at night-time – 50%.
- The 2010 proposal addressed all the concerns and was not constructed due to money. Mr. Malone Jnr questioned if the 2012 proposal was put to the Councillors when they were considering the current proposal at their meeting to approve the Part 8 proposal.
- The removal of the cycle track on the link road will result in a reduction in the land take needed. Questions the need for a cycle track on a dual carriageway.

8.6. Closing Statements

8.6.1. Mr. Pierce Malone

Mr. Malone sought to restate that the N24 runs from Limerick to Waterford and is a single lane carriageway between Limerick and the Ink Bottle Junction, Piltown and from Mooncoin to Waterford. People use the roads off the N24 easily and without issue. The problem with the current location is that the junctions were not done correctly on day one.

In terms of the roundabout, Mr. Malone sought clarification from Mr. Ryan in terms of the traffic on roundabouts and submits that he sees no problem with lighter traffic from local roads onto a roundabout.

8.6.2. Mr. Joseph Malone

Mr. Malone advises that what is being done is wrong and this relates to the costs of dealing with the underground pipes. Councillors rang him on the morning of the Council meeting dealing with the Part 8. Issues were raised with the members dealing with the Part 8 proposal and the resolution of the Council. It is submitted that the Councillors should have another look at the proposal due to the impact of the scheme on the Malone farm.

8.6.3. Kilkenny County Council

Mr. Flanagan sought to confirm that the land take from the Malones is 2.3311ha.

To conclude, Mr. Flanagan advised that there are different reasons for the CPO, and it is considered appropriate to build the road in accordance with the Part 8. It is considered an appropriate response to the community need. It is noted that there 19 submissions originally to the proposal and there is one outstanding.

The hearing closed at 3pm.

9.0 Assessment

9.1. CPO Demonstration

- 9.1.1. The statutory powers of the Local Authority to acquire land are contained in section in S11(7)¹ of the Local Government Act 2001 and sections 212 and 213 of the Planning and Development Act 2000, as amended. Under S212 of the Planning and Development Act 2000 a Local Authority may, in order to carry out its functions' powers and duties, carry out forms of development and in so doing a Local Authority is entitled to use CPO powers. S212(1) of the Act confirms the general power of a Planning Authority to develop, secure or facilitate the development of land and may do one or more of the following (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving; (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct; (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development.
- 9.1.2. Section 212(2) of the Planning and Development Acts states that a Planning Authority may provide or arrange for the provision of (c) transport facilities, including public and air transport facilities, and (d) any services which it considers ancillary to anything which is referred to in paragraph (a), (b) or (c).
- 9.1.3. Under S213(1)(i) of the act, in terms of land acquisition, the power conferred on a Local Authority to acquire land shall be construed to acquire land, permanently or temporarily, by agreement or compulsorily. Section 213(2)(a)² of the act states that a

¹ Local Government Act 2001 (7) A Local Authority to which subsection (3) or (4) relates shall (a) continue to be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold, manage, maintain and dispose of land or any interest in land.

² 213(2) (a) A Local Authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94, do all or any of the following: (i) acquire land, permanently or temporarily, by agreement or compulsorily, (ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an "acquisition of land".

Local Authority may, for the purposes of performing any of its functions including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

9.1.4. For the Board to confirm the subject CPO proposal, it must be satisfied that Kilkenny County Council has demonstrated that this CPO “is clearly justified by the common good”³. It is generally accepted that there are four test criteria⁴ that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property. These are that:

1. There is a community need, which is met by the acquisition of the property in question.
2. The particular property is suitable to meet the community need.
3. The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan
4. Any alternative method of meeting the community need have been considered but are not available.

These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the issues raised by the objector.

9.2. **Is there a community need that is to be met by the acquisition of the site in question?**

9.2.1. KCC has set out the community need for the project, which is the subject of this CPO. The primary need for the project is to improve road safety on the N24. The need for road improvements to address road safety is not contested by any of the objectors.

9.2.2. The purpose of the junction improvement scheme is to address traffic safety issues at this section of the N24. The evidence speaks for itself and there have been a number of accidents in the area, including fatalities. The proposed road project will, if permitted improve the overall safety of the road for all road users, including for

³ Para. [52] of judgement of Geoghegan J in *Clinton v An Bord Pleanala (No. 2)* [2007] 4 IR 701.

⁴ McDermott & Woulfe, *Compulsory Purchase and Compensation: Law and Practice in Ireland* (Butterworths, 1992)

pedestrians and cyclists. There was no argument between the parties at the Oral Hearing that the existing junctions onto the N24 affected by the subject CPO are dangerous. How to deal with the issues however did differ. The Objectors proposed that the removal of the 'humps' at the junctions would improve sight distances and the inclusion of roundabouts would eliminate the necessity for the link road and the closure of the Ink Bottle. The Council advised that the suggested amendments to the existing infrastructure would not fully address the issues along this stretch of the N24 and would not future proof the road.

- 9.2.3. The proposed scheme, as approved in the Part 8 process, is to address existing safety concerns in the local road infrastructure and to facilitate safe junction movements. It is considered that the development will result in a significant decrease in collisions and will also provide improved facilities for vulnerable road users such as cyclists and pedestrians, using these junctions. It is therefore concluded that the improvements to these junctions are necessary to ensure the safety of all road users and necessitates the compulsory purchase of the identified lands.
- 9.2.4. Arising from the above, I am satisfied that the stated purpose of the subject CPO – i.e. the N24 Tower Road Junction Improvement Scheme - will serve an identified community need and that the potential positive impacts (direct and indirect) outweigh the interference with the Objectors property rights. Given the deficiencies of the existing substandard road junctions, it is in the interest of public safety and improvement of traffic safety that the upgrade of the junctions is approved.
- 9.2.5. It is therefore considered that the case for the community need for the proposed road has been established and can be justified by the exigencies of the common good by reason of improved road safety and overall, the community benefit would be positive. It will significantly enhance pedestrian and cycling infrastructure in the area and improve road safety conditions. The proposed junction improvements and link road are considered fit for purpose, minimises the impact on the environment, land and property owners and is in accordance with regional and local policy. The acquisitions proposed under the CPO to enable this project to be implemented would, thus, in principle be fully justified.

9.3. Is the particular site suitable to meet that community need?

- 9.3.1. The need for the improvements to the Tower Junction on the N24 is evidenced in the history of collisions along this stretch of the road. The improvements will include the provision of a compact grade separated junction including an overbridge spanning the N24 national road and the replacement of the existing Tower Road roundabout with a new roundabout to the north west of the Piltown Tower, Protected Structure. In addition, a new 750m link road connecting the Ink Bottle Junction to the Tower Road Junction with closure of the Ink Bottle Junction access to the N24 for all vehicles except cyclists (which contains in proximate a structure included in the record of Protected Structure reference at Gage Lodge (The Turret or Ink Bottle) Reference C1060) is also proposed. The current N24 carriageway will be widened from the current 2+1 carriageway to a 2+2 carriageway for a distance of 1.8km.
- 9.3.2. The main area of concern arising from the proposed scheme relate to the provision of the link road and the closure of the Ink Bottle Junction. The link road will be 6m in width and will include a 3m wide cycle track and 3 verges of 0.5m between the N24 and the cycle path, 1m between the cycle path and the new link road and 2.5m between the link road and the Malone Farms new boundary. These measures will improve the safety for vulnerable road users. Additional safety measures are proposed as part of the scheme including the provision of cyclist and pedestrian facilities, improved public lighting, installation of road markings and signage, surface water drain system and hard and soft landscaping.
- 9.3.3. I am satisfied that the CPO lands are suitable for their intended use to facilitate the road improvement works. I am also satisfied that the extent of land take is justified in principle and has been kept to the minimum to facilitate the works approved as part of the Part 8 process and minimise impacts on the site.

9.4. Would the works to be carried out accord with or at least not be in material contravention of the provisions of the statutory development plan?

- 9.4.1. The Kilkenny County Development Plan 2014 – 2020 is the relevant policy document pertaining to the subject site. Chapter 11 of the Plan deals with Transport and section 11.7 with Road Network. Section 11.7.6 of the Plan deals with Road Improvement Projects and states that the Council, with the support of the NRA, is

progressing/developing a number of schemes within County Kilkenny, including N24 Tower Road Overbridge. Road Objective 11G of the Plan also seeks to support the implementation of the NRA projects as outlined above.

- 9.4.2. The Board will note that at the Oral Hearing, an Objector, while acknowledging the requirement for the Tower Road Overbridge, raised the question as to whether the works required to improve the N24 included the need to provide a link road and the closure of Ink Bottle Junction. In response, the PA submitted that proposal accords with the requirements of the CDP in relation to the N24 and the Tower Road Junction. It is submitted that the scheme adequately complies with all relevant objectives of the Plan.
- 9.4.3. The purpose of the junction improvement scheme is to address traffic safety issues at this section of the N24. The Regional Planning Guidelines for the South East Region, 2010-2022 identified that the current N24 is of variable standard and is not consistent with its status as a National Primary Route, with safety issues cited as a problem. It is an objective of the Regional Authority to prioritise the upgrading of the N24, as it is deemed essential for the sustainable development of the Region.
- 9.4.4. The proposed road project will, if permitted, improve the overall safety of the road, including for pedestrians and cyclists and as such, is in accordance with the policies and objectives of the Kilkenny County Council Development plan 2014-2020. I am satisfied therefore that the proposed development is in compliance with the policies and objectives of the Development Plan. I do not consider that the works would be a material contravention of the provisions of the statutory development plan.

9.5. Have any alternative methods of meeting the community needs been considered?

- 9.5.1. In assessing applications for compulsory purchase, the Board should satisfy itself that the site is suitable to accommodate / facilitate the proposed development for which the compulsory acquisition of lands is being sought and that the applicant has considered alternatives that may better suit the development. The issue of alternatives was raised as an issue at the Oral Hearing and Kilkenny County Council presented, at the request of the Inspector, Mr. Ryan, advised that the consideration of the alternatives for the scheme has been an organic process over the last decade.

- 9.5.2. Mr. Malone Jnr presented a map of the previously approved N24 Tower Road Overbridge scheme, map dated March 2012. It was submitted that if there had been the finances to implement this scheme at the time, it would have been constructed. It was argued that the works proposed would address the issues of road safety but would require substantially less land take from the land-locked Malone Farm. This 2012 scheme also included the N24 Overbridge but would have kept the Ink Bottle Junction open and would have maintained the existing Tower Road roundabout. Mr. Ryan advised that an assessment of the previously approved scheme found that if constructed, it would only have dealt with 1 type of collision, that the link road was located too close to the N24 and the junction to the national road would be too close. It was further submitted that the existing Tower Road Roundabout is below standard and is too small. As such, the original proposal is discounted.
- 9.5.3. Further considerations of alternatives looked at retaining the Ink Bottle Junction, as well as the omission of the link road and the use of roundabouts as suggested by the objectors. The Council presented arguments in relation to all alternatives concluding that the proposed scheme represents the most appropriate to address the need to improve road safety.
- 9.5.4. I am satisfied that the Council has considered all reasonable alternatives to the proposed road. The current road proposal, the subject of the CPO, is considered to be the most reasonable option in terms of minimising the wider environmental impact of the scheme and in providing an appropriate design response to the identified need to upgrade N24 Tower Road Junction. Therefore, the subject lands are considered suitable and necessary for the construction and operation of the scheme. In conclusion, I consider that the alternative methods of meeting the community need have been considered are not demonstrably preferable.

9.6. **Other Issues**

A number of these remaining issues relate to the design of the scheme approved under the Part 8 process. They are addressed here for the Boards information.

9.6.1. **Retention of access at Ink Bottle Junction**

The Malones sought to stress the importance of their access to the farm at Ink Bottle Junction in terms of moving cattle and for silage contractors. I note from the previous

Part 8 approved for the N24 Tower Road Overbridge the scheme facilitated the retention of this access.

The proposal seeks the construction of a link road, 6m in width, on a strip of land of approximately 14-15m in width at the Turret, to approximately 43m in width at the existing entrance to the farm at the Tower Road junction, from the fence line of the existing road infrastructure extending north and into the Malone farm. It is further proposed to include a 2-way cycle track 3m wide, along the proposed link road with three verges, 1 x 0.5m, 1 x 1m and 1 x 2.5m. The Objectors submit that the provision of the cycle lane is excessive and that the existing access to the farm could and should be retained. It is proposed to relocate the access to the farm to the new link road. While I note the requirements of the Council, I find it unfortunate that this matter could not be addressed to everyone's satisfaction.

9.6.2. Archaeology and Cultural Heritage

The Board will note that there appears to be significant gaps in the information provided in support of the proposed development with regard to Archaeological and Cultural Heritage Impact. Additional surveys and site investigations are recommended in order to establish the potential impacts associated with the proposed road scheme.

In addition to the concerns of the objectors, and the impact on their farm operations, the Board will note that the boundary of the Part 8 proposal seems to encroach into the curtilage grounds of the Ink Bottle - or Turret, which is a protected structure of regional importance. This structure is also considered as a picturesque landmark at the entrance to the grounds of Belline House estate, although it no longer forms an access, and the curtilage includes trees and hedgerows which frame the building and add to its visual context.

The construction of the proposed link road will occur to the south of the boundary of the Turret and the submitted Archaeological and Cultural Heritage Impact Assessment acknowledges that the development will have a slight, indirect, negative impact on the setting of this protected structure.

9.6.3. Impact on Flora & Fauna

Mr. Malone requested that the existing trees along the access road to the farm be retained. The previous Part 8 proposal saw the link road run to the south of these

trees facilitating their retention. In this regard, while I acknowledge the detail of the Part 8 Preliminary Ecological Appraisal and the AA Screening Report, I would question the validity of the comments in relation to potential effects on fauna and landscape, given the findings of the assessments and the potential presence of protected species within the survey site, requiring further assessments. The Report notes that the trees referred to above have been identified as mature trees which have features that are suitable for roosting bats, but a detailed survey has not been carried out.

In addition, signs of badger activity were recorded, including badger scats, a mammal run and mammal hole that may be attributed to badger, during the survey. The Ecological Appraisal also noted that the grassland area on the site provide suitable foraging habitats for badgers and it is likely that badgers are using the area for foraging and commuting within the wider landscape.

The appraisal concludes recommending that a number of further surveys are required to ensure the protection of protected species and nesting birds and notes the possible requirement for a derogation licence in terms of bats and badgers. I also note the requirement to remove trees and hedgerows which has potential to impact on the landscape and visual amenities of the area. A detailed tree survey does not appear to have been carried out and no Arborist Report was presented. As such, it is not clear if the trees to the immediate south of the existing Tower Road Roundabout are to be removed to facilitate the construction of the N24 Overbridge.

In the context of the above, I would consider it appropriate that the scheme should be amended to retain the existing trees on the Malone Farm whereby the link road should be moved to the south of these trees, and no permission should be permitted for the removal of the trees to the south of the Tower Road Roundabout.

9.6.4. **Drainage**

The objectors raised concerns that there were inadequate drainage details provided along the proposed new roadway. The proposed scheme includes proposals for drainage and services in terms of pre-earthworks, temporary earthworks, carriageway drainage, services and footpaths. I am satisfied that drainage in the area will not be adversely affected but will be significantly improved.

10.0 Conclusion

10.1. I am satisfied that the process and procedures undertaken by the Local Authority have been fair and reasonable and that Kilkenny County Council have demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of these lands would be in the public interest and the common good and would be consistent with the policies and objectives of the Kilkenny County Council Development Plan 2014-2020.

11.0 Recommendation & Decision

Having considered the objections made to the compulsory purchase order together with the information provided in support of the CPO and the relevant policy and guidance documents, it is considered that CPO should be confirmed with modifications relating to the protection trees which have been identified as mature trees which have features that are suitable for roosting bats, as the acquisition of the lands in question by the local authority is necessary for the purpose stated in the order and the objections cannot be sustained having regard to this necessity.

The recommended modifications are as follows:

In the interests of ensuring the protection of bats, protected species, including their roosts, and nesting birds, as well as visual amenity:

- (1) The existing trees to the south of and along the access road to the Malone farm be retained and the link road shall run to the south of these trees.
- (2) No permission should be permitted for the removal of the trees to the south of the Tower Road Roundabout.

DECISION

I recommend that the Board **CONFIRM** the above Compulsory Purchase Order with modifications, based on the reasons and considerations set out below.

12.0 Reasons and Considerations

Having considered the objections made to the compulsory purchase order, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following;

- a) The purpose of the compulsory acquisition for the N24 Tower Road Junction Improvement Scheme including the provision of an overbridge spanning the N24 National Road, replacement of existing Tower Road Roundabout, a new 750m link road connecting the Ink Bottle Junction to the Tower Road Junction with closure of the Ink Bottle Junction, widening of the current N24 carriageway, provision of cyclist and pedestrian facilities, improved public lighting, installation of road markings and signage, surface water drain system and landscaping;
- b) The policies and objectives of the Kilkenny County Development Plan 2014-2020;
- c) Relevant policies of the National Planning Framework and Regional Planning Guidelines for the South West Region 2010-2022;
- d) The present substandard nature of the existing road in relation to road safety;
- e) The community need, public interest served and overall benefits to be achieved from the proposed junction improvement works;
- f) The design of the proposed road, constituting a design response that is proportionate to the identified need;
- g) The submissions and observations made at the Oral Hearing held on the 11th day of March 2018 in Kilkenny Ormond Hotel, Kilkenny;
- h) The report and recommendation of the Inspector;

It is considered that, the permanent acquisition by the Local Authority of the land in question and the extinguishment of a private right of way, as set out in the order, schedules and on the deposited map, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity, subject to the following modifications:

In the interests of ensuring the protection of bats, protected species, including their roosts, and nesting birds, as well as visual amenity:

- (1) The existing trees to the south of the access road to the Malone farm be retained and the link road shall run to the south of these trees.
- (2) No permission should be permitted for the removal of the trees to the south of the Tower Road Roundabout.

A. Considine

Planning Inspector

03rd April 2020