



An
Bord
Pleanála

Inspector's Report ABP-301199-18

Local Authority Project

Meath County Council Compulsory
Purchase (No. 1) Order, 2018, N51
Dunmore Phase 2

Location

Townlands of Blackcastle Demesne,
Donaghmore, Dunmoe, Harmonstown,
Stackallan and Cruicetown.

Applicant

Meath County Council

Local Authority

Meath County Council

Objector(s)

1. Mervyn Grey
2. Gretta Goodwin
3. Hugh Gibney & Sheila Gibney
4. Noel Thomas Dugan
5. Gabrielle Brady
6. David Fitzherbert
7. Olive O'Connor
8. Kevin Meade & Alan Meade
9. Philip Doherty
10. Thomas Wilson
11. Brendan Mennis
12. Anthony Daly & Wendy Daly

13. Patricia O'Connor
14. Joseph & Patricia O'Connor
15. Louise Reilly & Paul Reilly
16. Christina, Patrick J and Enda
Gavin
17. Christina Gavin and Patrick
Gavin
18. Enda Gavin
19. Dermot Ward & Elizabeth Ward
20. Carol and Harry Long
21. Kevin and Anne Moran
22. Bernadette and Patrick Burke
23. Anna Matthews
24. Desmond Crinion
25. Desmond and Jacqueline Crinion
26. Stephen McNally
27. William McNally (Reps of Eileen
McNally Dec)
28. Damian and Mary Harford
29. Damian Harford
30. Emily and Gary Downes
31. Derek Owens and Anne Marie
Owens
32. Eamon and Eleanor Martyn
33. Noela Harford
34. Joseph Traynor
35. Maureen Leddy and Joseph
Traynor
36. Nina William James Smyth
37. Deirdre and David Cullivan

Observer(s)

None

Date of site inspection

4th July 2017

Inspector

Karen Kenny

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1.0 Introduction

- 1.1. This report relates to an application by Meath County Council for confirmation by the Board of Compulsory Purchase (No. 1) Order, 2018, N51 Dunmoe Phase 2.
 - 1.1.1. The N51 is a national secondary road that runs from Drogheda in Co. Louth to Delvin in Co. Westmeath. It provides a strategic link between the M1 (Drogheda), the N2 (Slane), the M3 (Navan) and the N52 (Delvin). The CPO would facilitate the realignment of a section of the N51 between the settlements of Navan and Slane and within the townlands of Blackcastle Demesne, Donaghmore, Dunmoe, Harmonstown, Stackallan and Cruicetown.
 - 1.1.2. Meath County Council approved planning consent for the scheme in January 2017 under Part 8 of the Planning and Development Regulations 2001 (as amended).
- 1.2. The CPO seeks to:
 - (a) acquire compulsorily lands described in Part 1 of the Schedule and shown on drawings numbered WH5101-04-013, WH5101-04-014 and WH5101-04-015.
 - (b) acquire temporarily lands described in Part II of the Schedule and shown on drawings numbered WH5101-04-013, WH5101-04-014, and WH5101-04-015.
 - (c) extinguish the public rights of way described in Part III of the Schedule and shown on drawings WH5101-04-016, WH5101-04-017, and WH5101-04-018.
- 1.3. The CPO involves the purchase of 26 hectares of land, of which 8.5 hectares is existing roadway. The land to be acquired is from agricultural holdings, domestic properties and roadbed. In total 68 no. landowners are directly affected by the proposed development.
- 1.4. An Bord Pleanála received a total of 37 no. objections in relation to the CPO.

2.0 Statutory Basis

- 2.1. The application is made under Section 76 of, and the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government Act (No. 2) Act, 1960, (as substituted by Section 86 of the Housing Act, 1966, and as amended by

Section 6 and the Second Schedule to the Road Act, 1993) and the Planning and Development Act, 2000 – 2017.

3.0 Site Location and Description

- 3.1. The subject site is approximately 4 kilometres in length and is located approximately 2.5 kilometres north east of Navan and 3.5 kilometres south west of Slane in County Meath. It is proposed to upgrade the existing road to a 'Type 1 Single Carriageway' road. The proposed alignment generally follows the line of the existing road, with some areas removed and new areas of carriageway provided.
- 3.2. The realigned route will consist of a 7.3-metre-wide carriageway with hard shoulders and verge. The road will include at grade junctions with staggered ghost islands and simple junctions. Drainage and attenuation works are proposed including attenuation ponds at drainage outfall locations. Other accommodation and fencing works and landscaping works are also proposed. The submitted documents state that the proposed road has been designed in accordance with the National Roads Authority's Design Manual for Roads and Bridges (DMRB).

4.0 Purpose of the CPO

- 4.1 Meath County Council set out the following background to the project:
 - The section of the N51 under consideration has a substandard alignment and safety is comprised due to the number of at-grade junctions and private accesses along the existing road. The proposed realignment will improve safety for this section of the national secondary route.
 - The N51 has recently been upgraded locally to the south west immediately to the east of Navan and to the east immediately west of Slane. The proposed realignment will connect the improved sections and provide an improved single carriageway road between the existing speed limits of Navan and Slane for a distance of 9.2 kilometres.

5.0 Policy Context

5.1. National Planning Framework (NPF)

National Strategic Outcome No. 2 of the NPF is to achieve 'Enhanced Regional Accessibility'. This outcome seeks to enhance accessibility between key urban centres of population and their regions. It is a key action under this outcome to maintain the strategic capacity and safety of the national roads network and to plan for future capacity enhancements.

5.2. Regional Planning Guidelines for the GDA 2010

The RPGs recognise the importance of safeguarding the carrying capacity and efficient operation of the strategic road network within the GDA, noting that this is national policy. The Guidelines support sustainable investment and the upgrading of the existing network.

5.3. Greater Dublin Area (GDA) Transport Strategy 2016-2035, NTA, 2016

The Transport Strategy provides a framework for the planning and delivery of transport infrastructure and services in the GDA over the next 20 years. It is a key principle of the Strategy that land use planning and transport planning be considered together in the overall development of the GDA. It is an objective of the Strategy to facilitate the provision of necessary upgrades to the national secondary road network (Section 5.8.1).

5.4. Meath County Council Development Plan 2014-2019

The site is located in a rural area outside of a designed settlement and is not subject to a land use zoning objective. I consider the following policies and objectives of the Development Plan to be relevant:

TRAN POL 26: To implement a programme of road construction / improvement works and local measures to improve road safety closely integrated with existing and planned land uses.

- TRAN POL 29: To provide for and carry out improvements to sections of national, regional and county roads that are deficient in respect of alignment, structural condition or capacity, where resources permit, and to maintain that standard thereafter.
- TRAN OBJ 17: To support, where appropriate, major road improvements, bypasses of local towns and villages and proposed national road schemes by reserving the corridors of any such proposed routes free of developments, which would interfere with the provision of such proposals. The realignment of the N51 between Dunmoe and Cruicetown is a listed road scheme.
- CH OBJ 7: To protect archaeological sites and monuments that are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record) through the planning process.
- CH OBJ 21: To ensure that any new development within or contiguous to an ACA is sympathetic to the character of the area and that the design is appropriate in terms of scale, height, plot density, layout, materials and finishes.
- LC SP 1: To protect the landscape character, quality, and local distinctiveness of County Meath in accordance with relevant government policy and guidelines and the recommendations included in Meath Landscape Character Assessment (2007).
- LC OBJ 1: To seek to ensure the preservation of the uniqueness of all landscape character types, and to maintain the visual integrity of areas of exceptional value and high sensitivity.
- LC OBJ 5: To preserve the views and prospects and the amenity of places and features of natural beauty or interest listed in Appendix 12 and shown on Map 9.5.1 from development that would interfere with the character and visual amenity of the landscape.

5.5. Natural Heritage Designations

- 5.5.1. The River Boyne flows from Navan towards Slane to the south east of the existing N51. The designated areas of the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232) run along the river path to the south east of the proposed scheme. The River Boyne and associated alluvial woodland are a proposed Natural Heritage Area (pNHA).
- 5.5.2. The proposed scheme was subject to Stage 1 Appropriate Assessment Screening. The Screening Report, dated May 2016, concludes that the project, alone or in combination with other projects or plans, is not likely to have a significant effect on the River Boyne and River Blackwater SAC or on the River Boyne and River Blackwater SPA and that it is not necessary to undertake any further stage of the Appropriate Assessment process.

5.6. Cultural Heritage Designations

- 5.6.1. The scheme directly impacts Recorded Monument ME018-032 Tober Patrick. This monument lies to the south east of the existing carriageway south of Stackallan Demesne and is described as 'an abandoned and degraded well'. There are no other archaeological sites recorded or observed within or immediately adjacent to the scheme.
- 5.6.2. The scheme runs along the southern boundary of the Stackallan Demesne, a designated Architectural Conservation Area, for approximately 1 kilometre but does not encroach onto the designated area of the ACA.
- 5.6.3. The proposed road scheme is situated in the Boyne Valley Landscape Area (CDP Appendix 7 refers), which is characterised in the Development Plan as a landscape of exceptional value, high sensitivity and international importance. The proposed road scheme also falls within Protected View no. 33 listed in Appendix 12 and detailed on Map 9.5.1 of the Development Plan.

6.0 Objections Received

- 6.1. **Cor Property Consultants on behalf of the following parties:**

6.1.1. Mervyn Grey (Plot 120), Gretta Goodwin (Plot 133), Noel Thomas Dugan (Plot 136 and 137), Gabrielle Brady (Plot 112), Anthony Daly & Wendy Daly (Plot 109), Patricia O'Connor (Plot 114), Joseph & Patricia O'Connor (Plot 115), Louise Reilly & Paul Reilly (Plot 116), Christina, Patrick J and Enda Gavin (Plot 118), Christina Gavin and Patrick Gavin (Plot 117), Enda Gavin (Plot 119), Dermot Ward & Elizabeth Ward (Plot 121), Carol and Harry Long (Plot 144), Kevin and Anne Moran (Plot 140), Bernadette and Patrick Burke (Plot 141 and 142), Anna Matthews (Plot 147 and 148), Desmond Crinion (159), Desmond and Jacqueline Crinion (160), Stephen McNally (Plot 150), William McNally (Reps of Eileen McNally Dec) (Plot 149), Damian and Mary Harford (Plot 124), Damian Harford (Plot 123), Emily and Gary Downes (Plot 1125), Derek Owens and Anne Marie Owens (Plot 1127), Eamon and Eleanor Martyn (Plot 129), Noela Harford (Plot 128), Joseph Traynor (Plot 131), Maureen Leddy and Joseph Traynor (Plot 130), and Nina William and James Smyth (Plot 138).

6.1.2. The main grounds of objection, which are repeated for all submissions, relate to the extent of land acquisition, adverse drainage impacts, noise impacts, the CPO boundary and planning and environmental matters.

6.2. **Sudway and Company Limited Chartered Surveyors on behalf the following parties:**

6.2.1. Olive O'Connor (Plot 154)

The main grounds of objection relate to the quality of drawings, impacts to property (noise and light pollution) and accommodation works. The submission also requests confirmation that the septic tank will continue to meet relevant standards.

6.2.2. Kevin Meade & Alan Meade (155 and 156):

The main grounds of objection relate to the quality of drawings, impacts on well, design and location of attenuation ponds and potential for impacts on retained agricultural lands, location of residential access and need to reinstate existing agricultural accesses and to agree boundary treatments.

6.2.3. Philip Doherty (Plot No. 157):

The main grounds of objection relate to the quality of drawings, impact of attenuation pond on property boundary, drainage and water run-off, the gradient at entrance, the

need to reinstate existing agricultural entrances, the protection of wells, access and maintenance of attenuation ponds and the need for fencing and planting along new boundaries. The submission also requests that attenuation pond no. 7 is covered and that consideration is given to the potential impacts arising from noise and light pollution.

6.2.4. Thomas Wilson (Plot No. 162):

The main grounds of objection relate to the quality of drawings, impacts on septic tank and percolation area and impact on enjoyment of property.

6.3. **Coonan Cawley Solicitors on behalf of Hugh Gibney & Sheila Gibney (Plot No. 104).**

6.3.1. The main grounds of objection relate to the extent of land acquisition, adverse drainage impacts, noise impacts, the CPO boundary and planning and environmental matters.

6.4. **Brady Group Agricultural Consultants / Land Agents on behalf of Brendan Mennis (Plot No. 113).**

6.4.1. The main grounds of objection are summarised as follows:

- Lands have been acquired which are not required, in particular Plots 113a.1 and 113c.1. The acquisition and severance of land will have a severe impact on the farm business.
- The road junction onto the new N51 should be relocated to the east (Ch900-Ch1000). This would benefit the operation of the objector's businesses.
- Vehicular accesses to lands south of the N51 need to be reinstated and a new vehicular access is required to lands to the north of the N51 at Ch150; no details of access during the construction and no design details for the underpass and ducting; concerns in relation to the maintenance of the roadside fencing and field drainage.
- Concern in relation to impacts on the dwelling, boundary treatments and on the well during the works and after.
- Accommodation works to include screening, noise and dust abatement measures. The EIS does not state where construction compounds will be

located or where construction traffic will travel during the realignment of the road.

6.5. Gaffney & Cullivan Architects on behalf of Deirdre and David Cullivan.

The main grounds of objection are summarised as follows:

- Objector has not been served with CPO notice. This is not consistent with the Part 8 drawings. Assurances were given by Meath County Council and TII that the legitimate concerns in relation to safety, noise and environmental issues, would be addressed in detail at CPO stage.

6.6. David Fitzherbert (Plot No. 103).

6.6.1. The main grounds of objection are summarised as follows:

- Lands acquired from the Fitzherbert family as part of the Phase 1 Road Improvement Scheme and the family were assured that no further lands would be required.
- The land acquired for Phase 1 extended eastwards beyond the objector's property. The Council produced an alignment during Phase 1 that differs from the proposed scheme. The cost and the negative impact on landowners is substantially less under the previous design. The original design complies with current standards and is fit for purpose, thus there is no need for the scheme that is now proposed. The section between chainages (Ch) 0-1200 (approx.) should revert to the original design.
- The current and projected traffic volumes do not support the proposed scheme and the scheme would not be justified on a cost benefit basis.
- The location and design of attenuation pond no. 1 would impact negatively on the operation of the objector's farm. Planning permission refused in 1990 by the Council and An Bord Pleanála for a dwelling at the location of proposed attenuation pond for reasons relating to intrusion on the Boyne Valley landscape. The attenuation pond would be more intrusive.
- There has been no hydrological assessment of the stream into which attenuation ponds 1, 2 and 3 discharges. In flood conditions the stream overflows and sections of the objector's land flood. The upgrading of culverts

for phase 1 of the scheme increased the impact of flooding on the objector's land. The proposed attenuation system will prolong the duration of flooding.

- Surface water from the road contains oil-based contaminants that will discharge into the stream, which will in turn discharge into the Boyne. This is a Salmonid River and the section close to the discharge point of the stream is a primary angling location.
- The Board should not grant permission for the scheme as the points raised in the objection cannot be dealt with by arbitration.
- Other issues were raised in relation to engagement and accommodation works under Phase 1.

7.0 The Oral Hearing

An oral hearing was held on the 12th Day of July 2018 in the Newgrange Hotel, Navan, Co. Meath. The Board retained the services of Artane Audio which forms the official record of the proceedings.

7.1. Attendance at the Oral Hearing

7.2. Local Authority, Meath County Council

Mr. Dermot Flanagan S.C., Mr Rory McEntee – Solicitor, Mr Ambrose Clarke – Project Engineer, Ms Wendy Bagnall – Planner.

7.3. Objectors

7.3.1. Mr. Tom Cor Representing:

- Mervyn Grey, Gretta Goodwin, Noel Thomas Dugan, Gabrielle Brady, Anthony Daly & Wendy Daly, Patricia O'Connor, Joseph & Patricia O'Connor, Louise Reilly & Paul Reilly, Christina, Patrick J and Enda Gavin, Christina Gavin and Patrick Gavin, Enda Gavin, Dermot Ward & Elizabeth Ward, Carol and Harry Long, Kevin and Anne Moran, Bernadette and Patrick Burke, Stephen McNally, William McNally (Reps of Eileen McNally Dec), Damian and Mary Harford, Damian Harford, Emily and Gary Downes, Derek Owens and

Anne Marie Owens, Eamon and Eleanor Martyn, Noela Harford, Joseph Traynor, Maureen Leddy and Joseph Traynor and Nina William / James Smyth.

- The objections received by An Bord Pleanála on behalf of Desmond Crinion and Desmond and Jacqueline Crinion were withdrawn prior to the Oral Hearing.
- Mr. Cor advised stated that he represents Hugh Gibney & Sheila Gibney.

7.3.2. Niall Sudway of Sudway and Company Limited Chartered Surveyors representing Olive O'Connor, Kevin Meade & Alan Meade, Philip Doherty and Thomas Wilson.

- Mr. Sudway advised that the submission from Philip Doherty will rest on the written submission made to An Bord Pleanála.
- Objections received by An Bord Pleanála on behalf of Olive O'Connor, Kevin Meade and Alan Meade and Thomas Wilson, were withdrawn.

7.3.3. Brendan Mennis.

7.3.4. David Cullivan of Gaffney & Cullivan Architects representing Deirdre and David Cullivan.

- Mr. Cullivan stated that his lands were within the Part 8 boundary but that he has not been served with notice of the CPO. He also advised that Meath County Council and TII indicated that concerns in relation to safety, noise and environmental issues, would be addressed in detail at CPO stage. The Local Authority confirmed that no land is to be acquired from Mr. Cullivan under the statutory process. The inspector advised that the Boards role and jurisdiction relates to the CPO only and that the inspector would not be in a position to accept a submission from Mr. Cullivan at the hearing as he is not a party to the CPO.

7.3.5. Frank Burke, Consulting Engineer representing David Fitzherbert.

7.4. **Submissions by Meath County Council**

Mr Ambrose Clarke, Project Engineer

The brief of evidence was submitted in hard copy and read into evidence. Key points are summarised below for the information of the Board.

- The horizontal and vertical alignment of the existing N51 is inadequate for a rural all purpose national route. There is a mix of traffic types and slow moving and congested traffic leads to unreliable journey times. Safety is compromised by at grade junctions and private accesses along the route. Improved sections to east and west of the proposed route result in route inconsistency.
- The objective is to provide a high-quality road that will adequately cater for traffic growth projections over the next 15 years and beyond.
- Route options were evaluated under the appraisal criteria of economic assessment, safety assessment, environmental assessment, integration assessment and accessibility.
- The emerging preferred route is considered to be the optimum realignment proposal. The project is designed as a Type 1 Single Carriageway in accordance with TII's design standards and has a design speed of 100 kph.
- The design strategy seeks to separate local traffic movements from higher speed strategic traffic where feasible to provide a high design speed / high capacity / safe route. The objective is to reduce the number of access points and junctions and to reduce the number of right turning manoeuvres.
- The scheme will improve links between Navan and Slane and national strategic links along the Drogheda (M1), Slane (N2), Navan (N3) and Delvin (N52) corridor and improve access for vulnerable road users within the local area.

Ms Wendy Bagnall, Planner

The brief of evidence was submitted in hard copy and read into evidence. Key points are summarised below for the information of the Board.

- The proposed development is consistent with national, regional and local planning and transportation policies. The submission refers to the National Planning Framework, Transport Strategy for the Greater Dublin Area 2016-2035, Regional Planning Guidelines for the GDA 2010-2022 and the Meath County Development Plan 2013-2019.

7.5. Submissions by Objectors

7.5.1. Mr Frank Burke, Chartered Engineer Representing Mr. David Fitzherbert.

The points raised are summarised as follows:

- The section between Ch 0 and Ch 1200 could have been designed within the existing carriageway. During Phase 1 the Council produced a realignment proposal that sat within the footprint of the existing road. The proposal complied with the relevant road design standards for a 100 kph road. Why was this alignment changed?
- The proposed scheme does not stand up to Cost Benefit Analysis. There are no time savings by diverting off the footprint and minimum savings in relation to safety.
- The Council did not consider all options for this section. The benefit of the proposed design over the previous is not clear.
- There is a statutory obligation to take the minimum land take required. Meath County Council have failed to do this.
- Council advised at the time of acquisitions under Phase 1 that no further lands would be required for later stages.
- Concerns in relation to the design and maintenance of the proposed attenuation ponds.
- The Board is asked to take due cognisance of previous judgements in relation to proportionality (reference to Heaney v Ireland and Cox v Ireland).

7.5.2. Mr. Tom Cor on behalf of named parties.

Mr. Cor advised that objections would stand on behalf of all clients and that he would make more details submission on behalf of Mr. Dermot Ward and Mr. Mervyn Grey.

The points raised are summarised as follows:

- The objectors are supportive of the scheme and see the need for the scheme. Objections remain in relation to individual property matters that Mr. Cor would hope to resolve with Meath County Council.

7.5.3. Mr. Tom Cor Representing Mr. Dermot Ward

The points raised are summarised as follows:

- The primary objection relates to the proposal to remove Mr. Wards existing access and to provide a cul-de-sac access serving 4 no. properties. The existing gateway is in place for over 100 years.
- The combined access is being justified on the basis of traffic safety. Can the safety benefit be supported by science or research, or is this an intuitive assumption? There would be no change in the number of vehicular movements with the new access, and as such the objector fails to see how the combined access would improve safety.
- Cul-de-sac's of this nature have in the past given rise to unauthorised parking, dumping of rubbish and anti-social behaviour.
- The omission of the slip road / cul-de-sac would reduce costs.
- Mr. Ward raised issues in relation to sightlines, changing weather patterns and regulations in relation to the use of Tractors and machinery on public roads. He suggests that the parties consult the Met Eireann Strategic Plan 2017-2027.
- The Board is asked to insert a new access for the property.

7.5.4. Mr. Cor Representing Mr. Mervyn Grey

The points raised are summarised as follows:

- Mr. Grey is supportive of the road scheme but considers the land take in respect of his plot to be disproportionate. His primary concern relates to the impact on the residential property, as the garden area is confined to the area between the dwelling and new road. It is argued that the removal of the full land area through CPO would devastate the property.
- The Council propose to provide a sloped bank from the road to the edge of the retained garden. Mr. Grey has submitted a proposal to the Council for a retaining wall in place of the sloped bank, which would reduce the land take. There is a precedent for the use of retaining walls on other road schemes.
- The submission to Meath County Council shows that the engineering solution would be cost natural. Mr. Peter Murphy QS advised that the proposed land take would impact on a septic tank and percolation area, a landscaped garden

and a well and that the family may need to be relocated during the works, due to the level of disruption that is likely to arise.

- The objection is not related to compensation and the objector is heavily dependent on the Board to correct the error on the Council's part in relation to excessive land take. This is a disproportionate use of CPO powers.
- It is open to the Board to approve this scheme with a reduced land take.
- Mr. Grey addressed the hearing and advised that the proposed alterations would not interfere with any part of the road and that he is willing to work with the scheme and to support the scheme.

7.5.5. Mr. Brendan Mennis

The points raised are summarised as follows:

- The Council's assertion that this is the minimum land take is not correct.
- The land take and impacts on agricultural and residential properties could be reduced if the road was realigned within the existing route.
- The scheme is excessive in terms of its design and expense.
- Direct access is sought onto the road. The objectors' farm lands are located to the east of the property. The new access onto the realigned N51 is to the west of objectors' existing access and would mean travelling west by 1 kilometre to access the main road and traveling back again, thus adding 4 kilometres to each journey. This will add to the cost of running farm machinery.
- The scenic nature of the area was highlighted.

7.6. **Closing Statements**

7.6.1. Closing statements were made by Mr. Brendan Mennis objector and Mr. Dermot Flanagan BL, on behalf of Meath County Council.

7.6.2. Closing Statement by Mr. Brendan Mennis.

The scheme is an overkill on design and spend in a scenic area.

7.6.3. Closing Statement by Mr Dermot Flanagan Barrister on behalf of Meath County Council

- In relation to the statutory test, the concept of alternatives should not be confused with alternatives in the EIA Directive or alternative means by which works could be done. In this situation the works have been through the Part 8 process which envisage the implantation of a road project within a certain land area. As demonstrated in the evidence of Mr. Clarke the works are of an appropriate design and are fit for purpose. The landowners have not put forward a suitable alternative for the scheme. The scheme relates to a project between two points, Point A and B. The road scheme needs to connect to both points. The evidence is that lands to be acquired are to a suitable standard.
- In terms of Mr. Grey, issues raised in relation to percolation, water, landscaping, accommodating works and disturbance are classically addressed as part of compensation process. While we seek to CPO the lands shown, if we can come up with an alternative in discussion with the landowner we would look to take less land. We seek the acquisition as proposed, with the opportunity to decrease this if alternatives can be met.
- The scheme accords with policy and is supported by an objective, as detailed previously. The IDA in the Reid case sought land for a future purpose. IDA legislation didn't allow for this and this is a critical distinction with this case.
- In this case, issues were raised in relation to proportionately. However, the CPO relates to works identified in the Part 8 and as such is proportionate. The CPO is not in vacuo as there is a sufficient level of information to inform the Board and the Inspector of lands.
- Matters raised, are exclusively or primarily relating to compensation.
- Even though this is a forced disposition, statutory procedures consider the CPO as if it were in the market place. Ask the Board to confirm CPO for stated purpose and that it is urgently required.

8.0 Assessment

- 8.1.1. The statutory powers of the local authority to acquire land are contained in section 213 (2)(a) of the Planning and Development Act 2000, as amended. Under its provisions the planning authority *may acquire land compulsorily for the purpose of*

performing any of its functions including giving effect to or facilitating the implementation of its development plan..... For the Board to confirm the CPO proposal, it must be satisfied that Meath County Council has demonstrated that this CPO "is clearly justified by the common good".¹

8.1.2. It is accepted that there are four criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property (as documented in the book entitled "Compulsory Purchase and Compensation in Ireland: Law and Practice" Mc Dermott and Woulfe 1992). The following minimum criteria must be satisfied:

- There is a community need that is to be met by the acquisition of the site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and
- 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.

8.1.3. These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation, in addition to addressing the issues raised by individual objectors and other matters arising.

8.2. **Need for the scheme**

8.2.1. The stated purpose of the CPO is to facilitate the realignment of a c. 4 kilometre section of the N51 National Secondary Route at a location that is between the settlements of Navan and Slane. The evidence of Mr. Ambrose Clarke, Project Engineer on behalf of Meath County Council states that the horizontal and vertical alignment of this section of the N51 is inadequate for a rural all-purpose national route. The substandard alignment is verified by the technical reports of the Council and in the evidence produced at the Oral Hearing and is not disputed by any of the

¹ Para. [52] of judgement of Geoghegan J in *Clinton v An Bord Pleanala (No. 2)* [2007] 4 IR 701.

parties. The Council assert that the safety of the route is further compromised by the number of at grade junctions and accesses along the road, by conflicts that arise between strategic traffic and slower moving local traffic and as a result of route inconsistency. Traffic levels are forecast to grow on the route and the proposed scheme is designed to cater for future traffic growth, to a design year of 2035. I note also that the scheme has received support from TII in terms of funding and to advance the design of the scheme and the CPO process.

8.2.2. I accept the assertion put forward by Mr. Clarke, Project Engineer that the scheme will provide for a safer stretch of road that will address serious deficiencies in the alignment of the existing road, thereby improving safety. The scheme will also cater for existing traffic and future traffic growth, thereby improving accessibility. I would also accept the argument that there will be economic, social and environmental benefits, in terms of reduced journey times and improved strategic links in the area. I conclude that the need for the CPO can be justified by the exigencies of the common good and that the community need for the scheme has been established.

8.3. Suitability of lands to meet the community need

8.3.1. The proposed development runs predominantly online or close to on line, with some areas of road to be removed and new areas provided. The CPO involves the purchase of 26 hectares of land, of which 8.5 hectares is existing roadway. The landtake primarily comprises lands within agricultural use, part of domestic gardens and entrances together with the existing roadway. In total 68 no. landowners are directly affected by the proposed development.

8.3.2. The lands to be acquired comprise narrow strips of land along the existing road carriageway and more substantial areas at the location of proposed roadside attenuation ponds. The expansion of the road area would facilitate the re-ordering of space along the linear route and at junctions to provide an upgraded alignment.

8.3.3. The evidence of Mr. Ambrose Clarke, Project Engineer, states that a number of route options were examined and that the proposed route has emerged as the optimum route. It is further stated that the designers have identified the minimum landtake in order to safely construct the proposed road project in accordance with current design standards. The local authority documents are supported by confirmation by Mr.

Clarke, Project Engineer, that the lands are both suitable and necessary for the proposed realignment.

- 8.3.4. I am satisfied that the lands, by reason of the juxtaposition with the existing road corridor, and based on the case put forward by Meath County Council, are suitable for the purpose of the road realignment works and associated drainage works. The lands to be acquired are accordingly suitable to meet the community need.

8.4. **Alternative methods of meeting the community needs**

- 8.4.1. While the need for realignment was generally accepted by all of the objectors attending the oral hearing, a number of objectors argued that the road could be realigned within the existing footprint, thereby reducing the landtake. Mr. Frank Burke on behalf of Mr. David Fitzherbert (Plot 103) referred to a previous realignment proposal for the section between Ch 0 and Ch 1200 within the existing road footprint and questioned why this alignment was changed. He argued that the proposal for this section does not stand up to cost benefit analysis and results in an excessive landtake. Mr. Brendan Mennis (Plot 113) also argued that the road could be realigned within the existing road footprint and the landtake reduced. In this regard, I would note that the evidence of Mr. Ambrose Clarke, Project Engineer, on behalf of Meath County Council, states that do nothing and do minimum scenarios were considered, however, it was concluded that the safety hazard from inconsistency of route standard along the length of the unimproved N51 cannot be addressed by piecemeal improvements (Brief of Evidence Section 3.1). Mr. Clarke advised that the previous proposal between Ch 0 and Ch 1200 was a tie in to the Phase 1 upgrade, while the proposed scheme is part of a 4 kilometre upgrade. He advised that TII (NRA) published revised drainage standards in 2015 and that the proposed scheme is designed to these standards.
- 8.4.2. In his closing statement, Mr. Dermot Flanagan, BL on behalf of Meath County Council highlighted the fact that the scheme relates to a project between two points and that the realigned road needs to connect to both points. The realigned section would connect to previously improved carriageway on both sides and provide for a continuous stretch of improved carriageway between the speed limits of Navan and Slane over a distance of approximately 9.2 kilometres. In addition, the unimproved section of the N51 is intersected along its length by a number of local roads,

agricultural entrances and residential entrances, which will all continue to require access. The proposed scheme meets this need.

- 8.4.3. I am satisfied, on the basis of the foregoing, that the proposed alignment is suitable to meet the identified community need and that no practical alternative has been presented that would meet this community need.

8.5. Compliance with the Development Plan

- 8.5.1. The Meath County Development Plan 2013-2019 is the relevant statutory plan for the area. I have examined the Development Plan and note the comments of the Senior Executive Planner in relation to compliance with the development plan objectives for the area.
- 8.5.2. The objectives of the Development Plan support road improvement projects (TRAN POL 26, TRAN POL 29) and the proposed scheme is listed in the Development Plan (TRAN OBJ 17). In terms of the wider objectives of the Development Plan, the site is located within the Boyne Valley which is identified as an archaeologically rich and sensitive landscape. Chapter 9 of the Development Plan includes objectives in relation to the protection of archaeological features, built heritage, landscape character and views and prospects.
- 8.5.3. It is an objective of the Development Plan “to protect archaeological sites and monuments that are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record) through the planning process” (CH OBJ 7).
- 8.5.4. Archaeological impacts are addressed in a Cultural Heritage Report that formed part of the Part 8 documentation. The report notes that the online nature of the scheme would reduce the potential for archaeological finds and that where finds do arise that they can be preserved by record. The scheme will directly impact Recorded Monument ME018-032 “Tober Patrick”, which is described in the report as an abandoned and degraded well. The Report concludes that preservation by record of the impacted section would not represent a significant impact on the wider archaeological landscape. There are no other archaeological sites recorded or observed within or adjacent to the scheme. Objective CH OBJ 7 specifically

provides for preservation by record and as such, I am of the view that the proposed scheme would not materially contravene this Objective.

- 8.5.5. The scheme runs along the southern boundary of the Stackallan Demesne, a designated Architectural Conservation Area, for approximately 1 kilometre. I am satisfied that the proposed road scheme would not encroach onto the designated area of the ACA and that the predominantly online scheme is designed to avoid impacts on the ACA. I am satisfied that the scheme would not contravene Objective CH OBJ 21, which relates to the protection of ACA's.
- 8.5.6. The proposed road scheme is situated on the boundary of 'Landscape Area No. 5 Boyne Valley' (Appendix 7 refers), which is characterised in the Development Plan as a landscape of exceptional value, high sensitivity and international importance. The proposed road scheme also falls within Protected View no. 33 listed in Appendix 12 and detailed on Map 9.5.1 of the Development Plan Development Plan. A Landscape and Visual Impact Assessment Report that formed part of the Part 8 documentation concludes that the proposed realigned route would reinstate a similar route corridor to the existing and that while there may be visual impacts during the construction stage and shortly thereafter, the impacts would be neutral in the medium to longer term. I would accept this conclusion and am satisfied that the proposed scheme would not contravene Objectives LC OBJ 1 and LC OBJ 5 which relate to the protection of landscape character and views and prospects.
- 8.5.7. I am satisfied, on the basis of the information submitted with the application, and subject to appropriate mitigation in line with the general requirements of the Department of Culture, Heritage and Gaeltacht Affairs, that the proposed scheme would not contravene materially objectives of the Development Plan for the area.

8.6. Consideration of Objections

- 8.6.1. The objector's original concerns are summarised under section 6. During the oral hearing concerns were refined and refocused in several respects. Matters raised, can be summarised as follows:

8.6.2. Mr. Frank Burke on behalf of Mr. David Fitzherbert (Plot 103)

Issues raised by Mr. Burke in relation to the extent of land take and the alternatives considered are addressed in Section 8.4 above. Mr. Burke raised concerns in

relation to the design of attenuation ponds and the potential for increased flooding. Meath County Council advised that the attenuation ponds are designed to prevent flooding by reducing runoff from the road to greenfield levels and to provide pollution control. Mr. Burke asserted that Meath County Council assured Mr. Fitzherbert under Phase 1 that no lands would be acquired for future phases of the road. The Council advised that they have no record of any agreements made. I am of the view that the matters raised are matters for negotiation between the parties or to be addressed through the statutory arbitration process. The Board has no role in relation to such matters.

8.6.3. Mr. Cor on behalf of Mr. Dermot Ward (Plot 121)

Mr. Cor outlined an objection in relation to the proposal to close an existing access to Mr. Wards property and to provide a combined access serving 4 no. properties. It was argued that this arrangement would not be safer as it would not reduce the number of turning movements onto or off the road. Mr. Ward asked that the Board reinstate his entrance. I am of the view that this issue relates to the design of the scheme. The Board in this case is confined to considering the CPO and cannot direct a change to the design of the approved scheme.

8.6.4. Mr. Cor on behalf of Mr. Mervyn Grey (Plot 120)

Mr. Cor on behalf of Mr. Mervyn Grey outlined support for the scheme but argued that the extent of the land take for his property is disproportionate and would decimate the residential property. Mr. Cor advised that a proposal has been submitted to the Council for a retaining wall in place of a proposed sloped bank between the road and his property (which is raised above the level of the road) and that this would reduce the extent of the land take required. It is argued that the CPO fails to take account of this alternative solution. Meath County Council confirmed that a proposal has been received but advised that a geotechnical survey of the ground is needed to determine whether the retaining wall is a feasible design solution. The Council have not undertaken surveys on the objectors holding to date due to the likelihood of impacts on landscaped garden areas. The Council request that the CPO be approved without amendment and indicated that a reduced land

area could be acquired in the event that it would suffice. The objector argues that the objective of realigning the road can be achieved in a way that would interfere to a lesser degree with his property and states that the objector is heavily dependent on the Board to correct the error on the Council's part. I would note that no alternative design proposal has been submitted to An Bord Pleanála. While it is open to the Board to confirm the order with modifications that reduce the landtake, I accept that the approved design is fit for purpose and that the proposed landtake is justifiable on this basis. The Council has not acted disproportionately in designing the scheme and in making an acquisition order for this property. Matters raised in relation to the impacts of the proposed CPO on the property are matters to be agreed either through negotiation between the parties or through the statutory arbitration process. The Board has no role in this regard.

8.6.5. Mr. Brendan Mennis

Issues raised in relation to the extent of land take and the alternatives considered are addressed in Section 8.4 above. Mr. Mennis raised a number of concerns in relation to the loss of direct access onto the road and the new point of access onto the realigned N51 to the west of his property. He advised that his agricultural lands are located to the east and that the revised access arrangements would result in increase the cost of running agricultural machinery. Meath County Council in response advised that compensation is payable in respect of loss of access. Concerns were also raised in relation to the lack of detail in respect of accommodation works and the likely impacts on his property. The matters raised are matters to be agreed either through negotiation between the parties or through the statutory arbitration process. The Board has no role in this regard.

8.7. Other Matters Arising

- 8.7.1. The Council has requested 4 no. amendments to the CPO, as detailed in Appendix 4 of the Brief of Evidence submitted at the Oral Hearing. The amendments relate to the names and addresses of 'owners or reputed owners'.
- Amendment 1 relates to Plot No. 139a.1 and 139b.1. The original CPO notice dated 13th March 2018, issued to the address listed on the property registration website, was returned by An Post on 27th March 2018. Following

enquiry, the Council re-issued the notice to a new address and state that the CPO was received to this address. I am satisfied that the Council has taken reasonable steps to notify the relevant party and recommend that Schedule I is amended to reflect the more up to date information.

- Proposed amendment no. 2 was withdrawn at the hearing.
- Amendment 3 relates to Plot No. 163a.1: The notice of CPO was served to two addresses and the Council seek to update the CPO to reflect the address to which the CPO notice was received. I am satisfied that the Council has taken reasonable steps to notify the relevant party and recommend that Schedule I is amended to reflect the more up to date information.
- Plot No. 164a.1: The 'owner or reputed owner' listed in the schedule is believed to be deceased. Notice was served to the 'Legal Reps' of the owner or reputed owner to the address listed on the property registration website. I am satisfied that the Council has taken reasonable steps to notify the relevant party and recommend that Schedule I is amended to reflect the more up to date information.

9.0 CONCLUSION AND RECOMMENDATION

I am satisfied that the process and procedures undertaken by the Local Authority have been fair and reasonable and that Meath 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 and the public right of way proposed to be extinguished would be in the public interest and the common good and would be consistent with the policies and objectives of the Meath County Development Plan. I recommend that the Board confirm, subject to the modifications set out below, the compulsory purchase order for the reasons and considerations set out below.

10.0 REASONS AND CONSIDERATIONS

Having considered the objections made to the compulsory purchase order and the report of the person who conducted the oral hearing into the objections and having regards to;

- (i) the purposes of the compulsory acquisition for the upgrade of the N51;
- (ii) the provisions of the Meath County Development Plan 2013-2019;
- (iii) substandard horizontal and vertical alignment of the existing N51;
- (iv) the community need, public interest served and benefits to be achieved from use of the acquired lands for the purpose identified in the order;

It is considered that, subject to the modifications set out below, the acquisition of the lands in question by the local authority is necessary for the purpose stated in the order and the objection cannot be sustained having regard to this necessity.

MODIFICATIONS

I recommend that Schedule I is amended to reflect the proposed amendment no. 1 in respect of plot 139a.1 and 139b.1, proposed amendment no. 3 in respect of Plot No. 163a.1 and proposed amendment no. 4 in respect of Plot 164a.1, as set out in Appendix E of the Brief of Evidence of Meath County Council, submitted to the oral hearing on the 12th July 2018.

Karen Kenny
Senior Planning Inspector

31th July 2018