



An  
Bord  
Pleanála

## Inspector's Report ABP-301474-18

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<b>Development</b>	Meath County Council R150 Laytown - Bettystown Spine Road Compulsory Purchase (No.2) Order, 2018
<b>Location</b>	Laytown to Bettystown, Co. Meath.
<b>Planning Authority</b>	Meath County Council
<b>Applicant (s)</b>	Meath County Council.
<b>Type of Application</b>	CPO.
<b>Planning Authority Decision</b>	
<b>Objectors server(s)</b>	1. James and Charlotte Lyons. 2. James Lyons.
<b>Observer(s)</b>	1. Cllr. Sharon Tolan. 2. Cllr. Tom Kelly.
<b>Date of Site Inspection</b>	4 <sup>th</sup> December 2018.
<b>Inspector</b>	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. 2) Order, 2018, R150 Laytown – Bettystown Spine Road.
  - 1.1.1. The R150 is a regional road that runs from Drogheda in County Louth to Kentstown in County Meath. It provides a link between the east Meath settlements of Mornington, Bettystown, Laytown, Julianstown and Duleek. The road intersects with the R132, R108 and R152 regional roads and with the N2 national primary route. It is the only road that directly connects the towns of Bettystown and Laytown.
  - 1.1.2. The CPO would facilitate the realignment of a section of the R150 between Laytown and Bettystown.
  - 1.1.3. Meath County Council approved planning consent for the scheme in May 2016 under Part 8 of the Planning and Development Regulations 2001 (as amended) (MCC Ref. P8/150003)
- 1.2. The CPO seeks to:
  - (a) acquire compulsorily lands described in Part 1 of the Schedule and shown on drawing number 15\_142\_00\_7200.
  - (b) acquire temporarily lands described in Part II of the Schedule and shown on drawing number 15\_142\_00\_7200.
  - (c) extinguish the public rights of way described in Part III of the Schedule and shown on drawing number 15\_142\_00\_7201.
  - (d) extinguish the private rights of way described in Part IV of the Schedule and shown on drawing number 15\_142\_00\_7201.
- 1.3. The CPO involves the acquisition of 4.2 hectares of land, of which 0.67 hectares is existing public and private roadway. Most of the land to be acquired is from agricultural holdings, with some areas of roadbed also affected. In total, eight landowners are directly affected by the CPO.
- 1.4. An Bord Pleanála received a total of 3 no. objections in relation to the CPO. One objection was withdrawn on 12<sup>th</sup> December 2018. The other 2 no. objections remain.

## 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

- 3.1.1. The scheme runs north from the existing R150 at the northern end of Laytown (adjacent to Scoil Spioraid Naoimh) to the Eastham Road Roundabout (adjacent to the Bettystown Court Hotel). The scheme runs through greenfield lands for the most part and will tie into existing road infrastructure in the area. The lands bounding the scheme are zoned commercial / town centre, community infrastructure and open space in the East Meath Local Area Plan. An educational campus and Youthreach facility have been developed along the route in recent years and are currently accessed from the Coast Road.
- 3.1.2. The stated purpose of the CPO is to acquire lands for the construction of the R150 Laytown – Bettystown Spine Road development comprising the construction of approximately 0.9km of single carriageway road with associated ancillary and consequential works and public car park, including junctions, footpaths, cycle tracks, bus layby, drainage / attenuation works, public lighting, fencing works, landscaping works, service duct provision, boundary treatment and accommodation works.
- 3.2. The new road will by-pass the existing 'Coast Road' section of the R150 that runs through Bettystown village. The new road section will form part of the regional road network.
- 3.3. The proposed route will comprise a single carriageway roadway, footpaths and cycle tracks, 2 no. roundabout junctions, 2 no. priority-controlled junctions, a car park (85 no. car parking spaces), bus laybys, hard shoulders and grass verges.
- 3.4. The submitted documents state that the proposed road has been designed in accordance with the Design Manual for Urban Roads and Streets (DMURS), the

National Cycle Manual (NCM) and the Design Manual for Roads and Bridges (DMRB).

## 4.0 Purpose of the CPO

4.1.1. Meath County Council's oral hearing submission sets out the following background to the project:

- The R150 Regional Road is the only road connection between the towns of Bettystown and Laytown. This leads to traffic congestion.
- Proximity between schools and growing pupil numbers has led to an increase in congestion in this area that impedes traffic flows in the morning period.
- A lack of good quality footpaths and cycle tracks and permeability discourages walking and creates safety concerns for pedestrians and cyclists.
- There is a lack of car parking in the area, which has a negative effect on transportation.
- The objectives of the development are summarised as follows:
  - To provide an alternative link route between Laytown and Bettystown in order to ease traffic congestion.
  - To improve accessibility to schools in order to ease traffic congestion.
  - To provide the opportunity for potential future access to adjoining zoned lands.
  - To provide high quality pedestrian and cycle paths linking both towns and increase walking and cycling.
  - To provide adequate off-road parking for accessibility to schools, beach and other community facilities.
  - To provide for future access to community and open space lands.
  - To improve safety for all road users including pedestrians and cyclists travelling between Laytown and Bettystown.
  - To provide a traffic calmed environment.
  - To facilitate the future and continued sustainable growth and success of Laytown and Bettystown.
- The road has been designed to cater for the future traffic projections.

## 5.0 Policy Context

### 5.1. Project 2040: National Planning Framework (NPF) and National Development Plan 2018-2027

- 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.
- The Laytown to Bettystown Link Road is included on a list of regional and local roads to be progressed over the course of the National Development Plan (Chapter 5 of the National Development Plan).

### 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. Draft Regional Spatial and Economic Strategy

The Draft Regional Spatial & Economic Strategy (RSES) for the Eastern and Mid-Land Regional Assembly Area was published on 5<sup>th</sup> November 2018. Objective RPO 8.8 of the Draft RSES supports appraisal and or delivery of road projects set out in Table 8.4 including the “Bettystown Laytown Link Road”.

### 5.4. 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 road schemes would be undertaken in accordance with a number of principles, which include safe and appropriate arrangements to facilitate walking, cycling and public transport provision.

## 5.5. Meath County Council Development Plan 2014-2019

I consider the following policies and objectives of the Development Plan to be relevant:

- TRAN POL 14:** To ensure the protection of the existing roads infrastructure while improving the capacity and safety of the road network to meet future demands.
- 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 POL 33:** To balance the requirement for an appropriate level of off-street car parking facilities against the need to provide transport alternatives to the private car, in the overall interest of sustainable land use practice.
- 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. Such road schemes include Local bypasses / relief roads identified in LAP's and Town Development Plans.
- 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.

## 5.6. East Meath Local Area Plan 2014-2020

- 5.6.1. The East Meath Local Area Plan 2014-2020 encompasses the census town of Bettystown-Laytown-Mornington East in addition to the adjacent settlement of



Donacarney-Mornington. I consider the following policies and objectives of the Local Area Plan to be relevant:

**TVC POL 2:** To seek to alleviate traffic congestion through Bettystown Village through the completion of the North South Spine Route.

**TM OBJ 1:** To facilitate the provision of a north-south spine road connecting the R150 at Scoil an Sprioraid Naoimh primary school to the Eastham road roundabout. This road will include quality footpaths and cycleways. The link road will proceed in conjunction with the development of adjoining lands and be provided by the relevant developer. Meath County Council may assist with the delivery of all or part of this road by using its compulsory purchase powers to acquire lands in certain circumstances e.g. in the instance where the Department of Education and Skills or another agency sought to improve access arrangements to the schools by way of the provision of all or part of this road, subject to necessary funding being made available.

**TM OBJ 4:** To facilitate new junction layouts at the intersection of the proposed north south spine road and the existing Coast Road (R150), at the Laytown Rail Bridge (R150), Coney Hall Road/R151, Narrowway Road /Piltown Road and the R150 / Piltown Road.

**TM OBJ 7:** To assess the feasibility of eliminating parking from Bettystown Beach.

**TM OBJ 9:** To investigate the possibility of developing public car parking facilities to relieve pressure for car parking on Bettystown Beach particularly during the summer months.

## 5.7. Natural Heritage Designations

5.7.1. There are a number of European sites in the vicinity of the CPO lands as follows:

- The River Nanny Estuary and Shore SPA (004158) is located c. 280 metres to the south east of the CPO lands.
- The Boyne Coast and Estuary SAC (001957) is located c. 700 metres to the north east of the CPO lands.
- The River Boyne Estuary SPA is located c. 2.5 km to the north of the CPO lands.

- The River Boyne and River Blackwater SAC is located c. 5 km to the north of the CPO lands.

5.7.2. The application is accompanied by an An Ecological Impact Assessment (December 2015) and Screening Statement for Appropriate Assessment (December 2015) that formed part of the Part 8 Documentation. The Screening Statement concludes that the project will not have a significant negative effect on European Sites and will not negatively affect their conservation objectives or integrity. On the basis of the finding of no significant effects it was concluded that Stage II Appropriate Assessment is not required.

## 5.8. Cultural Heritage Designations

5.8.1. There are no cultural heritage designations within or immediately adjacent to the CPO lands.

## 6.0 Objections Received

### 6.1. James and Charlotte Lyons (Plot No. 110a.1).

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

- No prior discussion in respect of acquisition.
- The documentation is not fit for purpose. It does not specify the purpose for which the land is to be compulsorily acquired and insofar as there is a purpose specified the scheme goes far beyond this purpose; the maps are not of a sufficient scale and do not contain sufficient detail to enable analysis; the documents contain fundamental errors in respect of the date for making an objection and dates on which relevant orders were made, are not signed and do not contain any detail in respect of how the scheme was arrived at.
- Community need has not been established.
- The land is being acquired for the benefit of a private developer.
- The proposed scheme is not provided for in the manner set out in the Meath County Council Development Plan.
- The scheme submitted for confirmation has not been the subject of any authorisation which would entitle the Council to have the CPO confirmed.

- No consent was obtained from the objector in respect of the inclusion of lands in the Part 8.
- The Part 8 scheme is different to that submitted in this application.
- The scheme should be subject to Appropriate Assessment under the EC Directive (92/43 EU).
- The development should be subject to Environmental Impact Assessment.
- The CPO process is invalid and void.

**6.2. Harrison O’Dowd Solicitors on behalf of James Lyons (Plot No. 106a, 1106b, 1106c1, 106d1, 106e1, 106f1).**

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

- No prior discussion in respect of acquisition.
- The documentation is not fit for purpose. It does not specify the purpose for compulsorily acquisition and insofar as a purpose is specified the scheme goes far beyond this purpose.
- The maps grounding the application are not of a sufficient scale and do not contain any appropriate detail to enable a proper analysis.
- The documents contain fundamental errors in respect of the date for making an objection and date of the order, are not signed, do not include the address of the acquiring authority and do not contain any detail in respect of how the scheme was arrived at.
- Reference in the CPO title to the R150 and a spine road. The land to be acquired is not confined to lands necessary for any such roadway.
- Part of the lands, including the objector’s lands, are being acquired to facilitate the development of third party lands.
- The scheme is identified as being required in connection with the construction of the R150 Laytown / Bettystown Spine Road. It also includes the provision of a public car park that is difficult to reconcile with the purpose of constructing a public road.
- The reference to ‘spine road’ is unclear and appears to have no technical or legal basis.
- The scheme is materially different to that provided for under Part 8.

- Community need has not been established.
- There is no evidence that the lands are suitable for the purposes for which they have been acquired.
- The carpark appears to facilitate schools and is provided primarily for their use. The Council have no statutory powers in this regard.
- The proposed scheme is a material contravention of the Council's Development Plan.
- The Part 8 procedure was carried out without any notice to the objector and our client was unaware of this process.
- The development is premature pending compliance with the requirements of the EU Directive 93/42.
- No proper consideration has been conducted in respect of whether the requirements of the EIA directive applied.

## 7.0 The Oral Hearing

- 7.1.1. An oral hearing was held on the 12<sup>th</sup> Day of December 2018 in the City North Hotel and Conference Centre, Gormanston, Co. Meath.
- 7.1.2. The Board retained the services of Artane Audio which forms the official English record of the proceedings.

## 7.2. Attendance at the Oral Hearing

### Local Authority, Meath County Council

Mr Dermot Flanagan S.C.

Mr Rory McEntee – Solicitor

Mr Jeff Emerson, Clifton Scannell Emerson Associates – Project Engineers

Ms Wendy Bagnall – Planner

### Objectors

Mr. James Lyons Objector, Mr. Michael O'Donnell BL, Mr. Evan O'Donnell BL, and Mr. Billy O'Dowd Representing James and Charlotte Lyons (Plot 110) and James Lyons (Plot 106).

### Observers

Cllr. Sharon Tolan

### 7.3. Submission - Meath County Council

#### **Mr Jeff Emerson, 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 R150 Regional Road is the only road connection between Bettystown and Laytown.
- Proximity between schools and growing pupil numbers has led to an increase in congestion that impedes traffic flows in the morning period in this area.
- A lack of quality footpaths and cycle tracks and permeability discourages walking and creates concerns over safety for pedestrians and cyclists. A pedestrian desire line has emerged through the road corridor.
- There is a lack of existing car parking which has a negative effect on transportation in the area.
- The objectives of the development are summarised as follows:
  - Provide an alternative link route between Laytown and Bettystown in order to ease traffic congestion on the R150.
  - Improve accessibility to the schools in order to ease traffic congestion.
  - Provide the opportunity for potential future access to adjoining zoned lands.
  - Provide high quality pedestrian and cycle paths linking both towns and increase walking and cycling.
  - Provide adequate off-road parking for accessibility to schools, beach and other community facilities.
  - Provide the opportunity for potential future access to adjoining lands zoned for community and open space uses.
  - Improve safety for all road users including pedestrians and cyclists.
  - Provide a traffic calmed environment.
  - Facilitate the future and continued sustainable growth and success of Laytown and Bettystown.

- The approved road development will increase physical activity through increased use of sustainable transport modes due to the provision of high quality pedestrian and cycle facilities.
- The scheme will provide for a recreational walking loop using the existing and approved route.
- The development will improve access to schools by removing a cul-de-sac and create a through road while offering a choice of routes to and from the schools from both Laytown and Bettystown.
- The development will offer a high quality of service to pedestrians and cyclists via a 2m wide footpath and 2m wide cycle track on each side of the carriageway separated from the carriageway by grass verge where possible.
- A traffic assessment has been carried out to inform the design of the new road. The road has been designed to cater for future traffic projections.
- The road has been designed with a 50 km/h speed limit to current standards including the Design Manual for Roads and Streets (DMURS), the National Cycle Manual (NCM) and the Design Manual for Roads and Bridges (DMRB).
- All of the lands referred to and contained in the Schedule to the CPO are necessary for the construction, operation and maintenance of the road development approved under Part 8.
- A description of public rights of way and private rights of way to be extinguished are detailed in Appendix A of the submission.

**Ms Wendy Bagnall, Planner**

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

- The settlements of Bettystown and Laytown have experienced significant expansion over the past 20 years.
- The 2016 Census town of Bettystown / Laytown / Mornington East is the third largest town in County Meath with a population of over 12,000 people.
- An educational campus opened in the area in 2012.
- The road project is listed in Project Ireland 2040 – The National Development Plan and in the Draft Regional Spatial and Economic Strategy for the Eastern Regional Assembly Area. The proposed development is consistent with National, Regional and Local planning and transportation policies. The

submission refers to the National Planning Framework 2018, Transport Strategy for the Greater Dublin Area 2016-2035, Regional Planning Guidelines for the GDA 2010-2022, Meath County Development Plan 2013-2019 and the East Meath Local Area Plan 2014-2020. In relation to the Meath County Development Plan there is specific reference to the following policies and objectives: TRAN SP14, TRANPOL26, and TRANOBJ17. In relation to the East Meath Local Area Plan there is specific reference to the following policies and objectives: TVCPOL2, TMOBJ 1; and TMOBJ4.

- A Part 8 process in respect of the proposed road scheme concluded in May 2016.
- The proposed development will improve road safety, traffic circulation, facilitate alternative modes of transport and will enhance permeability.

### **Clarifications**

Mr. D. Flanagan BL provided clarification on behalf of the acquiring authority in relation to the proposal to extinguish public rights of way as follows:

- Point AA1 to AA1 and AA2 and AA2 refer to a portion of public road and not the entire public road. The intention is to undertake works to replace a footpath that would require temporary closure of a part of the roadway. Sections of the public road may be closed for a period of 9 – 12 months while works are being done but traffic will be maintained through the area during works. Following works this section will continue to be a public road within the meaning of the roads act. The extinguishment is, therefore, temporary.
- Point AB1 to AB2 refers to a permanent extinguishment.

### **7.4. Questioning**

Prior to making a submission Mr. O'Donnell on behalf of the objector's sought clarification in respect of matters arising from the submission of the acquiring authority. The issues raised are summarised as follows:

- Do traffic assessments or other documents justify objectively the nature and extent of the proposed public car park at the location proposed?
- What is the rationale for the car park in terms of traffic flow.

- Is there an objective in the East Meath Local Area Plan for the provision of a public car park at the location?
- Do traffic assessments identify the end users of the proposed public car park and distance from community facilities.
- How will the car park facilitate access to the schools and is it suitable for that purpose?
- Is there any proposal to deal with the area south of the proposed spine road?
- Are there any concerns about the existing entrance to the objector's house relative to the location of the proposed roundabout?
- Was AA screening carried out in respect of the CPO.
- Is the CPO scheme identical to that approved at Part 8 and will there be any further refinements?
- Clarification sought in relation to the design of the car park, boundary treatments and the number of car parking spaces proposed.

The response of the acquiring authority can be summarised as follows:

- Mr. Geoff Emerson clarified that no further traffic assessments or studies were undertaken following approval of the Part 8.
- It was clarified that the objective of the scheme is to alleviate congestion and that the proposed road and car park in combination will address this objective.
- In relation to the need for the car park, the acquiring authority indicated that the scheme was developed from preliminary design stage to address traffic congestion and that the location of the car park was determined through the preliminary design process. The acquiring authority stated that there would be a number of end users of the car park. Mr. Emerson was unable to point to any reference to a car park in traffic assessments. Mr. Dermot Flanagan BL stated that the car park is addressed in the report submitted to the Elected Members in respect of the Part 8 and that it is part of the approved works. Ms. Wendy Bagnall advised that the development would divert traffic from Bettystown, allow for public realm upgrades, facilitate upgrades for sustainable modes along the coastal stretch and provide infrastructure for community facilities in the area.



- Ms. Bagnall advised that there is a general objective in the East Meath LAP, that pertains to the delivery of car parking and a similar general objective in the County Development Plan. It was clarified that there is no specific objective for a car park at the subject location.
- Mr. Emerson advised that a number of elements of the design fed into the level of car parking including the location of the roundabout and the need to facilitate access. It was clarified that the need for car parking is influenced by a range of factors, including congestion and that the car park would have a range of functions at different times (reference to serving schools, beach, parochial hall and church). The response indicated that a key function from a transportation point of view was to provide car parking for the schools to address the impact of school traffic on traffic and congestion.
- In response to questions in relation to the suitability of the car park for school related parking, Mr. Geoff Emerson advised that the proposed roundabouts are designed in accordance with DMURS and the National Cycle Manual and allow for easy movement of pedestrians and cyclists in this area.
- In response to the query with regard to future planned upgrades to the south, Mr. Emmerson advised that he is not aware of any specific objectives to provide alternatives north or south, save for objectives to provide pedestrian and cycle facilities.
- Mr. Emerson advised that details of the boundary treatment to the car park are not finalised.
- Mr. Dermot Flanagan BL advised that the requirement for a community need is met in this instance on the basis of various matters that include engineering and planning considerations. The works have been considered through a Part 8 process and have passed muster. Mr. Flanagan advised that he disagrees with Mr. O'Donnell's contention that the requirement to establish need is an objective test, arguing that it is a subjective test.
- In response to a query in relation to whether the design approved by Part 8 would be altered, the acquiring authority advised that the CPO seeks to implement the Part 8 and that the acquiring authority will be bound by the approved landtake, in the event that the scheme is approved.

- AA Screening was carried out as part of Part 8 process and regard was had to this when preparing the CPO.

### 7.5. **Submission - Objectors**

Mr Michael O'Donnell Representing James and Charlotte Lyons (Plot 110) and James Lyons (Plot 106).

- When applying tests in respect of compulsory acquisition the constitutional context must be considered. Plot 110 is part of the curtilage of the objectors dwelling house and is subject to constitutional protection under Articles 40.3, 40.5 and 43 of the Constitution. The Board must be satisfied that the application for compulsory acquisition is lawfully applied for and that all of it is justified.
- There is an obligation to seek voluntary acquisition in the first instance and only when that fails or is not appropriate to move to compulsory acquisition.
- No disagreement in terms of type of criteria for confirming the scheme. Section 13-31 of book entitled Law of Local Government, David Brown, 2014, states that compulsory acquisition is only permitted where necessary or in the common good. Need must be demonstrated / justified. It is no answer to refer to a Part 8 procedure. The need must be independently justified.
- No evidence has been presented that would justify the need for a public car park of the extent proposed at the location proposed. Community need has not been demonstrated. There is no basis for the number of spaces, systematic analysis in relation to land extent and it has not been demonstrated that the land is suitable for the intended purpose.
- Requirement of compulsory acquisition that the proposed works are carried out in accordance with the relevant Development Plan. Relying on general objectives is not sufficient.
- There has been no regard in specific terms to Habitats Directive Stage 1 Screening.
- Board need to consider EIA.

## 7.6. Submission - Observers

### **Cllr Tollin**

Cllr. Tollin set out a context in relation to the need for the project including the extinguishment of rights of way. Key issues raised related to safety for children, adequacy of footpaths and crossings and traffic congestion.

### **Cllr Kelly**

Cllr. Kelly advised that the road has been in discussions for over 17 years. Area identified for educational campus, sports facilities, library and other community facilities.

## 7.7. Meath County Council Response to Issues Raised

- Mr. Flanagan in response to points raised by Mr. O'Donnell referred to the following judgements:
  - Case of Central Dublin Association v the Attorney General (1970's) established that where the common good or social justice require an interference to personal rights it is justified for the greater good.
  - The case of Wymes v ABP and Meath County Council (2003) identified the limited role of the planning process in relation to CPO and states that such matters are to be dealt with under Part 10 (now Part 8) procedure.
  - In the Clinton v ABP case (2007) it was accepted that while there was a limited development purpose stated in the CPO the wider implications in relation to implementing or facilitating the implementation of the development plan was identified.
  - Paragraph 13-31 of publication titled Law of Local Government, David Browne, 2014, reframes McDermott and Wolfe's view that the Board in exercising its power can have regard to wider policy. Established in case law that when one looks at planning policy you interpret policy in the round.
  - In the Lord Ballyedmond v The Commission for Energy Regulation, (2006) case the nature of the decision being made by the competent authority was an issue. Key issue is that there is sufficient material to justify a decision. Not a matter of alternatives or a balancing act.

- Mr. Flanagan also stated that the court judgement in the case of Reid v IDA 2015 includes relevant considerations in relation to exercise of CPO.
- The CPO order goes well beyond the test established by Clinton in respect of a ‘particular purpose’.
- The lands are capable of accommodating the works.
- In terms of alternatives it has been shown that the spine road connects to existing infrastructure to enhance it and is proximate to schools, church and serves a number of purposes.
- There is no mandatory requirement to have discussions with a landowner prior to initiating a compulsory acquisition process.
- Part 8 and EIA are mutually exclusive. EIA Screening was conducted, and obligations are enshrined in the planning approval in respect of environmental matters.
- Matters raised on behalf of Mr. & Mrs. Lyons can be addressed through arbitration.
- Plot 106 is part of the public road fronting the objector’s property. It is not part of the curtilage of the dwelling.
- The car park is part of an overall package being supplied and acquired for community benefit and it is asked that An Board Pleanála confirm this as part of an overall package.
- The compulsory acquisition process cannot be used as a collateral attack on a Part 8 approved by Meath Council. Mr. Flanagan referenced the judgement in the case of Sweatman v ABP 2018 in this respect.

## 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”.<sup>1</sup>

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 assessment of this application. In addition, the issues raised by individual objectors and other matters arising will also be addressed.

## 8.2. **Need for the scheme**

8.2.1. The stated purpose of the CPO is to acquire lands for the construction of the R150 Laytown – Bettystown Spine Road development comprising the construction of approximately 0.9km of single carriageway road with associated ancillary and consequential works and public car park, including junctions, footpaths, cycle tracks, bus layby, drainage / attenuation works, public lighting, fencing works, landscaping works, service duct provision, boundary treatment and accommodation works.

8.2.2. The evidence of Mr. Jeff Emerson, Project Engineer on behalf of Meath County Council to the oral hearing states that the R150 Regional Road is the only road that

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

directly connects the towns of Bettystown and Laytown. The evidence states that there is a need to provide a high-quality link between Laytown and Bettystown, which would improve connectivity between both towns and encourage alternative modes of transportation. The evidence also notes that the proximity between primary schools in the area and a continued growth in pupil numbers has led to an increase in congestion and that a lack of quality footpaths and cycle tracks and car parking impacts negatively on transportation. The objectives of the scheme are detailed in Section 3.2 of the evidence and include the provision of an alternative link route between Laytown and Bettystown in order to ease traffic congestion; improve accessibility to schools in order to ease congestion; to provide the opportunity for future access to adjoining zoned lands; to provide high quality pedestrian and cycle paths; to provide adequate off-road parking for accessibility to schools, beach and other community facilities; and improve safety for all road users. Mr. Emerson's evidence states that a traffic assessment has been carried out to inform the design of the new road and junctions and that the traffic modelling has included future development scenarios. The documents submitted with the application include a Traffic Modelling Report dated December 2015<sup>2</sup>.

- 8.2.3. The evidence of Ms. Wendy Bagnall, Senior Executive Planner, Meath County Council concludes that the proposed development, to which the CPO relates, will improve safety, traffic circulation, facilitate alternative modes of transport and will enhance permeability through the area.
- 8.2.4. The objectors argue that the acquiring authority has not established a community need to be met by the acquisition of the lands and that insofar as it is asserted that the land is required for a road scheme the proposal includes works that are not compatible with the description of the CPO.
- 8.2.5. The objectors questioning at the oral hearing focused on a proposed public car park that impacts the objector's lands (Plot 106). Mr. O'Donnell BL on behalf of the Mr. Lyons argued that no evidence has been presented that would justify the need for a public car park of the extent proposed at the location proposed and that there is no basis for the number of spaces or systematic analysis of the extent of land required. Mr. O'Donnell BL queried whether traffic assessments or other documents reference

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Appendix 5, Constraints, Route Selection & Preliminary Design Report, Clifton Scannell Emerson.

the car park and justify objectively the need for a public car park of the nature and extent proposed at the location proposed. He also questioned the rationale for the car park in terms of traffic flow.

- 8.2.6. Mr. Geoff Emerson, Project Engineer, on behalf of the acquiring authority, indicated that he could not point to any specific reference to the car park in the traffic reports but clarified that the proposed road and car park in combination will address the objective of the scheme to alleviate congestion. In relation to the location of the car park, he indicated that the location of the car park was determined as part of the preliminary design process. Mr. Emerson stated that a number of factors influenced the design of the car park including the location of the roundabout and the need to facilitate access. It was clarified that the need for car parking is justified by a range of factors, including congestion and that it will serve a number of community uses (schools, beach, parochial hall and church). A key function of the car park from a transportation point of view is to address the impact of school traffic on traffic and congestion.
- 8.2.7. Mr. Dermot Flanagan BL advised that the requirement for a community need is met in this instance on the basis of various matters that include engineering and planning considerations and that the works have been considered through a Part 8 process and have been deemed adequate.
- 8.2.8. Mr. O'Donnell argued that it is not sufficient to justify need on the basis that a Part 8 exists as need must be established on the basis of an objective test. Mr. Flanagan disagreed with Mr. O'Donnell's contention that the requirement to establish need is an objective test, arguing that it is a subjective test. Mr. Flanagan referred to the court judgement in the case of *Clinton v An Bord Pleanála (2007)* in his response.
- 8.2.9. The proposed scheme will provide a new stretch of road that will connect to existing infrastructure. I am satisfied that the purpose for which the land is to be acquired is clearly set out in the Compulsory Purchase Order. I also accept that the stated purpose aligns to the powers and duties of the local authority and that the roadway will facilitate the implementation of the development plan. I accept the assertion put forward by the acquiring authority that the overall scheme, including the public car park, will improve safety, traffic circulation, facilitate all modes of transport and will enhance permeability through the area, thereby meeting a community need.

- 8.2.10. I do not accept the argument put forward by the objectors that the need for the scheme or more specifically the public carpark, must be established on an objective basis. In this regard I have referred to the Clinton v ABP judgement referred to at the oral hearing and submitted into evidence by the acquiring authority.
- 8.2.11. 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 CPO lands run from Scoil an Spioraid Naoimh in the townland of Ninch, Laytown northwards to the Eastham Road roundabout in the townland of Betaghstown, Bettystown, at a location that is adjacent to the Bettystown Court Hotel.
- 8.3.2. The CPO lands amount to a stated area of 4.2 hectares. Most of the land to be acquired is from agricultural holdings and 0.67 hectares is existing public and private roads. The evidence of Mr. Jeff Emerson, Project Engineer on behalf of Meath County Council states that all of the lands referred to and contained in the Schedule to the CPO are necessary for the construction, operation and maintenance of the development approved under the Part 8 Process. The details of the Part 8 approved by Meath County Council in 2016 in respect of the 'R150 Laytown to Bettystown Road' are included with the CPO application (MCC Ref. P8/15003).
- 8.3.3. Mr. O'Donnell BL on behalf of the objectors argued that no basis has been given for the extent of land required to facilitate the proposed car park and that it has not been demonstrated that the lands are suitable for the intended purpose. Mr. O'Donnell BL queried how the car park will facilitate access to the schools and whether it is suitable for that purpose. In response Mr. Geoff Emerson advised that the proposed roundabouts are designed in accordance with Design Manual for Urban Roads and Streets and the National Cycle Manual and allow for easy movement of pedestrians and cyclists in this area.
- 8.3.4. The local authority documents are supported by confirmation by Mr. Ronan Geoghegan, Project Engineer, Clifton Scannell Emerson, that the lands are sufficient, suitable and necessary for the provision of the proposed road development as described in the CPO.



8.3.5. The CPO lands provide for a direct road connection between two points on the R150, for the provision of a public car park and for ancillary and consequential works. I am satisfied based on the case put forward by Meath County Council, that the lands are suitable for the stated purpose. 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. The approved road scheme relates to a project between two points on the existing R150 and needs to connect to both points and includes a public car park at a location that is proximate to educational and community facilities in the area. I am satisfied that the scheme responds to Objective TM OBJ 1 of the East Meath Local Area Plan which is to facilitate the provision of a north south spine road connecting the R150 at Scoil an Spioraid Naoimh primary school to the Eastham road roundabout.

8.4.2. While the submitted documentation does not discuss the issue of alternatives in any great detail, the submission of Mr. Dermot Flanagan BL at the oral hearing states, in the context of alternatives, that the spine road connects to and will enhance existing infrastructure and is proximate to schools and a church and serves a number of purposes.

8.4.3. The “Constraints, Route Selection & Preliminary Design Report” prepared by Clifton Scannell Emerson Associate Engineers (December 2015), outlines details of environmental constraints that informed the design of the roadway. The submission of Mr. Emerson to the oral hearing stated that the scheme was developed from preliminary design stage to address traffic congestion and that the location of the car park was determined through the preliminary design process.

8.4.4. I am satisfied, on the basis of the foregoing, that the proposed alignment and the location of the car park 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 and the East Meath Local Area Plan 2014-2020 are the relevant statutory plans for the area. I have examined the

Development Plan and Local Area Plan and note the comments of the Senior Executive Planner in relation to compliance with the objectives for the area.

- 8.5.2. The objectives of the Development Plan support road improvement projects (TRAN POL 14, TRAN POL 26, TRAN POL 29) and the provision of off street car parking (TRAN POL 33). It is also an objective of the Development Plan to support bypasses of local towns and villages that are identified in Local Area Plans (TRAN OBJ 17).
- 8.5.3. Policy TVC POL 2 and Objective TM OBJ 1 of the East Meath Local Area Plan relate to the proposed road scheme. Policy TVC POL 2 is *“to seek to alleviate traffic congestion through Bettystown village through the completion of the north south spine route’* (TVC Pol 2). Objective TM OBJ 1 is *“to facilitate the provision of a north south spine road connecting the R150 at Scoil an Spioraid Naoimh primary school to the Eastham road roundabout. This road will include quality footpaths and cycleways. The link road will proceed in conjunction with the development of adjoining lands and be provided by the relevant developer. Meath County Council may assist with the delivery of all or part of this road by using its compulsory purchase powers to acquire lands in certain circumstances e.g. in the instance where the Department of Education and Skills or another agency sought to improve access arrangements to the schools by way of the provision of all or part of this road, subject to necessary funding being made available”*.
- 8.5.4. Objective TM OBJ 4 seeks to facilitate new junction layouts at locations including at the intersection of the proposed north south spine road and the existing Coast Road (R150) and Objective TM OBJ 9 is *“to investigate the possibility of developing public car parking facilities to relieve pressure for car parking on Bettystown Beach particularly during the summer months”*. I would note that the Laytown to Bettystown Link Road is listed as a proposed road scheme in the National Development Plan, 2018-2027 and in the Draft Regional Spatial and Economic Strategy for the Eastern and Midlands Assembly Area.
- 8.5.5. The Meath County Development Plan and the East Meath Local Area Plan provide clear policy support for the R150 link road. Mr. O’Donnell BL on behalf of the objectors argued, in the context of the proposed car park, that works that are the subject of compulsory acquisition must be carried out in accordance with a specific

provision of the relevant Development Plan and that it is not sufficient to rely on broad general provisions. In this regard, I would note that it is accepted (as discussed in Section 8.0 above) that there are four criteria that should be applied in respect of compulsory acquisition. One of the criteria is that “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”. I am satisfied that the Development Plan and the Local Area Plan include general support in respect of car parking provision. I am also satisfied that the proposed car park forms part of a wider road scheme that is supported by the Development Plan. Furthermore, the proposed car park would not materially contravene the provisions of the Development Plan or Local Area Plan for the area, in my view. I am therefore satisfied that the minimum test is met.

8.5.6. In terms of the wider objectives of the Development Plan, I would note that the issues of archaeological potential and flood risk are specifically addressed in the reports prepared in respect of the Part 8 and that form part of the documentation of the subject application. I accept the findings of these assessments and conclude that the proposed scheme would not materially contravene objectives of the Development Plan or Local Area Plan in relation to the protection of archaeological heritage and flooding management.

8.5.7. I am satisfied, on the basis of the information submitted with the application, 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, that have not been addressed above can be summarised as follows:

**Mr. O’Donnell BL on behalf of Mr. James Lyons (Plot 106) and Mr. James Lyons and Ms. Charlotte Lyons (Plot 110).**

8.6.2. The written objections raise concerns in relation to the adequacy of the CPO documentation. I am satisfied that the material submitted to An Bord Pleanála is sufficient to allow for the consideration of the CPO.

- 8.6.3. The objectors argue that there is an obligation to seek voluntary acquisition prior to initiating the CPO process. I am satisfied that the Council has taken reasonable steps to notify the relevant persons of the CPO and that any failure to engage in negotiations prior to initiating the CPO process does not render the CPO invalid.
- 8.6.4. In relation to points raised in respect of Appropriate Assessment and Environmental Impact Assessment, I would note that the CPO process is a restricted process relating to the acquisition of land and that the provisions of the Article 6 (3) of the Habitats Directive and the Environmental Impact Assessment Directive, 2014 are not relevant in this context.
- 8.6.5. In relation to questions raised in relation to the implementation of the approved Part 8, detailed design matters and whether there would be any further refinements, I am of the view that these matters fall outside of the Boards functions in the consideration of the CPO application.

#### **8.7. Other Matters Arising**

- 8.7.1. Mr. D. Flanagan BL provided clarification on behalf of the acquiring authority in relation to the proposal to extinguish public rights of way as follows:
- Point AA1 to AA1 and AA2 and AA2 refers to a portion of public road not the entire public road. The intention is to undertake works to replace a footpath that would require temporary closure of a part of the roadway. Sections of the public road may be closed for a period of 9 – 12 months while works are being done but traffic will be maintained through the area during the works. Not a permanent extinguishment. Works will be done and thereafter it will continue to be a public road within the meaning of the roads act.
  - Point AB1 to AB2 refers to a permanent extinguishment. The proposed road will curve to the west of the existing road and this area will no longer be part of the public road. AAB is permanent being the replacement or easement of right of way. Will be a public realm but not for vehicles.
- 8.7.2. I recommend, in the event that the Board is minded to approve the CPO, that the scheme is amended to allow for the temporary extinguishment of the public right of

way between Point AA 1 and AA1 and AA2 and AA2 as detailed on the CPO Map and in Schedule III to the CPO.

## **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 rights 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 R150 Laytown-Bettystown Spine Road;
- (ii) the provisions of the Meath County Development Plan 2013-2019;
- (iii) 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 objections cannot be sustained having regard to this necessity.

## **MODIFICATIONS**

I recommend that Schedule Part III is amended to reflect the proposal to extinguish Public Right of Way (AA) on a temporary basis as clarified in the oral submission of Mr. Dermot Flanagan to the Oral Hearing held on the 12<sup>th</sup> December 2018.

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Karen Kenny  
Senior Planning Inspector

31<sup>st</sup> January 2019