



An
Bord
Pleanála

Inspector's Report

ABP 301808-18

Compulsory Purchase Order

Cork County Council Compulsory
Purchase Order 2017 - L6506 Ferney
Road Improvement Scheme
Carrigaline

Location

Ferney Road – L6506, Carrigaline,
Co. Cork

Applicant

Cork County Council

Planning Authority

Cork County Council

Objectors

Ben and Noreen Egan

Observer(s)

None

Date of Site Inspection

9th August 2018/7th September 2018

Inspector

Erika Casey

1.0 Introduction

- 1.1 This report addresses Cork County Council's Compulsory Purchase Order 2018 with respect to works on Ferney Road (Local Road L6506) in Carrigaline, Co. Cork. This CPO would facilitate the implementation of the project which would upgrade the road to include the provision of new footpaths, uncontrolled pedestrian crossings, public lighting scheme, road surface water drainage system as well as improved road markings, signage and carriageway resurfacing.
- 1.2 To facilitate these works and the implementation of the road improvement scheme, the CPO would entail the temporary and permanent land acquisition of a number of parcels of land. The lands being acquired are portions of front gardens of dwellings and road bed (i.e. the portion of land between the road edge and property boundary).
- 1.4 One objector has challenged the CPO. The objection pertains to the proposed acquisition of lands identified as parcels P09.1a, P09.1b and P09.1c. The objection primarily relates to potential impacts on a residential property called 'Ardgower'.
- 1.5 The Order had the seal of the Council affixed on the 3rd day of May 2018 and was advertised publically on the 4th of May 2018.

2.0 Background

Part 8 Development Process

- 2.1 The proposed road improvement project has been subject to the process set out under in Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended. Part 8 permission was secured in April 2017.
- 2.2 On the 2nd of December 2016, the Council gave notice that they proposed the following works:
- "the construction of new footpaths, new drainage system, installation of new public lighting and carriageway resurfacing".*
- 2.3 The report prepared for the Part 8 process stated that the scheme would have the following benefits:

- The scheme will improve road safety for all road users and in particular the safety of vulnerable road users (i.e. pedestrians).
- The proposed new LED street lighting scheme will provide an appropriate level of lighting along the length of the scheme ensuring a safer environment for all road users.
- The proposed surface water drainage works will ensure that road surface water is adequately catered for and removed from the road surface.

2.4 The development was subject to AA screening which identified that the only Natura 2000 site within the potential impact zone of the site was the Cork Harbour Special Area of Protection (Site Code 4030). The report concluded that the works are sufficiently removed from the SPA and are of such a limited nature that there is no risk of disturbance related impacts on species of bird for which the SPA is designated. The only potential risk to the SPA arising from the project related to possible risks to water quality during the works phase, however, environmental measures have been designed into the project to ensure the protection of water quality. The report concludes that any risk of impact relating to the works phase on the SPA can be screened out.

2.5 A number of submissions were made on the Part 8 application. A Manager's Report was prepared in March 2017 and each submission was addressed in detail with the conclusion being that the proposed design is the optimal design solution for this road improvement scheme, that the proposed works are consistent with the proper planning and sustainable development of the area and that the development should proceed as set out. The scheme was formally adopted by the elected representatives of Cork County Council on the 24th of April 2017. The CPO drawings and particulars do not vary from the adopted Part 8 design.

3.0 **Statutory Basis**

3.1 Under Section 213(2)(a) of the Planning and Development Act, 2000 (as amended), a local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

3.2 Compulsory Purchase Orders are made pursuant to the powers conferred on the local authority by section 76 of the Housing Act, 1966, and the Third Schedule thereto, as extended by section 10 of the Local Government (No. 2) Act, 1960, (as substituted by section 86 of the Housing Act 1966), as amended by section 6 and the Second Schedule to the Roads Act, 1993, and as amended by the Planning and Development Act, 2000-2018. Orders are served on owners, lessees and occupiers in accordance with Article 4(b) of the Third Schedule to the Housing Act, 1966.

3.3 The Housing Act of 1966 provides if an objection has been made to a compulsory purchase order, the Board will facilitate the person making the objection to state their case at an Oral Hearing.

4.0 **Site Location and Description**

4.1 The location of the proposed road improvement works is on Ferney Road, Carrigaline, Co. Cork in the townland of Kilnagleary. Carrigaline is located c. 13 km from Cork City and is a Metropolitan Town within the County Metropolitan Strategic Planning Area. It has experienced a significant amount of development in recent years. The Cork County Plan 2014 envisages that the town will continue to grow at a moderate pace and a population target of 17,870 persons has been set up to 2022. This will require an additional 2,422 dwellings to serve the town.

4.2 The subject road is located in a primarily residential area characterised by large detached houses with substantial gardens as well as a number of residential estates. There are further extensive lands zoned for residential development to the north of Ferney Road and to the west of the Kilnagleary Link Road. Ferney Road connects directly to Church Hill to the west which provides direct connectivity to Carrigaline town centre to the north. Carrigaline Educate Together and Edmund Rice College are located approximately 100 metres to the east of the proposed road scheme.

4.3 It is envisaged that the L6506 Ferney Road will act as a link road between the town centre and the wider residential suburbs to the south east of the town which encompasses the housing estates of White Oaks, Ashbourne Court, Fernlea, Ardcarraig and Forrest Hill and their environs.

4.4 The plots subject to the objection comprise:

P09.1a – 0.0292 ha

P09.1b - 0.0120 ha

P09.1c – 0.0179 ha

4.5 These land parcels are located approximately mid-way along the road scheme and comprise lands along and within the front boundary of a residential property known as 'Ardgower'. 'Ardgower' is a large detached dormer bungalow set back from the road front. The dwelling is currently vacant and boarded up. The front boundary comprises in part an attractive stone wall as well as a low concrete capped wall. The dwelling is surrounded by hard landscaping for off street parking. There is a small detached shed structure located along the western boundary of the site. There are some mature trees along the front boundary.

5.0 Details of Compulsory Purchase Order

5.1 This is a case relating to an objection received to the making by Cork County Council of a Compulsory Purchase Order, 2018, for the compulsory acquisition of land for the purposes of providing road widening and improvements to the L6506 Ferney Road. The plots in question are demarcated grey on the accompanying map, outlined in red. There was one objection to the CPO by Ben and Noreen Egan, 12 Carrigmore, Carrigaline Co. Cork, namely the stated owner of Plots P09.1a, P09.1b and P09.1c.

5.2 The official seal of the Local Authority was affixed to the Order on the 3rd of May 2018, signed by the Chief Executive of Cork County Council and seconded by the Senior Executive Officer of Cork County Council. The proposed CPO was advertised in the Irish Examiner on the 4th of May 2018, advising that owners, lessees and occupiers of the land described in the Schedule would receive individual written notice and that a copy of the Order and the map referred to in it may be seen at all reasonable hours at the offices of Cork County Council. The advertisement included a schedule of land to be acquired.

5.3 The Compulsory Purchase Order, associated maps and the relevant newspaper notice have been forwarded by the Local Authority. Other documentation forwarded to the Board by the Local Authority includes the Manager's Orders, Engineer's Report dated the 15th of January 2018, letter from the Planning Department Dated

the 29th November 2017, and a copy of each form of Notice served in connection with the CPO. The Part 8 documentation submitted pertaining to the application includes the planning report, planning notice, Manager's report and approval letter.

5.4 The Engineering Report notes that the scheme comprises the following primary elements:

- Provision of new footpaths to ensure a continuous provision of pedestrian facilities along Ferney Road.
- New uncontrolled pedestrian crossings.
- Improvements to bus stop infrastructure.
- Installation of build out at junctions.
- New energy efficient LED public lighting scheme.
- New road surface water drainage system.
- New raised speed tables at pedestrian crossings.
- Improved road markings and signage.
- Carriageway resurfacing.
- Provision of new boundary walls, as required.
- Alterations to existing boundary walls, as required.
- All necessary accommodation works.

5.5 It is stated that the proposed road scheme will improve road safety for road users along the route, in particular, the safety of vulnerable road users such as pedestrians.

6.0 **Planning History**

Application Reference 08/7231

6.1 In November 2008 permission was granted on the site of the subject dwelling 'Ardgower' for the demolition of the existing dwelling and stores and the construction of 2 no. split level dwelling houses and ancillary site works as well as the provision of an overflow car parking area to serve adjoining offices. Under

application reference 13/4787, an extension of duration of the above permission was granted until the 19th of November 2018. The following conditions are of note:

Condition 8

Existing road boundary shall be removed in its entirety and new boundary fence shall be set back 2 metres from nearest edge of existing carriageway. The line of this set back shall be agreed on site with the Area Engineer prior to the commencement of development.

Any utility poles currently within the set back, shall be repositioned behind the new boundary, and any surface chambers or manholes within it shall be repositioned in a location or at a level to be agreed with the Council's area engineer. The applicant shall be responsible for the costs of relocating these facilities, for notifying the relevant statutory undertakers, for obtaining any necessary licences, and notifying the planning authority of the revised locations of such utilities, prior to the commencement of development.

Reason: *Notwithstanding the desirability of retaining existing roadside boundaries as far as possible, in this instance a set back is necessary for traffic purposes*

Condition 14

Entrance shall be so designed, and roadside boundaries so altered, as to provide sight distances of 80 metres, in both directions, at a point 3 metres back from the edge of the public road.

Reason: *In the interest of road safety.*

In the Vicinity

Application Reference 18/5993

- 6.2 There is a current live application for the construction of 58 no. dwelling units to be served by a vehicular entrance from the southern side Ferney Road, located opposite the 'Ardgower' property. Decision due by the 24th September 2018.

7.0 **Policy Context**

National

National Planning Framework

7.1 The National Planning Framework encourages the consolidation of urban areas and the making of stronger urban areas. National Policy Objective 4 encourages the creation of attractive, liveable, well designed, high quality urban places.

National Policy Objective 27 states:

“Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.”

Smarter Travel-A Sustainable Transport Future 2009-2020

7.2 Smarter Travel sets out a transport policy for Ireland. Sustainable transport modes are strongly promoted and actions set out aimed at ensuring that alternatives to the car are more widely available including by investment in cycling and walking.

Regional

Regional Planning Guidelines for the South West 2010 – 2022

7.3 The guidelines encourage walking and cycling policies and state:

“Fundamental to achieving a modal shift to walking and cycling is to make the journey safer and more convenient to the user. The region will need to ensure that objectives and actions are put in place to achieve safety in the provision of improved access to cycle paths and pedestrian walkways which are integrated with the public transport network.”

7.4 It is further detailed that:

“Development Plans and Local Area Plans should examine the possibility of retrofitting of adequate walking and cycling facilities and planning for all new areas should include the provision of such facilities in a sustainable manner.”

Local

Cork County Development Plan 2014

7.5 The plan notes that a key objective is to enhance existing walking routes, particularly those that access key transport and community infrastructure. Under Policy TM 2:1-Walking: it is a policy to encourage and facilitate a safe walking route network and culture of walking where possible and practical. It also notes that all

development should be accessible and permeable on foot and that the walking experience should be as safe and pleasant as possible.

Ballincollig Carrigaline District Local Area Plan 2017

7.6 The current statutory development plan for the area is the Ballincollig Carrigaline District Local Area Plan 2017. As detailed above, Carrigaline is to be promoted for further moderate growth. The plan details that the movement network is one of the key influences on the future development of the town. It is acknowledged that are opportunities to enhance walking and cycling amenities in the town. Under Objective CL – GO – Walking and Cycling Connectivity, it is an objective to further expand the network of designated walking and cycling routes to provide safe, convenient and pleasant routes between the town's main residential areas, schools and the town centre.

Natural Heritage Designations

7.7 There are no Natura 2000 sites in the vicinity of the proposed works. The nearest site is the Cork Harbour SPA which is located c. 0.4km to the north of the area.

8.0 Objections

Ben and Noreen Egan

- Consider that the works have not been fully detailed in terms of their effect on their property known as 'Ardgower'.
- Note that serious omissions on the drawings render the terms of the CPO to be misleading.
- States that 'Ardgower' is a substantial dormer dwelling that is accessed at its eastern end via a 3 metre wide vehicular entrance from the public road. The property is provided with a continuous wall along its road frontage which is of mixed construction. The wall varies in height due to fluctuations of the ground level. There is a significant slope from the boundary down towards the house. There are 4 large mature trees inside the existing block wall and extensive shrubbery which provide acoustic screening and privacy.
- Consider that the design of the proposed road works is flawed and that any road widening should be undertaken on the southern side to reduce or eliminate the bend in the road and increase sight distances in both directions. Also note that pedestrians are currently forced to walk on the

northern side of the road due to the lack of a margin and footpath on the southern side. Pedestrians from the various estates must cross the road to the northern side as the existing footpaths on the southern side of the road are discontinuous and are interrupted by residential dwellings. If the works were undertaken on the southern side of the road, it would allow the existing footpaths fronting the estates to be made continuous. This would facilitate the large number of people currently resident in the estates to use the southern side of the road to access schools and facilities on the Kilnagleary Link Road located further east.

- State that due to the fall in the site there will be a substantial level difference in the order of 900mm. Consider that the CPO should indicate the manner in which the ground levels are to be altered during construction and on full completion and this should be clearly indicated on a sectional drawing. The extent and nature of retaining structures and associated foundations must be detailed and their impact on the property clearly shown.
- The CPO drawings make no provision for an entrance to the 'Ardgower' site and the drawings show the existing entrance being eliminated by the construction of a new boundary wall. It is unclear what the nature and layout of the entrance to be provided will be. Concern regarding potential impacts of the location of entrance on the existing garage structure.
- Submit that a new or significantly altered entrance would require permission which would render the Part 8 permission as invalid.
- Note that the CPO drawings indicate an 8m high public lighting column where the existing gate pillar is located with two further columns along the front boundary. Concerns raised regarding potential illumination impacts and loss of privacy.
- Note that the CPO drawings show a footpath extending to 2 metres in width along the full length of the 'Ardgower' boundary. This is in contrast with a footpath varying between 1.3 and 1.7 metres in front of the properties to the east. Submit there is no basis for the anomaly and that the dimensions on the drawings make no allowance for permanent structures such as wall foundations, embankments and retaining structures.
- Concern regarding loss of mature trees and shrubs along the boundary and that trees to be removed are not indicated on the drawings.

9.0 The Oral Hearing

9.1 An oral hearing into the objection made against the CPO was held on the 6th of September 2018 at the Carrigaline Court Hotel. The hearing was recorded and so a complete record of what transpired is available. A list of attendees is also available. Proceedings got under way with the opening statement. Participants were informed that the purpose of the oral hearing is an information gathering exercise to assist in the consideration of the merits of the case and in drafting the report and recommendation to the Board in relation to the CPO order. They were also advised that the planning merits of the Part 8 Scheme have already been determined by the local authority. The purpose of the Hearing is to deal with the merits of the CPO process i.e. the merits of the acquisition of the subject lands. Participants were reminded that the Board has no role or jurisdiction in the determination of compensation.

9.2 With respect to the format of the hearing, the Local Authority was asked to state their case first. The Representatives for the objectors were then asked to make their submission and ask any questions to the local authority and this was followed by a question and answer session and responses from the local authority to the questions. Cork County Council were also given the opportunity to cross examine the objector and their representatives. I asked questions for clarification and information gathering purposes during and after the submissions. The hearing concluded with closing statements from the Representatives for the Objectors, the Local Authority and myself. The hearing commenced at 10.00am and an audio recording of the proceedings was made. The recording is attached to this report.

9.3 The following parties made submission to the oral hearing:

- On behalf of Cork County Council:
 - Donnacha Mc Carthy
 - Julia Dineen
 - John Slattery
 - Brian Loughrey

- On behalf of the objector:
 - Graham Copplestone
 - Jack Cahill
 - Noreen Egan

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

Cork County Council

9.5 Cork County Council presented evidence with regard to the justification for acquisition, alternatives considered and response to the issues raised by the objector. Key points from their evidence can be summarised as follows:

- Note the expansion in population that Carrigaline has experienced as well as the opening of new schools in the vicinity. This has intensified the need for appropriate pedestrian facilities along the Ferney Road. The proposed design will improve road safety conditions for all road users. The existing entrance from 'Ardgower' has inadequate sightlines and the road improvement scheme will address this.
- State that there is a pinchpoint on the existing road at 'Ardgower' where the road width is reduced to 5.6 metres. The acquisition of land from 'Ardgower' will allow the provision of a standard 2 metre wide footpath and a 6 metre wide carriageway.
- The footpath has been proposed on the northern side of the road for several reasons including value for money, pedestrian desire lines and available road space over the entire corridor. The location of the footpath on the southern side of the carriageway is not the optimal solution. It was detailed that this option would require a significantly greater area of land purchase and that there are constraints to delivery of a continuous path.
- Road widening on the southern side would increase horizontal radii which would increase vehicular speeds, contrary to DMURS. It was also detailed that the design of the scheme provides the optimal locations for crossing points for residents and that there is a natural pedestrian desire line along the northern side of the road which is evidenced by recent pedestrian

counts. The scheme as designed involves the minimum amount of CPO land and will provide improved pedestrian facilities to more houses and improve safety at a greater number of entrances.

- State that the specification for the new boundary walls and gate would form part of the scheme/accommodation works resultant from the CPO process. Lighting has been designed to minimise impact on urban road side properties. There is no plan to remove the existing vehicular entrance.

Objector

9.6 Evidence was presented by Jack Cahill, Noreen Egan and Graham Copplestone. Key points can be summarised as follows:

- State that the decision to locate the footpath on the northern side of the carriageway is largely predicated on the fact that there was a permission for the redevelopment of the 'Ardgower' site and that agreement was reached with the former owner of the site to set back the boundary in line with the conditions attached to this permission. Note that the property has now been acquired by the Egans and it is their intention to refurbish the existing house and not implement the permission granted under Planning Authority Reference 08/7231.
- Outline that the property was purchased after the Part 8 process had concluded and despite having contacted Cork County Council that they were not aware of the proposal or CPO to acquire 2 metres of their garden to facilitate the development. Object strongly to the proposal on the basis that it will have a significant adverse impact on the residential amenity of their dwelling, particularly in terms of noise, light pollution, loss of privacy and trees.
- Consider that the Part 8 application is fundamentally flawed and that the footpath should be constructed on the southern side of the carriageway. Outline that there is an application for 58 dwellings on a site opposite 'Ardgower' currently under consideration by Cork County Council – application reference 18/5993. Submit that in light of this, it would be more logical to locate the footpath on the southern side of the road where it could

tie in with existing footpath infrastructure. State that the Part 8 application should be considered afresh.

10.0 Assessment

10.1 Introduction

10.1.1 For the Board to confirm the subject CPO proposal, it must be satisfied that Cork County Council has demonstrated that this CPO “*is clearly justified by the common good*”.¹ Legal commentators² have stated that this phrase requires that 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.

10.1.2 Each of the above cited criterion is reworked into a question and used as a heading in my assessment of the subject CPO proposal, which is set out below. Following a discussion of each of these questions, I will consider, under a fifth heading, the remaining issues raised in the objection.

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

10.2.1 Cork County Council has set out the community need for the project, which is the subject of this CPO. It was not contested by the objector that there is a need for footpath and road improvement works along the Ferney Road.

10.2.2 As detailed above, Carrigaline has experienced significant population growth in recent years and it is anticipated under the core strategy of the County

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

² Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath and published by Bloomsbury Professional (West Sussex and Dublin, 2013).

Development Plan that the town will continue to expand. Ferney Road is located in a primarily residential area with a number of schools and an employment hub located in the vicinity. It provides the main pedestrian link between the residential estates to the south east of the town including White Oaks, Ashbourne Court, Fernlea, Ardcarraig and Forrest Hill to the town centre.

10.2.3 There are also a number of schools that are served by this route including the Carrigaline Educate Together National School (467 pupils) and the Edmund Rice Secondary Schools (660 pupils). There are also plans for a third special needs school on a site located to the east of the Educate Together. The locations of the schools are denoted no.s 11, 12 and 14 on the aerial photo included as Appendix F of Cork County Councils statement submitted at the oral hearing.

10.2.4 The existing road is deficient in terms of pedestrian facilities. There is no footpath for over one third of its length, with pedestrians forced to walk along the edge of the road carriageway. The condition of the existing ad-hoc pedestrian route along the northern side of the carriageway is poor. The road is located within a 50km speed zone and thus the current arrangements create significant traffic hazard and extremely poor environment for pedestrians, particularly children attending the two schools. Evidence was submitted at the hearing that over the past 10 years there has been 7 accidents on the Ferney Road, 2 of which resulted in a serious injury. The road is well used by pedestrians as is evidenced by the pedestrian count information submitted at the hearing and as I observed during two site visits to the road.

10.2.5 I am satisfied that the project is necessary to meet community need as it provides for the essential upgrade of the Ferney Road in order to provide a safe, continuous footpath along its route. The overall community benefit would be positive. The works will provide for new public lighting, traffic calming and pedestrian crossing points. It will significantly enhance pedestrian infrastructure in the town and improve road safety conditions. The acquisitions proposed under the CPO to enable this project to be implemented would, thus, in principle be fully justified.

10.3 **Is the particular site suitable to meet that community need?**

10.3.1 I am satisfied that the CPO lands are suitable for their intended use to facilitate the road improvement works. I am also satisfied that the extent of land take is justified

and has been kept to the minimum to facilitate the works and minimise impacts on the site.

10.3.2 Having regard to the submissions put forward at the Oral Hearing including detailed evidence regarding details of alternatives considered, I am satisfied that the need for the land take is justified and established. I conclude that the lands, through which the project which is the subject of the CPO would pass, would be suitable to meet the aforementioned community need.

10.4 Have any alternative methods of meeting the community needs been considered and are they demonstrably preferable (taking into account environmental effects, where appropriate)?

10.4.1 Two potential alternatives were presented by the objectors in their submission and at the hearing. These relate to the option of setting back the front boundary of their property to a lesser degree to minimise the extent of land take. The second alternative which was discussed at length at the oral hearing, is the option of locating the proposed footpath along the southern side of the carriageway. Both of these alternatives are considered further below.

10.4.2 Concerns have been raised by the objector that the extent of land required to facilitate the scheme which results in the existing front boundary wall being set back 2.1 metres is excessive. It was noted that the width of the proposed footpath along the Ferney Road varies and is c. 1.3 to 1.7 metres in front of all the properties to the east. In this regard, it was outlined that the extent of land to be acquired could be minimised, and the footpath width along the frontage of 'Ardgower' reduced so that it is consistent with that proposed to the east.

10.4.3 It was outlined by Mr. Loughrey (Cork Co. Co.) at the hearing that due a pinchpoint in the existing road carriageway that it is necessary to purchase a strip of land from 'Ardgower'. As it is necessary in any event to acquire this land, it was decided that it would be appropriate to provide a standard 2 metre wide footpath at this location in accordance with the guidance set out in DMURS (note: Fig. 4.34 of DMURS requires a minimum footway width of 1.8metres and a desirable width of 2.5 metres). It was detailed that the footpath narrows over a short distance of its route at certain locations where the purchasing of the necessary additional lands was not necessary. It was detailed that a balance had to be struck between design and cost

of the project, and where land had to be acquired, it was prudent to design the footpath in accordance with the optimal standards.

- 10.4.4 During questioning at the hearing by Mr. Cahill (objector), it was detailed that there is an existing grass margin on the southern side of the carriageway opposite 'Ardgower' and that this could have been included in the design so as to reduce the extent of land take required from the 'Ardgower' property. Mr. Loughrey clarified that this margin was required to be retained on the south side for vehicles emerging from the existing entrances to the south. Any reduction in the existing margin would decrease the sightlines for these properties which would be contrary to the principles of good design.
- 10.4.5 It is evident from the documentation submitted and presented at the hearing that there are particular constraints associated with the boundary along the 'Ardgower' site. As presented in Figure 3.2 of the statement submitted by Cork County Council at the hearing, the road carriageway narrows to 5.6 metres at this location. It is necessary to acquire land in order to facilitate road widening and a carriageway width of 6 metres at this location. As there is a necessity in any event to acquire land at this location, I would concur with the view of Cork Co. Co. that a footpath width of 2 metres should be provided in order to comply with the relevant standards and provide the optimal design.
- 10.4.6 It is also noted that one of the principal benefits of setting back the front boundary of 'Ardgower' as proposed in the CPO is that it will improve the sightlines from the existing entrance to this dwelling. As detailed at the hearing (see Figure 3.3 of the statement by Cork County Council presented at the hearing) and as I observed on site, the sightlines from the existing entrance to the property are deficient and pose a traffic hazard. The deficiency of the existing access is also reflected in the conditions of the previous permission pertaining to the site (Planning Authority Reference 08/7231) which required the set back of the boundary to facilitate enhanced sightlines. Whilst I note the objector states that it is their intention to renovate the existing house and thus retain the existing access arrangements as they are at present, the setting back of the boundary would significantly improve the existing situation and reduce a potential traffic hazard to vulnerable road users including pedestrians and cyclists.

- 10.4.7 It was specifically put to Mr. Loughrey at the hearing if adequate sightlines could be achieved with a reduced set back. He indicated that it was his professional opinion that a lesser set back would not achieve optimal sightlines.
- 10.4.8 Having regard to the foregoing, I am satisfied that the alternative of reducing the set back of the boundary is not appropriate in this instance. It would result in a sub optimal footpath width at this location and would not facilitate an access to 'Ardgower' with adequate sightlines. An amendment to the design to push the carriageway further south would impact negatively on the sightlines from existing entrances serving dwellings to the south. I am satisfied, based on the evidence presented, that this is not a workable alternative.
- 10.4.9 I note that the option of retaining the boundary wall in its current location and constructing the new footpath in front if it was also considered by Cork County Council. This option was dismissed as due to the existing pinch point in the carriageway, there would be insufficient space to provide a carriageway and footpath of sufficient width with this arrangement and such a design would impact negatively on the sightlines from properties to the south.
- 10.4.10 There was a lengthy discussion regarding the alternative of locating the footpath to the southern side of the carriageway at the hearing. In the evidence presented by Cork County Council, it was detailed that this option was considered at an early stage of the design process and determined not to be the optimal solution.
- 10.4.11 It was set out by the objector both in their submission and at the hearing that the fact that the 'Ardgower' site had the benefit of planning permission which required the set back of the boundary by way of condition was one of the principal reasons for choosing the northern side of the carriageway for the location of the footpath. It was submitted that agreement had been reached with the former land owner of the site and that this was the basis of locating the footpath on this side of the road. It was noted that the ownership of the site had now changed and it was not the intention of the new owners (the objectors) to implement the permission or set back the boundary.
- 10.4.12 It is evident from the documentation submitted by Cork Co. Co. at the hearing that the fact that there was an existing permission for the 'Ardgower' site under which it was a requirement to set back the boundary by way of condition was one of

deciding factors in the decision to locate the footpath on the northern side of the carriageway. When the Part 8 was designed, this was the existing situation at play and the Council had due regard to the planning history of the area when deciding the optimal location for the footpath as well as the fact that they had agreement from the landowner. Whilst it is acknowledged that the ownership of the site has now changed and it is no longer proposed by the current owners to implement the permission pertaining to the site, I note that there were also a multitude of other reasons as to why Cork County Council have located the footpath on the northern side of the carriageway. The extant permission whilst a consideration, was not, in my opinion, the overriding factor in the decision that this was the optimal location for the footpath.

10.4.13 The location of the footpath on the northern side of the carriageway was also considered the most appropriate location for a number of reasons. These were presented at the hearing and can be summarised as follows:

- It was detailed that providing the footpath on the southern side of the CPO would require the CPO of 3 separate properties, including 2 front gardens for a total distance of 215 metres (from chainage 125m to 330m). This length would be required to ensure that existing road edge on the northern side of the carriageway is not pushed northwards from its current location which would have an adverse impact on the sightlines for each of the houses from 'Ardgower' eastwards. Locating the footpath to the north would require land from a single property and for a distance of 60 metres. The scheme as designed, therefore, involves the minimum amount of CPO lands.
- Road widening on the southern side of the carriageway as proposed by the objector would result in the increase of the horizontal radii along the road which would increase vehicular speeds. This would be contrary to DMURS and proper urban design.
- Locating the footpath on the southern side would do nothing to improve conditions for residents on the north side of the road who would be forced to cross to the southern side at undesignated and unsafe locations. The scheme as presented includes two pedestrian crossings to ensure connectivity for all residents along Ferney Road.

- It was submitted that a pedestrian desire line has been established along the northern side of the road. Pedestrian counts undertaken indicated that pedestrians chose to walk on the northern side of the carriageway.
- There are a number of constraints to locating the footpath along the entire length of the southern side of the carriageway. It was detailed that there is an existing terrace of housing from chainage 500m to 650m with established on street parking which would have conflicted with a footpath at this location. Locating the footpath to the south would do nothing to improve road safety conditions for houses on the northern side of the road to the east of and including 'Ardgower'. Pedestrian movements from these properties would not be improved, nor would visibility from their entrances.

10.4.14 There was cross examination on these points at the oral hearing by the objectors Consulting Engineer Mr. Cahill. It was highlighted in particular that there is a current application under consideration by the Council directly opposite the site (Planning Authority Reference 18/5993) for 58 dwelling units and that this development will require a footpath along the southern side of the carriageway. It was set out by the objector that such a footpath could tie into other existing footpath infrastructure along the southern side of the carriageway in order to provide a continuous route. In this context, it was the opinion of the objectors that the Part 8 was fundamentally flawed and outdated and should be revisited to take account of the changing planning context and the fact that the southern side of the road is the optimal location for the footpath.

10.4.15 It was argued by Cork County Council that permission for this development had not been granted and nor was there any certainty that it would be developed. At the time the Part 8 was designed, this application had not been made and if the Part 8 had to be redesigned every time a new planning application was made, that it may never come to fruition and the scheme, including the much needed footpath, would never be implemented.

10.4.16 I would concur with the view of the Council, that, whilst there is a live application to the south of the 'Ardgower', there is no certainty that this will be permitted or constructed. Whilst such a scheme if permitted and constructed could facilitate the provision of a footpath along its road frontage, it would not eliminate the issue that there are other impediments to the delivery of a continuous path along the southern

side of the carriageway for its entire length. Whilst undoubtedly a footpath can be provided along certain sections of the southern side of Ferney Road, there are constraints at its western end due to the presence of terraced housing with on street parking. The provision of a footpath at this location would require the removal of all of the parking provision for these dwellings. It was clarified by Cork Co. Co. at the hearing that, even if the permission to the south was implemented, there would be a lack of connectivity along the southern side. It would be 120 metres short of providing a full pedestrian link and would not be a global solution. Furthermore, locating the footpath to the south does not address the issue of the inadequate sightlines that exist from the properties to the north. As noted at the hearing, the road improvement scheme will have the benefit of significantly enhancing the sightlines from these properties including 'Ardgower', thus reducing a potential significant traffic hazard.

10.4.17 Reference was made at the hearing by the objector to the Carrigaline Transport Study in 2009. It was stated by the objector that this report makes no reference to the requirement for a 2 metre footpath along the northern side of Ferney Road. Mr. Loughrey detailed that a new study had been commissioned and was currently being prepared. Correspondence was also submitted by the objector at the hearing from Cork County Council dated the 8th of January 2009. This letter from Cork County Council is a response to a compliance submission regarding Planning Application 08/7231 and notes there was no requirement for a 2 metre wide set back on the northern side of the carriageway. Having regard to the age of the 2009 study and previous correspondence from Cork County Council and the extensive development that has taken place in the intervening time, I am satisfied that this is not of relevance.

10.4.18 Having regard to the documentation and evidence submitted at the hearing, I am satisfied that Cork County Council carried out a robust and detailed assessment of the Ferney Road to determine the optimal location for the proposed footpath. When the Part 8 scheme was designed they had regard to a variety of factors including the extant permission pertaining to 'Ardgower' and the consent and agreement of the then owner regarding the proposal. However, it is clear that there were a range of other factors that determined that this was the optimal design. I am satisfied that there are constraints to the delivery of a continuous footpath along the

southern side of the road and to implement this alternative would require the CPO of a far greater extent of land which would impact on a greater number of properties. Even if the permission proposed under application reference 18/5993 is constructed, this would not ensure a complete footpath route to the south and in this context I do not concur that the Part 8 process should be reconsidered from first principles. The alternative of the footpath to the south would also not address issues such as the inadequate sightlines from properties to the north including 'Ardgower' and the potential increase of vehicle speeds due to an increase on the horizontal radii along the road, which would be contrary to DMURS. In conclusion, I consider that the alternative methods of meeting the community need have been considered are not demonstrably preferable.

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

10.5.2 Under the Cork County Development Plan 2014, it is a specific policy to encourage and facilitate a safe walking route network and culture of walking where possible and practical. It also notes that all development should be accessible and permeable on foot and that the walking experience should be as safe and pleasant as possible. The Ballincollig Carrigaline District Local Area Plan 2017 is the current statutory plan for the area. Objective CL – GO – Walking and Cycling Connectivity states that it is an objective to further expand the network of designated walking and cycling routes to provide safe, convenient and pleasant routes between the town's main residential areas, schools and the town centre.

10.5.3 As set out in Section 7 of this report, policy at a national and regional level supports and advocates for improved pedestrian facilities and amenities and measures to encourage walking in our towns and cities. National Objective 27 of the National Planning Framework specifically requires the integration of safe and convenient alternatives to the car by prioritising walking. The Regional Planning Guidelines also requires that objectives and actions are put in place to provide improved access to pedestrian walkways and states that the possibility of retro fitting of adequate walking facilities should be examined.

10.5.4 Having regard to the foregoing, I am satisfied that the project would be compatible with the objectives of the Local Area Plan and would accord with its objectives. I do not consider that the works would be a material contravention of the provisions of the statutory development plan.

10.5 Remaining Issues Raised in the Objection

10.5.1 The objection also raised concerns regarding:

- That the lighting columns will cause unacceptable illumination resulting in light pollution and loss of privacy.
- That the development will result in the unacceptable loss of trees and mature shrubs along the boundary.
- Concerns regarding the lack of design detail regarding the new boundary wall and entrance.

10.5.2 The road improvement scheme will result in the loss of the existing trees along the front boundary of the site. Even with a reduction in the set back of the boundary wall, the trees would be lost due to their proximity to the existing boundary wall. No arboricultural assessment regarding the condition or quality of these trees was submitted by either party. It was observed on site, however, that the condition of some of the trees was poor. Whilst I acknowledge that the loss of trees will impact to a degree on the amenities of the existing dwelling, the benefits of the scheme as a whole and the wider public good must be considered.

10.5.3 It was detailed at the hearing by Cork Co. Co. that a revised boundary wall and landscaping works would be addressed at detailed design stage of the road and through agreement with the relevant landowners. I am satisfied that the loss of trees could be mitigated through appropriate landscape measures.

10.5.4 With regard to public lighting, I consider this a necessary and integral part of the road design scheme. The lighting will be designed to modern standards and comprises a low energy LED scheme designed to minimise impact on urban road side properties. I am satisfied that if this lighting is appropriately designed that it will not have a material adverse impact on the 'Ardgower' property.

10.5.5 It was clarified at the hearing that there is no requirement for construction details on the CPO documentation. New boundary walls, entrance etc. will be agreed and

negotiated as part of the accommodation works package with the affected landowner. I am satisfied that it is not the intention of the Council to remove or omit the existing entrance. It will be set back as part of the new boundary detail and the treatment of the wall, gates, pillar etc. can be agreed at detailed design stage.

10.5.6 The current dwelling on site is vacant and in a poor state of repair. It was detailed at the hearing that it is proposed to upgrade the property. I am satisfied that the land take required to facilitate the development will not impact significantly on the residential amenities of the existing property. It was detailed at the hearing that a set back distance of c. 8.5 metres will remain between the repositioned boundary wall and the gable of the dwelling. I am satisfied that the residential amenity of this dwelling will not be significantly or adversely affected and can be mitigated through appropriate design and landscaping.

11.0 Recommendation

11.1 That the CPO be confirmed without modifications.

12.0 Reasons and Considerations

Having considered the objections made to the CPO and having regard to the following:

- (a) The purpose of the compulsory acquisition for road improvements including provision of new footpaths, uncontrolled pedestrian crossings, public lighting, surface water drainage, signage and carriageway resurfacing and improved road markings widening and junction improvement.
- (b) The community need, public interest served and overall benefits to be achieved from the proposed road improvement works.
- (c) The design of the proposed road improvement works constituting a design response that is proportionate to the identified need.
- (d) The present substandard nature of the existing road in relation to pedestrian facilities and the resultant improvement arising from the proposed road improvement and in the interest of pedestrian safety.
- (e) Relevant policies of the National Planning Framework and Regional Planning Guidelines for the South West Region 2010-2022.
- (f) The policies and objectives of the Cork County Development Plan 2014 and the Ballincollig Carrigaline District Local Area Plan 2017.

- (g) The submissions and observations made at the Oral Hearing held on the 6th of September 2018.
- (h) The report and recommendation of the Inspector.

It is considered that the acquisition by the local authority of the lands in question, as set out in the order and on the deposited map, is necessary for the purposes stated and the objection cannot be sustained having regard to the said necessity.

Erika Casey

Senior Planning Inspector

20th September 2018