



An
Bord
Pleanála

Inspector's Report

ABP-305689-19

Development

Confirmation of Compulsory Purchase Order, 'Louth County Council, Mount Avenue link Road, Compulsory Purchase Order, 2019'

Location

Mount Avenue Link Road, Co. Louth.

Local Authority

Louth County Council

Objectors

Mary McCannon and Others

Barry Dillon

Patrick and Doreen Rankin

Sean Lawless

John Sean Kirk

Moffett Investment Holdings

Martin and Kathleen McCaughey

Dermot Hanratty

Carrickmacross Management
Company Ltd.

Brian Fox and Others

Brian McSloy

Marie Tuft

Date of Oral Hearing

3rd March 2020

Date of Site Inspection

28/01/2020, 02/03/2020

Inspector

Conor McGrath

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1.0 Introduction

- 1.1. This report relates to an application by Louth County Council for confirmation by An Bord Pleanála of a Compulsory Purchase Order, entitled 'Louth County Council, Mount Avenue link Road, Compulsory Purchase Order, 2019'.

The CPO relates to:

- i. the permanent acquisition of lands in the townlands of Lisnawully, Farrandreg, Newtownbalregan and Castletown, Co. Louth.
- ii. the temporary acquisition of lands for construction purposes in the townlands of Lisnawully, Farrandreg, Newtownbalregan and Castletown, Co. Louth, and
- iii. the extinguishment of a public right of way at Mount Avenue, in the townlands of Farrandreg and Lisnawully.

The notice was signed and dated by Louth County Council on 30th September 2019.

2.0 Background

- 2.1. The acquisition of lands and extinguishment of a public right of way are proposed in order to facilitate the construction and improvement of the existing route between the Castletown Road (N53) to the north and the Carrickmacross Road (R178) to the south, over a distance of approximately 2km. This comprises part new road construction and part upgrading of the existing public road, Mount Avenue.
- 2.2. At its southern end, Mount Avenue is urban in character. The road is relatively narrow, with residential properties fronting the road for approx. 700m north of the junction with the R178. It is provided with traffic calming measures and a footpath on its eastern side, with intermittent footpath provision on its western side. The road is subject to on-street residential parking in places which restricts traffic movements. From a point approx. 750m north of the R178 to the junction with the N53, the road is more rural in character. The current width, structural condition and alignment (both horizontal and vertical) of the road are poor with no pedestrian facilities for much of its length.

- 2.3. The proposed Mount Avenue Link Road project was approved in December 2007 under Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended. The scheme has not been implemented to date.
- 2.4. The report prepared for the Part 8 process described the current sub-standard nature of Mount Avenue in terms of width and alignment. The report notes the role of Dundalk as a Gateway in the National Spatial Strategy. The Mount Avenue Masterplan was identified as involving the development of a sustainable community on approx. 300 acres to the west of Dundalk. The road is designed as a Link Street under DMURS and is defined as a Local Collector road. The scheme was not subject to environmental impact assessment.
- 2.5. The road scheme which would be facilitated by the subject Compulsory Purchase Order generally comprises the following:
- From its southern end, at a signalised junction with the R178 / Carrickacross Road, the proposed route will pass along the existing access road of Lis na Dara residential estate for approx. 250m. This estate road is approx. 7m wide with 2m wide footpaths and cycle paths on each side. There is direct vehicular access from a number of individual houses within Lis na Dara onto this road.
 - From Lis na Dara, the route continues northwest across agricultural lands (Lisnawully Farm) for approx. 400m. maintaining the cross section of the Lis Na Dara road. The route then turns east to join the existing line of Mount Avenue after approx. 250m.
 - The existing Mount Avenue road will be closed at this location, just north of an ESB substation site, to create a cul-de-sac accessible from the south. Pedestrian and cycle access will be maintained, however.
 - Travelling north from this point, the scheme involves on-line upgrading of Mount Avenue rather than greenfield construction. A new roundabout junction will be provided at the existing sharp bend at chainage 600, which will provide access to development lands to the east and existing residential development to the west. Road widening will generally take place on the eastern side of the existing road, minimising impacts on existing residential properties. North of the roundabout

junction, there will be impacts on the curtilage of a detached residential property to the east of the road.

- The improved route continues north past the entrance to the Headford residential estate, adjoining detached houses, the Rise residential estate to the east, and Louth County Council Waterworks and Dun Dealgan / Cu Cuchulainn's Castle to the west. Initial gradients are steep along this section of road, travelling north. Widening will generally take place on the western side for the road.
- There are a number of detached houses on the western side of the road on the approach to the junction with the Castletown Road R934, which will be formed as a priority junction with a stated long-term objective to close this junction.

3.0 Details of the Compulsory Purchase Order

This Compulsory Purchase Order is entitled "Louth County Council, Mount Avenue Link Road, Compulsory Purchase Order, 2019".

Objections were received to the making of the Compulsory Purchase Order by Louth County Council for the acquisition of lands as described in Part 1.a and Part 1.b of the Schedule for the purposes of the construction of the Mount Avenue Link Road and all ancillary works, as identified on the deposited maps, and to acquire and extinguish public rights of way as set out in Part 2 of the Schedule.

The official seal of the Local Authority was affixed to the Order on the 30th September 2019, and signed by the Cathaoirleach and Director of Services of Louth County Council. Notice of the making of the CPO was advertised in The Argus newspaper on Tuesday October 8th 2019, advising that owners, lessees and occupiers of the land described in the Schedule would receive individual written notices and that a copy of the Order and the map referred to was available to at the offices of Louth County Council and on their website. Notices to 63 no. affected parties were issued by registered post on 02/10/2019.

The Compulsory Purchase Order, deposited maps and the relevant newspaper notice have been forwarded by the Local Authority to An Bord Pleanála, along with the following items.:

- Copies of the Planners Report and the Senior Engineers Report on the proposal.
- A copy of the Chief Executives Order
- Copy of post office confirmation of postage of registered letters.
- Copy of the letter sent to those affected by the CPO.
- Copy of 2007 Mount Avenue Link Road Part 8 report.
- Copy of Minutes of Dundalk Town Council meeting approving the Part 8.

Subsequent documentation received from the Local Authority on 18/02/2020, include:

- Further copy of 2007 Mount Avenue Link Road Part 8 report.
- Copy of 2007 Part 8 Planning Report.
- Report on Submissions / Observations received during the Part 8 process.
- Drawings of the proposed road scheme dated 15th May and 18th September 2007.
- Copy of Minutes of Dundalk Town Council meeting 27th November and 10th December.
- Mount Avenue Link Road (LIHAF) Appropriate Assessment Screening Report 30/09/2019.
- Copies of the Planners Report and the Senior Engineers Report dated 27th September 2019.

4.0 Planning Authority Reports

4.1.1. Planning Report:

The primary objective of improving and upgrading Mount Avenue is to allow development of new residential areas as provided for in the Core Strategy (Variation no. 1) of the Dundalk and Environs Development Plan 2009 in support of Strategic Objectives SO2, SO5 and SO6.

The development strategy identifies Mount Avenue / Castletown as a priority development area, with Phase 1 lands. The road upgrade works are identified in Table 5.2 and supported by policies DS1 and TR12 of the plan.

The 2006 Mount Avenue Masterplan is incorporated into the development plan as a guidance document, a key objective of which is permeability and connectivity by way of a new access road. The road is approved for LIHAF funding which will facilitate the construction of 200 housing units by 2021 with potential to construction 1,200 units overall. Water and wastewater infrastructure will be provided in conjunction with road construction.

The development was screened out at Stage 1 of the AA process. The proposed development would support and satisfy the zoning objectives for the lands and is acceptable in principle. It will support development plan policies for sustainable and inclusive management of growth and secure (identified) roads. It will achieve Strategic Objectives and realise the aims and objectives of the Mount Avenue Masterplan in opening up the surrounding area for future residential development. The proposed improvement and upgrade will provide significant transport and movement benefits to Dundalk and surrounding areas.

Senior Engineer (Infrastructure): Certifies that the identified lands are suitable and necessary for the construction of the Mount Avenue Link road and ancillary works. The Council has complied with the requirements of Part 8 of the regulations. The planning report confirms that the proposal is in accordance with the development plan. Having considered the land ownerships involved and the complexity of the proposal, it would not be possible to acquire all the lands by agreement and therefore, recommend that the land be acquired by CPO.

5.0 Planning History

PA ref. 14/378 ABP ref. PL15.244460: Permission refused on appeal on lands to the east of Mount Avenue, adjacent to the Headford residential Development, for construction of 141 no. house. Reasons for refusal were

- Failure to demonstrate adequate sightlines at the Mount Avenue and Headford junction. Mount Avenue, onto which traffic is to discharge is substandard in respect of its horizontal and vertical alignment, restricted width

and irregular surface and is not satisfied that the applicants are in a position to effect the necessary improvements.

- Poor standard of open space provision and residential amenity.

PA ref. 18/493 ABP ref. ABP-303628-19: Permission granted on appeal for the construction of 50 houses and 30 apartments at Farndreg, on approximately the same site as PL15.244460. This includes an improved entrance onto Mount Avenue and the upgrading of c.550m of Mount Avenue from c.75m south of its junction with Headford estate to c.90m south of its junction with N53 Castletown Road, to provide a 6m wide road along this length, with a 2.0m footpath on the eastern and western side of the road for most of its length.

In deciding to grant permission, the Board had regard to the proposed road upgrade proposals and the LIHAF funding secured for the Mount Avenue Road Upgrade project. Conditions included:

2. No work shall commence on site until the visibility splays at the proposed access junction have been provided to the written satisfaction of the planning authority and no dwelling shall be made available for occupation until the improvement works to Mount Avenue have been completed.

PA ref. 14/520049: Permission granted for the completion of the final phase of Lis na Dara with the construction of 64 no. new dwelling houses. This site is currently under development at the northwestern end of the estate.

PA ref. 04520241: Permission granted for the first phase of Lis na Dara estate comprising creche/childcare facility and 205 residential units. The development also included site development works and an infrastructural link road. The link road is shown running north from R178 Carrickmacross Road through the development, linking with Mount Avenue to the north of the development site.

PA ref. 19/1099: Current application for permission for the development of three vehicle and pedestrian accesses from the proposed Mount Avenue Link Road (Permitted under Part 8 Planning and Development Regulations), at Lisnawully , Mount Avenue.

6.0 Policy Context

6.1.1. Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019

6.1.2. Dundalk lies within the Gateway Region and is identified as Regional Growth Centre. These are large towns with a high level of self-sustaining employment and services that act as regional economic drivers and play a significant role for a wider catchment. The vision is for Drogheda and Dundalk to both reach a population of 50,000 by 2031.

6.2. Louth County Development Plan 2015-2021

6.2.1. The settlement strategy prioritises sustainable development at appropriate locations within Dundalk and Drogheda, designated as Large Growth Town I - Key destination, economically active, supporting surrounding areas, located on a multi-modal corridor. Some 60% of future population growth is directed towards these two towns.

6.2.2. The Roads Improvement Programme 2015 - 2021 (Tables 7.7 - 7.9) will be implemented over the period of the Plan. Strategic new roads identified in Table 7.8 include the Western Infrastructure Route, Dundalk.

6.3. Dundalk & Environs Development Plan 2009-2015

The Spatial Strategy identifies six development areas including:

- Mount Avenue / Castletown: Provide for new residential development and supporting community facilities in accordance with the Mount Avenue Masterplan and to provide for the integration of the existing residential areas into the overall development strategy to the area and for the town.

Section 2.2 notes that a number of framework / master plans have already been prepared, including the Mount Avenue Masterplan. The provisions of these plans are incorporated as guidelines into the overall development strategy for the plan area. If any conflict arises between the provisions of any of the existing plans the development plan will at all times take precedence.

Variation no. 1 to the plan (2011), amended the phasing of development lands. Phase 1 include lands served by the proposed Mount Avenue Link Road.

5.4 Roads Network

The Western Infrastructure Route relates to a new road network linking the northern, western and southern environs with the town centre and the rest of the urban area.

Policy TR 12: Secure the provision of the Western Road Infrastructure and other roads improvements included in Table 5.2 in co-operation with the private sector and stakeholders.

Table 5.2: Road Infrastructure (includes)

Development Area	Main Roads Infrastructure	Western Infrastructure
Mount Avenue / Castletown	Realignment and up-grade of Mount Avenue Road Mount Avenue Link Road	Castletown Road to Acarreagh Acarreagh to Mount Avenue Acarreagh to Carrickmacross Rd. Castletown Rd. to Castletown River

6.4. Mount Avenue Masterplan 2006

- 6.4.1. This Masterplan is incorporated as a guidance document into the Dundalk & Environs Development Plan 2009 - 2015, as amended.
- 6.4.2. In terms of linkages the Masterplan noted that the Western Distributor Road is the primary distributor road for the western side of Dundalk. Secondary access roads are provided within the plan area to provide for local journeys and links to major routes.

6.5. Local Infrastructure Housing Activation Fund (LIHAF), List of Approved Projects, 28 March 2017

Mount Avenue, Dundalk €3.33m

The public infrastructure proposed includes:-

- Mount Avenue Road Upgrade

Housing Delivery:-

Located to the west of the Dublin Belfast rail line, the proposal is for a new access road which will open up zoned residential lands for development circa 43 Ha in close proximity to Dundalk Town Centre and Dundalk railway station.

The proposed Mount Avenue Road Upgrade comprises approximately 2km of varying width single carriageway, to local collector road standard where appropriate. The upgrading of road infrastructure will support the initial development of 200 homes with a potential for up to 1200 homes on the wider lands. The works were identified on foot of An Bord Pleanála decision which refused permission of housing on the lands due to poor road infrastructure.

6.6. Natural Heritage Designations

The subject lands are not designated for any nature conservation purposes. The closest sites conservation sites are Dundalk Bay SPA (004064), located approx. 1.15km northeast of the lands and Dundalk Bay SAC (000455) and located 2.5km to the northeast.

7.0 Objections

Objections to the Compulsory Purchase Order have been received from the following parties:

7.1. **Mary McCannon and Others** (Plot ref. 102a.01)

- This scenic area is used for amenity and leisure purposes
- The green area adjoining their property is used for school drop-off / pick-up.

- Carbon emissions due to excavations and impacts on soil porosity and biodiversity.
- Blockage of drains and creation of a traffic hazard on Castletown Road.
- Impact on historic properties on this site.

7.2. **Barry Dillon** (Plot ref. 1051.01)

- The loss of property and car parking facilities, interfering with property value.
- Negative impact on the quality of life and enjoyment of that property

7.3. **Patrick and Doreen Rankin** (Plot ref. 106a.01)

- The land to be acquired is used for car parking and there will be impacts arising from the need to provide car parking in their front garden.
- Increased traffic levels will give rise to noise and disturbance impacts.

7.4. **Sean Lawless** (Plot ref. 107a.01 and 107t.02)

- Loss of vehicle parking space.
- Costs of works to their driveway arising.

7.5. **Martin and Kathleen McCaughey** (Plot ref. 118a.01, 118g.02, 118g.05, 118n.06, 118a.03, 118o.04, 118b.08, 118h.10, 118t.11, 118a.07, 118b.09)

- The order was served on Kathleen McCaughey but the property is held jointly by Martin and Kathleen McCaughey.
- Confirmation is required that professional fees incurred in the CPO will be paid.
- All scheme and accommodation works should be agreed before any CPO.
- Confirmation is required that the scheme will be undertaken in one phase and a timeframe for completion of works.
- Failure to complete works in one phase will have health and safety issues.

7.6. **John Sean Kirk** (Plot ref. 131a.01)

- Objection relates to adjacent social housing development and realignment of Mount Avenue link road.

- Will the new access impact on a sewerage chamber adjoining their property?
- Will works allow existing development to connect to the new sewerage system?
- Proposed new road levels may have drainage / run-off impacts on his property.

7.7. Moffett Investment Holdings (Plot ref.s 133a.01, 133g.02 and 133m.03)

- Upgrade works to Mount Avenue are welcome and necessary for the benefit of landowners, residents and daily users.
- The CPO represents a land take of 13.99% of their overall landholding of 2.28ha.
- The objectors are seeking to review the land take, boundary treatment and associated compensation.

7.8. Dermot Hanratty

- The route severs a mass path running east to Mount Avenue and will violate a right of way contrary to S. 57 of the Act.
- A protected structure on the lands of the proposed development was removed previously to facilitate agricultural use of the lands / future development.
- Louth County Council have been aware of this matter.

7.9. Carrickmacross Management Company Ltd.

- The objectors are the registered owners of roads in Lis a Dara.
- The objectors were not served notice of the making of the CPO, in respect of the following Plot ref. numbers in their ownership - 152a.01, 1501.02 and 1481.04
- Same grounds of objection as residents of Lis na Dara.

7.10. Brian Fox and Others (Residents at Lis a Dara) (Plot ref.s 149t.02 and 149b.01)

- The proposal differs from the 2007 Part 8 application and the 2006 Mount Avenue Masterplan and does not take account of changes in the area in the intervening period.
- Potential road safety impacts and inadequacies in the 2007 Part 8 Scheme.
- There was limited resident engagement in the 2007 Part 8 process.
- Impacts on the enjoyment of land and on property values.

- Specific road plans should be available before acquisition of lands, to allow input to road and traffic safety issues.
- Open spaces along the route in Lis na Dara are used by children playing and there are no pedestrian crossings currently.
- There is no evidence of pedestrian crossings or traffic calming in the scheme.
- Infrastructure and facilities identified in the 2006 Masterplan have not been implemented, including the Western Distributor Road and other routes, which were referenced in the Part 8 process for the link road.
- In the absence of such infrastructure, Mount Avenue will function as the primary distributor between the N73 and R178. No assessment of impacts on Lis Dara has been carried out in this regard.
- Closure of Mount Avenue should therefore be postponed.
- Road design guidance for urban roads has changed since the Part 8 approval.
- The purpose of the road is unclear. The LIHAF approval describes the road as a local collector road not a primary or district distributor.
- Residents hope that the review of the county development plan will include a review of the Mount Avenue Masterplan.

7.11. **Brian McSloy** (Plot ref.s 149t.02 and 149b.01)

- Reduction in the value and quiet enjoyment of their property.
- There will be increased levels of noise, pollution, lighting and pedestrian activity immediately adjoining their home.
- The property was purchased with no previous knowledge of this road proposal.
- The developers of Lis a Dara were refused permission to access Mount Avenue.

7.12. **Marie Tuft**

- This will result in a main road running through a currently quiet residential estate.
- This road serves residents including children and provides access to creche and surgery.
- Increased noise and pollution.
- The estate will suffer reduced levels of security.

8.0 Oral Hearing

8.1. Introduction

8.1.1. The oral hearing was held on 02/03/2020 in the Crowne Plaza Hotel, Dundalk.

Louth County Council were represented by:

- Mr. Michael O'Donnell SC.
- Mr Eugene McManus, Administrative Officer.
- Mr. David Hall, Executive Planner.
- Mr. Frank McGee, Senior Executive Engineer.

The following objectors or their representatives were in attendance at the hearing:

- Mary McCannon and Patrick McCannon.
- Mr. Barry Dillon represented by Mr. Stephen Gunne.
- Patrick and Doreen Rankin.
- John Sean Kirk.
- Moffett Investment Holdings, represented by Mr. Brian Carroll, Sherry Fitzgerald.
- Martin and Kathleen McCaughey.
- Carrickmacross Management Company Ltd., represented by Mr. Conor Byrne.
- Brian Fox and Others.
- Brian McSloy.

The following objectors were not represented at the hearing:

- Sean Lawless
- Dermot Hanratty
- Maria Tuft.

8.2. Submissions

8.2.1. **Louth County Council Submission:**

Following introductory remarks from Mr. O'Donnell, Mr. McManus outlined the process followed in respect of the CPO. It was advised that the CPO schedule had been amended to incorporate corrections to the identified landowners in respect to

five plots. In addition, one plot is omitted from the CPO schedule as the local authority advised that the lands are no longer required. A revised Schedule was submitted to the hearing reflecting these changes.

Mr David Hall outlined the planning policy context for the Compulsory Purchase Order and concluded that the development is consistent with the proper planning and sustainable development of the area.

Mr. McGee made a submission describing the existing condition of Mount Avenue and described the proposed works which to be carried out under the Part 8 approval. The lands were described as suitable for the purpose and it was indicated that there was no alternative available to implement the Part 8 Approval.

Mr. McGee outlined the local authority response to each of the objections received. Prior to this submission, Mr. O'Donnell noted that a number of the objectors were not in fact landowners affected by the order.

The Local Authority submitted copies of written statements in respect of each submission, a photographic survey of the existing road, a detailed set of landownership maps, and a revised CPO schedule.

8.2.2. Objectors Submissions

Mary McCannon:

Mrs McCannon made reference to the need to respect the history and archaeology of the area. Concerns were raised regarding traffic volumes on the completed road. While it was indicated that there was no objection to the extent of the CPO affecting her lands, concerns were raised regarding the routing of traffic through the Lis na Dara estate.

Sean Kirk:

Mr. Kirk queried the drainage impacts of the road scheme and whether there had been consultation with Irish Water.

Moffett Investment Holdings Ltd – Brian Carroll, Sherry Fitzgerald.

The submission raised issues with the extent of landtake, the maintenance of two existing agricultural entrances to the lands and the treatment of the revised roadside boundary. (Written statement submitted)

Kathleen and Martin McCaughy:

Queries were raised with regard to the availability of funding for completion of the entire road project and the phasing of works to avoid piecemeal development.

Carrickmacross Management Company Limited – Conor Byrne

Brian Fox and Others

These submissions were heard jointly, and one written statement was presented to the hearing.

Mr. Byrne submitted that there would be severance impacts on Lis na Dara and that the CPO differs from the approved Part 8.

Mr. Fox raised issues of compliance with development plan policies and objectives, and the infrastructure requirements of the overall Masterplan for the area. It was submitted that the basis for the Part 8 scheme was now out of date.

Mr. Byrne argued that the extent of existing permitted development in Dundalk does not justify the road scheme opening up additional residential lands. The overall road design is inappropriate for a location within an existing residential area and would not be in accordance with current design standards.

Brian McSloy

Mr. McSloy advised that he had not received notification of the hearing.

Note: I discussed this matter with Mr. McSloy and advised that the correspondence on our file indicates that letters did issue to the agent in this regard. Mr. McSloy's agent was not present at this time to confirm matters.

His concerns relate to impacts on the amenity and safety of residents, particularly children, in Lis na Dara following development of this link road.

Mr. McSloy also advised that he had only been notified on Monday 01/03/2020 that his lands were to be removed from the CPO schedule. It was queried whether this would result in the loss of additional landscaped areas in the estate or whether the later acquisition of his property would be required to facilitate a third lane at the R178 junction.

The hearing adjourned for lunch at 1:15pm.

8.2.3. The hearing resumed at 2.15pm, with questioning of parties.

Prior to questioning, Mr. O'Donnell for Louth County Council outlined the jurisdiction of the hearing with regard to the previously approved road scheme and the matters which may be considered in such proceedings. Reference was made to a previous case *Wymes v An Bord Pleanala* (2003) HC O'Caoimhe J.

Questions from Objectors were taken generally in reverse order to the submissions:

14.30

Carrickmacross Management Company Limited – Conor Byrne

Brian Fox and Others

Mr Conor Byrne and Mr. Brian Fox put questions to the local authority.

In relation to the status of the Lis na Dara road as a public road, Mr. O'Donnell confirmed that construction of the Lis na Dara estate road had been funded by the local authority and was therefore a public road. A deed of conveyance of the lands to the local authority was signed in December 2007.

Acknowledging that the Management Company assert ownership of those lands, however, the Local Authority advised that there was no objection to the Company being added to the CPO schedule as a reputed owner of the lands.

Questions in relation to traffic safety and design of the route through Lis na Dara were raised by Mr. Fox.

In response Mr. O'Donnell advised that these were matters which were outside the scope of the hearing. Notwithstanding this, the Compulsory Purchase Order was described as being consistent with the Part 8 approval and the design is consistent with DMURS.

In response to questions regarding consistency with the development plan, Mr. O'Donnell noted that the only requirement is that the works are referenced in the development plan in order to provide jurisdiction to pursue the works. The Part 8 approval process dealt with compliance with the development plan and there is a clear, specific objective in the plan to pursue this road.

It was confirmed that the project was not subject to Environmental Impact Assessment.

In relation to traffic modelling, the local authority again advised that these were matters appropriate to the Part 8 process and not the CPO stage. It was confirmed that the intent is to implement bye-laws under the Roads Act banning HGV's movements along the route, while the design is also intended to reinforce same.

References in local authority submissions to low traffic volumes refer to no significant increase in traffic volumes relative to the existing levels.

Questions in relation to noise and air quality were also identified by the local authority as being outside the scope of the CPO process.

In response to questions and comments on the ability of residents to object to the Road Scheme, the local authority noted that the CPO process does not allow the Part 8 scheme to be revisited.

Brian McSloy

Mr. McSloy queried the late notice of the omission of his lands from the CPO. In response, Mr. O'Donnell noted that the local authority were facilitating Mr. McSloy following his objection to the acquisition of his lands.

Mr. O'Donnell confirmed the position of the local authority that it is not anticipated that the scheme would give rise to a significant increase in traffic arising beyond existing levels.

Martin McCaughey

In response to questions on the funding and phasing of works, Mr. O'Donnell confirmed that there will be one phase for completion of works, while matters of funding were not appropriate for discussion at the hearing.

Moffatt Investment Holding Ltd. - Brian Carroll

Questions were raised regarding the maintenance of two entrances to the lands and the proposed roadside boundary treatment. Mr. McGee confirmed that the two existing agricultural entrances will be replaced. Mr. O'Donnell further advised that the local authority would facilitate access to development on these zoned lands from the road. The proposed fence is an appropriate treatment for the boundary of lands which would subject to development in time. These are otherwise matters which can be dealt with as accommodation works.

Mary McCannon

Mrs McCannon reiterated earlier comments on heritage and routing of traffic through Lis na Dara.

The local authority had no questions for the Objectors.

8.2.4. Closing Submissions

Mary McCannon

The desire is for the scheme to be a success without upset to residents or devaluation of properties in Lis na Dara.

Carrickmacross Management Company Limited – Conor Byrne

Brian Fox and Others

Matters raised in the statement include:

- Lack of compliance with the development plan and Mount Avenue Masterplan.

- There is a lack of an identified community need for the road, given the extant permissions in the town and no assessment of alternatives.
- Inconsistencies with current design guidance and policy documents.
- There has been a lack of public consultation since the Part 8 approval.
- Proposed design and traffic calming measures for Lis na Dara highlight the deficiencies in the design.
- The Western Infrastructure Route which is a key part of the Masterplan for the area, may not be retained in the review of the development plan.
- Plans for this area, including the road should be reviewed.

Louth County Council

Mr. O'Donnell outlined the need to improve existing road infrastructure, which justifies the scheme. It was noted that there were no specific objections raised to the acquisition of lands, as grounds for not confirming the order in terms of their extent, suitability or other relevant considerations. Matters raised in submissions, include matters which are not relevant or entitled to be raised at this stage.

The case, *Wymes v. An Bord Pleanala* (2003) identified the relevant matters to which the Board may have regard and no part of the Part 8 application or approval can be heard at this stage.

In acknowledgement of the Carrickmacross Management Company submission, it was proposed to amend the CPO schedule to include the management company as a reputed owner. This was undertaken as a handwritten addendum to the schedule, with a further formal revised copy to follow (received 09/03/2020).

9.0 Assessment

9.1. Introduction

For the Board to confirm the subject CPO proposal, it must be satisfied that Louth County Council has demonstrated that this CPO “*is clearly justified by the common good*”.¹ This has been interpreted as a requirement to satisfy the following criteria²:

- There is a community need that is to be met.
- The particular site is suitable to meet that community need.
- Any alternative methods of meeting the community needs considered and are they 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.

9.2. **Is there a community need to be met by the acquisition of the lands?**

Dundalk is identified in national and regional planning policy as a growth centre. Within the town the western development area of Mount Avenue / Castletown is specifically identified as a priority area for development and lands are zoned for primarily residential uses in line with the provisions of the Dundalk and Environs Development Plan 2009 – 2015, as varied.

The design and service capacity of Mount Avenue is currently deficient having regard to existing traffic volumes. The upgrading of this road has been approved for LIHAF funding on the basis that it will open up zoned residential lands supporting the initial development of 200 homes with a potential for up to 1200 homes on the wider lands. In the absence of such upgrade works, the existing road network would not have capacity to accommodate additional traffic arising from the development of these lands and such would compromise the safety and amenities of the existing residential communities which it serves.

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

² *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).

The scheme will facilitate a reduction in traffic traversing the existing narrow southern section of Mount Avenue, which is not of adequate capacity to satisfactorily serve current traffic volumes.

The need for improvements to the road network is evidenced in previous planning decisions under PA ref. 14/378, ABP ref. PL15.244460 and ref. 18/974, ABP-303628-19. In respect of ABP-303628-19, the planning authority stated that “the condition and sub-standard nature of Mount Avenue in terms of horizontal and vertical alignment in conjunction with the lack of pedestrian infrastructure has impacted on the timely delivery of housing within the core strategy areas which had been prioritised as Phase 1 lands.”

I note that no objection or challenge to the principle of the improvement or upgrading of the road has been made. I conclude that the improvement of this road to a satisfactory standard will require significant works necessitating the acquisition of lands. I am satisfied that there is a need for this acquisition to meet the needs of the existing and future community in this area

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

This CPO relates to the acquisition of lands to facilitate an approved Part 8 road project. The route comprises a mixture of off-line, greenfield lands and on-line upgrading of Mount Avenue. The greenfield lands to the north of Lis na Dara at Lisnawully, are zoned for residential development and the proposed link road will provide access to these lands in line with the objectives of the development plan for the area. The route will also allow traffic to be directed away from the currently deficient southern section of Mount Avenue section with improvements to road safety and residential amenity thereon.

The widening and improvement of the existing carriageway will facilitate access to further zoned lands to the north, adjacent to the existing eastern urban edge of the town and improve traffic safety along the existing road line.

Objectors have queried the suitability of using the existing Lis na Dara access road as part of the Link Road. In this regard I note the design capacity and layout of this road as granted permission as part of the original Lis Na Dara approval,

0404520241, and the 2007 Part 8 Approval for the Link Road. It is not within the remit of this report to revisit matters which were properly considered as part of the previous planning process and the role of the Board in the CPO process in this regard is limited.

I conclude that the lands the subject of the CPO are suitable to meet the community need identified above.

9.4. Any alternative methods of meeting the community needs considered and are they demonstrably preferable (taking into account environmental effects, where appropriate)?

At the oral hearing, the Local Authority advised that the lands the subject of the Compulsory Purchase Order were necessary in order to implement the approved Part 8 scheme. There are therefore no alternative lands available to implement the terms of the approved scheme or scope to vary from the approved route.

I note the identified need to carry out improvements to Mount Avenue due to existing constraints thereon and that a significant proportion of the lands comprise in-line improvements which restrict the scope of alternatives.

Objectors have argued that the overall road network for this area should be subject to review, in particular the proposal to route the link road through Lis na Dara. In this regard, I note that the route accords with the provisions of the current development plan for the area and that such a review would fall outside the scope of consideration in this report.

I note that there was no objection by any landowner to the acquisition of their lands on the basis that there was an alternative to those lands available, and that the development plan clearly identifies objectives for the road network in this area. The routing of the link road through alternative greenfield lands in this area would not appear to deliver any significant improvements in terms of individuals rights and would likely give rise to an increased land-take elsewhere.

9.5. 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.

The Dundalk and Environs Development Plan 2009-2015 remains the extant plan for this area. The 2011 Variation (no.1) to the plan identified lands at Mount Avenue / Castletown, which are to be served by the Mount Avenue Link Road as Phase 1 residential lands. Policy TR12 seeks the realignment and up-grade of Mount Avenue and the Mount Avenue Link Road, while the line of the Mount Avenue Link Road, the subject of this CPO, is identified on development plan maps as *New and Improved Road Improvement*. In this regard it is considered that the proposed works are in accordance with the specific objectives of the current development plan for the area.

Third party submissions have raised the issue of conflict between the road network indicated in the 2006 Masterplan for the area and the line of the route now proposed. The development plan specifically notes that the Masterplan was incorporated into the development plan as a guidance document only and that in the event of any conflict, the development plan would take precedence.

The lands the subject of this CPO and the road scheme which it will facilitate are considered to be consistent with the provisions of the development plan for the area.

9.6. Extinguishment of Public Right of Way.

Mount Avenue currently connects N53 Castletown Road to the north with the R178 Carrickmacross Road to the south. At its southern end there are connections with lands to the east at Ard Easmuinn and Annaverna Drive, which provide access to local schools, church, shops and other community facilities.

As part of the scheme, Mount Avenue is to be closed to vehicular traffic at the junction with the proposed new link road, north of the ESB substation site and approx. 800m north of the junction with the R178. Pedestrian and vehicular through traffic will be facilitated, however. This will create a residential cul-de-sac approx. 330m north of the junction with Ard Easmuinn. The stated rationale for this closure is to stop traffic using the substandard southern section of Mount Avenue. I consider that this closure will result in improvements to the safety and amenities of residents along this currently narrow residential road, which experiences reasonably high levels of through-traffic currently. I note that there were no specific objections to the closure of this public right of way.

Having regard to the relatively limited number of houses on this section of Mount Avenue and the available alternative routes to the east, I do not consider that the closure of the vehicular right of way would result in significant disamenity or lengthening of local journeys. Any impacts in this regard would be offset against the improvement in residential amenities along the southern section of Mount Avenue. I do not consider that the closure would be likely to result in significant additional traffic generation along residential roads in Ard Easmuinn.

9.7. Other Issues Raised in the Objection

One objection, from a local resident not an affected landowner, refers to impacts on a mass path traversed by the route. No detail is provided of the route of this path. At the hearing the Local Authority noted that the realigned / greenfield section of the route is confined to Lisnawully and confirmed that there are no listed public or private rights of way through these lands. The remainder of the route comprises on-line upgrading of the existing road. The Local Authority advised that they were unable to confirm the existence of a Mass Path at this location.

I consider that this matter lies outside the remit of this report and would constitute a matter more appropriately dealt at planning approval stage and.

10.0 Conclusion and Recommendation

10.1. Having regard the assessment above, I consider that An Bord Pleanála should confirm the CPO before it with modifications based on the reasons and considerations set out below. I am satisfied that the process and procedures undertaken by Louth County Council are reasonable and that the Local Authority has demonstrated the need for the acquisition of lands and closure of the public right of way, and that the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of the said lands and closure of the public right of way would be in the public interest and the common good and would be consistent with the policies and objectives of both strategic and statutory planning policy.

10.2. I recommend that the Board confirm the CPO with modifications.

11.0 Reasons and Considerations

11.1. 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 new road construction, provision of new pedestrian and cycle facilities, carriageway widening, junction improvement and the closure of Mount Avenue to vehicular traffic at Farrandreg.
- (b) The community need, public interest served and overall benefits to be achieved from the proposed road improvement works.
- (c) The existing deficiencies in the road network serving this area in terms of width, alignment and lack of provision of pedestrians and cyclists and the resultant improvements in road safety facilitated by the acquisition of lands.
- (d) The policies and objectives of the Dundalk and Environs Development Plan 2009 – 2015 and the Louth County Development Plan 2015 - 2021.
- (e) The provisions of the Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019.
- (f) The objections received and the submissions and observations made at the Oral Hearing held on the 3rd March 2020.
- (g) The report and recommendation of the Inspector.

It is considered that subject to the modifications set out in the schedule to this order, the acquisition by the Local Authority of the lands which are the subject of the Compulsory Purchase Order, and the extinguishment of the public rights-of-way included in the order, is necessary for the purposes stated and the said objections cannot be sustained against this necessity.

Schedule

The Plot Numbers set out in Part 1.a of the Schedule to the Compulsory Purchase Order shall be modified in accordance with the details submitted by the local authority to An Bord Pleanála at the oral hearing on the 03/03/2020, and confirmed in the further Amended Schedule submitted to An Bord Pleanála on 09/03/220, in respect of the following plot numbers

- i. Plot 102a.01
- ii. Plot 117l.01
- iii. Plots 118a.01, 118g.02, 118a.03, 118a.04, 118g.05, 118n.06, 118a.07, 118b.08, 118b.09, 118h.10
- iv. Plot 119a.01, 119b.02
- v. Plot 135a.01,
- vi. Plot 152a.01, 150l.02, 148l.04.

and furthermore Plot 149b.01 shall be omitted from Part 1.a of the Schedule,

Reason: To ensure that the acquisition of the lands by the local authority is consistent with the stated need and purpose for same.

Conor McGrath

Senior Planning Inspector

13/03/2020