



An
Bord
Pleanála

Inspector's Report

ABP-307413-20

Development

N67/N85 Inner relief Road Ennistymon
(Blake's Corner) Compulsory
Purchase Order 2020.

Location

Ennistymon (Blake's Corner), County
Clare

Planning Authority

Clare County Council

Objectors

- (1) Erin McClure
- (2) Catherine Doyle Hassett
- (3) Miriam O'Dothery & Ross
O'Dotherty
- (4) Michael Lyons, Kevin Dore, Paddy
Clarke, Brid Howe, Paddy &
Antoinette Reynolds
- (5) Elizabeth McNamara
- (6) Jonathon O'Gorman
- (7) Monica Carroll, Frances Ryan,
Kevin McNamara
- (8) John Linnane, Michael Linnane
- (9) Frank McDonald
- (10) Anna Christofedes

(11) Patrick Donovan
(12) John & Sheena Clancy

Date of Site Inspection

23rd February 2021

Inspector

Colin McBride

1.0 Introduction

1.1. Introduction

Clare County Council is seeking confirmation of a compulsory purchase order authorising compulsory acquisition of lands entitled Clare County Council Compulsory Purchase Order 2020 N67/N85 Inner relief Road Ennistymon (Blake's Corner) N5. The Order was 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) and amended and extended by section 6 and the Second Schedule of the Roads Acts, 1993-2015, the Planning and Development Act, 2000-2019, the Roads Act 1993-2015 and all other Acts thereby enabling.

1.2. Proposed Development

Clare County Council wish to acquire compulsory lands to facilitate road construction and improvement comprising of development of an Inner Relief Road in Ennistymon including a new vehicular bridge crossing of the Inagh/Cullenagh river approximately 80m upstream of the existing bridge crossing. The overall route runs from the a point located approximately 180m west of Blake's' Corner on the N85 national road to a point located approximately 180m east of Blake's Corner on the N67 national road, via Bogbere Street. The development includes the pedestrianisation of the existing bridge, the inclusion of a roundabout at the western end of the proposed new bridge crossing on the L-1084, the relocation of the existing public park adjacent the New Road (N85) and all associated site works through the townlands of Deerpark West, Ardnacullia North and Ennistymon. It is also proposed to extinguish a number of the public and private rights of way listed in the Second Schedule Parts 1 and 2.

1.3 Site Location and description

The site is located in the centre of Ennistymon and comprises lands along both sides of Lanhinch Road, Bogbere Street, New Line and New Road, the site includes Bridge Street and the existing crossing over the Inagh/Cullenagh river as well as a portion of land north of the existing crossing bisecting the river.

1.4 Planning History

188000: Part 8 development granted consisting of the development of an Inner Relief Road in Ennistymon, including a new vehicular bridge crossing of the Inagh/Cullenagh River approximately 80m upstream of the existing bridge crossing. The overall route runs from a point located approximately 170 metres south east of Blake's Corner on the N85 National Road to a point located approximately 180 metres west of Blake's Corner on the N67 National Road, via Bogbere Street. The development includes the pedestrianisation of the existing bridge, the inclusion of a roundabout at the western end of the proposed new bridge crossing on the L-1084 and the relocation of the existing public car park adjacent to New Road (N85). The development also includes the demolition of three existing properties (two retail/office units and one residential unit) in the Ennistymon Architectural Conservation Area.

03.JN0013: Application for determination under article 250(3)(a) referral by Local Authority on whether a Natura Impact Assessment is required. The Board determined that no Stage 2 Appropriate Assessment is required.

HD0037: Application for determination under section 50(1)(b) of the Roads Act, 1993 to the Board whether the subject development requires Environmental Impact Assessment. The Board decided NOT TO DIRECT the road authority to prepare an environmental impact statement in respect the proposed road development.

2.0 Statutory Basis

- 2.1 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

compulsory. 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.

3.0 Compulsory Purchase Order

3.1. Documentation submitted

The local authority is seeking confirmation of the Clare County Council Compulsory Purchase (Ennistymon Inner Relief) Order No. 1, which was signed and sealed on 12th day of June 2020. The following documentation was submitted to the Board:

- Compulsory Purchase Order No.1 of 2020 (signed & sealed).
- CPO Schedule and Deposit Maps (sealed & dated).
- Sample of CPO notification letter served on affected property owners/ occupiers & lessees.
- Registered verification of post.
- CPO Newspaper Notice.
- Certificate of AECOM Engineer
- Endorsement by Senior Engineer of Engineers Certificate.
- Report of the Senior Planner.
- Endorsement of Director of Services of engineering & planning certification.
- Chief Executive's Order authorising the making of the CPO.

Schedule I of the CPO Schedule lists 110 x individual plots that will be permanently and temporarily affected during construction works. Schedule II Part I lists the 5 x Public Rights of Way proposed to be extinguished. Schedule II Part II lists the 1 Private Rights of Way proposed to be extinguished. Deposit maps illustrate lands to be permanently and temporarily acquired, the Public and Private Rights of Way to be extinguished and the Private Fishing Rights to be Temporarily Extinguished.

3.2 Case for the CPO

- Facilitate improved traffic movement through the town.
- Alleviate congestion at the Blake's Corner junction of N67 and N85.
- Improved public area at Blake's corner.
- Improved setting for protected structures.

3.3 Objections to the CPO

3.3.1 Erin McClure, 21 New Road, Ennistymon, Co. Clare (170.b).

- The owner of no. 21 New Road works from home and uses it for short term holiday rentals. Concern is raised regarding the impact of construction in terms of noise and disruption and subsequent loss of amenity and income, the impact of car headlights and increased traffic impact due to the property being directly opposite the new bridge crossing and questions the Local Authority's intention for no. 21 adjacent, which they have acquired.

3.3.2 Catherine Doyle Hassett, 14 New Road, Ennistymon, Co. Clare (163.b)

- The owner of no. 14 expresses concerns regarding the impact of changes outside her property and states that her husband has issues with mobility with concerns regarding their ability to continue to park outside their property to access such. The observer requests confirmation regarding their ability to still park outside their house.

3.3.3 Miriam O'Dothery & Ross O'Doherthy, Gurrane, Ennistymon, Co. Clare (172.b)

- The owners of no. 23 New Road expresses concern regarding the impact of changes outside their property in terms of increased traffic, noise, lights and darkening of their living space and its subsequent impact on amenity and devaluation of property.

3.3.4 Michael Lyons, Lahinch Road, Ennistymon, Co. Clare (107.b).

Kevin Dore, Lahinch Road, Ennistymon, Co. Clare (108.b).

Paddy Clarke, Lahinch Road, Ennistymon, Co. Clare (109.b).

Brid Howe, Lahinch Road, Ennistymon, Co. Clare (110.b).

Paddy & Antoinette Reynolds, Lahinch Road, Ennistymon, Co. Clare (111.b).

- The observers' ability to park in front of their dwellings is important in terms of residential amenity and the residents' mobility. It is unclear why the Council need to purchase the areas to the front of their dwellings.
- The proposal entails extinguishing a right of way (109.b), which concerns a laneway that provides access to the backland area of existing dwellings and would impact adversely the amenities of existing dwellings that have used such for a considerable period of time. The observation questions why extinguishment of such is necessary.

3.3.5 Elizabeth McNamara, Branch Manager, Dept of Employment Affairs & Social Protection, Bogbere Street, Ennistymon, Co. Clare (114.a.3, 114.a.4, 114.a.5, 120.a.1, 120.a.2, 120.a.3).

- It is considered the proposed improvements will not improve the traffic issues within Ennistymon and just move the congestion further up the New Road.

- The proposal entails demolition of two businesses and a private dwelling on which considerable effort and expense has been made upgrade them to their current condition and such contribute positively to the town. There is a derelict structure on the opposite side of the road (protected) with questions why such has not been considered to facilitate the improvements rather than the existing properties.
- There is no suitable alternative accommodation in the town up to the standard required by the Department.
- The operation requires parking outside, which is currently the case with no adequate parking in other parts of the town.
- Inadequate consideration has been given to the stressful impact of the process on the observers and those who are losing premises.
- There are alternative options available such as delisting Blakes & Linnanes Houses and constructing a roundabout and provision of an outer relief road.

3.3.6 Jonathon O’Gorman, 18 New Road, Ennistymon, Co. Clare (, Lahinch Road, Ennistymon, Co. Clare (167.b).

- The observer parks his car outside his dwelling and the loss of such would impact severely on his work due to need to load and unload tools from his vehicle. Loss of the ability to park outside the house would make his business unviable.
- The observer objects to the overall project as the New Bridge cuts across green embankments, which is an attractive amenity area for the town. The observer notes that there is an alternative less intrusive and costly solution including a no right turn over the existing bridge from the main street, provision of convex mirror, a yellow box, a revised traffic signal system and such would address existing congestion issues. The observer notes that a pedestrian walkway could be attached to the existing bridge.

3.3.7 Monica Carroll, Frances Ryan & Kevin McNamara, Dept or Employment Affairs & Social Protection, Bogbere Street, Ennistymon, Co. Clare (114.a.3, 114.1.4, 114.a.5, 120.a.1, 120.a.2, 120.a.3).

- The observers are employees in the social welfare office. Inadequate consideration is given of the human impact of the proposal with the observers' jobs in jeopardy and the importance of the office in terms of social impact.
- The proposal to demolish buildings that have been renovated to a high standard in favour of retaining derelict structures that could facilitate and alternative proposal is considered inappropriate.
- It is considered that the proposal for the new bridge will not alleviate congestion problems and just relocate them further along the New Road. It would be more suitable to process with the Outer relief Road.

3.3.8 John Linnane & Michael Linnane, Linnanes Funeral Home, Ennistymon, Co. Clare (185.a.1, 185.a.2)

- The objectors own a dwelling and funeral home business on the western side of New Road. The project and the lands taken for it will impact the existing business severely as it reduces the area currently used for mourners to queue and congregate, will endanger public safety and render the existing funeral home inoperable and will necessitate its relocation. The reduction in the area of the funeral home will render parking difficult.
- The objectors note that the Outer Relief Road project if advanced would eliminate the need for the Inner Relief Road project and mean no necessity to acquire the objectors' property.
- The objectors have submitted an engineering report elaborating the traffic impact. This report highlights that the Outer Relief Road project would be a better solution if advanced, the adverse effect of the Inner Relief Road project on the operation of the existing funeral home with reduced level of space to facilitate parking and mourners than currently available with the possibility of traffic hazard due to loss of spaces used for queuing.

3.3.9 Frank McDonald, The Granary, 20 temple Lane, Dublin 2.

- The observer indicates that the design of the area on the pedestrian bridge should make provision for cyclists and more detail is required regarding the proposal for the old bridge. A condition should be imposed that the Blake's and Linnane's are fully restored and brought back into active use.

3.3.10 Anna Christofedes, Lahinch Road, Ennistymon, Co. Clare (106.b).

Helen Barry, Lahinch Road, Ennistymon, Co. Clare (105.b)

- The observer's ability to park in front of their dwellings is important in terms of residential amenity and the residents' mobility. It is unclear why the Council need to purchase the areas to the front of their dwellings.
- The observers question if spaces are lost in the church car park where such parking will be displaced to. They note there are issues regarding school bus parking at this location and that proposals need to address issues such as speed and traffic calming.
- The proposal entails extinguishing a right of way (109.b), which concerns a laneway that provides access to the backland area of existing dwellings and would impact adversely the amenities of existing dwellings that have used such for a considerable period of time. The observation questions why extinguishment of such is necessary.

3.3.11 Patrick Donovan, Bogbere, Ennistymon, Co. Clare (191.b).

- The proposal is an inappropriate project for an urban area and it is more appropriate to facilitate traffic calming and slowing of traffic in an urban area rather than the proposal which is a significant intrusion.
- The acquisition of the objector's lands is not appropriate or necessary for the proposed scheme.

- The scheme will have an adverse impact through, noise dust and vibration and should be subject to Environmental Impact Assessment. No appropriate or preliminary examination has been carried out in relation to EIA. No Appropriate Assessment screening was carried out in compliance with the Habitats Directive.
- There are alternative solutions that should be considered rather than the current proposal.
- The proposal has a disproportionate impact on the property rights of the objector and the project appears to entail removal of the footpath to the front of the property, which would be inappropriate and contrary public safety.
- The scheme would entail significant noise and traffic impact and be detrimental to residential amenity and contrary health and safety.

3.3.12 John & Sheena Clancy, Bogbere Street, Ennistymon, Co. Clare (191.b).

- The objectors question the validity of the process under section 179 of the Planning and Development Act and the fact the proposal is the remit of Roads Authority and that this section has no application to the development.
- The Local Authority have no legal interest in the objectors lands and Section 179 is predicated upon a Local Authority having some legal interest in lands to enable it to carry out the development. The notice issued is invalid.
- The proposal and procedure initiated is contrary the objectors Constitutional Rights under Article 40 and 43 of the Constitution.
- The process has had a significant stressful impact on the objectors as the proposal entails loss of a family home and business in which considerable investment has been made and consider it an inappropriate and disproportionate action by the Local Authority.
- The notice published is incorrect in relation to naming of townlands and describing the nature and extent of works.

- The objectors note that the Local Authority requested an exemption from the Board in relation to carrying Appropriate Assessment and Environmental Impact Assessment. The objectors' question how this is appropriate given the nature and extent of the proposal and the fact that those impacted were not given notice of such or allowed to participate in this process.
- The objectors consider that it is not appropriate that such a determination that neither a screening for appropriate assessment or an EIA was carried out.
- The scheme would entail significant noise and traffic impact and be detrimental to residential amenity and contrary health and safety.

4.0 CPO Oral Hearing

4.1 An oral hearing into the objections made against the CPO was held on the 9th and 10th of June 2021, the hearing was virtual hearing using Microsoft Teams. 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.

4.2 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. Clare County Council were also given the opportunity to cross examine the objector and their representatives. 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.

4.3 The following parties made submission to the oral hearing:

- On behalf of Clare County Council:

Gareth Ruane, Senior Executive Planner, Clare County Council

Eoin O'Cathain, Technical Director, Roughan O'Donovan Consulting Engineers

Esmonde Keane SC

Objectors:

Jonathon O'Gorman

Michael O'Donnell SC, Deidre Courtney, Augustus Cullen Solicitors on behalf of John & Sheena Clancy

Michael O'Donnell BL, Deidre Courtney, Augustus Cullen Solicitors on behalf of Patrick Donovan

Elizabeth McNamara

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

Clare County Council:

Clare 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:

- An overview of the project was given. The road improvement scheme addresses the need for a new bridge crossing to address on-going issue of traffic congestion at Blake's' Corner. The proposal would address traffic congestion, improve pedestrian linkages, improve the public realm, allow improvement of enhancement of buildings at Blake's Corner.
- The need of the scheme was outlined and the fact that a number of options were considered (Options Assessment) prior to reaching a conclusion that the proposed scheme is the preferred approach the Part 8 process.

- The submission highlights that An Bord Pleanála determined that Appropriate Assessment and Environmental Impact Assessment was not required for the scheme and that this decision has not been challenged. The submission outlines National, Regional and Local Planning policy and that the proposed scheme is consistent with such.

The submission outlined a response to each of the objections raised.

Anna Christofides & Family and Helen Barry

There is an existing pedestrian footpath across the frontage of both houses. No amendment is proposed to the parking arrangements at this location and no reduction in car parking in the Church Grounds opposite. The project does not include the Old Mill Laneway.

Catherine Doyle Hassett

The road is under the control of the Council and always has been, the project will be subject to a Stage 2 Road Safety Audit with on-street parking arrangements to be confirmed at the detailed design stage. The Council will engage with the residents regarding on-street car parking strategy.

Department of Employment Affairs Branch Office Staff, c/o Monica Carroll, Frances Ryan, Kevin McNamara

The Part 8 approval was obtained following public consultation. The route is considered the most appropriate route and is in accordance with Development Plan objectives for the defined infrastructure safeguard route. The Blakes/Linnane Buildings are protected structures and included on the NIAH.

Elizabeth McNamara

The Part 8 approval was obtained following public consultation. The route is considered the most appropriate route and is in accordance with Development Plan objectives for the defined infrastructure safeguard route. The Armstead building and

the Blakes/Linnane Buildings are protected structures and included on the NIAH. Suitable premises alternative premises are available for lease or purchase.

Erin McClure

Condition no. 4 of the Part 8 approval requires submission of a construction and management plan. The proposal has been through a public consultation process and residential amenities were considered as part of the process. The scheme does address traffic safety concerns at Blake's corner by providing a new bridge.

Frank McDonald

The submission is broadly in favour of the proposal. The proposal includes improvements to the public realm and pedestrianisation of the bridge. The proposal will allow for future use and upgrading of Blake's and Linnane buildings.

John and Sheena Clancy

The proposal was subject to public consultation and an approved Part 8 application. The Board determined that EIA and a Stage 2 AA was not required. The inclusion of the objectors' lands is to realign the Lahinch Road (N67) with the Bogbere Street to provide a new link to the new river crossing. The level of lands required is proportionate and necessary. The issue raised by the objectors were not raised during the Part 8 process.

The Council refute that the scheme is based only on engineering principles and not on planning, architectural and urban design criteria. With improvement to the public realm and pedestrian facilities and an improvement of the town centre. In relation to the ACA the Board determined that an EIA was not required.

John Linnane & Michael Linnane

The proposal was subject to public consultation and an approved Part 8 application. In relation to the argument of necessity based on provision for an outer relief road,

the proposed scheme is an Objective of the Development plan and included under Volume 3(d) and identified as an objective on as a defined infrastructural safeguard. The outer relief road is an undefined infrastructure safeguard and a route selection study has yet to take place. The current proposal is defined infrastructure as opposed to the outer relief road being undefined.

The Council engaged with the landowners on alternative proposals relating to this premises with no preference advanced and the scheme was sought as proposed and granted under the Part 8 application. The proposal allows for parking of hearses partially over lands owned by Clare County Council.

Jonathon O’Gorman

The road is under the control of the Council and always has been, the project will be subject to a Stage 2 Road Safety Audit with on-street parking arrangements to be confirmed at the detailed design stage. The Council will engage with the residents regarding on-street car parking strategy. Alternatives were considered to the proposed scheme with such deemed to be most appropriate way of dealing with traffic capacity issues.

Miriam O’Dotherty and Ross O’Dothery.

The proposal was subject to public consultation and an approved Part 8 application.

Paddy Clarke, Michael Lyons, Kevin Dore, Brid Howe, Paddy & Antoinette Reynolds
It is not proposed to amend the parking arrangement at this location and the scope of the project does not include the Old Mill Laneway.

Patrick Donovan

The proposal was subject to public consultation and an approved Part 8 application. The Board determined that EIA and a Stage 2 AA was not required. The proposal is consistent with the Objective for a defined infrastructural safeguard under the County Development Plan. There is no wholesale demolition of properties in Ennistymon and the objectors’ description of the proposal is not justified. The

objector made no submission in relation the Part 8 application. The proposal will not facilitate high speeds but improved free flow of traffic. There is an existing footpath outside the objector's house, the land acquired will allow for realignment of Bogbere Street and the lands immediately outside his house will comprise of a footpath. The proposal would have no detrimental impact to the amenities or health and safety of the objector and the level of acquisition is proportionate of the scheme.

Objectors

Jonathon O'Gorman

The objector stressed the importance of the ability to park outside of his house for the purpose of his job (ability to load and unload tools) and raised concerns about the ability to retain such. The objector questioned the need for the proposal in the context of a more simile less intrusive solution as set out in his original submission.

Michael O'Donnell SC, Deidre Courtney, Augustus Cullen Solicitors on behalf of John & Sheena Clancy.

The objectors outlined the concerns regarding the stressful impact the loss of both their dwelling and business to facilitate the proposal. The objectors' highlighted the inappropriate manner in which the Council have acted in carrying out the process. The impact of the proposal on their constitutional property rights. The significant impact of the proposed works in an Architectural Conservation Area and the fact that alternatives in the form of an Outer Relief Road would be a more appropriate project. The objectors highlighted the fact that there was a lack of Environmental Impact Assessment of the project and the fact that the project crosses through a Natura 2000 site with no Appropriate Assessment carried out. Sheena Clancy gave evidence regarding the stress that the process has caused, the concern regarding the ability to find alternative properties in the event of confirmation and the unsympathetic approach taken by the Council to the process.

Elizabeth McNamara, Brach Manager, Dept or Employment Affairs & Social Protection, Bogbere Street, Ennistymon, Co. Clare.

The objector highlighted the fact that the proposal entail loss of business premises in which considerable investment has been made to renovate such. The importance of the office in terms of facilitating a service that is essential for the local community, the fact that it employs a number of individuals and concerns about the lack of alternative properties to facilitate its relocation.

Michael O'Donnell BL, Deidre Courtney, Augustus Cullen Solicitors on behalf of Patrick Donovan

The objector's representatives highlighted the fact that the hearing was been carried out virtually and that such has discommoded the objector from making a submission himself. The objector's representative highlighted the inappropriate manner in which the Council have acted in carrying out the process. The impact of the proposal on their constitutional property rights. The significant impact of the proposed works in an Architectural Conservation Area and the fact that alternatives in the form of an Outer Relief Road would be a more appropriate project. The objectors highlighted the fact that there was a lack of Environmental Impact Assessment of the project and the fact that the project crosses through a Natura 2000 site with no Appropriate Assessment carried out.

5.0 Planning Assessment

5.1. Planning Policy

5.1.2 Road Safety Strategy 2013-2020 (RSA)

In terms of engineering measures it is noted that whilst there is reduced emphasis on large scale road construction, there is an increased focus on value for money road improvements that will enhance the safety of the road system as a whole.

5.1.3 National Planning Framework

National Strategic Outcome 2

Inter-Urban Roads

Maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

5.1.4 Smarter Travel – A Sustainable Transport Future Goals include:

- improve quality of life and accessibility to transport for all and, in particular, for people with reduced mobility and those who may experience isolation due to lack of transport;
 - improve economic competitiveness through maximising the efficiency of the transport system and alleviating congestion and infrastructural bottlenecks;
 - minimise the negative impacts of transport on the local and global environment through reducing localised air pollutants and greenhouse gas emissions;
 - reduce overall travel demand and commuting distances travelled by the private car;
- In relation to roads, it is policy to retain investment in roads that will remove bottlenecks, ease congestion and pressure in towns and villages, and provide the necessary infrastructure links to support the NSS.

5.1.5 National Cycle Policy Framework Objective 1 – support the planning, development and design of towns and cities in a cycling and pedestrian friendly way. Objective 2 – Ensure that the urban road infrastructure (with the exception of motorways) is designed/retrofitted so as to be cyclist-friendly and that traffic management measures are also cyclist friendly.

5.1.6 South-West Regional Planning Guidelines 2010-2022 Section 2.1 identifies Strategic Growth Corridors that provide connectivity and linkages. The key corridors are:

- Atlantic Corridor from Waterford through Cork Gateway, Mallow Hub to Limerick.
- Inter-regional corridors including along the N21/N69 national road from Tralee to Limerick and
- Intra-regional corridors – main national roads linking main towns of regional importance throughout Cork and Kerry.

5.1.7 Clare County Development Plan 2017-2023

Table 8.2 Proposed Projects identified for Future Development

There are three relevant projects identified...

- N67, N85 Road Improvement Scheme, Ennistymon.
- Realignment of sections of N85 Ennis–Ennistymon road.
- Bypass south of Ennistymon linking the N85 to the N67.

Volume 3(d)

Proposed River Crossing (Defined Infrastructural Safeguard):

To address the on-going issue of traffic congestion in the vicinity of Blake's Corner, a new bridge crossing is proposed between the N85 and the N67. In this regard, an infrastructural safeguard has been included within the settlement plan area. The proposed infrastructure safeguard allows for the construction of a new bridge, upstream of the existing Conway Bridge, linking with the N67 on the west side of the Inagh River via Bogbere Street. Development of this bridge crossing is dependent on all necessary planning and environmental consents being obtained, including a flood risk assessment

Architectural Conservation Areas

Ennistymon: The present town of Ennistymon for the most part dates from the late 18th and early 19th centuries and comprises three main streets (Main St, Parliament St. and Bridge St.). The town is renowned for the survival of many of its traditional wooden shopfronts and stone slate roofs quarried from Liscannor and Doolin. The town contains 42 protected structures, many of which are being conserved and repaired.

Protected Structures:

Ennistymon Bridge (bridge),

Blake and Linnane (shop and house)

Armstead (house), Bogbere Street.

5.2. Natural Heritage Designations

Part of the site is located within the Inagh River Estuary SAC site code 000036.

6.0 Assessment

- 6.1. The proposal seeks consent for the compulsory purchase of the lands required for its construction. For the Board to confirm the subject CPO, it must be satisfied that Clare County Council has demonstrated that the CPO “is clearly justified by the common good”³⁰.

Legal commentators³¹ have stated that this phrase requires the following minimum criteria to be satisfied:

- There is a community need that is to be met by the acquisition of the lands in question,
- The particular lands are 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.

30 Para. [52] of judgement of Geoghegan J in Clinton v An Bord Pleanála (No. 2) [2007] 4 IR 701. 31 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).

- 6.2. Nature and Extent of the proposed development

Public Notices

6.2.1 The public notice refers to the construction and improvement comprising of development of an Inner Relief Road in Ennistymon including a new vehicular bridge crossing of the Inagh/Cullenagh river approximately 80metres upstream of the existing bridge crossing. The overall route runs from a point located approximately 180m west of Blakes' Corner on the N85 national road to a point located approximately 180m east of Blake's Corner on the N67 national road, via Bogbere Street. The development includes the pedestrianisation of the existing bridge, the inclusion of a roundabout at the western end of the proposed new bridge crossing on the L-1084, the relocation of the existing public park adjacent the New Road (N85) and all associated site works through the townlands of Deerpark West, Ardnacullia North and Ennistymon. It is also proposed to extinguish a number of the public and private rights of way listed in the Second Schedule Parts 1 and 2. The CPO is to facilitate the development granted under Part 8 ref no. 188000.

It is accepted that there are four criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property namely:-

- There is a community need, which is met by the acquisition of the property in question,
- The works to be carried out accord with the Development Plan,
- Alternative methods of meeting the community need have been considered but are not available,
- The suitability of the land to meet the community need.

6.3 Community Need

6.3.1 The stated purpose of the CPO is to facilitate the development of an Inner Relief Road in Ennistymon including a new vehicular bridge crossing of the Inagh/Cullenagh river approximately 80m upstream of the existing bridge crossing. The overall route runs from a point located approximately 180m west of Blakes' Corner on the N85 national road to a point located approximately 180m east of Blake's Corner on the N67 national road, via Bogbere Street. The development includes the pedestrianisation of the existing bridge, the inclusion of a roundabout at the western end of the proposed new bridge crossing on the L-1084, the relocation

of the existing public park adjacent the New Road (N85) and all associated site works through the townlands of Deerpark West, Ardnacullia North and Ennistymon.

6.3.2 I note that a number of objectors to the Inner Relief Road (IRF) and CPO dispute the need for the proposed development with reference to Projects identified for Future Development (Table 8.2) including a proposal for a bypass south of Ennistymon linking the N85 to the N67. The issue of the justification for the project in light of a proposal for a bypass was raised by the objectors during the oral hearing. The Local Authority's justification for the project is to alleviate existing traffic congestion experienced on the N85 in particular when negotiating the junction at Blake's Corner in the centre of the town, improvement of the public realm and pedestrian facilities.

6.3.3 I would consider that justification does exist for the project in terms of the existing unsatisfactory traffic conditions in the town centre that result in delays when seeking to travel through the town via the N85 and N67 due to the configuration of the junction of the N85 and N67 at Blake's Corner. The improvement of the junction is curtailed by the fact there are two existing protected structures at the junction and in addition the existing bridge, which is also protected structure is narrow in width and deficient in pedestrian footpaths. The existing protected status of the structures make it difficult to enact major improvements to the junction. The existing layout is also poor in term of public facilities such as pedestrian access. The proposal will facilitate improve traffic movements, improve traffic safety and enhance pedestrian facilities and movement through the town and an upgrade of public realm in the centre of the town and preserve structures of architectural heritage significance as well as enhancing their setting.

6.4 Compliance with Development Plan

6.4.1 In terms of compliance with the County Development Plan there are three road projects identified under Table 8.2 relating to Ennistymon. Two of these are relevant and are N67, N85 Road Improvement Scheme, Ennistymon and a bypass south of Ennistymon linking the N85 to the N67. The nature of the N67, N85 Road Improvement Scheme is not specifically described, however the proposed

development would be classified as coming under the scope of the N76, N85 Road Improvement Scheme. Under Volume 3(d) of the Development Plan the project is identified as being an objective of the Development Plan, defined as Proposed River Crossing (Defined Infrastructural Safeguard) and described as “to address the on-going issue of traffic congestion in the vicinity of Blake’s Corner, a new bridge crossing is proposed between the N85 and the N67. In this regard, an infrastructural safeguard has been included within the settlement plan area. The proposed infrastructure safeguard allows for the construction of a new bridge, upstream of the existing Conway Bridge, linking with the N67 on the west side of the Inagh River via Bogbere Street. Development of this bridge crossing is dependent on all necessary planning and environmental consents being obtained, including a flood risk assessment”.

- 6.4.2 The issue of provision of the bypass as an alternative to the provision of Inner Relief Road was raised in the objections and the oral hearing. There are objectives in the Development Plan relating to improvement of the public realm, preservation of the protected structures, Architectural Conservation Area and objectives in relation to improvement of the N85 and N67. I would consider that the proposal would be consistent with Development Plan objectives. The Board is therefore advised that the CPO submitted for confirmation complies with the relevant development plans.

Alternatives:

- 6.4.3 In relation to the issue of alternatives the objectors focus on the objective for a bypass being an alternative factor and one of the objectors presents an alternative that they consider an appropriate and less invasive alternative to the works proposed (Jonathon O’Gorman). In relation to this issue the bypass is a planned development objective of the Development, however it does not negate the fact the improvement works proposed including the new river crossing is also a planned objective of the Development Plan and is identified in the settlement plans as a Defined Infrastructural Safeguard. The works in question are an objective of the Development Plan, have been subject to a Part 8 development application, which would have included public consultation. The provision of a bypass would not deal with the specific traffic issues concerning Blake’s Corner even with the provision of a bypass

and deficient provision of pedestrian facilities on the existing bridge. The objector's alternative is not backed up with a traffic analysis or engineering report to demonstrate it is the optimal approach to dealing with existing issues at Blake's Corner and such would lack in the public realm improvements that would be gained by the removal of traffic from Blake's corner and the pedestrianisation of the bridge. I would conclude that, at this stage of the assessment, the chosen option appears to be the most reasonable solution, while at the same time minimising the impacts on the ecological, visual and residential sensitivities of the area.

6.4.4 Objections submitted by landowners focus on the scheme having an adverse impact on amenities, properties and lands. Such an impact is likely to arise no matter what route is selected. It is acknowledged that the preferred route presents burdens in relation to residential and business owners. These impacts will, in many cases, be permanent impacts notwithstanding the mitigation measures proposed. Issues relating to severance and loss of lands arising are matters to be addressed by way of compensation.

6.5 Suitability of lands to meet community need

6.5.1 The extent of the land that would be acquired under the order is determined by the specifications for same and are determined by the plans approved under Part 8. 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. 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.

6.6 CPO Issues Common to Multiple Objectors

6.6.1 There are specific issues raised by objectors. Objections submitted by landowners, occupiers and residents have identified potential impacts on properties and lands, as well as planning and environmental issues including impacts on human health, noise, air, climate, visual impacts and on biodiversity. The planning and environmental issues have been addressed under Part 8 application granted in

relation to the proposal. I would also reiterate that the Boards Directions under ref no.s 03.JN0013 and HD0037. It is acknowledged that the project will result in significant or profound impacts on a number residential property owners and business owners. These impacts will, in many cases, be permanent impacts notwithstanding the mitigation measures proposed. Issues relating to severance and loss of lands arising are primarily matters to be addressed by way of compensation.

6.6.2 Acquisition of dwellings and businesses

It is proposed to acquire one dwelling and a shop unit, plot no.s 115.a and 115.b owned by John & Sheena Clancy, an office premises occupied by the Department of Employment Affairs & Social Protection, plot no.s 120.a.1, 120a.2 and 120.a.3. and part of the premises associated with Linnane's Funeral Home, plot no.s 185.a.1, 185.a.2, 185.a.3, 185.b.1, 185.b.2. While I am satisfied that the applicant has demonstrated that the CPO "is clearly justified by the exigencies of the common good" and has satisfied the minimum criteria as outlined above, the loss of a dwelling, business or part of business premises is significant burden and, therefore, warrants very careful consideration given the constitutional protection afforded to property rights, and the principle of proportionality must be considered. The Board will note the legal submission made by Michael O'Donnell BL on behalf of the objector (John and Sheena Clancy) at the oral hearing, the submission by Elizabeth McNamara on 21st February 2020 (Ref. 31), and the written submissions on behalf of John Linnane & Michael Linnane. At the oral hearing and in the submissions the objectors noted the stress and anxiety they were experiencing due to the proposed acquisition, the uncertainties associated with same, and whether they would be able to find a similar house and or business premises in the locality as well as the difficulties posed by the loss of part of business premises in terms of its future operation. In responding to the objections at the oral hearing, the applicant's position is that the home and business property owners will be suitably compensated and that alternative properties are available in the local area.

6.6.3 Notwithstanding the above, it is considered that, as assessed in Section 5.3, the applicant has demonstrated a need that will advance the common good and which will be met by the proposed Inner Relief Road granted under Part 8 and facilitated by

its associated CPO. It is further considered that the acquisition of the identified dwelling, shop unit, office premises and part of a funeral home business is necessary to deliver such. While the acquisition will have significant and profound impacts on individual properties and the people residing and operating business therein, the delivery of the Inner Relief Road will be of strategic importance at a local and regional level, and will be of significant benefit to the common good of the population and economy of Ennistymon in terms of traffic management and improved public realm. I would note that all affected parties will receive compensation and that the applicant has entered into negotiations with property owners with a view to agreeing compensation amounts at an early stage in order to reduce stress and uncertainties for affected parties. While matters relating to compensation are not within the remit of the Board, I note the majority of the property owners impacted have not objected to the CPO. This is not to discount the significant and profound negative impacts on affected home and business owners, where they arise. Ultimately, however, I consider that the significant benefits of the Inner Relief Road for the common good of the city, county and region outweigh the profound impacts on affected home and business owners and, on that basis, I consider the proposed acquisition of a dwelling, retail unit, office premises and part of funeral home premises to be generally acceptable.

6.7. Impact on parking/right of ways:

6.7.1 A significant number of the objectors have raised concerns regarding the impact of the proposal on parking and use of existing rights of way. This issue has been raised by a number of the objectors raising concerns regarding the ability to park outside their dwellings as is currently the case as well as impact on a laneway access between dwellings on the Lahinch Road. Clare County Council's submission to the oral hearing highlighted the fact that the proposal will not impinge on the existing ability of householders along the route to park outside their dwellings or access the existing laneway. This issue of the ability to park outside an existing dwelling was questioned by Jonathan O'Gorman during the hearing with the Council representatives confirming that the project would not change this situation.

6.7.2 In the case of the Linnane's Funeral Home, the proposal entails loss of part of the premises with the objectors raising concerns that the alterations make the existing business inoperable due to impact on parking. The loss of land will lead to some reconfiguration of the existing business premises but no loss of the main functional structures. It would appear that the works proposed will alter the area around the funeral parlour building, the entrance configuration and loss of a wall used as for display purposes adjacent the entrance. The works proposed entails relocation of public parking to north of the funeral home and an existing dwelling further south and the plans approved under part 8 include an area for hearse parking and reconfiguration of the entrance serving the funeral home. It would also appear that some of the land being acquired will remain within the functional confines of the funeral home and for such use. I would be of the view that the works in question would lead to some alterations to the layout of the existing funereal home, but not impinge to the degree that such would be inoperable.

6.8 EIA/Appropriate Assessment Issues

6.8.1 The issues of the requirement to carry out Environmental Impact Assessment and Appropriate Assessment was raised during the hearing by Michael O'Donnell in his submission on behalf of John and Sheena Clancy, and Patrick Donovan. A number of questions were directed to the Council regarding the nature of works required to facilitate the project in the context of the Inagh River Estuary SAC. The Council indicated during the hearing that these issues were addressed by the directions of the Board on both these matters.

6.8.2 On this matter the planning history of the project is that permission was granted for a Part 8 development consisting of the development of an Inner Relief Road in Ennistymon, including a new vehicular bridge crossing of the Inagh/Cullenagh River approximately 80m upstream of the existing bridge crossing. The overall route runs from a point located approximately 170 metres south east of Blake's Corner on the N85 National Road to a point located approximately 180 metres west of Blake's Corner on the N67 National Road, via Bogbere Street. In addition to this application, Clare County Council sought two directions from the Board. Under ref no. 03.JN0013, an application for determination under article 250(3)(a) referral by Local

Authority on whether a Natura Impact Assessment is required, the Board determined that no Stage 2 Appropriate Assessment is required. Under ref no. HD0037, application for determination under section 50(1)(b) of the Roads Act, 1993 to the Board whether the subject development requires Environmental Impact Assessment, the Board decided NOT TO DIRECT the road authority to prepare an environmental impact statement in respect the proposed road development.

6.9 Health and safety, Traffic movements, Construction impact:

6.9.1 As noted above and the CPO is to acquire land to facilitate the construction of the road improvements approved under the Part 8 application ref no. 188000. The proposal is designed to facilitate existing traffic movements through the town and would have been assessed in terms of its planning merits under the Part 8 application. Construction impact is likely to be disruptive however such can be managed with appropriate construction management measures. In terms of traffic impact the proposal is to facilitate existing traffic and is not a development that would increase traffic levels in the town centre. As noted earlier the development will not impinge on existing ability of existing properties to park on street and such was confirmed by the Council during the hearing.

7.0 Recommendation

Having regard to the above assessment I recommend as follows:

7.1 Compulsory Purchase Order

I consider that the land take is reasonable and proportional to the stated purpose to provide the proposed Inner Relief Road. I am satisfied that the process and procedures undertaken by Clare County Council have been fair and reasonable and it has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of the lands would be in the public interest and the common good and would be consistent with the policies and objectives of the Clare County Development Plan 2017-2023.

DECISION

CONFIRM the compulsory purchase order for the reasons and considerations set out in Schedule 1.

SCHEDULE 1

REASONS AND CONSIDERATIONS

Having considered the objections made to the compulsory purchase order, the report of the person who conducted the oral hearing into the objections, the purpose of the compulsory purchase order and also having regard to:

- (a) the community need, public interest served and overall benefits, including benefits to the town centre, improved traffic movement improved public realm and setting of protected structures,
- (b) the provisions of the Clare County Development Plan 2017-2023 and the policies and objectives stated therein, which specifically identify the proposed road development,
- (c) the proportionate design response to the identified need, the acquisition by the local authority of the lands in question, and the extinguishment of public and private rights of way, as set out in the compulsory purchase order and on the deposited maps, are necessary for the purpose stated, and that the objections cannot be sustained having regard to the said necessity.

Colin McBride
Senior Planning Inspector

24th May 2022