



An  
Bord  
Pleanála

## Inspector's Report ABP-307931-20

### **Nature of Application**

Application for confirmation of Tipperary County Council Compulsory Purchase (construction of R498 Latteragh realignment scheme) Order 2020

### **Location**

Townlands of Currabaha, Glenmore Lower, Gurteen, Garrane, Bigpark, Sallypark, Curragh, Carrick, (Maunsell), and Carrick (Dawson), co. Tipperary.

### **Planning Authority**

Tipperary County Council

### **Applicant**

Tipperary

### **Objectors**

Brid and Tom Fogarty,  
Tom Conway

### **Date of Site Inspection**

6<sup>th</sup> November 2020

### **Inspector**

Sarah Lynch

## 1.0 Introduction

### 1.1. Overview

- 1.1.1. This is an application by Tipperary County Council for confirmation by the Board of a Compulsory Purchase Order ('CPO'), entitled Tipperary County Council Compulsory Purchase (R498 Latteragh Realignment Scheme) Order, 2020'.
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over land in the townland of Currabaha, Glenmore Lower, Gurteen, Garrane, Bigpark, Sallypark, Curragh, Carrick, (Maunsell), and Carrick (Dawson), co. Tipperary and it is made pursuant to the powers conferred on Tipperary County Council which is a designated road authority under Section 2(1) of the Roads Act 1993, as amended.
- 1.1.3. 2 objections to the CPO have been received and an Oral Hearing to consider these objections was held on the 1<sup>st</sup> & 2<sup>nd</sup> December 2020 via teams in an online platform. The report considers the details of the objections raised.

### 1.2. Purpose of CPO

- 1.2.1. The purpose of the CPO is to facilitate the undertaking of the development referred to as the realignment of the R498 which would comprise of:
  - Upgrade and realignment of R498 over a distance of c. 4.3km.
- 1.2.2. Tipperary County Council states that the section of the R498 under consideration is approximately 4.3km in length passing through the townlands of Currabaha, Glenmore Lower, Gurteen, Garrane, Bigpark, Sallypark, Curragh, Carrick (Maunsell), and Carrick (Dawson), in the electoral districts of Latteragh, Kilnaneave, Kilkeary and Glenkeen, Co. Tipperary. The existing R498 at Latteragh is a single carriageway section and follows the contours around the Latteragh hills, adjacent to meanders in the Nenagh River. The Council states that the location of the road has led to the road being of substandard cross section and horizontal geometry, which is below the desired required minimum for an alignment with an 80kph speed limit.
- 1.2.3. It is further outlined within the Council's submission that there are no overtaking opportunities on this section of the route which leads to driver frustration. It is stated that there are three at grade junctions, which include 2 skewed T-junctions and a crossroads, as well as several direct dwelling, farm and field accesses along the route

of the proposed works. The narrow cross section and lack of clear verges are said to impact the visibility of junctions along this stretch of road.

1.2.4. The Council state that there have been many collisions along this stretch of road which include fatal and serious collisions as well as many anecdotal reports of minor / material damage collisions.

1.2.5. The Council seeks to acquire lands from 39 landowners as well as lands currently owned by Tipperary County Council which are not included in the Compulsory Purchase Order.

### 1.3. **Accompanying documents**

1.3.1. The application was accompanied by the following:

- Chief Executive's Order authorising the making of the CPO, dated 29<sup>th</sup> July 2020.
- Compulsory Purchase Order and Schedule thereto, dated 29<sup>th</sup> June 2020
- CPO Maps.
- Engineers Report, dated 5<sup>th</sup> June 2020, detailing the need for the scheme.
- Engineers Report, dated 13<sup>th</sup> July 2020, detailing the background of the scheme, the need for the scheme and confirming that the proposed work is in conformity with the planning and development objectives of the area, that the acquisition of the land is suitable and necessary for the purpose and recommending that a CPO be made.
- Newspaper notice, published in the Nenagh Guardian on the 8<sup>th</sup> August 2020.
- Copy of notice sent to landowners
- Certificate of service of CPO notices.

### 1.4. **Format of CPO and Schedule**

1.4.1. The CPO states that in order to complete the scheme it is necessary to acquire lands from 39 landowners. The list of reputed landowners with associated land-take is detailed in 'Schedule 2 Parts II Land to be permanently acquired' and 'Part III Land to be temporarily acquired'. Temporary land takes are required to facilitate construction

of the proposed realignment and will be returned to the landowner on completion of the scheme.

- 1.4.2. The lands described in the Schedule are stated to be lands other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.
- 1.4.3. Schedule 2 Part II Land to be Permanently acquired and Schedule 2 Part III Land to be Temporarily acquired assigns an identification number to each plot of land and describes the quantity, type, townland, owner or reputed owner, lessee or reputed lessee and occupier of each plot, as relevant.

## **2.0 Site Location and Description**

- 2.1. The proposed realignment will occur over a distance of c. 4.3km along the R498 Nenagh to Thurles route. This road is the main link road between Nenagh and Thurles and is described as being a strategic part of the link between Nenagh and Clonmel which are the administrative capitals of County Tipperary.
- 2.2. As noted above the CPO relates to lands in multiple townlands including of Currabaha, Glenmore Lower, Gurteen, Garrane, Bigpark, Sallypark, Curragh, Carrick (Maunsell), and Carrick (Dawson), in the electoral districts of Latteragh, Kilnaneave, Kilkeary and Glenkeen, Co. Tipperary. The proposed realignment will commence near to the townland of Kilkeary along the R498 and will extend northwards following the contours around the Latteragh hills adjacent to the meanders of the Nenagh River. The road extends through a rural landscape which is interspersed by rural housing and bounded by agricultural lands. The road, at one particular location is bounded by a steep area of woodland and whilst of appropriate width for the most part, has a number of pinch points and numerous sharp bends with no verge provided for.

## **3.0 Planning History**

- 3.1. A Part 8 consent was passed under Section 179 of the Planning and Development Act 2000, as amended, by Tipperary County Council on the 24<sup>th</sup> August 2017 for the proposed realignment works.

## 4.0 Policy Context

### 4.1. Regional Spatial Economic Strategy for the Southern Region 2020

- **RPO 153- Capacity of Inter-Urban Road Connections.** It is an objective to protect, improve and maintain the operation of the National and Strategic Regional inter-urban road connections within and between the cities, settlements, ports and airports by providing effective policies in Local Authority County Development Plans (CDP), Local Area Plans (LAP) and Strategic Development Zones (SDZs) promoting effective traffic management and transport demand management. It is a requirement for CDP's, LAP's and SDZ's to consider all alternative modes and public transport options in tandem with traffic demand options.
- **RPO 168 - Investment in Regional and Local Roads.** The following regional and local road and transport measures will be progressed to achieve NSO: Enhanced Regional Accessibility subject to the recommendations of the three MASPs, the preparation of associated Metropolitan Area Transport Strategies and the preparation of Local Transport Plans for key settlements and other urban centres where applicable. These measures are also subject to robust feasibility studies and site/ route selection to reduce impacts on the environment and required appraisal, planning and environmental assessment processes.

Under this RPO, where works to any part of the strategic road network are supported, the potential for improved sustainable transport shall be considered. The potential for nature-based design solutions for mitigation design shall be considered. Part (A) Projects Identified Under the NDP Including Pre-Appraisal Stages –

- Realignment of R498 Nenagh/Thurles road at Latteragh

### 4.2. North Tipperary Development Plan 2010-2016

- 4.3. It is of note that the existing County Development Plans for Tipperary have both had their lifetimes extended (11A Planning and Development Act 2000, (as amended)), and will remain in effect until a new Regional Spatial and Economic Strategy is made by the Southern Regional Assembly, thereafter a new Tipperary County Development Plan will be made.
- 4.4. The lands are located within the rural area outside of any development boundaries.
- 4.5. Section 9.3.1 of the plan acknowledges that investment in roads infrastructure is essential to attract inward investment and identifies the R498 Nenagh to Thurles upgrade as a priority project.
- 4.6. The plan further states that the proposed project is also identified within the Mid West Regional Planning Guidelines 2010. The preservation of such routes is outlined in Policy T12: National Road Infrastructure Programme in which is its stated:
- 'It is the policy of the Council, to seek the implementation of Strategic Transport Improvement Priorities identified in the SERPGS and the MWRPGs and any strategic transportation documents for the Region. The Council will seek to support the implementation of these schemes by the reserving of corridors of the proposed routes, free from inappropriate development, so as not to compromise the future road schemes'.*
- 4.7. Figure 9.2 of the development plan identifies the R498 from Nenagh to Thurles as a strategic route. The plan seeks to ensure that the strategic road network will continue to function into the future whilst at the same time facilitating appropriate growth and development in line with the Spatial Planning and National Roads.

**Policy T13: Strategic Road Network**

It is the policy of the Council to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to Strategic Routes, subject to the following policy exceptions:

- (a) New access to facilitate orderly urban development on Strategic Routes on appropriately zoned land on the approaches to or exit from, urban centres that are subject to a speed limit of 60 km before a lower 50 km limit is encountered

may be permitted subject to road safety audit carried out in accordance with the TII's requirements and avoidance of a proliferation of such entrances.

(b) New access to lands adjoining Strategic Routes within 50 km speed limits may be considered in accordance with normal road safety, traffic management and urban design criteria for built up areas.

(c) New accesses to Strategic Routes may be permitted in exceptional circumstances, in the case of developments of national and regional strategic importance<sup>50</sup> which by their nature are most appropriately located outside urban areas, and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed.

(d) Proposals for new rural houses to access onto a Strategic Regional Road or a National Secondary Road will only be permitted where compliance is demonstrated with Policy SS5: Housing on Strategic Regional Roads<sup>51</sup> and Policy SS6: Housing on National Secondary Roads.

(e) All development proposals shall demonstrate compliance with the development management standards set out in Chapter 10.

#### **4.8. Nenagh Towns and Environs Development Plan 2013-2019**

4.8.1. Section 8.3.1 of the plan identifies the R498 as being a key asset for both the county and Nenagh town.

### **5.0 Objections**

5.1. 2 objections were received from landowners.

#### **5.2. Grounds of objection**

##### **1. Brid and Tom Fogarty – P116**

- No replacement gate is being provided, to replace two being removed.
- Proposed fencing is not fit for purpose.
- The county council are only entitled to acquire lands set out in the CPO.
- Concerns in relation to the impact of the CPO on the new farmyard, request that new shed is not acquired.

## **2. Thomas Conway – Plot 114-08, 114-09**

- The design of the entrance to the private dwelling is not acceptable.
- Sharing an entrance with neighbouring School house is not acceptable and will lead to stress for objectors.
- The procedure is not in accordance with EU law.

## **6.0 Oral Hearing**

6.1. An Oral Hearing was held virtually on the 1<sup>st</sup> & 2<sup>nd</sup> December 2020. A digital sound recording was made of the Oral Hearing and should be consulted for a full representation of proceedings; however, a summary of the Hearing is included in Appendix 1 of this report.

## **7.0 Assessment**

### **7.1. Overview**

7.1.1. For the Board to confirm the subject CPO, it must be satisfied that Tipperary County Council has demonstrated that the CPO “is clearly justified by the common good”<sup>1</sup>. Legal commentators<sup>2</sup> 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 site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable, 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.

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

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



7.2. In the interest of clarify it is of note that Section 213 of the Planning and Development Act 2000, as amended, sets out the legal status of the compulsory purchase process in relation to Local Authorities, as follows:

(1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.

(2) (a) 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 or its housing strategy under section 94, do all or any of the following:

(i) acquire land, permanently or temporarily, by agreement or compulsorily,

(ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

(iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an “acquisition of land”.

(b) A reference in paragraph (a) to acquisition by agreement shall include acquisition by way of purchase, lease, exchange or otherwise.

(c) The functions conferred on a local authority by paragraph (a) may be performed in relation to— (i) land, or (ii) any easement, way-leave, water-right or other right to which that paragraph applies, whether situated or exercisable, as the case may be, inside or outside the functional area of the local authority concerned.

(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the

local authority, the land will be required by the authority for that purpose in the future.

(b) The acquisition may be effected by agreement in respect of any land which, in the opinion of the local authority, it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land. (c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.

(4) A local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in subsection (2) of this section and section 10 (as amended by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, shall be construed so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in subsection (2) of this section.

7.3. I will therefore address each of the four criteria outlined above in turn below, together with the issue of proportionality and other issues arising from the objection.

#### 7.4. **Community Need**

7.4.1. Community need was set out by Tipperary County Council within the documentation submitted with the CPO and at the Oral Hearing and can be summarised as follows:

- The proposed works comprise of 4.3km of road realignment works, in an area of road where visibility and structure are poor.
- 9 collisions including 1 fatality have been recorded over a 7 year period.
- Lack of overtaking opportunities leads to driver frustration and potential for head on collisions.
- Sections of R498 lack forward visibility due to poor horizontal alignments which increases potential for accidents to occur at junctions and along the route at bends.
- Poor horizontal alignment at certain areas is well below the desirable minimum radii for design speed of 85km leading to limited visibility and stopping

distances. Pinch points have also resulted in areas where passing of two way traffic is hampered.

- Lack of facilities for vulnerable road users along existing route.
- General conditions of the route also add to an increased potential for collisions to occur which include poor surfacing, wearing away of centreline markings, ponding, dark areas of poor lighting and undulating terrain.

#### 7.5. Benefits of the scheme include the following:

- Reduction in collisions, improved junction safety, reduction in driver frustration with increased overtaking opportunity, off road facilities for vulnerable road users such as pedestrians and cyclists.
- Improved journey times which will give rise to economic benefits.
- Improved structure of road will reduce potential for hydrocarbons to enter the Nenagh River.
- Provision of safer environment for non-car users and improvement to rural connectivity and public transport.

7.5.1. I note that the objector did not challenge the fundamental community need outlined by the Council and that their concerns primarily relate to matters of route selection with respect to their lands.

7.5.2. Having reviewed the information submitted and having conducted an Oral Hearing, I am satisfied that the existing road infrastructure represents aged infrastructure which is substandard in terms of structure and deficient in relation to road safety requirements. I am satisfied that there is a clear need for improvements to the alignment and structure of the road to meet current standards. I am therefore satisfied that Tipperary County Council has demonstrated a clear and pressing community need that would be met by the project that would be facilitated by the acquisition of rights over the lands in question, should the Board confirm the CPO.

#### 7.6. **Suitability of Lands**

7.6.1. At the outset, the Board will note that Tipperary County Council are seeking to both permanently and temporarily acquire lands.

- 7.6.2. The lands that are the subject of this CPO are currently used for a number of uses including agricultural purposes, forestry, domestic access, garden areas and some areas which include existing roadbed. Whilst I do not consider the lands to be of any particular sensitivity in terms of Development Plan designations, landscape character, value or scenic qualities, it is important to note at this juncture that the remains of a Motte known as the Moat of Latteragh, is located to the west of the proposed realignment at Latteragh, (SMR TN027-105) as seen on plan no. 2 of 4 submitted. The proposed works are removed from this monument, separated by a bridge over the Nenagh River. Given the nature of the works at this location, which will comprise of junction improvements and limited road widening and that the lands directly adjacent to the river at this point are proposed as a temporary acquisition, I am satisfied that the proposed works would not encroach upon the existing monument.
- 7.6.3. The majority of the area within the immediate vicinity of the lands is relatively sparsely populated. No residential dwellings are to be acquired.
- 7.6.4. With regard to land use zoning objectives, I have addressed this in Section 7.7 below, however in brief I consider that the proposed road realignment works would be acceptable within the un-zoned rural lands affected by the CPO.
- 7.6.5. As noted in Section 2.0 above, the proposed route generally follows the alignment of the R498 for a distance of 4.3km and encroaches minimally on either side of the route onto third party lands to allow for the proposed improvements. Map no. 2 of 4 identifies lands that are being acquired on both a permanent and temporary basis to facilitate works removed from the existing alignment of the R498. Such a deviation from the main route is required as the route is restricted by the River to the west and steeply sloping lands to the east at this location.
- 7.6.6. I note that Tom and Brid Fogarty have raised a number of concerns, one of which relates to the extent of lands to be acquired from their landholding. They are concerned that the lands to be acquired will affect an existing new farm shed and farmyard which will in turn affect the functioning of their family farm. They state that the lands comprised of forestry but have recently been developed as a farmyard.
- 7.6.7. In response to the objectors concerns the Council stated that the large area of lands to be acquired at this location is necessary to provide for the appropriate grading of the lands down to the road given the significant slope which is currently present at this

location. The Council stated that this slope has been engineered to a high standard and is deemed necessary to ensure the safe operation of the route at this location.

7.6.8. Whilst I acknowledge the objectors' concerns, I note that lands at this location are particularly steep and consider it reasonable that the Council would require the gradient of such lands which lie directly adjacent to the R498 to be reduced. The Council stated within their submission to the Oral Hearing that the slope designed is a standard slope gradient and as such I consider that the use of standard calculations provides a degree of certainty in terms of slope stability adjacent to such a critical rural route. Thus, I consider that the lands contained within the CPO at this location are necessary to the approved works. I further note that the Council have altered the schedule to reflect the current use of these lands and that such matters will be subject to the arbitration process which is separate to the CPO proceedings.

7.6.9. Having regard to the nature of the proposed realignment works, the construction methodology as set out in the submissions given by The Council at the Oral Hearing, and noting the restrictions on options available to the Council for the improvement of this route, I am satisfied that the lands that are the subject of the CPO are suitable to meet the aforementioned community need.

#### **7.7. Accordance with the Development Plan**

7.8. As outlined in Section 4.1 above, the North Tipperary Development Plan 2010-2016 identifies the R498 Nenagh to Thurles upgrade as a priority project. The development plan includes objective SO09-1 which seeks to work in partnership with adjoining local authorities and public bodies in the implementation of transport policies and objectives contained within the Mid -West and South East Regional Planning Guidelines, as may be amended and the Mid-West Area Strategic Plan 2010-2030 and any subsequent regional level land use and transportation guidelines and Strategies.

7.9. It is of note in this context that the R498 upgrade is identified within the Regional Spatial Economic Strategy for the Southern Region as a road project to be progressed in order to achieve the NSO: Enhanced Regional Accessibility of the NPF. The RSES outlines that the maintenance and improvement of such routes is essential for intra-regional rural connectivity which has a direct effect on the economic viability and growth of rural population centres. The principle of the proposed development is therefore in accordance with both local and regional policy for the area.

7.10. With particular regard to the lands that the Local Authority are seeking to compulsorily acquire rights over, I note that they are identified as open countryside within the North Tipperary County Development Plan which are lands outside of any settlement. The widening of transport network, in my opinion would be compatible with the land use and would be an appropriate development in this area.

7.10.1. In conclusion, therefore, I am satisfied that the project that would be facilitated by the compulsory purchase order, should it be confirmed by the Board, would accord with the provisions of the North Tipperary County Development Plan 2010-2016, as varied, and that the acquisition of the lands or interests therein would not materially contravene any specific policies or objectives of the Plan.

#### 7.11. **Use of Alternative Methods**

7.12. Alternative routes of meeting the community need were addressed by Tipperary County Council in terms of the various route options that were considered. The Council outlined within their submission to the Oral Hearing that within the study area, six route corridors were identified. Within or between these route corridors, fourteen route options were developed. It was stated by the Councils representative that these fourteen options were assessed under the headings of Environment, Engineering, and Economy. This assessment reduced the options down to five options. Public consultation was held in January 2016 with these options presented. The five remaining options were then assessed under the headings of Safety, Economy, Environment, Accessibility and Integration in line with the Common Appraisal Framework.

- Option 1 offered a Low cost with high safety; however, it was the lowest preference of all the options for Environment with significant farm severance and impacts on non-agricultural properties.
- Option 6 was the most expensive option and it only offered a Medium preference for Safety and Environment. While Option 6 offered an overall Medium preference for Environment, it scored Low preference in terms of Biodiversity due to the impact on the TUFA Spring and the significant badger sets.

- Option 11 was the lowest cost option, but it only offered a Medium preference for Environment, due to the significant loss of the old woodland and was the lowest preference of all the options for Safety.
- The cost of Option 13 was equivalent to the average cost of all five options and it offered medium preference for all criteria. Option 13 offered an overall Medium preference for Environment, it scored Low preference in terms of Biodiversity due to the impact on the TUFA Spring and the significant badger sets.
- Option 14 was the second most costly option and was the only option to offer High preference for both Safety and Environment. For this reason, the option emerged as the Preferred Route Option.

7.13. Following the Stage 2 assessment, Option 14 was considered the Preferred Route and a public consultation presenting this option was held on 12<sup>th</sup> April 2016. Following this consultation and consideration of submissions received, the preferred route was determined as Option 14. This Option was advanced through the Section 179/Part 8 statutory consultation planning process. Some minor modifications were made to the scheme by Resolution of the Elected members at a special meeting of 24<sup>th</sup> August 2017 and the scheme was approved which concluded the statutory consultation planning process.

7.14. Having regard to the information provided by the Council in relation to the alternative considered I am satisfied that a significant number of options have been considered in detail by the Council and that the proposed route is the most appropriate route to meeting the community need.

#### 7.15. **Proportionality and Necessity of Level of Acquisition Proposed**

7.15.1. The CPO is based upon a corridor of various width and alignment, with the majority of the works occurring within the roadbed or lands adjacent to the existing route of the R498. An area of concern raised by the objectors is identified as P114-08 & 09 Tom Conway in which there is concern in relation to the removal of direct access to the R498 and the replacement of these entrances with 2 no. direct access points onto the R498. The objector was represented by both Mr. Dawson and Paul Conway, son of the objector. It was stated that the objector is concerned that the removal of direct access onto the R498 will hamper their entrance. Their property is located adjacent to an old

school house which is used as a community facility and attracts 10-20 cars at time of events. This property also attracts antisocial behaviour and has been a source of distress to the objector. It was further stated that the objector is concerned that the use of the same entrance as this facility will hamper his access and he wishes for the CPO to be amended to permit him direct access to the R498.

7.15.2. It was outlined within the submission of the Council to the Oral Hearing that these entrances will be offline from the new road alignment and will remain as currently laid out but the old section of the R498 will under the new scheme form a layby onto which these entrances will enter prior to accessing the R498 from one of two entry points. A point raised by the Council outlined that one of the factors that influence collisions along a road is the multiplicity of junctions / accesses. There are several existing private direct accesses for dwellings, farms and fields along the existing R498 and the majority of these will need to be replaced with direct access to the realigned R498 as there is no alternative, however in areas such as those related to Mr. Conway's objection the number of accesses can be reduced, thus improving the safety of the road.

7.15.3. In the interest of clarity, the objector's entrance will remain but will access a layby prior to accessing the R498, thus there will be a change in the nature of the access.

7.15.4. An additional concern was raised by Tom and Brid Fogarty in relation to the removal of a newly built farm shed, this issue has been examined above under the heading of suitability of lands and will not be repeated hereunder, however it is necessary to make reference to this element of the objection as it is also relative to the proportionality and necessity of the project. As mentioned above the Council consider that land within Plot 116-01 are necessary to provide for a standard gradient at this location.

7.15.5. Having reviewed the information submitted by Tipperary County Council and the objectors and having inspected the lands and conducted an Oral Hearing, I am satisfied that the width and extent of the proposed permanent and temporary land acquisitions are necessary and proportionate in the context of meeting the identified community need.

7.16. Additional Issues Raised by both Objectors.

7.16.1. Engagement in the process



7.16.2. Both objectors raised concerns and expressed dissatisfaction in relation to the level of engagement by the Council in relation to the process. They felt that no one listened to or took their concerns into account in the designing of the works. They both stated that the issues raised cannot be quantified and expressed that the CPO would affect the quality of their lives and livelihoods.

7.16.3. Whilst I acknowledge both objectors' dissatisfaction with the process, I have reviewed the file in relation to the Council Statutory obligations in relation to engagement of landowners and note that the Council complied with its statutory obligations in relation to the notification of landowners in relation to the process and also advertised the process accordingly. I can therefore find no failure in relation to the Council's compliance with the relevant legislation in this regard.

#### 7.16.4. Acquisition and accommodation works

7.16.5. Other issues raised by Brid and Tom Fogarty relate to the acquisition of a well and the replacement of a gate and the suitability of fencing. The Council have acknowledged the location of a well within the CPO lands and stated that the fence is standard fencing specified by Transport Infrastructure Ireland. I consider that such accommodation works are a matter for the arbitration process.

#### 7.16.6. Compliance with EU Law

7.16.7. It was also stated by Mr. Rae that the process is not in accordance with EU law, however no particular law was identified and no specifics in relation to where the Council had failed to comply with such laws were provided.

7.16.8. Thus, having reviewed the information submitted by Tipperary County Council, the objections made and conducted an Oral Hearing as stated above I am of the opinion that there is a clear and pressing need for the proposed road realignment works in order to improve the structure and alignment of the R498.

### 7.17. **Conclusion**

7.17.1. In conclusion, I am satisfied that the process and procedures undertaken by Tipperary County Council have been fair and reasonable, that Tipperary County Council has demonstrated a pressing community need that would be facilitated by both the temporary and permanent acquisition of lands in respect of the lands identified in the Schedule and drawings submitted to the Oral Hearing, that said lands are both suitable

and necessary to meet the community need and that the extent of acquisition is proportionate to the objective being pursued. I therefore consider that the proposed acquisition of permanent and temporary lands relating to the working areas would be in the public interest and the common good and would be consistent with the relevant provisions of the Tipperary County Council 2010-2016.

#### 7.18. **Recommendation**

7.19. I recommend that the Board confirm the Compulsory Purchase Order submitted at the oral hearing held on the 1<sup>st</sup> and 2<sup>nd</sup> December 2020, based on the reasons and considerations set out below.

#### 7.20. **Reasons and Considerations**

7.20.1. Having considered the objections made to the Compulsory Purchase Order, and not withdrawn, the report and recommendation of the Inspector who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the Compulsory Purchase Order, and having regard to the following:

- (a) The substandard structure and safety of the existing route;
- (b) The strategic nature of the scheme in the context of providing increased connectivity to large rural settlements;
- (c) The improvements of road safety resulting from the scheme;
- (d) The community need, public interest served and overall benefits to be achieved from the proposed development;
- (e) The chosen route for the R498 realignment works which constitutes a design response that is proportionate to the identified need;
- (f) The policies and objectives of the Tipperary County Development Plan 2010-2016;
- (g) The submissions and observations made at the Oral Hearing held on the 1<sup>st</sup> and 2<sup>nd</sup> December 2020;

It is considered that, the acquisition of permanent and temporary areas by Tipperary County Council on the lands in question, as set out in the order and on the deposited maps, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

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Sarah Lynch  
Planning Inspector

10<sup>th</sup> March 2021

## **APPENDIX 1: ORAL HEARING SUMMARY**

**Case Reference: ABP-307931-20**

**Development:**

**Venue of Oral Hearing: Online via Microsoft Teams.**

**Date: 1<sup>st</sup> & 2<sup>nd</sup> December 2020**

**Commencement Time: 10:00**

### **Attendees**

Representation on behalf of each Party was as follows:

#### **(a) Tipperary County Council:**

- a. Dermot Flanagan BL –Senior Counsel
- b. John Harte - Solicitor
- c. Brian Beck – Senior Planner Tipperary County Council
- d. John O’Flaherty – Chartered Engineer – Tobins Consulting Engineers

#### **(b) Objectors:**

##### **Brid & Tom Fogarty**

- a. Tom Dawson- Agent
- b. Richard Rea- Agent

##### **Tom Conway**

- a. Tom Dawson
- b. Paul Conway

### **Submission of Tipperary County Council**

Mr. Harte made an opening statement which can be summarised as follows:

- Outlined Order of submissions and explained that Mr Flanagan SC was detained and would join proceedings.
- Request to clarify the remaining objectors.

**An adjournment until 11am was agreed to finalise objection withdrawals.**

**11am – hearing resumed and a number of objections were withdrawn.**

Mr Flanagan made a further opening statement which can be summarised as follows:

- Confirmation of objections withdrawn.
- Order of appearance.

Mr. Beck read from a statement in relation to compliance with relevant planning policy and guidance which can be summarised as follows:

- Location of development and relevant zoning objectives
- Relevant heritage – protected monuments
- Appropriate Assessment
- Environmental Impact Assessment
- Compliance with regional and local planning policy

Mr. O’Flaherty read from a statement which outlined the following:

- Background to the making of the Compulsory Purchase Order – Tobins engaged in 2015 to commence design process for the R498 realignment at Latteragh.
- Tobin’s were engaged for 3 phases – route selection, design and Environmental Assessment reports and Statutory Process.
- Approval for Road was passed by resolution on the 24<sup>th</sup> August 2017.
- Overview of need for the Road alignment – safety, vulnerable road users, alignment, economic, environmental, accessibility and social inclusion.
- Consideration and assessment of Alternatives.
- Compulsory Purchase Order Process.
- Response to submissions.

Mr O’Flanagan read from a statement which outlined the following:

- Substantive law pertaining to CPO
  - Section 213 of the 2000 Act is applicable.

- Section 217 of the Act is applicable and outlines the Boards powers to make decisions on transferred functions.
- Section 143 of the Act is applicable – the Board to have regard to policy and objectives.
- General principles for land acquisition are established in case law.
- The acquisition of land is for the construction of a road development approved in August 2017 under Section 179 of the Planning and Development Act by Tipperary County Council.

Mr. Dawson asked questions on behalf of Brid and Tom Fogarty in relation to Plot 116-01 with regard to plot entrance, the acquisition of a well and the acquisition of a new farm yard which was not there at the time that the CPO was issued. Mr Dawson asked what alternatives were considered to avoid a new shed and if not how much of the shed would be removed. The objectors son who is running the farm also has permission / Section 5 in relation to the construction of another farm shed. Concerns were raised in relation to the operation of the farm and the impact the works will have on it and the matter was stated to not be relevant in terms of compensation as the objectors required that the CPO is amended to retain the shed.

Mr O’Flaherty responded to the objection and stated that the contours at this location are steep and an embankment is required, a standard slope gradient had been designed and encompassed the location of the existing shed. A redesign would be required if the shed was to be avoided.

Mr. Flanagan interjected and stated that the issue is a matter for compensation and redesign is not a matter for CPO. It was further stated that the description of the lands will be amended to include existing new development and will be factored into the arbitration process.

Mr. Dawson rebutted with a final remark, stating that the CPO is not about money for his client it is about their livelihood and intention as a farmer and they wish for their objection to remain. Mr. Dawson expressed his clients dissatisfaction in relation to the level of engagement throughout the process.

Mr. Flanagan responded and referred to the CPO process should the Board grant and the further engagement with objectors which would occur at that stage. He referred to the case of Gunning v Dublin Corporation.

Hearing is adjourned on a number of occasions to facilitate withdrawal of objections.

At 16:31 Mr. Dawson commences submission on behalf of Tom Conway. The submission raises concerns in relation to the reduction of direct entrances from Mr. Conway's lands to the R498. Mr. Dawson states that the CPO effects not only Mr. Conway's property rights but also his social and human rights. His dwelling is located adjacent to a school house which is used frequently for community events. 10-20 cars can be in attendance. Users of the school house park along the road outside Mr. Conway's house causing stress and antisocial behaviour occurs also. Entrances at this location have been reduced from 6 to 2. Mr. Dawson stated that Mr. Conway is seeking to have direct access onto the R498.

Mr. O'Flaherty responds and clarifies at the inspector's request that the 6 entrances are to form part of a layby which will have 2 entrance points onto the R498. The old road will in effect become a layby and the new road will be aligned directly parallel.

Paul Conway, son of Tom Conway spoke on behalf of his father and stated that his father has been stressed by the process and lack of engagement and he felt that the lack of engagement was not acceptable. He reiterated Mr. Dawson's statements in relation to the use and occurrences at the School house which is the neighbouring building to his parents home and that his parents do not wish to use the same entrance onto the R498. He also raised concerns in relation cars parking in front of his parents entrance and that the proposal would exacerbate this.

The hearing was closed for the day.

## **Day 2 – 2<sup>nd</sup> December 2020**

Inspector opened the hearing at 10am.

Mr Rae requests a recess.

Mr. Flanagan confirms updates to the CPO schedule.

Hearing recommenced at 10:45

Mr. Rae, gives update on his client position.

Mr. Flanagan outlines changes to schedule

Discussion regarding withdrawn objections

Hearing recommences at 12:00, a number of objections are withdrawn by Mr. Rae

Final statement by Mr. Flanagan

**I then read a closing statement, and the Oral Hearing closed at 12:12.**