



An
Bord
Pleanála

Inspector's Report ABP 314466-22

Development

Request to make alterations to previously approved N5 Ballaghaderreen to Scramoge road project (application reference number ABP 300493-17)

Location

Ballaghaderreen to Scramoge, Co. Roscommon.

Applicant

Roscommon County Council

Type of Application

Section 146B - Request to alter development approved under Section 51 of the Roads Act 1993, as amended.

Inspector

Pauline Fitzpatrick

1.0 Introduction

- 1.1.1. The requester was granted approval under ref. ABP 300493-17 for the upgrade/replacement of the N5 National Primary Road between Rathkeery and Scramoge in County Roscommon. The requester is now submitting this request to An Bord Pleanála, pursuant to section 146B of the Planning & Development Act 2000 (as amended), for alterations to the terms of that approval as it relates to the permitted development.

2.0 Planning History

ABP 300493-17 – approval granted 17th January 2019 under section 51 of the Roads Act 1993, as amended, for improvements/upgrade of the N5 between Ballaghaderreen and Scramoge in County Roscommon. The application was accompanied by an EIAR and AA.

ABP 300490-17 - A CPO was confirmed under Section 76 of the Housing Act, 1996, as amended, on the same date. A number of clerical errors were rectified by way of Amendment Order ABP 300490M-17.

In summary the scheme comprises:

- 33.4km of National Primary Road to Type 1 Single Carriageway standard,
- 15.4km of realignment of existing roads
- Five roundabouts
- 16 T junctions
- Reconfiguration of a crossroads between the existing N5 and R361 in Frenchpark
- 3 road underbridges and 1 road overbridge
- 4 bridges and 14 culverts
- 290 metres of retaining walls at 3 no. locations
- 9 accommodation underpasses, access roads and accessed

- Other associated works including earthworks, drainage, landscaping, safety barriers, lighting, fencing and accommodation works.

3.0 Proposed Changes

The changes proposed as part of the subject 146B request relate to **three locations** to provide for additional Active Travel measures. Each is accompanied by an Environmental Appraisal report.

3.1. ***A cycling/walking underpass and associated cycleway west of Bellanagare village (N5 mainline Ch12+620)***

- It will provide for a connection between Bellanagare and Frenchpark utilising access tracks incorporated into the original design and the provision of a new cyclist/pedestrian underpass beneath the new N5 road.
- It comprises a 3 metre wide shared footway/cycleway commencing within the verge of the realigned existing N5 road, which will be classified as a regional road, just to the north of the new N5 road. It will then turn off that road onto an access track which serves to provide maintenance access for an attenuation pond before crossing under the new N5 road via an underpass. From there it will utilise another field access track to re-join the verge of the realigned old N5 (to be reclassified as a Regional Road).
- The underpass will not be accessible to vehicular traffic.
- The access track on the south side of the N5 will be shared between the landowner and the active travel facility.
- The underpass will be drained by a positive drainage system and connected to the adjacent access track drainage systems, utilising the same outfall locations.

The proposed works are contained entirely within the CPO boundary.

3.2. **A cycling/walking link towards Elphin village (R369 immediately East of the proposed N61/R369 roundabout, over a distance of 290 metres**

- The proposed active travel route forms part of a larger scheme of Active Travel proposals in the vicinity.

- It comprises a 3 metre wide shared footway/cycleway commencing within the verge of the realigned R369 road connecting to the facility already incorporated into the western verge of the N61 and Shankhill roundabout as part of the N5 project.
- It will facilitate safe access between the parking to the south-west of the proposed Shankhill roundabout, the graveyard to the north-west and the IRA Monument to the War of Independence to the north-east.
- It will cross two direct accesses along the westbound lane of the R369. One provides access to a field and storage/work shed and the 2nd provides access to a field.

The proposed works are contained entirely within the CPO boundary.

3.3. A cycling/walking link at the eastern end of the scheme (between existing N5 at Ch. 53+350 and the end of the realigned N5 at Ch. 53+900)

- It comprises a 3 metre wide shared footway/cycleway and 2 metre segregation zone where adjacent to the carriageway commencing within the verge of the existing N5 south of the realigned N5 at Ch 0+000 along junction 20.
- It separates from the carriageway at approx. Ch 0+100 along junction 20 and runs inside and adjacent to the CPO line to Ch.53+600 along the realigned N5.
- It is outside the CPO boundary between Ch 53+600 and Ch 53+860 and uses an existing road.
- The route crosses the R371. Thereafter it runs inside of the proposed N5 verge within the CPO and terminates at the junction at Ch 54+230.

The works are partially within the CPO boundary. This is to minimise additional construction works required as well as to minimise the overall impact of the scheme.

4.0 Requester's Submission

- Providing safe and dedicated facilities within and between the local communities will improve connectivity between the towns and villages. The

alterations are considered to be in accordance with Government policy to develop active travel facilities to promote a modal shift from the private car to more sustainable modes of transport.

- It is considered that the alterations sought do not constitute the making of a material alteration of the permitted development and would not give rise to significant environmental effects beyond those already considered in the original EIAR and the Board's previously completed EIA.

4.1.1. Environmental Appraisal Reports

Environmental Appraisal Reports for each location accompany the request (3 no.).

In summary:

Population and Human Health

- The Active Travel Proposals will partially alleviate the negative impact identified in the EIAR on community severance between Frenchpark and Bellanagare.
- The works support the potential mentioned in the EIAR to use improvements in the general amenity of towns and heritage attractions to encourage more amenity use and tourism visits to the local area.
- The works will improve safety for vulnerable users.

Biodiversity

- The majority of the alterations are within the scope of what was assessed as part of the permitted development.
- The portion of the works that fall outside the approved CPO will utilise the existing road. No additional land will be used. The route runs outside the edges of the Key Ecological Receptor of local importance (KER20) in the vicinity.
- No new considerations arise.

Soils and Geology

- The portion of the works that fall outside the approved CPO will utilise the existing road. No additional land will be used.

- No additional impacts arising.

Water

- The proposals are not located at a known karst feature or other hydrogeological resource identified in the EIAR.
- The works will incorporate additional drainage measures which connect to the proposed drainage system. The additional contributing areas are minimal compared to that assessed and will have no significant change to the impact assessment contained in the EIAR.

Landscape and Visual Analysis

- There will be a slight reduction in the area of the embankment in the vicinity of the underpass west of Bellanagare but this is not considered significant. Screen planting for property B12-007 will not be impacted.
- The works will reduce the area available for proposed woodland planting between Ch 53+400 and Ch. 53+600 by 18%. The visual impact to the planting would be minimal
- No additional impacts arising.

Noise and Vibration

- No new considerations arise.

Air and Climate

- No new considerations arise.

Archaeology and Cultural Heritage

- The proposed works do not involve the acquisition or disturbance of any additional lands. The lands outside the CPO boundary will utilise the existing road.
- No additional impacts arising.

Architectural Heritage

- No new considerations arise

Material Assets and Land

- The proposed works do not involve the acquisition or disturbance of any additional lands. The lands outside the CPO boundary will utilise the existing road.
- No additional impacts arising.

Cumulative Impacts

- No new considerations in terms of cumulative impacts arise

5.0 **Legislative Basis**

Section 146B. — (1) Subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act.

(2)(a) As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.

(b) Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.

(3)(a) If the Board decides that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.

(b) If the Board decides that the making of the alteration would constitute the making of such a material alteration, it shall —

(i) by notice in writing served on the requester, require the requester to submit to the Board the information specified in Schedule 7A to the Planning and Development Regulations 2001 in respect of that alteration, or in respect of the alternative alteration being considered by it under subparagraph (ii)(II) , unless the requester has already provided such information, or an environmental impact assessment report on such alteration or alternative alteration, as the case may be, to the Board, and

(ii) following the receipt of such information or report, as the case may be, determine whether to —

(I) make the alteration,

(II) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or

(III) refuse to make the alteration.

(3A) Where the requester is submitting to the Board the information referred to in subsection (3)(b)(i) , that information shall be accompanied by any further relevant information on the characteristics of the alteration under consideration and its likely significant effects on the environment including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account.

(3B) Where the requester is submitting to the Board the information referred to in subsection (3)(b)(i) , that information may be accompanied by a description of the features, if any, of the alteration under consideration and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment of the alteration.

(4) Before making a determination under subsection (3)(b)(iii), the Board shall determine whether the extent and character of —

(a) the alteration requested under subsection (1), and

(b) any alternative alteration it is considering under subsection (3)(b)(ii)(II)

are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).

6.0 Assessment

6.1. Consideration of Materiality

- 6.1.1. As noted in the documentation accompanying the request the proposed alterations are to provide for additional Active Travel measures in line with current government policy to encourage a modal shift away from motorised vehicles to more sustainable forms of transport.
- 6.1.2. Works are proposed at three locations and are summarised in section 3 above.
- 6.1.3. The first, to the west of Bellanagare village, provides for a cycling/walking underpass and associated 3 metre wide footway/cycleway. It will provide for a connection between Bellanagare and Frenchpark utilising access tracks incorporated into the original design and the provision of a new cyclist/pedestrian underpass beneath the new N5 road. The underpass will not be accessible to vehicular traffic. The proposed works are contained entirely within the CPO boundary.
- 6.1.4. The second provides for a 3 metre wide cycling/walking link towards Elphin village on the R369 immediately east of the proposed N61/R369 roundabout, over a distance of 290 metres. The proposed works are contained entirely within the CPO boundary.
- 6.1.5. The third is a 3 metre wide cycling/walking link at the eastern end of the scheme (between existing N5 at Ch. 53+350 and the end of the realigned N5 at Ch. 53+900). The works are within the CPO boundary save between Ch 53+600 and Ch 53+860 where it would use an existing road running immediately adjacent. This is so as to minimise additional construction works required as well as to minimise the overall impact of the scheme.

- 6.1.6. The requester considers that the proposed alterations do not give rise to any additional significant impacts over and above those contained in the EIAR for the scheme and which were considered as part of the EIA of the scheme as approved.

Population and Human Health

- 6.1.7. In my opinion no new considerations arise in terms of human beings. The works will have no material impact on noise and dust as assessed. I submit that the proposed alterations will not alter the findings of the EIAR and the EIA carried out by the Board.

Biodiversity

- 6.1.8. The alterations will not result in any additional impact on flora, fauna and avifauna over that as originally assessed in the EIAR. The works outside the CPO boundary are along an existing road with no key ecological receptors in the vicinity. I submit that the proposed alterations will not alter the findings of the EIAR and the EIA carried out by the Board.

Land and Soil

- 6.1.9. The mitigation measures associated with the approved development to manage and control waste during construction will not be required to be changed or altered. The additional earthworks associated with the proposed underpass are minimal in the context of the quantities of excavation required for the approved and will not alter the findings of the EIAR and EIA carried out by the Board

Water

- 6.1.10. The works will incorporate additional drainage measures which connect to the proposed drainage system. The additional contributing areas are minimal compared to that assessed and will have no change to the impact assessment contained in the EIAR. I therefore accept the conclusion that the proposed alterations would not give rise to significant effects over that assessed in the EIAR and the EIA undertaken by the Board.

Air and Climate

- 6.1.11. The dust suppression measures during the construction phase as detailed in the EIAR which accompanied the original application will apply. No new considerations arise.

Material Assets

- 6.1.12. In my opinion no new considerations arise in terms of material assets. No additional land is required to be acquired. The works outside the CPO boundary are along an existing road. I submit that the proposed alterations will not alter the findings of the EIAR.

Cultural Heritage

- 6.1.13. The majority of the works are within the CPO boundary as assessed. The works outside the CPO boundary are along an existing road. Therefore no additional land will be used that was not originally a roadway. I submit that the proposed alterations will not alter the findings of the EIAR.

Landscape

- 6.1.14. In the context of the overall project the alterations to planting required to accommodate the works are minor. They do not impact on the visual impact of the scheme. I submit that the proposed alterations will not alter the findings of the EIAR.

Interaction of the Above and Cumulative Impacts

- 6.1.15. I submit that the interaction of impacts does not materially alter those identified in the EIAR and assessed in the EIA.

Conclusion

I submit that the alterations sought would not give rise to significant environmental effects beyond those already considered in the original EIAR and the Board's previously completed EIA.

6.2. Boundary Considerations

- 6.2.1. The location of the proposed alterations between Ch.53+600 and Ch.53+860 falls outside the CPO boundary of the approved road development. The applicant states that this is in order to utilise the existing road to minimise additional construction works required as well as minimise the overall impact of the scheme.
- 6.2.2. I would refer the Board to other cases which came before it where the changes to developments were made outside of the red line.

ABP-04PM0010 - Proposed alteration to the redevelopment of the Port of Cork Ringaskiddy.

- 6.2.3. The Inspector's report referenced the location of development outside of the red line boundary and considered that this, amongst other effects of the proposed alterations, constituted a material alteration within the meaning of section 146B(2)(a). The Board invited submissions and observations on the proposed alterations and requested an environmental impact assessment from the applicant. Subsequently, the Board decided to alter the subject development having concluded that there would be no significant environmental impacts or significant effects on European sites.

ABP-06D.PM0015 - Proposed alterations to the National Rehabilitation Hospital in Dun Laoghaire-Rathdown

- 6.2.4. The works involved a slight adjustment to the red line boundary. The Board found that the site boundary revision with associated minor increase in landscape buffer zone, would not result in a material alteration to the terms of the development.

ABP 313323-22 – Proposed alterations to a substation and compound, Dunboyne, Co. Meath.

- 6.2.5. The alterations involved the relocation of the access track, part of which was outside the red line boundary. The Inspector recommended that subject to the applicant being requested to make a submission revising the said red line boundary by way of section 146 (2)(b) of the Act the proposed alterations were not material. The request was not made. The Board in its decision considered the proposal alteration not to be material.

Alterations Subject of this Request

- 6.2.6. In this instance, the proposed alterations between Ch 53+600 and Ch 53+860 whilst outside the said red line/CPO boundary are along an existing road and thus within the control of the requestor as Roads Authority.
- 6.2.7. Notwithstanding my conclusions that the proposed physical alterations comprise modest changes to the permitted development and do not, of themselves, result in a material alteration to the terms of the approved development, I am concerned that

the specified works outside of the red line/CPO boundary has the potential to comprise a material alteration on legal or procedural grounds.

- 6.2.8. In order to address this matter, and before making a determination in respect of materiality, I recommend that the Board invite a submission from the applicant, revising the red line/CPO boundary to include the active travel measures between Ch53+600 and Ch 53+860. This information could be sought under section 146B(2)(b) of the Act which reads '*Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.*' (my emphasis). The sub-section of the Act, whilst not specific to the person intending to carry out strategic infrastructure, is broad in scope and does facilitate submissions from persons whom the board consider appropriate.
- 6.2.9. Having regard to my conclusion in respect of the physical alterations proposed and that the small area of additional land affected by the works is on lands under the control of the applicant as Roads Authority, I am satisfied that an alteration to the red line/CPO boundary to include the said existing road would not comprise a material alteration to the permitted development.

6.3. **Finding in Respect of Materiality**

- 6.3.1. Subject to revision of the red line boundary associated with the active travel measures at the eastern end of the scheme between Ch 53+600 and Ch 53+860, I am satisfied that the proposed alterations can be implemented while still ensuring that the approved road project can continue to be met without impediment. The modifications will not alter the character of the permitted development.
- 6.3.2. I submit that no new considerations arise in relation to impacts on the environment which were not considered in the assessment of impacts for ABP 304493-17
- 6.3.3. I am of the opinion, having fully considered the proposed alterations and the development as approved under ABP 304493-17, that the Board would not have determined the proposal differently had the modifications now proposed in the alteration formed part of the said application. In that regard, I consider it reasonable

to conclude that the proposal subject of this request does not constitute the making of a material alteration of the development as approved under ABP 304493-17.

6.3.4. I have considered the provisions of section 146B(2)(b) which provides for, at the Board's discretion, the invitation of submissions from persons, including the public. Save for the above recommendation inviting the applicant to revise the red line boundary and having considered the nature, scale and extent of the alteration, the information on file and the nature, scale and extent of the development granted under ABP 304208 -19 I am of the opinion that the inviting of submissions from the public in this instance is not necessary and is not required for the purposes of the Board in determining the matter.

6.4. **Appropriate Assessment**

Appropriate Assessment Stage 1 - Screening

6.4.1. Under ABP 300493-17 the Board completed an appropriate assessment screening exercise in relation to Natura 2000 sites within a 15 km radius of the application site. 15 no. of the sites were screened out. The Board then undertook an appropriate assessment in relation to the effects of the development proposed on 6 no. sites that were not screened out namely:

- Bellanagare Bog SAC (000592)
- Bellanagare Bog SPA (004105)
- Annaghmore Lough (Roscommon) SAC (001626)
- Cloonshanville Bog SAC (000614)
- Lough Forbes Complex SAC (001818)
- Lough Gara SPA (004048)

6.4.2. The Board concluded that the proposed development, by itself, or in combination with other plans or projects, would not be likely to adversely affect the integrity of this European Sites in view of the site's conservation objectives. A NIS was prepared and submitted as part of the application in relation to PA0047.

6.4.3. The proposed alterations are located within the red line and CPO boundary of the approved development save for 260 metres between Ch 53+600 and Ch 53+860

which would be on an existing road which runs alongside but just outside the CPO boundary on lands in the control of the requestor as Roads Authority.

6.4.4. I note:

- The majority of the alterations are within the scope of what was assessed as part of the approved development.
- The proposed underpass to the west of Bellanagare will incorporate additional drainage measures which will connect to the proposed drainage system. The additional contributing areas are minimal compared to that assessed and will have no impact on the system as designed.
- The portion of the works that fall outside the approved CPO will utilise an existing road. No additional land will be used.

6.4.5. Having considered the Board's determination on appropriate assessment on ABP 300493-17, section 9.3 of the Inspector's Report on the said file, the nature, scale and extent of the proposed alterations relative to the development subject of and approved under ABP 300493-17, and the information on file which I consider adequate to carry out appropriate assessment screening, I consider it reasonable to conclude that the alterations proposed, individually or in combination with other plans or projects, would not be likely to have a significant effect on the European sites in view of the sites' conservation objectives.

7.0 Recommendation

I recommend that the Board decides that the proposed modifications subject of this request do not constitute the making of a material alteration of the terms of the development as approved under ABP 300493-17.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 29th day of August 2022 Roscommon County Council under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of a N5 Ballaghaderreen to Scramoge Proposed Road Development approved under section 51 of the Roads Act, 1993, as amended.

WHEREAS the Board made a decision to approve the proposed development, subject to conditions, for the above-mentioned development by order dated the 16th day of January, 2019

AND WHEREAS the proposed alteration is described as follows:

Active Travel Proposals

AND WHEREAS the Board decided, in accordance with section 146B(2)(b) of the Planning and Development Act 2000, as amended, not to invite submissions or observations from the public in relation to whether the proposed alteration would constitute the making of a material alteration to the terms of the development concerned,

AND WHEREAS the Board decided, in accordance with section 146B(2)(a) of the Planning and Development Act 2000, as amended, that the proposed alterations would not result in a material alteration to the terms of the development, the subject of the approval,

AND WHEREAS having considered all of the documents on file and the Inspector's report, the Board considered that the making of the proposed alteration would not be likely to have significant effects on the environment or on any European Site,

NOW THEREFORE in accordance with section 146B(3)(a) of the Planning and Development Act, 2000, as amended, the Board hereby alters the abovementioned decision so that the approved development shall be altered in accordance with the plans and particulars received by An Bord Pleanála on the 29th day of August 2022, for the reasons and considerations set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.

REASONS AND CONSIDERATIONS

Having regard to:

- (i) the nature and scale of the proposed road development approved under An Bord Pleanála reference number ABP 300493-17,

- (ii) the limited nature and scale of the alterations when considered in relation to the overall permitted development
- (iii) the examination of the environmental impact, including in relation to Natura 2000 sites, carried out in the course of that application,
- (iv) the absence of any significant new or additional environmental concerns (including in relation to Natura 2000 sites) arising as a result of the proposed alterations, and
- (v) the report of the Board's inspector, which is adopted,

It is considered that the proposed alterations would not be material. In accordance with section 146B(3)(a) of the Planning & Development Act, as amended, the Board hereby makes the said alterations.

Pauline Fitzpatrick
Senior Planning Inspector

October, 2022