



An
Bord
Pleanála

Inspector's Report

ABP-314668-22

Development

Monaghan County Council
Compulsory Purchase Order No. 1 of
2022- Ulster Canal Greenway Phase
2, Monaghan Town to Northern
Ireland Border

Location

Co. Monaghan

Planning Authority

Monaghan County Council

Applicant(s)

Monaghan County Council

Type of Application

Compulsory Purchase Order

Objectors

Leslie Turbitt

David Turbitt

Date of Site Inspection

04th of December 2023

Date of Oral Hearing

12th of December 2023

Inspector

Adrian Ormsby

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1.0 Introduction

- 1.1. This report relates to a compulsory purchase order (CPO) sought by Monaghan County Council (MCC) to construct a greenway from close to the Coolshannagh Roundabout Junction on the N12 National Primary Road on the east side of Monaghan Town to the border with Northern Ireland. The proposed Greenway generally follows the line of the Ulster Canal predominantly to the North of the N12 road as it enters Northern Ireland and becomes the A3 in County Armagh.
- 1.2. MCC is seeking to acquire compulsorily the necessary lands to implement the scheme. This includes both the permanent and temporary acquisition of lands, which are shaded light and dark grey, respectively, on the deposited maps accompanying the CPO. The purpose of the temporary acquisition of lands is to facilitate site works associated with the construction of the greenway.
- 1.3. Two objections were received in respect of the CPO from landowners as outlined in Section 6 below. This report considers the issues raised in the objections submitted to the Board and, more generally, the application to acquire lands for its stated purpose.
- 1.4. According to the documentation submitted by MCC the CPO is being made-

UNDER SECTION 76 OF AND THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, (AS AMENDED) 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), AND AS AMENDED AND EXTENDED BY THE PLANNING AND DEVELOPMENT ACTS 2000 TO 2021, THE LOCAL GOVERNMENT ACTS 1925 TO 1919, ROADS ACTS 1993 TO 2015 AND ALL OTHER ACTS THEREBY ENABLING THE COMPULSORY PURCHASE OF LANDS, TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 4 (a) OF THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, AS AMENDED BY THE PLANNING AND DEVELOPMENT ACT, 2000- 2021.

- 1.5. A Part 8 application process for the Greenway previously took place under Reg. Ref. 21/8005, which was approved through resolution of the elected members of the Council on the 05th of July 2001.
- 1.6. The proposed greenway is intended to connect with an existing greenway to the west of and within Monaghan Town and to future sections of the overall cross-border scheme to Middletown in County Armagh. The 'Brief of Evidence' documented submitted by MCC in advance of the Oral Hearing indicates Armagh, Banbridge and Craigavon Borough Council secured planning permission for the section of greenway from the Northern Ireland Border to Middletown in May 2022.
- 1.7. MCC's CPO Engineers Report discusses the need for the project and points to clear sustainability and health benefits associated with the creation of the greenway including its low carbon footprint and the opportunity it affords to general well-being.

2.0 Site Location and Description

- 2.1. The proposed greenway route extends approximately 7.2km along the general route of the Ulster Canal and the direction of the N12 National Primary Road east of Monaghan Town to Ardgonnell Bridge at the Northern Ireland Border. The Ulster Canal is now disused and poorly maintained over the years. It remains largely open in places and covered over in others. The greenway route is located in both public and private ownership.
- 2.2. The route traverses a number of townlands including Tullyhirm, Knockaconny, Drumrutagh, Drumacruttan, Corbeg, Crowey, Skinnagin, Templetate, Tullylish, Tuckmilltate, Killyneill, Killeef, Leitrim, Lisnanore and Tamlat.
- 2.3. The CPO lands are relatively flat and appear to be close to the 50m contour as per OSI Discovery Series Mapping available to the Board. The route and Ulster Canal generally meander from west to east along the route of the N12.
- 2.4. In terms of this CPO and the two objections on file the greenway route traverses the townland of Crowey and crosses the R185. Just east of this regional road the greenway travels to the north of Mr David Turbitt's house before cutting south into lands that the objectors appear to seek possessory ownership off. At the time of my inspection the lands permanently sought appear to be in agricultural use and I would

not describe them as in use for purposes ancillary to residential amenity e.g. a garden. From this point the CPO seeks to permanently acquire lands along the northern towpath of the open canal to a local road at Crowey Bridge. The Council also seek to temporarily acquire a narrow strip of lands along the R185 which includes the grass verge and access road to the house of both objectors and lands to facilitate access and works on the east side before the Crowey Bridge.

2.5. There are no European Sites located in close proximity to the CPO lands. A number of features of architectural heritage are located along and in close proximity to the CPO route including the National Inventory of Architectural Heritage (NIAH) recorded-

- milestone/milepoint¹ and
- the 14th Lock and 13th Lock²

These are generally within the lands occupied/owned by the objectors. Crowey Bridge is also a designated Protected Structure (RPS Ref No. 41101060).

3.0 CPO application and Intended Development

3.1. Documentation

3.1.1. The application documentation includes the following-

- Signed and Sealed-
 - Deposit Maps
 - CPO Schedule
- Copies of Letters issued to affected landowners dated 22/09/2022 including An Post Registered post certificate of posting.
- MCC Chief Executive Order R172/2022 dated 07/09/2022 making the CPO
- Newspaper adverts

¹ <https://www.buildingsofireland.ie/buildings-search/building/41401004/crowey-monaghan> Reg No. 41401004- Rating Regional, categories of special interest- Historical Technical

² <https://www.buildingsofireland.ie/buildings-search/building/41401005/14th-lock-and-13th-lock-crowey-monaghan> Reg No. 41401005, Rating Regional, Categories of Special Interest- Architectural, Technical

- Planners Report dated 22/04/2022
- Engineer CPO Report dated September 2022.

3.2. Part 8 Application 21/8005

- 3.2.1. A Part 8 process previously took place under Reg. Ref. 21/8005, with consent given by resolution of the elected members of the Council on the 05/07/2021.
- 3.2.2. An Appropriate Assessment Screening Report was prepared and formed part of the assessment for the Part 8 process, where it was not considered that the proposed development would be likely to have a significant effects individually or in combination with other plans or projects on a European site and, as such, an Appropriate Assessment (Stage 2AA) was not required.
- 3.2.3. The Part 8 consent for the greenway addressed the relevant planning and environmental considerations arising.

3.3. Description of permitted Greenway and proposed CPO

- 3.3.1. The Part 8 proposal generally permitted a greenway from Monaghan Town's Coolshannagh roundabout (N2 junction with N12) to Ardgonnell Bridge, located on the border with Northern Ireland near the N12. It includes a 5m corridor incorporating a pathway up to 3m wide with a drainage/buffer verge up to 1m on each side. The pathway will consist of an unbound, granular surface course of gravel and dust, with asphalt in certain locations. The permitted proposal includes tock proof timber fencing (1.2m tall) at each side of the greenway where appropriate, as well as chicane railings at road crossing points, four pedestrian timber footbridges for connectivity across the canal and watercourses, underpass guardrails at the following bridges: Drumratagh Bridge; Crowey Bridge; Glebe Bridge and Pipers Bridge, information boards at the termination point in Monaghan Town, together with way-marking and advanced warning signage for users along the route where appropriate, and all necessary associated site works such as route clearance, tree felling where unavoidable, drainage improvements, road junction improvements for pedestrians (dropped kerbs, tactile paving), site levelling/re-grading works and cut and fill earthworks.

3.3.2. There are five no. drawing sheets / sections of the route accompanying the CPO schedule. These can be generally described as follows-

- A wider view Index Map of the overall scheme and includes an aerial photograph
- Four Deposit Sheets outlining-
 - lands subject to the CPO in red,
 - lands to be permanently acquired in light grey
 - lands to be temporarily acquired in dark grey
 - yellow bubble annotations identifying each parcel of land subject to acquisition permanently or temporarily in accordance with the details provided in the associated Schedule.

3.3.3. In terms of the Objections on file the Board are referred to Deposit Sheet 02 of 04 and yellow bubbles 23.1, 23.2, 23.1t and 23.2t. The CPO Schedule indicates these lands are owned by Monaghan County Council but are occupied by the two objectors on file.

4.0 Planning Policy Context

4.1. National Planning Framework (NPF) – Project Ireland 2040 ('NPF')

- National Policy Objective 22- *Facilitate tourism development and in particular a National Greenways, Blueways and Peatways Strategy, which prioritises projects on the basis of achieving maximum impact and connectivity at national and regional level.*
- National Policy Objective 46- *In co-operation with relevant Departments in Northern Ireland, enhanced transport connectivity between Ireland and Northern Ireland, to include cross-border road and rail, cycling and walking routes, as well as blueways, greenways and peatways.*
- Section 3.3 deals with the Northern and Western Region. It identifies-
“Key future planning and development and place-making policy priorities for the Northern and Western Region” which includes-

“Building on the progress made in developing an integrated network of greenways, blueways and peatways that will support the diversification of rural and regional economies and promote more sustainable forms of travel and activity based recreation utilising canal and other routes.”

- Section 8.4 discusses Co-ordination of Investment in Infrastructure and highlights how NPF and the Regional Development Strategy for Northern Ireland provide a basis for long-term co-ordination on infrastructure development, including transport, energy and communications and social and community infrastructure. In relation to Tourism it specifically states-

“Development of..... greenways such as the Ulster Canal Greenway also offer potential for an enhanced tourism offering throughout the border area.”

4.2. Strategy for the Future Development of National and Regional Greenways 2018 (SFDNRG)

- The ‘Focus of this Strategy’ clearly details-

“ Greenways should ideally be in the order of at least 20km in length and preferably longer. In order to bring additional revenue into an area, Greenways should ideally be closer to 40km, similar to the Great Western and Waterford Greenways, as this will usually require an overnight stay for non-local users. In addition, Fáilte Ireland advise, that if Ireland is to be recognised internationally as a world-class activity tourism destination it will need to have the appropriate infrastructure in place in order to motivate international tourists i.e. a number of national Greenways and a spread of regional Greenways that provide a compelling visitor experience.

For the purposes of this strategy, the development of ‘Greenways’ relates to the development of Greenways of scale i.e. for new

developments or extensions of existing Greenways that are more than 20k or shorter distances where it is proposed to join a number of existing Greenways to form a longer, more strategic route.

- The document details-

“Northern Ireland published its Greenways Strategy in 2016 and it includes a number of Greenways that would logically extend across the border. EU funding under INTERREG VA has been made available to a number of these Greenways....Middletown in Armagh to Smithborough in Monaghan.....Many of these Greenways can be extended in the coming years and it will be important to take a joint approach to proposals in this regard.”

- Page 7 of the Strategy describes ‘Greenways’ as-

“..... a recreational or pedestrian corridor for non-motorised journeys, developed in an integrated manner which enhances both the environment and quality of life of the surrounding area. These routes should meet satisfactory standards of width, gradient and surface condition to ensure that they are both user-friendly and low-risk for users of all abilities.”

4.3. Regional and Economic Spatial Strategy 2020-2032 for the Northern and Western Regional Assembly

- The RSES identifies Monaghan as a Key Town in the Region. A Key Future Priority is-

“The development of the Ulster Canal Greenway, which provides a direct sustainable transport mode of regional benefit to healthy living and economic benefit through the development of the tourism offer.

- Section 5.8 is titled ‘Our Natural Networks and refers to Figure 55 on Page 202 shows a map of the region titled- *“Our Natural Networks (Greenways and Blueways)”*. This section then refers to the SFDNRG (section 4.2 above) and specifically includes the following project-

“The Ulster Canal Greenway, (Monaghan County Council, Cavan County Council, Mid-Ulster Borough Council, Armagh, Banbridge and Craigavon Borough Council, Omagh and Fermanagh District Council): 4.2km route open. Work in progress (Phase 2, Smithboro – Middletown, 22km, in progress – Planning Stage).

- The following Regional Policy Objectives (RPO) are relevant
 - RPO 5.18- *The Regional Assembly shall collaborate with Local Authorities, Fáilte Ireland, Waterways Ireland, DTAS, and other relevant stakeholders in developing an integrated network of Greenways across the region’s catchments. To support, and enable the development of sustainable Greenway projects, the NWRA will encourage and promote:*
 - (a) The advancement and growth of Greenways through several Key National and Regional Greenway Projects, which are high capacity, and which can in the medium/long term be extended and interlinked across County Boundaries and with Local Greenways, and other cycling/walking infrastructure.*
 - (b) Prioritisation of Greenways of scale and appropriate standard that have significant potential to deliver an increase in activity tourism to the region and are regularly used by overseas and domestic visitors, and locals, thereby contributing to a healthier society through increased physical activity.*
 - (c) The appropriate development of local businesses, and start-ups in the vicinity of Greenway Projects.*
 - (d) The development of Greenways in accordance with an agreed code of practice.*
 - (e) Collaborative development of Greenways and Blueways, including feasibility and route selection studies to minimise impacts on environmentally sensitive areas.*
 - RPO 5.19- *The Assembly supports the further development of Greenways as part of the Outdoor Recreational Plan for Public Lands*

and Waters in Ireland 2017-2021', as part of an overall improvement of facilities to enhance health and wellbeing across society.

- RPO 6.23- *To provide sustainable travel which will be supported by providing walking and cycling facilities (including Greenway and Blueway projects) as a priority across the region.*
- RPO 6.24- *Support Cross-border sustainable transport, including but not limited to the delivery of the following:*
 - *North-West Multi-modal Mobility Hub*
 - *North-West Greenway*
 - *Ulster Canal Greenway*
- RPO 6.26 *The walking and cycling offer within the region shall be improved to encourage more people to walk and cycle, through:*
.....(c) Development of a network of Greenways.
- RPO 9.1 *Build Inclusive and Compact Places by:..... d)....Developing new offerings in support of existing ventures in the tourism sector, such as greenways, walking trails and other inter-urban connections, based on the wealth of natural and cultural heritage assets and providing links to the Wild Atlantic Way and the Causeway Coast.*
- Chapter 9 is titled '*All Island Cohesion*'. Page 290 provides a 'Case Study'- the Ulster Canal in which it details Phase 3-

Ulster Canal Greenway. The 22km Cross Border project will connect Smithborough in Co. Monaghan with Middletown in Co. Armagh, the greenway will follow the towpath of the Ulster Canal where possible and funding of €5m has already been secured (through Interreg / SEUPB).

- The RSES Glossary describes a Greenway as-

"A recreational or pedestrian corridor mainly for non-motorised journeys developed in an integrated manner which enhances both the environment and quality of life of the surrounding area, more generally associated with cycling."

4.4. Monaghan County Development Plan 2019 – 2025 (CDP)

- At a meeting of Monaghan County Council on the 4th of March 2019, the Elected Members, by resolution, made the Monaghan County Development Plan 2019-2025 (CDP). The plan comes into effect on the 1st of April 2019.
- The CDP sets out a number of relevant policies including-
 - Tourism Policies-
 - *TMP 5 To support the continued development of the Ulster Canal project and the expansion of the Greenway along the route of the Canal through County Monaghan.*
 - *TMP 6 To support the reopening of the Ulster Canal given its tourism and economic potential for County Monaghan and the wider region.*
 - Cycling and Walking Policy
 - *CWP 1 To promote and facilitate the development of walkways, cycleways and recreational routes in appropriate locations throughout the County to deliver the objectives of the County Walking and Cycling Strategy and any subsequent strategy document.*
 - *CWP 2 To promote and encourage the development of walks and cycleways in accordance with the Smarter Travel Policy and to protect established routes from development that would adversely impact upon them.*
 - *CWP 3 To develop, in co-operation and consultation with adjoining local authorities and cross border bodies sections of the Ulster Canal Greenway Network to connect the main urban centres throughout central Ulster.*
 - *CFP 13 repeats CWP- 3.*
 - Protected Structures Policy
 - *BHP 10 The Council aims to conserve the built fabric of the Ulster Canal, Great Northern Railway, historic mills and other*

industrial heritage structures throughout the county and planning permission will be required for their removal or alteration.

- *Policy for Areas of Secondary Amenity- SA5 Ulster Canal and Environs-*
 - *SAP 1 To limit development in Areas of Secondary Amenity Value and to only permit compatible amenity developments where they do not unduly impact on visual amenity.*
- The CDP sets out a number of relevant Objectives including-
 - Strategic Objectives
 - *SO 1 To develop to its full potential each part of County Monaghan in economic, social and environmental terms.*
 - *SO 3 To realise the potential of County Monaghan in the context of its strategic location along the border, adjacent to the eastern economic corridor and to improve linkages and communications between Monaghan and its neighbouring counties.*
 - *SO 4 To support balanced economic development throughout the county by delivering improved infrastructure and services.*
 - *SO 5 To protect and nurture the County's rich natural resources, heritage, tourism assets and amenities along with the environmental quality of the natural and built environment in both the urban and rural areas.*
 - *SO 6 To plan for greater social inclusion and to improve the quality of life of all who live and work in County Monaghan*
 - Tourism Objectives-
 - *STO 3 Encourage and accommodate the reopening of the Ulster Canal*
 - *MPO 9 To support the re-opening of the Ulster Canal in Monaghan Town and any complementary developments along the route of the Ulster Canal, including the proposed Ulster Canal Greenway network.*

- Section 7.18 of the CDP deals with Greenways and states-
 - *“The first phase of the Ulster Canal Greenway project opened in 2013. The 4.5km route travels from the east to west of Monaghan Town along the disused Ulster Canal. Phase 2 of the Ulster Canal project was launched in September 2017. This cross-border project is being led by Waterways Ireland and is being carried out in partnership with Monaghan County Council, Armagh City, Banbridge & Craigavon Borough Council and the East Border Region. The €4.95 million project will extend over a distance of 22km between Smithborough in County Monaghan to Middletown, Co. Armagh and is due for completion in 2021.”*

4.5. Natural Heritage Designations

- There are no SAC's, SPA's, NHA or proposed NHA's considered within close proximity of the site.

5.0 Planning History

- Along route of CPO-
 - 21/8005- Part 8 consent granted for greenway from Monaghan Town's Coolshannagh roundabout (N2 junction with N12) to Ardgonnell Bridge, located on the border with Northern Ireland near the N12- 05/07/21.
Notification of Decision dated 12/07/21
- Traverses CPO boundary in north south direction to west side of CPO route
 - 18/562, ABP-309906-21- 22km of 38kV electricity cables and associated development. Grant 30/06/2023.
- Application pertinent to the objection of Mr. David Turbitt
 - 87/125- erection of house at Crowey, Silverstream, grant 22/03/1987
- There are a number of other small scale developments permitted in reasonable proximity to the proposed CPO boundary but none are considered significant for the purpose of the CPO and this assessment.

6.0 Objections

Three objections were received. One of these was withdrawn in advance of the Oral Hearing. The remaining objections are from the following-

- Paul Boyce & Company Solicitors on behalf of Mr. Leslie Turbitt (H18DH26) in respect of his lands at Crowey, Silverstream, Co. Monaghan and
- Maria Connolly Solicitors on behalf of Mr. David Turbitt (H18VV65) in respect of his lands at Crowey, Silverstream, Co. Monaghan.

The main concerns raised are similar for both objectors and can be summarised as follows-

1. There are legal proceedings underway for both objectors in Monaghan Circuit Court as regards to ownership of lands including part of which is subject to the CPO. The objectors claim adverse possession of the lands but the Council are registered land owners with PRAI and as per the CPO schedule. Copies of Equity Civil Bills including Equitable Indorsement of Claim are submitted.
2. Further information was requested from the Council regarding the proposed temporary acquisition of lands to the east and west of the relevant landholding and works to be done. The response from the Council was not considered acceptable. Copies included.

7.0 Oral Hearing

- 7.1. An Oral Hearing was held on Tuesday, 12th of December 2023. Representatives of both objectors and Monaghan County Council were represented at the Hearing and oral submissions were heard on behalf of all the parties. The proceedings of the Oral Hearing are briefly summarised in Section 11, Appendix A of this report and referenced in the assessment section below (Section 8.0). The proceedings were also recorded and are available to the Board on an audio file.
- 7.2. It was clear from the submissions of both objectors that there are no objections in principle to the CPO or the proposed greenway.
- 7.3. It was determined from the Oral Hearing that the main matters of concern regarding ownership of the lands as detailed in the CPO Schedule remained the main issue of

objection. In this regard the representatives of the objectors acknowledged that this concern was most appropriately served at a later stage of the acquisition process i.e. following the Boards determination, yet their clients instruction was to seek a deferral of the CPO application before An Board Pleanála until such time as the civil proceedings between the objectors and the Council had concluded.

- 7.4. MCC submitted a 'Brief of Evidence' document in advance of the hearing that was circulated to the objectors in advance. It was evident from the Oral Hearing that the contents of this submission (most notably 'Appendix C- Responses to objections') adequately addressed the objectors concerns in relation to the temporary acquisition of lands.

8.0 Assessment

8.1. Introduction

- 8.1.1. The proposed CPO is in relation to a section of the Monaghan Greenway, which is intended to be constructed generally along or close to the Ulster Canal from Monaghan Town's Coolshannagh roundabout (N2 junction with N12) to Ardgonnell Bridge, located on the border with Northern Ireland near the N12. This section of the proposed greenway will connect with the existing 4.5km stretch of the Monaghan Greenway at Monaghan Town. It will extend eastwards to the Northern Ireland Border where it will adjoin and connect to a permitted greenway from the Northern Ireland border to Middletown³.
- 8.1.2. The Local Authority is seeking to compulsorily acquire the necessary lands to implement the Part 8 planning permission for the greenway scheme permitted under 21/8005. The plots that are subject to the proposed CPO comprise the land, and site working areas, deemed necessary by MCC for the construction of the greenway. MCC considers this appropriate having regard to the need to meet the required infrastructural standards and that the land take is proportional to its requirements.
- 8.1.3. The proposed greenway and CPO site extends west to east approximately 7.2km from the north east outskirts of Monaghan Town along the general direction of the

³ <https://ulstercanalgreenway.com/2022/06/06/planning-permission-granted-from-border-to-middletown/>
accessed 15/12/23

Ulster Canal and the N12 National Primary Road. The route generally meanders and is low lying and mainly flat located close to the 50m contour as per the OSI Discovery Series mapping available to the Board.

8.1.4. My assessment of the proposed CPO considers the general principles/tests to be applied in assessing CPOs of this nature, issues raised in the written objections submitted to the Board and the points made at the Oral Hearing (OH). The established principles/tests for CPO cases are-

1. The works to be carried out should accord with, or at least not be in material contravention of, the policy and objectives contained in the statutory development plan relating to the area.
2. There is a community need that is to be met by the acquisition of the lands in question.
3. The project proposed and the associated acquisition of lands is suitable to meet the community need.
4. Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.
5. The extent of land-take should have due regard to the issue of proportionality.

8.1.5. Following these, the assessment will address the specific issues raised in the objections lodged. These are-

- A dispute over title to lands subject to CPO and
- clarity on proposed works requiring temporary acquisition of lands.

8.1.6. The written objections were supplemented by submissions from all parties at the Oral Hearing. The Board are advised that it is clear from the Oral Hearing that the only remaining matter of contention for the objectors is the dispute over title to land. The legal representatives on behalf of both objectors generally confirmed their clients approval of the project in principle and not having any specific objections based on the established tests for determining CPO's.

8.2. Compliance with Planning Policy including County Development Plan

- 8.2.1. Section 4.0 of this report sets out the general planning context at National, Regional and Local Level.
- 8.2.2. This CPO seeks to acquire lands in order for the local authority to implement planning permission 21/8005 for the greenway which was determined by resolution of the elected members. The planning context for the subject greenway is clearly and broadly established across higher policy tiers including National Policy Objective 46 of the NPF and Regional Planning Objective 6.24 of the RSES as well as the Strategy for the Future Development of National and Regional Greenways 2018.
- 8.2.3. There are a number of pertinent policies and objectives set out in the Monaghan County Development Plan 2019-2025 that support this project. In particular I note the following tourism policy and objective-
- *TMP 5 To support the continued development of the Ulster Canal project and the expansion of the Greenway along the route of the Canal through County Monaghan.*
 - *MPO 9 To support the re-opening of the Ulster Canal in Monaghan Town and any complementary developments along the route of the Ulster Canal, including the proposed Ulster Canal Greenway network.*
- 8.2.4. Having considered the above and noting no specific objections in relation to planning policy were raised by the objectors in their written submission or at the Oral Hearing, I am satisfied the proposed greenway and lands subject to the CPO accord with and are entirely consistent with planning policy and in particular the Monaghan County Development Plan 2019-2025. The proposal does not materially contravene any stated policy or objective. This general test/principle in terms of assessing the CPO has been met.

8.3. Community Need

- 8.3.1. The submissions and matters discussed through the Oral Hearing clearly indicate there is no dispute as regards the community need for the greenway to which the lands subject to this acquisition application are required.

- 8.3.2. As the greenway, and its associated works, are required to pass through various sections of land owned by third parties, it is necessary for the Council to acquire these land parcels from such owners whether voluntarily or compulsorily as is the case with this application.
- 8.3.3. Section 1.2 of the CPO Engineers Report dated September 2002 sets out the need for the project. It discusses objectives focusing on more sustainable modes of transport, reductions in CO2 emissions, modal shift from cars to walking/cycling and construction of a cross border greenway. It also details objectives including recreational amenities, provision of cycling infrastructure, development of local tourism and associated amenities and creation of a high quality environment to live and work. Importantly it highlights improving connectivity between communities on both sides of the border as well as clear sustainability and health benefits from the greenway.
- 8.3.4. Having considered the above, the documentation on file and having visited much of the proposed greenway it is clear to me the greenway, would deliver on the objectives detailed above, would represent a very valuable tourist attraction for the area, would have the ability to deliver additional benefits for local community in terms of being an important cross-border initiative which encourages social cohesion between communities, more sustainable forms of mobility, and would result in improved local opportunities for people to walk and cycle as a means of transport other than driving.
- 8.3.5. While no adverse effects have been raised in the objections to this CPO I do note the proximity of the scheme to the two objectors homes and other homes along its route. It is likely there may be some residential amenity concerns that have not been raised through CPO objections. However, the relevant test in this context is whether on balance the overall benefits of the proposed scheme to the wider community would outweigh these more localised impacts.
- 8.3.6. I am satisfied the proposed greenway would be an appropriate means of meeting the detailed objectives of the project and would be in the interests of local and wider community need and thereby deliver an amenity providing significant community gain. It is clear to me the proposed greenway would benefit the local and wider community and that the CPO is therefore justified in the interests of the common

good. The community need for this scheme is therefore established and that this general test/principle in terms of assessing the CPO has been met.

8.4. Suitability of Lands to serve the Community Need

- 8.4.1. In order to consider this test it is appropriate to revisit the first test and general compliance with planning policy. It is clearly established through these planning tiers that greenways such as that proposed are reflected in planning policy created by the democratic will of the people at national, regional and local level. Specifically CDP policy and objective TMP 5 and MPO 9 support the continued development of the Ulster Canal Greenway project along the route of the Canal through County Monaghan.
- 8.4.2. Therefore, it is evident that the need for the greenway should follow the route of the existing Ulster Canal as much as possible. The route chosen clearly achieves this while allowing for some deviations due to existing constraints and circumstances.
- 8.4.3. The objectors to the CPO have clearly indicated at the Oral Hearing that they have no objections based on the suitability of lands to serve the community need. In this regard the Board are advised that both properties of the objectors straddle either side of the existing canal with the canal actually forming an attractive features of their personal amenity space. In my opinion, to propose the greenway along the canal through this residential area would significantly intrude on the objectors residential amenity. Instead, MCC have proposed a significant portion of the greenway away from this residential amenity area and through agricultural lands to the north of Mr David Turbitt house. This land is in separate ownership and no objection has been received from that landowner. The greenway will then return towards the canal towpath. This return is into pasture land which appear to be lands that Mr Leslie Turbitt claims ownership of. This is considered an entirely appropriate and suitable diversion from the original canal route and will best serve the community need at this point as well as the amenity needs of the objectors.
- 8.4.4. Having considered all of the above and noting no objections were received on this point I am satisfied the lands identified in the CPO are required for the construction of the proposed greenway and that they are entirely suitable to meet this criteria in relation to serving the community need. The suitability of the lands is therefore

established and that this general test/principle in terms of assessing the CPO has been met.

8.5. Consideration of Alternatives

- 8.5.1. In order to consider this test it is again appropriate to revisit the earlier tests. The project proposes a greenway along the route of the Ulster Canal. This is set out in planning policy, achieves a community need and the lands required are considered suitable to meet the community need.
- 8.5.2. An alternative to the project would be to not deliver the Ulster Canal Greenway, or to deliver a greenway that is not along the Ulster Canal. It can be argued that these alternatives would be contrary to policies and objectives of all relevant planning policy as discussed earlier, notwithstanding proper planning and sustainable development.
- 8.5.3. In order to reasonably deliver a greenway along the Ulster Canal, options for alternative routes would be minimal save for local circumstances. Such routes must also be considered in the context of the actual project that has received planning permission under 21/8005. The Board will be aware that this planning consent cannot be re-considered through this CPO application. Therefore a pragmatic consideration of alternatives and route selection is required in the context of this test. I am not aware of any provisions for the Board to extend or revise the site boundary of the CPO nor can it amend the permitted Part 8 at this stage.
- 8.5.4. Section 1.5 of the Engineers CPO Report accompanying the application discusses the background to the project and the route selection in which a technical scoping study and a constraints assessment were carried. In terms of the subject proposal 5 key areas were assessed to determine which side of the canal would be more suitable for the Greenway. The route options are provided in Appendix A of the Engineers Report with the constraints shown in Appendix B. The route options were assessed and scored against the criteria outlined on page 10 of the Engineers Report with a preferred route chosen based on the highest overall score. The recommended route is shown in Appendix D of the report.
- 8.5.5. In terms of the objectors properties the Board will note the considerations for preferred route appear to include a 'red route' and an 'orange route' either side of the

canal through the lands where both objectors homes are located. This route is described in the constraints assessment table as the shorter route. The route considerations also include a circuitous 'purple route' and 'green routes' north and south of the objectors homes including along the R185.

- 8.5.6. The Board are reminded that neither objector has raised any concerns as regards the alternatives considered including the choice of the preferred route.

Notwithstanding this, I am satisfied the Council have engaged in a thorough assessment of route options in order to deliver on national, regional and local policy, to deliver a project of community need and the lands chosen are suitable to meet that need. The preferred route forms the basis of the Part 8 planning permission which has been approved through the resolution of elected members of the local authority. I can therefore only conclude the considerations necessary for this CPO test have been met.

8.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 8.6.1. The CPO proposes permanently acquiring 92 parcels of land and temporarily acquiring 64 parcels of land. The Schedule and Deposit Maps submitted with the CPO application details each parcel of land including the quantity, description and situation of the land. This includes those lands which the two objectors raise concerns over. The objectors lands are indicated as numbers-

- 23.1 (0.2194ha, grassland/agricultural land))
- 23.2 (0.0007ha, disused canal)
- 23.1t (0.0071ha, verge)
- 23.2t (0.0295ha, disused canal)

- 8.6.2. The Board are reminded that the objectors raise no concerns regarding the proportionality and necessity for the level of acquisition proposed.

- 8.6.3. Having considered the preceding CPO principles/tests, I am satisfied the process and procedures undertaken by Monaghan County Council (MCC) seeking confirmation of the CPO have been fair and reasonable, that the Council has demonstrated the need for the lands and that all the lands being acquired are both

necessary and suitable to facilitate the provision of Ulster Canal Greenway Phase 2 from- Monaghan Town to Northern Ireland Border

- 8.6.4. Having regard to the protection afforded to property rights as set out in the Irish Constitution and the European Convention on Human Rights, I consider that the acquisition of lands as set out in the CPO schedule and on the deposited maps pursues, and is rationally connected to, legitimate objectives in the public interest, namely the delivery of the Ulster Canal Greenway Phase 2 from Monaghan Town to Northern Ireland Border
- 8.6.5. I am also satisfied that MCC has demonstrated that the means chosen to achieve those objectives only impair the property rights of the affected landowners including the objectors, as little as possible. In this respect, I have considered reasonable alternative means of achieving the objectives referred to and I am satisfied that MCC has established that none of the alternatives are such as to render the means chosen and the CPO made by MCC unreasonable or disproportionate especially as regards to property rights.
- 8.6.6. The effects of the CPO on the rights of affected landowners including the lands the two objectors claim ownership of, are proportionate to the objectives being pursued. I am further satisfied that the proposed acquisition of these would be consistent with policies and objectives of the Monaghan County Development Plan 2019-2025 including TMP5 and MPO9. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.

8.7. Issues Raised by Objectors including at the Oral Hearing

- 8.7.1. Three written objections to the CPO were received by An Bord Pleanála. One of these was withdrawn in advance of the Oral Hearing held on the 12/12/23. The written submissions of the two remaining objections highlight two concerns-

- A dispute over title to lands subject to CPO and
- clarity on proposed works requiring temporary acquisition of lands.

These written objections were supplemented by oral submissions at the Oral Hearing. The parties at the Oral Hearing were represented as follows-

- Monaghan County Council by Mr. Michael O'Donnell B.L.

- Mr. Leslie Turbitt by Mr. Laurence Masterson B.L. and Mr. Paul Boyce Solicitor.
- Mr. David Turbitt B.L by Mr. Oliver Costello

Title to land

- 8.7.2. The **first issue** relates to purported ownership of the lands identified in the CPO schedule as 23.1, 23.2, 23.1t and 23.2t. MCC have detailed themselves as the 'Owner(s) or Reputed Owner(s)' in the CPO schedule and listed the two objectors as 'Occupiers(s)'. During questioning at the Oral Hearing Proceedings it was confirmed that MCC are the registered landowners as per the PRAI.
- 8.7.3. The two objectors are family members and they share the same objections to the CPO. They each have 'Equity Civil Bills' before Monaghan Circuit Court in which they seek orders confirming (inter alia) adverse possession of their homes and the associated lands. These are in place since 2018 and 2019 and the matters disputed remain unresolved. It is their position that the CPO should not proceed until such time as the Courts have formally determined their cases.
- 8.7.4. The Council contend in their 'Brief of Evidence' written response to the objections that matters such as land ownership and compensation for same are inappropriate at an Oral Hearing and will be dealt with through a further stage subsequent to the Oral Hearing.
- 8.7.5. From the Oral Hearing submissions it seemed clear to me that both representatives of the Objectors shared the Council's understanding and in particular the fact the Board have no jurisdiction to make a determination as to the title of the subject lands. However and in summary, it was their position representing their clients, that they should seek assurances that there would be no circumstances in which a decision by the Board could be interpreted or relied upon by MCC in aid of its defences to both civil proceedings and in the absence of same an adjournment⁴ or deferral of the Boards decision would be appropriate.

⁴ Following Mr. Masterson Closing Statement, in which he sought a deferral of a decision from ABP, Mr. O'Donnell interjected arguing the request for an adjournment represented a new matter that the Board should not entertain. Having listened back to the Oral Hearing recording I am satisfied that during his initial oral

- 8.7.6. MCC's legal representative firmly argued in response to the submissions at the Oral Hearing that it is entirely inappropriate for MCC or ABP to intermeddle in proceedings that are before the Court. The legal proceedings in this regard have no significance or should not be relied upon for consideration in respect of this CPO procedure. Mr O'Donnell did offer his view and as a matter of law and general principle that no decision of the Board would create any prejudice to or affect any proceedings before the Court.
- 8.7.7. Mr O'Donnell then highlighted the sole matters the Board are required to address through the CPO process i.e. those in sections 8.2-8.6 above. He highlights that the representatives of both objectors accept that this is the case and that they have no substantive objection to the types of matters the Board are required to address. The Board should note, I asked the Objectors specifically if there were any objections to the established tests the Board will have regard to. Both representatives confirmed they had no such objections on the basis of those tests.
- 8.7.8. I have reviewed the written submissions in full and asked questions at the hearing in relation to same. While I do not consider the following information particularly significant to the Boards determination on this CPO they should be aware that-
- MCC appear to have granted planning permission to the second objector Mr. David Turbitt for a house under planning reference number- 87/125. While I have not been able to determine the planning application site boundary it is evident this home is located just to the south of the greenway and the proposed temporary acquisition of land is required along part of the entrance and roadside boundary to this home.
 - Mr. David Turbitt's Equity Civil Bill documentation and the PRAI mapping submitted with his written objection identifies his claim to lands marked 'B'. In this regard it appears to me that his claimed lands are not in any way affected by the proposed 'permanent' acquisition of lands which fall completely within

submission Mr. Masterson did request on his client's behalf that the Boards confirmation would abide or would be adjourned until the determination of the circuit court proceedings. He then specifically sought a deferral during his closing statement. I am satisfied this matter did not represent the introduction of a new matter at the Closing Statement stage.

I also note Mr. Costello did not specifically seek an adjournment or referral during his oral submission but did say it would be inappropriate for the CPO to be made at this stage until the proceedings in the circuit court are determined. In my opinion the content of his earlier submission was such to suggest an adjournment or deferral was sought as he requested in his closing statement.

the lands marked 'A' and such lands are instead claimed by the first objector Mr Leslie Turbitt.

- 8.7.9. I appreciate the concerns of the objectors as they are serious matters of contention relating to their homes and adjoining lands. However, I see no reason why the Board should consider adjourning or deferring their decision on this CPO on the basis of the objections received and supplemented at Oral Hearing i.e. until a resolution of the civil proceeding. A significant amount of time has already passed since the CPO application seeking confirmation was submitted to An Board Pleanála and the provisions of the Planning and Development Acts provide the Board with powers to confirm the order with, or without modification, or it may refuse to confirm the order. Having considered all of the above, **I am satisfied the first matter of objection for both parties is not a matter for the Board to determine.** The Board may therefore wish to consider the provisions of section 216 (1) (c) of the Planning and Development Act and if the objections received relates exclusively to matters which can be dealt with by a property arbitrator.

Temporary acquisition of land

- 8.7.10. The second issue relates to the nature and extent of works required regarding the proposed temporary acquisition of lands to the east and west of the relevant landholding i.e. land parcels 23.1t and 23.2t. These are described in the CPO schedule as a 'verge' and 'disused canal' respectively.
- 8.7.11. MCC submitted a 'Brief of Evidence' Document in advance of the Oral Hearing in which they set out their response to the objections in Appendix C. With reference to the temporary acquisition of lands the Council explain-
- *23.1t = The existing verge along the public road and along the front of the private access is proposed to be temporarily acquired to replace the existing boundary fence and to carry out verge levelling/landscaping works. No works are proposed to the entrance of the private access lane itself. Access will be maintained at all times to the properties on the private access lane. Gates will be provided in the site security fencing which will be manned by the contractor. Estimated duration of these works is 2-3 days.*
 - *23.2t = The existing Bed of the Ulster Canal and adjacent Crowey East Lock Walls are proposed to be temporarily acquired to allow a working area for the*

contractor to carry out the proposed conservation works to the Lock Walls. Works will comprise vegetation clearance, stone masonry repairs, and repointing where necessary. Estimated duration of these works is one week. No permanent works are proposed to the bed of the Ulster Canal within this area, proposed conservation works to the lock walls will not permanently alter the layout or character of the area but will aim to improve the condition of the Ulster Canal Heritage features.

8.7.12. From the submissions made by the representatives of both objectors at the Oral Hearing it is clear there are no longer objections as regards clarity of the works required to facilitate the temporary acquisition of lands.

8.7.13. I have considered the works detailed above and the need for the temporary acquisition of 23.1t and 23.2t. I am satisfied these works are appropriate in the context of the proposed project and comfortably fall within the remit of the tests necessary to confirm this CPO. In this regard I am satisfied the **second issue of objection has been adequately addressed and resolved.**

9.0 Recommendation

9.1. I recommend that the Board **CONFIRM** the subject Compulsory Purchase Order

10.0 Reasons and Considerations

Having considered the objections made to the compulsory purchase order, the written submissions and observations made to the Oral Hearing held on the 12th of December 2023, the report of the Inspector who conducted the Oral Hearing into the objections, the purpose of the compulsory purchase order to facilitate the delivery of the Ulster Canal Greenway Phase 2 from Monaghan Town to the Northern Ireland Border and also having regard to the following-

- (i) the provisions of National Planning Framework- Project Ireland 2018-2040, the Regional and Economic Spatial Strategy 2020-2032 for the Northern and Western Regional Assembly and in particular the Monaghan County Development Plan 2019-2025 – where the Development Plan clearly supports

the delivery of the scheme for which the CPO is proposed as per policy TMP5 and objective MPO9,

- (ii) the community need to acquire lands to provide for a Greenway, the public interest served and overall benefits, including social cohesion between the Republic and Northern Ireland, provision of walking and cycling infrastructure to be achieved from the delivery of the Ulster Canal Greenway,
- (iii) the suitability of the lands and the necessity of their acquisition to facilitate the provision of the greenway in close proximity to the Ulster Canal
- (iv) the appropriate consideration of alternatives to deliver the project,
- (v) the proportionality and necessity for the level of acquisition proposed having regard to protection afforded to property rights as set out in the Irish Constitutional and European Convention on Human Rights and
- (vi) the overall design response, which has been appropriately tailored to the identified need,

it is considered that the acquisition of lands by Monaghan County Council, as set out in the Compulsory Purchase Order and on the deposited maps, is necessary for the purpose stated, which are legitimate objectives being pursued in the public interest, and that the CPO and its effects on the property rights of affected landowners are proportionate to those objectives and justified by the exigencies of the common good.

It is considered that the permanent and temporary compulsory acquisition of the lands comprising the Compulsory Purchase Order by Monaghan County Council are necessary for the purpose stated in the Order, Schedule, and Deposited Maps, and that the objections made cannot be sustained having regard to this necessity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby
Planning Inspector

21st of December 2023

11.0 List of Appendices

11.1. Appendix A: A brief summary of Proceedings at the Oral Hearing

Background

An Oral Hearing (OH) was held on Tuesday, 12th of December 2023 in relation to the proposed compulsory acquisition sought by Monaghan County Council (MCC) to construct a greenway from Monaghan Town to Northern Ireland Border. It was held remotely at the offices of An Bord Pleanála using Microsoft Teams software. The following made submissions at the Oral Hearing.

1. Submissions on behalf of Monaghan County Council (MCC)

- Michael O'Donnell, BL representing MCC)– *legal context*
- Paul Clerkin MCC- *Project Manager*

2. Submissions by Objectors

- Leslie Turbitt represented by Laurence Masterson, BL (instructing solicitor Paul Boyce also in attendance)
- David Turbitt represented by Oliver Costello BL

3. Opening of Oral Hearing

- The Inspector formally opened the hearing at 09.45am but delayed proceedings to 10.00am due to absence of objecting parties and a discrepancy in the start time as per the agenda with the arranged Teams meeting time.
- At c.10.00am and following some introductory remarks, and confirmation of attending parties and who would be contributing, it was requested that the Local Authority make its formal submission.

4. Submissions by Monaghan County Council

- Mr O'Donnell opened on behalf of MCC
- Mr Paul Clerkin Project Manager
 - give a brief overview of the CPO scheme and Greenway Project

5. Submissions by Objectors, elaborating on written submissions

- At c.10.36am Mr. Laurence Masterson BL proceeded with an oral submission on behalf of the first objector Mr. Leslie Turbitt.
 - This submission made clear from the outset the objector did not want to disturb or interrupt a beneficial project for the area.
 - The primary issue of concern pertained to purported title of the subject lands which are subject to civil proceedings in the Circuit Court.
 - The second matter of objection regarding temporary acquisition of lands was largely resolved based on the content of MCC submission in advance of the hearing.
- At c.10.49am Mr. Oliver Costello BL proceeded with an oral submission on behalf of the second objector Mr. David Turbitt.
 - This submission largely endorsed the submission of Mr Masterson on behalf of first objector.
 - Not an issue of the greenway or substance of CPO but instead is an issue of the title to the property.
 - Slight difference to first objection and their civil bills is Mr David Turbitt applied for and received planning permission 1987.
 - The second matter of objection regarding temporary acquisition of lands not a matter of substantial contention based on the content of MCC submission in advance of the hearing.

6. Councils Response

- At c.11.16am MCC set out their response to both objections as one.

- Only one issue raised with the Mr Costello adopting Mr Masterson's approach. It would be inappropriate for MCC to intermeddle with proceedings before the courts. The proceedings should not form any part or consideration of this CPO procedure.
- Mr O'Donnell put forward a statement of law that no decision of the Board would affect any proceedings before the Courts.
- The submissions of the objectors are misconceived and here are no substantive objections or dispute over the matters which the Board are required to address.

7. Questioning between the Parties

- At c.11.27am questioning between the parties commenced. Each objector raised one question each, however, no new significant matters arose. MCC declined the opportunity ask questions.
- The Inspector posed some questions to all parties relating to clarity over the lands in question, the contents of information provided in the written submissions as part of the Civil Bills, the extent of land each objector claimed ownership of and the nature of the objections as regards the proposed scheme.

8. Closing Comments

- At c.11.57am Michael O'Donnell provided his Closing Statement
- At c.12.00pm Mr Masterson provided his Closing Statement including his acknowledgment that Mr. O'Donnell had detailed no prejudice would be created in the context of the Circuit Court proceedings and that his clients instruction is to seek a deferral of the CPO decision until resolution of Court proceedings.
 - Mr. O'Donnell interjected at the end of this submission as he believed a new submission was made i.e. seeking adjournment. I am satisfied a

new matter was not raised, please see section 8.7.5 and footnote 4 of assessment.

- At c.12.05pm Mr. Costello provided his Closing Statement. He indicated his clients instructions are to seek a deferral until the Civil proceedings over title are determined.
 - Mr. O'Donnell again interjected at the end of this submission regarding the matters the Board are required to address which does not include the Civil proceedings.

8. Closing of Oral Hearing

- The Inspector made some brief final comments and thanked the participants.
- It was confirmed that a report would be prepared and presented to the Board, who will make a determination on the proposed CPO in due course.
- The Inspector closed the Oral Hearing at c.12.10pm.