



An
Bord
Pleanála

Inspector's Report

ABP-317544-23

Development

Fingal County Council Compulsory Purchase (R126 Portrane Road Footpath Project) Order 2023

Location

townland of Ballalease North in the Electoral Division of Rush-Lusk, Co. Dublin

Planning Authority

Fingal County Council

Applicant(s)

Fingal County Council

Type of Application

Compulsory Purchase Order

Objector

Niall Sudway on behalf of J. Vaughan Electrical Contractors

Date of Site Inspection

23rd August 2024

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1.1. This is an application by Fingal County Council (FCC) for confirmation by the Board of a Compulsory Purchase Order (CPO) for the R126 Portrane Road Footpath Project ('the subject site').
- 1.1.2. The site is located on the eastern side of Donabate town and relates to a section of the R126 public road, extending from the west of Carr's Mill estate to the east of Martins Lane. Along this stretch of road there is a mix of development, with a number of residential developments accessed from the road, including Carr's Mill and The Priory. A few shops are located within a small neighbourhood centre on the southern side of the road. Off street, perpendicular parking spaces are located to the front of the shop units. St. Patricks School is located on the northern side of the R126.
- 1.1.3. The Board has received one objection to the CPO from the landowner J. Vaughan Electrical Contractors Ltd. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property.

2.0 Application of the CPO / Proposed Development

Rationale for Acquiring the Lands

- 2.1.1. The CPO includes for the permanent acquisition and the temporary acquisition of properties identified on the local authority deposit map which comprises an overall area of some 244 sq. m. The order is made pursuant to Section 76 of the Housing Act, 1966 (as amended) and all other necessary Acts, thereby, enabling the compulsory purchase of lands published in accordance with article 4(a) of the Third Schedule to the Housing Act, 1966 (as amended).
- 2.1.2. The stated purpose for the acquisition of the lands is for the purposes of footpath construction, road resurfacing, drainage improvement works, associated infrastructure and all necessary, ancillary and consequential associated works traversing the townland of Ballalease North in the County of Fingal including:
 - (a) to acquire permanently compulsory the lands, including the substrata thereof delineated in red and the coloured light grey permanent acquisition described in Part 1 of the Schedule 2 hereto and shown on the map marked Fingal

County Council Compulsory Purchase Order 2023 and sealed with seal of the local authority and deposited at the offices of the local authority.

- (b) To acquire temporary compulsory the lands, including the substrata thereof delineated in red and coloured dark grey temporary acquisition described in Part 1 of the scheduled here 2 and shown on the deposited map.
- (c) To acquire permanently compulsory the section of the right of way of this section of the wayleave described in Part 2 of the schedule hereto.
- (d) To acquire temporarily compulsory the sections of the private rights of way and section of wayleave described in Part III of the Schedule hereto.

Statutory Basis

- 2.1.3. The CPO has the seal of the Council affixed on the 4th July 2023 and was advertised on the 6th July 2023 in the Dublin Gazette. Formal notice was issued to the affected landowners on 5th July 2023. The application was lodged with An Bord Pleanála on the 6th July 2023.
- 2.1.4. Having regard to the modest nature of the proposed CPO and the nature of the grounds of objection submitted, it was determined that an Oral Hearing was not required.

Application Documentation

- 2.1.5. The application documentation includes the following:
 - 3 copies of the sealed map (Drawing No. F463-R126-Portane Road CPO-0200 Rev 01).
 - 3 copies of the sealed order.
 - 2 copies of the Dublin Gazette, 6th July 2023, in which notice of the making of the CPO was published (page 12).
 - Copy of certified statement of service of notice indicating the name and address of person on whom notice was served and the manner of service.
 - Copy of correspondence served on interested parties.
 - Copy of Chief Executive's Order EETCD/0260/2023, dated 3rd July 2023.

- Copy of certificate of Mr. Paul Carroll, Senior Engineer (Planning and Strategic Infrastructure Department), dated 29th June 2023.
- Copy of certificate of Mr. Malachy Bradley, Senior Planner (Planning and Strategic Infrastructure Department), dated 28th June 2023.

3.0 Planning History

3.1.1. Subject Site

Reg. Ref. PARTXI/005/19: In December 2020, Fingal County Council granted approval for a proposed development including the following works:

- Widening of the section of the R126 road between the entrance to Carr's Mill estate and Martins Lane to 6.5m;
- Resurfacing of the section of the R126 road between the entrance to Carr's Mill estate and Martins Lane;
- Widening of the footpath on the northern side of the R126 to 2.5m along this section, from the entrance to Carr's Mill estate to Martins Lane;
- Partial demolition and setting back of the gable end of a building currently set to the edge of the existing footpath between Carr's Mill estate and St. Patrick's National School;
- Demolition of associated auxiliary buildings next to the building currently set to the edge of the existing footpath between Carr's Mill estate and St. Patrick's National School;
- Junction improvement at the Carr's Mill estate junction onto the R126;
- Introduction of a signalised crossing next to St. Patrick's National School;
- Introduction of a raised table next to St. Patrick's National School;
- Widening of the existing bus lay by at St. Patrick's National School;
- Provision of new gulleys and gulley collectors to improve surface water drainage;
- All associated site works.

4.0 Policy Context

4.1. Fingal Development Plan 2023-2029

- 4.1.1. The Fingal Development Plan 2023-2029 ('Development Plan / CDP') was made on 22nd February 2023 and came into effect on 5th April 2023.

4.2. Zoning Objectives

- 4.2.1. The R126 road, which is the subject of this application is not subject to any zoning objective, however there are several applicable land use zoning objectives within the vicinity of the proposed works which relate to the plots of land for acquisition as follows:

- Zoning Objective 'RS' Residential – Provide for residential development and protect and improve residential amenity.
- Zoning Objective 'LC' Local Centre – Protect, provide for and/or improve local centre facilities.
- Zoning Objective 'CI' Community Infrastructure – Provide for and protect civic, religious, community, education, health care and social infrastructure.
- Zoning Objective 'OS' Open Space – Preserve and provide for open space and recreational amenities.
- Zoning Objective 'HA' High Amenity - Protect and enhance high amenity areas.

- 4.2.2. Highly Sensitive Landscape Area (Sheet 14)

The area is located within a highly sensitive landscape.

- 4.2.3. Architectural Conservation Area

Portrane ACA is located to the eastern end of Portrane Road.

4.3. Relevant Development Chapters and Policy Objectives

Table 2.10: Remaining Zoned Residential Capacity from Fingal Development Plan 2017–2023 of the Development Plan identifies Donabate, which includes Portrane as a self-sustaining growth town.

Policy CSP32 – Donabate LAP: Facilitate development on zoned residential lands within the settlement boundary of Donabate as prescribed in the Donabate LAP. Support the provision of the necessary social and community infrastructure including recreational facilities and strengthen and enhance the public realm, providing improved levels of connectivity and permeability.

Objective CSO48 – Pedestrian and Cycleways in Donabate: Provide for a comprehensive network of pedestrian and cycle ways linking residential areas to one another, to the town centre, schools, the recreational campus at Ballymastone and the railway station.

Objective CSO50 – Active Travel Connections Between Donabate-Rogerstown Park and Lusk-Rush: Investigate all options in looking at the delivery of active travel connections between Donabate-Rogerstown Park and Lusk-Rush.

Walking and Cycling:

The following policies support walking and cycling, with a focus on increased provision of walking, cycling and public transport infrastructure.

Policy CMP3 – Integrated Land-Use and Transport Approach.

Policy CMP7 – Pedestrian and Cycling Network.

Policy CMP9 – Prioritisation of Pedestrian and Cyclists.

Objective CMO5 – Improvements of the Pedestrian and Cyclists Environment.

Objective CMO10 – Walking and Cycling Infrastructure.

Policy CMP12 – Public Realm.

Objective CMO15 – Public Realm and Development.

Objective CMO16 – Existing Street Space and Active Travel.

Road Improvements:

The following policies are relevant to the proposed road improvement scheme:

Policy CMP15 – Safe Routes to School Promote walking and cycling for school trips through support and engagement with the ‘Safe Routes to School’ and the ‘Green Schools Travel Programme’.

Policy CMP30 – Roads Infrastructure Prioritise new road developments that facilitate improvements in the overall efficiency of the transportation network including through the provision of new bridge crossings or new cycling and walking infrastructure.

Policy CMP32 – Sustainable Roads Infrastructure Prioritise changes to existing roads infrastructure that underpins sustainable development, maintains road safety and network efficiency.

Policy CMO36 – Strategic Roads Network Maintain and protect the safety, capacity and efficiency of National roads and associated junctions in accordance with the Spatial Planning and National Roads Guidelines for Planning Authorities 2012, the Trans-European Networks (TEN-T) Regulations and with regard to other relevant national and regional policy documents, as required.

Portrane ACA:

The following policies are relevant:

Policy HCAP14 – Architectural Conservation Areas Protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible.

Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

4.4. Donabate Local Area Plan 2016 (extended to 2026)

4.4.1. Section 3.1 Transportation Strategy

The Government's key goals of achieving Smarter Travel can be achieved through the following measures in the Donabate LAP:

Promote an increase in walking and cycling through a network of safe, inter-connecting walkway / cycleways which link residential areas, Donabate village centre, Donabate Rail Station, schools, and recreational facilities.

- Objective 3.4 Implement local and strategic traffic relief measures to improve traffic freeflow and safety – Donabate Village and on road networks serving

schools through phased construction of a Distributor Road and a series of internal link roads through the LAP lands.

- Objective 3.6 Ensure the construction of the following cycleway/footpath improvements in tandem with development:
 - Link path/route from Rahillion LAP Lands south to St Patrick's Boys and Girls National Schools.
- Objective 3.8 Prioritise the movement of pedestrians and cyclists in proximity to public transport nodes and improve the walking and cycling environment in tandem with the emerging public transport and vehicular network.
- Objective 3.9 Continue to ensure walking and cycling facilities and networks are designed so that they are safe and meet the needs of people with disabilities.
- Objective 3.12 To promote the provision of a dedicated set-down facility to serve Scoil Padraic Callini and St Patrick's Boys National School on lands adjacent to the existing school sites, in collaboration with the Department of Education and Skills and School Authorities.

4.5. Regional Policy

4.5.1. The Regional and Economic Spatial Strategy for the Eastern and Midland Region, 2019 ('RSES')

The 'Regional and Economic Spatial Strategy for Eastern and Midland Region, 2019 ('RSES')' includes relevant planning policies and objectives in relation to the development of strategic development areas including Donabate.

TABLE 5.1 Strategic Development Areas and Corridors, Capacity Infrastructure and Phasing of the RSES states in relation to the short-term phasing and enabling infrastructure for Donabate will include "DART expansion, distributor road and railway bridge, social infrastructure, local area water network and storage upgrades".

4.6. National Policy

4.6.1. National Planning Framework (NPF) - Project Ireland 2040

The acquisition of the subject site to facilitate the improvement of the pedestrian, cycling and road network in Donabate is consistent with National Strategic Outcome 3 to Strengthened Rural Economies and Communities to “*Invest maintaining regional and local roads and strategic road improvement projects in rural areas to ensure access to critical services such as education, healthcare and employment*”.

National Strategic Outcome 7 – Enhanced Amenities and Heritage states “*Attractive places include a combination of factors, including vitality and diversity of uses, ease of access to amenities and services supported by integrated transport systems and green modes of movement such as pedestrian and cycling facilities. Appealing places are also defined by their character, heritage, and sense of community. This includes attractive buildings and street layouts, civic spaces and parks and regeneration of older areas and making places feel safe through active use and design*”.

4.6.2. **Design Manual for Urban Roads and Streets, 2019 ('DMURS')**

DMURS states that:

- *Public Realm Strategies may address broader strategic issues similar to an LAP or Masterplan, but they are more closely associated with detailed design outcomes. In some cases, Public Realm Strategies may include detailed material palettes and construction specifications.*
- *Better street design in urban areas will facilitate the implementation of policy on sustainable living by achieving a better balance between all modes of transport and road users. It will encourage more people to choose to walk, cycle or use public transport by making the experience safer and more pleasant.*

4.6.3. **The Architectural Heritage Protection Guidelines for Planning Authorities, 2011**

The Architectural Heritage Protection Guidelines for Planning Authorities ('the Architectural Heritage Protection Guidelines') are a practical guide for planning authorities and for others who must comply with Part IV of the Planning and Development Act 2000 on the protection of the architectural heritage.

The Guidelines stress the importance of protecting and enhancing the curtilage of, and views, of and into Protected Structures. In this regard, they state the setting of an area, together with views in and out of it, can contribute greatly to its overall character and should always be considered when assessing its importance.

5.0 The Objection

5.1. One objection has been received by the Board on behalf of J. Vaughan Electrical Contractors (Plot: 20). A second objection was submitted and was subsequently withdrawn. The main concerns raised are summarised as follows:

- The scheme is unwarranted at the location of the property and will disproportionately affect the retail unit by virtue of the removal of parking to the front of the property.
- The compensation paid will not replace the value of the lost car parking spaces.
- Unclear as to how the local authority will maintain access to the property during construction.
- The relocation of the bus stop will create a traffic hazard by blocking the sight lines from vehicles reversing out of the existing car parking.
- The CPO constitutes a violation of the objectors' constitutional right to the quiet enjoyment of his property.

6.0 Assessment

6.1. Overview

6.1.1. The proposed CPO is for confirmation by the Board of a Compulsory Purchase Order (CPO) in relation to the construction of a footpath, including road resurfacing, drainage improvements and associated works along the R126 at Ballalease North, Portrane, Co. Dublin.

- 6.1.2. The site accommodates a section of the R126 extending from west of Carr's Mill estate to east of Martins Lane, including various residential areas, shops and a school site.
- 6.1.3. The Board has received one objection to the CPO from the property owner Mr. J. Vaughan Electrical Contractors (Plot: 20). This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the lands.
- 6.1.4. Fingal County Council state that the acquisition of the land is necessary for the completion of the Fingal County Council R126 Portrane Road Enhancement Project and that the works are necessary to achieve the stated objectives in the Fingal Development Plan and the Donabate Local Area Plan in relation to the provision and improvement of active travel facilities.

The project will provide a suitably wide and safe footpath for pedestrians to use in the vicinity of two national schools (St. Patricks' Boys National School and Scoil Phadraic Cailini) and will help create lower speed environment thereby improving road safety for all road users, particularly for pedestrians and other road users.

- 6.1.5. My assessment of this case considers the issues raised in the written objection to the Board, my observations on site, and the general principles to be applied in assessing CPOs of this nature.
- 6.1.6. For the Board to confirm the subject CPO proposal, it must be satisfied that Fingal County Council has demonstrated that this CPO is clearly justified by the common good. It is generally accepted that there are five test criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property. These are that:
- i. There is a community need that is to be met by the acquisition of the lands in question.
 - ii. The project proposed and associated acquisition of lands is suitable to meet the community need.
 - iii. 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.

iv. Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.

v. The extent of land-take should have due regard to the issue of proportionality.

6.1.7. Furthermore, the Board should consider whether the acquisition will have an excessive or disproportionate effect on the interests of the affected persons.

6.1.8. The proposed CPO is assessed below in the context of the above tests prior to addressing the specific issues raised in the objection lodged.

6.2. Community Need

6.2.1. The community need for the proposal is referenced in the reports submitted by the Senior Engineer and the Senior Planner of Fingal County Council submitted as part of this CPO application. The Local Authority states that the acquisition of the land is necessary for the realisation of the R126 Portrane Road Footpath project as provided for under the permitted Part 8 development (Reg. Ref. PARTXI/005/19).

6.2.2. The objector states that the works are unwarranted and will disproportionately affect the retail unit owned, will remove vital car park parking spaces, and will cause a traffic hazard and the loss of sightlines from vehicles reversing out of the existing car parking.

6.2.3. In my view and following my physical inspection of the site, I noted the existing parking to the front and side of the small neighbourhood centre. However, the parking spaces, in particular to the front of the retail units, are not marked out or delineated as designated parking bays, and at time of my inspection I observed some dangerous movements from cars entering and exiting these established parking spaces. While I acknowledge the loss of the parking spaces to the front of the objectors' business which would have an adverse impact on the land if the property acquisition were to be approved. However, the relevant test here is whether – on balance – the overall benefits accruing to the wider community outweigh the localised impact on the individual. I also note that a separate scheme of compensation is available as a form of redress to compensate for any loss incurred. Notwithstanding, I consider that the proposed improvement works will improve the existing haphazard parking arrangement at this location. I also note that there is

parking to the side of the retail unit. Additionally, the improvements to the footpaths in the vicinity will, in my view, increase pedestrian footfall to these units.

- 6.2.4. Concerns have also been raised in respect to the relocated bus stop, which will give rise to a traffic hazard. The existing bus stop is located to the front of the school, on the opposite side of the neighbourhood centre. Following my observations at site visit, I consider that the existing location of the bus stop, creates a traffic hazard and any improvement proposed to the existing arrangement would be welcomed and would address any existing traffic hazard at this location.
- 6.2.5. Therefore, and in having regard to the benefits outlined above, it is clear in my opinion that the proposed project would constitute an appropriate means of meeting the stated objectives of the R126 Portrane Road Footpath project and would be in the interests of community need and of the common good. The proposed acquisition of the lands identified on Deposit Map (drwg. no. F463-R126-Portrane Road CPO-0200 Rev 01) is in accordance with national, regional and local policy, including several planning objectives outlined in the Development Plan. I consider that the implementation of the project would help to deliver an enhanced public realm for the area, promote pedestrian and traffic safety and improve accessibility.
- 6.2.6. In summary, a failure to acquire the property and 'building around' the site would prevent the full delivery of the overall road footpath project. It would take away from the other public realm enhancements and streetscape improvements which can be implemented and would result in an inferior pedestrian environment overall. The works would be a significant and important community gain, in my opinion, and aligned within meeting the needs of the community.
- 6.2.7. I conclude that the proposed CPO would benefit the wider community and that it is justified in the interests of the common good. I conclude that 'the community need' for this scheme has been established and this principle in terms of assessing the CPO has been shown to be met.

6.3. Suitability of Lands to Serve the Community Need

- 6.3.1. One of the CPO tests requires consideration of whether the proposed acquisition of the land would serve the community need, and whether the lands is suitable to meet this need.

- 6.3.2. The Local Authority confirmed that the total area of land proposed to be acquired is 244sqm. This information is shown on the relevant Deposit Map, which is on the file (drwg. no. F463-R126-Portrane Road CPO-0200 Rev 01). This includes the full extent of the lands in the area subject to the land acquisition. The CPO would affect 77 no. landowners.
- 6.3.3. The CPO relates to a section of the R126 road extending from the west of Carr's Mill estate to the rear of Martin's Lane and is required to deliver the Portrane Road Enhancement Project, which includes footpath widening, road widening, road resurfacing, drainage improvements and associated infrastructure works for this section of the road.
- 6.3.4. I am satisfied that the land which is subject to this CPO is suitable and required to accommodate the proposed project and that this is in the interest of serving the community need.

6.4. Compliance with Planning Policy (including County Development Plan)

- 6.4.1. The proposed acquisition of the subject land is part of a wider interconnected project comprising various road enhancement upgrades in Donabate. The works seeks to enhance pedestrian, cycling and traffic safety within the public domain in Donabate. The project was approved by the elected members on December 2020 under a Part 8 application (Reg. Ref. PARTXI/005/19).
- 6.4.2. The Fingal Development Plan 2023 - 2029 includes several policies and objectives which are consistent with the acquisition of the site and to achieve the aims of the Portrane Road Footpath project. These are cited under Section 4.1.1 of my report above. I draw particular attention however, to Objective Donabate 5, Objective MT17 of the Development Plan, and Objective 3.8 of the Donabate LAP, which are in relation to the development of a network of pedestrian and cycleways linking residential areas, connectivity to schools to minimise barriers to walking to school and to provide safe pedestrian facilities.
- 6.4.3. Section 2.4.6 ('Compulsory Purchase Orders') of the County Development Plan states that where the context so requires and once identified, the use of Compulsory Purchase Orders (CPOs) will be pursued in as timely a manner as possible under the relevant legislation, for the betterment of the community as part of Active Land

Management measures. Section 2.4 (Page 55) states that active land management measures, provided for under legislation, are to ensure that land hoarding is discouraged, and that development potential is released through available mechanisms. In my view, one such legislative option available to the Council – insofar as it is used properly and correctly and in accordance with the relevant procedures – is the power to compulsorily acquire land.

- 6.4.4. The Architectural Heritage Protection Guidelines for Planning Authorities (2011) seek to enhance built heritage and promote care and maintenance of protected structures. While a portion of the land subject to the CPO is located within the Portrane ACA, having regard to the scale and nature of the works proposed I do not consider that the works will negative impact on the character or setting of the ACA and would be acceptable. In any event the works will improve the visual amenity of the road carriage way and footpaths generally in the area.
- 6.4.5. In conclusion, I am satisfied that the purpose of the proposed CPO is in compliance with national, regional and local planning policy, including the Fingal Development Plan 2023-2029.

6.5. Consideration of Alternatives

- 6.5.1. There are two alternatives in this case; i.e., the 'do-'nothing' scenario, which would be annulment of the CPO, or to approve the CPO and therefore permit the Council to compulsorily acquire the site.
- 6.5.2. The 'do nothing' scenario would mean the existing situation remains and the improves to the footpaths, road surfacing and drainage improvement works would not be realised. This would not prevent other streetscape enhancements and works from taking place, however, conversely, the acquisition of the site would facilitate the full extent of the proposed R126 Portrane Road Footpath project, as per the project, and allow FCC to provide improved and safe pedestrian facilities, improve road surface, provide traffic calming thus improving road safety and will improve road drainage.
- 6.5.3. The objector states that the works an unnecessary and the impact the acquisition of lands would have on their constitutional property rights.

- 6.5.4. Noting the nature of the works I consider that there are no other sites, or property, in the surrounding area which need to be acquired to achieve the stated purposes of the project. The CPO application was therefore needed for the subject sites only, and the acquisition of these lands is required to facilitate the Portrane Road Enhancement Project and delivery of the overall scheme.
- 6.5.5. The Senior Engineer and Senior Planner have prepared statements and reports on the application. The Senior Engineer certifies that the land proposed to be temporarily and permanently acquired are necessary, sufficient and suitable for the purposes of the project.
- 6.5.6. In terms of what would happen if the site were not acquired, I note that the Council state that the key purpose of the project is to provide for improved streetscape, pedestrian connectivity, accessibility to the existing school sites and improved safety and this would be able to be achieved without the approval of CPO. This purpose relates to 'R126 Portrane Road Footpath as a central feature of an enhanced and improved public realm, improving connectivity and accessibility at this location in Donabate.
- 6.5.7. I have reviewed the deposit maps, including the Proposed Plan (F463-R126-Portrane Road CPO-0200 Rev 01). I consider that a proportion of the wider proposed public realm improvements and related works could still be delivered independent of acquiring the objectors' site (Plot: 20). However, I consider that the exclusion of the objectors' site would significantly undermine the design arrangement and unification of the streetscape at this important confluence between where the sites, the school and the neighbourhood centre meet. It is clear to me that the removal of the objectors' site from the proposed enhancement works would be a significant 'lost opportunity' in terms of facilitating the envisaged improved linkages, connectivity, and legibility – both physical and visual – in this part of Donabate and would lead to a lack of cohesion, integration and consistency.
- 6.5.8. In summary, I am satisfied that the relevant test in relation to consideration of alternatives has been shown to be met.

6.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 6.6.1. One of the criteria required to be satisfied is consideration of whether the measures proposed under a Compulsory Purchase Order will have an excessive, or disproportionate effect, on the interests of the affected person(s).
- 6.6.2. I consider that the delivery of the project, including an enhanced and improved public footpath, road network at the location of the subject site, would benefit all future users in the long run, including local people, tourists, and visitors to this part of Donabate. The project would also improve the access and egress to the existing schools in the immediate vicinity, which is a key objective of the County Development Plan and of other relevant national and regional planning policy and guidelines.
- 6.6.3. I acknowledge that the acquisition of these lands would have undeniable negative effect on the third parties due to loss of land, parking, and disturbance. The Board will know that this type of impact on private property can only be justified and necessitated by the exigencies of the common good, and that the CPO application process must have regard to the principles of social justice and proportionality.
- 6.6.4. However, whilst I accept that there would be certain negative, but unavoidable, impacts caused by the CPO on the affected landowners I consider its overall impact proportionate to the objective being pursued. I am satisfied that the extent of the proposed amount of land-take is acceptable and does not exceed the requirement of the scheme.
- 6.6.5. Following the CPO process, I note that the landowners may be liable for compensation. However, this is a matter for a separate forum. I note that such issues relating to arbitration and compensation payable lie outside the scope of this case, which is exclusively concerned with land acquisition matters only. However, it would provide potential redress for the landowner and compensate for loss incurred.
- 6.6.6. In summary, I am satisfied that the process and procedures undertaken by the Local Authority as part of this CPO application process have been fair, reasonable and proportionate. Fingal County Council has demonstrated the need to acquire the lands and that the property sought to be acquired is both necessary and suitable to facilitate the R126 Portrane Road Footpath project. I acknowledge that there would

be certain an unavoidable, but necessary impact incurred by the landowner. However, the impacts are proportionate to the objective being pursued, in my opinion, when considered on balance against the benefits that would be derived by the community.

- 6.6.7. I am also satisfied that the acquisition of the site lands and extinguishment of the identified rights of way is consistent with national, regional, and local planning policy, as outlined in Section 7.4 of my report above. In this regard, I have considered Objective Donabate 5, Objective MT17 of the Development Plan, and Objective 3.8 of the Donabate LAP, which are in relation to the development of a network of pedestrian and cycleways linking residential areas, connectivity to schools to minimise barriers to walking to school and to provide safe pedestrian.
- 6.6.8. In summary, I consider that Fingal County Council has demonstrated that the CPO meets the relevant criteria for establishing that the proposed acquisition of the lands is justified by the common good. I conclude that the CPO is necessary and proportionate to the community need and I do not consider that the extent of land-take proposed is excessive for its intended purpose.

7.0 Recommendation

7.1. Having regard to the above, I conclude that:

- the acquisition of lands under the CPO would serve a community need that advances the common good,
- the particular land is suitable to meet that need,
- the proposal does not materially contravene the development plan, and
- alternatives have been considered, and that there is no alternative which is demonstrably preferable,
- the proposed acquisition is proportionate and necessary.

I recommend that the Board **CONFIRM** the Compulsory Purchase Order based on the reasons and considerations set out below.


8.0 Reasons and Considerations

8.1. Having considered the objection made to the compulsory purchase order, the purposes for which the lands are to be acquired as set out in the compulsory purchase order, 'Fingal County Council Compulsory Purchase Order (R126 Portrane Road Footpath Project), 2023', and having regard to the following:

- i. the constitutional and European Human Rights Convention protection afforded to property rights,
- ii. the approval of a proposed development for improvement works which also form part of the overall lands under the Part 8 Process (Reg. Ref. PARTXI/005/19),
- iii. the community need, public interest served and overall benefits to be achieved through the delivery of the Project,
- iv. the policies and objectives of the Fingal Development Plan 2023-2029, which are not materially contravened, and
- v. the observation made, and
- vi. the report and recommendation of the Inspector,

it is considered that the permanent acquisition of the lands in question, as set out in the Order, Schedule, and deposited map by Fingal County Council, is necessary for the stated purpose, which is a legitimate objective being pursued in the public interest, and that the CPO and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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.



Emma Nevin
Planning Inspector

23rd September 2024