



An
Bord
Pleanála

Inspector's Report PL06D.CH3299

Development

DLR County Council Compulsory
Purchase (M50 Junction 14 Link
Road) Order, 2016

Planning Authority

Dún Laoghaire Rathdown County
Council

Third Party

Aviva Life and Pensions UK Ltd.

Date of Oral Hearing

1st February 2017

Date of Site Inspection

24th January 2017

Inspector

Gillian Kane

Contents

1.0	Introduction.....	3
2.0	Site Location and Description	3
3.0	BACKGROUND.....	4
3.1.	Part 8 Development Process.....	4
4.0	Proposed Development	6
5.0	COMPULSORY PURCHASE ORDER	7
6.0	OBJECTIONS TO THE ORDER.....	8
7.0	PLANNING POLICY CONTEXT	11
7.1.	Greater Dublin Area Transport Strategy 2016-2035.....	11
7.2.	Design Manual for Urban Roads and Streets.....	11
7.3.	The Regional Planning Guidelines for the East Region 2010-2022	11
7.4.	Dún Laoghaire Rathdown County Development Plan 2016-2022.....	12
7.5.	Sandyford Urban Framework Plan (SUFP)	12
8.0	ORAL HEARING	14
9.0	ASSESSMENT	15
9.6.	Community Need	16
9.7.	Land is suitable for proposed development.....	18
9.8.	Compliance with the Development Plan.....	19
9.9.	Alternatives Assessed.....	20
9.10.	Issues Raised by the Objector	22
10.0	CONCLUSION AND RECOMMENDATION	24
11.0	DECISION	25
	Appendix 1 Oral Hearing Summary	
	Appendix 2 Documentation submitted at Oral Hearing and copy of Recording	
	Appendix 3 Photographs, Maps and Policy Documents	

1.0 Introduction

- 1.1. This report refers to an application by Dún Laoghaire Rathdown County Council for the confirmation of Compulsory Purchase Order (M50 Junction 14 Link Road) no. 2016. One objection to the making of the CPO was received by the Board.
- 1.2. The development underlying for which the CPO was made is described as:
 - The construction of a new link road between the existing signalised roundabout at the M50 junction and Blackthorn Road
 - replacement of the signalised roundabout at Junction 14 with a signalised junction
 - Construction of a new signalised junction on Blackthorn Road
 - Improvements to pathways, cycleways and crossings and improvements to the quality of the public realm locally
 - Upgrading of the public lighting in the area
- 1.2.1. The Compulsory Purchase Order had the seal of the Council affixed on the 30th September 2016, Drawing no. RPO/LA-01-06 was sealed on the 5th of October 2016 and the CPO was advertised publically on the 12th of October 2016.

2.0 Site Location and Description

- 2.1. The lands subject of the CPO are located in the Sandyford Business Estate, formerly known as the Sandyford Industrial Estate. The proposed road scheme runs from the roundabout at Junction 14 of the M50, northwards through ESB lands, through a service yard lying between two existing warehouses owned by Aviva, north through lands in the ownership of Eir, part of which is under construction and joins with the existing Blackthorn Road. The route of the road proposal travels west on Blackthorn road to a point just west of the junction with Heather Road and eastwards to a point close to the junction of Blackthorn Road and Carmanhall Road.
- 2.2. Photographs and maps in Appendix 3 serve to describe the site and location in further detail.

3.0 BACKGROUND

3.1. Part 8 Development Process

3.1.1. The proposed ESB link road project has been subject to the process set out under in Part XI of the Planning and Development Act, 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001, as amended (Planning Authority reg. ref. PC/07/13 refers). On the 20th November 2013, the Council gave notice that they proposed the following works:

- the construction of approx. 350m of single two-lane carriageway road with a central island, a north bound bus lane, cycle tracks, verges, footpaths, public lighting, road drainage and signage
- a new signalised controlled junction at the tie-in point to the existing network at Blackthorn Road
- a link from the proposed ESB Link Road to Arena Road providing a further 145m length of new single carriageway
- the provision of new pedestrian and cycle crossings
- improvements will also be made to the existing Blackthorn Road at the approaches to the new junction.

3.1.2. The report prepared for the Part 8 process as submitted to the Council on the 14th April provides the background to the proposed road development and how it forms part of the Sandyford Urban Framework Plan (SUFP). A traffic study undertaken as part of the plan determined that the predicted increase in permitted development in Sandyford required a number of additional road and public transport infrastructure elements. The subject road development is stated to be an essential infrastructure element as it provides for additional future development with a new access to junction 14 of the M50. The development was assessed against the Economic Development Strategy of the Regional Planning Guidelines 2010-2022, the 2010 Dún Laoghaire Rathdown County Development Plan and the Sandyford Urban Framework Plan. The development was subject to **AA screening**, ultimately finding that the proposed development is not likely to have any significant effects on any Natura 2000 site.

3.1.3. The scheme was also **screened for EIA**, concluding that the proposed development did not exceed any of the thresholds prescribed in the Roads Act that would trigger a mandatory requirement to conduct an EIA and prepare and EIS. The report notes

that an EIS was prepared for the South Eastern Motorway Scheme but that the current proposal does not significantly change that development. The report notes that an **Environmental Report** in the format of an EIS was prepared for the Part 8 and that the sub-threshold development is not likely to have any significant effects on the environment.

- 3.1.4. The Part 8 Planning Environmental Report describes the background to the scheme, the alternatives considered, traffic, the impact of the proposed development on human beings, noise and vibration, air quality and climate, hydrology and hydrogeology, soil, flora & fauna, landscape and visual impacts, material assets and architectural, archaeological and cultural heritage. The report also recommended mitigation measures.
- 3.1.5. A **planning assessment** states: section 5.1.1 Note 1 in the SUFP was included as at the time of publication no preliminary design work had been carried out. The assessment states that the proposed road development has been designed in accordance with DMURS and co-authored by the NTA. The assessment notes that the link to Arena Road is a shared street – a low speed (30kph), low volume road with cyclists & motorists sharing the carriageway.
- 3.1.6. The report refers to the **Managers report** prepared by the Council. Each of the submissions to the Council was addressed in detail with a Managers response and a Managers Recommendation. The report concluded with a recommendation that the road project proceed.
- 3.1.7. At a meeting of April 14 2014, the Council declared the resolution to proceed with the proposed development in accordance with the drawings which were on display and any such minor and immaterial alterations to the plans and particulars of the development, subject to the following amendments:
 1. At the ESB link road and the M50 junction tighten corner radius at the north-east corner of junction
 2. At M50 junction and north-east corner provide a footpath / cycle track as a direct route through the landscape area subject to the availability of the required land.
 3. At the Blackthorn Road junction provide an advance stop line and the extension of the on-road section of the cycle lane southwards.

4. At the Blackthorn Road cycle track (west to east direction) provide off-road route for cyclists.
5. Provide cycle track in place of shared surface at Blackthorn Road junction
6. At Blackthorn road east, northeast bound segregate cycle track at this location by 75mm above road level and 50mm below footpath level.

4.0 Proposed Development

- 4.1.1. I note that the development underlying the CPO, as described in the Order does not include a link from the new road to the existing cul-de-sac at Arena Road as provided for in the Part 8 development.
- 4.1.2. The CPO seeks to acquire land in order to provide for a new single carriageway link road of approx. 350m between Blackthorn Road and the roundabout at junction 14 of the M50. The development, as described in Schedule Part 1 is:
 - Lands comprising of the approach / exit ramps off the M50 motorway, approach / exit from the bridge over the M50, connecting onto the N31 dual carriageway and approach to the ESB depot,
 - Within the existing roundabout at the entrance to the ESB on the N31,
 - A new link road commencing approx. 130m west of the roundabout on the N31 (exist ramp M50) at the entrance to the ESB depot. For a distance of approx. 40m west of the roundabout on the N31 (entry ramp M50). For a distance of approx. 30m south-west of the roundabout on the N31 (bridge over the M50). For a distance of approx. 35m east of the roundabout on the N31,
 - The construction of a new link road including drainage running in a northerly direction from the roundabout on the N31 and connecting to the Blackthorn Road a distance of approx. 350m through lands in the ownership of the ESB, Aviva Undershaft Four Ltd., Eir and Dún Laoghaire Rathdown County Council in the townland of Carmanhall, Murphystown, and Blackthorn in the Administrative County of Dún Laoghaire Rathdown.
 - An upgrade of the Blackthorn Road for a distance of approx. 360m from the junction of Burton Hall Road to the junction of Heather Road.

5.0 COMPULSORY PURCHASE ORDER

5.1.1. On the 30th of September 2015, the Chief Executive of Dún Laoghaire Rathdown County Council, signed an Executive order ordering that approval be given for the compulsory acquisition of lands for the proposed new link Road between the existing signalised roundabout at the M50 Junction 14 and Blackthorn Road.

5.2. The order seeks to:

1(a) acquire compulsorily, for the purposes of upgrading the M50 Junction 14 Link Road, a distance of 350m length or thereabouts of new single carriageway road linking Blackthorn Road and the roundabout at M50 Junction 14 shown onlined in red and coloured grey on Drawing no. RPO/LA-01-16 entitled “Dun Laoghaire Rathdown County Council Compulsory Purchase (M50 Junction 14 Link Road) Order, 2016” in the townlands of Blackthorn, Murphystown and Carmanhall in the Administrative County of Dún Laoghaire Rathdown, together with all associated ancillary and consequential works, the land described in part 1 of the Schedule hereto which land is shown on a map marked “Dún Laoghaire Rathdown County Council Compulsory Purchase (M50 Junction 14 Link Road) Order 2016” and sealed with the Seal of the Local Authority and deposited at the offices of the Local Authority.

1 (b) Acquire permanently plots 1,2,3.1, 3.2, 3.2.1, 4, 5 and 6 onlined in red and coloured grey on Drawing no. RPO/LA-01-16. To temporarily acquire plots 1T, 2T, 2.1T, 2.2T, 2.3T, 2.4T, 2.5T, 2.6T, 3.1T, 3.1.1T, 3.3T, 3.3.1T, 3.4T, 3.4.1T, 4T, 4.1T, 4.2T and 6T onlined in red and hatched in orange for temporary usage until the completion of the road development to which the scheme relates

2 The land described in Part I of the Schedule hereto onlined in red and coloured grey on the deposited map is land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.

5.2.1. The Order had the seal of the Council affixed on the 30th September 2016 and was advertised publically on the 12th of October 2016

5.2.2. The order comprises the following:

- **Drawing no. RPO/LA-01-16**

- **Schedule Part I** – Lands to be permanently acquired being and other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.
- **Schedule Part II** – *Description of Temporary Acquisition of Plots* (until the completion of the road development to which the scheme relates). The acquisition of temporary plots 1T, 2T, 2.1T, 2.2T, 2.3T, 2.4T, 2.5T, 2.6T, 3.1T, 3.1.1T, 3.3T, 3.3.1T, 4T, 4.1T, 4.2T and 6T in the townlands of Blackthorn, Carmanhall and Murphystown in the Administrative County of Dún Laoghaire Rathdown for the purposes of construction of retaining and boundary walls. *Description of Private Right of Way proposed to be extinguished:* The section of Private Right of Way on access road off Heather Road in the Townland of Carmanhall in the Administrative County of Dún Laoghaire Rathdown and between the lines AA-BB as shown on drawing no RPO/ LA-01-16 entitled “Dún Laoghaire Rathdown County Council Compulsory Purchase (M50 Junction 14 Link Road) Order, 2016”.

5.2.3. The seal of the Council was affixed to the Schedule on the 30th September 2016 and to the map on the 5th of October 2016. The proposed CPO was advertised in the Irish Independent on Oct. 12th 2016, advising that objections were to be submitted to the Board by within six weeks of the date of publication of the notice. The advertisement in the Irish Independent included details of Parts I and Part II of the Schedule and a description of the Private Right of Way to be extinguished.

6.0 OBJECTIONS TO THE ORDER

6.1. John Spain & Associates, Planning and Development Consultants act on behalf of the objector to the Order – Aviva Life and Pensions UK Ltd., Hatch Street, Dublin 2. The objection submitted to the Board states that Aviva owns warehousing and office units at Fern Road, Sandyford Industrial Estate, which is accessed from and situated to the east of Heather Road. It is submitted that the concerns of Aviva raised in the Part 8 process have not been addressed and the Board is requested to consider during their consideration of the CPO.

6.1.1. The objection states that their concerns can be summarised as follows:

1. Loss of delivery yard to the central unit with no replacement delivery yard
2. Loss of rental income due to future delivery of the road

3. Loss of car parking and diminution in the value of the subject properties
4. Noise impact due to proximity to properties and lack of noise attenuation measures
5. Absence of boundary treatment details
6. Design of link road does not adequately take into consideration landownership issues and the potential they have to impact on the redevelopment proposals for the area.

6.1.2. It is submitted that the proposed link road will have significant implications in terms of the continued use of the property of Aviva Life and Pensions UK Ltd, particularly the central unit for warehousing and office use. It is submitted that the proposed link road will result in considerable disruption during the construction and operation phase and therefore a diminution of the value of the subject properties.

6.1.3. The objection is accompanied by the following:

- Letter notifying of the proposed CPO
- Copy of Part 8 submission to Dún Laoghaire Rathdown CC (see section 6.1.4 below)
- Letter from Savills stating that a road proposal would render the property unusable as there would be no way to load into or out of the warehouse, negatively impacting the lettability of the property in the short term.

6.1.4. Appendix 2 is a copy of the Part 8 submission to the Council. The grounds of the submission can be summarised as follows:

- The Council is requested to omit the section of the proposed link road through the Aviva lands and amend the alignment of the road from the Leopardstown Road roundabout to link to Arena and Burton Hall road only. This amended road proposal alignment would open up the ESB lands for development and allow the Aviva lands to operate as present. This is considered a more cost effective road proposal as it will allow the ESB lands to connect to the wider road network.
- The Aviva landholding consists of three two storey / double height buildings with an established warehousing and ancillary office use, surface car parking and service areas with frontage on to Fern Road. The eastern and western

units are occupied, the central unit is vacant. Access to the lands is via Fern Road – a local access road off Heather Road.

- The Aviva lands are within the Sandyford Urban Framework Plan (SUFP). It includes a six year roads objective for “ESB roundabout on Leopardstown Road to Arena Road and Blackthorn Road”. Page 51 of the SUFP states *“Note Number 1: The alignment of the Road between the ESB roundabout and the Arena road, and the ESB roundabout and the Blackthorn Road has not been finalised. The critical factor is the connection between those two points.”* The current road proposal is in line with the SUFP.
- Loss of Delivery Yard with no replacement yard: the proposed road alignment will sever the Aviva property into two, with the loss of the existing service and delivery yard serving the centre building. The significant negative impact is recognised by the Planning Authority in their Part 8 report. The impacts will be medium to long term and will affect the commercial viability of the property. The Council have not considered the provision of a replacement service yard on the ESB lands to the south.
- Loss of Rental Income: The central unit is currently vacant. The rental agent claims that this is due to uncertainty over the road proposal and the future of the service yard.
- Loss of Car Parking: The central building has 16 no. car spaces to the front of the property of which 7 no. will be removed by the proposed road. 1 no. space will be removed from the eastern building. This will devalue the property.
- Noise Impact: significant traffic volumes on the new link road will increase noise in the central and eastern building. Noise disturbance will also occur during the construction stage. The impact of 10,000 vehicles on the new road was not adequately considered in the Part 8 report, with only one standard mitigation measure proposed.
- Absence of boundary treatment details: drawings do not include any boundary treatment details.
- The Council should consider providing direct access off the new link road to the central Aviva unit.

7.0 PLANNING POLICY CONTEXT

7.1. Greater Dublin Area Transport Strategy 2016-2035

- 7.1.1. This transport strategy provides a framework for the planning and delivery of transport infrastructure and services in the Greater Dublin Area (GDA). It also provides a transport planning policy around which other agencies involved in land use planning, environmental protection, and delivery of other infrastructure such as housing, water and power, can align their investment priorities.

7.2. Design Manual for Urban Roads and Streets

The Design Manual for Urban Roads and Streets (DMURS) sets out the manner in which roads and streets in urban and suburban areas should be designed in a manner which ameliorates the historic dominance of the private car and other motorised forms of transport. The Transport Strategy is required to put forward complementary policies and objectives, which will, at the regional level, facilitate the implementation of DMURS at the local and district level.

7.3. The Regional Planning Guidelines for the East Region 2010-2022

- 7.3.1. The Regional Planning Guidelines set out a comprehensive vision for the development of the Greater Dublin Area. They provide the following vision statement: *“The GDA by 2022 is an economically vibrant, active and sustainable international Gateway Region, with strong connectivity across the GDA Region, nationally and worldwide; a region which fosters communities living in attractive, accessible places well supported by community infrastructure and enjoying high quality leisure facilities; and promotes and protects across the GDA green corridors, active agricultural lands and protected natural areas.”* The Guidelines set out the regional policy parameters and key principles for the direction of economic growth in the GDA. **Section 3.7.1** in outlining how the Polycentric Gateway and Primary Economic Growth Towns will be supported, lists Sandyford as one the drivers within the core of the GDA, for sustained international and regional economic development and growth.
- 7.3.2. In relation to promoting economic convergence, section 3.7.3 of the guidelines notes that Sandyford has experienced rapid growth in high value business services and opportunities exist to build upon high value added jobs and development. While the

role of manufacturing has declined, it remains a strong component of employment in the area, and diversification options should be explored in accordance with relevant departmental plan.

7.4. **Dún Laoghaire Rathdown County Development Plan 2016-2022**

- 7.4.1. The operative development plan for the lands is the Dún Laoghaire Rathdown County Development Plan 2016 - 2022. Policies of relevance to the proposed development include:
- 7.4.2. **Policy ST25** states that it is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network – including improved pedestrian and cycle facilities. **Table 2.2.5** lists the 6-year road objectives, of which ‘M50 Junction 14 diverge, ramp access to Sandyford (provided via a free-flow slip to ESB link road (preferred option) or Heather Road), refers to the subject road proposal.
- 7.4.3. Map no. 6 of the development plan shows the lands immediately adjoining the road route as **Zone OE** which has the stated objective ‘to provide for office and enterprise development’. A proposed QBC / Bus Priority route runs along the proposed route.
- 7.4.4. **SLO no. 121** on the lands to the immediate east of the route seek ‘to ensure the provision of pocket parks and urban plazas in accordance with locations specified on Map 1 and Drawing no. 10 of the SUFP.

7.5. **Sandyford Urban Framework Plan (SUFP)**

- 7.5.1. Appendix 15 of the Dún Laoghaire Rathdown Development Plan 2016- 2022 is the Sandyford Urban Framework Plan. The plan seeks to promote and facilitate employment growth in Sandyford Business District, recognising its status as a primary growth centre in the Economic Development Strategy of the Regional Planning Guidelines 2010-2022. Of relevance to the subject CPO are the following:
- 7.5.2. Map 1 and **Section 2.3.4** identify the subject site as being zoned LIW Light Industrial Warehousing Zone 4. The objective for LIW is ‘to improve and provide for low density, light industrial / warehousing uses’. Zone 4 is described as currently encompassing “traditional low density, low rise warehouse type development located within Stillorgan Industrial Estate and along Heather/Furze/Bracken Road and areas on the southern and western periphery of Sandyford Business District. Due to their

location, these lands lend themselves to a continuation of lower intensity employment uses such as warehousing, car showrooms, and light industrial uses”.

7.5.3. **Section 4.2** of the SUIFP refers to Sustainable Transport Infrastructure Policies and Objectives. **Policy SUIFP7** states that it is Council policy to develop and support a culture of sustainable travel in the Sandyford Business District. **Section 4.2.1** states that transport was found to be the critical constraining factor when assessing the capacity of infrastructure to cater for development of the area. **TAM6** states that it is an objective of the Council to implement the following cycling and walking access routes by upgrading existing routes and as part of the provision of new road proposals as shown on Drawing no. 6. The **Six-year objectives Cycling and Walking** of relevance to the subject development are as follows:

- Road Proposal (2a) – Leopardstown Link Road from South County Business Park.
- Road Proposal (6) – E.S.B. Roundabout, on Leopardstown Road to Arena Road and Blackthorn Road.
- Road Proposal (7) – Leopardstown Roundabout Re-configuration to a signalised junction.

7.5.4. **TAM 7** states that in order to improve permeability and connectivity within the Sandyford Business District, it is an objective of the Council to create a low speed environment for cyclists and pedestrians by implementing the following internal circulation routes, and traffic management measures (including 30kph zones and traffic signal measures) as shown Drawing No. 7. **TAM8** states that it is an objective of the Council to require future developments within the Sandyford Business District that impact on the road network to submit a Quality Audit to be carried out in accordance with DMURS and best UK practice.

7.5.5. **TAM17** states that it is an objective of the Council to implement the following six-year roads objectives as shown on Drawing no. 8. This combination of schemes represents the road infrastructure configuration required to facilitate traffic growth (based on implementing a significant modal shift to more sustainable travel modes) that will result from the future development of Sandyford Business District. Of relevance to the subject CPO is: M50 Junction 14 Diverge ramp access to Sandyford (provided via a free flow slip to the ESB Link Road (preferred option) or Heather Road) (No.1).

7.5.6. Policy **SUFP12** regarding phasing, states that it is Council policy to ensure the orderly development of Sandyford Business District by the phasing of future development in tandem with the delivery of infrastructure. **Objective P1** states that it is an objective of the Council that the planning approval process for the following road schemes shall be complete and planning permission granted prior to further development being permitted for office based employment within Sandyford Business District that exceeds 70,000 sq.m. of the potential 350,000 sq.m. identified, ESB Link Road, M50 Diverge ramp free-flow lane and Link to Arena Road (No.6). Prior to the implementation of this road scheme, that consultation and review will be carried out with the National Transportation Authority based on their Greater Dublin Area Draft Transport Strategy 2016- 2035. **Objective P3** states that it is an objective of the Council that satisfactory progress should be made with the implementation of all of the Sustainable Transport six-year objectives prior to further development being permitted for office based employment within Sandyford Business District that exceeds 250,000 sq.m. of the potential 350,000 sq.m. identified. **Objective P6** states that it is an objective of the Council to ensure the orderly development of the area and accordingly the following restrictions will apply: No additional development will be permitted off Arena Road or the ESB roundabout until the link between the ESB Road and Arena Road and the link to Blackthorn Road is facilitated. (Drawing 8 Scheme No. 6).

8.0 ORAL HEARING

- 8.1. An oral hearing was held in the office of An Bord Pleanála on 1st Feb 2017. The hearing commenced at 10.00am and an audio recording of the proceedings was made.
- 8.2. A summary of the Oral Hearing is attached in Appendix 1 and referenced throughout section 9 below.
- 8.3. In advance of the hearing the third party Objector indicated that they would not attend the hearing

9.0 ASSESSMENT

- 9.1. The statutory powers of the Local Authority to acquire land are contained in section in s11(7)¹ of the Local Government Act 2001 and sections 212 and 213 of the Planning and Development Act 2000, as amended. Under s212 of the Planning and Development Act 2000 a Local Authority may, in order to carry out its functions powers and duties, carry out forms of development and in so doing a Local Authority is entitled to use CPO powers. S212(1) of the Act confirms the general power of a Planning Authority to develop, secure or facilitate the development of land and may do one or more of the following (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving; (b) develop any land in the vicinity of any road or public transport facility which it is proposed to improve or construct; (c) provide areas with roads, infrastructure facilitating public transport and such services and works as may be needed for development.
- 9.2. Section 212(2) of the Planning and Development Acts states that a Planning Authority may provide or arrange for the provision of (c) transport facilities, including public and air transport facilities, and (d) any services which it considers ancillary to anything which is referred to in *paragraph (a), (b) or (c)*.
- 9.3. Under s213(1)(i) of the act, in terms of land acquisition, the power conferred on a Local Authority to acquire land shall be construed to acquire land, permanently or temporarily, by agreement or compulsorily. Section 213(2)(a)² of the act states that a Local Authority may, for the purposes of performing any of its functions including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

¹ Local Government Act 2001 (7) A Local Authority to which *subsection (3) or (4)* relates shall (a) continue to be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold, manage, maintain and dispose of land or any interest in land,

² 213(2) (a) A Local Authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under *section 94*, do all or any of the following: (i) acquire land, permanently or temporarily, by agreement or compulsorily, (ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in *subparagraphs (i), (ii) and (iii)* are referred to in this Act as an “acquisition of land”.

9.4. It is generally accepted that there are four test criteria³ that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property.

These are that:

1. There is a community need, which is met by the acquisition of the property in question.
2. The particular property is suitable to meet the community need.
3. The works to be carried out accord with the Development Plan.
4. Any alternative method of meeting the community need have been considered but are not available.

9.5. These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the issues raised by the objector.

9.6. **Community Need**

9.6.1. Dún Laoghaire Rathdown published a Land Use and Transportation Study (LUTS) for Sandyford in 2007. The report noted the significant ad-hoc growth in Sandyford and the need to manage and improve the existing road network to accommodate permitted and future growth.

9.6.2. The background paper (2011) for the SUFP estimates a population of 10,913 residents and 43,404 employees in Sandyford by 2030. The quantum of development predicted for Sandyford was debated in a number of studies between 2006 and 2008. The Council finally arrived at a figure of an estimated 350,000sq.m. (the recommended do-something scenario as outlined in the 2011 SUFP Transportation Strategy). This strategy formed the basis of the SUFP and included the following six-year roads objectives:

- M50 Junction 14 Diverge ramp access to Sandyford provided via a free-flow slip to the ESB road (preferred option) or Heather Road
- Revised access to South County Business Park including an access to car parks within Central Park
- Bracken Road extension to the Drummartin Link Road
- Burton Hall Road extension to Leopardstown Road

³ McDermott & Woulfe, Compulsory Purchase and Compensation: Law and Practice in Ireland (Butterworths, 1992)

- ESB link road and link to Arena Road
- Reconfiguration of the Leopardstown Roundabout
- Quality Bus Corridors

9.6.3. The overall development was recommended to be phased. The subject ESB link Road is recommended as Phase 2. The Transportation Strategy states that proposed link road is required for any future development of the ESB lands and an additional access to Sandyford. Phasing Objective P1 of the SUFP states that further development exceeding 70,000sq.m. of the potential 350,000sq.m. will not be permitted in Sandyford Business District until the planning approval process for ESB link road, M50 Diverge ramp free flow and link to Arena Road are complete.

9.6.4. The Senior Planner for DLRCC Ms. Louise McGauran stated in her evidence to the oral hearing, that the SUFP, the County Development Plan and the Regional Planning Guidelines were all aligned in their plan for the development of Sandyford, based on a logic and rationale that she examined the quantum of development that could be accommodated. Ms McGauran stated that the infrastructural proposals in the SUFP, which includes the proposed Link Road, are critical in allowing the area to develop in line with the policy documents. Ms McGauran noted that the Sandyford LUTS was reviewed in 2008 and that of the projects that were assessed the ESB link road from junction 14 to Blackthorn Avenue was identified as being one of those projects required to support additional development in Sandyford.

9.6.5. During the course of the oral hearing DLRCC Senior Engineer Mr. Michael Mangan stated that the key objectives of the proposed Link Road scheme are as follows:

1. To deliver increased levels of accessibility to the Sandyford Business Estate,
2. To provide for further development in Sandyford Business Estate,
3. To facilitate and export the expected growth in traffic arising from the future development envisaged by the SUFP
4. To fulfil the improved public transport objectives for the area (the proposed road forms part of the Orbital Bus Route) and
5. To encourage the use of sustainable transport modes.

9.6.6. Mr Mangan stated that the significant growth in Sandyford Business Estate has given rise to increased demand for transport infrastructure. He stated that this demand had partly been met by Luas, the M50 and various bus improvements but additional road

links, junction improvements and traffic management are required to relieve the congestion which still exists. Mr Mangan stated that there is a need for an additional road into the heart of the Business Estate (defined as Blackthorn Road, Blackthorn Drive and Blackthorn Avenue) and that such a road should include public transport, pedestrians and cyclists. Mr Mangan noted during the hearing that the SUFFP acknowledges that congestion will still occur at peak hours notwithstanding the provision of the proposed link road.

9.6.7. Arising from the above, I am satisfied that the stated purpose of the subject CPO – i.e. the creation of a link road from junction 14 of the M50 to Blackthorn Road will serve an identified community need and that the potential positive impacts (direct and indirect) outweigh the interference with the Objectors property rights.

9.6.8. It is considered that the case for the community need for the proposed road has been established and can be justified by the exigencies of the common good. In addition to providing an additional access to Sandyford Business Estate, the proposed link road will provide a dedicated bus route, cycle lane and footpaths into the centre of the Business Estate, all of which are required to create an environment and travel network that supports a change in modal choice. The proposed road is considered fit for purpose, minimises the impact on the environment, land and property owners and is in accordance with regional and local policy.

9.7. Land is suitable for proposed development

9.7.1. The lands comprise lands in the freehold / ownership of Dún Laoghaire Rathdown some sections of private road (Fern Road), and lands in the ownership of TII, ESB, Eir and Aviva. TII, ESB and Eir have not indicated any objection to the proposed scheme or CPO. The objection of Aviva is dealt with in section 9.10 below

9.7.2. The lands to be permanently or temporarily acquired are not affected by any nature conservation designations, or tree preservation orders. There are no protected views in the locality and no development constraints have been identified. No buildings of any description will be removed to facilitate the road. Whilst the scheme will result in the loss of private lands, these lands are not subject to any designations or constraints, which would render them unsuitable for the proposed development. I am satisfied that the CPO lands are suitable in principle for the proposed scheme.

9.7.3. I am satisfied that the extent of lands to be acquired is reasonable and commensurate to the scheme.

9.8. **Compliance with the Development Plan**

- 9.8.1. Sandyford is identified as a primary economic growth centre and a driver for sustained international and regional economic development and growth in the Economic Development Strategy of the 2010-2022 Regional Planning Guidelines. Sandyford is identified as a growth centre in the Core Strategy of the Dún Laoghaire Rathdown County Development Plan 2016-2022.
- 9.8.2. The link road from junction 14 of the M50 to Blackthorn Road is supported by a number of policy documents. The South Eastern Motorway (SEM) was a six year roads objective of the 2004-2010 development plan. The proposed motorway route included a section of the current proposal (into the ESB lands). The completion of the C-Ring Motorway System (Southern Cross Route and South Eastern Motorway) also formed part of the DTO Strategy 'A platform for Change 2000-2016'. A road proposal along the subject route is identified as a six-year road proposal in Dún Laoghaire Rathdown County Council development plans 2010-2016 and 2016-2022.
- 9.8.3. During the course of the Oral Hearing, the Senior Planner for Dún Laoghaire Rathdown CC confirmed that the proposed development was assessed under the Regional Planning Guidelines 2010-2022, the SUFP and the Dún Laoghaire Rathdown County Development Plans 2010-2016 and 2016-2022. She confirmed her view that the proposed development was wholly in accordance with the County Development Plan and the proper planning and sustainable development of the area.
- 9.8.4. The third party notes that page 51 of the 2011 SUFP refers to the fact that the alignment of the Road between the ESB roundabout and Arena Road, and the ESB roundabout and Blackthorn Road has not been finalised. While the precise route was not confirmed at the time of the publication of the SUFP 2011-2016 (variation no. 2 of the 2010-2016 development plan), the fact that the road was proposed to go through the Aviva lands and join Blackthorn Road was clear from each of the drawings and maps associated with the 2011 plan.
- 9.8.5. The proposed road project is in accordance with TAM 6, TAM7, TAM8 and TAM 8 of the Sandyford Urban Framework Plan, Appendix 15 of the Dún Laoghaire Rathdown

County Council Development plan 2016-2022. I am satisfied therefore that the proposed development is in compliance with the policies and objectives of the Development Plan.

9.9. Alternatives Assessed

- 9.9.1. In assessing applications for compulsory purchase the Board should satisfy itself that the site is suitable to accommodate / facilitate the proposed development for which the compulsory acquisition of lands and wayleaves etc. is being sought and that the applicant has explored and examined feasible alternatives that may be better suited to accommodate the development
- 9.9.2. In relation to feasible alternatives that may be better suited to accommodate the development the Environmental Report prepared as part of the Part 8 process states that at the time of the Sandyford Urban Framework Plan (SUFP) a number of alternatives were considered to address the increased growth predicted for Sandyford. The three alternatives were: (i) a slip road from the M50 southbound off-slip onto Heather Road, (ii) construction of the Burton Hall Road Extension (iii) do nothing. In the case of the slip road to Heather Road, the NRA had concerns and expressed a strong preference that the scheme be combined with the ESB Link Road in order to have only one exit point towards Sandyford from the M50. In the case of the Burton Hall Road Extension the growth objectives of the SUFP could not be achieved without the development of both the Burton Hall Road extension, the ESB link road and the Link to Arena Road.
- 9.9.3. During the oral hearing the DLRCC Senior Engineer Mr Michael Mangan stated that a number of potential road schemes were identified in various studies and that this culminated in Traffic Modelling where a number of scenarios were tested using a local area traffic model developed for Sandyford. The analysis of the model determined that a combination of road schemes was required to provide the optimum road infrastructure configuration and that the combination included the M50 Junction 14 Link Road. The detailed and comprehensive analysis of the various scenarios carried out is presented in the Transportation Strategy Background Paper to the LUTS.
- 9.9.4. The third party, as part of their submission on the Part 8 process requested that the County Council consider the option of stopping the proposed link road within the

ESB lands, approximately at the location of the proposed Arena Link road (not part of this CPO). Aviva's Part 8 submission, the grounds of which form the objection to this CPO, states that they have no plans to redevelop their lands, the proposed truncated road is considered a more viable, cost effective and appropriate solution for delivering future road infrastructure in the area. A shorter route would obviously be a more cost effective route (less land to CPO and less construction costs) but how they consider the truncated route to be a more viable and appropriate solution for delivering the objectives of the SUFP is not clear. The Objector does not elaborate in his submission and the Objector did not avail of the opportunity to answer questions at the Oral Hearing.

- 9.9.5. The six year objectives to provide a link from junction 14 to Blackthorn Road are clearly presented in the SUFP / development plan from as far back as 2011 and in the Sandyford LUTS 2006. The proposed Arena Road link is not part of the current CPO and as such cannot be relied on to fulfil the objectives of the development plan. Further, the growth predicted for Sandyford could not be accommodated on the Arena Road link road due to its limited size. The proposed link road from junction 14 to the Blackthorn Road is a four lane carriageway. The future Arena link road, as proposed in the Part 8 process is two lanes, with no bus lane, no cycle lane and no pedestrian crossings. The Arena link road would therefore not fulfil the objectives of TAM 6 and TAM7.
- 9.9.6. As part of his evidence during the oral hearing, the Senior Engineer Mr Michael Mangan for DLRCC stated that the alternative proposal suggested by the third party would not provide the same access as the proposed Link Road, that multi-storey buildings on either side of Arena Road would not allow for the provision of cycle lanes which is contrary to one of the SUFP's core principle which is to maximise the contribution of sustainable travel modes. Mr Mangan stated that the Arena Link road would not facilitate the provision of a dedicated bus lane and would be virtually redundant as an exit route. In response to my question about the capacity of the Arena Link road vis-à-vis the proposed CPO road, Mr Mangan stated he did not have the figures about the traffic volumes on each road to hand but that the constraints on the ESB lands were such that the proposed Arena Link road could not accommodate more lanes. He noted that the route of the Arena Link road was through lands on which there currently are buildings and that the road is currently a cul-de-sac.

9.9.7. I am satisfied that the Council has considered all reasonable alternatives to the proposed road. The current road proposal, the subject of the CPO, is considered to be the most reasonable option in terms of minimising the wider environmental impact of the scheme and in providing an appropriate design response to the identified need to provide a link from junction 14 of the M50 to Blackthorn Road. Therefore, the subject lands are considered suitable and necessary for the construction and operation of the scheme.

9.10. Issues Raised by the Objector

9.10.1. The third party Objector Aviva Life and Pensions UK are listed as Aviva Undershaft Four Ltd., Their interest in the CPO lands is as follows:

Plot	Description	Interest of Aviva
3.1	0.0950ha, palisade fence, gate, tarmacadam parking / service yard and stores	Leasehold from Dún Laoghaire Rathdown
3.1T	Temporary acquisition of 0.0064ha, palisade fence and tarmacadam parking / service yard	Leasehold from Dún Laoghaire Rathdown
3.1.1T	Temporary acquisition of 0.0088ha, concrete plinth and wall, railing and part of tarmacadam parking	Leasehold from Dún Laoghaire Rathdown
3.2	0.0363ha, railings, wall, footpath, kerb, private road, two parking spaces, grass verge, part of Right of Way and hedging	Leasehold from Dún Laoghaire Rathdown
3.2.1	0.0033ha, railings and wall	Owner
3.3T	Temporary acquisition of 0.0418ha, private road, footpath, car parking area and hedging	Leasehold from Dún Laoghaire Rathdown
3.3.1T	Temporary acquisition of 0.0021ha, parking area	Owner
3.4T	Temporary acquisition of 0.0167ha, private road, footpath and car parking area	Leasehold from Dún Laoghaire Rathdown
3.4.1T	Temporary acquisition of 0.0021ha, parking area	Owner

9.10.2. The issues raised by the objector are as follows:

1. Loss of delivery yard to the central unit with no replacement delivery yard
2. Loss of rental income due to future delivery of the road
3. Loss of car parking and diminution in the value of the subject properties

4. Noise impact due to proximity to property to properties and lack of noise attenuation measures
5. Absence of boundary treatment details
6. Design of link road does not adequately take into consideration landownership issues and the potential they have to impact on the redevelopment proposals for the area.

9.10.3. *Loss of delivery yard:* The loss of the delivery yard and associated car parking is a significant and long term impact for the third party. As noted by the Local Authority in their response to Aviva's objection to the Part 8 and in response to their objection to the CPO, the Council must consider the wider benefit to future growth within the Sandyford Business District. In terms of proportionality the impact Aviva is being requested to burden must be considered against the wider benefits that will accrue to those with interests in Sandyford Business Estate. I am satisfied that it has been demonstrated that the proposed scheme - through an additional access to the heart of the business estate- will facilitate further growth of the area and through the provision of a bus lane, cycle lanes and footpaths will provide safer, quicker and shorter journeys for those on public transport on bicycles and on foot. Future tenants, employees and visitors to the Aviva premises will also benefit from these improved routes. Thus I accept the County Council's position that the short term impacts will be significant but the long term impacts will be greater and of more significance.

9.10.4. *Loss of Rental Income:* The third party submits that the uncertainty around the proposed road is such that it affects the commercial viability of the central unit for tenants. The third party Part 8 submission included a letter from Aviva's letting agent advising of the negative impact of the proposal on prospective tenants. I note that on the date of my site visit the central unit was occupied by a specialist sports store.

9.10.5. *Loss of car parking and diminution of value:* The diminution of value of a property is a matter for the property arbitrator. I note that as per article 5(2) of the Third Schedule (Housing Act 1966 as amended), objections should not relate to matters which would more appropriately be addressed by the property arbitrator. The loss of more than two car parking spaces will be off-set by increased access to the subject premises by public transport, by bicycle and by foot.

- 9.10.6. *Noise impact:* The noise impact of the proposed Part 8 road development was assessed in section 7.1 of the Environmental Report carried out. In terms of the operational phase, section 3.8 of the report notes that the proposed road surface course is polymer modified stone mastic asphalt, which generates less noise when trafficked than other materials and is therefore more suited to an urban area. The Senior Engineer for DLRCC stated during the oral hearing that if allowable noise limits are exceeded ameliorative measures can be implemented.
- 9.10.7. *Absence of boundary treatment details:* section 3.10 of the Part 8 Environmental Report refers to the landscaping scheme for the Link Road. The report states that selection of trees and shrubs was made having regard to the sometimes windy conditions and to minimise ongoing maintenance. Full details of landscaping are on the Part 8 drawings. The Senior Engineer for DLRCC, during his evidence to the Board at the oral hearing stated that normal practice in road schemes is to replace like with like. As there is no boundary treatment to the side of the Aviva building, the Council propose to match the fence to the rear of the property – a 2.4m high security palisade fence.
- 9.10.8. *Impact on land ownership issues:* I note that with the exception of the third party Aviva, no other land owner affected by the proposed road scheme have objected to the proposed CPO.

10.0 CONCLUSION AND RECOMMENDATION

- 10.1. I am satisfied that the process and procedures undertaken by the Local Authority have been fair and reasonable and that Dún Laoghaire Rathdown County Council have demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable. I consider that the proposed acquisition of these lands would be in the public interest and the common good and would be consistent with the policies and objectives of the Dún Laoghaire Rathdown County Council Development Plan 2016-2022.

11.0 DECISION

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

REASONS AND CONSIDERATIONS

Having considered the objection made to the compulsory purchase order, the report of the person who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following;

- (a) the policies and objectives of the Dún Laoghaire Rathdown County Development Plan 2016-2022, including Appendix 15 the Sandyford Urban Framework Plan
- (e) the community need, public interest served and overall benefits to be achieved from the proposed road development
- (b) the design of the proposed road, constituting a design response that is proportionate to the identified need,
- (c) The submissions and observations made at the Oral Hearing held on 1st February 2017 in the offices of An Bord Pleanála

It is considered that, the permanent and temporary acquisition by the Local Authority of the land in question and the extinguishment of public rights of way, as set out in the order, schedules and on the deposited map, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

Gillian Kane

Gillian Kane
Planning Inspector

08 February 2017

Appendix 1 Oral Hearing

Attendees

Pat Butler SC DLRCC

Edward Hughes Solc. DLRCC

Michael Mangan Senior Engineer DLRCC

Louise McGauran Senior Planner DLRCC

Sean Mantan DLRCC

Seamus Aherne DLRCC

Austin Baines DLRCC

Adrian Thompson DLRCC

Michael Talbot DLRCC

Keith Gavin DLRCC

Gerard Crowley ESB

Colm Cummins ESB

- 11.3. Inspector opened Oral Hearing at 10.00. Opening statement and agenda. Invited Local Authority to make their submission
- 11.4. Local Authority Senior Counsel **Mr Pat Butler** stated that the Local Authority's case is that the proposed CPO is required, that the land necessary to carry out the works is required and is set out in the CPO and that the project is compatible with the Development Plan. He states that the Insp and the Board will be satisfied. He called on Mr Michael Mangan Senior Engineer to set out the project.
- 11.5. **Mr Michael Mangan Senior Engineer Infrastructure and Climate Change Department of DLRCC:** Mr Mangan read through his evidence as submitted to the hearing. The brief comprised an introduction, background to the SUFP, a description of the scheme, need for the scheme, alternative proposals, noise, boundary treatment and a conclusion. See Appendix 2 for copy.
- 11.6. The Inspector asked Mr Mangan to confirm that his evidence referred to Objective TAM3 and to the alternative proposal as submitted by the Third Party Objector.
- 11.7. **Louise McGauran Senior Planner Infrastructure and Climate Change Department of DLRCC:** Ms. McGauran read through her brief of evidence as submitted to the hearing. Her submission provided the planning rationale for the

proposed road including the Regional Planning Guidelines 2010-2022, the Dún Laoghaire Rathdown 2016-2022 County Development Plan and the SUFP. Ms McGauran's written evidence provided a planning history for the subject lands and a response to the issues raised in the John Spain Associates objection to the CPO. See Appendix 2 for copy.

11.8. Council concluded their evidence.

11.9. Inspector noted that neither the third party objector nor their planning agents were in attendance at the hearing and therefore she would read their written submission into evidence. Appendices 1 and 2 of the submission were to be taken as read.

11.10. Inspector invited the Council to respond to the written submission of the third party. **Mr Pat Butler SC** stated that the submission is based on diminution in value and these are matters for compensation. The proposal in relation to an alternative that has been dealt with by Mr Mangan.

11.11. Inspector questioned **Mr Michael Mangan SE** regarding the traffic capacity of the proposed Link Road and the Arena Link Road and whether Arena Road is capable of accommodating the volume of traffic expected on the link Road. Mr Mangan stated that he didn't have the car journey traffic figures but he would like to note that Arena road would provide no physical capacity for buses but that it also would not join up with the central circulatory route that has been identified. The Inspector noted that the Arena link road could change by the time it gets to a CPO. Mr Mangan responded that the Arena Road is built out, that the width of the road is limited and that the intention is that Arena Road will be a link rather than a through road.

11.12. The Inspector requested clarification as to the extent of plot 3.2 on the CPO order as whether it corresponded with the area identified as road closure on Fern Road (sheet 5 of the Part 8 drawings). **Mr Mangan** clarified that the two areas corresponded.

11.13. The Inspector requested clarification as to the extent of car spaces used by Aviva that are to be removed on Fern Road. **Mr Mangan** and **Sean Mantan** from Dún Laoghaire Rathdown County Council confirmed that more than two spaces would be removed from Fern Road.

11.14. Inspector asked DLRCC to make a closing statement. **Mr Butler** stated that he commended the CPO to the Board, that he considered that the Board would be

satisfied that there is a requirement for the project, that the land is required for it and that it comes within the terms of the development plan.

11.15. Inspector closed the hearing and thanked all attendees.