



An
Bord
Pleanála

Inspector's Report PL09.CH3337

Local Authority Project

Irish Water Compulsory Purchase
(Upper Liffey Valley Sewerage
Scheme Contract 2A) Order 2017

Location

Townlands of Kilbelin, Little Connell,
Great Connell, Newhall, and
Halverstown, Newbridge, Co. Kildare

Applicant

Irish Water

Local Authority

Kildare County Council

Objector(s)

Ballyfarm Ltd
Cox's Property Ltd
Thurles Wholesale Cash n' Carry Ltd
Dermot Cox
Aston Ltd

Observer(s)

None

Date of site inspection

15th September 2017

Inspector

Hugh D. Morrison

Contents

| | |
|--|----|
| 1.0 Introduction..... | 3 |
| 2.0 Statutory Basis..... | 3 |
| 3.0 Site Location and Description..... | 4 |
| 4.0 Purpose of the CPO..... | 5 |
| 5.0 Policy Context..... | 5 |
| 5.1 Irish Water | 5 |
| 5.2 Plans..... | 6 |
| 5.3 Natural Heritage Designations..... | 7 |
| 6.0 Objections..... | 8 |
| 7.0 The Oral Hearing..... | 11 |
| 8.0 Assessment..... | 19 |
| 9.0 Recommendation..... | 29 |
| 10.0 Reasons and Considerations..... | 30 |

1.0 Introduction

- 1.1. This report addresses Irish Water's CPO (Upper Liffey Valley Sewerage Scheme Contract 2A) Order 2017. This CPO would facilitate the implementation of a project that would entail the laying of a new sewer between the neighbourhood of Kilbelin, to the south of Newbridge town centre, and the Osberstown WWTP, to the west of Naas. The project would also entail the construction of pumping and stormwater storage stations at Kilbelin, Little Connell, and Newhall. The first and third of these stations are the subject of Part 8 applications made by Kildare County Council and the second is the subject of a more recent permitted application 15/974 made by Irish Water. The main objectives of this project would be to reduce overflows to the River Liffey at Kilbelin and Newhall and to increase the capacity of the sewerage system in the Newbridge area, thereby facilitating future growth.
- 1.2. The subject CPO would entail the land purchase of 7 plots, the establishment of permanent wayleaves over 24 plots, and the establishment of temporary working areas over 21 plots. Five objectors have challenged the subject CPO. Their objections pertain to 3 of the land purchase plots, 9 of the wayleave plots, and 12 of the working area plots. All of these plots are at the Newbridge end of the project. Two of the five objectors reiterate what another two of the objectors say and so there are, in practise, three challenges to the CPO.

2.0 Statutory Basis

- 2.1. The application is made under Section 76 and the Third Schedule of the Housing Act, 1966, as extended by Section 10 of the Local Government Act (No. 2) Act, 1960, (as substituted by Section 86 of the Housing Act, 1966, and as amended by Section 6 and the Second Schedule to the Road Act, 1993) and the Planning and Development Act, 2000 – 2015, and as applied by Section 93 of the Water Services Act, 2007, as amended.
- 2.2. Irish Water, pursuant to Section 7 of the Water Services (No. 2) Act, 2013, is carrying out the functions of a Water Services Authority for the purposes of the Water Services Act, 2007.

3.0 Site Location and Description

3.1. The Upper Liffey Valley Sewerage Scheme would run between Kilbelin to the south east of Newbridge town centre to Osberstown WWTP to the west of Naas. The route of this Scheme would follow a generally south west/north east axis. The initial south western portion would pass through the townlands of Kilbelin, Great Connell, and Little Connell, the central portion would coincide with the R445, and the north eastern portion would pass through the townlands of Newhall, Halverstown, and Osberstown.

3.2. The main elements of the Upper Liffey Valley Sewerage Scheme are as follows:

- Interception of existing 675 mm sewer at Kilbelin in south-east Newbridge and its diversion to a new foul pumping station at Kilbelin.
- New foul waste water pumping station and storm storage tank at Kilbelin with ultimate foul pumping capacity of 340 l/s and 2000 cubic metres storm water capacity.
- 500 mm diameter rising main and 900 mm diameter gravity sewer to a proposed new foul water pumping station at Little Connell.
- New foul waste water pumping station and storm storage tank at Little Connell with ultimate foul pumping capacity of 510 l/s and 1800 cubic metres storm water capacity.
- 600 mm diameter rising main and 900 mm diameter gravity sewer to a new foul water pumping station at Newhall.
- New foul waste water pumping station and storm storage tank at Newhall with ultimate foul pumping capacity of 900 l/s and 1800 cubic metres storm water capacity.
- 700 mm diameter rising main to Osberstown WWTP.
- Operation and maintenance of the new pumping stations and storm water storage tanks for 12 months.

4.0 Purpose of the CPO

4.1 Irish Water outlines the background to the project, which would be facilitated by the subject CPO.

- The EC considers that the Osberstown agglomeration is non-compliant with Articles 3.1 and 3.2 (Collection Systems) of the Urban Waste Water Treatment Directive (91/271/EEC) and so it is in breach of Article 4 (Treatment), too.
- The EPA's Upper Liffey Valley Sewerage Scheme Discharge Licence (Reg. No. D0002-01) sets out an Improvement Programme for Storm Water Overflows.

This project would address both of these critiques. Thus, the existing unscreened overflows of combined waste and storm water sewers into the River Liffey at Kilbelin and Newhall would be replaced by pumping and storm water storage stations. Waste water would be routed underneath the River Liffey at Kilbelin in a new sewer that would run to Newhall and onto Osberstown WWTP, via another pumping and storm water storage station at Little Connell. This new sewer would also facilitate further development in the wider Newbridge area.

4.2 The project was the subject of a route selection exercise. The route thus selected would pass over lands in private ownership, some of which are the subject of bank charges. As the need for the project is pressing and Irish Water has previously experienced delays in dealing with lands subject to such charges and, more generally, in concluding agreements with landowners, the subject CPO has been made in a bid to expedite matters.

5.0 Policy Context

5.1. Irish Water

In October 2015, Irish Water published its Water Services Strategic Plan (WSSP). Appendix 3 of this Plan is entitled "Agglomerations identified in the European Commission Infringement Case against Ireland in respect of the Urban Waste Water

Treatment Directive” (91/271/EEC). The Upper Liffey Valley Sewerage Scheme, which is the subject of the current CPO, is listed as Item 68 in this Appendix.

Irish Water’s website has a news section, which on 23rd May 2017 published an article under the heading “Upper Liffey Valley Sewerage Scheme progressing to support current and future development in Newbridge: The project will benefit the environment by reducing overflows to the River Liffey.” The article goes on to state that,

Once the proposed project is complete it will facilitate increased flow to the existing Osberstown WWTP and support future population and economic growth in Newbridge. The investment will also significantly reduce overflows to the River Liffey at Kilbelin and Newhall, ensuring that wastewater is treated and discharged in compliance with the Urban Wastewater Treatment Regulations, 2001, and conditions as set out in the EPA’s Wastewater Discharge Licence and help Ireland avoid substantial EU penalties.

5.2. Plans

Under the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022 (RPG) and under the Kildare County Development Plan 2017 – 2023 (CDP), Newbridge is, variously, identified as a Primary Economic Growth Town and a Large Growth Town II.

Under Table 11 of the RPG, ten waste treatment investment priorities are identified, including the following two which are of relevance to the subject CPO project:

- (4) Delivery of expansion of Osberstown plant and/or other possible solutions for Osberstown catchment.*
- (9) Upgrading of sewer systems to provide adequate capacity against flooding risk and to mitigate discharges from Combined Sewer Overflows in networks to acceptable environmental standards.*

Under the “Infrastructure” chapter of the Kildare County Development Plan 2017 – 2023 (CDP), thirteen wastewater policies are set out, the following four of which are of particular relevance to the subject CPO project:

WW 1: Work in conjunction with Irish Water to protect drainage infrastructure and promote investment in the drainage network to support environmental protection and facilitate the sustainable growth of the county.

WW 5: Work in conjunction with Irish Water to protect, manage and optimise wastewater drainage networks in the county including the protection of wayleaves and buffer zones.

WW 6: Work in conjunction with Irish Water to promote the ongoing upgrade and expansion of wastewater services to meet the future needs of the county and the region including facilitating the provision and zoning of appropriate sites required for wastewater services infrastructure as necessary.

WW 7: Support Irish Water in delivering key wastewater projects in the county including:

- Osberstown WWTP Upgrade,*
- Leixlip WWTP Upgrade,*
- Upper Liffey Valley Sewerage Scheme,*
- Kildare Town Network Upgrade, and*
- Local Network Reinforcement Projects.*

Under the “Water, Drainage, and Environmental Services” chapter of the Newbridge Local Area Plan 2013 – 2019 (LAP), seven wastewater policies and eleven wastewater objectives are set out. The following two policies and one objective are of particular relevance to the subject CPO project:

WW 6: To implement and promote the Urban Waste Water Treatment Regulations, 2001 and 2004, as may be amended.

WW 7: To ensure that the necessary drainage facilities to serve the needs of all development are provided.

WWO1: To ensure the upgrade of the Newbridge Eastern Interceptor Sewer and network upgrade to the Liffey Valley Catchment Area.

5.3. Natural Heritage Designations

Irish Water has undertaken a Stage 1 Screening for AA of the project, which is the subject of the CPO. Under this Screening, Natura 2000 sites within a 15 km radius of the site have been identified. None of these sites overlap with this site, which lies to

the east and the north east of Newbridge. The nearest of the Natura 2000 sites lie to the north and east of Newbridge, i.e. Mouds Bog SAC (site code 002331) and Pollardstown Fen SAC (site code 000396). The Screening concludes that the project would not have a significant effect on Natura 2000 sites and so the need for a Stage 2 AA does not arise.

6.0 Objections

6.1. (a) Ballyfarm Ltd:

Permanent wayleaves – owns plots 1002, 1001, 1101 (jointly) & 1102 (jointly).

(b) Cox's Property Ltd:

Permanent wayleaves – owns plots 1101 (jointly) & 1102 (jointly).

- **Impact on business**, a fully operational construction and steel fabrication facility, with an easement over the road through the Ballyfarm lands:
 - The proposed wayleave and working area would severely restrict truck movements to and from the site, thereby posing health and safety issues to both workers and customers alike.
 - The proposed sewer may compromise the long term structural integrity of the carriageway.
- **Location**: The proposed sewer should be re-sited at the back of the footpath, thereby removing any risk to the carriageway.
- **Drainage**: Insufficient details have been submitted as to the drainage implications of the proposed sewer for the lands through which it would pass.
- **Construction Details**: Insufficient details have been submitted as to how construction works would be undertaken and no details have been submitted concerning reinstatement and the subsequent management of any settlement risk.
- **Access**: Precise details of how access would be maintained during the construction period have not been clarified.

- **Duration of the Works:** The likely commencement and completion dates of construction works have not been provided.
- **Specialist advice:** Irish Water is requested to meet the objector's reasonable costs in this respect.
- **Other Matters:** If Irish Water makes available further information, then the objector reserves the right to elaborate on the above objections and/or to add in extra ones.

6.2. (c) Thurles Wholesale Cash n' Carry Ltd:

Land acquisition – occupies plots 0101, 0201 & 0202¹, and

Temporary working area – occupies plot 0104.

(d) Dermot Cox:

Land acquisition – owns plot 0101,

Permanent wayleaves – owns plot 0102, and

Temporary working area – owns plots 0104, 0103 & 0105.

- **Impact on Business**, a fully operational Cash n' Carry facility:
 - The proposed acquired lands and working area would severely restrict truck movements on the site, thereby posing health and safety issues to both workers and customers alike.
 - The siting of a proposed sewage holding tank adjacent to the objector's facility would pose a health and food safety risk and it would adversely affect worker and customer perceptions of the same. These effects would be likely to lead to the closure of this facility, which is a major employer in the local economy.
 - The siting of a proposed sewage holding tank would negate an extension proposal to the facility, which is the subject of extant permission.

¹ Plots 0201 & 0202 are in the ownership of Kildare County Council.

- **Location:** The proposed sewage holding tank should be relocated to the far side of the River Liffey on agricultural lands zoned for open space.
- **Drainage:** Insufficient details have been submitted as to the drainage implications of the proposed sewer for the lands through which it would pass.
- **Construction Details:** Insufficient details have been submitted as to how construction works would be undertaken and no details have been submitted concerning reinstatement and the subsequent management of any settlement risk.
- **Access:** Precise details of how access would be maintained during the construction period have not been clarified.
- **Duration of the Works:** The likely commencement and completion dates of construction works have not been provided.
- **Specialist advice:** Irish Water is requested to meet the objector's reasonable costs in this respect.
- **EIS:** The objector wishes to take advice on the need for an EIS and to comment upon the same.
- **Other Matters:** If Irish Water makes available further information, then the objector reserves the right to elaborate on the above objections and/or to add in extra ones.

6.3. (e) Aston Ltd:

Permanent wayleaves – owns plots 0901, 0902, 0907, & 0910, and

Temporary working area – owns plots 0903, 0904, 0905, 0906, 0908, 0909, 0911, 0912 & 0913.

- **Impact on Business:** The proposed land acquisition and working area would have a significant detrimental impact upon the layout of the future development of lands in the objector's ownership, which are zoned residential and amenity in the LAP.

- **Location:** The route of the proposed sewer should be revised to ensure that the aforementioned impact is minimised.
- **Drainage:** Insufficient details have been submitted as to the drainage implications of the proposed sewer for the lands through which it would pass.
- **Construction Details:** Insufficient details have been submitted as to how construction works would be undertaken.
- **Access:** Precise details of how access would be maintained during the construction period have not been clarified.
- **Duration of the Works:** The likely commencement and completion dates of construction works have not been provided.
- **Specialist advice:** Irish Water is requested to meet the objector's reasonable costs in this respect.
- **Other Matters:** If Irish Water makes available further information, then the objector reserves the right to elaborate on the above objections and/or to add in extra ones.

7.0 The Oral Hearing

- 7.1. A day long oral hearing into the objections made against the CPO was held on 21st September 2017 in the Conference Centre of the Osprey Hotel in Naas, Co. Kildare. This hearing was recorded and so a complete record of what transpired is available. A list of attendees is also available.
- 7.2. During the course of this hearing, Billy Grogan of Lavelle Chartered Surveyors Ltd, acting on behalf of the objectors Ballyfarm Ltd and Aston Ltd, with-drew each of their objections. Thus, the remaining objectors are Cox's Property Ltd, Thurles Wholesale Cash n' Carry Ltd, and Dermot Cox.
- 7.3. The following parties made submissions to the oral hearing:
- On behalf of Irish Water, Alan Dobb BL called the following expert witnesses:
 - John Finegan, Asset Delivery, Land, Wayleaves & Utility to address CPO Procedure. This evidence included, as attachments, Irish Water's written responses to each of the objectors.

- Esther White, Asset Delivery, Infrastructure Regional Lead for the East/Midlands Region to address Project Need.
- Olwyn James, Asset Delivery, Planning & Consents Specialist to address Statutory Consent Processes.
- Grellan McGrath, Project Director for RPS to address the project from an engineering perspective. This evidence included, as attachments, responses to the specific concerns of each of the objectors.
- On behalf of the remaining objectors, Dermot Flanagan SC elaborated on his clients' original submissions and he called the following expert witness:
 - Leonard Brennan of Punch Consulting Engineers to address engineering aspects and implications of the project of concern to the objectors.

7.4. The main points arising during the course of the oral hearing are summarised below. First, from Irish Water:

In relation to **project need**:

- A Preliminary Report from 2002 explored the future drainage and treatment needs of the catchment area to the Osberstown WWTP. This Report identified the specific need for an eastern interceptor sewer in Newbridge to remedy flooding and pollution problems. Renewed impetus for this sewer has resulted from European Commission action against Ireland for the said pollution. An aerial photograph of Newbridge was presented that shows where out of sewer flooding has occurred in the town.
- The elements of the proposed scheme were set out and its objectives, to provide capacity for the growth of Newbridge and to reduce overflows from combined sewers at Kilbelin and Newhall to the River Liffey, were stated.
- The reasons for the CPO were summarised under the headings of community need, time constraints, and potential delay. Essentially, the CPO mechanism is considered necessary in the light of the pressing need for the proposed scheme and Irish Water's previous experience of delays to projects where agreement is being sought with multiple owners and where some lands are the subject of bank charges.

In relation to **planning**:

- The proposed pumping station, retention tank, and associated works at Kilbelin and Newhall were consulted upon and agreed, under Part 8 of the Planning and Development Regulations, 2001 (as amended), by Kildare County Council in 2008. The remaining proposed pumping station, retention tank, and associated works at Little Connell was permitted, under application 15/974 made by Irish Water.
- The project was screened out for the purpose of EIA and AA.
- The project would reflect policies and objectives set out in the Government's document entitled "Building on Recovery: Infrastructure and Capital Investment 2016 – 2021", Irish Water's Water Services Strategic Plan and Capital Investment Plan, the National Spatial Strategy 2002 – 2020, the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022, the Kildare County Development Plan 2017 – 2023, and the Newbridge Local Area Plan 2013 – 2019 (LAP).
- The project would pass through lands that are the subject of several different zonings. Utilities are "open for consideration" under all but one of these zonings. In the remaining zoning, Irish Water contends that the relevant zoning objective would not be contravened.
- Plots 0101 and 0201 lie within a site that is used by Cox's Cash n' Carry. These plots form part of a vehicle parking and manoeuvring area. Permitted application 13/777 authorises an extension to the existing building on this site. This extension would come within this area but not as far as the said Plots. Once the pumping station and retention tank is installed beneath ground, the surface and air space above these items could be used again for vehicle parking and manoeuvring.

In relation to **site selection**:

- The existing sewerage system in Newbridge was described and the observation was made that there is no capacity available in this system to serve the future growth of the town.
- The concept behind the proposed scheme is to divide the catchment of Newbridge and its hinterland into two sub-catchments, i.e. western and eastern ones. The installation of an eastern interceptor sewer would serve the former sub-catchment, thereby relieving pressure on the latter one. This sewer would be accompanied by a pumping station and storm water balancing tank at Kilbelin. During heavy rainfall, this tank would store overflows from the sewer, which presently enter the River Liffey, and, thereafter, discharge them back into the sewer.
- The route of the proposed Newbridge Eastern Interceptor Sewer was described and the rationale for its selection was set out. Originally this route was to have coincided with the entire line of the proposed Southern Relief Road (SRR). However, it is not now proposed to do so over the most south westerly portion of this line for the following reasons:
 - To connect to this end of the SRR would entail routing the Sewer along the R416, which was found to be congested with existing services.
 - A delay has arisen in the construction of the SRR and so the bridge within which the Sewer would be incorporated would not be available in time.
 - To construct a separate crossing at this point now would risk its subsequent damage when the bridge comes to be built.
- The site selection exercise for the proposed pumping station and storm balancing tank at Kilbelin was set out. Four sites denoted as Options A, B, C, and D were considered and the advantages and dis-advantages of each one were presented. Option D was the preferred one for the following reasons:
 - It is on the line of the existing sewer upstream of the combined sewer outlet.
 - It is adjacent to the R416 and readily accessible to construction traffic.
 - It does not require deep excavation close to the bank of the river with the risk of inundation, as is the case for Options A and B.

- The existing 675mm sewer can be intercepted and diverted to the pumping station within the one site, unlike Options A and B.
- It minimises the amount of land that would be sterilised for future development, as the site currently contains a 675mm foul sewer and a 1500m storm sewer.
- The specific concerns of the remaining objectors were addressed as follows:
 - Disruptions to operational activities in the yard during the construction phase would arise. Measures to alleviate such disruption were identified, e.g. the construction of a temporary employee car park and/or storage area to the west of the existing building and the construction of a temporary entrance from the industrial estate road to the west, to facilitate forward gear vehicular delivery movements.
 - The proposed pumping station and storm water balancing tank would be installed underground and fitted with trafficable roof slabs. Accordingly, once functioning, they would have minimal impact upon the operational activities in the yard. Access to them for maintenance purposes could be undertaken outside business hours.
 - The footprint of the proposed extension to the existing building would be outside the footprint of the proposed pumping station and storm water balancing tank and so neither project would interfere with the other.
 - The proposed pumping station and storm water balancing tank would mitigate the existing environmental impacts of overflows into the River Liffey and the surcharging of the existing sewerage system. The works requirements for these items would address odour levels, which would not be allowed to exceed 3 odour units per cubic metre at the site boundaries. These items would be either sealed or covered and they would be positively ventilated by means of an odour control system.
- The objector identified a further potential site at Kilbelin on the eastern side of the River Liffey. Irish Water set out the advantages and dis-advantages that would be attendant upon this site and it concluded that the former would be far outweighed by the latter.

Secondly, from the remaining objectors:

- The objector, Thurles Wholesale Cash n' Carry Ltd, is in occupation of the site selected for the Kilbelin pumping station, which is the subject of a Part 8 approval from 2008. This site forms part of the overall site that the objector is in occupation of and so it is part of the planning unit for his business use, a planning unit which is the subject of an extant permission from 2014 for an extension to the existing building that is within it. This permission is not subject to any conditions that require the site of the pumping station to be excluded from its ambit.
- Irish Water propose to permanently acquire the selected site for the Kilbelin pumping station. The objector questions whether, in the light of his aforementioned occupation, this is proportionate. The case of Reid -v- the IDA [2005] IESC 82 was cited in which Mr. Justice McKechnie set out, in paragraph 44 of his judgement, principles to be applied in assessing any objection to a CPO. One such principle is of particular relevance. It states:

The conferring and exercise of such power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlies the power.

While Irish Water has stated that the surface and air space above the pumping station would be available post-construction for the objector's use again, no legal basis for such use would exist. In these circumstances, attention is drawn to the option available to Irish Water to amend its CPO to propose a permanent wayleave instead. Equally the Board could modify the CPO to this effect.

- Under the Part 8 approval, the storm water balancing tank was to have a volume of 1700 cubic metres, whereas a volume of 2000 cubic metres is now proposed. Similarly, the siting of this tank is shown as being further to the north of the approved siting. (Irish Water is invited to re-site the said tank further to the south). Accordingly, in the strict sense, Irish Water does not have planning permission for what it is now proposing. Furthermore, the

temporary working area associated with the construction of the pumping station would encroach upon the footprint of the aforementioned extension to the existing building on the objector's overall site.

- Under the Part 8 approval, the details of the proposal were described as being "specimen and preliminary." Under the current proposal, they are described in the contract documentation as being "specimen" and thus a precursor for construction by a contractor, on a design and build basis, within the envelope of the aforementioned approval. Thus, uncertainty exists as to the final form that this pumping station will take. In these circumstances, the Board should consider whether or not it has sufficient information and whether or not confirmation of the CPO would be premature.
- Under the Part 8 approval, as distinct from the contract documentation, odour is not addressed or controlled.
- The siting of the control building at the southern extremity of the site is welcomed.
- Whereas Irish Water's project is designed to achieve clean water objectives, in the light of the case of O'Mahony -v- An Bord Pleanala 2005 IEHC 39, other Development Plan objectives, such as employment, need to be considered. The objector provides local employment and so the viability of his business is important to ensure that such employment continues to be afforded.
- A comparison between the Part 8 approval and what is now proposed shows that a 6m diameter 16m deep vertical shaft would be constructed in order to facilitate routing the sewer under the River Liffey. The question is posed as to whether or not this item was included in the screening exercise for EIA and AA.
- The construction phase would cause complications for vehicular movements on the objector's overall site. In fact, if it is assumed that both the extension and the proposed temporary working area are insitu, HGV forward gear turning manoeuvres would become impossible. (Irish Water's proposal that a new access be formed in the western boundary of the site, to assist in this respect, does not have the benefit of planning permission).

- Attention is drawn to the guidance from Kildare County Council and Irish Water that advises that separation distances between foul water pumping stations and residential properties should be, variously, 50m and, for smaller pumping stations than the one proposed, 15m. The objector contends that the former standard and a dimension in excess of the latter standard are applicable in this case and yet neither would be met. Consequently, the implications for odour control, especially under a surcharge scenario, would be that much greater for the objector.

From the question time:

- The objector's occupation of the selected Kilbelin pumping station site was acknowledged by Irish Water.
- The absence from the Part 8 approval of odour control conditions was acknowledged by Irish Water. The contract documentation does however address this matter.
- The choice of a permanent acquisition as against a permanent wayleave was discussed. Irish Water stated that the former was more appropriate than the latter in situations, such as the one proposed, where continuous access for maintenance purposes was necessary. The objector responded by stating that the same rights of access could be afforded under a permanent way leave. Irish Water also stated that the trafficable surface proposed for the pumping station was a mitigation measure in response to the objector's viability concerns and that it was now being used against Irish Water to argue for a permanent wayleave.
- Irish Water stated that, notwithstanding the preparation of an EIA Screening, it considered that the project was not of a type that requires EIA and so the need to consider whether or not it was threshold or sub-threshold development does not arise.
- The alternative means of access identified by Irish Water replicates that which was permitted under the parent permission in 1976 for the existing Cash n' Carry building.

8.0 Assessment

8.1 For the Board to confirm the subject CPO proposal, it must be satisfied that Irish Water has demonstrated that this CPO “is clearly justified by the common good”.² Legal commentators³ have stated that this phrase requires that the following minimum criteria must be satisfied:

- There is a community need that is to be met by the acquisition of the site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and
- The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.

8.2 Each of the above cited criterion is reworked into a question and used as a heading in my assessment of the subject CPO proposal, which is set out below. Following a discussion of each of these questions, I will consider, under a fifth heading, the objections of the remaining three objectors, insofar as they pertain to the selected Kilbelin pumping station site, and related legal matters.

Is there a community need that is to be met by the acquisition of the site in question?

8.3 Irish Water has set out the community need for the project, which is the subject of this CPO. Thus, the proposed Newbridge Eastern Interceptor Sewer would address the fact that the existing sewerage system in the town is at capacity and so, during periods of heavy rainfall, it can surcharge leading to localised flooding and the release of foul water from combined sewers.⁴ By enabling this system to be subdivided into two catchments, this Sewer would effectively increase capacity in the overall system, thereby mitigating the risk of flooding and associated pollution and

² Para. [52] of judgement of Geoghegan J in *Clinton v An Bord Pleanala (No. 2)* [2007] 4 IR 701.

³ Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath and published by Bloomsbury Professional (West Sussex and Dublin, 2013).

⁴ Refer to Figure 1 in the Statement of Evidence of Esther White on Project Need.

facilitating the future growth of Newbridge. Furthermore, it would solve the problem that occurs at present whereby, during periods of high rainfall, foul water overflows from combined sewers at Kilbelin and Newhall into the River Liffey. The resulting pollution is the subject of European Commission action against Ireland, under the Urban Wastewater Treatment Regulations 2001, and it is addressed by means of an Improvement Programme in the EPA's Discharge Licence. Thus, foul water would be conveyed to the Osberstown WWTP for processing to a greater extent than occurs at present.

- 8.4 None of the objectors to the CPO questioned the community need for the project.
- 8.4 The pressing need for the project is identified in Irish Water's Water Services Strategic Plan (October 2015). Strategically, both the RPG and the CDP identify Newbridge as a growth town and so by implication the capacity of the sewerage system is an issue that needs to be resolved. The CDP and the LAP specifically refer to the project under Policy WW 7 and Objective WWO1, respectively.
- 8.5 I conclude that the project would manifestly meet the community need to mitigate the risk of flooding and pollution and to promote the future growth of Newbridge. The acquisitions proposed under the CPO to enable this project to be implemented would, thus, in principle be fully justified.

Is the particular site suitable to meet that community need?

- 8.6 Irish Water have explained in their submitted documents and at the oral hearing how the lands which are the subject of the CPO would form a suitable route for the project.
- 8.7 None of the objectors to the CPO question, in principle, the suitability of the route for the project.
- 8.8 During the oral hearing, evidence from a planning perspective was submitted, which included a commentary on the land use zoning of the lands through which the route of the project would pass. This commentary noted that where formal zonings exist, the project as a utility would be "open for consideration" in each of them, except for one. Under this exception, the Zoning Objective is "To protect and improve existing leisure and amenity facilities" and it pertains to the site of The Gables Guest House and Leisure Centre, which lies between the R416 and the River Liffey to the east of the site at Kilbelin selected for the proposed pumping station and storm water tank.

Irish Water expressed the view that the routing of the proposed sewer underneath this site would be in compliance with this Objective. As this routing would be at a depth of c.16m and it would be achieved by means of tunnelling, I concur with this view.

- 8.9 I conclude that the lands, through which the project which is the subject of the CPO would pass, would be suitable to meet the aforementioned community need.

Have any alternative methods of meeting the community needs been considered and are they demonstrably not preferable (taking into account environmental effects, where appropriate)?

- 8.10 Irish Water has outlined how the route of the Newbridge Eastern Interceptor Sewer was originally envisaged as passing underneath the R416 as far as its future junction with the south western extremity of the proposed Southern Relief Road (SRR). However, as the R416 carries a considerable number of existing services and as the timetable for the SRR has been delayed, an alternative route for the Sewer is now being proposed whereby it would pass underneath the River Liffey, to the east of the selected site for a pumping station and storm water tank in Kilbelin, and, thereafter, it would pick up the line of the proposed SRR further to the east.

- 8.11 Irish Water has also outlined its site selection process for the said pumping station and storm water tank in Kilbelin. Its selection in this respect is the focus of the objectors concerns. Four sites were considered, denoted as Options A, B, C, and D. The various advantages and dis-advantages of each of these Options is set out and the one selected emerges as the one that is demonstrably preferable from Irish Water's perspective.

- 8.12 The objectors identified a further site to the east of the River Liffey in the vicinity of Plots 0102, 0103, and 0105. Irish Water has examined this site, too, and in the light of its advantages and dis-advantages has concluded that it, too, would be less satisfactory than the site selected. Thus, while its location on the eastern side of the River Liffey would afford ample space on lands zoned for open space, the inlet to the pumping station and storm water tank would have to be 10 – 12m underground to ensure a continuous fall in the gravity sewer as it passes underneath the River Liffey, thus adding to constructional and future maintenance costs, the site is not readily accessible from the existing road network and it is remote from existing utilities, and

its construction would not obviate the need to construct works on the Cash n' Cary site to ensure that self-cleansing flows can occur in the existing Liffey Sewer.

8.13 I have reviewed Irish Water's assessment of each of the four Options and the fifth one identified by the objectors. I am satisfied that this assessment is reasonable and robust and that the selected site is demonstrably preferable to the other ones examined.

Would the works to be carried out accord with or at least not be in material contravention of the provisions of the statutory development plan?

8.14 The statutory development plan for the entirety of the project, which is the subject of the CPO, is the CDP. Additionally, for that portion of this project that is either within or near to Newbridge the LAP is a statutory plan.

8.15 As discussed under the second heading of my assessment, the project would be compatible with relevant CDP and LAP zonings/zoning objectives. It would also fulfil specific policy WW 7 of the CDP and specific objective WWO1 of the LAP.

8.16 I conclude that the project would accord with the provisions of the relevant statutory development plans.

Consideration of objections and related legal matters

8.17 The objectors' original concerns are summarised under section 6.2 above. During the oral hearing these concerns were refined and refocused in several respects. Essentially, they can be summarised under the following headings:

- The need for EIA,
- Planning consent,
- Amenity,
- Technical matters, and
- Proportionality.

The need for EIA

8.18 The objectors raised the question as to whether or not the project should be subject to EIA. While Irish Water circulated an EIA Screening Document to the oral hearing, during the question time, it stated that this Document was prepared as an in-house

exercise to confirm that EIA was not required. Its position was that the project was a type of development that did not require EIA and so any question as to whether or not it exceeds the relevant thresholds set out in Parts 1 and 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2015, or is sub-threshold under Schedule 7 to Articles 103, 109, and 120 of these Regulations, does not arise. I concur with this position.

- 8.19 During the oral hearing, the objectors queried whether or not the submitted EIA Screening Document pertained to the project as currently proposed and not the earlier project that was the subject of a Part 8 approval. I have read the description of this project, as outlined in this Document, and I am satisfied that the EIA Screening Document does relate to this project as currently proposed.

Planning consent

- 8.20 The project would entail the construction of three pumping stations and storm water tanks at Kilbelin, Little Connell, and Newhall. The first and third of these stations are the subject of Part 8 approvals dating from 2008, when Kildare County Council was the Drainage Authority, while the second is the subject of permitted application 15/974 obtained by Irish Water.
- 8.21 The objectors drew attention to the details of the proposals for the Kilbelin site. Specifically, they highlighted that, whereas the volume of the storm water tank approved under Part 8 would have been 1700 cubic metres, it is now proposed to be 2000 cubic metres. Likewise, the tank's length and breadth dimensions would change from 30m x 20m to 40m x 17m and it would be re-sited c. 8 – 10m further to the north.
- 8.22 The objectors also drew attention to the introduction of a 6m diameter vertical shaft, which would be sited to the east of the aforementioned tank and which would have a depth of 16m. This shaft has been introduced as part of the redesign of the proposals for the Kilbelin site arising from the revised routing of the sewer described under the third heading of my assessment.
- 8.23 The objectors further drew attention to the possibility of additional revisions, as the proposal would be taken forward by a contractor on a design and build basis. In this respect, the contract documentation only requires that any material deviation from the planning consent be avoided. They, therefore, questioned whether or not the

Board has sufficient information before it to make a decision on the CPO without such a decision being premature.

- 8.24 I note the points raised by the objectors. I note, too, that, at the very least, the Part 8 approval establishes the principle of what is now being proposed. Ultimately, it is for Irish Water to satisfy itself that it has the necessary planning consents for the Kilbelin site and the entirety of the project.
- 8.25 I consider that the absence of detailed and finalised plans for the proposed pumping station and storm water tank on the Kilbelin site does not prevent the Board from making an informed and reasonable decision on the CPO, which is before it.

Amenity

- 8.26 The objectors' engineer, Leonard Brennan, draws attention to the risk of odour from the proposed Kilbelin pumping station, which would be sited in the vicinity of the Cash n' Carry and residential properties at Kilbelin Crescent. He cites Kildare County Council's advice that "There must be lateral separation of at least 50m from the boundary of a foul pumping station site to the nearest adjacent habitable property in order to minimise any risk of an odour being detected at neighbouring properties."⁵ He also cites Irish Water's advice that for Type 3 Pumping Stations, a lateral separation distance of 15m is applicable.⁶ These Stations are smaller than the one proposed and so he deduces that a greater separation distance would thus be appropriate. He further contends that the Cash n' Carry should be regarded as analogous to a habitable property for this purpose.
- 8.26 Leonard Brennan submitted a plan⁷, which shows the site in conjunction with adjoining lands for the purpose of illustrating ascending separation distances outwards from the proposed Kilbelin pumping station at 25m intervals. The proximity of this station to the existing Cash n' Carry building and its proposed extension and adjacent dwelling houses on Kilbelin Crescent is thereby illustrated.
- 8.27 Irish Water's engineer, Grellan McGrath, addressed the concern with respect to odour. He advised that the Kilbelin pumping station would be designed, built, and

⁵ Page 20 of the Water Services Department's "Requirements for Foul Pumping Stations and Associated Infrastructure (November 2012, Revision 1)."

⁶ Page 78 of Connections and Developer Services' "Code of Practice for Wastewater Infrastructure (December 2016)."

⁷ Refer to Drawing No. 171-265-005 Rev: PR0.

operated in compliance with the European Communities (Waste Water Treatment) (Prevention of Odours and Noise) Regulations – S.I. No. 787 of 2005 and that to this end each chamber would be either sealed or covered and each would be positively ventilated through an odour control system designed to ensure that a threshold of 3 odour units per cubic metre is not exceeded at the site boundaries. He also advised that, once the storm balancing tank is emptied, it would be the subject of an automatic storm cleansing cycle.

- 8.28 I note that the Code of Practice cited is not applicable to the size of pumping station proposed for the selected Kilbelin site. I note, too, that the Part 8 approval, which applies to this site, is for a comparable pumping station to that now proposed. The consultation exercise for this proposal in 2008 did not attract objection from either the Cash n' Carry or local residents. The other Options for site selection would also be in the vicinity of residential properties. The only exception would be that of the site identified by objectors. However, in other respects, this site was the most disadvantageous.
- 8.29 Clearly, the project is designed to relieve problems that affect the existing sewerage system in Newbridge, including amenity issues that arise from periodic flooding and associated pollution, and so it differs from a new development scenario wherein pumping stations can be located optimally from an amenity perspective. Given the amenity gains that are in view and given, too, that the contract documentation for the Kilbelin site incorporates the provisions set out above by Grellan McGrath, I consider that the development of this site as proposed would not be unduly detrimental to the amenities of the area.

Technical matters

- 8.30 The objectors' original concerns included a cluster of technical matters relating to the construction phase, e.g. details of the works themselves, including the implications for drainage, access arrangements, and the timing and duration of any construction phase.
- 8.31 Irish Water responded to these concerns by letter in advance of the oral hearing and in the Brief of Evidence presented by Grellan McGrath. The majority of these

concerns appear to have thereby been allayed apart from the question of access, which was the subject of submissions and questions/answers at the oral hearing.

- 8.32 Figure 10 in the aforementioned Brief of Evidence illustrates access arrangements that could be utilised during any construction phase. Thus, assuming that the proposed extension to the existing Cash n' Carry building, which is the subject of extant permission (application 13/777) granted on 12th March 2014, remains unbuilt, employee car parking spaces and a storage area could be laid out on the western side of the said building and forward gear HGV deliveries could be facilitated by means of a new access off the industrial estate road to the west of the overall site.
- 8.33 The objectors drew attention to the need to obtain planning consent for the proposed new access. Irish Water did not disagree. It did however draw attention to the precedent for such an access, as under the parent permission for the Cash n' Carry building granted in 1976, it had been proposed and permitted, but not implemented.
- 8.34 The objectors engineer, Leonard Brennan, presented a series of plans of the overall site, which illustrated that with the said extension insitu it would be impossible during the construction period for HGV deliveries to be undertaken in the manner that occurs at present. Essentially the 10m wide temporary working area would remove from the yard turning space that is critical in this respect.⁸ It would also overlap slightly with the south eastern corner of the extension.
- 8.35 Leonard Brennan also presented plans that depict, in conjunction with one another, the footprints of the pumping station, as approved under Part 8, and as now proposed and the former footprint in conjunction with an alternative siting of the one now proposed in a more southerly position.⁹ This alternative siting would be accompanied by a temporary working space that would be further to the south. Thus, it would place less of a squeeze on the yard space that would remain available for HGV manoeuvres and deliveries and it would not overlap with the extension.
- 8.36 In the light of the foregoing exchanges, I note that there are a number of variables at play, which, depending on how they are handled by the parties, could serve to alleviate any servicing difficulties that would arise for the Cash n' Carry during the construction period for the Kilbelin pumping station. Thus, if the construction of the

⁸ Compare Drawing Nos. 171-265-002 Rev: PR1 and 171-265-003 Rev: PR1.

⁹ Compare Drawing Nos. 171-265-004 Rev: PR0 and 171-265-010 Rev: PR0.

extension were to occur after this construction period, then such difficulties would be minimised. Alternatively, if the construction of the extension were to precede that of the pumping station, then the feasibility of the alternative siting could be explored. Ultimately, these are matters for the parties to work out together in conjunction, as appropriate, with the question of compensation.

Proportionality

8.37 The objectors questioned whether or not the proposed permanent acquisition of the selected Kelbelin pumping station site, as distinct from a permanent wayleave, would be proportional in the sense outlined by Mr. Justice McKechnie in the case of *Reid - v- the IDA [2005] IESC 82*. In this case, the Justice referred to the following principle, which is of relevance in deciding upon CPOs:

The conferring and exercise of such power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlies the power.

8.36 Dermot Flanagan, on behalf of the objector Thurles Cash n' Carry Ltd (TCnC), referred to TCnC's occupation of the entirety of the selected site, in conjunction with its Cash n' Carry use. This site forms the southern part of a wider site that is in its occupation. He stated that, as TCnC is in occupation of this wider site and as this site is in use as a Cash n' Carry, it is this wider site that constitutes the planning unit over which TCnC has existing user rights, which include existing user rights to extend in accordance with the extant permission from 2014. Clearly, during the construction phase, the use of the overall site would be disrupted, as discussed above. Furthermore, during the operational phase, there would be on-going disruption.

8.37 By way of response, Irish Water's engineer, Grellan McGrath, stated that the proposed pumping station would require a higher degree of servicing than a typical underground sewer pipeline, i.e. weekly visits for monitoring and maintenance purposes as distinct from very occasional visits when e.g. blockages result or damage occurs that needs repairing. Thus, while permanent wayleaves are appropriate for sewer pipelines, Irish Water considers that permanent acquisition is appropriate for pumping stations. With respect to the Kilbelin pumping station, Irish

Water stated that monitoring and maintenance could be undertaken outside the normal business hours of the Cash n' Carry in order to minimise any potential disruption to this business.

- 8.38 Grellan McGrath also stated that the pumping station and storm water tank would be sited underground and that the surface above these items would be trafficable and so, once installed, these items would be compatible with the re-commencement of the use of the surface and air space as a yard to the Cash n' Carry. The associated control building would be constructed over ground in the southernmost extremity of the site and so its presence would, in practise, have little if any effect on the functioning of the yard. The objectors confirmed that this is so by stating that they welcomed the siting of this building.
- 8.39 Irish Water stated that its willingness to make available the surface and air space above the pumping station and storm water tank, as described above, was now being used against it by the objectors who were concerned that this willingness would not be the subject of any legally binding agreement.
- 8.40 I note from Figure 9 of Grellan McGrath's Brief of Evidence that, while Thurles Cash n' Carry Ltd occupy the entirety of the selected site, the objectors own the northern and central portions (plots 0101 & 0104), while Kildare County Council owns the southern portion and a strip of land that accompanies a gateway from the R416 (plots 0201 & 0202). The proposed pumping station and storm water tank would be sited in a position that would straddle the central and southern portions of the site. Irish Water proposes the permanent acquisition of the central and southern portions and the said strip of land. I consider that the choice before the Board is whether to confirm this proposed acquisition or to modify it to that of a permanent wayleave. Given the siting of the proposed pumping station and storm water tank, I consider that a mixture of both these options would lack cogency.
- 8.41 In seeking to assess whether or not the proposed permanent acquisition, as distinct from the alternative permanent wayleave nominated by the objectors, would be proportional, I consider that the question of access to the selected site is pivotal. Irish Water has defended its choice of permanent acquisition on the basis that pumping stations, as distinct from pipelines, require weekly monitoring and maintenance, thereby generating a much higher pattern of service traffic movements. It has also

stated that it would endeavour to undertake such servicing when the Cash n' Carry is closed. Notwithstanding this undertaking, I consider that the greatest potential for disruption to the Cash n' Carry by Irish Water in the future would arise from conflicting traffic movements between these business and utility users. The opposite would also be the case, too.

8.42 In order to mitigate the risk of the aforementioned conflict, I consider that the physical separation of traffic movements would be of value. Such separation would be facilitated by the use of dedicated accesses to the retained Cash n' Carry site and the site selected by Irish Water. The existing entrances off the R416 would facilitate such dedicated usage, i.e. the more northerly one would continue to serve the Cash n' Carry, while the more southerly one, which is presently unused, could serve Irish Water. Such separation would hinge on the permanent acquisition of the selected site, as a permanent wayleave would be insufficient to achieve this outcome, i.e. the Cash n' Carry, as continuing occupier of the site, would have a right of access and egress through the more southerly entrance, too.

8.43 In the light of the foregoing considerations, I conclude that the proposed permanent acquisition of the site selected by Irish water for the Kilbelin pumping station and storm water tank would be proportional.

9.0 Recommendation

That the CPO be confirmed without modifications.

10.0 Reasons and Considerations

Having considered the objections made to the CPO and having regard to the following:

- i. Appendix 3 of Irish Water's Water Services Strategic Plan,
- ii. Relevant policies and priorities of the Regional Planning Guidelines for the Greater Dublin Area 2010 – 2022,
- iii. Relevant policies of the Kildare County Development Plan 2017 – 2023,

- iv. Relevant policies and objectives of the Newbridge Local Area Plan 2013 – 2019,
- v. The Urban Waste Water Treatment Directive (91/271/EEC),
- vi. The EPA's Upper Liffey Valley Sewerage Scheme Discharge Licence (Reg. No. D0002-01),
- vii. The manifest community need for the project,
- viii. The suitability of the route selected for the project to meet the community need,
- ix. The demonstrably preferable nature of the route selected over that of the identified alternatives,
- x. The accordence of the project with statutory development plans,
- xi. The proportionality of the project, particularly in relation to the site selected for the Kilbelin pumping station and storm water tank and the proposed permanent acquisition of this site,
- xii. The submissions and observations made at the oral hearing, and
- xiii. The report and recommendation of the inspector.

It is considered that, the permanent acquisition, permanent wayleaves, and temporary working areas proposed by Irish Water of the lands in question, as set out in the Order, Schedules, and on the Deposited Maps, are necessary for the purposes stated and the objections raised cannot be sustained having regard to the necessity of these purposes.

Hugh D. Morrison
Planning Inspector

19th October 2017