



An  
Bord  
Pleanála

# Inspector's Report ADDENDUM 02.JP0047

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<b>Development</b>	N55 Corduff to South of Killydoon Realignment, Section B
<b>Location</b>	Townlands of Ballytrust, Ballytrust Lower, Legwee, Drumcor, Killydoon, Drumbannow, Grousehall and Mullaghoran, Co. Cavan
<b>Local Authority</b>	Cavan County Council
<b>Type of application</b>	Application for approval made under Section 177(AE) of the Planning and Development Act, 2010 (local authority development requiring appropriate assessment)
<b>Prescribed Bodies</b>	Transport Infrastructure Ireland Inland Fisheries Ireland
<b>Observers</b>	1. Oliver O'Reilly 2. Patrick and Noel Brady 3. Killydoon Area Development Association 4. Malachy and Adele O'Reilly
<b>Date of site inspection</b>	3 <sup>rd</sup> October 2017 and 28 <sup>th</sup> November 2018

**Date of Oral Hearing**

4<sup>th</sup> December 2018

**Inspector**

Niall Haverty

**NOTE: This Addendum should be read in conjunction with my original report on file dated 26<sup>th</sup> October 2017**

## **1.0 Introduction**

### **1.1. Concurrent Application for Confirmation of Compulsory Purchase Order**

- 1.1.1. The Board will be aware that Cavan County Council has made an application for confirmation of a Compulsory Purchase Order, entitled 'Cavan County Council Compulsory Purchase (N55 Corduff to South of Killydoon – Section B) Order, 2018' (Board Ref. ABP-301560-18 refers).
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of lands in the townlands of Ballytrust, Ballytrust Lower, Legwee, Drumcor, Killydoon, Drumbarrow, Grousehall and Mullaghoran in County Cavan and it is made pursuant to the powers conferred on the local authority by section 76 and the third schedule of the Housing Act 1966, as extended by section 10 of the Local Government (No. 2) Act 1960, and amended by Section 213 of the Planning and Development Acts 2000 to 2017.
- 1.1.3. The purpose of the CPO is to facilitate the proposed development which forms the basis of this application for approval pursuant to section 177AE of the Planning and Development Act 2000, as amended. To recap, this development comprises the realignment of a portion of the N55 National Secondary Road and associated development, including three new bridges over the River Erne, as outlined in more detail in my original report dated 26<sup>th</sup> October 2017.

### **1.2. Oral Hearing**

- 1.2.1. An Oral Hearing was held on 4<sup>th</sup> December 2018, in the Cavan Crystal Hotel, Co. Cavan. This was a joint Oral Hearing in respect of both this application for approval pursuant to section 177AE of the Planning and Development Act 2000, as amended (ABP Ref: 02.JP0047) and the concurrent application for confirmation of a CPO (ABP-301560-18).
- 1.2.2. A digital sound recording was made of the Oral Hearing and should be consulted for a full representation of proceedings. A summary of the Hearing is, however, included in Appendix 1 of this Addendum report.

- 1.2.3. This Addendum report addresses matters arising at the Oral Hearing, and it should be read in conjunction with my original report.

## **2.0 Additional Assessment**

- 2.1. The principal issues that arise for further consideration since my previous report on file relates to the submissions made at the Oral Hearing and the subsequent questioning between the parties.

- 2.2. At the outset, I note that Mr Tim Ryle, the Ecologist who appeared at the Oral Hearing on behalf of the Local Authority stated that none of the observations have direct bearing on the Appropriate Assessment process, and that they largely relate to proper planning and sustainable development of the area. While I would generally concur with this position, I note that section 177AE(6)(a) of the Planning and Development Act 2000, as amended, also requires the Board to consider, inter alia, the likely effects on the environment and the likely consequences for the proper planning and sustainable development of the area.

### **2.3. Inland Fisheries Ireland Submission**

- 2.3.1. Mr Ryle, on behalf of the Local Authority, provided a response to the IFI's written submission at the Oral Hearing. He confirmed that the Local Authority agreed with the recommendations made by the IFI, and that the bridges would be clear-span to avoid the need for in-stream construction works. He also stated that the requirements to adhere with IFI best practice guidance and to seek prior written approval for in-stream works shall be conditions of the construction contract, and that the contractor will be required to prepare a Construction and Environmental Management Plan. I consider these measures to be appropriate, and note that they were included as mitigation measures in the NIS submitted with the application.

### **2.4. Access to Killydoon**

- 2.4.1. Mr Oliver O'Reilly's written submission and the submission given on his behalf at the Oral Hearing raised the issue of the northern access to Killydoon, which he contends differs from the route alignment drawing previously provided to him.

- 2.4.2. At the Oral Hearing I noted that Figure 3.1(d) of the Environmental Report shows a southern entrance to Killydoon, but no northern entrance, in response to which Mr Condrón stated that the northern entrance came about due to the consultation process to facilitate local traffic and businesses within Killydoon. I asked Mr Condrón to comment as to whether any additional environmental impacts or mitigation measures arose due to the now-proposed northern entrance. Mr Condrón stated that he was satisfied that no additional issues arose beyond those addressed in the report.
- 2.4.3. While the northern access to Killydoon is not shown on the figures contained in the Environmental Report, it is shown on the road alignment drawings. Having heard submissions from both the Local Authority and the observer in relation to this matter at the Oral Hearing, I am satisfied that the provision of the northern access to Killydoon will facilitate local traffic and businesses in the village, and that it will also facilitate Mr O'Reilly in accessing his lands on the western side of the proposed road without having to travel back through the village. The Board should note that the issue of access to Mr O'Reilly's retained lands is addressed in more detail in my report on the concurrent application for confirmation of a CPO (Ref. ABP-301560-18). I consider that the proposed access arrangements for Mr O'Reilly are reasonable and that any outstanding matters are a matter for agreement/arbitration and compensation, as appropriate, under the separate CPO process.
- 2.4.4. With regard to the issue of public lighting of the new road where it bypasses Killydoon, I accept the Local Authority's position that the public lighting of national roads in a rural area is not required and that the provision of footpaths in such an area is likewise not required. I note in this regard that there is existing public lighting and footpaths in Killydoon village along the existing N55 alignment, which will be retained. I do, however, continue to hold the view that the provision of a high quality road with upgraded junctions at both ends of Killydoon may result in vehicles entering the village at excessive speeds, and I therefore recommend that the Board include a condition requiring the provision for traffic calming measures at the entrances to the village of Killydoon in the interest of traffic safety.

## 2.5. Set-back from River Bank

- 2.5.1. At the Oral Hearing I queried the apparent discrepancy between the 3m setback from the river bank referred to in the submission of Mr Condron, the Engineer appearing on behalf of the Local Authority, compared to the 5m leave strip included as a mitigation measure in the NIS and Figures 3.2 – 3.4 of the Environmental Report which indicate the toe of the embankment encroaching on both those measurements. In response to my query, the project Ecologist, Mr Ryle, stated that anything less than 5m could possibly be a difficulty in terms of the impact assessment. Mr Condron stated that the 3m measurement came from the NRA Guidelines for the Crossing of Watercourses During the Construction of National Road Scheme, but that the embankment will be retained to ensure a minimum set-back from the river bank of 5m as per the NIS.
- 2.5.2. I consider the proposed 5m leave strip, as described in Section 4.6.4 of the NIS, to be an adequate and appropriate means of mitigating adverse effects. Having regard to the discrepancies noted above, and in the interests of clarity, I recommend that the provision of a minimum 5m wide leave strip at each bridge crossing of the River Erne be clearly specified by way of Condition.

## 2.6. Conclusion

- 2.6.1. Having conducted an Oral Hearing in relation to this application and the concurrent application for confirmation of the CPO (Ref. ABP-301560-18), my conclusion remains as per my previous report, dated 26<sup>th</sup> October 2017. That is, having regard to the location of the application site 20km upstream of the Lough Oughter and Associated Lakes SAC (site code: 000007) and the Lough Oughter Complex SPA (site code: 004049), the design of the scheme and in particular the use of clear span bridges with no in-stream structures or disruption to the existing river banks, and subject to the implementation of best practice construction methodologies and the proposed mitigation measures, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of

the Lough Oughter and Associated Lakes SAC, the Lough Oughter Complex SPA, or any other European site, in view of the sites' Conservation Objectives.

### **3.0 Recommendation**

3.1. On the basis of the above assessment, and that contained in my earlier report dated 26<sup>th</sup> October 2017, I recommend that the Board approve the proposed development based on the following reasons and considerations and subject to the conditions set out below. The Board should note that the recommended conditions in this Addendum report have been updated and amended from those included in my earlier report.

### **4.0 Reasons and Considerations**

4.1. In coming to its decision, the Board had regard to the following:

- (a) Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union,
- (b) Directive 2000/60/EC (Water Framework Directive),
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the Lough Oughter and Associated Lakes SAC (site code: 000007) and the Lough Oughter Complex SPA (site code: 004049),
- (e) the policies and objectives of the Cavan County Development Plan, 2014-2020,
- (f) the nature and extent of the proposed works as set out in the application for approval,

- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development,
- (i) the submissions and observations made at the Oral Hearing held on the 4<sup>th</sup> December 2018, and
- (j) the Inspector's report dated 26<sup>th</sup> October 2017 and the subsequent addendum report dated 21<sup>st</sup> January 2019.

#### **4.2. Appropriate Assessment**

- 4.2.1. The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Lough Oughter and Associated Lakes SAC (site code: 000007) and the Lough Oughter Complex SPA (site code: 004049) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.
- 4.2.2. The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Lough Oughter and Associated Lakes SAC (site code: 000007) and the Lough Oughter Complex SPA (site code: 004049), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:
  - i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
  - ii. the mitigation measures which are included as part of the current proposal, and
  - iii. the conservation objectives for the European Sites.
- 4.2.3. In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the



potential effects of the proposed development on the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives.

#### 4.3. **Proper Planning and Sustainable Development/Likely effects on the environment**

- 4.3.1. It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 5.0 **Conditions**

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Environmental Impact Report and Natura Impact Statement lodged with the application to An Bord Pleanála on the 12<sup>th</sup> day of May 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development and retained as part of the public record.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. All mitigation measures identified in the Environmental Impact Report (EIR) and Natura Impact Statement (NIS) submitted with the application shall be implemented in full as part of the proposed road development or as may be required in order to comply with the following conditions. The local authority

or any agent acting on its behalf shall appoint a person with appropriate ecological and construction expertise as an environmental manager to ensure that the mitigation measures identified in the EIR and NIS are implemented in full.

**Reason:** In the interest of clarity and to protect the environment during the construction and operational phases of the development.

3. Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare a Construction Management Plan (CMP) generally in accordance with the commitments set out in the Environmental Impact Report and Natura Impact Statement which were submitted with the application. The CMP shall include specific proposals as to how the CMP will be measured and monitored for effectiveness, and it shall be on file prior to the commencement of development and retained as part of the public record.

**Reason:** In the interest of protecting the environment and in the interest of public health.

4. (a) The design and construction of culverts and watercourse/river crossings shall have regard to the provisions of NRA publication 'Guidelines for the Crossing of Watercourses during the Construction Of National Road Schemes' and the Eastern Regional Fisheries Board publication 'Requirements for the Protection of Fisheries Habitat during Construction and Development Work at River Sites'.
- (b) No excavation or construction works shall take place in the vicinity of the River Erne during the peak spawning period for salmonids between 1<sup>st</sup> October and 30<sup>th</sup> April inclusive.
- (c) Detailed measures in relation to the protection of bats, badgers and otters during the construction period shall be determined in consultation with the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht. These measures shall be implemented as part of the development by the local authority or any agent acting on its behalf.
- (d) A minimum 5 metre wide leave strip shall be maintained on both sides of the River Erne at each bridge crossing point, as described in Section 4.6.4 of the Natura Impact Statement submitted with the application.

**Reason:** In the interests of clarity, ecological protection and to ensure the protection of the European sites.

5. The scheme shall make provision for traffic calming measures at the entrances from the realigned N55 to the village of Killydoon and these shall be put in place as part of the overall contract for the works. These provisions shall be made available for public inspection at the offices of the local authority.

**Reason:** In the interest of traffic safety.

6. The local authority or any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. A suitably qualified archaeologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on site during construction works.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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Niall Haverty  
Planning Inspector  
21<sup>st</sup> January 2019

## 6.0 APPENDIX 1: ORAL HEARING SUMMARY

**Case Reference: ABP-301560-18 and 02.JP0047**

**Development: N55 Corduff to South of Killydoon Realignment, Section B**

**Venue of Oral Hearing: Cavan Crystal Hotel, Co. Cavan**

**Date: 4<sup>th</sup> December 2018**

**Commencement Time: 10:15**

### 6.1. Attendees

6.1.1. Representation on behalf of each Party was as follows:

- Cavan County Council:
  - Mr Esmonde Keane SC – Barrister.
  - Ms Jacqueline Maloney – Solicitor.
  - Mr Mark Condron – Engineer, RPS Consulting Engineers.
  - Mr Tim Ryle – Ecologist, RPS Consulting Engineers.
- Observers/Objectors:
  - Noel and Patrick Brady.
  - Malachy O'Reilly.
  - Laura O'Reilly on behalf of Oliver O'Reilly.
  - Ned Nagle, Nagle Agricultural Consultants.

6.1.2. Mr Nagle advised that he had received the information he required in relation to his Clients, with the exception of Mr Luke O'Reilly, and that he was willing to withdraw the objections to the CPO if the Council gave an undertaking to look into the provision of an underpass for Mr O'Reilly. I advised Mr Nagle that if he wished to withdraw any objections, I would require a letter to this effect. As noted in section 6.7 below, Mr Nagle subsequently submitted a letter prior to the conclusion of the hearing withdrawing 5 No. objections to the CPO. Luke O'Reilly's objection was not withdrawn.

6.1.3. No prescribed bodies were represented at the Hearing.

## 6.2. Submission of Cavan County Council

6.2.1. Mr Esmonde Keane provided a brief overview of the proposed road realignment project and the lands that it is sought to acquire.

6.2.2. Mr Mark Condrón, Senior Associate in the Transportation Sector of RPS Consulting Engineers, then read from a written statement (Item 1 – appended), which can be summarised as follows:

- The N55 links Athlone with Cavan, via Granard, Edgeworthstown and Ballymahon. It is locally and regionally important, with a notably high proportion of heavy commercial vehicles (13%). It also links with the N3, N4 and N6.
- Route improvements to the N55 have been made over a number of years. The only section of the N55 within County Cavan that has not been improved is the 3.7km between Mullaghoran and Ballytrust, encompassing the village of Killydoon.
- Improvements to the N55 are supported in National, Regional and County level policy documents.
- The N55 is one of five prioritised projects for the North Region identified in the National Secondary Roads Needs Study 2011.
- Scheme objectives include safety, environmental, economic, accessibility and social inclusion and integration of towns.
- This section of road is below standard and is narrow, hilly and bendy. The specific scheme need can be summarised as the need to improve the condition of the N55 in the area for route consistency between improved sections and for road safety purposes.
- Due to rural nature of the area, the N55 caters for a significant amount of HGVS and strategic traffic as well as a large mix of local and slow-moving agricultural traffic.
- Killydoon village has been subject to a traffic management scheme and a limit of 60km/hr applies. Large vehicles cannot pass each other on the narrow bridge over the River Erne.

- Current horizontal alignment is particularly poor, with available stopping sight distances well below current design standards. This is inadequate for a rural all-purpose national route.
- There are currently six at-grade junctions with local roads, eighteen direct accesses from houses, farms and commercial premises with generally poor visibility and a further ten frontages/accesses within Killydoon. Each of this is a potential safety hazard and reduces the capacity of the road.
- Minimal hard strip and verge and inadequate drainage on existing road.
- TII HD 15 Network Safety Ranking identifies the 2012-2014 collision rate for the 1km section at Killydoon village as being twice above the expected rate.
- This unimproved section of the N55, which is flanked by improved sections, comprises a hazardous section of the route where driver expectations of achievable speed may be inappropriate for the prevailing conditions.
- The scheme would significantly improve safety for users of the N55 and for the village of Killydoon.
- The Route Selection Report for the scheme was completed in May 2013. Three route corridor options emerged in the first stage, with a second stage considering multiple route options within each corridor. Two preferred routes were identified and technically assessed to identify which option to proceed with.
- Proposed road design is in accordance with TII requirements and includes sustainable drainage systems, forgiving roadsides and shallow embankments to reduce the need for barriers.
- The three proposed bridges over the River Erne have section 50 consent under the Arterial Drainage Act. They can be constructed without in-stream works.
- Local access will be maintained at all times during construction. The existing N55 will remain open insofar as possible, but temporary road closures or night-time working may be required.

- All lands to be temporarily or permanently acquired are necessary to facilitate the road construction and operation, respectively. Alternative access arrangements are proposed where public rights of way are proposed to be extinguished.

6.2.3. Mr Condron then read from a written response to each objection to the CPO and each submission in respect of the section 177AE application (Item 2 – appended). The following summarised standard responses were provided in respect of each CPO objection:

- Cavan County Council will endeavour to agree accommodation works. Such works are contingent upon agreement with the landowner.
- Proposed scheme will not have a significant adverse impact on retained lands and any such impacts can be assessed/addressed by means of compensation by a separate process.
- Drainage design follows TII Design Standards and is compliant with the SUDS Manual. The drainage attenuation system is designed to cater for a 1 in 100 year storm event with additional allowance for climate change. The drainage design is robust and minimises the risk of increased flooding to adjacent retained lands.
- Cavan County Council will make every effort to accommodate farming operations and the proposed scheme will not have a significant adverse impact on farming enterprises. Any adverse impact can be assessed/addressed by means of compensation by a separate process.

6.2.4. In respect of a number of specific objections, the following additional summarised responses were provided:

- **Noel Brady (CPO Ref. 04):** All lands subject of the CPO are required for road construction, but that Cavan County Council undertakes to seek to transfer plot 4.5, or whatever portion thereof is not permanently required for the scheme, to Mr Brady upon completion of the scheme.
- **Luke O'Reilly (CPO Ref. 16):** A significant change in the height of the road alignment would be required to provide a grade-separated underpass to serve lands on both sides. The road would need to be raised by up to 6m for a

significant length which would result in a material change to the scheme with potential for major adverse impacts on the receiving environment and land take. Any impacts on Mr O'Reilly's land holding / farming enterprise can be assessed/addressed by means of compensation.

- **Oliver O'Reilly (CPO Ref. 07):**
  - All lands subject of the CPO are required for road construction.
  - The local link road (old N55) will provide a safer means of access, as traffic levels in Killydoon will be reduced. The junction with the new national road will provide visibility and safety.
  - Cavan County Council will endeavour to agree accommodation works regarding separate front and rear accesses to the dwelling and farmyard.
  - The provision of a northern access to the village from the proposed N55 alignment affords a shorter route to Mr O'Reilly's landholding to the west, compared to the southern access. The provision of north and south accesses to the village will also benefit other residents and businesses.

6.2.5. Mr Condon provided the following summarised responses to the submissions on the s177AE application:

- Route was selected following a robust selection process. It is compliant with policy documents and is in line with proper planning and sustainable development for the area.
- Property reference CPO-065 will require noise mitigation measures, which is likely to involve the installation of a noise or environmental barrier. Such works are contingent upon agreement with the landowner.
- Scheme does not include for public lighting as it is a rural scheme. The north and south junctions accessing the village of Killydoon are in a rural setting and it is non-compliant with TII standards to provide lighting at these junctions. It may be feasible to consider extending existing lighting further out along the old section of the N55, which will be downgraded to a local road, but this is outside the scope of the scheme.



- Pedestrian facilities are not provided along the realigned road due to safety concerns and consistency with adjacent upgrade schemes. Suitable alternative adjacent routes exist.
- Design of proposed pond to the south of the River Erne bridge crossing is in line with TII design standards and the SUDS Manual. The drainage design is robust and minimises the risk of increased flooding to adjacent retained lands.
- Significant change to the scheme would be required to facilitate a dedicated underpass to serve lands on both sides for Mr Oliver O'Reilly. This would result in adverse impacts on the receiving environment and other land holdings.
- Cavan County Council is satisfied that it has undergone extensive consultation with affected landowners. Landowners have been encouraged to contact the Council with queries or concerns.
- Final preferred route amalgamates sections of a number of previous route options and has sought to minimise severance.
- The upgrade of the existing bridge and footpaths in Killydoon are outside the scope of the scheme.
- The proposed bridge crossings have been designed as clear span structures to avoid the need for in-stream works. The requirement to adhere to IFI best practice and to seek prior written approval for in-stream works shall be conditioned in the construction contract. A Construction and Environmental Management Plan will also be prepared with adherence to relevant guidance. Control of site run-off will also be dealt with through the CEMP.

6.2.6. Mr Tim Ryle, Senior Ecologist in the Energy, Environment and Resource Sector of RPS Consulting then read from a written statement (Item 3 – appended), which can be summarised as follows:

- Phases 1 and 2 (Section A) of the scheme was the subject of an Appropriate Assessment Screening Report, which concluded that it would not have a likely significant effect on European Sites and that a Stage 2 AA was not required. This section of the scheme is substantially complete.

- Phases 3 and 4 (Section B) of the scheme was subject to a Stage 2 Natura Impact Statement.
- Through the implementation of best practice measures and recommended mitigation measures including the avoidance of instream works in the River Erne, it was concluded that the project would not have a significant effect individually or in combination with other plans or projects on the conservation objectives of Lough Oughter and Associated Lakes SAC and Lough Oughter Complex SPA.
- None of the third party submissions have direct bearing on the Appropriate Assessment process and largely relate to proper planning and sustainable development in the area.
- The design is cognisant of IFI guidance and the ecological recommendations have from the outset been to ensure that no adverse impacts occur to the River Erne and by inference to the hydrologically connected European sites.
- The design of the road scheme contains the necessary best practice pollution control measures, which when implemented, will ensure that Section B of the road scheme, either individually or in combination with other plans or projects, including the substantially built Section A of the scheme will not adversely affect the integrity of any European site.

### **6.3. Submissions of Objectors/Observers**

#### **6.3.1. Noel and Patrick Brady (CPO Ref. 4.0 and 65.0)**

- Farming enterprise will be greatly affected by road if it goes ahead.
- Road will be within 15 – 20m of existing house at Grousehall.

#### **6.3.2. Laura O'Reilly on behalf of Oliver O'Reilly (CPO Ref. 7.0)**

- No objection in principle to the proposed bypass, but what is proposed now is significantly different to what was originally proposed.
- They were told that under no circumstances would there ever be two entrances to the village, and that the road would be a cul de sac at the northern end, with access from the farmyard onto the new road.

- Second entrance at the northern end of the road will face into their front garden, and there is no provision for a rear/farmyard entrance.
- Requiring farm vehicles to traverse in front of the house presupposes that the house and farm will always remain in one ownership.
- Lack of consultation with landowners.
- No-one from the Council has inspected visibility standards at objector's existing accesses onto the N55.

6.3.3. Nagle Agricultural Consultants: Mr Nagle did not make submissions in respect of his clients, but participated in questioning of the Local Authority.

#### 6.4. **Objector/Observer Questioning of Local Authority**

6.4.1. Noel and Patrick Brady (CPO Ref. 4.0 and 65.0)

6.4.2. Mr Brady queried the lack of provision of an entrance point onto the new N55 from the original tree-lined avenue to his farmhouse (c. Ch. 800m) and to lands on the eastern side of the proposed road. Mr Condrón advised that a proposed field access was to be provided at c. Ch. 390m, with realigned entrance to the farm and house at c. Ch. 530m. Mr Condrón confirmed that a field entrance would be maintained at c. Ch 800m to the west. Access to the other side would be from the old N55 from Killydoon. Mr Brady advised that he required direct access for driving cattle across the new road. Mr Keane stated that Mr Brady would not be facilitated to drive cattle across the new N55, and would have to return to his farmyard via the village of Killydoon and the entrance at Ch. 530m.

6.4.3. Mr Condrón stated that access would not have to be maintained at land parcel 4.5, as it forms part of the permanent CPO. Mr Brady queried the statement in the Council's response, regarding the return of lands, and Mr Keane stated that the Council could not agree to transfer the land, but would seek to transfer the land, as this would require the consent of the Elected Members.

6.4.4. Mr Nagle, on behalf of Mr Brady stated that the scheme would impact on their intensive dairy farm, as c. 9 acres of their c. 50 acres would be taken off them. The only option they have to continue their dairy farm is to lease land across the road, so an underpass would be required for cattle movements between Ch. 500m and 600m.

- 6.4.5. Mr Keane stated that the Council would not be prepared to countenance opposing gates on the new road for road safety reasons. Mr Nagle stated that this is why an underpass is required. Mr Condrón stated that an agricultural gate would be provided as part of the accommodation works at c. Ch. 390m, and that there would be no change in how Mr Brady accesses these lands. Mr Nagle stated that this would be a similar safety issue to that at chainage 800m and that an underpass is therefore required.
- 6.4.6. Mr Brady stated that he needed to maintain access along his original tree-lined avenue to the village of Killydoon across the new road.
- 6.4.7. Mr Condrón stated that a staggered vehicle access would be provided across the road at chainage 390m. Directly opposing access would be less safe. He stated that the majority of the Brady lands would be retained on the west side of the scheme and it is difficult to see the justification for an underpass.
- 6.4.8. In relation to parcel 65, Mr Brady stated that Bridget Brady was deceased, and that the house was in the process of being transferred back to him. I queried the nature of the proposed noise barrier at this location adjacent to the existing house. Mr Condrón advised that further modelling would be required, and would likely be either a noise fence or a bund.
- 6.4.9. I asked Mr Condrón to comment in relation to the stated requirement for the permanent CPO of plot 4.5, given the statement that the Council would seek to transfer it, or part thereof, back to Brady. Mr Condrón stated that the current position is that the plot is permanently required, but that if it transpires otherwise, they will seek to transfer it.
- 6.4.10. Mr Keane asked Mr Condrón to comment on difficulties with providing an underpass for Mr Brady. Mr Condrón stated that a 4m elevation would be required for the road, with resultant impacts on lands and environmental impact. Mr Nagle stated that 4m is an exaggerated figure and that an underpass could be provided within significantly less depth. Following further discussion regarding the feasibility or otherwise of an underpass, I advised that the matter would be brought to the Board's attention.
- 6.4.11. Laura O'Reilly on behalf of Oliver O'Reilly (CPO Ref. 7)

- 6.4.12. Ms O'Reilly queried the lack of consultation with landowners, and advised that no meeting was ever had with Mr O'Reilly or a walkover of his lands. Mr Condrón stated that the Local Authority had undertaken consultation.
- 6.4.13. Ms O'Reilly queried the change from one entrance to Killydoon to two. Mr Condrón advised that this had changed to accommodate business and local traffic through the village.
- 6.4.14. Ms O'Reilly queried the proposal to provide a single entrance point to Mr O'Reilly's house and farmyard, which would require agricultural vehicles to traverse the front of the house. Mr Condrón then submitted a drawing to the Hearing, which he stated had recently been provided to Mr O'Reilly's representative (Item 4 – appended). This drawing was stated as showing a proposal of how separate access could be provided to the house and farmyard via an access track on the existing N55 roadbed, which would become redundant. Following discussion on the nature of the access, I asked Ms O'Reilly if Mr O'Reilly's preference was for the north access point to be removed, which would require him to travel back through Killydoon and around the new N55 to access his lands to the west. She stated that this was the preference for vehicular traffic, but that farm vehicles should be able to cross the new road in a similar manner to how they cross now.
- 6.4.15. Ms O'Reilly queried the impact due to traffic on an embankment looking into Mr O'Reilly's garden. Mr Condrón stated that the new road would be significantly further away than the existing road, and that traffic volumes through Killydoon would be greatly reduced. He also stated that property boundary treatments would remain unchanged. Any visual screening required would be provided.
- 6.4.16. I asked if traffic calming measures were proposed at the northern entrance into Killydoon. Mr Condrón stated that there were not.
- 6.4.17. Ms O'Reilly queried the lack of provision of an underpass on the northern side of the new bridge, when one was provided on the southern side. Mr Condrón stated that one was provided on the southern side due to that landowner retaining lands immediately either side of the road. The portion of land to the east of the proposed bridge is being permanently acquired for an attenuation pond, and therefore no access is provided.

- 6.4.18. Ms O'Reilly noted that the pond is not shown on the plans, and they were surprised to see it on the final plans provided to them. Mr Condron stated that it was shown on the drawings submitted to the Board. I noted that it was not shown on the drawings, which are geometrics layouts. Ms O'Reilly advised that she was unaware of the pond, and had understood that the lands may have been temporarily acquired and returned following construction.
- 6.4.19. I asked Mr Condron to comment on Figure 3.1(d) of the Environmental Report, which shows a southern entrance to Killydoon, but no northern entrance, although an attenuation pond is shown. Mr Condron stated that the northern entrance came about due the consultation process, but that the attenuation pond had always been shown. I asked Mr Condron to comment as to whether any additional environmental impacts or mitigation measures arose due to the now-proposed northern entrance. Mr Condron stated that he was satisfied that no additional issues arose beyond those addressed in the report.
- 6.4.20. Ms O'Reilly stated that Mr O'Reilly had no objection to his farm entrance being moved further down the new road to facilitate visibility requirements, if this would allow for access across the new road.
- 6.4.21. Nagle Agricultural Consultants on behalf of Luke O'Reilly (CPO Ref. 16)
- 6.4.22. Mr Nagle queried the lack of provision of an underpass for Mr O'Reilly, given that he is a dairy farmer, with c. 65 cattle who farms on both sides of the proposed new road. He currently crosses the road, and will either have to get out of the dairy business, or get an underpass between chainage 3250m and 3300m. Moving cattle by vehicle is not always feasible due to number of people required.
- 6.4.23. Mr Condron stated that he was aware of how Mr O'Reilly currently accesses his lands and the leased lands to the east. Vehicular access would be provided on the new road, existing field gates on the old road would be retained and the lands to the west could be accessed from the new junction at chainage 3400m.
- 6.4.24. Mr Condron stated that an underpass would require the raising of the road alignment by up to 6m, which would increase the height of the road relative to adjacent properties and potentially adverse visual and noise impacts. There is an existing stream beside it, and a sunken underpass would be liable to flood. Mr Nagle stated that the road did not have to be raised. A sealed underpass and pump could be

provided. He has land leased for another 10 years, and his lands on the far side of the road. Environmental concerns have to be balanced with the concerns of the farmer. Mr Condrón stated that the level of water in the stream would be higher than the level of the underpass, and it would be difficult to operate it without flooding or pollution hazard. He also stated that if an underpass was provided, Mr O'Reilly would still need to cross the old N55, which would be downgraded, in order to reach the lands to the east. Mr Nagle stated that no drainage design had been done yet, so the Council couldn't say what could or couldn't be done with regard to the underpass.

## **6.5. Local Authority Questioning of Objectors/Observers**

6.5.1. The Local Authority had no specific questions for objectors or observers.

## **6.6. Inspector's Questions**

6.6.1. I queried the lack of attenuation ponds shown on the drawings submitted, and asked whether the ponds shown on Figures 3.1c and 3.1d of the Environment Report were the only two ponds proposed. Mr Condrón confirmed that this was correct, and that other attenuation facilities included swales and that all attenuation facilities included petrol interceptors.

6.6.2. In relation to the examination of alternatives, I noted the proposal for three bridge crossings of the same river in the space of 1.5km, and asked what alternatives to this had been considered to this. Mr Condrón stated that a range of alternatives were considered, with three route corridors. The use of clear span bridges and a CEMP will ensure no adverse effect on the Natura 2000 sites.

6.6.3. I queried the discrepancy between the 3m setback from the river bank referred to in Mr Condrón's submission, compared to the 5m leave strip mentioned in the NIS and the figures in the Env. Report which indicate the toe of the embankment encroaching on both those measurement. Mr Condrón stated that the 3m measurement comes from the NRA guidance document for the crossing of watercourses. Mr Ryle stated that anything less than 5m could possibly be a difficulty in terms of the impact assessment.

6.6.4. I noted figures 3.2, 3.3 and 3.4 of the Environmental Report which show the toe of the embankment within 1-2m of the river edge. Mr Condrón stated that the

embankment will be retained to ensure a minimum set-back from the river bank of 5m as per the NIS.

- 6.6.5. I asked Mr Condron to outline the proposed programme, the duration of temporary acquisition and the timescale for completion of Section A. Mr Condron stated that Section is nearing substantial completion in 2-3 weeks. In relation to Section B, detailed design would take place in 2019 and the duration of construction would be 18 months to 2 years as a minimum.
- 6.6.6. I asked Mr Condron to comment on the location of proposed construction compounds and deposition areas. Mr Condron stated that sites had been looked at, but no decision had been made yet. Temporary deposition areas would be located within the land acquisition areas as per Section A.

## 6.7. Closing Statements

- 6.7.1. I provided an opportunity for all parties to make closing statements. Prior to this, Mr Nagle submitted a letter withdrawing a number of objections to the CPO, as outlined above.
- 6.7.2. Nagle Agricultural Consultants
- 6.7.3. Mr Nagle asked the Board to take the requirement for the two underpasses into consideration. The proposal to transport animals across the road in vehicles is dangerous.
- 6.7.4. Laura O'Reilly on behalf of Oliver O'Reilly
- 6.7.5. Ms O'Reilly asked the Council to send a representative to meet Mr O'Reilly to discuss his objections. She notes the drawing submitted and Mr O'Reilly would be willing to discuss a rear access with them.
- 6.7.6. Local Authority
- 6.7.7. Mr Keane gave a closing statement on behalf of the Local Authority, which can be summarised as follows:
- The need for the scheme has been demonstrated, even by those objecting.
  - The road is an impingement during construction, but a far safer road will be provided with a properly designed drainage system.



- The road provides for a balancing of interests. Access to both ends of Killydoon are proposed.
- Separate access to Oliver O'Reilly's farmyard will be provided with an access track. Significant improvement on noise and disturbance to O'Reilly's home due to the reduction in traffic.
- Accesses will be maintained where possible. The number of accesses onto the new N55 has been kept to a minimum. Directly facing gateways have been avoided for safety reasons.
- Environmental concerns have been addressed in the detailed NIS. Robust assessment has occurred. Given the significant distance and the mitigation measures proposed, it can be said beyond all reasonable scientific doubt that there will be no adverse impacts on the European Sites, or the integrity of those sites.
- Significant levels of public consultation have taken place over years. It has been an iterative process.
- The lands in question are required for the road scheme. The Board is asked to confirm the CPO and grant consent for the development under s177AE.

6.7.8. I then read a closing statement, and the Oral Hearing closed at 13:40.