



An
Bord
Pleanála

Inspector's Report 29N.NM0005.

Description

Request for Alterations to previously approved Railway (LUAS Broombridge – St. Stephen's Green to Broombridge) Order 2011 under case reference 29N.NA0004.

Planning Authority

Dublin City Council

Applicant

Transport Infrastructure Ireland.

Type of Application

Section 146B request.

Date of Site Inspection

20th & 21st February 2017.

Inspector

Ciara Kellett

1.0 Introduction

- 1.1. This is a request by Transport Infrastructure Ireland (TII) to alter the terms of a previously approved Railway (LUAS Broombridge – St. Stephen’s Green to Broombridge) Order 2011 under case reference 29N.NA0004 approved by the Board on 2nd August 2012.
- 1.2. The current request, under Section 146B of the Planning and Development Act 2000, as amended, is for alterations to the approved development. Section 146B of the Act is subject to section 146D of the same Act which specifically provides that section 146B will apply to railway orders made under the Transport (Railway Infrastructure) Act 2001.
- 1.3. It is noted that the proposal was initially the subject of pre-application consultations under Section 37B of the Act. The applicant formally withdrew from that process. The file is attached, ABP Ref. 29N.NC0014.

2.0 Application Details

- 2.1. The request includes the following documentation:
 - Plan of the proposed alterations to the works.
 - Environmental Screening Report with two appendices:
 - Overhead Catenary System (OCS) fixings outside the limits of deviation on Protected Structures – photos.
 - Appropriate Assessment Screening Report.
- 2.2. Since the granting of the Luas Cross City (LCC) Railway Order, TII have progressed the LCC scheme through detailed design and procurement. At present construction is on-going and is forecast to be completed in the latter half of 2017. This request is to alter the terms of the development to provide for changes to the Overhead Catenary System (OCS).
- 2.3. The OCS delivers the power supply to the Luas system and the support system can comprise poles, building fixings or a combination of both. The poles and building fixings support a conductor wire which is maintained approximately 6m above the public road and runs along the length of each track. A pantograph extends from the

roof of the Luas tram and collects the power through continuous contact with the overhead wire and hence traction power is supplied to the tram.

- 2.4. The revised design relates to the position of building fixings. The proposed changes, to those approved in the LCC Railway Order, are required to address the findings from internal and external building surveys that have been carried out during the construction phase. TII have identified constraints which necessitate alterations to be made in terms of the location of certain building fixings. In summary, of the 146 building fixings proposed in total, the proposed location of 23 OCS building fixings on 15 Protected Structures are outside the limits of deviation that are specified for Protected Structures in Article 6(c) of the LCC Railway Order.
- 2.5. Article 6(c) of the LCC Railway Order specifies that where works relate to the attachment or fixing of a bracket, cable, wire, fixture or other thing to a Protected Structure that they may not deviate in any direction by any distance not exceeding 0.75m from the situations shown on the plan.
- 2.6. All of the Protected Structures that are the subject of this alteration request were previously assessed for architectural heritage impacts from OCS fixings in the Environmental Impact Statement (EIS). All properties in question are included in the Seventh Schedule of the Railway Order for the attachment to any wall, house, building or structure thereon any bracket, cable or wire or other fixture required for, or in connection with, the construction, operation, maintenance or improvement of the railway.

3.0 Environmental Screening Report

- 3.1. TII consider that the proposed alterations are not material alterations within the meaning of Section 146B of the Act. However, they further note that should the Board determine that the proposed alterations are material, an Environmental Screening Report has been prepared which concludes that there are no likely significant effects on the environment arising from the proposed alterations.
- 3.2. The Screening Report notes that as part of the EIS, the OCS fixing target for Protected Structures was illustrated on photographs in the Architecture Design Strategy which was submitted as Chapter 7A, Book 1. The relevant photographs have been updated to illustrate the proposed revised fixing target and the original

fixing target (and new fixings where applicable) and are included as an appendix to the Environmental Screening Report.

- 3.3. An Architectural Heritage appraisal of the revised OCS fixings, outside the limits of deviation against those provided for in the granted LCC Railway Order, was carried out by Paul Arnold Architects, who are acting as the Project Conservation Architects for the construction phase. The Architectural Heritage appraisal concludes that there are no greater architectural heritage impacts arising from the fixings that are to be moved or are new. The revised fixing locations are therefore not likely to have significant effects on the architectural heritage or other aspects of the environment.
- 3.4. The Screening Report notes that 146 building fixings were proposed in total. It was proposed to locate two fixings on two Category 1 buildings (Landmark Protected Structures comprising of buildings of national and international importance) and 60 on Category 2 buildings (Protected Structures) and Category 3 buildings (not Protected Structures but buildings of architectural heritage merit). The remaining fixings are for buildings not deemed to be of architectural merit. Where a building fixing was proposed for a party wall between two buildings the impact on both was assessed.
- 3.5. Table 1 below, as presented in the Environmental Screening Report, lists the affected OCS building fixings on the relevant 15 Protected Structures and appraises the revised OCS locations relative to those assessed in the LCC EIS.
- 3.6. The appraisal concludes that the characteristics and location of the proposed alterations are consistent with those previously approved as part of the LCC Railway Order. It considers that the extent and character of the alterations are minor and not material and out of 152 fixings¹, only 23 fixings on 15 Protected Structures are outside the limits of deviation.
- 3.7. Table 1 below is a copy of the table included in the Environmental Screening Report. The reference to figures refers to figures included in the Screening Report.

¹ Note section 5 of the Environmental Screening Report refers to 146 fixings and section 5.3 refers to 152 fixings – this difference is assumed to be as a result of additional fixings required.

Table 1:

Location/ Address	LCC EIS Architectural Heritage (AH) and DCC Protected Structure Reference (RPS) Numbers	LCC Railway Order Number of fixings	Revised OCS Design Impact	Architectural Heritage Appraisal of revised design
3 St Stephen's Green North	AH18 (RPS 7762)	1 Fixing	3 Proposed Fixings 3 new fixings deviate c.1.8m, c.3.3m and c.7.3m from original fixing target (Figure 1, BXD- 29O-F4.1, F4.2, F4.3)	No greater architectural heritage impact
13-13A St Stephen's Green North and 24 Dawson Street	AH28 RPS 7771, RPS 2256	3 Fixings	2 Proposed Fixings 1 proposed fixing on south elevation (St. Stephen's Green) deviates c.4.5m (Figure 1, BXD- 29O-F5.1) from original fixing target 1 fixing at original fixing target location on east elevation (24 Dawson Street) Fixing on east elevation (24 Dawson Street) removed - architectural heritage impact removed	No greater architectural heritage impact
32 Dawson Street	AH57 RPS 2262	1 Fixing	2 Proposed Fixings 2 proposed fixings deviate c.0.95m and c.1.2m from original fixing target (Figure 1, BXD-29O-F13.1, F13.2)	No greater architectural heritage impact
38 Dawson Street	AH63 RPS 2268	1 Fixing	1 Proposed Fixing 1 proposed fixing deviates c.2m from original fixing target (Figure 1, BXD-29O-F14.1)	No greater architectural heritage impact
43 Dawson Street	AH68 RPS 2273	1 Fixing LCC RO appraised impact of OCS fixing on party wall between 42 (AH67, RPS 2272) and 43 Dawson Street	1 Proposed Fixing Proposed fixing deviates c.1m from original fixing target (Figure 1, BXD-29O-F16.1)	No greater architectural heritage impact
8 Dawson Street	AH41 RPS 2250	1 Fixing LCC RO appraised impact of OCS fixing on party wall on both 8 and 9 Dawson Street (AH 42)	1 Proposed Fixing Proposed fixing deviates c.1m from original fixing target (Figure 2, BXD-29O-F39.1)	No greater architectural heritage impact
8 Burgh Quay	AH156 RPS 1018	1 Fixing	1 Proposed Fixing Proposed fixing deviates c.4.9m from original fixing target (Figure 3, BXD-29A-F17.1)	No greater architectural heritage impact

15-17 Eden Quay	AH242 RPS 2486	2 Fixings	3 Fixings (1 original and 2 proposed) Proposed fixing (Figure 4, BXD-29B-F2.2) deviates c.5.5m from original fixing target Additional fixing (Figure 4, BXD-29B-F2.1) and retained original fixing target (Figure 4, BXD-29B-F2) both within limits of deviation	No greater architectural heritage impact
9 Abbey Street Lower	AH292 RPS 2	1 Fixing	2 Fixings (1 Original and 1 Proposed) 1 fixing at original fixing target (Figure 4, BXD-29B-F10) 1 proposed new fixing deviates c.1m from original fixing target (Figure 1, BXD-29B-F10.1)	No greater architectural heritage impact
66 - 72 Marlborough Street	AH260 - AH266 RPS 1331	2 Fixings	3 Proposed Fixings 3 proposed fixings deviate c.1.5m, c.1m and c.1.96m from original fixing target location (Figure 5, BXD-29B-F.35.1 and BXD-29B-F.37.1, F.37.2)	No greater architectural heritage impact
164-165 Parnell Street & 1-2 Cavendish Row	AH327 RPS 1332	2 Fixings	3 Fixings (1 Original and 2 Proposed) 1 fixing at original fixing target location 2 proposed fixings deviate c.4.4m and c.1m from original target location (Figure 6, BXD-29C-F.12.1)	No greater architectural heritage impact
37 (with 38) O'Connell Street Upper (West Side)	AH213 & AH214 RPS 6021	2 Fixings	2 Proposed Fixings 1 proposed fixing deviates c.8.79m from original target location and relocated to O'Connell Street façade (Figure 7, BXD-29C-F16.1) 1 proposed fixing deviates c.2.9m from original fixing target (Figure 7, BXD-29C-F15.1)	No greater architectural heritage impact
59 Parnell Square West	AH328 RPS 6418	1 Fixing	2 Proposed Fixings 2 proposed fixings deviate c.12.4m and c.12.5m from original fixing target location (Figure 8, BXD-29C-F22.1, F.22.2)	No greater architectural heritage impact
43 Dominick Street Lower	AH344 RPS 2320	1 Fixing	1 Proposed Fixing 1 proposed fixing deviates c.1.16m from original fixing target location (Figure 9, BXD-29D-F1.1)	No greater architectural heritage impact
24 Dominick Street Lower)	AH336 RPS 2313	1 Fixing	2 Fixings (1 Original and 1 Proposed) 1 fixing at original fixing target location (Figure 9, BXD-29D-F3.1) 1 proposed new fixing deviates c.2.59m from original fixing target location (Figure 9, BXD-29D-F3.2)	No greater architectural heritage impact

4.0 **Appropriate Assessment Screening Report**

4.1. An Appropriate Assessment Screening Report was prepared by the requestor. The Screening Report concludes that the proposed alterations to the OCS design when taken either individually or in combination with other plans or projects is not likely to have any significant effects on any European Site and it can be concluded that it is not necessary to go beyond the screening stage.

5.0 **Legislation**

5.1. Under s. 146B(2)(a) the Board shall as soon as practicable make a decision as to whether the making of the alteration would constitute the making of a material alteration of the terms of the development concerned.

5.2. Under s.146B(2)(b), before making a decision under this subsection, the Board may invite submissions to be made by any person or class of persons as the Board considers appropriate and the Board shall have regard to any submission made on foot of the invitation.

5.3. Under s. 146B(3)(a), if the Board decides that the making of the alteration would not constitute the making of a material alteration it shall alter the permission or approval and notify the parties concerned.

5.4. Under s. 146B(3)(b), if the Board decides the making of the alteration would constitute a material alteration, it shall determine whether to:

- Make the alteration,
- Make an alteration to the terms of the development concerned being an alteration to the one requested, or
- Refuse to make the alteration.

5.5. Under s. 146B(4), before making a determination on the above, the Board shall consider whether the alteration requested or the alternative alteration would be likely to have significant effects on the environment.

5.6. Under s. 146B(5), if the Board determines that the making of either kind of alteration is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection 3(b), or is likely to have significant effects the

provisions of s. 146C shall apply. In a case to which s. 146C applies the Board shall require the person who made the request under s. 146B to prepare an EIS in relation to the proposed alteration of the terms of the development concerned.

- 5.7. Under s. 146B(6) if the Board determines to make an alteration it shall alter the approval/permission and notify the parties accordingly.
- 5.8. Under s. 146B(7) in making a determination under subsection (4) the Board shall have regard to the criteria as set out in any regulations made under s. 176.
- 5.9. Under s. 146B(8)(a) before making a determination under subsection 3(b) or (4) the Board shall:
- Make or require the requestor to make relevant information relating to the request available for inspection;
 - Require the person who has made the request to invite submissions or observations.
- 5.10. The Board shall have regard to any submission or observation made to it and notify any person who made a submission or observation in relation to the request.

6.0 Relevant Section of Railway Order

- 6.1. Part 2 of the Railway Order refers to 'Works Provision'. Article 6 refers to Deviation. With respect to Protected Structures, it is stated:

In executing any of the authorised works the Agency may —

(c) where those works relate to the attachment or fixing of a bracket, cable, wire, fixture or other thing to a Protected Structure, deviate in any direction by any distance not exceeding 0.75m from the situations shown on the plan.

- 6.2. Article 11 refers to the Fixing of Brackets etc. to buildings and erection of poles.

(1) Without prejudice to the exercise by the Agency of its powers under section 48(1)(a)(iv) of the Principal Act, the Agency may enter on the lands specified in the Seventh Schedule and may attach to any wall, house, building or structure thereon any bracket, cable or wire or other fixture required for or in connection with the construction, operation, maintenance or improvement of the railway and may do on such land all such other things as are, in the

opinion of the Agency, ancillary to or reasonably necessary for such purposes.

(2) Without prejudice to the generality of paragraph (1), the fixtures that may be attached pursuant to that paragraph to a wall, house, building or structure include equipment, instruments and gear for monitoring the effect on such wall, house, building or structure of the authorised works and the operation of the railway, and the Agency may from time to time and at such times as the Agency shall determine re-enter the lands in question for the purpose of inspecting such equipment, instruments and gear and for taking readings.

(3) The Agency may enter on the lands specified in the Eighth Schedule and may erect thereon any pole or poles required for or in connection with the construction, operation, maintenance or improvement of the railway.

7.0 Assessment

7.1. Introduction

7.1.1. As noted in section 5 above, section 146B of the Planning and Development Act is essentially a two stage process. The first stage is for the Board to consider whether or not the making of the proposed alterations would constitute “*the making of a material alteration of the terms of the development concerned*” [Ref. s. 146B(2)(a)]. If the decision is that the making of the alteration would not constitute the making of a material alteration, then the Board “*shall alter the permission or approval*” [Ref. s. 146B(3)(a)].

7.1.2. The second stage only arises if the Board decides that the proposed alterations would constitute such a material change. In this case the Board, before determining to make such a material alteration or to refuse to make such an alteration, must determine whether the proposed alteration “*would be likely to have significant effects on the environment*”. [Ref. s. 146B(3)(b) and (4)]. This determination requires consideration of the requirement for EIA and public consultation [Ref. s. 146B(7) and (8)].

7.1.3. Clearly, if the outcome to stage one is a decision that the proposed alteration would not constitute a material alteration, then there is no basis for addressing the matters referred to in stage two.

7.1.4. In deciding in the first instance on this issue of materiality, the Board has the discretion to invite submissions from any person or class of persons as the Board considers appropriate. I do not consider this is a necessary course of action in this instance.

7.2. **Stage One – Material Alteration**

7.2.1. I have read all the information on file, as well as the EIS with respect to the OCS system and the Architectural Design Strategy (Chapter 7A of Book 1 of the EIS). The principle of the OCS as a means of providing power to the Luas trams was the subject of much debate at the Oral Hearing, as well as the subject of numerous submissions. The Board furthermore commissioned a report on the feasibility of alternative power systems (the Systra Report). Ultimately, the Board decided to grant the railway order including the use of the OCS system as a means to supply power to the trams.

7.2.2. The EIS stated that the most appropriate and effective method of accommodating the OCS system in narrow city streets is via the use of poles and building fixings. The EIS states that each street in Dublin, given the variety and complexity of the receiving environment, was considered individually.

7.2.3. Every Protected Structure was individually assessed in Chapter 24 of Book 1 'Material Assets: Architectural Heritage'. A Baseline Rating was given to every structure. Chapter 15 of Book 2 and Book 3 'Material Assets: Architectural Heritage' considered the impact on architectural heritage due to building fixings. Mitigation measures for building fixings were provided which included consulting the Project Conservation Architect to review and approve the survey methodology and techniques.

7.2.4. It was noted that in advance of fixing to a building, each building would be surveyed in order to establish the suitability and properties of the base material. The survey methods included external and/or internal inspections as well as boroscopic inspections. The deviation limit of 0.75m was provided in the event that the proposed locations proved to be unsuitable.

- 7.2.5. The residual impact on architectural heritage due to building fixings was described in Table 15.4 of Book 2 of the EIS. The residual impact ranged from slight to moderate which was deemed acceptable by the Board when they carried out their Environmental Impact Assessment.
- 7.2.6. As noted in Section 3 above, the requestor has provided an appraisal of the revised OCS Fixing Locations outside the limits of deviation prepared by the Project Conservation Architect. I concur with the findings of the appraisal which concludes that no greater architectural heritage impact results.
- 7.2.7. I draw the Board's attention to the table included in the Environmental Screening Report and repeated above in Section 3. While 29 fixings are referred to when the revised design impact for the OCS is being appraised, the 23 no. refers to the fixings being relocated, or the additional new fixings that are to be added, which are outside of the limits of deviation.
- 7.2.8. I consider that a key aspect of this request is the fact that no new Protected Structures are affected. All of the Protected Structures that are the subject of this request were previously assessed for architectural heritage impacts in terms of placing a building fixing on the façade, and the impacts were deemed acceptable.
- 7.2.9. I also consider it important that all the properties in question are included in the Seventh Schedule of the Railway Order. Article 11 of the Railway Order provides that the requestor may enter into lands specified in the Seventh Schedule and *may attach to any wall, house, building or structure thereon any bracket, cable or wire or other fixture required for or in connection with the construction, operation, maintenance or improvement of the railway and may do on such land all such other things as are, in the opinion of the Agency, ancillary to or reasonably necessary for such purposes*
- 7.2.10. As noted above, in some cases the number of fixings on buildings has increased. For example, on 9 Abbey Street Lower, 1 fixing was proposed and this has increased to 2. However, this change is just one element of the authorised works for the LCC which provides for the insertion of a new Luas scheme within the city and I consider the extent and character of the alterations to be minor.

7.3. Conclusion

- 7.3.1. I have reviewed the proposed changes and I have carried out a site visit to review the location of the proposed changes. I am satisfied that in the context of the development, the proposed alterations would not constitute the making of a material alteration of the terms of the development.
- 7.3.2. As indicated in Section 5.1 above, given that this is a stage one conclusion, the Board is obliged to alter the Railway Order as requested and there is no basis to proceed to the second stage assessment provided for in the legislation.
- 7.3.3. The only other matter that needs to be considered is that provided for in Section 146B(2)(b) whereby the Board, prior to making a decision as to whether the making of the alteration would constitute the making of a material alteration of the terms of the development, may invite submissions in relation to the matter by such persons or class of persons, and which may include the public, as the Board considers appropriate.
- 7.3.4. I am satisfied that the proposed alterations are of such a minor nature that such consultation is not warranted in this instance.

8.0 Appropriate Assessment

- 8.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed alteration would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend that the Board should alter the approved Railway (LUAS Broombridge – St. Stephen’s Green to Broombridge) Order 2011 under case reference 29N.NA0004, as requested and in accordance with the following Draft Order:

REQUEST received by An Bord Pleanála on 9th February 2017 from Transport Infrastructure Ireland under Section 146B of the Planning and Development Act, 2000, as amended, in respect of Railway Order described as the Railway (LUAS Broombridge – St. Stephen’s Green to Broombridge) Order 2011.

PROPOSED ALTERATIONS comprise:

Alterations to the terms of the development to provide for elements of a revised Overhead Catenary System (OCS), specifically the relocation or addition of 23 OCS building fixings on 15 Protected Structures listed in Table 1 of the Environmental Screening Report, which are outside the Railway Order limits of deviation for Protected Structures that are specified in Article 6(c) of the granted Railway Order.

WHEREAS the Board made a decision to approve the Railway Order for the Luas Cross City project, subject to conditions, by order dated 2nd August 2012,

AND WHEREAS the Board considered that the alterations sought, either alone or in combination, would not result in a material alteration to the terms of the development the subject of the Railway Order.

NOW THEREFORE in accordance with Section 146B(3)(a), Planning and Development Act, 2000, as amended, the Board hereby alters the terms of the development to provide for elements of a revised Overhead Catenary System (OCS), specifically the relocation or addition of 23 OCS building fixings on 15 Protected Structures.

10.0 Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.

11.0 Reasons and Considerations

Having regard to the extent and character of the proposed alterations, the Board considered that the alterations are just one element of the authorised works which provides for the insertion of a new Luas scheme within Dublin City Centre and are minor and would not give rise to any significant consequences in terms of impact on Architectural Heritage in the area.

The Board carried out a screening for appropriate assessment. It concluded that, on the basis of the information submitted, the proposed alterations, in themselves, or in combination, or in combination with other plans and projects, would not be likely to have significant effects on any European Sites.

Ciara Kellett
Senior Planning Inspector

27th February 2017