

**Appendix D – Report on Oral Hearing to  
Extinguishment of Public Right of Way over  
Level Crossing XC187**

**REPORT**

**ON**

**ORAL HEARING OF OBJECTIONS / SUBMISSIONS TO**

**EXTINGUISHMENT OF PUBLIC RIGHT OF WAY**

**OVER PART OF LOCAL ROAD LS 8514 ,  
AT LEVEL CROSSING XC 187**

**FANTSTOWN, KILMALLOCK, CO. LIMERICK**

**IN ACCORDANCE WITH SECTION 73, ROADS ACT, 1993**

**ON**

**10<sup>TH</sup>. NOVEMBER, 2009.**

**ORAL HEARING****ON 10<sup>TH</sup> NOVEMBER, 2009****OF OBJECTIONS / SUBMISSIONS TO EXTINGUISHMENT OF  
PUBLIC RIGHT OF WAY, OVER PART OF LOCAL ROAD LS 8514,****AT LEVEL CROSSING XC 187, FANTSTOWN, KILMALLOCK, CO.  
LIMERICK****IN ACCORDANCE WITH SECTION 73, ROADS ACT, 1993.****BACKGROUND**

By County Managers Order No. RS/54/09, dated 23<sup>rd</sup> October, 2009, I was appointed by Limerick County Council to conduct an Oral Hearing of Objections/Submissions to the Council's proposal to extinguish the public Right of Way over a 16 metre length of Local Road LS 8514, at Level Crossing XC 187, at Aghnaluggin Bridge, Fantstown, Kilmallock, Co. Limerick. The Local Road crosses two tracks of the Dublin / Cork Railway Line at this location.

On 19<sup>th</sup> May , 2006, CIE advised Limerick County Council that Iarnrod Eireann wished to close Level Crossing XC 187 at Fantstown, for operational and safety reasons. They stated that alternative access could readily be achieved, via two closely located overbridges, at Fairyfield to the west, and at Ballinascaula to the east. They requested the Council to extinguish the public Right of Way at the location, using the procedure set out in Section 73 of the Roads Act, 1993.

Notice of the proposal to extinguish the public Right of Way over part ( 16m. ) of Public Road LS 8514, at Fantstown, Kilmallock, was published in the Limerick Leader, dated 15<sup>th</sup> March, 2008, advising that a map showing the proposals was available for public inspection, at the Roads Office, County Hall, Dooradoyle, and at the Kilmallock Area Office, from 13<sup>th</sup> March 2008 to 17<sup>th</sup> April 2008, and that written objections or representations could be made by 1<sup>st</sup> May 2008. Additionally, Site Notices advertising the proposal were erected at the location, and left in place for the requisite statutory period.

Ten Submissions or Objections to the proposal were received by Limerick County Council by the due date, including a Petition from local residents, with 47 signatures, and a Resolution dated 2<sup>nd</sup> April 2008 from the Elected Members on Limerick County Council's Kilmallock Area Committee.

Section 73 (1)(d) of the Roads Act, 1993 provides that a "local authority shall, if it considers it appropriate, afford an opportunity to persons making objections to state their case at an oral hearing conducted by a person appointed by the local authority and consider the report and any recommendation of the person appointed". As a number of those objecting to the proposal requested an opportunity to state their case at an Oral Hearing, Limerick County Council appointed me to conduct an Oral Hearing of the objections / submissions made, and to prepare a report thereon, to include recommendations on whether, or not, the Council should proceed with the proposed extinguishment of the public Right of Way at Fantstown, thereby facilitating closure of Level Crossing XC 187 at the location. The report would be placed before the Elected Members of the Council, who would make a decision thereon. Section 73 (5) of the Act specifies that the making of an Extinguishment Order and the consideration of objections/representations thereto are reserved functions of the Elected Members.

**ORAL HEARING, TUESDAY, 10<sup>th</sup> NOVEMBER, 2009.**

The Oral Hearing commenced at 10.30 am on Tuesday, 10<sup>th</sup> November 2009, in the Council Chamber, County Hall, Dooradoyle, and was attended by 20 persons, including four Elected Members and five Officials of Limerick County Council, a Solicitor representing the Council, three Officials representing CIE/Iarnrod Eireann, and six local residents. A copy of the attendance sheet is attached.

As presiding Inspector, I was assisted by a professional Stenographer, who recorded the proceedings.

At the outset, I outlined the legal framework in Section 73 of the Roads Act, 1993 governing Extinguishment of public Rights of Way, along with my appointment, by Manager's Order, to conduct an Oral Hearing and prepare a report, which would subsequently be considered by the Members of Limerick County Council, who would make a decision on the matter. I also advised those attending that the proceedings would be informal.

Limerick County Council, who were invited first to present their position to the Oral Hearing, put forward three speakers, each of whom made an oral presentation, supported by written submissions, copies of which were made available to those present, and followed by cross questioning by the Elected Members and local residents present.

**Evidence of Joseph Kennedy, Senior Executive Engineer ( Roads )**

Joseph Kennedy, Senior Executive Engineer, (Roads Maintenance), and with particular responsibility for traffic management and road safety presented Limerick County Council's position on the matter. He outlined the background to the proposal, commencing with CIE's initial request to the Council, in May 2006, to

extinguish the public Right of Way over a short section of Local Road LS 8514, to facilitate closure of the level crossing at Fantstown. Following publication of notice of the proposal in the Limerick Leader, in March 2008, a number of observations and submissions were received by the Council, which Mr. Kennedy summarised, as follows:

Pat Leahy, Fantstown---Landowner with grazing rights let. Needs full right of way at railway crossing for animals and machinery

Maureen Drake, Glensheen, Ardpatrick - Gatekeeper with Iarnrod Eireann. Enjoys serving community.

Betty & John Houlihan, Gibbonstown---Long time residents. Believe they have civic right to visit friends and neighbours.

Petition from Residents of Fantstown, Gibbonstown, Bawntard (47 Signatures) - Wish to continue their right to walk, cycle, and drive the road into the future.

Alan Lillington, Mount Coote Stud - Land on eastern side of LS 8514. Concerned re possible dumping and illegal encampments.

Shane Houlihan, Gibbonstown---Resident in area concerned closure of crossing would be detrimental to his business, and to leisure and community activity.

Pauline & James Dore, Coolroe - Closure would be a great loss to local residents.

P. Keogh, Abbeywood, London---Owns and visits cottage south of crossing. Closure would isolate them from other residents in the area

Kilmallock Area Committee—Object to closure, because:

- Road needed by locals and visitors for delivery of services.
- Important pedestrian route; closure would divide community.
- Creation of two cul-de-sacs may result in increased dumping.
- Closure would encourage temporary dwellings.
- Closure would hinder access by Emergency Services.

Coras Iompair Eireann - Closure necessary to improve public safety, and for operational efficiency of railway.

Mr. Kennedy outlined the pattern of development in the area, and stated that, from his observations, there is little traffic using the road, even agricultural traffic, except at harvest time, and the latter would pose a high risk crossing a railway.

Pedestrians crossing the railway present a serious hazard to rail traffic on the line, and to themselves. Mr. Kennedy considered the level of such usage was too low to warrant provision of a pedestrian bridge.

With reference to littering, Mr. Kennedy said there was no evidence of abnormal littering in the area, though it was considered that, both this and unauthorised camping were potential issues following closure of the crossing, but these were separate enforcement matters for the Council.

Based on his experience and knowledge of a number of serious incidents in the County, where there was conflict between railway lines and public roads, Mr. Kennedy believed that CIE/Iarnrod Eireann's request to close Level Crossing XC

187 was justified and reasonable, in the interest of public and traffic safety, particularly as the Dublin/Cork line is the busiest in the State, with trains running hourly in each direction, and vehicular delays of up to 20 minutes at a time while trains are using the line.

#### Cross Questioning of Joseph Kennedy

- Mr. John Houlihan challenged Mr. Kennedy's assertion that dumping/littering was not a significant problem on the road, stating that he had contacted the Area Engineer to have rubbish removed. It was agreed that a 'No Dumping' sign had been erected by the Council on the road
- John Houlihan looks after Mr. Keogh's cottage, and would be faced with a round trip of 7kms, with his lawnmower, to cut Keogh's grass, compared to 120 metres, on foot, at present.
- Cllr. M. Donegan raised the recent closure of Road LS 8514 by Iarnrod Eireann, to enable them carry out works on the tracks. Mr. Kennedy advised that Iarnrod Eireann had wrongly closed the road without obtaining approval from Limerick Co. Council.
- Mr. Shane Houlihan expressed the view that Mr. Kennedy's conclusions were not correct, as he was not resident in the area, and could not therefore form an accurate picture of local crossing traffic, both pedestrian and vehicular, and the effect that facilities such as the Martinstown sports and community complex had on same. Mr. Kennedy responded that his conclusions were based both on his site inspections and over 30 years professional experience, which included both traffic management and road safety.



- Mr. G. Clery stated that he rents land at both sides of the railway, and that it was incorrect to say that the crossing was little used by the agricultural community. He crosses frequently, by car, with machinery and with cattle.
- Mr. E. Cronin stated that, himself and a neighbour train greyhounds and cross twice daily, from Gibbonstown, to gallop their dogs, at Riversfield. He also claimed that a large number of pedestrians use the crossing to access the Riversfield Road, which was stated to be a scenic, and much used walking route.
- Cllr. M. Houlihan stated that, since 2006, a lot of new development, and principally the new Martinstown GAA Field and Community Centre, had taken place in the locality, which will both increase and alter the pattern and usage of the level crossing. The Club have teams in all the under age categories, and additionally, a Soccer Club has now been organised.
- Mr. E. Cronin, Mr. S. Houlihan, and Cllr. W. O'Donnell supported Cllr. M. Houlihan regarding the hazard that closure of the Level Crossing would create for young people from the area accessing the new Martinstown complex. At present, they travel south on LS 8514, via the level crossing, as far as Foley's Cross, where they turn left and proceed along the R 515 to the Sports facilities. Closure of the level crossing would necessitate travelling eastward along the L 8649 to Ballinascaula, turning right, and proceeding westward along the R 515, as far as the complex, with a further right turn into the facility. The Bridge and Junction at Ballinascaula were stated by all present, from past experience accessing the former GAA Field, to be dangerous.
- Cllr. M. Houlihan stated, that closure of the level crossing would split the Community. Creation of two cul-de-sacs would also have the effect of

devaluing property prices locally. He asked if any alternative to closure, such as provision of an automated crossing, or a bridge, had been considered. He was supported by Cllrs. M. Donegan and E. Ryan, who stated that Iarnrod Eireann had provided such facilities elsewhere, e.g. Emly, Co. Tipperary.

Evidence of Kieran O’Gorman, Senior Executive Engineer ( Planning )

Mr. O’Gorman, who works as Senior Executive Engineer in the Planning Department of Limerick County Council stated that he could not comment on any potential or likely planning applications on Local Road LS 8514, or that may be impacted by the proposed closure. He outlined relevant policy objectives included in the current (2007 ) County Development Plan:

**Policy SP9, Roads:** In areas not under pressure for development, residential development will be permitted on roads less than 3.7 m. (12 ft.) wide, provided the surface alignment will not result in a traffic hazard. This allows the Planning Authority cater for local need. There will be a presumption in favour of family members, provided a traffic hazard is not created.

**Policy ENV 9, Agricultural Lowlands** deals with Landscape Character, house location, design, and finish, as well as landscaping.

**Policy SP 26 – Extended Structurally Weak Area.**

The site of the level crossing is located within the structurally weak area. Any proposed dwellings should be for own occupancy and applicants are expected to have been living in rural County Limerick for at least ten years.

Mr. O’Gorman reviewed the recent planning history of the area. He stated that the area may move from being one characterised as structurally weak to one having a strong agricultural basis in the forthcoming revision of the County Development

Plan. He further stated that Policy SP 9 is most important because it defines the road as being substandard, so that only persons who are from the road, or grew up on the road or own land on the road would qualify for a one-off house thereon.

Cllr. E. Ryan asked Mr. O’Gorman if he considered that the provision in the County Development Plan for the preservation and improvement of amenities should be used to prevent closure of an amenity such as the level crossing at Fantstown. Mr. O’Gorman confirmed that planning permission was not required for the proposed closure, and that Section 73 of the Roads Act, 1993 was the appropriate process.

Evidence of Niall Murray, Assistant Chief Fire Officer.

Mr. Murray, along with Senior Assistant Chief Fire Officer, Carl Weaver, who was also present, were stated to have responsibility within Limerick County Fire & Emergency Service for the Kilmallock and Foynes fire ground.

Mr. Murray stated he had consulted with the Kilmallock Station Officer, concerning the implications, for the Fire Service, of the proposed Fantstown level crossing closure. Two key issues were identified

- (1) Access to dwellings on the same road (LS 8514) as Level Crossing XC 187.
- (2) Access to the railway line, in the event of a train crash or a derailment.

The time and distance from Kilmallock Fire Station to level crossing XC 187 was measured and recorded, both approaching from the south, via R515, and from the north, via Coolroe/Bawntard. The distance approaching from the south is 3.2 miles and the time recorded was 6 minutes. The corresponding figures for the northern approach are 2.5 miles and 6 minutes. The distance and time from the next nearest level crossing, at Thomastown, were also measured, at 4 miles and 7 minutes. Based on this data, the Kilmallock Station Officer has stated that he has no problem

with the proposed closure of Level Crossing XC 187, in relation to gaining access to dwellings, on the road, in the event of a Fire or other Emergency.

With regard to gaining access to train crashes or derailments, the Fire Service would be unable to transport equipment along the rail track, without assistance from Iarnrod Eireann rail transport. If the Fire Service are required to bring equipment onto the railway tracks, the fire appliances will be positioned as close to the track as possible, from where the equipment will be physically moved to the location of the incident. However, if the proposed closure proceeds, Iarnrod Eireann should make provision to enable the Fire Service gain access, if required.

#### Cross Questioning of Niall Murray

- ☉ Mr. John Houlihan asked how the Fire Service would access an accident occurring at the level crossing following its closure. Mr. Murray stated that the Fire Service would request Iarnrod Eireann provide metal fencing, when closing the crossing and blocking off access, which the Fire crews could readily cut through to gain access in the event of an emergency incident occurring. A gate would also be required for emergency access.
- ☉ Mr. G. Clery was concerned at the difficulties posed for the Emergency Services by the possible presence of temporary dwellings on either of the cul-de sacs created by the proposed closure of the level crossing, even if Iarnrod Eireann provided an emergency access gate. Mr. Murray stated that the Fire Service would respond to such an incident in the most appropriate and timely manner. Garda assistance would be deployed to move temporary dwellings. Cllr. W. O'Donnell was concerned that Fire Service operations would be hampered more in the cul-de sacs created by the closure than if the road remained open.

- Cllr. M. Donegan enquired as to what would happen if both Kilmallock's appliances were deployed at other incidents, if a rail crash occurred. Mr. Murray advised that there are predetermined attendance arrangements in existence, throughout Ireland, where another Station, such as Charleville, would back up Kilmallock.

## EVIDENCE OF CIE / IARNROD EIREANN

### Conor McGuinness, Senior Project Manager, Irish Rail.

Mr. Conor McGuinness, Senior Project Manager with Irish Rail explained that the Company were closing level crossings all over the country, in pursuance of a Railway Safety Programme, which started in 1999, and is funded by the Department of Transport. The Programme was initiated following a report by international specialist risk consultants, and aims to eliminate and mitigate the safety risks identified. Every level crossing on the system presents an inherent risk to the railway, the public, and road users. The greatest risk factor to the safe operation of trains around the network, up to half the total risk, is level crossings. The risk is eliminated by closing the crossing. At public road level crossings there is a shared duty of care between Iarnrod Eireann and the County Council.

Mr. McGuinness stated, that over 700 crossings had been closed nationwide over the past 10 years, under the Railway Safety Programme, based on risk analysis of the usage of the crossing, and the number and speed of trains. The Dublin to Cork line is the principal and busiest rail artery in the State, and the Company aim to remove all crossings on this line, to promote safety and enhanced operational efficiency, as all featured high in potential risk. To date, 95 (80%) crossings have been closed on the line, and plans are well advanced to close the remainder. Iarnrod Eireann also have a nationwide programme of de-manning crossings on other lines.

The Fantstown level crossing, located about 3 kms. east of Kilmallock, lies mid section between stations, so trains are travelling at their full line speed when they pass through. The current speed on this line is 100 mph., and it is intended to increase this to 125 mph., to enable rail transport compete with the motorway network.

Mr. McGuinness stated that, there are currently 34 scheduled train movements at Fantstown daily, and up to 10 unscheduled movements, which could be engineering trains, freight trains, or other track recording vehicles.

Public usage of the crossing was stated to be low, based on counts carried out by Iarnrod Eireann. Daily vehicular movements vary between 4 and 12, with an eight-day traffic count in November 2004 recording 60 vehicle trips. A twenty-four hour count, in early November 2009, recorded 8 vehicular and 5 pedestrian crossing movements.

The crossing is manned between 07.30 a.m. and 23.00 pm. and the gates are locked outside of these hours. During the hours that the facility is manned, the gates are closed for passage of trains 38% of the time, and the crossing can be used by vehicles for the remaining 62%, i.e. for 9.6 hours daily. The minimum delay to vehicular users, at the crossing, is 3 minutes, and the maximum 20 minutes, though this can be up to 30 minutes when Dublin and Cork bound trains cross hourly. The pedestrian wicket gates are unrestricted in use, and the gatekeeper has no function in such use.

In concluding, Mr. McGuinness expressed the view, that the existing road network in the area would facilitate ready alternative access and re routing following closure of the crossing.

Tim Richards, Senior Property Surveyor, Coras Iompair Eireann

Mr. Richards expressed the view, that closure of Fantstown level crossing would have low impact, given the current low level of vehicular and pedestrian usage, the existing restrictions on usage of the crossing, and the fact that the existing road network facilitates rerouting, and the lack of lands on both sides of the track in common ownership.

To illustrate the impact on journey times, following closure, Mr. Richards presented an analysis of the effect of rerouting on the journey between Gibbonstown Cross to the north of the crossing, and Foleys Cross to the south, a distance of 700 metres. The current journey time is 3.7 minutes, assuming only the minimum delay of 3 minutes occurs at the crossing. Post closure of Fantstown Level Crossing, a 5.1 km. detour east, via Ballinascaula Bridge, would take 5.1 minutes. A 6.5 km. detour west, via the outskirts of Kilmallock, would take 6.5 minutes. These detours would therefore take 1.4 minutes and 2.8 minutes longer than the current route through the level crossing. If the delay at the crossing exceeds 3 minutes, the alternative route options are more attractive, possibly reflecting the current low level of vehicular usage.

Mr. Richards outlined Iarnrod Eireann's response to the contents of the resolution adopted by the outgoing Kilmallock Area Committee, on 2<sup>nd</sup> April, 2008, and submitted as a formal objection to the proposed extinguishment of part of Local Road LS 8514.

**Objection 1:** This is a public road being used by local householders and visitors, including delivery of services.

**Response 1:** The existing road network provides ready alternative access (see above), and anyone travelling from or to Kilmallock or Tipperary would not be substantially inconvenienced by the closure.

**Objection 2:** It is an important pedestrian route for the local community, and its extinguishment would result in dividing the community.

**Response 2:** The crossing presents an existing restriction to those in the community, and the closure is considered necessary to achieve the safety benefits that will result

**Objection 3:** The creation of two cul-de-sacs may result in increased dumping on this already problematic road, or encourage temporary dwellings..

**Response 3:** These are enforcement issues for Limerick County Council. It is considered that curtailment of access through an area enhances rather than reduces security levels, by removing a viable escape route for offenders dumping.

**Objection 4:** Closure of the road may result in lack of access for the emergency services.

**Response 4:** The layout of the existing road network is such that access will not be compromised. Closure of the crossing will eliminate the risk of an emergency vehicle being delayed at the crossing. Iarnrod Eireann will retain a gate for emergency access, on the northern side of the crossing.



### Cross Questioning of CIE/Iarnrod Eireann Evidence.

- The traffic count and pedestrian data put forward by Iarnrod Eireann, to demonstrate low usage of the crossing were questioned by several speakers, including Cllrs. M. Donegan, W. O'Donnell, and E. Ryan, and Messrs G. Clery and E. Cronin, on the basis that there was an apparent discrepancy between a 24 hour video recording, on 3 / 4 November 2009, and an earlier 8 day vehicular count. Mr. Richards clarified that, on 3 / 4 November, vehicles were recorded 200m. north of the crossing, but not all of those counted used the crossing, as they accessed properties between the census point and the crossing. The number of vehicles making the actual crossing in the 24 hour period was 8, which is broadly consistent with the earlier 8 day count of 60 vehicles. Five pedestrians made the crossing during the 24 hour video recording, on 3 / 4 November. This recording was made, as no data previously existed on pedestrian usage.

Iarnrod Eireann were accused of using the count data selectively. Some of those present felt that the data did not take account of the number of young people crossing at Fantstown to access the Martinstown GAA complex, agricultural vehicles, and cattle being driven across the line, all activities that would peak during Summer months. Walking greyhounds across the line was also stated to be a daily occurrence. It was also suggested that usage of the crossing was depressed on 3 / 4 November due to heavy rain on that day.

- Iarnrod Eireann's stated aim of closing level crossings to eliminate risk and improve safety, thereby facilitating an increase in line speed, to enable rail transport compete with the motorway network, was considered by those objecting to the proposal to ignore the safety of young people accessing Martinstown GAA field, who would be forced to travel via Ballinascaula

Bridge and Junction, following closure of Fantstown Crossing. In response, Mr. McGuinness (Irish Rail) cited a number of accidents and fatalities on similar crossings on the Dublin / Cork line, including one two years ago in Dundrum, and several near misses

Research shows that there have been 136 accidents nationwide at level crossings, involving road vehicles, between January 2004 and December 2008, including 14 in the Limerick District, one of which was on the Dublin/Cork line A fatality involving a pedestrian being struck by a train occurred at Bishopswood , in 2007, at a crossing similar to Fantstown.

- Iarnrod Eireann were asked if they had considered replacing the level crossing with a bridge, as had happened elsewhere, sometimes facilitating just one person. Mr. McGuinness advised that bridges are only provided, where farms are being severed and no alternative road access was available between the two parts of the holding. At Fantstown, alternative routes are readily available, and journey times would generally be less because of the delays at the crossing. Mr. McGuinness said the cost of a public road bridge would be in excess of € 2.5m., and in the case of Fantstown, at least two houses would have to be removed, or at least overshadowed to facilitate construction of approach embankments to the bridge, extending back 100-150 metres. Such cost and disruption could not be justified.
- As well as the issue of the safety of children accessing the GAA Field, via Ballinascaula, the additional fuel costs for families accessing the community facility was raised.
- Reference was made by Cllrs. Houlihan and Donegan to the four recently opened Ballyhoura Cycleways, two of which traverse the area. It was stated that closure of the level crossing at Fantstown was inconsistent with the

expansion of recreational activities. Mr. McGuinness reiterated that the closure of Fantstown and other crossings on the Dublin/Cork line was to eliminate the potential risk of accidents identified in their consultants risk analysis

- o Iarnrod Eireann were queried regarding the possibility, and cost, of replacing the current level crossing at Fantstown with an automated crossing. Mr. McGuinness stated that a single automated crossing would cost in excess of €1m because of the cost of integrating it into their signalling system. Under questioning, he accepted that lesser costs were achieved on the Mayo line, where a number of automated crossings were tendered and installed together. He agreed that provision of an automated crossing at Fantstown was technically feasible, but provision of same would run contrary to the Company's stated objective to eliminate all crossings on the Dublin / Cork line, in the interest of safety and to facilitate increasing line speed to 125 mph. On further questioning, Mr. McGuinness explained that Iarnrod Eireann had a programme of de-manning and automating crossings on other lines, e.g. Athlone to Westport, all of which had significantly greater crossing traffic and lower line speeds than Fantstown. Mr. McGuinness was asked if Iarnrod Eireann could group Fantstown with other crossings, at Thomastown, Churchtown, Ballyhay to create a contract package with unit costs below €1m., as had been achieved elsewhere. He stated Iarnrod Eireann were already in discussion with the local authorities concerned at these locations regarding the options available.
- o Mr. McGuinness advised that all but one crossing have been eliminated on the Belfast line, which may have line speeds raised to 100 mph: 90% have been eliminated on the Portarlinton to Athlone line.

- Iarnrod Eireann were accused by some present of damaging community and social life in the area, in pursuance of increased rail speeds, so as to compete with road transport, and the elimination of risk.
- Councillor O'Donnell suggested that the alternative route, via Ballinascaula, should be made safe and upgraded by Limerick County Council, with funding provided by Iarnrod Eireann.

The Oral Hearing concluded at 12.40 pm.

#### *COMMENTARY AND CONCLUSIONS*

Having considered the written objections and submissions made to Limerick County Council, examined the location, conducted an Oral Hearing on 10<sup>th</sup> November, 2009, and considered the transcript of evidence presented there, as well as the background to the proposed Extinguishment of the Right of Way over part of Local Road No. LS 8514, my conclusions are as follows:

1. Limerick County Council complied with the statutory requirements of Section 73 of the Roads Act, 1993, concerning Extinguishment of public Rights of Way, and no issues regarding same were raised, either in the written submissions, or at the Oral Hearing.
2. In May, 2006, CIE requested Limerick County Council to undertake a Section 73 process, to extinguish the public Right of Way over a 16 metre length of Local Road No. LS 8517, to facilitate closure of Level Crossing XC 187, at Fantstown, Kilmallock, for operational and safety reasons. It was confirmed at the Oral Hearing that the proposal did not require planning permission, and that Section 73 of the Roads Act, 1993 is the appropriate process to use in extinguishing a public Right of Way. The making of an Extinguishment

Order, and the consideration of objections or representations thereto are reserved functions of the Elected Members.

3. Notice of the proposal to extinguish the public Right of Way at Fantstown was published in the Limerick Leader, on 15<sup>th</sup> March, 2008. Ten objections or submissions were received by Limerick County Council, by 1<sup>st</sup> May, 2008, including a petition from 47 local residents, and a resolution from the outgoing Members of the Kilmallock Area Committee, dated 2<sup>nd</sup> April 2008, objecting to the proposal. An Oral Hearing of the objections/submissions was held on 10<sup>th</sup> November, 2009, attended by Elected Members and Officials from Limerick County Council, Officials from Iarnrod Eireann, and local residents.
4. Local residents use the level crossing for a range of activities and purposes, including business, agriculture, leisure, and sport, particularly accessing the new GAA sports and community complex, exercising greyhounds and walking or jogging.
5. The proposed extinguishment of the public Right of Way will impact in varying degrees on local Residents, depending on where they live, the purpose of their journeys and their planned destination.
6. Mr. Niall Murray, Assistant Chief Fire Officer, confirmed that, from their examination of the proposal, the Fire & Emergency Service had no objection to closure of level crossing XC 187 at Fantstown, in relation to gaining access to properties on the two cul-de-sacs that would result from the closure.

With regard to accessing the railway line in the event of a train crash or derailment, the Fire Service would position their appliances as near as possible to the incident, and would require assistance from Iarnrod Eireann

to transport cutting and other specialist equipment along the track. They would require steel fencing that could be cut or removed, at Fantstown, or a gate for emergency use. Iarnrod Eireann confirmed at the Oral Hearing that they would retain a gate, for emergency access, at the northern side of the crossing.

The Fire Service would deal appropriately with an incident, if they were impeded by illegal encampments from gaining access thereto. They confirmed they have predetermined attendance agreements in place, whereby adjoining Stations, such as Charleville, would back up Kilmallock, if the latter's appliances were deployed elsewhere.

7. The proposed closure would result in the creation of two cul-de-sacs on Local Road LS 8514, on each side of the crossing, which it was claimed would result in illegal dumping or littering. Evidence adduced at the Oral Hearing showed that this is not a significant problem in the area heretofore, and it is a matter for enforcement by the Council under the appropriate legislation. It was suggested, that closure of the crossing would eliminate an escape route for the perpetrators, rendering illegal dumping less likely.

The possibility of unauthorised encampments being established in the cul-de-sacs was also raised as an issue. However, it was suggested that the narrowness of the road to the south, and the number of houses north of the crossing are deterrents to same. The Garda and the Council have enforcement powers.

8. It was suggested, at the Oral Hearing, that property prices on the road would be devalued following closure of the crossing. However, no evidence was adduced to either support or reject this contention.

9. Iarnrod Eireann are obliged, by statute, to ensure, as far as is reasonably practicable, the safety of persons in the operation of the railway. In pursuance of this obligation, and following a report by international specialist risk consultants, Iarnrod Eireann embarked, in 1999, on a Railway Safety Programme, funded by the Department of Transport, which aims to eliminate and mitigate the safety risks associated with level crossings, for the railway, the public, and road users. The risks are eliminated by closing the crossings. To date, over 700 crossings have been closed.

The Dublin to Cork line is the principal rail artery in the State, on which 95 crossings have been closed, to date, and plans are well advanced to close the remainder. The proposed closure of Fantstown crossing is being progressed as part of the Railway Safety Programme, so as to eliminate the potential risk identified there.

10. Iarnrod Eireann officials stated at the Oral Hearing, that closure of all level crossings on the Dublin/Cork line would facilitate raising line speeds from 100 mph to 125 mph, enabling the rail system compete with the motorway network.
11. At present, there are 34 scheduled train movements daily, at Fantstown, and up to 10 unscheduled movements.

The crossing is manned between 07.30 am. And 23.00 pm, and the gates are locked outside of these hours. During the manned period, the gates are closed for trains passing 38% of the time, and open for the remaining 62%, i.e. for 9.6 hours each day, when the crossing can be used, on request, by vehicular traffic. Delays at the crossing, while trains pass, can vary from a minimum of three minutes up to twenty minutes, and occasionally thirty minutes.

12. Iarnrod Eireann presented evidence to show that usage of the crossing, by both vehicular traffic and pedestrians is low. Daily vehicular movements vary between 8 and 12, with an 8-day count in November 2004, recording 60 vehicle trips. A 24-hour count, in early November 2009, recorded 8 vehicular and 5 pedestrian movements. These data were challenged by the objectors as being selective, given that sporting and agricultural activities peak during summer months, and not in November when the counts were taken. The point was also made that the low usage of the crossing was a consequence of the significant delays encountered by users while trains pass on the country's busiest line.
13. Iarnrod Eireann contend that closure of Fantstown level crossing will have minimal impact on current users, given the usage restrictions there, the low levels of usage, and the fact that the road network in the area readily facilitates rerouting. Their representatives put forward data to show that journey times on the alternative routes, between Gibbonstown Cross and Foleys Cross could be less than current journey time, using the level crossing, particularly when the delay at the gates exceeds 3 minutes.
14. A major issue arising at the Oral Hearing was the safety of young people accessing the new GAA Field and Community Centre, at Martinstown. Closure of the level crossing would necessitate accessing these facilities via Ballinascaula Bridge and Junction, which are considered to be substandard and dangerous. Iarnrod Eireann should provide funding to Limerick County Council for agreed improvements to this route, as a consequence of the closure.
15. Iarnrod Eireann were requested, at the Oral Hearing, to provide a bridge over the railway at Fantstown, to replace the level crossing, and so as to avoid splitting the local community. Mr. McGuinness, Iarnrod Eireann,



stated that bridges are only provided where land holdings are being severed, and farmers had no other means of access between one part of their holding and another. Construction of a bridge at Fantstown would necessitate removal or overshadowing of at least two houses, construction of significant approach embankments, and would cost at least €2m. Given the low level of traffic using the crossing, provision of a bridge cannot be justified, in my view.

16. Provision of an automated crossing instead of closure was also raised with the Iarnrod Eireann Representatives, who stated that, while such a proposal was technically feasible, it would cost in excess of €1m., and could not therefore be justified at such a low used crossing. Automated crossings had been provided at less unit cost in some parts of the country, where a number of crossings were bundled in a single contract to achieve economy of scale. Usage of the crossing at Fantstown would not justify the cost of providing an automated facility. In any case, it was Iarnrod Eireann's objective to eliminate all crossings on the Dublin/Cork line, so as to eliminate risk, and allow higher line speeds be achieved.

## RECOMMENDATION

Having given detailed consideration to the points made and issues arising, both in the written objections and submissions, and at the Oral Hearing, and from my own inspections of the location, and given the current restrictions on and the very low level of usage of Fantstown Level Crossing, I believe the substantial public safety arguments made in favour of the proposed Extinguishment outweigh those made against. Accordingly, I recommend that Limerick County Council proceed with the proposed Extinguishment of the Public Right of Way over part (16m.) of Local Road LS 8514, at Level Crossing XC 187, at Fantstown, Kilmallock, Co. Limerick, in accordance with the provisions of Section 73 of the Roads Act, 1993.

As closure of the Level Crossing will have an adverse impact on persons, particularly young people accessing the sports and community complex at Martinstown, improvements need to be carried out, by Limerick County Council, on the alternative route, via Ballinascaula, in the interest of road safety. I further recommend that the cost of the necessary improvements be substantially borne by Iarnrod Eireann.

Signed:



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*John O'Flynn,*  
*Chartered Engineer.*

Date: 4<sup>th</sup> January, 2009

*ATTENDANCE SHEET*

AH agenda sheet

Oral Hearing re Proposed Extinguishment of  
 Right of Way  
 closure of Level crossing XC 187 C  
 Parston Kilmallock 10<sup>th</sup> Nov 2009

Name	Position / Title
Maureen Murray	A.O. Road, Galway d. e. e.
Joe Kennedy	SKB Reta Social H.C.C.
Moll Murray	ACFO Limerick County Fire Service
CARL WEAVER	SACFO Limerick County Council
Kieran O'Gorman	Planning Department Limerick C.C.
Tim Richards	CIE Group Property
Conor McQuinn	IRISH Rail, New Works dept.
PAT O'Sullivan	IRISH Rail. STATION MASTER, special
Eddie Ryan M.C.C.	Castlecragh, Fallow, Co. Linc
MIKE DONEGAN M.C.C.	MILLMOUNT, KILMALOCK, Co. LIMERICK
Mike Houlahan M.C.C.	Bresheen Kilmallock Co. Limerick
Gabriel Cherry	Bawnard Kilmallock
Sammy Cronin	GIBBONSTOWN Kilmallock
Brendan Hanley	GIBBONSTOWN Kilmallock
Betty Hayden	GIBBONSTOWN
John Houlahan	Gibbonstown,
Shae Houlahan	Gibbonstown
Thomas Drake	Dredfack
William O'Connell	L.C.C.
Lena Barry, Solicitor	Staly Paters (UC)

APPEARANCES

INSPECTOR: MR. JOHN O'FLYNN

LIMERICK COUNTY COUNCIL: MS. LENA BARRY  
LEAHY & PARTNERS SOLICITORS

LIMERICK COUNTY COUNCIL: MS. MAURA MURRAY

CHARTERED ENGINEER: MR. JOE KENNEDY

PLANNING DEPARTMENT: MR. KIERAN O'GORMAN

FIRE BRIGADE: MR. NIALL MURRAY  
MR. CARL WEAVER

COUNCILLORS: MR. EDDIE RYAN LCC  
MR. MIKE DONEGAN LCC  
MR. MIKE HOULIHAN LCC  
MR. WILLIAM O'DONNELL LCC

CIE/IARNRÓD ÉIREANN: MR. CONOR MCGUINNESS  
MR. TIM RICHARDS  
MR. PAT O'SULLIVAN

LOCAL RESIDENTS: MR. GABRIEL CLERY  
MR. EAMON CRONIN  
MR. BRENDAN HANLEY  
MS. BETTY HOULIHAN  
MR. JOHN HOULIHAN  
MR. SHANE HOULIHAN  
MR. THOMAS DRAKE

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