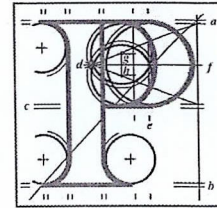


Our Case Number: ABP-314597-22

Your Reference: Sean and Phil Scahill



**An
Bord
Pleanála**

R.G. Emerson & Co. Solicitors
13 Cross Street
Co. Galway
H91R8DF

Date: 06 July 2023

Re: BusConnects Galway Cross-City Link Scheme.
University Road to Dublin Road, Galway City.

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above mentioned case. The contents of your submission have been noted.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above-mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Niamh Thornton
Executive Officer
Direct Line: 01-8737247

CH08

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The Secretary
Planning Appeals Board
64 Marlborough Street
Dublin
DO1 V902

AN BORD PLEANALA

LDG- _____
ABP- _____

04 JUL 2023

Fee: € _____

Time: _____ By: *Mand*

Our Ref: PM.4185.001

Your Ref: APB-314597-22

Date: 4 July 2023

**Re: Submission on behalf of Sean and Phil Scahill
Bus Connects Galway: Cross City Link (University Road to Dublin Road)
Scheme
Approval of Scheme under Section 51 of the Roads Act**

Dear Sirs

By letter dated 31st May 2023 An Bord Pleanala invited submissions in respect of the above entitled scheme and we set out response in respect of the matter hereunder.

We note that the Board have decided to hold an oral hearing in respect of the Compulsory Purchase Order (CPO) but not in respect of the Section 51 application for approval of the scheme. We do not understand how one can separate a procedure where the response of the Council is a single unitary response in respect of both applications as if the test in both were the same. In effect, what the Acquiring Authority are seeking to urge upon the Board is that the carrying out of the Environmental Impact Assessment (EIA) is sufficient for the Board to approve the scheme for the purposes of confirming the compulsory acquisition of the lands, but this is, it is respectfully submitted, entirely misconceived.

It is indeed true to say that the EIA is an important part of the consideration of the scheme under Section 51 as is an Appropriate Assessment (AA) under the Habitats Directive as well as the other domestic law issues that one is required to address under Section 51, but consideration of these matters are confined to Section 51 and accordingly are limited to those issues and those issues alone.

In respect of the response which is dealt with sequentially as per the response of the Acquiring Authority, we maintain our position in respect of the EIA Report set out in the original submission.

In respect of the matters set out and relied on in respect of the EPA Guidelines to be contained in the EIA Report and in particular the need for regular dialogue, we refer to the absence of any dialogue with our clients, any engagement with them or any engagement

Patricia McLoughlin BCL, LL.M, MBA Paul Watters B.A., LL.B. Conor Ruane B.A., LL.B.

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V.A.T 7548086G

with the occupier of 139 College Road, and insofar as there is an emphasis by the Acquiring Authority on this in their response to our submission, it is mystifying why they have not engaged at all with the absence of any information in respect of 139 College Road and the various issues in respect of occupation and impacts identified.

139 College Road is occupied by an elderly lady who is in poor health, who is particularly vulnerable to noise, dust and vibration, and who is particularly sensitive to the kind of effects of the major works on her health that will occur as part of this scheme, yet the occupation of that person in the house has not even been identified, nobody has considered this issue and the type of reference made in the Council's response to our clients original submission has to be viewed in the light of the failure to engage with the detail in respect of this property or with the particular personnel involved.

In respect of the separation between the client and the EIA team, we do not know what is intended to be referred to as "*functional separations where required*" and it is submitted that the EIA Report must be independent of and seen to be separate from the project and in effect amount to a critical analysis of that project.

In respect of the Strategic Environmental Assessment (SEA), while it is stated that a SEA was undertaken for the Galway Traffic Study no such document containing that assessment has been produced and while there is a reference to the matter being referred to at Section 1.5.2, that begs the question as to what precise regard was had and it is critical that a copy of that SEA be furnished as part of the documentation grounding the application.

In respect of conflating the EIA Report with the CPO, the response simply confirms that this conflation has occurred and indeed the response at (iv) is both indecipherable and lacking any coherence and demonstrates that there was no separation between the EIA Report and the issues grounding the scheme for the purpose of Section 51 with that of the CPO. Therefore the entire approach adopted under Section 51 is misconceived.

The next issue dealt with is the inadequate public consultation and the concerns raised by our clients in respect of the absence of consultation with them as householders, and the absence of any detailed investigation in respect of the lands being acquired and the impact on 139 College Road. It is completely inaccurate to describe the consultation process as comprehensive and substantive, and if such consultation had occurred in the manner as described by the Council, how could the Council not be aware of the detail in respect of 139 College Road, of the nature of the occupation of that house, of the property interest of our clients but most importantly of the vulnerability of the occupant of 139 College Road. It is submitted that the absence of any information in this regard demonstrates that the Council have not carried out any or any appropriate public consultation.

Even more extraordinarily, notwithstanding that they refer earlier in the response to the ongoing need for dialogue and engagement when new information comes to light, the Council it would appear have done nothing once it has been brought to their notice that an elderly person is living in 139 College Road and have taken no steps either to correct the record or to facilitate the engagement of that person in the compulsory acquisition procedure. This is extraordinary where the property to be acquired comprises the curtilage of a structure protected under Article 40.3 and 43 of the Constitution, is a dwelling house

for the purposes of Article 40.5 of the Constitution, is protected under the European Convention of Human Right as a dwelling house and where there is an obligation to protect and vindicate the property rights of the citizen where one of the highest rights to be so protected is the right to shelter.

Had any analysis been conducted of the effect of this scheme on that property and in particular on the occupant of that property in terms of noise, where nobody of that age can be expected to live in that house during the period where construction works are being carried out given the levels of noise that would occur, where this person is particularly vulnerable to dust given her age and physical condition, to vibrations, to security and to levels of noise generally and the duration of that noise, the scheme could never have been proposed in the manner that it was and without any of the mitigations being put in place that would be required in any scheme much less one with the consequences and impacts of this scheme. The approach of the Acquiring Authority has been far below the standard that one would require from a Public Authority engaging in a scheme with the potential effect on a person of the sensitivity and vulnerability of the occupant of 139 College Road, and where that person is not capable of being heard in response to the treatment relating to this scheme.

In respect of air quality and emissions generally, the response at paragraph (vii) is to refer to Chapter 7 but no impact on specific vulnerable persons is identified in that chapter. The approach of the Acquiring Authority/Council appears to simply take a general standard namely the air standard along College Road but that is not the appropriate test given the particular sensitivity of individuals likely to be affected by the scheme to which regard must be had as well as the properties and in particular the dwelling houses along this road. Simply relying on the standards on College Road but not on the houses that immediately adjoin it demonstrates the fundamental inappropriateness and incoherence of the approach adopted by the Council.

We reiterate our concerns arising from the matters set out above that the full impacts of the scheme have not been addressed and that the EIA Report is deficient and specifically the impacts of noise, of dust, of vibration, of air quality and on public health of the scheme cannot be overemphasised. None of these matters have been addressed in the context of 139 College Road and accordingly the scheme is completely deficient in failing to address in terms of its design these issues, and the effects of the scheme which will render 139 College Road uninhabitable and will render the occupant of that house homeless, is an effect it appears never to have been considered through absence of public consultation and investigation.

In respect of the response to the Climate Action Plan 2021, which the submission from the Acquiring Authority states was the relevant Plan at the date of the publication of the EIAR, this Plan was quashed by Order of the High Court and subsequently a new Plan was made. It is submitted along with the Guidelines from the EPA that the proposed scheme must be addressed relative to the new Climate Plan as that is the Plan that the Board must consider, i.e. the Plan that is in force at the date of the determination of the application under Section 51. It would appear that the Council are relying on a Plan that is no longer in force, that was invalidly made and have failed to have any regard to the new Plan which is now law and

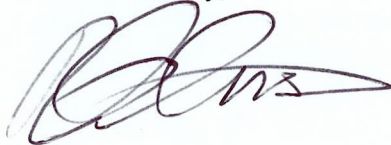
which binds this scheme, and the Board cannot approve the scheme because they have no information as to the extent, if any, the scheme complies with its obligations.

Our clients finally have grave concerns about the manner in which the Natura Impact Statement (NIS) was prepared. The lineal nature of the scheme runs along and is located very close to Galway Bay which has a number of European Sites and where the impact on these European Sites is likely to be very significant. It is submitted that having regard to the decisions in *Connolly v. An Bord Pleanala* and the judgment of the European Court in a number of decisions in particular *Commission v. Ireland, Friends of the Irish Environment* and *People Over Wind* cases, the Board could not meet the test for appropriate assessment given the approach and the level of information that was submitted.

We note that the Board has a duty under the Roads Act to determine both applications at the same time and in the light of the approach adopted by the Council to rely exclusively on the EIAR and by implication the NIS, and in the light of the decision of the Board to hold an oral hearing in respect of the CPO confirmation, we would respectfully submit that the Board should re-visit the decision not to hold an oral hearing in respect of the Section 51 application.

You might clarify what the position is in this regard at your earliest convenience.

Yours faithfully,

A handwritten signature in red ink, consisting of several loops and a long horizontal stroke at the end, positioned below the text 'Yours faithfully,'.