

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01V902

Our Ref: 03173/LO/2309/JK
25th October 2022

'Station House'
Ashtown Road
Castleknock
D15 WFX2

AN BORD PLEANÁLA
LDG- 058575-22
ABP- _____
27 OCT 2022
Fee: € 50 Type: pmo
Time: 16:31 By: Hand

RE: DART+ WEST ELECTRIFIED RAILWAY ORDER 2022

Dear Sir/Madam,

This is a submission by **John Malone** and **Grainne Malone** residents and owners of the property **'Station House', at Ashotwn Road, Ashtown, Castelknock, Dublin 15**, relating to the proposed railway works covered by the proposed Railway Order by Córas Iompair Éireann ('The Applicant'). Please find enclosed a postal order for €50 being the statutory fee. We have reviewed the draft Railway Order and the documentation accompanying the application and this submission relates to concerns in relation to the potential significant effects on 'Station House', and relates to certain legal matters of access arising from the proposed works. 'Station House' is located at 10th Lock on the Royal Canal and is uniquely situated between the canal to the north and the adjacent Maynooth railway line as shown in the following image. The property enjoys a pedestrian access ('A') directly to Ashtown Road and vehicular access ('B') via the canal towpath.



The property is located within the administrative area of Fingal County Council. The lands north of the railway line are Zoned HA - High Amenity¹. The Royal Canal² and Royal Canal 10th Lock³ are listed in the Fingal County Development Plan 2017-2023, Appendix 2 as protected structures as is Longford Bridge⁴ (Ashtown Road).

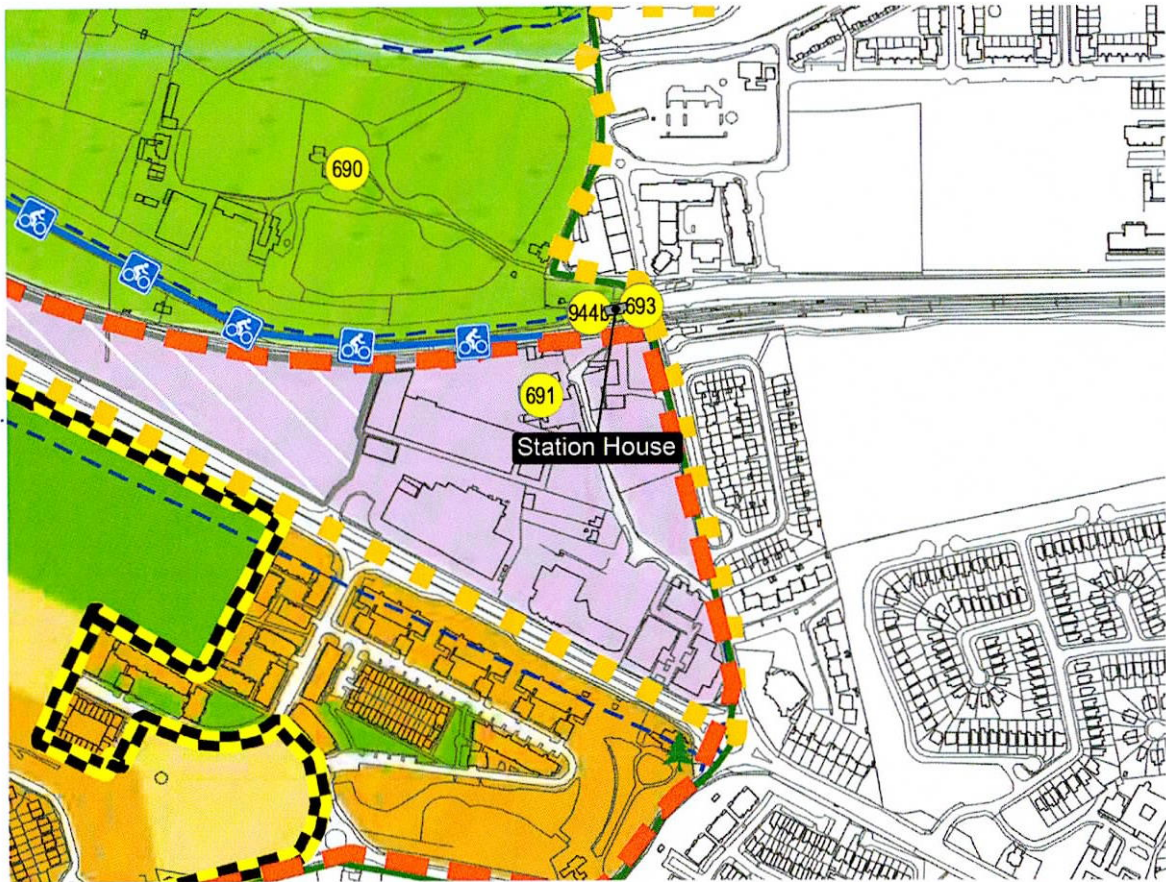


Figure 1.1 Excerpt Fingal Development Plan 2017-2023, Blanchardstown South Sh.13

'Station House' is not a protected structure but dates back to the Midland Great Western Railway circa. 200 years ago, and is considered to have significant heritage value and is one of only a very few original examples of Midland Great Western Railway Station Houses still occupied.

¹ Zoning Objective Description: Protect and enhance high amenity areas; Zoning Objective Vision: Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored (Fingal County Development Plan 2017-2023)

² RPS No. 0944a: Late 18th century man-made canal, including the tow paths, the canal channel with its stone and earth banks, and the canal locks (10th, 11th and 12th Lock)

³ RPS No. 0944b: 10th Lock of late 18th century Royal Canal structure, formed by cut stone walls and timber gates

⁴ RPS No. 0693: Late 18th century single-arched stone road bridge over Royal Canal at Ashtown Train Station

1 INTRODUCTION

- 1.1 We are the owners of the residential property **'Station House'** a residential property at **Ashtown Road, Ashtown, Castleknock, Dublin 15**. We have reviewed the draft Railway Order and the documentation accompanying the application in particular the Environmental Impact Assessment Report (EIAR) dated July 2022 and the accompanying appendices and general arrangement drawings.
- 1.2 This document relates to concerns regarding potential impacts upon Station House and the occupiers of Station House which concerns we believe have not been fully considered in the EIAR, or not considered at all.
- 1.3 We thought that our initial inputs had been brought to the attention of the scheme designers at an early enough stage in this process, so we hoped that there would have been ample time and opportunity to consider and respond to our concerns regarding the proposal. We have welcomed the opportunity to review the proposals submitted to An Bord Pleanála but consider that the scheme promoters have shown little commitment to meaningfully consider our initial concerns and note a lack of engagement with important matters of our amenity, wellbeing and rights of access which are significantly impacted by the current proposals before the Board.
- 1.4 The application is accompanied by an EIAR, which requires, inter alia, that the Applicant includes a description of the reasonable alternatives studied in the preparation of the application. An essential part of the EIA process is to identify the reasonable alternatives considered and to explain the rationales for the selection made taking into account the direct and indirect effects of the development proposal upon the following environmental factors at Article 3 of the Directive/Section 171A of the Act:
- (a) Population and human health
 - (b) Biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC
 - (c) Land, soil, water, air and climate
 - (d) Material assets, cultural heritage and the landscape, and
 - (e) the interaction between the factors referred to in points (a) to (d)
- 1.5 The current proposals at Ashtown have the potential to have serious implications under several aspects of the environment, and particularly

residents, land, material assets and cultural heritage as well as the interaction of same. The onus will be on the Applicant to identify and consider these matters as well as reasonable alternatives and to justify the option chosen at Ashtown taking into account the effects of the project on the environment.

- 1.6 It is our contention that insofar as the scheme relates to Station House the assessment is not comprehensive and fails to consider impacts both direct and indirect on the property, the structure, rights of access and fails to consider the impact on the wellbeing of the occupiers particularly during the construction phase. The assessment of the EIAR is a matter for An Bord Pleanála at the Approval stage, the analysis below highlights real shortcomings specifically relating to the failure to adequately identify and consider the impacts, both direct and indirect on Station House and its residents and legal rights. The main findings are summarised to show their relevance to the consideration of An Bord Pleanála.

2 PROPOSED WORKS AT ASHTOWN

- 2.1 The proposed works include for the realignment of Ashtown Road along the route of Mill Lane. The realignment is necessary due to the proposed closure of the existing level crossing on Ashtown Road. The closure of the crossing will result in Ashtown Road ending in a cul-de-sac on both sides of the railway. Various roadworks are proposed to provide access to Ashtown Station on the southern side of the railway line and to the east of our property. EIAR Chapter 4 '*Description of the Proposed Development*' sets out to describe the works at Ashtown Level Crossing at Section 4.8.6 and Section 4.12.5. The description mentions the closure of the level crossing and the diversion of Ashtown Road and identifies that

"The proposed level crossing replacement works at Ashtown will require property acquisition and modifications to existing accesses."

- 2.2 The EIAR highlights at Section 4.12.5 that a mini-roundabout is proposed on Ashtown Road on the northern side of the railway line to allow for vehicle turn-around and expressly to provide access to a residential property on the northern bank of the canal. There is no mention of Station House on the southern side of the canal and it appears from the submitted drawings that access to Station House will be directly affected by the works.

- 2.3 A large pedestrian cycle overbridge is proposed on the eastern side of Ashtown Road and the existing pedestrian bridge will be demolished. EIAR Figure 4-141 *'Ashtown Station after removal of level crossing'* appears to show the roadway on the northern side of the railway terminating at the mini-roundabout and the area between the roundabout and the railway line is shown pedestrianised. This proposal is confirmed in EIAR 4.8.5.1.1 *'Enhancements at Ashtown Station'* which states that the *"The protected bridge that is currently used by vehicular traffic will become a pedestrian bridge for DART passengers, residents and cyclists, providing a link across the Royal Canal."* Pedestrianising the existing canal bridge (Longford Bridge) impacts upon access to Station House. We can find no evidence of this direct impact having been satisfactorily considered and no mitigation measures are proposed.
- 2.4 The EIAR is silent on the impact the proposed works have on access to the property and is silent on the right of way along the canal towpath. The matter of our legal rights and the duties of the Applicant in this regard are set out in this document at Section 4.
- 2.5 Station House is not mentioned at all in the EIAR description of the works. Significant scheme works at Ashtown all within 100m of Station House include, but are not limited to the following:
- Closure of existing level crossing.
 - Construction of Substation and Station Upgrade.
 - Demolition of existing pedestrian crossing gantry and demolition of the existing station building (See EIAR Table 4-15 for list of 'Initial Works').
 - Construction of Pedestrian and Cycle Bridge requiring piling on the northern side of the Royal Canal to support the structure and will also require construction to the banks of the canal.
 - Pedestrianise existing canal bridge.
 - Demolition of existing pedestrian bridge over the Royal Canal.
 - Realignment of the Ashtown Road including construction of Railway Underbridge of twin track and canal and towpath which involves a significant construction requiring piling.

2.6 EIAR Construction Strategy

2.6.1 EIAR Section 5.2 states that the construction phase of the proposed development will be of 47 months duration. It is stated that a key consideration in the preparation of the construction strategy and programme "is the requirement to reduce the impact on the operation of the railway line and hence, to maintain rail services for passengers." Daytime working hours are 07:00-19:00 weekdays and 07:00-13:00hrs weekends. Night-time and weekend possessions are set out at EIAR 5.2.1 as follows:

- Night-time track possession (weekdays): 4-hours. From 01:00 to 05:00 hrs
- Night-time track possession (Saturday nights): 6-hours. From 01:00 to 07:00hrs
- Full weekend track possession: 52 hours. Saturday 01:00 to Monday 05:00.
- Bank Holiday weekend track possession: 76 hours. Saturday 01:00 to Tuesday 05:00hrs
- Total closure: 24 hours per day for a specified duration.

2.6.2 Regarding the working hours of the construction compounds, it is proposed that these will be operational 24/7 in order to service the various worksites. It is noted that there are a number of construction compounds at Ashtown as listed in EIAR Table 5.2 including CC-SUB-S5-53600-B, CC-STA-S5-53660-B and CC-LC-S5-53820-B. These compounds are identified in Figure 2.1 below.

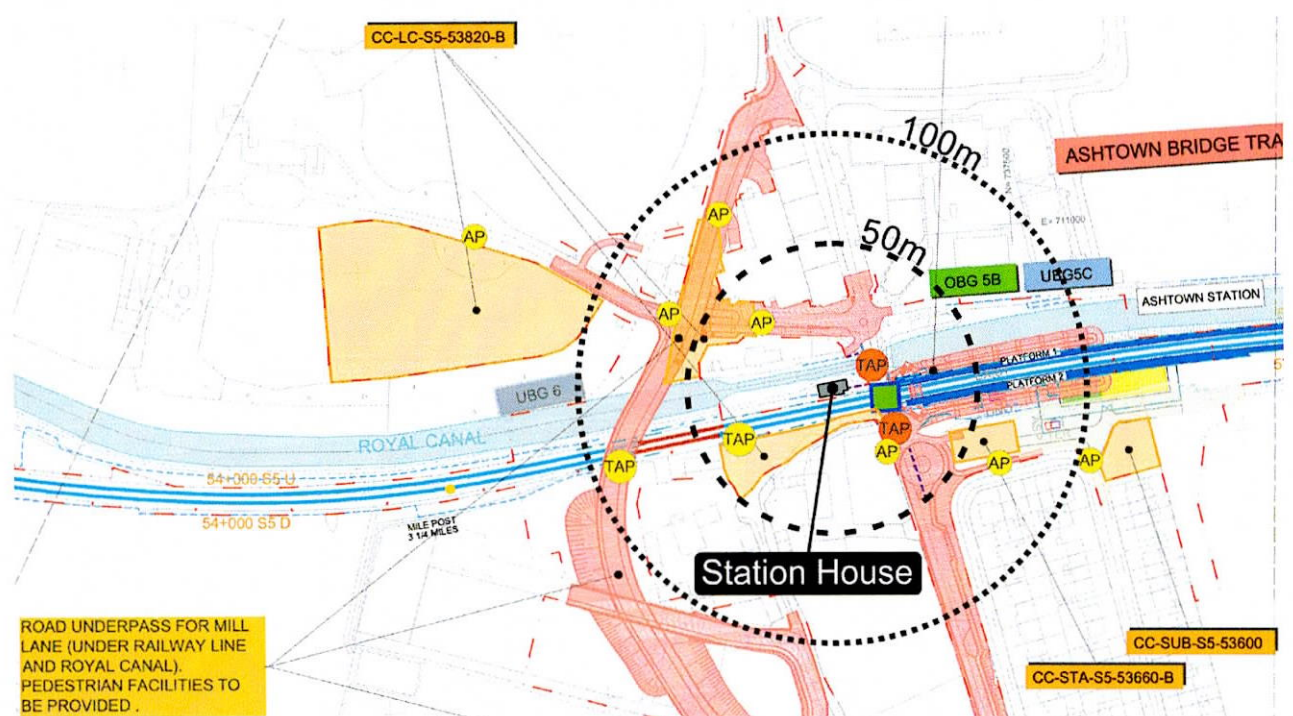


Figure 2.1 Excerpt 'General Design Project Schematic Layout' Sheet 09 of 42 (annotation added)

- 2.6.3 Figure 2.1 shows Station House outlined black at the centre of 2 no. concentric circles added to show the various works within 50m and 100m radius of the property. EIAR 5.3.3.3 states that the compounds will be "heavily used".
- 2.6.4 EIAR Table 5.1 indicates that pedestrian bridgeworks over the railway tracks at Ashtown will be performed during night-time/weekend possessions. It is assumed that this includes for both demolition of the existing structures and construction of the proposed structures.
- 2.6.5 Works to retaining walls also have the potential to be carried out at night-time.
- 2.6.6 The works to construct the underpass along the realigned Ashtown Road may also be required to be carried out during night-time hours.
- 2.6.7 Significant civil engineering works are required in the construction of the pedestrian and cycle bridge and these are set out in EIAR Section 5.6.4.2 and include significant piling works undertaken from the canal, widening of the station platform and piling from the platform. All of these works are stated in the EIAR as being undertaken during night-time working hours.
- 2.6.8 It is noted that CC-SUB-S5-53600-B is the main compound for this work and is located within 50m of Station House. The construction sequence of the Ashtown Underpass between 50-100m from Station House property has been split into two sections which are, the rail underbridge and the canal aqueduct, both of which are significant civil engineering works requiring piling. EIAR 5.6.5.2 states that: "*Undertaking piling in successive short overnight or weekend possessions reduces the risks to the railway of the rig toppling onto the tracks or temporarily undermining the track support zone. A bored piling rig and a steel sleeve will be used to install the piles and vibration with impact hammer will be required.*" The construction of the canal aqueduct similarly requires piling. In total the estimated construction period for this element of the works on the realigned Ashtown Road is 2 years.

2.7 Noise and Vibration

2.7.1 EIAR Section 14.4.1 outlines baseline noise and vibration surveys stating that such surveys have been *"conducted at locations representative of the nearest sensitive areas which have the potential to be impacted during construction phase and/or those likely to be impacted during the operational phase"*.

2.7.2 EIAR Table 14.5 and Figure 14.2 set out the locations of baseline noise and vibration surveys. The closest survey location to Station House is 'N22' located some distance away on the southern side of the railway in Martin Savage Park.

2.7.3 Under EIAR Table 14.7 the following is noted *"Note that at location N22 the vibration associated with rail movements was not detected at a level sufficiently above the background vibration level to allow an estimate of the vibration associated with a typical train movement. This is due to the large distance between the rail line and the monitoring position, ~50 metres"*. It follows as reasonable that Station House is a significantly closer sensitive location than Martin Savage Park. We reserve the right to adduce expert evidence to An Bord Pleanála at an oral hearing on the matter of noise and vibration and air quality during the construction of the proposed development.

2.7.4 EIAR Section 14.5.3.5 provides an assessment of noise and vibration impact during construction. At page 14/27 the EIAR includes the closing of level crossings as one of the activities with the greatest potential to generate vibration. The EIAR at page 14/28 identifies several properties in the vicinity of the works that would be considered to be vulnerable to vibration impacts and these include the following:

- Lock-keeper's cottage at North Strand Road/Newcomen Bridge.
- Ashtown lock-keeper's cottage.
- Ashtown Oil Mill.
- Porterstown schoolhouse.
- Crossing-keeper's house at Porterstown Road.
- Former Leixlip railway station.
- Former Coldblow & Lucan railway station, east of Collins Bridge, Westmanstown.
- Station Master's house, Maynooth.

2.7.5 Station House is not listed in the consideration of properties vulnerable to vibration.

2.7.6 Regarding the construction of Ashtown Station EIAR at page 14/34 states that

"The current pedestrian bridge at Ashtown station will be replaced with a new one in order to deal with the pedestrian flow increase due to the proposed traffic changes. The works are expected to take place across a 5 month period with the majority of the works taking place during the night and weekend possessions, due to the proximity to the live rail tracks. In particular dismantling of the existing bridge; platform widening; piling on the northern platform; and cutting piles and installing the pile caps will be undertaken during night periods. These night works will likely generate significant, temporary noise effects at nearby receptors.

During the day period, moderate to significant temporary noise effects are likely to occur at the nearest receptors, in particular at the Rathborne Village building which directly overlooks the works and the Station House dwelling. Mitigation measures that can be implemented are discussed in Section 14.6.1.

An underpass is proposed for access across the rail track and canal near to Ashtown Station. The works will take approx. 2 years to complete with approximately two thirds of the work taking place during the day period. However, there will be night possession work where work is taking place close to the rail track, these works will include piling, excavation and concreting. Night works are likely to cause a significant effect at surrounding receptors, and in particular at the Station House located adjacent to the rail tracks. During the day period, the likely effects from the works will range from moderate to significant dependent on the activities undertaken.

The site can implement typical mitigation measures such as a solid hoarding for the duration of the works and typical mitigation measures can be implemented, these are discussed in Section 14.6.1."

2.7.7 The measures proposed in EIAR Section 14.6.1 are not considered of meaningful benefit to the occupants of Station House. Having identified it as the nearest receptor, no specific measures are proposed to protect the wellbeing of the occupants. We believe that it would be appropriate that

there should be further detailed analysis and it is appropriate that noise levels at Station House should have been taken by the Applicant. In particular, noise level readings are appropriate at the front and rear of the property.

- 2.7.8 The Construction Phase noise and vibration impacts will vary according to the particular construction activities that are occurring at any given time. The noise level produced by construction work will vary at the nearest sensitive receptor boundary at any time depending upon a number of factors including the type of plant in use, plant location duration of operation, hours of operation, distance from the noise sources and intervening topography.
- 2.7.9 It is difficult to accurately determine the likely noise levels at Station House without knowing greater detail than provided in the EIAR. The noise model should account for the impacts on noise propagation associated with the magnitude of the noise source, the distance from the source to the receptor, the intervening ground type and topography, the presence of screens or buildings, meteorological impacts and the time that a noise source would be operating.
- 2.7.10 An assessment for Station House should be carried out to demonstrate whether or not the appropriate noise criteria can be met for the construction period and in particular the night-time scenarios considered in the EIAR programme of works.
- 2.7.11 It is considered likely that an impact assessment for site-specific noise modelling at Station House will show that many elements of the construction works will have a profound impact on the noise environment at the property.
- 2.7.12 Cumulative noise impact should also be considered from the various site compound and construction sites and activities. There will be many different items of plant operating at any one time within various distances of Station House and cumulative noise impacts are likely to exceed acceptable levels in the day-time and in the night-time. There is likely to be an intolerable level of noise for continuous exposure and the noise level may well be higher during intensive phases of construction activity especially in the night-time.
- 2.7.13 When the cumulative noise impact is considered, noise levels at Station House are thought highly likely to exceed the recommended upper limits for noise in the relevant standards, and this means that our home will be

uninhabitable throughout much, if not all of the construction period for the works at and in the vicinity of Ashtown Station and Ashtown Road.

- 2.7.14 Piling is required for the pedestrian bridge and the Ashtown Road underbridge and canal aqueduct and the EIAR states that much of this work will be carried out in the night-time. We do not consider that this is satisfactorily assessed or that the effects are suitably mitigated in the noise impact assessment presented in the EIAR.
- 2.7.15 Piling is an especially noisy activity and significant impacts would be predicted. The proximity of Station House to the structures in particular means that the inhabitants will experience considerable noise levels associated with the piling activity; this type of activity is also frequently continuous and could run throughout the night-time operations. The noise level associated with piling activity could make Station House uninhabitable during construction as it is likely to greatly exceed permissible, recommended or tolerable levels.
- 2.7.16 In completing the noise impact assessment, it is necessary to consider the cumulative impact of all activities and noise sources on the noise climate at Station House. When the combined impacts of all the various construction activities are considered (piling, HGV traffic, construction compound activity, other building and site clearance works etc) the cumulative noise impact will very likely be above the prescribed limits at Station House. This arises because of the proximity of our home to the construction site boundary and to elements of the proposed scheme.
- 2.7.17 We respectfully submit for the consideration of An Bord Pleanála specific matters arising at Station House and these include:
- Station House is an old building circa. 200 years and has shallow foundations. The proposed location of OHLE supporting poles and excavations for their foundations may have the potential to affect Station House. The current scheme drawings suggest that the proposed pole near the property is cantilevered from the southern side. Should the Board be minded to grant permission we respectfully seek that this cantilevering from the southern side is conditioned so as to mitigate possible subsidence.

- We are concerned at the height and scale of the proposed pedestrian and cycle bridge. We are also concerned about the boundary treatment of the Station House southern boundary. In particular we are concerned at the absence of detail on the site boundary and bridge and the potential impact upon daylight and night-time glare. We can find no evidence that these factors were considered in the EIAR, or at all.
- Confirmation that threshold vibration levels will be reduced by 50% for the purposes of assessing impact on Station House as per the National Roads Authority Report 2004 which states:

"Guidance relevant to acceptable vibration at the foundation of buildings is contained within BS 7385 (1993): Evaluation and measurement for vibration in buildings Part 2: Guide to damage levels from ground-borne vibration. This states that there should typically be no cosmetic damage if transient vibration does not exceed 15mm/s at low frequencies rising to 20mm/s at 15Hz and 50mm/s at 40Hz and above. These guidelines relate to relatively modern buildings. Therefore, the guideline values should be reduced to 50% or less for more critical buildings. Critical buildings would include premises with machinery that is highly sensitive to vibration or historic buildings that may be in poor repair, including residential properties." (p.14).

2.8 Air Quality

2.8.1 The risk of dust impacts arising from the proposed development are summarised in EIAR Table 12.44. The magnitude of risk determined in the EIAR is used to prescribe the level of site-specific mitigation required for each activity to prevent significant impacts occurring. The risk at each of the Ashtown compounds for dust impact is categorised as 'High' during construction. Having identified Station House as the nearest receptor no specific measures are proposed to protect the wellbeing of the occupants in terms of air quality during construction.

2.8.2 The main pollutants emitted during the construction phase are dust and fine particulate matter (PM₁₀ and PM_{2.5}); sulphur dioxide (SO₂), nitrogen oxides (NO_x) and carbon monoxide (CO) are also emitted as a result of emissions from vehicles, plant and machinery. All of these pollutants would be expected

to be released as a result of the proposed development and these are the principal pollutants that will be emitted during the construction phase.

- 2.8.3 Given the scale of construction work proposed and the nature, extent and duration of the works to be undertaken, construction has the potential to lead to significant levels of fine particulate matter emitted and also nitrogen oxides from diesel engines and it will have a measurable impact on air quality in the immediate vicinity of Station House.
- 2.8.4 The construction phase will last for at least 2 years, and the impact is therefore relatively long-lived. The impacts beside and close to Station House are potentially considerably greater than at the receptors used in the EAIR assessments due to the proximity of the property to the underbridge, pedestrian bridge, the station, the railway line and the construction compounds. There is very significant potential for an exceedance of air quality standards at Station House and significant adverse air quality impacts will arise from dust during construction.
- 2.8.5 Construction activity may also lead to emissions of fine particulate matter such as PM₁₀ and PM_{2.5} – these very fine particles are not visible to the naked eye but they can cause very serious respiratory problems, especially for older people and those whose health is compromised in any way.
- 2.8.6 One of the most significant environmental impacts of any type of construction programme is air quality impacts arising from the release of dust and fine particulate matter into the air. Significant issues relating to the construction phase impacts on air quality are; dust deposition on surfaces especially close to the construction sites and emissions of fine particulate matter including PM_{2.5} and PM₁₀ close to the construction sites. Air quality impacts are at their highest within 100m of the source of emissions, in this case the construction activity, and Station House is located well within this distance. Due to this very close proximity, significant adverse air quality impacts from dust and fine particulate matter are unavoidable as there is considerable potential for substantial quantities of dust and particulate matter to be released and to affect the air quality and amenity of Station House.
- 2.8.7 Dust cannot be fully controlled at 3m - 60m distance from the works. Station House will be severely impacted as a result of the dust emissions from the

construction works and this is unavoidable given the scale of works proposed and the close proximity to the construction works. It may not be possible to manage the air quality impacts on a practicable level, and Station House is likely to be uninhabitable for a significant part of the construction phase, especially when the cumulative impacts from noise, vibration and traffic are taken in to account.

- 2.8.8 It is disappointing that a meaningful mitigation plan was not put forward in the EIAR to address the very significant adverse impacts that will be experienced at Station House and lands. The mitigation measures proposed in the EIAR are limited and focus on generic approaches to management of dust associated with various types of activity. The EIAR fails to adequately consider the proximity of Station House to the construction site and associated structures. Specific mitigation measures are essential to mitigate the very significant potential adverse impacts. The measures proposed in the EIAR are not considered sufficient to mitigate the impacts identified.

3 LAND ACQUISITION

- 3.1 EIAR Drawing 'Property Plan No. DW009' identifies various plots of land for permanent acquisition, for temporary acquisition and also identifies Rights of Way to be acquired.

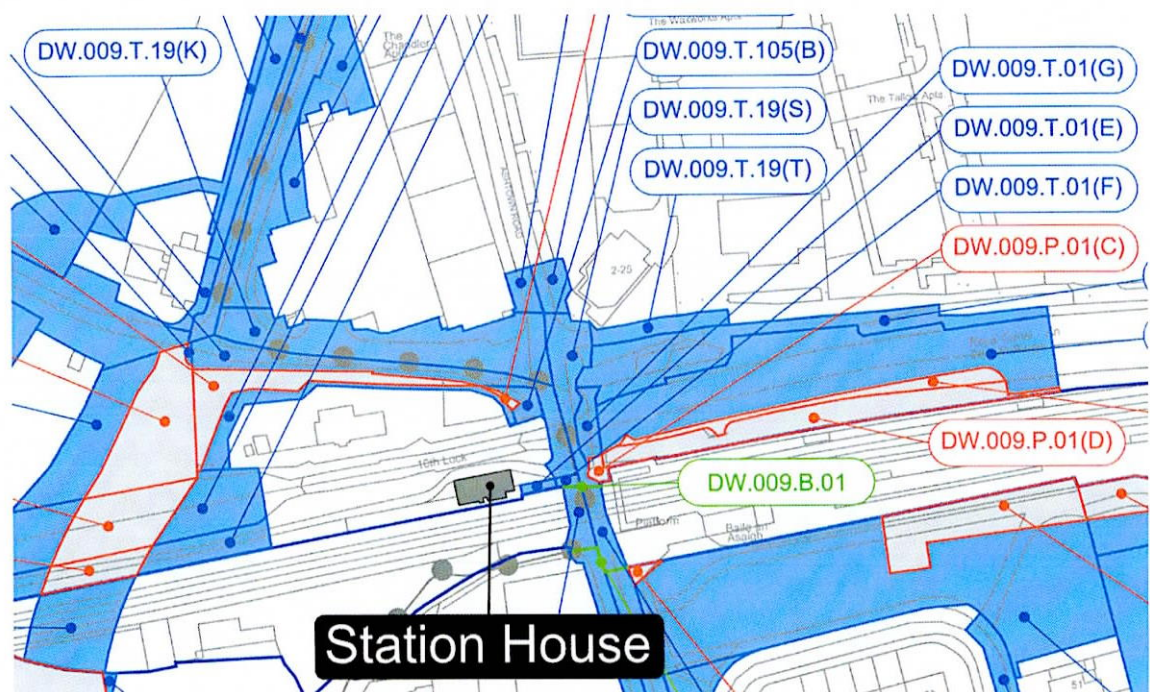


Figure 3.1 Property Plan DW009 Excerpt (Annotation added)

- 3.2 Figure 3.1 is an excerpt of the EIAR property plan and identifies the pedestrian access to Station House (refer to 'A' in image on opening page) with the label DW.009.T.01.(E).
- 3.3 The corresponding 'Dart+ West Project Book of Reference - Schedule 4' describes the plot as 'towpath' and states 'Waterways Ireland' as the reputed owners.
- 3.4 The lands identified are the pedestrian access to Station House and are in our ownership and are private lands that make up no part of the canal towpath.
- 3.5 The schedule and drawing fail to properly identify the plot and also fail to identify the right of way enjoyed by Station House over the towpath which is immediately north of the lands identified by the Applicant as DW.009.T.01.(E).
- 3.6 The Applicant has failed to identify the lands and has failed to justify the need for any part of the Station House property to facilitate the proposed works or their construction.

DART + West Project - BOOK OF REFERENCE - SCHEDULE 4 Land of which temporary possession may be acquired			
		Property Plan	DW.009
		Property Number	T.01(E)
QUANTITY, DESCRIPTION AND SITUATION OF LAND	OWNERS OR REPUTED OWNERS	LESSEES OR REPUTED LESSEES	OCCUPIERS
Quantity (sq.m.) 19 Description Towpath Situation Ashtown, Dublin 15 Townland Ashtown	Waterways Ireland 2 Sligo Road Enniskillen Co. Fermanagh		
Observations <div> Referenced By: C.I.E. Date: 20/06/2022 Ref. No. DW.009.T.01(E) </div>			

Figure 3.2 Book of Reference – Schedule 4 (Excerpt)

4 STATION HOUSE ACCESS

4.1 General

4.1.1 The proposed Railway Order is fundamentally flawed as it does not confer on the railway authority the requisite legal interests relative to our property for it to carry out the proposed works.

4.1.2 It is necessary to maintain vehicular access to Station House as I live with my 84 year old father and must ensure that there is vehicular access available for him. This does not only include access by vehicles to my house to bring him to and from medical appointments and all other engagements, but also to provide vehicular access at all times for emergency services in the event that such is required.

4.1.3 Furthermore, the enjoyment of Station House will be significantly diminished by the removal of vehicular access and the proposed interference will give rise to a very significant diminution to the value of my property. No provision is made in the proposed Order for the compulsory acquisition of the necessary interest and thus there would be no lawful authority for the proposed works. If there was the acquisition of the necessary interest, there would be a corresponding entitlement to compensation in the event of its confirmation. In the absence of the necessary interest, the proposed works would be unlawful and would be restrained by the Courts.

4.1.4 The scheme as described in the application will give rise to further interferences with my property rights, and these are addressed below: -

4.2 Interference with my common law right of access to the highway.

4.2.1 The proposed scheme involves works that shall prevent vehicular access from my property to and from the adjoining public road and highway.

4.2.2 Since the property abuts the highway, we are entitled to enter onto the public road at any point where the land adjoins it as a common law right which is an incident of land abutting a highway. The Supreme Court confirmed this right in *Sligo Corporation v. Gilbride* [1929] ILTR 105 at 107-108: - *"It is well established that where there is a public highway the owners of*

land adjoining thereto have a right to go upon the highway from any spot on their own land."

- 4.2.3 In *Holland v. Dublin County Council* [1979] 113 ILTR 1 at 3, Kenny J described this right of access as *"one of the oldest recognised by the law"*.
- 4.2.4 In *Dwyer Nolan Developments Limited v. Dublin City Council* [1986] IR130, the Council carried out work that resulted in existing vehicular access to the public road being interfered with, and the High Court granted an injunction requiring the Council to restore access.
- 4.2.5 The right of access to the highway is recognised by section 52(2) of the Roads Act, 1993, which provides that where An Bord Pleanála approves a road scheme for a motorway, busway or protected road under Section 49 of that Act and where an existing means of direct access is closed, removed, altered, diverted or restricted, so that the owner is deprived of the only means of access from that land to the public road, the road authority cannot exercise its power until an alternative means of access to and from the public road has been provided. Section 52(4) provides a right for compensation for damage suffered in consequence of the depreciation of any interest in land being disturbed as a consequence. Smyth J held in *Futac Services Limited v. Dublin City Council*, unreported, High Court, 24 June, 2003, that the requirement is to provide *"an access such as to be of the same character (e.g. pedestrian, vehicular, commercial, etc.) as that which had existed and has existed to date"*.
- 4.2.6 Section 45 of the Transport (Railway Infrastructure) Act, 2001 confers, upon the commencement of a Railway Order, the power to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the Order and, for that purpose, the Railway Order shall have effect as if it were a compulsory purchase order. The proposed Railway Order does not include provision for the acquisition of the right of access to the highway enjoyed by our property at Station House.
- 4.3 Interference with easement of way over the towpath.
- 4.3.1 Our property has the benefit of a private right of way over the towpath on the canal. This arises by way of implied grant and/or by prescription. The scheme proposes to interfere with the exercise of that private right of way. No

provision is made for the compulsory extinguishment of my right of way. It follows that, even if the proposed Railway Order is confirmed, the scheme cannot proceed as proposed since to do so would result in interference with constitutionally protected property rights.

4.4 Interference with public right of way and public road over the towpath.

4.4.1 In the alternative to the foregoing, the towpath is also subject to a public right of way which has been exercised as such by the public as of right for centuries since the construction of the canal. No provision is made for the extinguishment of the public right of way in the Railway Order, and it therefore follows that the proposed works will amount to a public nuisance. The interference with a public right of way is both a civil wrong and a criminal offence.

4.4.2 The towpath is further a public road in the charge of the road authority. Section 78 of the Local Government (Ireland) Act, 1898 imposed the duty on the authority to maintain towpaths and trackways on the banks of navigable rivers. Section 82(1) of that Act required the authority to maintain public works, including such towpaths. That statutory duty was carried over under Section 24 of the Local Government Act, 1925, pursuant to which the road authorities were conferred with the duty of maintaining public roads. Section 11(6) of the Roads Act, 1993 provided every road which is a public road immediately before the repeal of an enactment shall be a public road. Although Sections 78 and 82(1) of the Act of 1898 were subsequently repealed by Section 4 of the Local Government Act, 2001, this does not take away the status of public roads placed under the charge of road authorities under the Act of 1898 thereafter confirmed by the Acts of 1925 and 1993.

4.4.3 Section 50(1) of the Act of 2001 provides that, upon the commencement of a Railway Order, a railway undertaking shall thereupon be authorised for the purpose of carrying out railway works or the operation, maintenance, repair or improvement of a railway or for any purposes incidental to the purposes before said to "*open, break up and, if necessary, alter the level or route of any public road*". This power does not extend to the power to extinguish or abandon a public road.

4.5 Interference with the level crossing.

4.5.1 The proposed Railway Order proposes to close the level crossing adjacent to our property. This is misconceived on a number of levels.

4.5.2 First, the level crossing is the subject of accommodation ways created under s.68 of the Railway Clauses Consolidation Act, 1845. Section 68 provides that:

"The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say,)

Such and so many convenient gates, bridges, arches, culverts, and passages, over, under, or by the sides of or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made;.....

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them."

4.5.3 I am advised that it is clear from the analysis of the nature of an accommodation way by Laffoy J. in *Kavanagh v CIE* [2009] IEHC 624 that it cannot be restricted or extinguished at the discretion of the railway undertaking. Section 68 creates a statutory obligation to maintain the accommodation way at all times thereafter.

4.5.4 Second, the level crossing is also the subject of a public right of way which has not been extinguished.

4.5.5 Third, the level crossing is also part of a public road which has not been abandoned.

4.6 Property Interests

4.6.1 We are advised that the proposed Order is misconceived in so far as it purports to authorise works that the authority cannot carry out due to the

lack of a sufficient legal interest, and that the draft Order does not make provision for the acquisition of necessary property interests relative to our property.

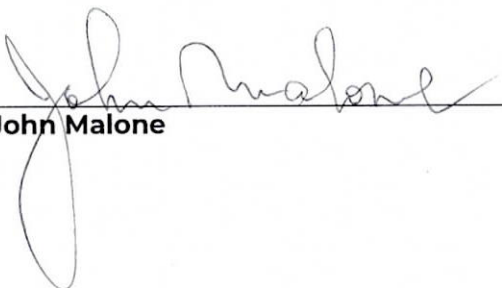
- 4.6.2 If the proposed Railway Order had proposed the acquisition and extinguishment of the rights and interests relative to our property as would be sufficient to give legal authority for the carrying out of the proposed works, which it does not, it would be necessary for the acquiring authority to satisfy the Bord that the proposed acquisition should be confirmed.
- 4.6.3 As constitutional property rights would be affected, both the relevant statutory provisions which are purported to be exercised and the manner and purpose for which they are to be exercised should be subjected to heightened scrutiny, as held in *Clinton v. An Bord Pleanála* [2005] IEHC 84.
- 4.6.4 To be justified by the common good, compulsory acquisition must be proportionate, whereby it must be rationally connected to a legitimate purpose, and not be arbitrary, unfair or based on unreasonable considerations, it must impair property rights as little as possible, and it must extend only in so far as is necessary to achieve its purpose, as held by the Supreme Court in *Reid v. IDA* [2015] 4 IR 494. It was further held in *Reid* that the assessment of compliance must be case-specific, meaning that there must be an individual assessment in the circumstances surrounding each exercise of compulsory power. There has been no assessment of the impact on our property to date in the EIAR or elsewhere.
- 4.6.5 As relates to our property, this will require the removal of vehicular access to be rationally connected to a legitimate purpose so as to be proportionate, and not to be arbitrary, unfair or based on unreasonable considerations. There is no rational basis for the proposed interference, and it appears to be wholly arbitrary, unfair and unreasonable.
- 4.6.6 It also requires a decision to be made that removing such access would impair our property rights "*as little as possible*". It simply cannot be argued that this act of interference with our property rights is the least that is required by the authority to achieve its purpose. This is evidenced by the fact that no justification whatsoever is given for the impact on our property rights.

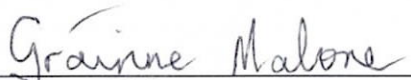
- 4.6.7 As held by the Supreme Court in *Clinton v. An Bord Pleanála* (No. 2) [2007] 4 IR 791, the task is to be satisfied that the interference with our constitutionally protected rights is justified by the exigencies of the common good. In this case, no justification whatsoever is offered. It follows that the interference must be regarded as irrational, and contrary to fundamental reason and common sense.
- 4.6.8 The EIAR fails to comply with the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) as it fails to provide any information as to the likely significant effects of the project to material assets, and in particular the effects on our property. It is extraordinary that the EIAR simply makes no mention of the interference with our property rights and the resultant blight on our property that will be caused by the project. This goes to underline the arbitrary manner in which the scheme has been conceived and advanced in relation to our property rights.

5 CONCLUSION

- 5.1 We respectfully ask that An Bord Pleanála have regard to our concerns in determining the application and seek that appropriate provisions are made and safeguards put in place in respect Station House. In the absence of satisfactory measures to safeguard and protect Station House and our property rights we respectfully urge An Bord Pleanála to refuse permission for the main reasons, considerations and arguments I have set out above.

Yours faithfully


John Malone


Grainne Malone