



Oifig na
nOibreacha Poiblí
Office of Public Works

OUTLINE LEGAL SUBMISSIONS OF THE OPW

AN BORD PLEANÁLA

26 FEB 2024

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A. Introduction

1. As noted in the opening statement made to the oral hearing, the Commissioners of Public Works in Ireland (the “Commissioners”) welcome the opportunity to participate in this oral hearing and wish to express and reiterate their overall support for the Metrolink project which it is hoped will deliver economic, social and tourism benefits to the city of Dublin.
2. The Commissioners made a number of submissions for consideration by An Bord Pleanála (the “Board”), as part of the Railway (MetroLink–Estuary to Charlemont via Dublin Airport) Order 2022 public consultation process. These submissions relate to buildings and properties owned or managed by the Office of Public Works (“OPW”) along the proposed route that are occupied by various Government Departments and other State bodies, such as An Garda Síochána and the Houses of the Oireachtas.
3. The matters raised in these submissions stem from the statutory role and responsibility of the OPW to ensure the protection and preservation of these important State properties, historic and national monuments and are aimed at ensuring the continuity of State business and the delivery of critical Government services throughout the project.
4. The OPW wishes to acknowledge the positive and constructive engagement between officials from Transport Infrastructure Ireland (“TII”) and the OPW on this project over the last number of weeks in respect of the matters raised in our submissions and TII’s responses to those submission. As a result of that engagement, significant progress has been made in terms of reaching agreement on many of the matters raised relating to the construction and operation phases of MetroLink insofar as they impact on properties owned or managed by the OPW.
5. I am pleased to inform the oral hearing that TII and the OPW have reached agreement on a number of conditions and would respectfully submit these should be included as conditions to the railway order. The properties that these conditions refer to are listed as an Appendix to the submissions. The OPW is willing to read those conditions into the record, subject to the Inspector.

6. The agreement on conditions does not include St. Stephen's Green. The OPW understands that TII will hand in conditions relating to St. Stephen's Green that it proposes should be attached to any railway order that is confirmed. While there has been engagement between the OPW and TII in relation to St. Stephen's Green, there is no agreement on the conditions which will be furnished to the Board by TII, and it is a matter for the Board whether to attach the conditions proposed by TII in respect of St. Stephen's Green.

B. Statutory Obligations of the Commissioners

7. The Commissioners have an important statutory obligation under the Commissioners of Public Works (Functions and Powers) Act 1996 (the "**1996 Act**"). One of the functions conferred by s.2(1) of the 1996 Act is to manage certain State properties. The Commissioners made 28 separate submissions to the Board in respect of the properties owned or managed by the OPW which are potentially affected by the Metrolink project. This includes Government Buildings, the Leinster House complex, the GPO, the National Gallery and National Museum and the National Monuments at Moore Street and St. Stephen's Green.
8. In addition to the general powers and functions conferred by the 1996 Act, section 6 of the St Stephen's Green (Dublin) Act 1877 (the "**1877 Act**") transferred St. Stephen's Green to the Commissioners and the Commissioners have certain functions under the 1877 Act.
9. The Commissioners also have functions under the National Monuments Act 1930 (the "**1930 Act**"). The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 (the "**2023 Act**") was enacted on 13 October 2023 and is largely uncommenced. The relevant sections (which are not commenced) are in Part 2 and substantially replace the provisions in the 1930 Act which is repealed by s.7 of and Schedule 1 to the 2023 Act.
10. The relevance of these statutory functions to the Metrolink project will be addressed in these submissions.



C. Obligation of OPW to Protect St. Stephen's Green

11. St. Stephen's Green is Ireland's best-known urban public park, attracting over 4.4 million visitors annually. It has been managed by the OPW since 1877 and is currently owned by the Minister for Housing, Local Government & Heritage. The ownership of the Minister extends not only to the area enclosed within the railings surrounding the Green, but also to the area outside the railings but within the surrounding posts (see section 6 of the Act of 1877).
12. This National Monument in the heart of Dublin is Ireland's oldest urban public park and is governed by the St. Stephen's Green (Dublin) Act 1877, "An Act to vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park". Thus, the Green has a special statutory status as a public park. It has played a significant role in Ireland's history, including during the 1916 Easter Rising. While the OPW supports the objective of modern Metro infrastructure for Dublin and the State, the OPW is also of the view that delivery of such infrastructure cannot be at the expense of Ireland's national heritage.
13. St. Stephen's Green is one of three public parks in the state, specifically established under its own particular statute, the others being the Phoenix Park and the Bourn Vincent Memorial Park at Killarney. Because of its great heritage importance, the Green also falls into the definition of "National Monument" for the purposes of section 2 of the 1930 Act. The Green is a Protected Structure and Recorded Monument, as well as a National Monument.
14. Prior to the 1877 Act, access to St. Stephen's Green was restricted to local residents. The Saint Stephen's Green (Dublin) Improvement Act 1814 was passed as an Act of Parliament, and this was later repealed by the 1877 Act.
15. Section 15 of the 1877 Act provides that the Commissioners shall maintain St. Stephen's Green as an ornamental park or pleasure ground for the recreation or enjoyment of the public and may erect any lodges or ornamental buildings or indeed provide ornamental fountains or waterworks.

16. The 1877 Act has not been repealed but section 116 of the Dublin Transport Act 2008 (the “2008 Act”) dis-applies section 15 of the 1877 Act:

- A. to anything done for the purposes of surveys and inspections under section 36 of the Transport (Railway Infrastructure) Act 2001 (the “2001 Act”)
- B. to any railway works (within the meaning of section 2 of the 2001 Act) carried out on or under Saint Stephen’s Green pursuant to a railway order under section 43 of the 2001 Act, or
- C. to restrict the operation of a railway, light railway or metro (within the meaning of section 2 of the 2001 Act) on or under Saint Stephen’s Green.

17. The written legal submissions of TII state (§108) that the railway works to be carried out on foot of the Railway Order come within section 116(b) and (c) of the 2008 Act and, consequently, section 15 of the 1877 Act is dis-applied for the purposes of this application.

18. The Commissioners are of the view that section 116 of the 2008 Act is broad enough to capture the elements of construction and operation of the Metrolink project, insofar as it potentially affects or impacts on St. Stephen’s Green, and agree that it dis-applied section 15 of the 1877 Act.

D. Status of St. Stephen’s Green as a National Monument

19. In addition to the specific functions under the 1877 Act, St. Stephen’s Green is a national monument which is protected under the 1930 Act and will be protected under the 2023 Act, when commenced. St. Stephen’s Green also features on the National Inventory of Architectural Heritage which was established by the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act 1999.

20. While there is no formal Act or legal instrument designating St. Stephen’s Green as a national monument, as the Court of Appeal noted in Moore v Minister for Arts, Heritage and the Gaeltacht [2018] 3 I.R. 265, the 1930 Act *assumes* the existence of a national monument as an objective fact which does not require formal designation. The OPW is of the view that St. Stephen’s Green is a national monument. Page 39 of the TII response document also recognises that St. Stephen’s Green is a national monument.



21. The term “national monument” is defined in the 1930 Act as a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic, or archaeological interest attaching thereto and also includes every monument to which the Ancient Monuments Protection Act, 1882, applied immediately before the passing of the 1930 Act.
22. The designation of a monument as a national monument has a number of effects. First, under s.5 of the 1930 Act, the guardian or owner has a duty to maintain the national monument in question. Secondly, any works carried out by the owner must be supervised by the Minister where he or she acts as guardian. Thirdly, there are prohibitions on damaging, injuring, defacing, excavating or removing a national monument. The prohibition on damaging, injuring, defacing, excavating or removing a national monument also arises where the national monument is owned by the Minister or the local authority.
23. In its submission to the Board in January 2023, the OPW stated:
- “While certain mitigation measures are outlined within the EIAR, the residual effect, even taking account of these actions, remains very significant and permanent through both the Construction and Operation Stages of MetroLink. Construction of the station as currently proposed will result in permanent change to the architectural form of the Green, increased hard landscaping, introduction of upstanding structures into the footprint of the park and loss of mature trees and canopy. This will result in long-term, permanent impact on the amenity and setting of this National Monument.”
24. The submission and covering letter by the OPW which was provided to the Board in January 2023 also identified the OPW’s concerns about St. Stephen’s Green in light of the particular statutory context and suggested the following wording in a condition:
- “Prior to commencement of development, TII must ascertain whether the proposed Metrolink project will potentially result in the total or partial destruction of any national monuments and, if so, must comply with the requirements of section 14 of the National Monuments Act 1930, as amended.”
25. The TII response to the submissions states (p.39) that
- “OPW submit that the removal of trees, railings and the Wolfe Tone monument constitute demolition of part of a National Monument and as such may require the submission of a separate EIAR and

Ministerial consent. TII do not consider the proposals for St Stephen's Green in anyway constitute demolition or destruction. However, TII confirms that all consents and approvals required in relation to St Stephens Green will be obtained by TII prior to works being undertaken that will impact St Stephen's Green Park”.

26. OPW welcomes the commitment in the TII submissions that it will comply with its statutory obligations, but it does not accept that there will be no demolition or destruction.
27. The TII response states (p.39) that to facilitate construction a number of heritage items that are architecturally significant such as railings, bollards, lamp standards, paving, the Wolfe Tone monument, and the Famine sculpture will be temporarily removed, stored and reinstated following the completion of the main works. It also states that the felling of 64 trees of class A, B, C is considered significant.
28. The OPW would also draw attention to the MetroLink Cultural Heritage Strategy dated September 2022 which states (p.21) that, in relation to St Stephen's Green Park National Monument, consent will be required for all MetroLink works within its proximity (i.e. within 30m of the perimeter kerb line) inclusive of the following packages of works:
 - Geotechnical Investigations (Package I): In May 2021 TII applied for Consent to excavate 3 no. cable percussive and rotary drilled boreholes (inclusive of associated trial pits), 2 no window sampling boreholes and the establishment of 2 no. temporary site compounds and associated temporary hoarding within the eastern boundary of St Stephen's Green Park. The application, which included the metal detection of spoil was granted on 10 August 2021 (C0001054; E00538; R000557) subject to receipt of the appropriate permits from the OPW.
 - Utility Slit Trenches (Package I): In May 2021 TII applied for Consent to excavate five utility slit trenches; four within the east and west footpaths and carriageway of St Stephen's Green East (inclusive of St Stephen's Green Park National Monument) and one within the carriageway of Hume Street The application was granted on 10 August 2021 (C0001054; E00538; R000557)
 - Heritage Works (Package II): Consent will be required for the removal to secure storage of all heritage items on the Park's external perimeter (e.g. bollards, light standards, Paving) in addition to all interior elements as present within the footprint of the proposed station



- box (e.g. statues railings and lawn guards). Upon completion of Main Construction works all elements will be reinstated by the Heritage Contractor
- Utility Diversion Works (Package II): Consent will be required for the diversion of all utilities within proximity of the proposed station, inclusive of those within the park's eastern extent (e.g. gas and water)
 - Main Works (Package IV): Consent will be required for the construction of the proposed station box inclusive of the establishment of compounds, hoarding, removal of trees and landscaping and all reinstatement works such as landscaping, planting and the construction of above ground station elements.
29. The OPW believes that the proposed felling of trees is a significant loss of tree cover and could be construed as demolition of part of St. Stephen's Green and would necessitate an application for the necessary statutory consent, but this is ultimately a matter for the relevant Minister.
30. In any event, s.14 of the 1930 Act, as substituted by s.5 of the National Monuments (Amendment) Act 2004 (the "2004 Act"), states that, in respect of a national monument of which the Minister or a local authority are the owners or the guardians or in respect of which a preservation order is in force, it shall not be lawful for any person to do any of the following things in relation to such national monument:
- A. to demolish or remove it wholly or in part or to disfigure, deface, alter, or in any manner injure or interfere with it, or
 - B. to excavate, dig, plough or otherwise disturb the ground within, around, or in proximity to it, or
 - C. to renovate or restore it, or
 - D. to sell it or any part of it for exportation or to export it or any part of it.
31. Whether the works proposed for St. Stephen's Green are characterised as demolition or removal or disturbance, they still fall within the scope of the licensing process in s.14 of the 1930 Act.

32. The 2023 Act more broadly defines “relevant works” as ‘works at, on, in, under, to, or within the immediate surroundings of, a monument’. Section 27 of that Act states that a person shall not carry out relevant works where the relevant monument is a monument to which general protection applies, or direct or authorise the carrying out of such works, other than under and in accordance with a licence. Section 28 enables the Minister to attach conditions to certain relevant works.
33. The Board does not have to determine whether the proposed works, which are the subject of the railway order, fall within the scope of the 1930 Act or the 2023 Act or will necessitate a licence. That is a matter for the Minister to be determined by reference to the statutory code in force at the time the application is made.
34. In the circumstances where TII has committed to applying for any necessary consents under the National Monuments legislation in accordance with its statutory obligations, OPW does not require the condition set out in the covering letter submitted to the Board in January 2023 to be attached to the railway order.
35. By way of analogy, in *Redmond v An Bord Pleanála* [2020] IEHC 151, the High Court stated (§154) that the fact that the Board had granted permission did not obviate the need for the developer to apply for a “derogation licence” under the Habitats Directive in circumstances where required. The Court also stated that, had the Board included a condition stating that a “derogation licence” must be applied for where required, the condition would merely be replicating a legal obligation that subsists in any event.
36. While dealing with a different consent, it is submitted that the same principle would apply here. In light of TII’s stated intention to comply with its obligations under the National Monuments Acts, the OPW notes that the Minister may impose conditions under the licensing process in the National Monuments legislation as it applies at the time of the decision on any licence application.
37. The OPW also wishes to draw the Board’s attention to s.14D of the 1930 Act which was inserted by the European Union (Environmental Impact Assessment of Proposed Demolition of National Monuments) Regulations 2012 (S.I. No.249/2012) (the “**2012 Regulations**”), as amended by S.I. No. 528 of 2020.



38. The 2012 Regulations require the carrying out of an EIA where a decision to grant consent under s.14(2)(a) of the 1930 Act, or to issue directions under s.14A(4)(d) of that Act, would result in the demolition of a national monument. As stated above, the OPW is of the view that the removal of significant tree cover in St. Stephen's Green could qualify as "demolition", but this is a matter for the relevant Minister.
39. In the event that the 2023 Act is commenced when the application for a licence is made for works at St. Stephen's Green, section 34 of the 2023 Act also provides that relevant works (within the meaning of the Act) are subject to EIA where they are likely to have significant effects on the environment, following a screening determination for EIA by the relevant Minister.
40. The obligations to carry out EIA screening, or EIA where required, in s.14D of the 1930 Act and sections 32 to 34 of the 2023 Act apply to any application for a licence and are separate to the obligation on the Board to carry out an EIA for the works envisaged under the railway order.

E. OPW Position on St. Stephen's Green

41. Consistent with the OPW's statutory functions, it is respectfully submitted that the Board should consider whether any modifications to the railway order or conditions would reduce the environmental impacts on St. Stephen's Green.
42. It is submitted that TII's preferred station location at St. Stephen's Green and construction methodology for the station are not the least environmentally impactful solution for St. Stephen's Green Park.
43. The St. Stephen's Green Options Assessment Summary (A7.8) acknowledged that the current preferred option station design (Location 5) will have significant environmental impacts on the park and important heritage buildings on St Stephens Green East.
44. The EIAR also highlighted the significant impact on St. Stephen's Green. Chapter 25 Archaeology and Cultural Heritage characterises the effect as very significant direct negative (permanent) during the Construction Stage and very significant indirect negative during Operation Stage. Chapter 26 (Architectural Heritage) characterises the effect as profound

direct negative during the Construction Stage and very significant indirect negative during Operation Stage. Chapter 27 (The Landscape) characterises the effect as very significant negative during the Construction Stage and very significant negative during Operation Stage.

45. Section 27.5.4.113 of the EIAR also states that: “it may be acknowledged that the proposed works can apply a level of mitigation which would go some way to reinstating the disturbed part of ‘the Green’, however, beyond any potential for reinstatement, replacement, or restoration, it would be difficult to offset impacts on the maturity and wholeness of this place.”
46. The OPW acknowledges that TII has provided a response to the OPW’s concerns.
47. However, the OPW would reiterate its position as set out in the submissions made to the Board in January 2023 in respect of St. Stephen’s Green.
48. If the Board considers that a modification or alternative is preferable from an environmental perspective, the OPW would welcome that.
49. The European Union (Railway Orders) (Environmental Impact Assessment) (Amendment) Regulations 2021 (the “**2021 Regulations**”) were made on 20 December 2021 and amend the 2001 Act. Section 42B of the 2001 Act was inserted by the 2021 Regulations and provides that, before deciding whether or not to grant the order to which the application relates, the Board must take into account the Environmental Impact Assessment Report (“**EIAR**”) submitted under s.37, and any revised EIAR submitted under s.47D, as well as any additional information, submissions or observations.
50. Section 43(2) of the 2001 Act, as amended by the 2021 Regulations, states that if the Board is of the opinion that the application should be granted, it shall make an order authorising the applicant to construct, maintain, improve and operate the railway or the railway works specified in the order or any part thereof, in such manner and subject to such conditions (including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring), modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies in the order.



51. At a level of general principle, the High Court stated in Clifford & O'Connor v An Bord Pleanála [2021] IEHC 642 that it is clear and unambiguous that the Board can modify a development proposal by way of conditions and that it is clear from the EIA and Habitats Directives that consent can be granted for a modified project after the submission of an EIAR or Natura Impact Statement. In the event that the Board does grant permission for a modification of the railway order, the Board will be obliged to carry out an EIA and Appropriate Assessment ("AA") of the modified scheme in accordance with its obligations under national and EU law.

G. Conclusion

52. In conclusion, the OPW reiterates its support for the Metrolink project and has reached agreement on conditions in respect of OPW property, with the exception of St. Stephen's Green.

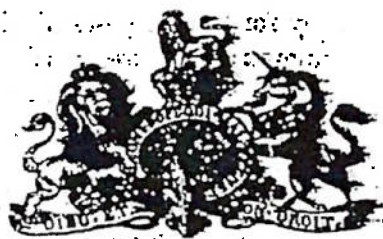
David Browne SC

24 February 2024

Appendix

- Government Buildings, Merrion Street, Dublin 2
- Leinster House, Kildare Street, Dublin 2
- General Post Office, Dublin 1
- Department of Agriculture, Food and the Marine, Dublin 2
- Department of Enterprise, Trade and Employment, Dublin 2
- Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, Dublin 2
- Department of Finance, Merrion Street, Dublin 2
- Department of Justice, 50-51 St. Stephen's Green, Dublin 2
- Garden of Remembrance, Dublin 1
- Iveagh House, Department of Foreign Affairs, Dublin 2
- Mobhi Road Complex, Dublin 9
- National Concert Hall Complex, Dublin 2
- National Gallery of Ireland, Dublin 2
- St. Stephen's Green Buildings, Dublin 2
- St. Stephen's Green House, Dublin 2

- The National Library, Dublin 2
- The National Museum of Archaeology, Dublin 2
- The Natural History Museum, Dublin 2,
- 1 GQ. George's Quay, Dublin 2
- Corn Exchange, Burgh Quay, Dublin 2
- Nos. 13-15 Hatch Street Lower, Dublin 2, Trinity Point, Dublin 2
- Nos. 10-11 Leinster Street, Dublin 2, Earlsfort Terrace, Dublin 2
- Parnell Street / Kings Inn Street & Loftus Lane, Dublin 1
- 13-14 Burgh Quay, Dublin 2, 14-17 Moore Street and 8-9 Moore Lane, Dublin 1
- 16 Parnell Square, Dublin 1
- 22-25 Clare Street, Dublin 2
- 44-45 O'Connell Street, Dublin 1
- 52 St Stephen's Green, Dublin 2
- 9-15 O'Connell Street, Dublin 1
- Apartments 1-8 Clare Court, Dublin 2
- Ballymun Garda District Headquarters & Intreo Office, Dublin 9



CHAPTER cxxxiv.

An Act to vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park; and for other purposes. A.D. 1877.
[23d July 1877.]

WHEREAS by an Act passed in the session of Parliament held in the fifty-fourth year of the reign of King George the Third, chapter two hundred and eight, intituled "An Act for the Improvement of the square called Saint Stephen's Green in the city of Dublin," (in this Act referred to as "the Act of 1814.") the Lord Mayor, Recorder, Treasurer, and High Sheriff of the said city, and the representatives in Parliament for the said city, all for the time being, together with certain then inhabitants of the said square, and their successors to be elected in manner therein-after mentioned, were constituted and appointed Commissioners for carrying that Act into execution; and such Commissioners were empowered to contract for the absolute purchase of all or such part of the ground in the interior of the square called Saint Stephen's Green as they should judge necessary for the purposes of that Act, or for a grant thereof in fee farm, subject to such annual rent as might be agreed upon, and the moneys to be paid either for the absolute purchase thereof or for the annual rent to be received under such grant were to be paid out of the moneys to be raised by virtue of that Act, and the said Commissioners were empowered to contract for the making, finishing, and completing, improving, ornamenting, and inclosing of the said square; and towards making, completing, and finishing the said inclosure and improvements, and in order to create a permanent fund for that purpose, and for the payment of the purchase money of the ground in the interior of the said square, or for the annual rent thereof, all the houses, ground, lots, and tenements surrounding the said square were made liable to the annual payment of such sum as the said Commissioners should from time to time in manner therein mentioned direct, not exceeding the rate of five shillings for each foot of frontage; and in order to raise

[Local.-134.]

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A.D. 1877. a sufficient sum of money for the purposes of the said Act, the said Commissioners were empowered to raise by sale or mortgage of all or any part of the said fund, or by issuing debentures thereon, bearing interest at a rate not exceeding six pounds per centum per annum, or by the yearly appropriation of any part thereof, such sum or sums of money as should or might be sufficient for the purpose of paying the purchase money or rent of the ground of the interior of the said square (as the case might be) as aforesaid, and for all other the purposes therein mentioned :

And whereas in pursuance of the provisions of the Act of 1814 the Commissioners constituted by the said Act agreed with the Right Honourable the Lord Mayor, Aldermen, and Burgesses of the said city of Dublin (in this Act referred to as "the Corporation.") for a grant in fee farm of the said square at a yearly rent, and in pursuance of such agreement a conveyance by way of lease and release bearing date the nineteenth day of November one thousand eight hundred and fourteen was made to the said Commissioners by the Corporation of the land or ground in the interior of the said square, and which are the premises herein-after more particularly described, at the yearly rent of three hundred pounds late Irish currency, equal to two hundred and seventy six pounds eighteen shillings and six pence present currency of the United Kingdom :

And whereas since the passing of the Act of 1814, the Commissioners thereby constituted and their successors have continued to act in execution of the said Act :

And whereas the residue now remaining unpaid of the debt created under the Act of 1814 by the issue of debentures amounts to two thousand pounds or thereabouts, together with the interest thereon now due at the rate of four pounds per centum per annum :

And whereas there is within the municipal boundaries of the city of Dublin no public park, and it would be of great public advantage, and conduce to the health and enjoyment of the inhabitants of the said city, if the said square were opened for their recreation and enjoyment, and were for that purpose discharged from all estates, claims, rights, and incumbrances affecting it, and were vested in and maintained and managed by the Commissioners of Public Works in Ireland :

And whereas in furtherance of the object aforesaid it has been agreed between the Corporation and the Commissioners of Saint Stephen's Green (in this Act referred to as the "existing Commissioners"), and Sir Arthur Guinness, Baronet, one of the members elected to serve in the present Parliament for the said city of Dublin, that the said Sir Arthur Guinness should provide such funds as

A.D. 1877.

And whereas the Lords Commissioners of Her Majesty's Treasury have sanctioned the said arrangement:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Saint Stephen's Short title
Green (Dublin) Act, 1877."

Discharge
debt.

A.D. 1877. thereupon, as soon as may be possible, apply the same in payment of the said debenture debt, and the interest thereof.

Payment
into court by
Commissioners.

3. If the existing Commissioners should be unable after diligent inquiry to ascertain the person to whom each part of the said sum secured by debentures issued under the authority of the Act of 1814, and the interest thereon, is payable, or where any part thereof is payable to a person who, or whose committee or guardian, cannot give an effectual receipt for the same, the existing Commissioners may pay such parts of the said sum into the Court of Chancery in Ireland, under any Act for the time being in force for the relief of trustees; and upon such payment into court being made, the existing Commissioners shall be discharged from all claims on account of each such part, and of all interest thereon.

Saint
Stephen's
Green to be
rendered
suitable for a
public park.

4. At any time after the passing of this Act, and before the first day of July one thousand eight hundred and seventy-nine, it shall be lawful for the said Sir Arthur Guinness to enter upon the said square, as the same is in the sixth section of this Act more particularly described, and, if necessary, to alter the present inclosure of the same, and to lay out the same as public and ornamental pleasure grounds and to make roads, paths, and fences therein and to erect lamps and fountains, and to lay down gas pipes and water pipes therein, and to do all such acts, matters, and things, whether of the same kind as those above mentioned or different, as may be proper for rendering the said square suitable for use as a public and ornamental park. The works which the said Sir Arthur Guinness is by this section empowered to effect shall be according to plans and specifications to be prepared by the said Sir Arthur Guinness, and to be agreed on before the commencement of the works between him and the said Commissioners of Public Works, subject to the approval of the Lord Lieutenant.

Order of
Lord Lieu-
tenant for
opening
Saint
Stephen's
Green.

5. On or before the first day of July one thousand eight hundred and seventy-nine, upon proof to the satisfaction of the Accountant General of the Court of Chancery in Ireland of the payment by the said Sir Arthur Guinness to the existing Commissioners of the sums herein-before mentioned in that behalf, and of the application or lodgment of the same by the existing Commissioners for the purpose of discharging the said debenture debt in the manner herein-before prescribed, the said Accountant General shall give notice of such payment and application or lodgment to the Lord Lieutenant. On or before the same first day of July, the Commissioners of Public Works, if they shall be satisfied that the

said square has been rendered suitable for a public and ornamental park according to the plans before mentioned, shall give notice that they are so satisfied to the Lord Lieutenant. Upon the receipt of both the notices herein-before mentioned, the Lord Lieutenant shall, by order to be published in the Dublin Gazette, declare that the said square is open for a public park, to be called and known by the name of "Saint Stephen's Green." A.D. 1877.

6. Upon the making of the said order the said square in Dublin called Saint Stephen's Green, and all other property (if any) (in this Act referred to as "Saint Stephen's Green") comprised in the said conveyance, bearing date the nineteenth day of November one thousand eight hundred and fourteen, made by the Corporation to the then Commissioners for the improvement of Saint Stephen's Green, and all the estate and interest therein of the Corporation and of the existing Commissioners, and all the ground which has been for some time before the passing of this Act inclosed within the posts and chains of Saint Stephen's Green, shall be and the same are hereby transferred to and vested for the purposes of this Act in the Commissioners of Public Works, as incorporated by the Act of the session of Parliament held in the thirty-second and thirty-third years of the reign of Her present Majesty, chapter seventy-four; and the Commissioners of Public Works shall thenceforth hold the same absolutely freed and discharged from the said conveyance, and from the rent reserved by the same, and, save as in this Act expressly provided, from all obligations, debts, and liabilities whatsoever affecting the same, and discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever.

7. When and so soon as Saint Stephen's Green shall have been transferred to and vested in the Commissioners of Public Works as aforesaid (which transfer and vesting is herein-after referred to as "the transfer"), all property of whatsoever description belonging to the existing Commissioners under the Act of 1814 in their capacity as such Commissioners shall vest absolutely in the Commissioners of Public Works.

8. From and after the transfer the existing Commissioners shall cease to act as such, and all the houses grounds lots and tenements surrounding Saint Stephen's Green shall be absolutely freed and discharged from the payment of any annual or other sums by direction of the Commissioners under the Act of 1814, except for the payment of any debt or the discharge of any obligation or liability incurred before the transfer, and not otherwise satisfied or discharged by the operation of this Act, and from all liability in

Transfer of
Saint Ste-
phen's Green
to the Com-
missioners of
Public
Works.

Transfer of
property of
existing
Commis-
sioners to
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sioners of
Public
Works.

Existing
Commis-
sioners to
cease to act,
and repeal of
54 G. 3.
c. 208.

A.D. 1877. respect of any debentures issued under the authority of the Act of 1814, or of any moneys secured by any such debentures as aforesaid, and the Act of 1814 shall thereupon be repealed: Provided always, that, except as by this Act otherwise specially provided, such repeal shall not affect anything duly done or suffered under the Act of 1814 before the transfer.

Continuance
of powers of
existing
Commis-
sioners until
transfer.

9. Until the transfer, the powers, authorities, privileges, and liabilities of the existing Commissioners under the Act of 1814 shall, subject to the provisions of this Act, continue in every respect as if this Act had not been passed: Provided always, that after the passing of this Act, the existing Commissioners shall not make any payment, enter into any contract or agreement, or do any act not necessary in the ordinary course of their business, or whereby the said Sir Arthur Guinness might be prejudicially affected in executing the powers conferred upon him by this Act, or by reason of which the Commissioners of Public Works upon the transfer may be in anywise injured or prejudicially affected, or Saint Stephen's Green may be in anywise charged or incumbered.

Contracts
prior to
transfer to
be binding.

10. Except as is by this Act otherwise specially provided, all contracts and agreements entered into ~~made before the transfer by~~ to, or with the existing Commissioners, or any trustees or persons acting on their behalf, or by, to, or with any other person to whose rights and liabilities they have or shall have succeeded, shall be determined upon the transfer, but without prejudice to any right of action for any breach of any of such contracts which shall have theretofore occurred.

Recovery of
rates.

11. In addition to the remedies given by the Act of 1814 for the recovery of the rates thereby charged, it shall be lawful for the existing Commissioners until the transfer, and afterwards as regards any rate or rates in arrear at the time of the transfer for the Commissioners of Public Works, to sue for and recover any such rate or rates which now is or are or hereafter shall be in arrear by civil bill before the Recorder of the city of Dublin from any person or persons who shall be occupier or occupiers of any premises in respect of which such rate or rates shall be payable, or from whom the same might be recovered by distress.

Actions, &c.
not to abate.

12. Nothing in this Act contained shall release, discharge, or suspend any action, suit, or other proceeding at law or in equity which was pending by or against the existing Commissioners, or any of them, in relation to the affairs of the existing Commissioners, or to which they or any of them, in relation to such affairs, shall be parties immediately before the transfer, but every such action,

suit, or other proceeding may be maintained, prosecuted, or continued by or in favour of or against the Commissioners of Public Works (as the case may be) in the same manner and as effectually and advantageously as the same might have been maintained, prosecuted, or continued by or in favour of or against the existing Commissioners, or any of them, if this Act had not been passed, the Commissioners of Public Works being in reference to the matters aforesaid in all respects substituted for the existing Commissioners.

A.D. 1877.

13. From and after the twenty-ninth day of September one thousand eight hundred and seventy-seven, all liability to pay any rent which but for the passing of this Act would have accrued due after such day, under the above-recited deed of the nineteenth day of November one thousand eight hundred and fourteen, in respect of Saint Stephen's Green shall absolutely cease and determine; and all rights of the Corporation in respect of any such rent shall be deemed to be and the same are hereby released.

Release of future rent.

14. From and after the transfer the Corporation shall furnish, free of cost, such supplies of water and gas as the Commissioners of Public Works shall from time to time determine to be suitable for the use of Saint Stephen's Green as a public and ornamental park. Provided that the Commissioners of Public Works shall not at any time require such a supply of water as would necessarily impair the sufficiency of the supply of water by the Corporation for domestic use or manufacturing purposes.

Obligation of Corporation to provide gas and water.

Management of Saint Stephen's Green.

15. The Commissioners of Public Works shall after the transfer maintain Saint Stephen's Green as an ornamental park or pleasure ground for the recreation or enjoyment of the public, and may, with the consent of the Commissioners of Her Majesty's Treasury, erect any lodges, ornamental buildings, or other erections thereon, and may, with the like consent, if they think fit, provide any ornamental fountains or other ornamental waterworks therein, and employ such gate or lodge keepers and other necessary officers and servants, for the order and management thereof, in all respects as they may deem suitable and proper, and may from time to time make such alterations and improvements in the arrangement, laying out, planting, draining, and fencing of the same, for the purposes of such park or pleasure ground, and alter or pull down any building, erection, or other work therein, as they may think fit; and, subject to the powers aforesaid, the Commissioners of Public

Commissioners of Public Works to maintain Saint Stephen's Green as a park or pleasure ground, and may erect lodges, lay out ground, &c.

A.D. 1877. Works shall at all times maintain and keep Saint Stephen's Green, and the buildings and erections thereon, and all other things thereto belonging, in good and sufficient repair and in a proper and ornamental condition, and shall allow the same to be used and enjoyed as a public park for the recreation and enjoyment of the public, and not for any other purpose; and for effecting any of the objects of this Act it shall be lawful for the Commissioners of Public Works to accept private subscriptions from persons willing to contribute towards carrying into execution the powers of this Act, or to permit such persons from time to time to contribute to the objects of this Act by the erection of such statues or other suitable works in the said park as the said Commissioners of Public Works may approve.

Byelaws.

Commis-
sioners of
Public
Works may
make bye-
laws.

16. At any time after the transfer, the Commissioners of Public Works may from time to time make such byelaws as they think fit for all or any of the purposes following; that is to say,

For regulating the conduct of the officers and servants of the Commissioners of Public Works:

For regulating and limiting the use and enjoyment of Saint Stephen's Green, and the times during which the same shall be open to the public, and the modes and purposes in or for which the same and each part thereof may be used by the persons frequenting the same:

For preserving order and good conduct among persons frequenting Saint Stephen's Green, and for preventing nuisances and obstructions in or on the pathways or roads surrounding or adjoining the same, and for preventing any annoyance to the inhabitants of the neighbouring houses by the persons using the said park:

Generally for carrying into effect the provisions of this Act.

The Commissioners of Public Works may repeal, alter, amend, or vary any such byelaw, or may make a new byelaw or new byelaws in lieu thereof or in addition thereto.

Nothing in this Act contained shall authorise the making of any byelaw repugnant to law or this Act.

The Commissioners of Public Works may by any byelaw provide for the removal from the said park or for the arrest of any person offending against such byelaw, and may impose penalties for offences against any byelaw, not exceeding in respect of any offence five pounds: Provided always, that every such byelaw shall be so framed

as to allow of part only of the maximum penalty thereby imposed A.D. 1877.
being inflicted.

No byelaw made by the Commissioners of Public Works under this Act shall be of any force or effect until the same has been publicly exhibited in Saint Stephen's Green for fourteen days, and a copy thereof delivered to the town clerk of the City of Dublin, and has been afterwards approved under the hand of the Chief or Under Secretary to the Lord Lieutenant, and shall have affixed thereto the seal of the Commissioners of Public Works, and shall be published as herein-after mentioned.

17. Copies of all byelaws for the time being in force under this Act affecting other persons than the officers and servants of the Commissioners of Public Works shall be painted in legible characters on boards to be set up and continued at each and every of the entrances to Saint Stephen's Green, or in some conspicuous position within the same, and such boards shall from time to time be renewed, replaced, and restored when and so often as the same are destroyed, defaced, or removed: Provided always, that if any such boards be destroyed, defaced, or removed, such byelaws shall continue in force and such penalties shall be payable respectively during such time as may be reasonably required for renewing, replacing, or restoring the same, in the same manner as if the destruction, defacement, or removal had not occurred.

Byelaws
to be set up
in Saint
Stephen's
Green.

18. The production of a written or printed copy of the byelaws authenticated by the seal of the Commissioners of Public Works shall be evidence of the making, approval, and existence of such byelaws in all prosecutions, actions, or proceedings under or concerning the same, without adducing proof of such seal, and with respect to the proof of the publication thereof it shall be sufficient to prove that painted boards containing copies thereof were set up and continued in manner by this Act directed, and in case of any such board having been destroyed, defaced, or removed, that it was renewed, replaced, or restored as soon as conveniently might be.

Evidence of
byelaws.

19. Any person who destroys, pulls down, injures, or defaces any board on the premises of the Commissioners of Public Works on which any such byelaw is painted or placed shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for
defacing
boards.

20. Every penalty imposed under the provisions of this Act shall be recoverable in a summary way, subject and according to the provisions of the Acts regulating the powers and duties of justices of the police district of Dublin metropolis or of the police of such district.

Recovery of
penalties.

[Ch. cxxxiv.]

*The Saint Stephen's Green. [40 & 41 Vict.]
(Dublin) Act, 1877.*

A.D. 1877.

Part of ex-
penses of
Commis-
sioners of
Public
Works to be
paid out of
moneys voted
by Parlia-
ment.

Saint
Stephen's
Green
exempt from
taxes.

21. The Commissioners of Public Works shall defray such of the expenses incurred in carrying this Act into execution as cannot be defrayed out of moneys received by them under this Act or applicable to the purposes of this Act, out of such moneys as may be provided by Parliament for such purpose; and the accounts of all moneys expended by the Commissioners of Public Works under this Act shall be subject to the provisions of the Exchequer and Audit Departments Act, 1866.

22. The Commissioners of Public Works shall not be assessed or rated to any county, borough, or other local rate or cess in respect of Saint Stephen's Green or any erection thereon, or any part thereof respectively.

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