



An  
Bord  
Pleanála

**Memorandum  
ABP 305149-19**

<b>To</b>	<b>SID Board</b>
<b>cc</b>	<b>Rachel Kenny DOP</b>
<b>Re:</b>	<b>Pre-Application Consultation and Suitability of Railway Order Application</b>
<b>Date:</b>	<b>20/05/20</b>

## 1.0 Introduction

CIE has entered into pre-application discussions with the Board in relation to proposed railway works pursuant to section 47B of the Transport (Railway Infrastructure) Act, 2001 (as amended) (inserted by Section 50 of the Planning and Development (Strategic Infrastructure Act) Act 2006). The works pertain to the replacement of 7 no. manned level crossings on the Dublin to Cork railway line between Fantstown Co. Limerick and Buttevant Co. Cork. The prospective applicant proposes to apply for a Railway Order for the works.

A meeting was held with the prospective applicant on 17<sup>th</sup> October, 2019 with the minutes of same on file for the Board's information.

The purpose of this memorandum is to garner the Board's opinion as to the suitability of the legislative mechanism proposed by which to seek consent for the works. During the course of the above referenced meeting the Board's representatives advised the prospective applicant to give consideration as to whether the proposed works could be the subject of a railway order under the Transport (Railway Infrastructure) Act 2001. It recommended that any legal advice

or submission in this regard could be submitted to aid in the consideration of the matter and that the views of the Board may be sought.

## 2.0 Proposed Development

The works entail the replacement of 7 no. manned level crossings along a 24km section of the Dublin-Cork line which straddles the Cork/Limerick County boundary.

In summary:

<b>Level Crossing</b>	<b>Crossing Type</b>	<b>Proposed Works (summary)</b>
<b>XC187 Fantstown</b>	C – gates normally closed to road traffic	Closure. Divert traffic along existing roads.
<b>XC201 Thomastown</b>	C – gates normally closed to road traffic	New overbridge. Tie in to existing local road to south and new junction on regional road.
<b>XC209 Ballyhay</b>	CD – gates normally open to road traffic by day and normally closed at other times	4 barrier CCTV
<b>XC211 Newtown</b>	CD – gates normally open to road traffic by day and normally closed at other times	New access road. Tie in to existing local roads
<b>XC212 Ballycoskery</b>	CD *– gates normally open to road traffic by day and normally closed at other times	New overbridge. Tie into local roads.
<b>XC215 Shinanagh</b>	CD *– gates normally open to road traffic by day and normally closed at other times	Upgrade existing overbridge and tie in to existing local roads, upgrade of junction on N20.

<b>XC219 Buttevant</b>	CX – gates normally open to road traffic	New overbridge. Tie into existing regional road to east and west.
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*\*Operated on a 24 hour basis as a CX – Type level crossing*

Some of the works will necessitate the acquisition of land and extinguishment of rights of ways.

An EIAR and NIS are currently being prepared for submission as part of a Railway Order Application under Section 37 of the Transport (Railway Infrastructure) Act 2001, as amended.

### 3.0 Planning History

XC187 Fantstown – Limerick County Council sought to close the level crossing at Fantstown by way of extinguishment of the public right of way under section 73 of the Roads Act. The section 73 motion was not put to the Council.

2010/2011 – Closures for the 7 level crossings were developed as individual schemes with 3 advanced to Part 8 approval stage between 2009 and 2011 (Fantstown, Newtown and Ballycoskery). They were not progressed due to local objections and lack of funding.

### 4.0 Prospective Applicant's Case

#### 4.1. Overview

- Significant investment by the prospective applicant has been put into eliminating manned level crossings on the nationwide rail network. Previous works were advanced under different legislative codes and were not subject of Railway Orders.
- The 7 no. crossings in question are the only remaining manned crossings on the Dublin-Cork rail line. Their proximity to each other has impacts on the line's efficiency with issues also arising in terms of safety.
- In terms of the planning history (as summarised above) the level crossing projects were pursued on an individual basis with some prepared to Part 8

application stage with assistance from the respective local authorities. Due to a myriad of issues, including local opposition, this approach was not successful, and the projects were not advanced further.

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- It is proposed to make an application for a Railway Order under the Transport (Railway Infrastructure) Act 2001 as amended. The prospective applicant considers it the most appropriate legislative mechanism as the proposed works comprise of ancillary works necessary for a railway line. It would also allow for a proper assessment in terms of cumulative impacts with an EIAR to be prepared.
- The prospective applicant can only avail of CPO powers by way of a Railway Order application.

#### 4.2. Legal Opinion

A legal opinion by Conleth Bradley SC to the prospective applicant as to the appropriateness of a Railway Order Application for the proposed works was received by the Board in February, 2000.

In summary:

- It is considered that the de-manning of the 7 no. manned level crossings on the public road and their replacement, in most instances with overbridges and road improvements, and all associated works is best achieved by the prospective applicant applying for a Railway Order.
- The works proposed as part of the replacement of the 7 no. manned level crossing are encompassed by the definition of 'railway works' as set out in Section 2(1) of the Transport (Railway) Infrastructure Act, 2001. In same *"railway works" means any works required for the purposes of a railway or any part of a railway, including works ancillary to the purposes aforesaid such as parking by buses or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities, and in this definition "works" includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal.*
- It is noted that a Railway Order can cover inter alia the following matters:

(1) works provisions – including the power to alter the layout of public roads (and bridges) (3) the power to create new roads (and bridges) (4) the compulsory acquisition and possession of land, (5) the acquisition of rights over land (6) the extinguishment of public and private rights of way, (7) temporary possession of land, (8) arbitration, (9) interference with apparatus, (10) agreements with local authorities, (11) interference with roads.

- A Railway Order application is subject to EIA with the requirement to submit an EIAR.
- It is considered the totality of the works would be applied for in one Railway Order rather than a series of separate railway order applications on the basis that the works are so as to facilitate one railway line – Dublin to Cork.

## 5.0 Discussion

### *Railway Order*

Level crossings could reasonably be considered to be '**railway infrastructure**' as defined in section 2(1) of the Transport (Railway Infrastructure) Act, 2001 in that they are structures or equipment which facilitate a rail line to cross a road/path and are therefore *used in connection with, or necessary or incidental to the movement of passengers or freight by railway.*

On the basis of the information provided the works proposed to effectively remove the manned level crossing arrangements which would entail road realignments/improvements, new and upgraded overbridges, 4 barrier CCTV layout and extinguishment of rights of way could reasonably be considered to come with the definition of '**railway works**' as set out in section 2(1) of the 2001 Act in that they are works required for the purposes of a railway or any part of a railway. In this definition '**works**' *includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal.*

In this regard I note **section 44** of the 2001 Act sets out what provisions can be contained in a railway order considered to be necessary or expedient including any rights in, under or over any public road, the acquisition of which is considered

necessary for giving effects to the order. In addition, I note **section 50** of the Act states that on the commencement of a railway order the railway undertaking is authorised to carry out road works including the construction of a new road for the purpose of carrying out railway works or the operation, maintenance, repair or improvement of a railway subject to the prior consent in writing (which shall not be unreasonably withheld) of the relevant road authority. Such consent by the road authority can be subject to conditions, restrictions, or requirements as it thinks fit.

The railway order, if approved, would also provide the prospective applicant with the relevant consent to acquire land as necessary and extinguishment of public and private rights of way that would arise to carry out the works in question without recourse to other legislative mechanisms.

The proposal to undertake the 7 level crossings under one railway order as they pertain to one railway line will allow for the cumulative impact of the works proposed. An EIAR will be required for the proposal. The applicant has also advised that any application would be accompanied by a NIS.

#### ***Other Legislative Mechanisms***

As noted, the works proposed to be undertaken in 6 of the 7 locations entail works to the public road network including new access roads, upgrade of existing roads, new overbridges and upgrading of existing overbridges. It will also involve the extinguishment of public rights of way and acquisition of land to carry out the works. It could be argued that in that context the works would more appropriately comprise of 'road works' rather than 'railway works'. Should this view be advanced then consent for the works under other legislative codes, notably Part VIII with the application of the necessary CPO provisions, would be more appropriate.

In such a scenario it may be the case that the 7 no. locations would be advanced as discrete projects with the assistance of the relevant local authorities. Taken individually the works would not come within the scope of the developments set out in Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations, 20001, as amended, for which an EIAR would be required. However, should any of the proposed developments be accompanied by a NIS then an application will be required to be made directly to the Board.

## **Section 37A – Strategic Infrastructure**

For the Board's information I note that as per Schedule 7 of the Planning and Development Act, 2000, as amended, the following is an Infrastructure Development for the purposes of sections 37A and 37B.

*A terminal, building or installation associated with a long-distance railway, tramway, surface, elevated or underground railway or railway supported by suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, but excluding any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the Planning and Development (Strategic Infrastructure) Act 2006).*

Therefore, should the works not be considered 'railway works' as defined under the Transport (Railway Infrastructure) Act 2001 the projects could be considered as 'installation' associated with a long distance railway and therefore require assessment against the criteria set out in Sections 37A.

At this juncture I would suggest that whilst the development, in itself, may not be of strategic economic or social importance to the State or the region in which it is situated, the development would be directly related to and would assist in the realisation of one the key future growth enablers for Cork as identified in the National Planning Framework, namely improved rail journey times to Dublin and would accord with NSO 4 to develop existing good quality rail links between Dublin and Belfast and Cork into an island rail spine through line speed and service enhancement. It would also advance the provisions of the regional spatial and economic strategy for the area in terms of rail infrastructure notably RPO 162 which highlights the need to move the Dublin-Limerick Junction/Cork rail lines to higher speeds to improve connectivity to regional cities through improved rail journey times.

### **Conclusion**

On balance, I would accept the prospective applicant's view that the proposed works can be considered '**railway works**' as defined in the Transport (Rail Infrastructure) Act, 2001, and can be appropriately dealt with by one Railway Order on the basis that the works, albeit at 7 no. locations, pertain to one railway line. An EIAR will be required in which the cumulative impacts of the works will be considered.

The Board is advised that discussion around the detail of the proposed works and considerations relating to proper planning and sustainable development or the environment that may have a bearing on the Board's decision has been limited to date. On the basis of the detail provided provision of advice on these issues would be important in the context of nature and extent of the design solutions proposed at certain locations.

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Pauline Fitzpatrick  
Senior Planning Inspector

20<sup>th</sup> May, 2020