Our Case Number: ABP-314597-22

Your Reference: Sean and Phil Scahill

An Bord Pleanála

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

Date: 22 November 2022

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

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above-mentioned proposed road development and will take it into consideration in its determination of the matter.

Please note that the proposed road development shall not be carried out unless the Board has approved it or approved it with modifications.

The Board has also received an application for confirmation of a compulsory purchase order which relates to this proposed road development. The Board has absolute discretion to hold an oral hearing in respect of any application before it, in accordance with section 218 of the Planning and Development Act 2000, as amended. Accordingly, the Board will inform you in due course on this matter. The Board shall also make a decision on both applications at the same time.

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

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

Yours faithfully,

Niamh Thornton
Executive Officer
Direct Line: 01-8737247

HA03A

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The Secretary
Planning Appeals Board (Strategic Infrastructure Division)
64 Marlborough Street
Dublin 1
DO1 V902

Our Ref: PM.4185.001 **Your Ref**: **Date**: 18 November 2022

Re: Application for Approval under Section 51 of the 1993 Roads Act

Dear Sirs

We act on behalf of Sean and Phil Scahill who Galway City Council have identified as the owners / occupiers of the lands at 139 College Road, Galway H91 C9NA and we wish to lodge a submission in respect of proposed development entitled "Bus Connects Galway: Cross-City Link (University Road to Dublin Road) Scheme of Development", Which proposal (hereinafter referred to as road scheme) is the subject matter of an application which seeks approval under s51 of the 1993 Roads Act.

This road scheme, is a specified development for the purposes of the Environment Impact Assessment Directive, 2011/92/EU (The EIA Directive) as well as being a development that has been certified as having likely significant effects on a European Site and accordingly requires a Stage II Assessment for the purposes of Council Directive 92/43/EEC.

It is in this context that the Council has sought approval for the scheme under Section 51 of the 1993 Roads Act and have included within the application documentation an Environmental Impact Assessment Report (EIAR) as well as a Natura Impact Statement (NIS) and therefore there are in fact three separate consents that are required, namely an approval of the road scheme under Section 51, development consent for the purpose of the EIA Directive and an Appropriate Assessment (AA) under the Habitats Directive, and it is proposed in the documentation that all of these be dealt with within a single application procedure and we expressly reserve our position as to the appropriateness of such a procedure in that regard.

The Environmental Impact Assessment Report

Under the Directive the EIAR is intended to be a separate stand-alone document which is an independent review of the effects of the scheme. It is intended to be separate from the designers of the scheme and while the preparation of the EIAR can interact with the scheme, it is intended to be an objective, independent document which allows for an appropriate distance between the scheme and the assessment report if it is to comply with the requirements of the EIA Directive.

On the face of the documentation lodged, it would appear that it is difficult to discern a difference between the parties who prepared the EIAR and the designers of the scheme,

and in terms of the personnel involved it would appear that the relationship which in fact appears to involve a single design team is inconsistent with and contrary to the EIA Directive.

When the content of the EIAR is considered it will be seen that it is entirely positive to the scheme and indeed reads not as an independent critical analysis of the impacts but rather as a document supporting the scheme on its merits, and this supports the contention that the failure to maintain necessary distance between the scheme and the EIAR has resulted in a failure to comply with a critical requirement and a necessary pre-condition to the carrying out of an EIA.

The opening of the non-technical summary illustrate the point where in the very first paragraph the documentation refers to the proposed scheme

"will support integrated, sustainable transport usage through infrastructure improvements and transport management measures for active travel…"

and later

"the proposed scheme will ensure that public transport services can access key areas such as retail and recreational centre of the city, public transport hubs at rail and bus stations…".

These type of value laden statements may be appropriate to accompany the scheme but they are not appropriate for an EIAR and at a very simplistic level an EIAR should be more akin to perhaps a road safety audit where the scheme is critically assessed and where there is an objective critique of what is proposed rather than being a positive endorsement of a scheme prepared by the very people who designed it and therefore cannot, despite the best efforts of all involved, be objective in respect of the impacts thereof.

The scheme relies on the Galway Transport Strategy (GTS) 2016 but there is no reference in the EIAR to that strategy being the subject of a Strategic Environmental Assessment (SEA) and it is now well established that any scheme which is proposed on the basis of a strategy which has not been the subject matter of a SEA that complies with the requirements of Council Directive 2001/43/EEC cannot be approved by the Board as to do so would represent a fundamental breach of European Community law.

The need for the proposed scheme is set out at paragraph 3 of the non-technical summary and identifies the concerns raised in respect of the need to deal with increased capacity for such traffic.

However, the same Authority in conjunction with Galway County Council is proposing the Galway Outer Bypass which in fact traverses through a number of suburbs which the City Council rely on in this scheme and which they claim will be protected through what they describe as the sustainable public transport provision. This scheme in respect of our clients property will entail the utter destruction of the residential environment in the suburb ibn which our clients residence is located in the same way as the Galway Outer Bypass presides over the utter devastation of separate residential areas with a large number of residential properties affected as part of that scheme. The Board has in the recent past approved that Road Scheme and while the decision to approve that scheme has been subsequently quashed or is reported to be the subject matter of such an order, in circumstances where the Road Scheme has been approved on the basis of accommodating increased traffic, the Board has approved that scheme.

The need for the scheme as set out paragraph 3.1 and in substantive detail in the EIAR cannot be reconciled with what is set out in the Galway Outer Bypass Scheme, and there is a fundamental contradiction between the two proposals which cannot be reconciled.

Furthermore, the scheme which creates a busway which must as a matter of fact be predicated on carbon based transport model cannot be consistent with the Climate Action Plan 2021.

The position would be different if in fact the scheme proposed for example a light rail project which is based on low carbon or sustainable energy sources, but this is not the case here and the very paragraph referred to which focusses on the need to accelerate electrification of road transport, biofuels and modal shift to transport modes with low energy consumption cannot be relied upon as grounding this application as if permitted it will be implemented using the very vehicles that are in contra distinction to and in conflict with the provisions of the Climate Action Plan 2021.

Comment has already been made on the Galway Transport Strategy 2016 which as a Plan did not involve compliance with any of the procedures required and was not subject, for example, to an Appropriate Assessment under the relevant provisions of the Habitats Directive and therefore cannot be relied upon to justify the scheme here proposed. There is therefore no basis set out in the EIAR which would justify the need for the proposed scheme.

However even more fundamentally the inclusion within the EIAR of the need for the proposed scheme is inappropriate and confuses two separate statutory procedures. The need for a proposed scheme is not a relevant consideration for the purposes of EIA which focusses not on the need for the scheme but on the environmental effects. The basis of the EIAR report appears to justify the scheme not on the basis of its environmental effects but rather that it is necessary. Those considerations are inappropriate and invalid and render the EIAR ultra vires, invalid and void.

In respect of public consultation, the documentation when revealed will show that while there was public consultation but which was both superficial and conducted in a context where it was specifically designed to explain and justify a scheme rather than genuinely engage with the public and use the consultation to inform the designers of the scheme in a manner consistent with the EIA Directive.

It could never be the case that any person would agree with the incorporation of a specified development for the purposes of the EIA Directive, a largescale and controversial development, to be located in the front garden of a residential property and that such a scheme could develop out of any such consultation is absurd and to suggest that the consultation in those circumstances can be relied upon when this is the result is quite simply extraordinary.

The EIAR asserts that the basis of the assessment of impact is predicated upon a robust environmental baseline. This environmental baseline is predicated upon a particular route and merely stating that there was involvement of the public and stakeholders in the assessment and design process is not such as to comply public consultation requirements of the EIA Directive.

Specific evidence will be given at the oral hearing as to the absence of any real or substantive consultation in respect of the Applicants property and the particular concerns that arise in respect of the manner in which that property is used as well as the impact on related properties which are nowhere identified in the EIAR and where had any or any appropriate consultation taken place and a full understanding obtained as to what was

proposed, these matters could not but have come within the knowledge of the Local Authority and the scheme would not have been designed in the manner that it has.

The approach in respect of alternatives commences with what is described as a "do nothing" alternative. This illustrates both the lack of understanding of the obligations of the EIA Directive and indeed the obligations of Galway City Council which have a statutory obligation to achieve the objects of their Plan. In the light of the acknowledgement that the City Council are required to achieve the objectives of their Plan and to implement a scheme in accordance with that Plan, the alternative which was a "do nothing" scenario was never a real alternative, and the approach which has been adopted is fundamentally in conflict with and contrary to the obligations under the Directive. Accordingly the whole basis of a critical part of the EIA Directive, namely alternatives, has been misconstrued and misapplied in the documentation lodged.

Galway City Council suggest as part of their scheme that they considered, for example, light rail as an alternative. Galway City Council are not the relevant authority to implement a scheme of light rail, it is different statutory body who is responsible for such an alternative and one must question whether a scheme if adopted would deprive the authority (that is Galway City Council) from implementing that scheme and which if light rail was adopted would be such as to preclude them from any further consideration of or involvement in the scheme.

It will come as no surprise therefore that this alternative (namely light rail) was not adopted but the reasons why it was not adopted would seem to have very little to do with the type of considerations that are appropriate in any consideration of alternatives.

The proposed development will have a devastating effect on our clients and their property, on their health, on their amenities, on the value of the property as well as particular sensitive occupants of the property, none of which has been properly considered in the documentation lodged.

When one considers issues like dust, for example, the nature and extent of the works will be such that any reasonable occupation of the dwelling house in the light of the levels of dust will be impossible and in particular because of the vulnerability of the occupants of the house and of the overall property. These effects by virtue of the particular vulnerability of the occupants and the proximity to the scheme can never be mitigated but yet these impacts have not either been identified, much less mitigated in documentation and therefore a fundamental requirement of the EIA Directive, namely identification of significant adverse effects and their proposed mitigation has not been complied with.

In respect of noise and vibration, again there is no adequate or appropriate analysis of the impacts of noise on our clients and on their residence and on the amenities, but it can be stated with certainty that the residence cannot continue to be occupied given the level and extent of noise that will be generated. It appears that the approach being adopted is not the approach required as per the World Health Organisation standards but rather as self-serving document prepared by the overall funder of the scheme which results in levels of noise as being over double what is permitted in the World Health Organisation Guidelines, and this is intolerable in respect of the levels of impacts that will occur.

The lands that will be affected both by dust, noise and vibration, general nuisance as well as interference with access and egress will have profound impacts on the health and wellbeing of our clients and will require our clients to vacate their property certainly during the period when the works are ongoing but which will in any event be uninhabitable during the operation of the scheme due to noise levels. This is a direct attack on our clients rights under Article 40.5 (inviobility of the dwelling), rights to bodily integrity and a healthy

environment under Article 40.3 and fails to vindicate our Clients property rights protected under Articles 43 and 40.3. Accordingly the scheme in this regard cannot be approved under s51 of the 1993 Roads Act.

The range of impacts therefore that are required to be identified in the EIA Report have been inadequately identified, considered and it will be necessary to engage appropriate expertise to show in detail the extent of the failures of the relevant documentation in that regard. Again it will be necessary in advance of these submissions to have various issues clarified with the Authority and we would request that appropriate facilities be made available at the oral hearing to be convened in respect of the approval of the scheme under s51 in that that regard.

There are similar concerns on behalf of our clients in respect of the Natura Impact Statement and the manner and basis upon which this document has been prepared. We are concerned that the requirements of the Habitats Directive be properly and appropriately considered and the failure to comply with these requirements again renders any consent under Section 51 impossible.

In all the circumstances therefore we formally object to the application made under Section 51, we request that formal approval not be given but we understand that it may be necessary in respect of this application that there be a hearing and we intend to fully participate in that hearing and will identify and expand on all of the issues raised in this submission at that time.

Our clients would appreciate if you would give them adequate time and notice in respect of any such hearing and afford our clients the appropriate time in which to deal with the very large range of issues that require to be addressed some of which only have been identified here.

We await hearing from you.

Yours faithfully

RG Emerson & Co.