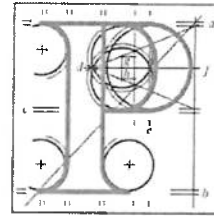


Our Case Number: ABP-317780-23

Your Reference: Bastille Realty Limited



**An
Bord
Pleanála**

Kieran O'Malley & Company Limited
2 Priory Office Park
Stillorgan Road
Blackrock
Co. Dublin

Date: 12 October 2023

Re: Bray to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2023
Bray to Dublin City Centre

Dear Sir / Madam,

An Bord Pleanála has received your letter of objection on behalf of your client, Bastille Realty Ltd relation to the above-mentioned compulsory purchase order.

In respect of same, please note that in circumstances where

- (i) no objections are received by the Board within the period provided for making objections, or
- (ii) all objections made are subsequently withdrawn, or
- (iii) all objections made relate exclusively to matters which can be dealt with by a property arbitrator the Board will inform the local authority as appropriate and, in such circumstances, the local authority can itself confirm the order with or without modification or refuse to confirm the order in accordance with the provisions of section 216 of the Planning and Development Act, 2000, as amended.

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 on this matter in due course.

If you have any queries in the meantime, please contact the undersigned officer of the Board at laps@pleanala.ie

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

Yours faithfully,

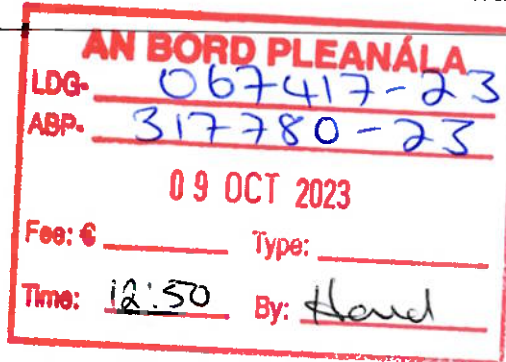
Sarah Caulfield
Executive Officer
Direct Line: 01-8737287
CH03

Teil	Tel	(01) 858 8100
Glaio Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

9th October 2023

An Bord Pleanála
(Strategic Infrastructure Division)
64 Marlborough Street
Dublin 1



Ref.: KA27.317780
Proposal: Bray to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2023
Date Lodged: 4th August 2023
Submissions By: 10th October 2023

Re: LANDOWNER OBJECTION

Dear Sir or Madam,

We have been instructed by **Bastille Realty Limited, 8 The Mall, Lucan, Co. Dublin, K78 R8N2** (hereinafter referred to as "Bastille Realty" or "our client") owner of No. 2, Donnybrook Road, Dublin 4 to object¹ to the proposed compulsory acquisition of lands within their ownership at No. 2 Donnybrook Road (plot no. 1018(1).1e refers).

At the outset, we formally request an Oral Hearing for the Board to adequately consider the unjust and unnecessary acquisition of part of our client's property at No. 2 Donnybrook Road and we reserve the right to make whatever further or other submissions as may be required and to elaborate on these submissions at any such oral hearing.

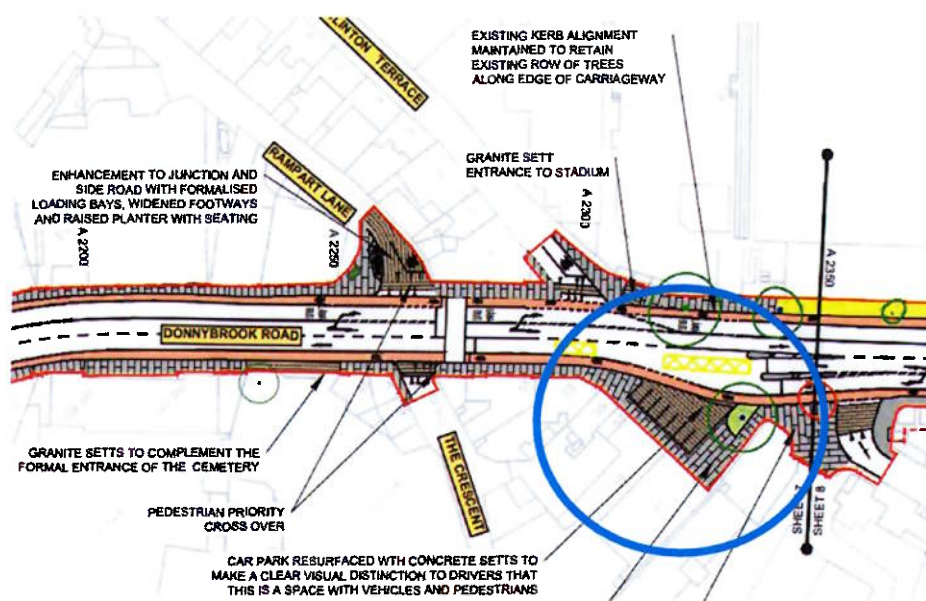
There is no basis or justification for the inclusion of our client's land because it is not required to implement the proposed **Bus Connects** scheme. The Board is referred to *Clinton v. An Bord Pleanála* [2007] IESC 19 ("Clinton") where the Supreme Court set out the parameters within which any such compulsory acquisition must occur and the test to be employed. The most fundamental requirement in that test is to consider the impact on the landowner whose constitutional rights are to be infringed and to determine whether these can be justified. This is an extremely onerous task placed upon the Acquiring Authority, which has not been conducted in respect of our client's land. Excluding our client's land from the CPO won't affect the Acquiring Authority's ability to implement the proposed scheme.

The fundamental obligation on the Acquiring Authority and the test that is required to be met is that the least possible impact on the landowner is created by adopting a Scheme utilising the various statutory powers of the Acquiring Authority that meets the requisite standard. The National Transport Authority (NTA)

¹ A separate submission to the proposed scheme, is also being filed to An Bord Pleanála.

has not, in preparing the Proposed Scheme and in formulating the CPO, directed their minds to these requirements. As set out in our client's submission to the Proposed Scheme, the NTA's EIAR has largely ignored our client's property, there is no basis for its inclusion or the specific provision of proposed bike racks at this location, and it significantly underestimated the permanent negative profound impact that would arise from the land take.

The Board is invited to contrast the approach taken by the NTA to car parking outside Caffè Nero which is also in Donnybrook and about 230 metres from No. 2 Donnybrook Road. The following extract (with blue circle added) from Drg. No.: BCIDB-JAC-ENV_LA -0013_XX_00 -DR-LL -0007 Rev M01: Bray To City Centre Core Bus Corridor Scheme Landscaping Design shows the proposal at that location is to retain most of the car parking while providing vehicular access across the proposed re-aligned cycle lane:



Applying this layout approach at No. 2 Donnybrook Road i.e. our client's car parking spaces are maintained but vehicular access is across the re-aligned cycle lane, would be the least possible impact on our client without affecting the transport need for the scheme as set out in Chapter 02 of the EIAR. It should follow and the Board is invited to agree that our client's land can be omitted from the Proposed Scheme and the CPO. There is no evidence that this has been considered by the NTA. The Scheme therefore as proposed, in the absence of such consideration is fundamentally invalid and void.

In addition, the Board is referred to the following commentary by Douglas Hyde B.L from the Irish Planning & Environmental Law Journal Vol. 29, Number 3 (page 78) in respect of the rationality test as to whether or not a CPO is in breach of a constitutional requirement:

"A rationality test may be applied by the Board (or subsequently in judicial review by the Courts) to assess whether a CPO (submitted to it for confirmation) is in breach of constitutional requirements. This test is intended to be an objective assessment of whether the balance between the objective to be achieved by the CPO and the impact on the owner of the land proposed to be compulsorily acquired is so contrary to reason and fairness as to constitute an unjust attack on a landowner's constitutional property rights."

Our client's land is not required to realise the objective of the proposed scheme thus it should be omitted from the CPO. Its inclusion is a blatant unjust attack on our client's constitutional property rights. There is an oversupply and unsubstantiated concentration of the proposed bike racks at Donnybrook (5 of the 7 proposed bike racks are shown at Donnybrook) as part of this Bus Connects scheme. Omitting the proposed bike rack from our client's land would not affect the objective of the proposed scheme or the CPO. If 5 no. proposed bike racks are required in Donnybrook, then the proposed bike rack can be placed elsewhere in the local public realm enhancement in front of Nos. 4-12 Donnybrook Road and No. 2 Donnybrook Road excluded from the CPO.

We formally request the Board to reject the application in the light of the failure to comply with the fundamental legal requirements to establish even a prima facie case that it is appropriate to compulsorily acquire our client's land.

Without prejudice to our position to reject this CPO, in the event the Board confirms the CPO, it is respectfully requested to exclude our client's land from the CPO on the basis that it is not necessary to implement the proposed Bus Connects scheme.

Please acknowledge receipt of this submission and direct all future correspondence to this office.

Regards,



Raymond O'Malley

Kieran O'Malley & Co. Ltd.

ROM: rom