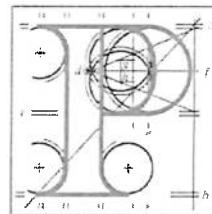


**Our Case Number:** ABP-317780-23

**Your Reference:** Eoin Conway



**An  
Bord  
Pleanála**

Ciarán Sudway & Associates Ltd  
9 Fitzwilliam Square  
Dublin 2

**Date:** 13 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 in 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  - (ii) all objections made are subsequently withdrawn, or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](mailto: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

CH02

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	<a href="http://www.pleanala.ie">www.pleanala.ie</a>
Ríomhphost	Email	<a href="mailto:bord@pleanala.ie">bord@pleanala.ie</a>

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

An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1

<b>AN BORD PLEANÁLA</b>	
LDG- 067501-23	ASSOCIATES LTD
ABP- 317780-23	Chartered Surveyors
10 OCT 2023	
Fee: € _____	Type: _____
Time: 9.20	By: Hanel

4<sup>th</sup> October 2023

**Re.: NTA – Bray to City Centre Core Bus Corridor Scheme**  
**Compulsory Purchase Order 2023 – Mr. Eoin Conway, Beauchamp**  
**House, Dublin Road, Bray, A98 N5W7 – Plot No's 1069(1).1d and**  
**1069 (2).2d**

Dear Sir/Madam,


I am instructed by the above named landowner to act on his behalf in respect of the above Scheme and in this regard I have been provided with a copy of the letter from the NTA dated 10<sup>th</sup> August 2023 attaching the Notice of the Making of a CPO. The first sentence of the accompanying letter is confusing in that it suggests that the NTA intend to submit the Notice of the Making of the CPO in the coming days. It is therefore not clear whether or not a formal application has in fact been made.

The matters that are set out below relate primarily the impacts arising out of the proposed Compulsory Purchase Order and I understand that my client will be retaining a Town Planner to make representations in respect of the Planning Application that is submitted as part of the statutory process.

In terms of the application before the Bord for the approval of a Compulsory Purchase Order for the proposed Scheme, it is certainly premature to consider the approval of a CPO, for the following reasons:

1. The Scheme does not have planning permission.
2. There are no detailed design drawings for the Scheme.
3. There are no draft drawings to an appropriate scale to facilitate an understanding of the impact of the proposed acquisitions on the retained properties.
4. The acquiring Authority has not established that there is a need for the Scheme or that the lands to be acquired are in fact required in order to perform any defined statutory function of the acquiring Authority.
5. The acquiring Authority has not considered alternative solutions and has not identified sufficiently, the nature of the problem which their statutory function requires them to address.
6. The acquiring Authority have not considered the possibility of acquiring the property required by agreement.
7. Funding has not been approved for either the detailed design of the scheme, the land acquisition for the scheme or the construction of the scheme. In

9 Fitzwilliam Square, Dublin 2, Ireland



these circumstances, the acquiring Authority have not demonstrated that there is any urgent need, or indeed any need whatsoever, for the compulsory acquisition of the lands contained in the order. Furthermore, the Bord is well aware that in the past CPO's have been approved and subsequently abandoned due to lack of funding, or a Notice to Treat has been served to "save the CPO", but where no works have commenced for over 10 years after the service of the Notice to Treat. The Bord is also aware, that if the CPO is confirmed and a Notice to Treat is served and a Notice to Enter is served, there is no obligation on the acquiring Authority to commence or complete the works within any time frame thereafter. This contravenes Article 1 of the First Protocol to the Convention on Human Rights. This Article was considered in *Sporrong and Lonnroth v Sweden*, (1982) 5 EHRR 35 and also in *Skibinscy v Poland*, Appl No 52589/99. In the former case it was held that an expropriation permit for over 20 years "upset the fair balance which should be struck between the protection of the right of property and the requirements of the general interest: the Sporrong Estate and Mr. Lonnroth bore an individual and excessive burden....."


In the latter case, the applicant argued that their right to the peaceful enjoyment of their property had been breached as a consequence of the designation of their property for the construction of a major roadway on foot of which the land was to be expropriated "at some undetermined future date". The Court held that a fair balance had not been struck between the competing general interests and that the applicants had been obliged to bear an excessive individual burden.

The Bord should also consider the effects of their decision to approve the EIS and the CPO in respect of the first iteration of the Galway City Outer Bypass. The EIS (planning permission) was challenged to the European Courts and eventually the CPO was annulled. Now a second iteration of both the EIS and the CPO have been approved and once again the Planning Permission has been appealed to Europe. This highlights the fact that a CPO should not be approved in advance, or simultaneously with the planning permission. The impacts on affected landowners in Galway and the burden that they have carried goes back well over 20 years.

Similarly, in the case of Metro North. The Bord approved the EIS and the CPO but after at least 10 years of preparation, the Scheme was ultimately abandoned due to the lack of funding. Now this Scheme too, is in its second iteration and if the Scheme is approved, works will not commence until at least 2028, subject of course to funding, which has not yet been approved.


The Bord has a duty and an obligation to ensure that its decisions meet the requirements of both European and domestic legislation and that the landowners affected by a compulsory expropriation do not suffer an excessive burden under Art 1 of the First Protocol to the Convention on Human Rights.

In any event, it is clear that the inclusion of a scheme in the National Development Plan cannot be equated to having funding approved to acquire lands and build the Scheme being approved. Funding approval only occurs



after a Scheme has been become operative and in the past, this approval may well go beyond the 18 months allowed in law for the service of the Notice to Treat. Currently, for the majority of Scheme's, funding is only approved in small tranches and begins with funding to "develop a design" for the Scheme, after which funding might be approved for "procurement", etc. Funding for land acquisition and construction has not in my recent experience occurred for many years after the service of the Notice to Treat, and I would ask that the Bord consider this deficit before approving a CPO for the current Scheme.

8. In the case of *Clinton v An Bord Pleanala (No 2)*, 2007 4 IR 701 it was held that the confirming Authority must prove that "the acquisition of the property is clearly justified by the common good". The confirming Authority has not proven that this is the case and neither have they adequately demonstrated that there is a need for the proposed scheme or that other alternatives have been properly considered. In addition, the acquiring Authority has not provided any cost/benefit analysis which includes the totality of the cost of the Scheme, including land acquisition costs, and neither have they demonstrated that if the Scheme is confirmed, that they have funding to commence and complete the Scheme without delay.
9. It would appear that the proposed Scheme does not comply with the Development Plans of the local Authorities through which the scheme passes and, in this regard, it would appear that any approval of the CPO would contravene the judgement in *O'Mahony v An Bord Pleanala (2005) IEHC 39*.
10. The EIS has not adequately assessed the alternative routes and given reasons for their rejection in accordance with the Habitats Directives of the European Union and the Convention of Human Rights, as considered in the case No. C-461/17, and the judgment of which was delivered on the 7<sup>th</sup> November 2018 by the European Court.
11. The EIS/EIAR has not properly, or fully, considered the impacts of the proposed scheme on the Conway Residence and Business, including the fact that it is a protected structure. The protected structure includes the boundary walls and the many mature trees on the lands. The trees cannot under any circumstances be interfered with, and in those circumstances it is unlikely that the Scheme as currently envisaged can proceed.
12. The Notice served on my clients suggest that if the CPO is confirmed, compensation will be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 and the Planning and Development Act 2000, as amended. Furthermore, the Notice states that if compensation is not agreed, it will be determined by an Arbitrator appointed by the Land Values Reference Committee. This is disingenuous. At the time that the Notice was served on my clients, the acquiring Authority were aware that under the provisions of the Land Value Sharing and Urban Development Zones Bill 2022, the compensation provisions and procedures for assessing and determining compensation together with the procedure of transferring title, would all come within the remit of this latter Bill, and which provisions are entirely different to the provisions set out and referred to in the Notice served. This applies equally to the procedure for determining the compensation in default of agreement. The Bord should not confirm any CPO until such time as landowners have been properly informed as to the legislation and procedures which will apply to the determination and settlement of their claim.

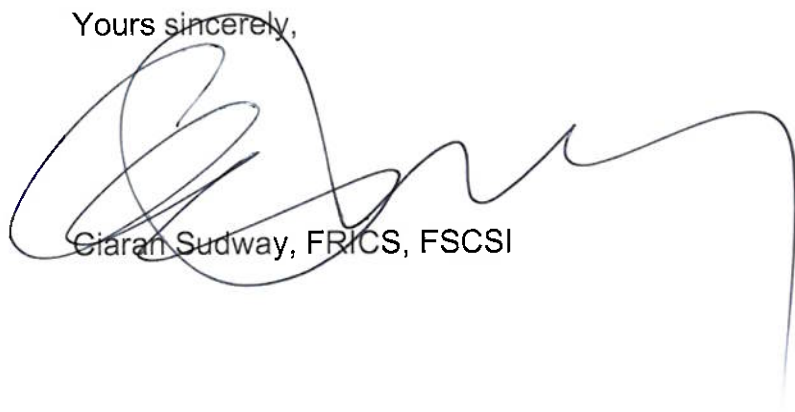


Prior to the Planning and Development Act 2000, CPO's were considered by an Inspector at a Public Inquiry, and under which all evidence was given by the acquiring Authority under Oath. A scheme was prepared and presented in final form and the only matters for the Inspector to consider were, essentially, whether or not the land was required to implement the Scheme and whether or not the Scheme was required to satisfy a need of the community. If a CPO was confirmed, the CPO would generally be implemented immediately, and would be completed promptly, because both the final design and funding were available, at the time of the Public Inquiry.

Since the introduction of the Planning and Development Act 2000, and of course numerous European directives and legislation, this no longer happens. Since 2000, CPO's have been approved by the Bord on numerous occasions, but which have (a) not been commenced, (b) partially commenced but not completed, (c) partially commenced, not completed and not declared abandoned, and all of which CPO's are over 20 years since Bord Approval. In these circumstances, I would suggest that the Bord has a duty of care to landowners, not to approve any CPO, unless the proposed Scheme has planning permission and unless both detailed design and funding for land acquisition and construction are available and that the acquiring Authority can prove that they intend to commence with the construction of the Scheme as soon as a CPO is confirmed by An Bord.

I trust that the Bord will reflect positively on the matters set out above, and please note that my clients reserve the right to expand on this objection in due course.

Yours sincerely,



Ciaran Sudway, FRICS, FSCSI