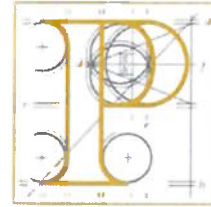


Our Case Number: ABP-317780-23

Your Reference: Sharon McKenna Murphy



An
Bord
Pleanála

Ciarán Sudway & Associates Ltd
9 Fitzwilliam Square
Dublin 2

Date: 10 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 Sharon McKenna Murphy 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(ii) all objections made are subsequently withdrawn, or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

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

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Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
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64 Sráid Maoilbhríde	64 Marlborough Street
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D01 V902	D01 V902

An Bord Pleanála,
64 Marlborough Street,
Dublin 1

AN BORD PLEANÁLA	
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By:	havel

3rd October 2023

Re.: NTA – Bray to City Centre Core Bus Corridor Scheme
Compulsory Purchase Order 2023 – Ms Sharon McKenna Murphy, 9
Dublin Road, Bray, A98 T660 – Plot No's 1049(1).1e and 1049 (2).2e

Dear Sir/Madam,


I am instructed by the above named landowner to act on their 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 10th 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 to the impacts arising out of the proposed Compulsory Purchase Order.

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 property.
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 these circumstances, the acquiring Authority have not demonstrated that there is any urgent need, or indeed any need whatsoever, for the compulsory

9 Fitzwilliam Square, Dublin 2, Ireland



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.

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. 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 7th November 2018 by the European Court.
10. The Bord might note that the schedule to the CPO indicates that DLRCC are the owners of both the lands permanently and temporarily acquired. This is incorrect. My clients have owned and maintained the lands for over 20 years, and I understand that they are entitled to Freehold, or equivalent tenure, on all of the lands contained in the Schedule.

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. In this regard it should be acknowledged that the inclusion of a Scheme in the National Development Plan does not equate to having funding approved for the delivery of a particular Scheme.

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, FCSI