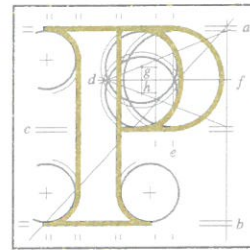


Our Ref: ABP-300493-17
P.A.Reg.Ref: N/S

Your Ref:



An
Bord
Pleanála

Mark Keavney
Roscommon County Council
National Roads Regional Office
Racecourse Road
Co. Roscommon

17th January 2019



Re:
N5 Ballaghaderreen to Scramogue Proposed Road Development.
Ballaghaderreen to Scramogue, Co. Roscommon

Dear Sir,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the 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,

Fergal Kilmurray
Executive Officer
Direct Line: 01-8737247

HA16

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended

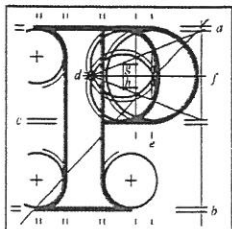
A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, **www.citizensinformation.ie**.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



An
Bord
Pleanála

Board Order ABP-300493-17

Roads Acts, 1993 to 2015

Planning and Development Acts, 2000 to 2018

Planning Authority: Roscommon County Council

Application by Roscommon County Council for approval under section 51 of the Roads Act 1993, as amended, in accordance with plans and particulars, including an Environmental Impact Assessment Report, lodged with An Bord Pleanála on the 20th day of December, 2017.

Proposed Road Development: Proposed upgrade/replacement of the N5 National Primary Road between Rathkeery and Scramoge passing through the townlands of Rathkeery, Glebe East, Portaghard, Sheepwalk, Turlaghnammaddy, Dungar, Mullen, Corskeagh (ED Frenchpark), Frenchpark Demesne, Cloonshanville, Leggatinty, Derreen (ED Bellanagare), Cashel (ED Bellanagare), Ballaghcullia, Bellanagare, Drummin, Tonaknick, Peak, Carrigeenacreeha, Mullenduff, Garrynphort, Corry West, Corry East, Kilvoy, Cloonyeffery, Clogher Beg, Clogher More, Rathroe, Raheen, Cartronagor, Barrinagh, Creeve (ED Rossmore), Runnaruag, Gortnacranagh, Ross Beg, Shankill, Killeen West, Cherryfield Or Drishagan, Lurgan, Killeen East, Tullylloyd, Tullycartron, Lugboy, Cloonculla (ED Cregga), Cregga, Cuilrevagh, Tullen, Lettreen, Doughloon, Corskeagh (ED Annaghmore), Lavalley, Kildallogh, Doon, Vesnoy, Cloonradoon, Bumlin, and Scramoge, all in the County of Roscommon, comprising inter alia:-

- 33.4 Kilometres of National Primary Road to Type 1 Single Carriageway standard;
 - 15.4km of realignment of existing roads;
 - Five roundabouts;
 - Frenchpark Roundabout (R361 south of Frenchpark);
 - N61 Roundabout (between Tulsk and Elphin);
 - Shankill Roundabout (N61/R369);
 - Strokestown Roundabout (LP-1405);
 - Kildallogge Roundabout (R368/LP-1405);
 - At grade mainline T junctions;
 - 16 'T' Junctions, of which 5 are staggered;
 - Reconfiguration of a crossroads between the existing N5 and R361 in Frenchpark;
 - 3 road under bridges and 1 road overbridge;
 - 4 river bridges and 14 culverts;
 - Approximately 290m of retaining walls at three locations;
 - Provision of 9 accommodation underpasses, access roads and accesses;
 - Associated earthworks including excavation of peat and unacceptable material, excavation and processing of rock and other material, provision of material deposition areas, and deposition and recovery of unacceptable material for use in the works;
 - Temporary site compounds;
 - Drainage works;
 - Landscaping works;
 - Utilities and Services Diversion Works including the diversion of high voltage electricity lines at 3 locations and the provision of associated support towers/ poles;
 - Safety Barrier, Fencing, Public Lighting, signing, lining and Accommodation Works; and
 - Environmental measures and all other Ancillary Works, and
- as amended by the revised public notice dated the 10th day of July, 2018.



Decision

Approve the above proposed road development without modifications generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard to the following:

- (a) The relevant provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU (EIA Directive),
- (b) Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives),
- (c) the European, national, regional and local strategic road policies and objectives, inclusive of those set out in National Planning Framework, Smarter Travel – A Sustainable Transport Future, the Regional Planning Guidelines for the West Region 2010-2022 and the Roscommon County Development Plan 2014-2020,
- (d) the scheme constituting a key transportation element for the improvement of the N5 National Primary Road,
- (e) the design, layout and alignment of the proposed road development,
- (f) the range of proposed mitigation measures set out in the submitted Environmental Impact Assessment Report, Natura Impact Statement, and Schedule of Commitments, and

- (g) the submissions made in relation to the application and the report and recommendation of the Inspector including the report of its appointed consultant hydrogeologist.

Appropriate Assessment:

The Board agreed with and adopted the screening assessment carried out and conclusions reached in the Inspector's report that Annaghmore Lough (Roscommon) SAC (site code 001626), Bellanagare Bog SAC (site code 000592), Bellanagare Bog SPA (site code 004105), Cloonshanville Bog SAC (site code 000614), Lough Forbes Complex SAC (site code 001818) and Lough Gara SPA (site code 004048) are the only European Sites in respect of which the proposed road development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment, including the report of its appointed hydrogeologist. The Board completed an appropriate assessment of the implications of the proposed road development for the affected European Sites, namely Annaghmore Lough (Roscommon) SAC (site code 001626), Bellanagare Bog SAC (site code 000592), Bellanagare Bog SPA (site code 004105), Cloonshanville Bog SAC (site code 000614), Lough Forbes Complex SAC (site code 001818) and Lough Gara SPA (site code 004048) in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed road development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed road development on the aforementioned European Sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed road development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives.

Environmental Impact Assessment:

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development;
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application;
- (c) the submissions from the local authority, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report including the report of its appointed consultant hydrogeologist.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how these were addressed in the examination and recommendation and are incorporated into the Board's decision.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the local authority, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed road development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report, is up to date and complies with the provisions of EU Directive 2014/52/EU, amending

Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated as follows:

- Risk of pollution of ground and surface **water** during the construction and operational phases. The impacts would be mitigated by measures within a Construction Erosion and Sediment Control Plan and adherence to best practice construction measures and incorporation of appropriate drainage facilities as set out in mitigation measures 6.1-6.14 and mitigation measures 7.1 to 7.107.8 (sic).
- Impact on **population and human health** as a result of noise during the construction and operational phases of the development. The contractor will be obliged to take specific noise abatement measures and comply with the recommendations of BS 5228-1:2009+A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Site – Noise and the European Communities (Noise Emission by Equipment for Use Outdoors) Regulations 2001 as set out Mitigation Number 9.1. The contractor will also be required to comply with specific requirements with respect to vibration and blasting as set out in Mitigation Numbers 9.2 – 9.5. In terms of the operational phase mitigation measures will be required at 11 properties in the form of acoustic barriers and/or earth bunds as detailed in Mitigation Numbers 9.9 and 9.10.
- **Landscape and Visual Impacts** will arise from the proposed road development. Landscape mitigation proposals shall take full account of the approaches and principles set out in A Guide to Landscape Treatments for National Road Schemes in Ireland with planting and landscaping to be carried out in accordance with Mitigation Numbers 8.1 to 8.18.
- The proposed development would give rise to significant impacts on **Material Assets and Land** including agricultural and non-agricultural land arising from the compulsory acquisition of land to allow for the development. Impact on businesses from loss of passing trade will also arise. The Transport Infrastructure Ireland/National Roads Authority Code of Practice Guide to Process and Code of Practice for National Road Project Planning and



Acquisition of Property for National Roads will be adhered to and the mitigation measures with regard to timing of works, consultation with property owners, restoration of access, boundary treatment, drainage and services will be carried out in accordance with Mitigation Numbers 13.1 to 13.5 and 14.1 to 14.6.

- The proposed development would have potentially significant positive effects on **Population and Human Health** in terms of the increased benefits in terms of shorter journey times and reduction in traffic hazard. The removal of through traffic from the towns and villages along the existing N5 will assist in the improvement of connectivity, reduction of severance, and improvement in noise, air and overall amenity.
- The proposed development would have potentially significant positive effects on **Cultural Heritage** by the removal of substantial levels of traffic along the N5 which will also assist in improving the setting and context of Rathcroghan archaeological complex.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures referred to above, and other measures set out in the Schedule of Commitments submitted to the oral hearing on the 10th day of October, 2018, including proposed monitoring as appropriate, subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Proper Planning and Sustainable Development

It is considered that the proposed road development would be in accordance with European, national, regional and local planning and that it would be acceptable in respect of its likely effects on the environment and its likely consequences for the proper planning and sustainable development of the area.



CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Environmental Impact Assessment Report, lodged with the application to An Bord Pleanála on 20th day of December, 2017, as amended by the plans and particulars lodged with An Bord Pleanála on the 7th day of June, 2018 and at the oral hearing held on the 9th and 10th days of October, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. All mitigation measures identified in the Environmental Impact Assessment Report and the Schedule of Environmental Commitments submitted by the local authority to the oral hearing on the 10th day of October, 2018, shall be implemented in full as part of the proposed road development or as may be required in order to comply with the following conditions. The local authority or any agent acting on its behalf shall appoint a person with appropriate ecological and construction expertise as an environmental manager to ensure that the mitigation measures identified in the Environmental Impact Assessment Report are implemented in full.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

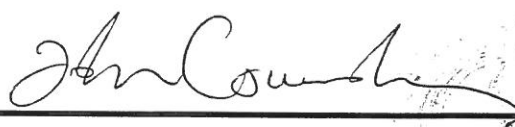
3. Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare a Construction Management Plan (CMP) generally in accordance with the commitments set out in the Environmental Impact Assessment Report and the Schedule of Environmental Commitments submitted by the local authority to the oral hearing on the 10th day of

October, 2018. The CMP shall include specific proposals as to how the CMP will be measured and monitored for effectiveness, and it shall be on file prior to the commencement of development and retained as part of the public record.

Reason: In the interest of protecting the environment and in the interest of public health.

4. Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare an Environmental Operating Plan (EOP) generally in accordance with the commitments set out in the Environmental Impact Assessment Report and the Schedule of Environmental Commitments submitted by the local authority to the oral hearing on the 10th day of October, 2018. The EOP shall include specific proposals as to how the EOP will be measured and monitored for effectiveness, and it shall be on file prior to the commencement of development and retained as part of the public record.

Reason: In the interest of protecting the environment and in the interest of public health.



**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 16th day of JANUARY 2019