

Our Reference: FPL/184/

Your Reference:

9 October 2020

By hand to: The Secretary, An Bord Pleanála, 64 Marlborough Street, Dublin 1

Re: An Bord Pleanála Reference PL17.308116

Applicant: Shannon Homes Limited

Proposed Development: 357 no. residential units (169 no. houses, 188 no. apartments), childcare facility and associated site works

Development address: Townlands of Colp West, Colp East, Stameen and Mornington, Drogheda, Co. Meath.

Date of application: 8 September 2020

Name of Observer Protect East Meath Limited (Company No 495141)

Address of Observer 7 Riverside Cottages, Julianstown, Co Meath

Name of Agent FP Logue Solicitors

Address of Agent 8/10 Coke Lane, Smithfield, Dublin 7

Dear Secretary

Introduction

I act for Protect East Meath Limited, 7 Riverside Cottages, Julianstown, Co Meath. I have been instructed by my client to make the following submission to An Board Pleanála (the “Board”) setting out its observations on the above-mentioned Strategic Housing Development application (ABP Ref 308116). On behalf of my client, I request that An Bord Pleanála takes due account of this submission in its determination of that application and that it refuses planning permission for the proposed development.

The fee of €20 is paid by credit card in person.

Submission

Protect East Meath makes the following submission in relation to the application.

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Breach of Public Participation Rules

In our opinion the provisions of the Planning and Development (Housing) and Residential Tenancies Act 2016 (the “2016 Act”) are contrary to Articles 6(2) and 6(4) of the Environmental Impact Assessment Directive (Directive 2011/92/EU) since the public is not given early and effective opportunities to participate in the decision making procedure when all options are open.

The public is precluded from participating in the mandatory consultation procedure under section 6 of the 2016 Act which is a private procedure between the developer, the Board, and the relevant local authority. This procedure entails a review of the proposed planning application resulting in a formal decision of the Board as to whether the application constitutes a reasonable basis for an application under section 4 of the 2016 Act or whether further consideration and amendment is required in order to constitute a reasonable basis for an application under section 4.

The public is not permitted to review the file at this stage nor is it permitted to submit observations. However, it is clear that this is a formal part of the procedure and involves a critique of the application with the opportunity for the local authority and the Board to comment on the content of the documents to be submitted to the next stage of the procedure and for the local authority to issue an opinion.

It is particularly clear that environmental issues and concerns may be raised at this point and that the consultation has an influence on the contents of the EIAR, AA Screening report and NIS.

By analogy with *An Taisce v An Bord Pleanála and others* [2020] IESC 39 and taking into account the overall SHD scheme, the procedure is incompatible with the EIA Directive. In particular, when an application is made following the mandatory consultation, the Board has a mandatory deadline of 16 weeks to make a decision¹ (and only 11 weeks after the closure of public submissions). There is no possibility for the Board to request further information following receipt of public observations. Therefore, the Board’s consideration of observations from the public and statutory consultees cannot lead to a request further information or otherwise to modification of the application. The content of the planning application is definitively and finally decided at the start of the application stage with no other options possible based on the decision made by the Board at the end of the consultation stage.

There is no possibility that the public can submit its own observations or provide its own environmental information to inform the earlier step in the procedure. Therefore, in this case and presumably for all SHD cases public participation does not and did not take place at the earliest opportunity when all options remained open rendering the procedure unlawful as a matter of EU law.

Compliance with 2016 Act – material contravention in relation to zoning

Under section 9(6)(b) of the 2016 Act, the Board is precluded from granting planning permission where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned in relation to the zoning of the land.

The proposal constitutes a material contravention of all three zoning objectives on the site.

The land zoned A2 Residential zoning is qualified as ‘Residential Phase II (Post 2019)’ and not available for residential. The issue of whether this qualification in the Meath County Development Plan (2013-2019) (as varied) (the “CDP”) cannot be materially contravened under section 9(6)(b) is currently before the High Court in *Highlands Residents Association and anor v An Bord Pleanála and ors* 2020/238 JR with judgment expected before 18 December 2020.

¹ Unless, exceptionally, there is an oral hearing.

The proposed development on F1 lands is also a material contravention in relation to the zoning of the land. This area is part of the Grange Rath Estate with a proposal to construct a new access point and bridge over the railway line. It is well established that use of a particular piece of land is determined by reference to the principal use, and uses which are ancillary to the principal use are regarded as being part of, or subsumed within, the principal use². In this instance the access via Grange Rath is clearly ancillary to the proposed housing development since it provides an access point and connection to the adjoining estate. The principal use of the proposed development on F1 land cannot be described as providing for and improving open spaces for active and passive recreational amenities.

Finally, for the areas zoned WL – white lands the zoning objective needs to be read in conjunction with the explanation at page 38 of the consolidated CDP:

White Lands are identified in in 4 statutory land use plans which are the former Navan Development Plan, Drogheda LAP, Maynooth LAP and the written statement and land use zoning objectives for Gormanstown (sic) contained in Volume 5 of the County Development Plan. These are strategic lands and their designation is to allow for a long term, integrated approach to the taken to the expansion of an urban area. It is not generally envisaged that development proposals will be brought forward during the life of this Development Plan for such lands. No indication is therefore generally offered regarding the suitability or otherwise of individual uses on said lands within this Development Plan. Should the Planning Authority be satisfied that a project proposed for lands with a white land designation would assist with the implementation of the Economic Strategy, these lands can be released for employment creating development during the plan period in accordance with the Economic Strategy. White Lands can only be released where it would lead to significant employment creation, or which cannot reasonably be accommodated on other employment zoned land. (emphasis added)

It is clear therefore that the proposal constitutes a material contravention of the WL zoning since the proposed development, a housing development, does not meet the requirements of the CDP for release of WL zoned land.

Section 9(6) does not permit the Board to amend the proposed development to remove development that would otherwise materially contravene the CDP in relation to zoning – once even part of the application contravenes the development plan in relation to zoning the Board's has no jurisdiction to grant permission.

Therefore, based on any one, and indeed all, of the material contraventions identified above the application must be refused.

Material contravention – breach of SEA Directive.

Without prejudice to the above, if the Phase II qualification does not form part of the zoning it is also impermissible as a matter of EU law to grant permission for an EIA project that falls outside the framework of the CDP by granting permission for a development that is expressly precluded under the CDP.

This is because the CDP and Variation No 2, which were both subject to SEA set the framework for future development consents under the EIA Directive. The idea of “setting the framework” embodies the notion that the concept of plans or program relates to any measure which establishes by defining rules and procedures for scrutiny to the sector concerned, a significant body of criteria and detailed

² Heather Hill Management Company CLG v An Bord Pleanála and others [2019] IEHC 450, paragraph 119

rules for the grant and implementation of one or more projects likely to have significant on the environment.

CJEU case law indicates that any measure allowing derogations from such plans and programs must itself satisfy the requirements of the SEA Directive (Directive 2001/42/EC). In the instant case the 2016 Act purportedly gives An Bord Pleanála powers to grant permission in material contravention of the CDP. In essence this represents a form of derogation condemned by the CJEU and is therefore incompatible with EU law.

The Board has a duty under the *WRC* case³ to disapply conflicting EU law. As explained in *An Taisce*, the Board does not have to go further and positively create a regime that is compatible with EU law. Equally it is not for my client to define how such a scheme might operate.

Material Contravention – criteria are not satisfied.

Further, and also without prejudice, the developer has not made the case for a material contravention based on the criteria cited in sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000.

In general, since this is an exceptional power, it must be interpreted strictly and restrictively. The development plan is of central importance to our planning system and constitutes a contract between the people and the state in relation to development. A breach of this contract should only be permitted in exceptional circumstances based on clearly defined policy or law and for specific and well understood reasons.

Part (i) – Strategic or National Importance

The developer claims that the mere fact that the proposal qualifies as strategic housing development is sufficient to meet this criterion. This cannot be the case, if the legislature had intended to give the Board powers to grant permission in material contravention of the relevant development plan (other than in relation to zoning) for all SHD developments then it would have made this explicit and it would not have been necessary to provide for the four options in section 37(2)(b). It is therefore clear that to qualify under this part of the exception the applicant must point to something more than the mere fact that the proposal is for a strategic housing development.

It should also be pointed out that the development plan itself defines what is strategically important, it is hard to understand how a proposal to materially contravenes the development plan could ever be something that is “strategically important”.

Part (iii) – Having regard to the RSES, S28 guidelines, S29 policy directives etc.

The gist of the developer’s arguments here is that there is a need for more houses, there is still room for more houses within the scope of the current development plan and that Drogheda has been identified for growth, therefore a material contravention is warranted.

The developer doesn’t explain why there is such urgency that it cannot wait for the new development plan to be adopted in the coming months (this would also give it time to carry out appropriate surveys and analysis in relation to the Boyne Estuary SPA – see below). It seems obvious that the most appropriate way of ensuring consistency with the NPF and RSES is for the developer to wait until the new Meath CDP is adopted in May 2021.

The NPF and RSES are high level strategic plans at national and regional level. There is very little in them that can be seen to apply to specific projects since the clear legislative intent is that these

³ Case 378/17 *Minster for Justice v Workplace Relations Commission*

plans should be implemented via the development plan and the Core Strategy leaving it to the democratic plan-making functions of local authorities to set out the precise details of how the plans should be implemented in their functional areas.

The developer has not identified how the current CDP is inconsistent with the NPF and RSES or other guidelines to the extent that a material contravention is needed. In fact what seems to be put forward as justification are some selected excerpts from these plans without any consideration of the overall strategic context.

In fact, the RSES places significant emphasis on the fact that Drogheda should be developed under a statutory Joint Urban Area Plan (UAP) which will be prioritised. This will ensure that a coordinated approach is taken to future compact growth, sustainable development, and investment to enhance Drogheda's role as a compact Regional Growth Centre. The UAP will identify a functional urban area and plan boundary for the plan area and strategic housing and employment development areas and infrastructure investment requirements to promote greater coordination and sequential delivery of serviced land for development.

It would therefore be premature and contrary to the RSES to grant permission in material contravention of the current CDP until such time as the UAP is adopted. The proposal, if granted, would introduce residential development on the far side of the natural boundary of the railway line and could end up being isolated if the outcome of the UAP considered that the lands in this area were not suitable for development or were to fall outside the boundary of the plan area. This may well be the case for planning reasons as well as environmental reasons given the sites proximity to and suitability as an *ex-situ* site for the Boyne Estuary SPA.

RPO 4.2 of the RSES is also relevant. It requires infrastructure and investment priorities to be aligned with the spatial planning strategy of the RSES and requires housing development to be planned on a phased basis in collaboration with infrastructure providers to ensure adequate capacity for services.

The proposed material contravention is directly contrary to this RPO – there is no evidence of collaboration with infrastructure providers. Indeed, there are serious transport bottlenecks in the area due to two decades of high levels of house building in South Drogheda and under-investment in infrastructure. The road network connecting to the M1 is almost at its theoretical maximum capacity (see below) and the DART extension to Drogheda is several years away.

Overall, the RSES must be interpreted as being against a material contravention that seeks to accelerate an isolated housing project without regard to the underlying strategic objectives, in advance of the UAP and without the required collaboration with infrastructure providers.

SEA Directive/Habitats Directive – Urban Design Framework Plan invalid

It is noted that the Urban Design Framework Plan qualifies as a “plan or program” under the SEA Directive because it was approved (i.e. adopted) by Meath County Council under the Local Area Plan for the Southern Environs of Drogheda 2009 – 2015 in order to safeguard the proper and sustainable development of the Mill Road/Marsh Road area.

The fact that it is not a statutory plan does not affect this since the SEA Directive applies to plans and programs that are required by “legislative, regulatory and administrative provisions”. The Local Area Plan for Southern Drogheda 2009 to 2015 is such a provision since it is based on an objective of the statutory local area plan.

Equally the fact that it is not mandatory is not decisive since guidelines are also considered to be plans and programs in addition to measures that have mandatory elements. In fact, it is not even

necessary for a plan or a program to lay down any positive requirements at all for it to be within the scope of the SEA Directive.

In any event the developer itself⁴ characterises the UDFP as “*setting out a vision and framework for the mixed-use development of the lands at the Mill Road/Marsh Road*”. The developer goes on to say that “*The UDFP acts as a framework for the development of the lands ensuring the delivery of a high-quality mixed-use development*”.

Equally the Board considers the UDFP to set the framework for development in the area. In case PL17.235818 the Board refused permission for the construction of a road connecting Marsh Road with Colp Road including site development works at Townlands of Colp West, Stragrennan and Stameen West of Mill Road, Drogheda, Co Meath. Permission was refused on two grounds, one of which was expressed as “*The proposed distributor road would be premature, pending the approval of an urban framework plan and the determination of a roads layout for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.*”

It is also clear that the UDFP must be subject to appropriate assessment. The plan area is ecologically connected with the Boyne river and several European Sites and it is an area identified as supporting certain of the SCI associated with the Boyne Estuary SPA.

Since the plan was adopted in breach of the SEA and Habitats Directives, the UDFP is invalid and therefore can have no effect. For this reason, the Board must reject the application for the same reasons that it gave in case PL17.235818.

Habitats Directive – Appropriate Assessment

The previous application was refused for the sole reason that the Board could not be satisfied that the project would not adversely affect the integrity of the Boyne Estuary SPA in view of the site’s conservation objectives and qualifying interests.

The developer has now submitted an application which appears identical to the previous one with a revised AA which screens our *ex-situ* effects on the SPA but screens in impacts during the construction phase on the Boyne Coast and Estuary SAC and the Boyne and River Blackwater SAC and the Boyne Estuary SPA due to increased human presence in the area.

However, as we show below neither the AA Screening Report nor the NIS nor other documents on the file provide adequate information for the Board to reach a conclusion required under both sections 177U and 177V of the 2000 Act.

Appropriate assessment must be carried in view of the best scientific knowledge, so in this case the question is: What is the “Best Scientific Knowledge”?

The first observation is that neither the AA Screening Report nor the NIS describe what constitutes the “Best Scientific Knowledge” in relation to the *ex-situ* locations. This is surprising given that the assessment must take place in view of this knowledge. It appears that the science relating to *ex-situ* locations in East Meath is not well understood.

In order to gain clarity on the issue, the writer filed an AIE request with the NPWS on 23 September 2020 asking it to (a) set out what it considered to be the best scientific knowledge relating to *ex-situ* locations relative to the Boyne Estuary SPA and the River Nanny Estuary and Shore SPA; (b) provide the most up to date surveys or studies of these locations; and (c) details of what surveys or methodology it would recommend should be employed by a developer when drafting an EIAR, AA

⁴ Planning report paragraphs 1.25 and 1.26

Screening report or NIS. After some clarification, the NPWS responded to say that the request was “complex”, that the information could not be provided in time to make this submission and that it may even need to extend the time to respond by an extra month due to the complexity.

Nonetheless, Protect East Meath identifies the following as its view of the best scientific knowledge.

The starting point is the documents published by the NPWS, i.e. the conservation objectives and supporting documents. Starting a page 29 of the Supporting Document there are tables outlining the main features of the Species of Conservation Interest (“SCI”) including numbers, foraging distribution, and roosting distribution. From this it appears that Golden Plover and Lapwing as the most likely to use arable land and grassland for foraging, although Black Tailed Godwit may use grassland for foraging.

Page 43 deals with displacement and the effect this can have. The document notes that the effect of even short-term displacement should not be underestimated and that it can have knock on effects. Heavy disturbance may lead to displacement that is equivalent to habitat loss and may even have consequences at population level.

At page 44 it is noted that waterbird behaviour is complex, and the review is merely a starting point for any future study.

The conservation objectives for the species are set out in an associated document. For both Golden Plover and Lapwing, the distribution, range, timing and intensity of use of areas is the measure against which the target of no significant decrease in the range, timing or intensity of use of areas is to be assessed.

In terms of seasonality the documents refer to the core survey months of September to March (page 10 and footnote 16 on page 16) which is the main wintering period when many species occur in their largest concentrations.

Gillings and Fuller⁵ have published a detailed examination of the two principal ex-situ species at issue in this observation i.e. Golden Plover and Lapwing⁶. The following facts can be extracted from their research:

- Golden Plovers have an affinity for grassland whereas Lapwing utilise a wider range of habitats.
- The population of each peaks in November to January and drops off in March when Spring migration starts.
- Both species can be found on winter cereals, bare till and on a variety of grassland types.
- The abundance of potential prey items present in different habitats is likely to be an important factor shaping the distribution of plovers between fields.
- Prey is likely in vegetated fields than bare till because the vegetation insulates the soil surface and creates a microclimate for soil invertebrates which will otherwise be buried deeper.
- Plover distribution is positively correlated both with the biomass of earthworms and with field age
- Birds will move to different habitats to feed depending on the time of year and the temperature
- Soil factors play a part because birds feed on soil invertebrates

⁵ BTO Research Report No 224 “*Winter ecology of golden plovers and lapwings: A review and consideration of extensive survey methods*”

⁶ The paper refers to these two species as “plover”

- Loss or degradation of habitats means that flocks cannot stay in the same place all winter and they may be forced to shift to other areas.
- Birds can move between fields up to 12km apart
- Flocks are extremely mobile within winters
- Birds may use an area for several weeks and then move to another area several km away
- Over a 10-year period in Buckinghamshire birds not only shifted locations within winters but also used different groups of fields in different winters. One cannot determine numbers by simply visiting fields where the species has been recorded in the past, indeed the whole notion of traditional sites needs to be treated with caution.
- It is very difficult to identify a site containing suitable habitat. The main implication is that it is extremely easy to reach the conclusion that birds are not present within an area that may, in fact, support a large number of birds.
- For species like Golden Plover and Lapwing we have insufficient understanding of habitat selection to derive a list of suitable sites based on habitat characters.
- One way to survey is to search large areas preferably in a synchronised manner, the problem is that this requires huge manpower effort.

Bibby et al⁷ is the definitive reference for Bird Census Techniques.

It defines methodology for dropping counts (page 160), look-see counts (page 161) and Habitat Surveys, particularly grassland habitats (page 260).

Gilbert et al⁸ is an authoritative text on bird monitoring methods. It describes generic wintering bird monitoring methods and indicates that there should be one count per month on predetermined dates with January being the most important for inclusion in the IWC.

Critique of AA Screening report and NIS

Overall, these reports lack a rigorous description of the study objective and do not provide a basis justifying the methodology used. The overall premise seems to be aimed at establishing that the development site no longer has habitat suitable for use by SCI and that it is not currently in use by SCI. From this the developer concludes that there are no likely significant effects on the SPA and there will not be an adverse effect on the integrity of the site.

It is immediately apparent that the survey method is not complete since it took place between 20 February and 2 April 2020, i.e. the survey did not cover a complete season and did not even take place at the peak within the season. The developer offers no justification for this omission other than it did not suit its own timetable. Clearly the developer's desire to submit a planning application before completing the necessary survey work represents a serious gap in the scientific analysis and is not a "limitation".

It is apparent from the work of Gillings and Fuller that the lack of observation during one month of one season is not conclusive as to whether a location is capable of supporting SCI. Therefore, very little information can be drawn from the bird surveys - they are certainly not sufficient to justify screening out ex-situ effects on the SPA given the low threshold at screening stage.

Notwithstanding Gillings and Fuller's observations that habitat surveys alone cannot be used to assess plover, the habitat surveys presented by the developer are also not conducted according to a recognised methodology. The Developer discloses in chapter 5 of the EIAR that it used the technique in *Best Practice Guidance for Habitat Survey and Mapping* (Smith et al., 2010). However

⁷ Bibby et al, Bird Census Techniques 2nd ed (2000, Academic Press)

⁸ Gilbert et al Bird Monitoring Methods (1998, Pelagic Press)

this methodology is not suitable for surveying bird habitats. This requires much more detailed surveying looking at elements of the habitat that are particularly relevant for specific bird species, including vegetation height, soil characteristics and abundance of food sources. Similarly, the *Fossit* classification cannot be used to draw any conclusions about the suitability of a specific location for the Golden Plover or Lapwing.

There is some suggestion in the AA Screening report that there were bird surveys in 2018 and 2019, however it is clear from the reasons grounding the refusal of the first application that this was not the case. There is also a suggestion in the AA Screening that dropping count observations can be extrapolated back to October whereas the NIS says that such counts can only give information in relation to the preceding weeks. In any event it does not seem to be that case that the detailed characterisation work set out by Bibby has been undertaken to ground a study in relation to the presence or otherwise of droppings, equally the work of Gillings and Fuller indicates that isolated surveys are not sufficient.

Also in relation to habitats it appears to be the developer's case that up until July 2019 the site was a suitable *ex-situ* location (the developer states that it is "*no longer considered to be of value as an ex-situ site*") but the "landowner" (i.e. a company connected with the developer) has now decided to permanently cease agricultural use of the land thereby rendering it unusable to SCI in the space of just over six months. This cessation of use cannot be split from the project since the cessation of use is obviously something that the developer has done in anticipation of starting construction work. This change must be appropriately assessed as part of the overall project.

Looking at the baseline, there is no overall characterisation of the extent and nature of *ex-situ* locations supporting SCI species, while the NPWS documents set out details of the nature and extent of the habitat within the SPA itself, there is no detailed information available to characterise the extent of the *ex-situ* sites which support SCI. In the application, the developer's site is examined in isolation with a glib statement that there are other suitable habitats elsewhere. This may or may not be the case but there is no systematic investigation presented on this point. The effects on the integrity of the SPA need to be assessed in relation to the overall integrity of the site and its capacity to support particular species. As pointed out in the supporting documents permanent displacement may have serious effects on the integrity of the site. Gillings and Fuller observe that the use of *ex-situ* sites by Golden Plover and Lapwing is extremely dynamic and wide ranging. It is therefore clear that a basic habitat survey and a monitoring survey of the site during the last month of one season in no way can be said to be capable of supporting rigorous scientific conclusions.

The AA Screening Report does not identify likely significant effects due to *ex-situ* habitat loss, yet there is more detailed discussion of this aspect in the NIS, this is unexplained. However, it seems reading the documents as a whole that *ex-situ* effects are screened out. Given that there is a fairly low threshold for screening, the lack of scientific methodology means there is a real doubt about the potential for significant effects due to *ex-situ* habitat loss which means that the Board does not have sufficient information to make a lawful screening determination on this application and it should request more information in order to conduct a stage II assessment.

The Stage II appropriate assessment that is presented is also questionable. Several factors relating to disturbance due to walkers with or without dogs are not correct or inconsistent. For example, the SPA supporting documents note that even during winter there was significant walking activity affecting the SPA whereas the developer justifies its conclusion based on an observation that there is less human activity during this period. The NIS states without any underlying data that there is suitable other foraging habitat that is inaccessible to human activity but then goes on to conclude that there will be no displacement. This is not internally inconsistent or support by data. This observation is also inconsistent with the supporting document's warning that certain SCI are

extremely sensitive to disturbance and that permanent displacement is tantamount to habitat loss. This aspect is not quantified or assessed in relation to the integrity of the site. There is no estimate of the increase in walkers presented. Also no account is taken of the proposed Boyne Greenway, which is also before the Board⁹. With alternative recreational areas, there is no analysis as to why this would be material, given that when the initial studies were done in 2011/2012 there were also alternative recreational areas in the locality yet this did not affect the conclusions as to disturbance.

Overall neither the AA Screening report nor the NIS can support lawful stage 1 or stage 2 appropriate assessment determinations.

EIA Directive – traffic impacts and other indirect effect

The final point Protect East Meath would like to make concerns vehicular traffic, in particular the lack of capacity on the R132 which passes through the village of Julianstown and which is the main route between the proposed development and the M1 at junction 7.

This was a concern that it raised in its submission on the developer's first application where it provided detailed analysis of traffic volumes in the village of Julianstown and showed that the volumes were exceptional and serious and growing. Since then it has commissioned a study¹⁰ of the capacity of the R132 link road which found that it is now operating at 91% of its theoretical maximum capacity whereas such roads are recommended to have 15% spare capacity to allow for normal fluctuations. In fact the capacity of the R132, as the Main Street in Julianstown will be lower due to the reduced speed limit and the presence of junctions with the R150 and at Whitecross.

Unfortunately, this information could not be introduced to the procedure at an earlier stage where it could have informed the scope of the EIAR. If it had been possible, Protect East Meath could have made the case for a detailed analysis of the capacity of the R132. It seems that the developer is cognisant of the issue with Julianstown but has only addressed it in a perfunctory way. In the transport assessment it admits that Julianstown is outside the study area but nevertheless indicates that the development will cause significant traffic increases in the village but less than 5% which it states is a threshold set by the NRA for triggering Transport Assessments.

The developer seems to have overlooked that in the guidance, this threshold is subject to the following caveat "*In locations that experience particularly heavy congestion and when traffic flows from a proposed development are less than 5% of the traffic flows on the adjoining road, a Transport Assessment may still be required. When in doubt, the requirement for a Transport Assessment should always be scoped with the relevant local authority.*" It appears that this scoping was not done even though the developer has demonstrated specific awareness of the traffic issues in Julianstown. Its failure to take into account the NRA guidance in relation to heavily congested roads is a serious omission from its analysis and undermines the usefulness of the EIAR as a document from which reasoned conclusions can be drawn in relation to significant effects on the environment.

Had the developer given proper consideration to the traffic levels in Julianstown and engaged with Meath County Council it would have become aware that Meath County Council's analysis¹¹ has identified the need for a Julianstown bypass and has now introduced a new objective into the draft County Development Plan:

⁹ For reference Bird Watch Ireland's submission on the Greenway project is attached since it sets out in some detail that organisation's concerns in relation to the SPA – Annex 1

¹⁰ Annex 2

¹¹ Copies included in Annex 3

JUL OBJ 12 - To examine the feasibility and progress the design and delivery of a preferred option for the Julianstown Bypass in conjunction with relevant stakeholders.

Despite traffic levels being generally at 10% of the previous year's levels due to COVID, morning congestion in the village is leading to a 2km traffic queue which takes up to 20 minutes to clear (i.e. an average speed of 6km/h through the village). A video of a typical morning commute through the village is presented to show the extent of the issue¹². The hourly volume when this video was taken was 900 vehicles travelling south towards M1 Junction 7¹³.

Further analysis showing AADT growth since 2013 is also provided with a full range of statistics available at <https://www.nratrafficdata.ie>¹⁴

We also present a petition¹⁵ containing almost 600 signatories asking for Julianstown to be made traffic free together with comments from people who signed the online petition.

It is clear that this level of traffic is fundamentally incompatible with the quality of life and amenity of Julianstown and compromises the health of Julianstown residents. Noise mapping under the Environmental Noise Directive shows noise levels exceeding all safe indicators¹⁶. Based on this the village environment has no more capacity for extra traffic from this proposed development.

It is understood that the Joint Urban Plan described in the RSES will include a wider transport study of the Drogheda area which will include an examination of the traffic flows in Julianstown. It would therefore be premature to grant permission before the results of this study are available and the Urban Plan is adopted.

The Board is asked to examine the effects of extra traffic on Julianstown and to reach a reasoned conclusion that there are significant adverse effects on the environment in Julianstown due to the direct and indirect impacts from vehicular traffic and integrate this into the reasoned conclusion of the Board. In Protect East Meath's view the Board has little discretion on this issue given that it relates to human health and well-being. Therefore, it must refuse the application as being premature pending the construction of a bypass for the village of Julianstown.

Conclusion

For the reasons set out in this letter the application should be refused.

Yours sincerely

Fred Logue
Principal

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¹² Annex 4, also available at <https://www.youtube.com/watch?v=WPMr6XtJhbY>

¹³ See hourly Southbound volume 29 September 2020 (from www.nratrafficdata.ie) Annex 5

¹⁴ Annex 6 shows annual growth in AADT since 2013

¹⁵ Annex 7

¹⁶ See <https://www.tii.ie/technical-services/environment/noise-maps/>

Annexes

1. Birdwatch Ireland submission on Boyne Greenway application (ABP Ref 307652)
2. SLR Traffic and Transport Study, February 2020 (Full version with appendices on CD)
3. Meath County Council Julianstown traffic analysis, including preliminary business case
4. Video of morning commute through Julianstown (on CD only).
5. TII hourly Southbound traffic flows on 29 September 2020 when the video was shot
6. September AADT 2013 to 2020- Julianstown
7. Petition calling for traffic free Julianstown