Our Case Number: ABP-320164-24

Your Reference: Carmel Dowling

An Bord Pleanála

Sheehan Planning
44 Balnagowan
Palmerston Park
Dartry
Dublin 6
D06 DC98

Date: 06 November 2024

Re: DART + Coastal North Railway Order 2024 - Northern Line between Dublin City Centre and Drogheda including the Howth Branch
Dublin City Centre and Drogheda, located in counties Dublin, Meath and Louth

Dear Sir / Madam,

An Bord Pleanála has received your recent letter in relation to the above mentioned case. The contents of your letter have been noted. Please accept this letter as a receipt for the fee of €50 that you have paid.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in relation to the matter 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,

Aisling Reilly
Executive Officer
Direct Line: 01-8737131

RA03

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

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Sheehan Planning

44 Balnagowan, Palmerston Park, Rathmines, Dublin 6

| 087 900 6525 |

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

22nd October 2024

Dear Sir/Madam

Re: DART+ Coastal North Railway Order – Submission/Observation

[By hand]
ABP Ref.: 320164

1.0 INTRODUCTION

We[1] act for and make this observation/submission on behalf of Carmel Dowling[2], Teresa Dowling[3] and Mary MacLoughlin[4] ('Clients') who are landowners whose lands are subject to being compulsorily purchased as part of the Railway Order Application.

We are instructed that:

- Our Clients are the joint owners of lands referenced in the CPO/Railway Order documentation which are shown on plan no. Server Map Plan no. DCN-SM-005555-5022) as proposed to be: permanently acquired (Ref. DCN.5022.P.4(A)); temporarily acquired (Ref. DCN.5022.T.4(A); and where a temporary right of way is to be acquired (Ref. DCN.5022.4T.4(A).

- Whereas our Clients are not identified as the owners or reputed owners of the lands referenced in the Schedule to the Railway Order they are joint owners of the lands referred to as property plan 5022 property no. P.4(A) in the second schedule (part 1), property plan 5022 property no. T.4(A) in the third schedule, and property plan 5022 property no. 4T.4(A) in the fourth schedule (Part 2).

- Works are also proposed to their lands as set out in Works Layout Plan 15 and that plan's associated Schedule titled 'Railway Order – Work Layout Plan No. 15 Skerries Station and Surrounds' which Schedule includes a short description of the works.

Our Clients are highly concerned that the acquisition of the lands and the associated works and development will adversely affect traffic safety in the area and considers that the Railway Order, if confirmed by the Board, would disproportionately impact on their property rights, will diminish the value of their property and is contrary to proper planning and sustainable development where it will give rise to traffic hazards and arguable contravenes the site's zoning objective.

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[1] John Sheehan, Sheehan Planning, 44 Balnagowan, Palmerston Park, Rathmines, Dublin 6, D06 DC98.
[2] Wayside, 10 Revington Circle, NCR, Limerick, V94 D26K.
[3] 5 Foxfrove, Skerries, Co. Dublin K34 RW30.
[4] Tougher Hill, Milveton, Skerries, Co. Dublin, K34 ND66.

Our Clients are also concerned that the extent of the proposed land take and/or works is greater than that which had been explained to our Clients by agents and/or servants of CIE prior to the submission of the application for the Railway Order.

Our Clients object to the Railway Order Application and calls on the Board to refuse to confirm and/or refuse to grant the Railway Order Application and associated works.

More detailed particulars of the matters underpinning our Clients objection to the Railway Order Application are set out at 2.0 below.

As our Clients are landowners whose lands are subject to compulsory purchase/acquisition as part of the Railway Order Application we understand that no fee is payable for this objection. Without prejudice to this and out of an abundance of caution we have included payment of €150.00 processing fee which we understand might otherwise be payable (€50 euro per named person in this observation). You might kindly return/reimburse this fee to John Sheehan, 44 Balnagowan, Palmerston Park, Rathmines, Dublin 6 in the event that such fee is not payable.

2.0 OBJECTION

2.1 Background Information

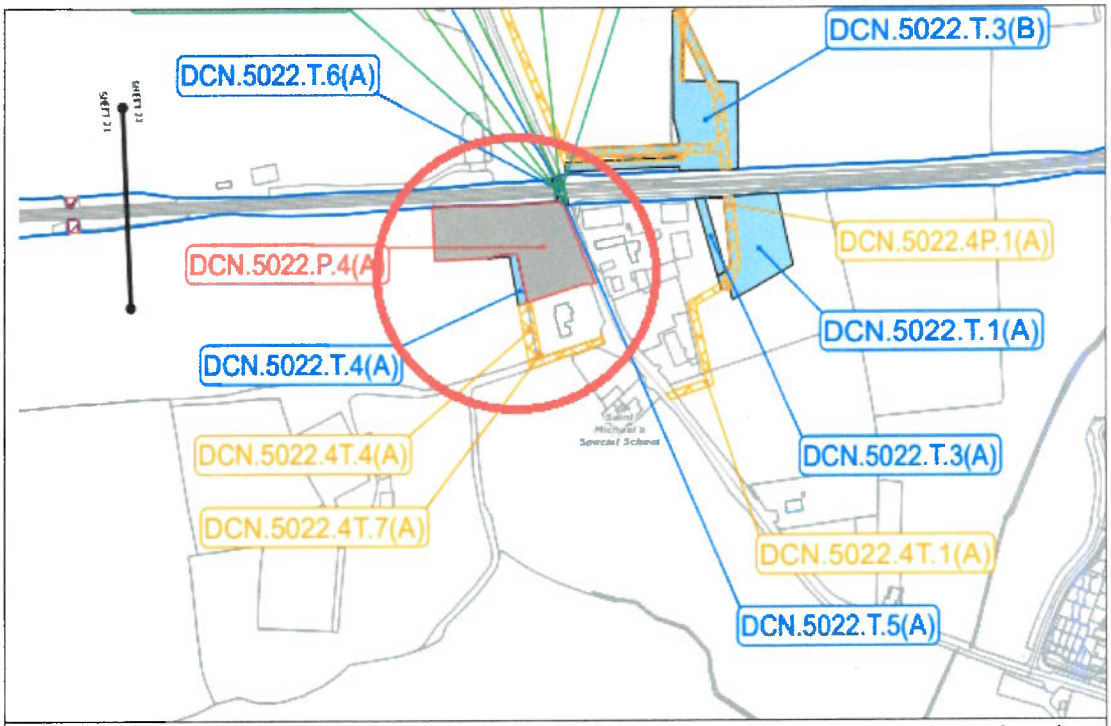

Figure 1: Modified extract from Book 2 Property Plan 22 showing the approximate location (outlined in red) of our Clients property which will be subject to CPO and affected by works associated with the Railway Order Application.

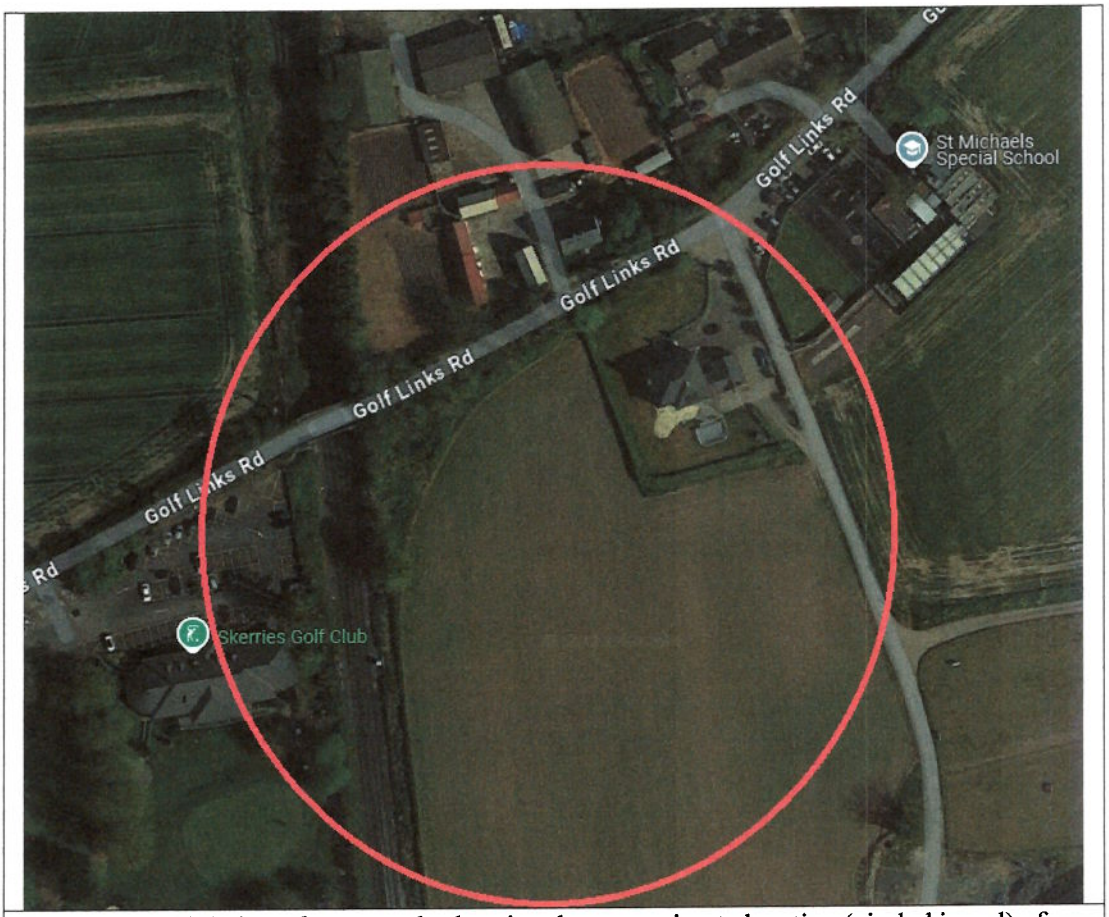

Figure 2: Aerial photo from google showing the approximate location (circled in red) of our Clients property and lands in the vicinity of the property that will be affected by the works and/or subject to compulsory purchase/acquisition associated with the Railway Order. When read together with the map in Figure 1 it can be seen it is proposed permanently acquire land directly adjacent to house and to acquire a permanent right of way around the house.

Figure 3: Photo of the dwelling shown on the aerial photo at Figure 2 taken from google street view. As can be seen road shown on the righthand side of photo the Golf Links Road rises to a humpback bridge which traverses the nearby railway line.

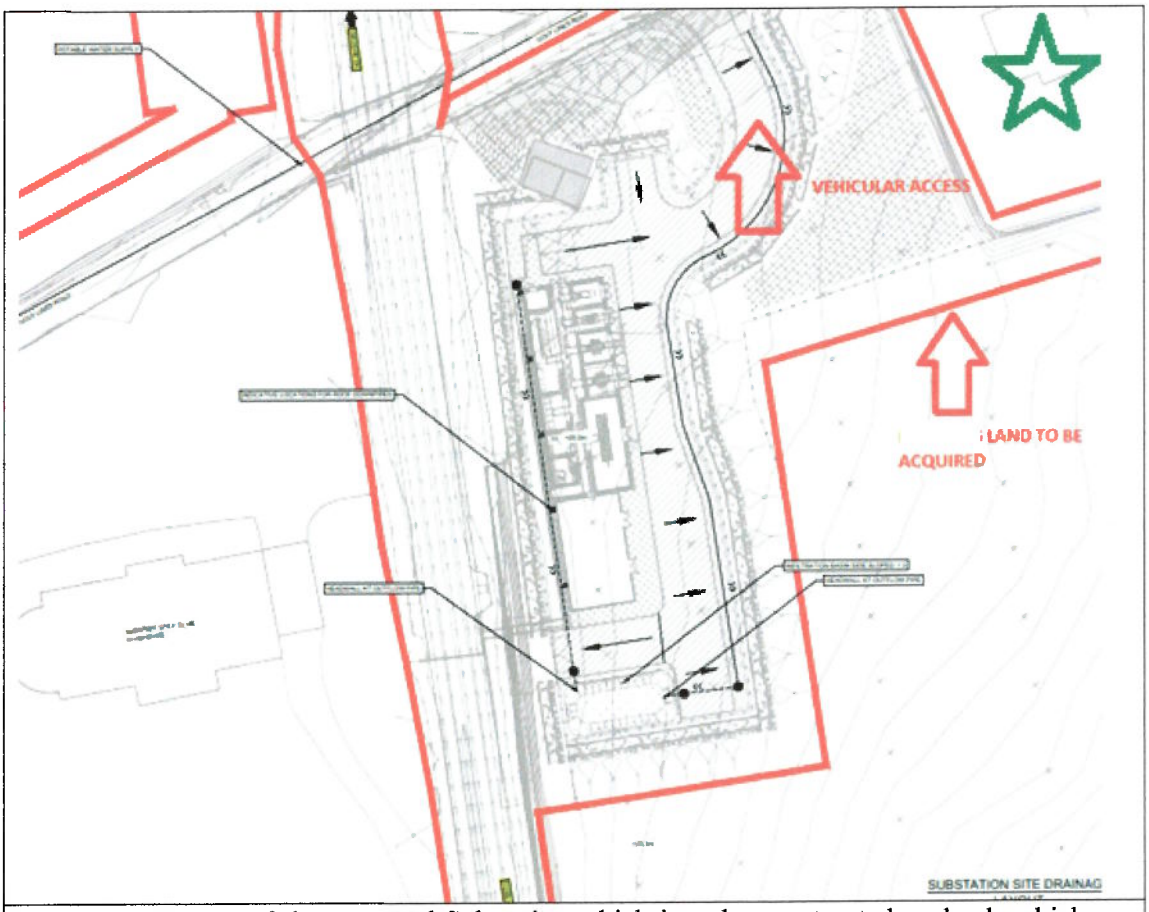

Figure 4: Layout of the proposed Substation which is to be constructed on lands which are subject to the CPO element of the Railway Order. Layout extracted from drawing no. D+WP56-ARP-P4-NL-DR-RO-000813 in the Specific Location 08 Booklet of drawings submitted as part of the application. It is evident from the drawing that a vehicular access point is proposed directly from the lands to the Golf Links Road. It is unclear therefore why a right of way, which will run behind and may interfere with access from the house (green star) to the field to the rear of the adjoining house is necessary or proportionate having regard to constitution protections afforded to private property rights.

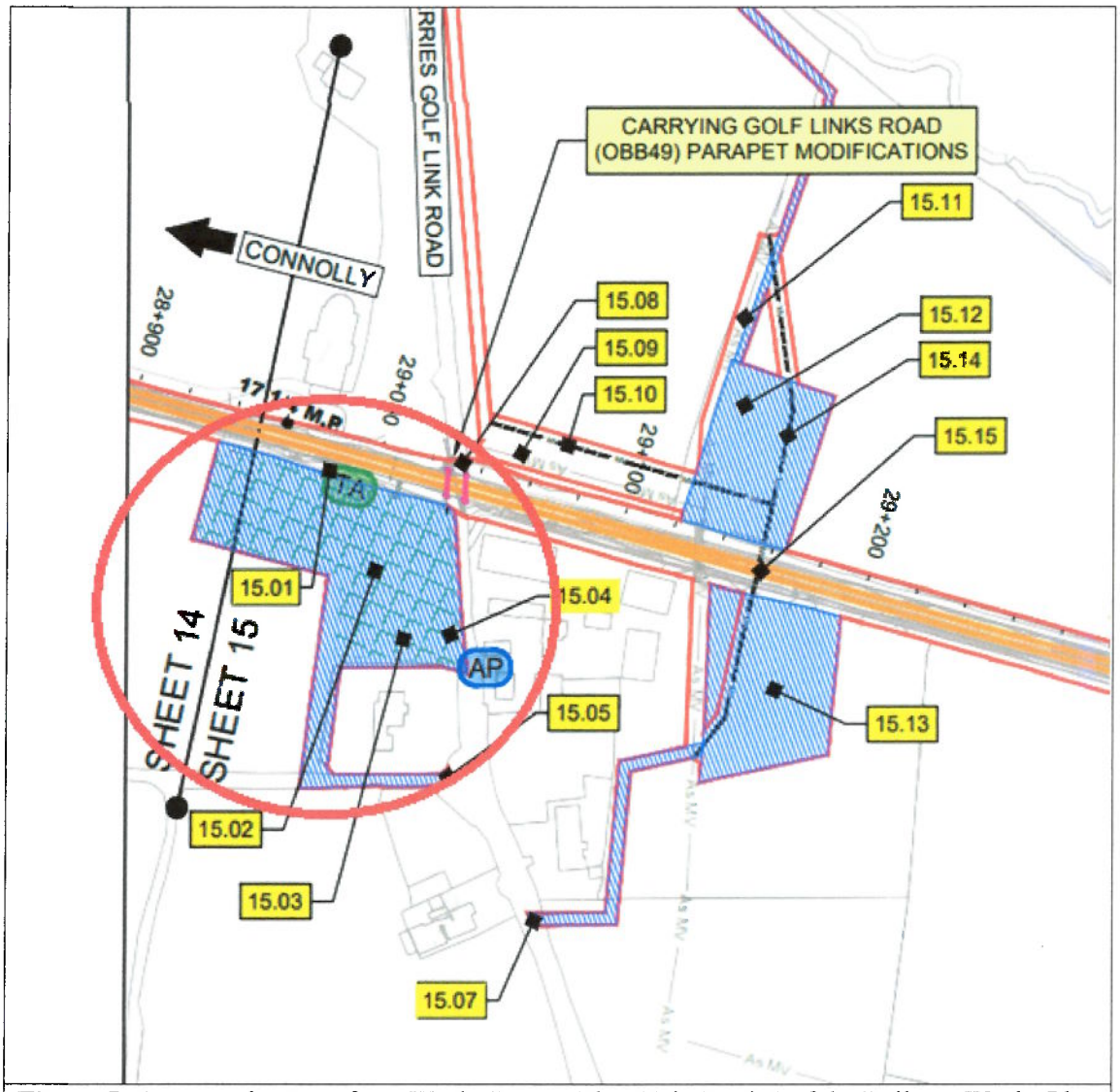

Figure 5: Annotated extract from Works Layout Plan 15 in Book 1 of the Railway Works Plan (approximate area our Clients lands subject to the works are circled in red). It cross references a schedule of works (extract at Figure 6). Work refs. 15.01, 15.02, 15.03, 15.4, 15.05, TA (existing track access point) and AP (proposed compound access point) are proposed on our Clients lands.

Railway Order - Works Layout Plan No. 15
Skerries Station and Surrounds

Works No.	Description	Plan No.
15.01	Proposed Track Access via. South Skerries substation compound as per 15.02.	Works Layout Plan No. 15
15.02	Construction of Skerries South electrical substation compound to enable electrification of the line. It will located within a dedicated compound accessed via Skerries Golf Link Road (as described in 15.04).	Works Layout Plan No. 15
15.03	Establish a temporary construction compound to facilitate the construction of a permanent substation compound and new access road. The compound is outside of current CIE lands. Works will include fencing / hoarding, site offices, welfare facilities, storage facilities, workshops, parking and storage of certain construction plant and equipment storage required to carry out the works.	Works Layout Plan No. 15
15.04	Proposed access to permanent substation compound 15.02 shall be via Skerries Golf Link Road.	Works Layout Plan No. 15
15.05	Proposed access to temporary construction compound 15.03 shall be via. Private access road off Skerries Golf Link Road.	Works Layout Plan No. 15
15.06	Proposed access to temporary construction compound 15.12 shall be via. Skerries Golf Link Road.	Works Layout Plan No. 15
15.07	Proposed access to temporary construction compound 15.13 shall be via. Skerries Golf Link Road.	Works Layout Plan No. 15

Figure 6: Extract from the Railway Order – Works Layout Plan No. 15 Skerries Station and Surrounds schedule, which is cross referenced in Works Layout Plan 15 (extract of which is at Figure 5 above) and provides a description of the proposed works.

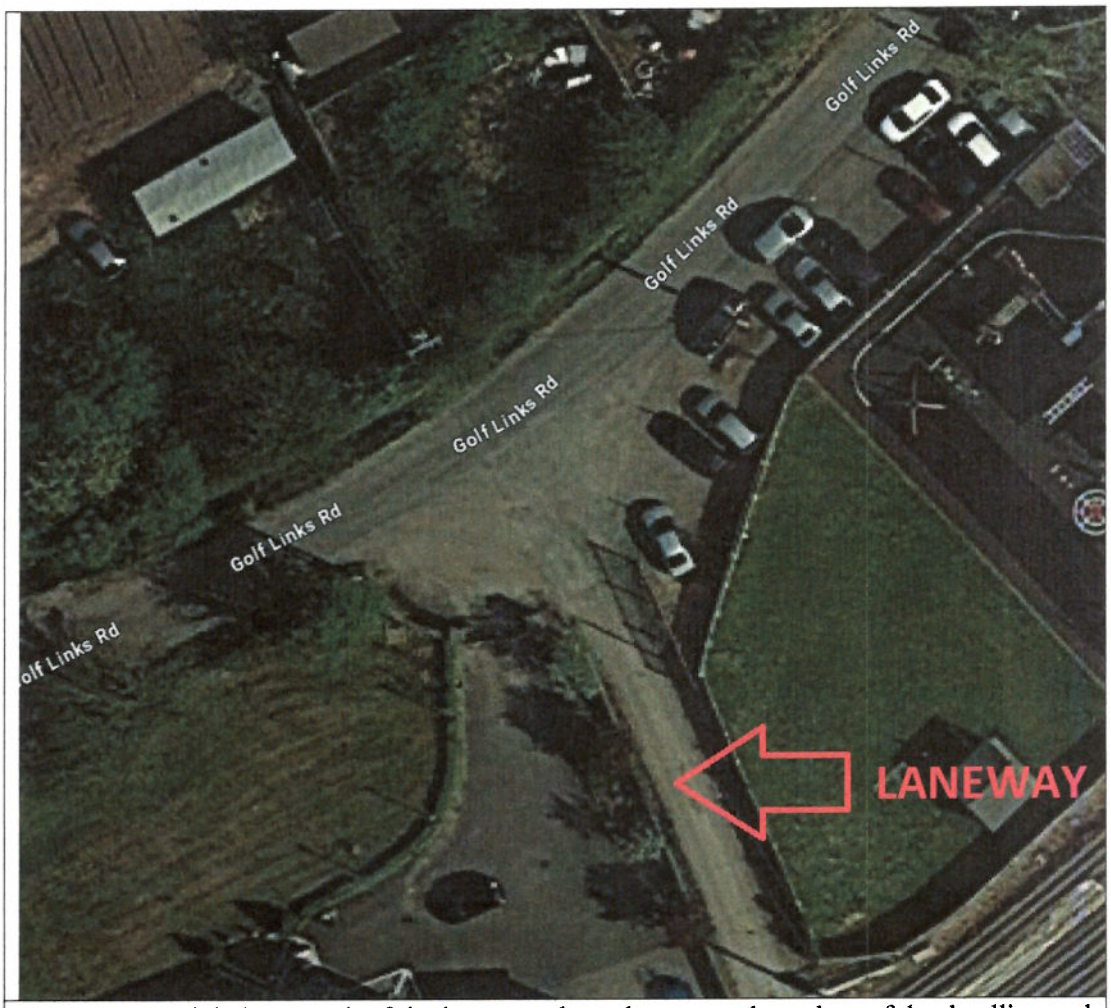

Figure 7: Aerial photograph of the laneway along the eastern boundary of the dwelling and over which approval for a temporary right of way is being sought. Whereas it might appear from the plan drawings of the area that there are setbacks from the Golf Links Road to the laneway, sightlines are actually restricted as the Golf Links Road curves and where the land to the front of St Michael's School is actively used for the parking of vehicles which obstruct sightlines. There is a concern that the use of the laneway by/on behalf of CIE would increase traffic hazards.

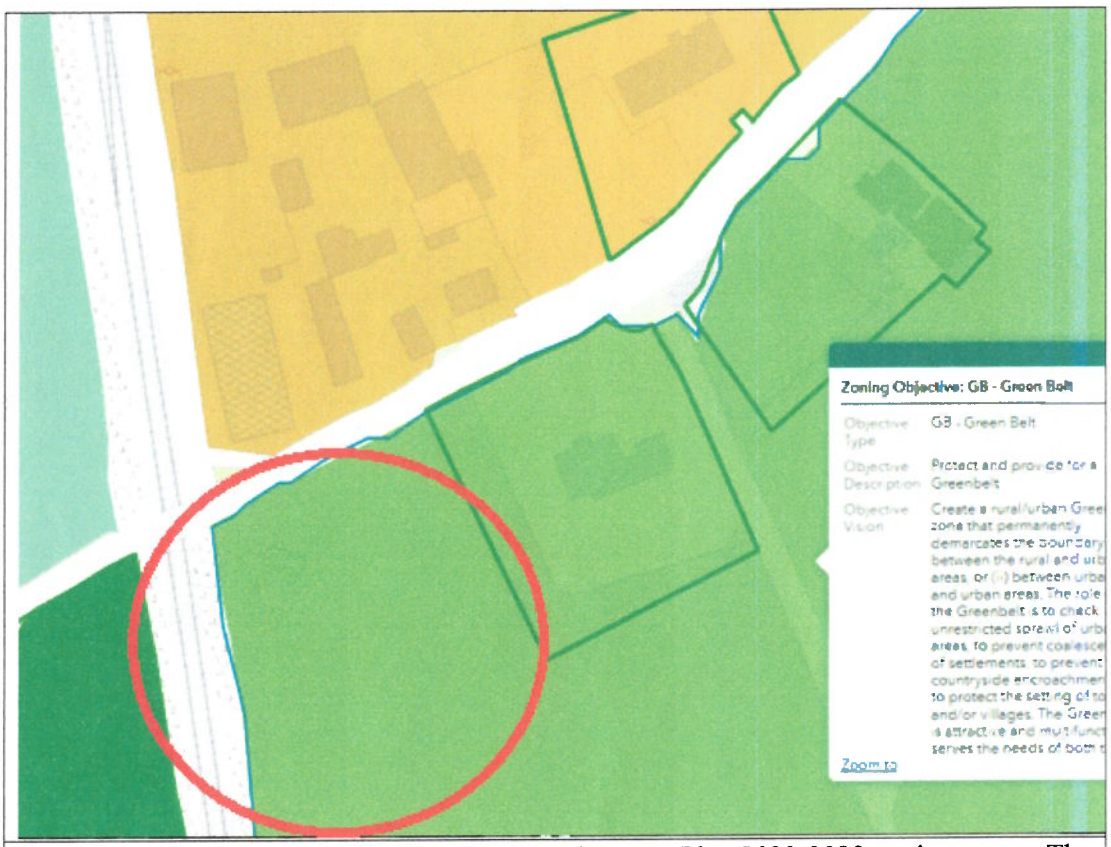

Figure 8: Extract from the Fingal County Development Plan 2023-2029 zoning maps. The approximate location of the land to be permanently acquired is circled in red. The land is zoned GB (Green Belt). Lands to the north are zoned RA (Residential).

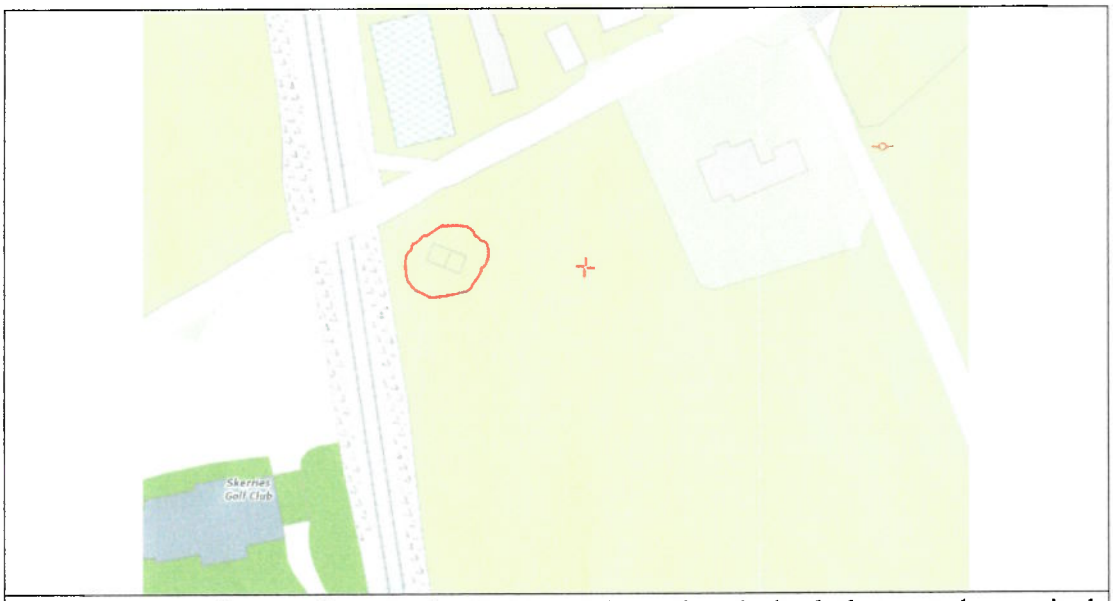

Figure 9: There is a derelict lodge (circled in red) located on the lands that are to be acquired as part of Railway Order Application. It is also shown on the Development Plan extract at Figure 8. It was formerly in residential use. The compulsory purchase of the lodge and the demolition of the lodge and its replacement with a sub-station will prevent our clients from refurbishing the lodge and bringing it back into use.

Discussions with CIE

Our Clients are concerned that the drawings submitted as part of the application envisage land take over and above what we are advised had been outlined to our Clients by a Mr Gary Keegan on behalf of CIE in advance of the submission of the application for the Railway Order Application and are of the opinion that the extent of land take subject to compulsory purchase/acquisition is excessive.

2.2 Objection

The Board will be aware of the relevant case law concerning the exercise of its powers of compulsory purchase of land. It is imperative that any constitutionally protected property rights should be affected as little as possible and any interference with those rights should be proportionate - see the Law Reform Commission's Issues Paper, 2017, 'Compulsory Acquisition of Land', where it refers, at pg 23, to a requirement that constitutional property rights be impaired 'as little as possible'.

It is also understood the relevant acquiring authority also must demonstrate that the compulsory purchase order "*is clearly justified by the exigencies of the common good*" (see *Clinton v An Bord Pleanála (No. 2)* [2007] 4 IR 701). This has been interpreted by legal commentators in '*Compulsory Purchase and Compensation in Ireland: Law and Practice*', Second Edition, by James Macken, Eamon Galligan, and Michael McGrath, published by Bloomsbury Professional (2013)' broadly as a requirement to satisfy the following criteria:

- That there is a community need that is to be met by the acquisition of the site in question;
- That the particular site is suitable to meet the community need;
- Any alternative methods of meeting the community need have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate); and
- The works to be carried out should accord or at least not be in material contravention of the provisions of the statutory development plan.

Our Clients accept that there is a general need for DART +. It is however not accepted that:

- there is a community need to acquire as much of the land as proposed such that the substation would immediately adjoin a residential dwelling;

- there is a community need justifying the creation of a temporary right of way on the lands that will serve to impede, for an unknown period of time, access from the dwelling to the field behind the dwelling. It is also unclear why it is needed where the lands to be permanently acquired directly adjoin the Golf Links Road, from which road permanent access to the proposed substation is proposed;

- the particular site for the construction of the sub station is actually suitable to meet the community need; if a temporary access point and temporary right of way is needed to avoid traffic hazards/disruption it would seem to follow that a permanent access point from the Golf Links Road would give rise to a traffic hazard. The site is therefore not suitable for the need envisaged;

- The proposed Railway Order Application, which envisages permanent land take (including the purchase of a derelict lodge which was formerly in residential use) and also envisages the creation of the temporary right of way (which temporary right or way appears to be unnecessary where a permanent access to the substation is proposed from Golf Links Road), would have a disproportionate impact on our Client's constitutionally protected property rights;

- The temporary right of way includes the use of a laneway that runs along the eastern boundary of a dwelling. While it may appear from application drawings that there is a setback from the Golf Links Road that would mitigate potential traffic hazards arising from the use by CIE/its servants of the laneway, we are advised that sightlines are actually restricted as the Golf Links Road curves and is not straight, rises in elevation to the west (see Figure 3) and where the land to the front of St Michael's School is actively used for the parking of vehicles (see Figure 7) which can obstruct views. There is a concern that the use of the laneway by/on behalf of CIE would increase traffic hazards.

- It is unclear if the development of a substation on 'RA' zoned lands to the immediate north of our Clients lands, upon which the development of 'Utility Installations' is 'Permitted in Principle', was considered as an alternative to the compulsory purchase of our Clients' lands.

- Despite assertions at pg 49 of the Planning Report prepared by ARUP[5] that development does not contravene zoning objectives the development of a sub-station[6] on the lands arguable materially contravene the site's zoning in that:

    - The lands which are to be permanently acquired are zoned as GB (green belt) in the Fingal County Development Plan 2023-2029 the object of which is: "*Protect and provide for a Greenbelt*". The development of a large concrete/cement rendered metal roofed sub-station surrounded by fencing does not protect and provide for a greenbelt.

    - The vision for GB zoned lands as set out in the Development Plan is to:

      "*Create a rural/urban Greenbelt zone that permanently demarcates the boundary (i) between the rural and urban areas, or (ii) between urban and urban areas. The role of the Greenbelt is to check* ***unrestricted sprawl of urban areas, to prevent coalescence of settlements, to prevent countryside encroachment*** *and to protect the setting of towns and/or villages. The Greenbelt is attractive and multifunctional, serves the needs of both the urban*

[5] A similar assertion as to consistency with zoning is made in Chapter 2, pg 25 of the EIAR, without reference to any zoning vision or zoning matrix.

[6] Described in the Non-Technical Statement to the EIAR at 4.2.4.6 as comprising "*The proposed South Skerries Substation is located east of the railway, approximately 1.1km south of Skerries Station. Permanent acquisition of third-party land will be required for the proposed substation as the proposed site does not sit within the existing CIÉ property boundary. The finish proposed for the substation is a cement rendered finish on all elevations with pressed metal roof sheeting, keeping the same architectural finishes as the existing IÉ substations. The site will be surrounded by fencing which will provide a security barrier. The site perimeter will also be planted with a new hedgerow to provide appropriate screening. Access to the proposed substation will be provided via a 45m long road from the Golf Links Road north of the site. The access road will be 5m wide.*"

and rural communities, and strengthens the links between urban and rural areas in a sustainable manner. The Greenbelt will provide opportunities for ***countryside access and for recreation****, retain* ***attractive landscapes****, improve derelict land within and around towns, secure lands with a nature conservation interest, and* ***retain land in agricultural use****. The zoning objective will have the consequence of achieving the regeneration of undeveloped town areas by ensuring that* ***urban development is directed towards*** *these areas.*"

It is unclear how the development of a large concrete rendered building with a metal roof surrounded by fencing (see description at 4.2.4.6, Chapter 2 of the EIAR – also at footnote 4 of this document) is consistent with the zoning vision vision for GB zoned land which is, inter alia, to 'retain attractive landscapes and retain land in agricultural use'.

It is also unclear how the development of a large utility installation building on green belt lands, immediately next to lands zoned for residential development, is consistent with the requirement in the zoning vision to 'check unrestricted sprawl of urban areas' and 'to prevent countryside encroachment'.

- It is unclear how the development of a new permanent access point to the Golf Links Road to GB zoned lands is consistent with Development Plan objectives including objective SPQHO69 which states:

Objective SPQHO69 – Vehicular Entrances

Minimise the number of new entrances to sites within a rural cluster with a preference for sharing accesses with existing dwellings or using existing entrances. New entrances will only be considered where the potential for sharing is not possible. Any removal of hedgerows, trees and walls or other distinctive boundary treatment required to accommodate sight lines must be limited in extent and must be replaced with the same type of boundary. The use of native species for replacement planting shall be used where appropriate.

- The development of a substation is not listed as a 'Permissible in Principle' use in the zoning matrix for GB zoned lands. Pg 479 of the Development Plan states that: "*Uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective* ***and*** *Vision* ***and*** *their compliance and consistency with the policies and objectives of the Development Plan.*" For the reasons outlined above the development is not consistent with the zoning objective, zoning vision, or objective SPQHO69 and so the construction of the sub-station with a new entrance to the Golf Links Road is not consistent with the Development Plan

- It is also unclear why the development of a large substation, which would appear to be more appropriately located on zoned lands where 'Utility Installations' are 'Permitted in Principle' (for example on lands zoned FP, DA, CI, GE, HI, HT, LC, MC, MRE, RA, RB, RC, RS, RU, RV, RW, WD in the Fingal County Development Plan 2023-2029), is necessary specifically on our Clients, particularly where lands to the immediate north across Golf Links Road are zoned, adjoin the railway track and upon which 'Utility Installations' are 'Permitted in Principle'.

The acquisition of the land will further prevent our Clients from developing the lands themselves. In this regard, there is a derelict lodge (circled in red in Figure 9) located on the lands that are to be acquired as part of Railway Order Application. It is also shown on the Development Plan extract at Figure 8. It was formerly in residential use. The compulsory purchase of the lodge and the demolition of the lodge and its replacement with a sub-station will prevent our Clients from refurbishing the lodge and bringing it back into use. Further while the lands are zoned GB various uses are nonetheless 'Permissible in Principle' as set out in the zoning matrix for GB lands in the Development Plan:

USE CLASSES RELATED TO ZONING OBJECTIVE

Permitted in Principle		
Agricultural Buildings	Agri-Tourism	Bed and Breakfast[3]
Boarding Kennels[3]	Burial Grounds[29]	Childcare Facilities[3]
Community Facility	Farm Shop[20]	Golf Course
Guest House[3]	Health Practitioner[3]	Holiday Home/Apartments[7]
Office Ancillary to Permitted Use	Open Space	Recreational/Sports Facility
Research and Development[14]	Residential[4]	Restaurant/Café[13]
Veterinary Clinic[21]	Campsite[25]	

[3] Where the use is ancillary to the use of the dwelling as a main residence
[4] Subject to compliance with the Rural Settlement Strategy
[7] Only permitted where the development involves conversion of a protected structure
[13] Ancillary to tourism uses or conversion of protected or vernacular structures where appropriate
[14] Rural related research and development only
[20] Only where the bulk of the produce is produced on the farm
[21] Only where a demonstrated need to locate in a rural environment because of the nature of the clinic required is established
[25] No static mobile homes or permanent structures (unless ancillary to the operation of the campsite) shall be permitted
[29] And appropriately scaled ancillary facilities

In this context it is considered that the acquisition could disproportionately interfere with our Clients property rights, would diminish the value of their property and the development on the lands to be acquired is contrary to proper planning and sustainable development as it arguably materially contravenes the zoning of the lands and/or will give rise to traffic hazards.

We are instructed that the land take that is proposed in the application is also greater than that discussed with the agents/servants of CIE in advance of the making of the application for the Railway Order.

In this context our Clients request that the Board refuse to confirm the Railway Order Application.

In the event that the Board is minded, notwithstanding our Clients objections, to approve the Railway Order Application our Clients request that the Board not confirm the temporary acquisition of a right of way as envisaged in the application.

3.0 CONCLUSION

This objection set out our Clients key concerns with respect to the Railway Order Application for Dart+ Coastal North Railway Order.

For the reasons set out above it is considered that the Railway Order Application, if confirmed/granted, would have a disproportionate impact on our Clients property rights, would diminish the value of their lands, and would be contrary to proper planning and sustainable development of the area.

Our Clients therefore request that the Board refuse to confirm/grant the Railway Order Application. Without prejudice to this position in the event that the Board is minded to confirm/grant the Railway Order our Clients request that the Board not confirm the temporary acquisition of a right of way as envisaged in the application as set out in this submission.

Yours faithfully,

John Sheehan
Sheehan Planning

Encl. [fee]