

03/04/24

Decision Record of Determination of Appropriate Procedure for the Cherrywood to Rathmichael Manor Rapid Build Cycle Scheme.

Introduction

Further to Section 6 of the '*Guidelines on Traffic Work Procedures Section 38 of the Road Traffic Act (1994)*', October 2023 (Department of Transport), this document is the formal record of the Determination of the appropriate process for *Cherrywood to Rathmichael Manor Rapid Build Cycle Scheme*, for this non-statutory public consultation process. A three staged process has been followed in accordance with Sections 6.1- 6.3 of the Guidelines.

The proposed scheme comprises the provision of a dedicated cycle route together with ancillary pedestrian infrastructure upgrade works along the Bray Road on the western side of the N11 between Cherrywood Park and Rathmichael Manor. The extent of the works is ca. 720 metres in length. All proposed works are within the envelope of the public road.

Stage 1

This stage sets out the key details of the scheme and the applicability of Section 38 of the Road Traffic Act (1994).

Key details of the proposed scheme

The route commences at the Cherrywood Park access, routing along the Bray Road on the western side of the N11 as far as Rathmichael Manor. This scheme comprises a rapid build option, utilising the low-traffic nature of the Bray Road. Plans and particulars of the scheme are shown on Drawing Numbers: *CSG-ARUP-ZZ-ZZ-DR-CH-0100-P03 to CSG-ARUP-ZZ-ZZ-DR-CH-0104-P03*.

The scheme is set out below in three sections and illustrated in figures 1-4.

Proposed Design Layout Section 1 – Cherrywood Park Access to Cherrywood Road

The section is approximately 120m in length and provides access to a small number of businesses and residences. It is proposed to designate the street to a 'cycle street' which would allow for the mixing of cyclists and vehicles along this section of the road. Resurfacing works and the provision of an at-grade textured strip on either side of the lane is proposed to help with traffic calming and encourage cyclists to 'take the lane'. The lane width proposed is 3.5m, with a textured strip of 0.65m provided on either side.



It is proposed to realign the 40m section of one-way slip lane and encroach the existing verge. This will allow for the provision of a two-way cycle track up to the cycle street, with a small section of pavement proposed as a shared path to allow for the transition. No encroachment into the verge or widening of the footpath is proposed along this section. The concept sketch for *Design Layout Section 2* is set out in Figures 2 and 3 below.



Figure 2: Design Layout Section 2 (Part 1)





Figure 3: Design Layout Section 2 (Part 2)

Design Layout Section 3 – N11 off-slip road to Rathmichael Manor

The section is approximately 250m in length and is free from vehicular traffic. There is a separate footpath and path which is informally operating as a cycle route at present.

For this section (i.e. from the N11 off-slip lane to Rathmichael Manor), it is proposed to provide a formal two-way cycle track and footpath that generally matches the existing extents of the path (e.g. approximately 4-6m in width). A raised pedestrian crossing is proposed to access the bus stop island.

At the approach to Rathmichael Manor, the path would be realigned to cross the roadway, with a new zebra crossing (with Belisha beacons) provided adjacent to a cycle crossing. An improved shared path connection to the Loughlinstown pedestrian bridge is also proposed. The concept sketch for *Design Layout Section 3* is set out in Figure 4 below.



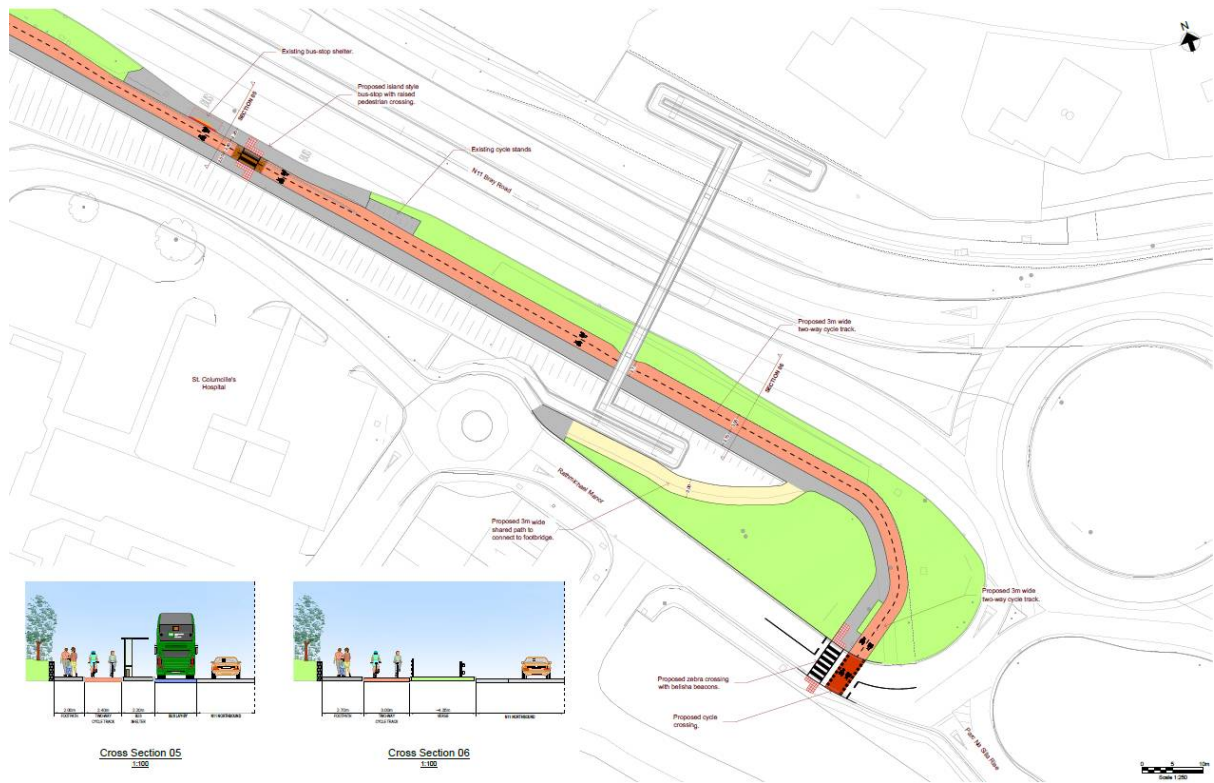


Figure 4: Design Layout Section 3

Scope of Section 38 of the Road Traffic Act (1994)

Section 38 relates to the provision or removal of traffic calming measures by a road authority *“in respect of public roads in their charge.”*

A *“public road”* means in accordance with Section 2 of the Roads Act 1993 *“a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority”*.

“Traffic calming measures” are defined in of Section 38(9) of the Road Traffic Act 1994 as meaning:

“measures which —

(a) enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles (whether generally or of a particular class) for the purpose of enhancing public bus services, or

(b) restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists),



and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works."

In addition to the above legislation, Section 3 of the 'Guidelines on Traffic Work Procedures Section 38 of the Road Traffic Act (1994)' provides a non-exhaustive list of works that would fall within the definition of traffic calming measures.

Does the proposal fall into the Scope of Section 38?

All the interventions as set out above are located within the boundaries of public roads as defined by Section 2 of the Roads Act 1993.

The works, which are ca. 720 metres in length, are described in more detail above. In summary, the works consist of:

- Resurfacing works to the public roadway to provide for a new 'cycle street';
- Provision of dedicated cycle lane;
- Ancillary improvements to the existing pedestrian footpaths;
- Provision of a raised pedestrian crossing to provide access to a bus stop island;
- Realign a 40m section of one-way slip lane and encroach the existing verge and a small section of shared path (cycle and pedestrian);
- New pedestrian zebra crossing (with Belisha beacons) adjacent to a new cycle crossing at Rathmichael Manor.

These works are "*measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists)*".

It is therefore considered that these works are traffic calming measures consistent with the definition set out in Section 38(9) of the Road Traffic Act (1994) and Section 3.2 of the Department of Transport Guidelines.

Stage 2: EIA and AA Screening Process

Stage 2 refers to the determination of the need for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). ARUP, on behalf of the Active Travel Section has undertaken screening for Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) as part of the design process and in advance of commencement of any works. Dún Laoghaire-Rathdown County Council (DLRCC) has, as Competent Authority, carried out AA and EIA Screening Determinations.

Environmental Impact Assessment



The EIA Screening Report prepared by ARUP concludes that based on the information provided within the EIA Screening Report that no significant impacts on the environment will arise from the construction or operation of the proposed development and that an EIA is not required.

The EIA Screening Report has been considered and evaluated by the Senior Planner for the area and the Director of Services for Planning and Economic Development, Dún Laoghaire-Rathdown County Council, who are satisfied that the EIA Screening Report gives full consideration to the relevant legislative context; sets out the requirements for mandatory and sub-threshold EIA; and agrees with the contents and conclusion set out in the Screening Report.

Having regard to the relevant legislative context, description of works and EIA Screening Report, DLRCC has, in its EIA Screening Determination stated that *"the proposed Cherrywood to Rathmichael Manor Rapid Build Cycle Scheme does not trigger a mandatory EIA under the EIA Directive 2011/92/EU as amended or the Planning and Development Regulations 2001, as amended or the Roads Act 1993, as amended and Road Regulations 1994. Further, the Council (as Competent Authority) determine, for the reasons set out above and in the EIA Screening Report, that the proposed development, is not likely to have significant effects on the environment due to the nature, scale or location of the proposed development relevant to areas of environmental sensitivity and the types and characteristics of potential impacts, cumulation of effects with those arising from other existing and/or proposed projects and measures to avoid or prevent what might otherwise have been significant adverse effects on the environment."* The Council concludes that *"the proposed development, by itself or in combination with other projects, is not likely to have a significant effect on the environment and accordingly that an EIA is not required and that an Environmental Impact Assessment Report is not required."*

Appropriate Assessment

The AA Screening Report prepared by ARUP states that *"It is concluded beyond reasonable scientific doubt, in view of best scientific knowledge and in the absence of mitigation that the proposed development, individually or in-combination with other plans or projects, is not likely to have a significant effect on the above listed European Sites, in view of the sites' conservation objectives. An appropriate assessment is therefore not required and there is no requirement for a Natura Impact Statement to be prepared in respect of the proposed development."*

The AA Screening Report has been examined and evaluated by the Senior Planner for the area and the Director of Services for Planning and Economic Development, Dún Laoghaire-Rathdown County Council, who are satisfied that the AA Screening Report gives full consideration to the relevant Directives and legislation and agrees with the contents and conclusion set out in the AA Screening Report and the reasons therein. DLRCC has, in its AA Screening Determination stated that *"on the basis of objective information and in view of best scientific knowledge and applying the precautionary principle, for the reasons set out above and in the AA Screening Report, it has been concluded that the proposed development (Cherrywood to Rathmichael Manor Rapid Build Cycle Scheme), individually or in combination with other plans or projects¹, without relying on any mitigation measures, will not have a significant effect on any European Sites, in*

¹) Except as provided for in Article 6(4) of the Habitats Directive, viz. There must be:

- a) No alternative solution available,
- b) Imperative reasons of overriding public interest for the plan to proceed; and
- c) Adequate compensatory measures in place.



view of the sites' conservation objectives, and that there is no reasonable scientific doubt in relation to this conclusion. Consequently, a Stage Two AA and a Natura Impact Statement (NIS) is not required."

Stage 3: Applicability of Part 8 Procedure

As EIA and AA is not required for the proposed development the next stage is to examine the Section 38 project relative to the applicability of the Part 8 Procedure.

Section 179 of the Planning and Development Act 2000 (as amended) and Part 8 of the Planning and Development Regulations 2001 relates to certain development carried out by or on behalf of a local authority. S.179(6) sets out circumstances where such requirements do not apply and this includes subsection 179(6)(bb).

179(6). This section shall not apply to proposed development which:

(bb) consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994.

The primary purpose of this scheme is the provision of improved infrastructure for cyclists, while it will also include ancillary upgraded pedestrian infrastructure in the form of pedestrian crossing and footpath enhancements.

Section 5.3 Multi-faceted Works' of the Department of Transport's Guidelines states:

"Frequently works which are primarily to enhance public bus services or improve facilities for cyclists, also contain other ancillary elements such as improvements for pedestrians, possibly in the form of upgraded footpaths or upgraded pedestrian crossings. It is recommended that a decision on the appropriateness of utilising either the Section 38 procedure or the applicability of the exemption from the Part 8 Procedure is made based on the primary purpose of the scheme. If the primary purpose of the project does not relate to bus or cycling enhancements, then the exemption set out in Section 179(6)(bb) of the Planning and Development Act of 2000 does not apply. On the other hand, if the primary objective is either bus or cycling enhancements, then the exemption should apply, notwithstanding that there may be other elements associated with the project."

It is therefore considered that as the primary purpose of the works are cycling enhancements and that the pedestrian improvements are ancillary, that the Section 38 process is appropriate.

Section 95 of the of the Road Traffic Act 1961 (as amended)

In addition to the process set out above the works will include the provision of regulatory signs which will be decided at the detailed design stage. Prior to the provision of these signs, the Commissioner (of An Garda Síochána) will be consulted as required under Section 95 (3)(b) of the Road Traffic Act 1961 (as amended).



Decision Conclusion

On the basis that neither an Environmental Impact Assessment (EIA) nor an Appropriate Assessment (AA) are required, having regard to:

- Section 38 of the Road Traffic Act 1994;
- Section 179(6)(bb) of the Planning and Development Act 2000 (as amended),
- Section 5.3 of the Department of Transport 'Guidelines on Traffic Works Procedures: Section 38 of the Road Traffic Act (1994)' (October 2023);

it is considered that that Section 38 of the Road Traffic Act 1994 and Section 95 of the Road Traffic Act, 1961 as amended by Section 37 of the Road Traffic Act 1994, is the correct legislative process under which the proposed works will be carried out.

Furthermore, in accordance with Section 95 (3)(b) of the Road Traffic Act 1961 (as amended); the Road Authority will consult with the Commissioner (of An Garda Síochána) with regard to regulatory signs which will be erected and/or removed on the public road to which these works pertain.



Michele Costello

Senior Executive Planner

Active Travel Team

Infrastructure and Climate Change Department



