



COMMISSION EUROPEENNE  
SECRETARIAT GENERAL  
SG.R.2

Bruxelles,, le 01/10/2007

## BORDEREAU D'ENVOI DU COURRIER

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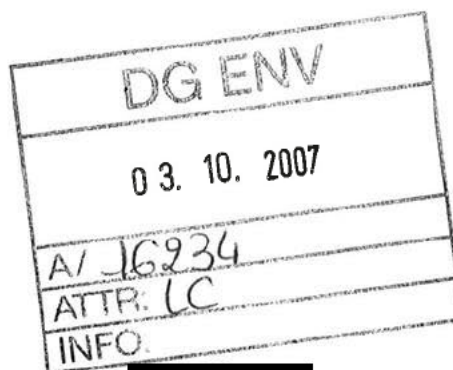
**Référence**

**Objet**

INFRACTION A 2007/2166 IMPACT - DIR. 2001/42 - SEA NATIONAL PLAN -  
REPONSE

**Destinataire(s)**

Titre MME MME CATHERINE DAY (SECRETARIAT GENERAL ())  
Titre COMMISSION EUROPEENNE  
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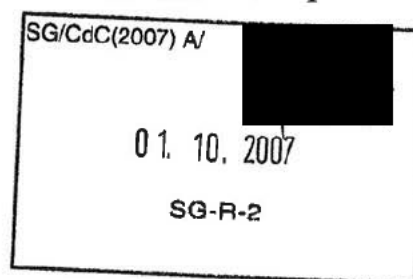
Buan Ionadaíocht  
na hÉireann  
chuig an Aontas Eorpach



Permanent Representation  
of Ireland  
to the European Union

27 September, 2007

Ms. Catherine Day  
Secretary General  
Secretariat-General  
Commission of the European Communities  
B-1049  
Brussels



**Ref: Letter of Notice - Infringement No. 2007/2166**

Dear Secretary General

I refer to your letter of formal notice of 29<sup>th</sup> June, 2007 (which was received on the same day in the Permanent Representation) regarding the issue of the application of Directive 2001/42/EC ("the Directive") to Ireland's National Development Plan 2007-2013 (NDP).

I also refer to your letter of 30<sup>th</sup> July, 2007, in which Ireland was given an extension until the 29<sup>th</sup> September, 2007, of the deadline by which it must reply. The Irish authorities wish to express their appreciation of the Commission's willingness to provide Ireland with the extra time needed to give this issue its due consideration.

### **Position of the Irish Authorities**

The Irish authorities categorically reject the contention in the letter from the European Commission that Ireland is in breach of the Directive because a Strategic Environmental Assessment was not carried out on the NDP. The reasons for this are set out below under the heading "*Legal Basis for View of Irish Authorities*".

Firstly, however, I have been asked by the Irish authorities to make some observations of general importance in relation to this matter. The Irish authorities are most aggrieved that, in relation to such a sensitive issue pertaining to a key element of the medium term economic and financial investment strategy of the Irish Government, there was no prior contact from the Commission with the Irish authorities on the matter before the issue of an Article 226 letter. Ireland is always open to direct bilateral engagement with the Commission on any issue that might prove contentious between Ireland and the Commission. We had thought that the Commission shared this approach. For reasons that are unclear to the Irish authorities, this approach to Ireland/Commission relations was not adopted by the Commission in relation to this matter.

Dialogue between a Member State and the Commission does not in any way impinge on the Commission's role in upholding EU law. Ireland is and always has been supportive of the role of the Commission in upholding the Treaties and EU law.

REPRÉSENTATION PERMANENTE DE L'IRLANDE AUPRÈS DE L'UNION EUROPÉENNE

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However, Ireland also believes that the optimal framework for resolving issues is bilateral engagement between Member States and the Commission. Where the Commission has concerns about application of EU law in Ireland, the Irish authorities consider that any resort to formal processes under the Treaty should, at least initially, be preceded by an effort to raise and examine such concerns within this bilateral framework. In this context, the Irish authorities strongly believe that the misapprehensions of the Commission with regard to the NDP might have been dispelled if the Commission had first directly engaged with the Irish authorities. In this regard, we have noted the Commission's own statement (COM (2007) 502 final) that some 70% of contentious issues are resolved before any formal letter of notice is issued.

The Irish authorities gave careful consideration to the issue of the applicability of this Directive to the National Development Plan 2007-2013 as part of the process of preparing the NDP. On the basis of such consideration and legal advice procured specifically in respect of whether or not the Directive applied to the NDP, the Irish authorities had concluded to their satisfaction that the NDP clearly falls outside the scope of the Directive.

The concern of the Irish authorities at the approach adopted by the Commission is compounded by the fact that NDP funding will contribute hugely to the enhancement of Community policies in a wide range of key areas, including the area of environmental policy. Under the NDP, an unprecedented level of funding of €25 billion will be made available to promote environmental sustainability. Much of this funding will help to directly address deficits which have been the subject of separate Commission infringement proceedings (e.g. water services and waste). Investment under the NDP will also be key to delivering the objectives and priorities of Ireland's National Reform Programme under the Lisbon Agenda, as highlighted again in Ireland's 2006 Progress Report.

### **Background to the NDP (2007-2013)**

Before turning to the legal basis of Ireland's rejection of the Commission's contention that an SEA should have been carried out in respect of the NDP (2007-2013), I would first like to set out the general background of the NDP. The Irish Government decided in mid-2005 that it would prepare a National Development Plan to cover the period 2007-2013. The resulting National Development Plan is the Government's financial framework for the next seven years and is intended to help achieve high level objectives of continued economic competitiveness and to provide a better quality of life for people who live in this country over the next seven years. Under the NDP, the Government has allocated some €184bn of funding to support the key investment priorities which will help deliver these high level objectives.

Government Departments and Agencies will work to achieve the goals of the NDP within the multi-annual financial allocations set out in the NDP. These financial allocations represent the Government's best assessment at the time of adoption of the NDP of investment requirements and prioritisation within an overall financial framework. As indicative allocations, they are clearly subject to review over the period of the Plan in the light of the overall imperative of maintaining economic and budgetary sustainability consistent with the Stability and Growth Pact.

The NDP was not required by any Irish legislative, regulatory or administrative requirement. The NDP is not a legal document. It was and is a financial budget plan relating to Government investment policy over the period.

The rationale for preparing a National Development Plan included:

- (i) Bringing together in a single document the Government's commitment to the investment priorities needed to maintain Ireland's national economic competitiveness and improving the quality of life;
- (ii) Placing such investment policies within a sustainable economic and budgetary framework; and
- (iii) Providing a coherent and integrated financial framework for Departments and implementing agencies to roll out public investment.

### **Legal Basis for View of Irish Authorities**

In the context of the Commission's letter of 29<sup>th</sup> June 2007, the Irish authorities have again considered the issue in depth and detail and have again satisfied themselves that the NDP clearly falls outside the scope of the Directive. The position of the Irish authorities is reinforced and confirmed by a recent decision in the Irish High Court. The legal considerations informing the position of the Irish authorities are set out in the following paragraphs.

#### **Article 3.8**

The opinion of the Irish authorities that the NDP is not encompassed by the Directive is emphatically supported by our consideration of Article 3.8. The Irish authorities contend that Article 3.8 specifically excludes the NDP from the scope of the Directive.

Article 3.8 of the SEA Directive states that:

"The following plans and programmes are not subject to this Directive:

- financial or budget plans and programmes".

The NDP is a financial and budgetary plan (encompassing various sectoral investment strategies and programmes) and sets out multi-annual financial allocations for investment priorities identified in the NDP. The NDP represents the Government's view of what levels of financial allocations may be available and necessary to meet various investment priorities over the period covered by the NDP. In 2004 the Irish Government moved to a rolling multi-annual envelope system of allocation of financial resources for Central Government capital investment. In each Annual Budget the new multi-annual envelope is set out. Similarly, NDP current expenditure is provided for in the annual budget. Accordingly, delivery of the financial commitments in the NDP is an integral part of the annual National Budget.

The financial allocations in the NDP are obviously indicative given that it is a 7 year period and the Government needs to retain room for manoeuvre to respond to changing economic and budgetary circumstances. Nevertheless, the NDP reflects a very significant level of commitment to providing the financial resources set out in the NDP. It is clear that the NDP is a financial investment plan. As such, the Irish authorities firmly contend that the NDP is excluded by Article 3.8 from the coverage of the requirements of the SEA Directive.

The view of the Irish authorities that the NDP is a financial plan and thus is excluded from the scope of the Directive has been confirmed by a recent judgement of the Irish High Court of 31<sup>st</sup> July, 2007, concerning a prison project mentioned for illustrative purposes in the NDP. Relevant extracts from the judgment of Mr. Justice Smyth follow:-

*"The NDP is essentially a financial plan or framework setting out what the Government sees as the investment priorities for the next seven years, and how resources can be invested amongst different investment priorities."*

and

*"I am satisfied and find as a fact that it is essentially a financial or budgetary plan and even if, as is the case, a project of national significance is mentioned in the NDP such is for administrative purposes as indicative of the type of project that would be financed out of a particular financial "envelope"."*

and

*"I am satisfied that the NDP comes within the exemption provided for by Article 3(8) of the Directive that it has a budgetary or financial plan and sets out no environmental criteria as to what types of development are permissible within the general community."*

and

*"Specifically Article 3.8 excludes from the plans and programmes the subject of Directives such as financial or budget plans and programmes. Accordingly, in my judgment the Directive has no application whatsoever to the NDP."*

#### **Article 2(a)**

Our view that the NDP is not encompassed by the Directive is further supported and confirmed by our consideration of Article 2(a). In the view of the Irish authorities, Article 2(a) of the Directive clearly indicates to the Irish authorities that the NDP is not encompassed by the Directive. Article 2(a) of the Directive defines "plans and programmes" as those which "are required by legislative, regulatory or administrative provisions". In this context, it should be clearly noted there are no legislative, regulatory or administrative provisions requiring the Irish Government to prepare a National Development Plan. The Government decided to adopt the NDP to provide a

strong basis for economic and social investment for the next seven years and to set out the financial resources it was willing to commit, based on the economic assumptions set out in Chapter 2 of the Plan, to the delivery of such priorities. As the NDP was not required by any legislative, regulatory or administrative provisions, it does not come within the definition of "plans and programmes" set out in article 2(a) of the Directive. As such, the NDP is therefore exempt from the Directive.

In this context, I refer to your request that the Irish Government provide "copies of the statutory and administrative provisions and instructions that governed the adoption of the NDP." As indicated in the previous paragraph, the NDP was not adopted under any legislative, regulatory or administrative provisions. As such, no document conforms to the type of document embraced in your request. The Government of Ireland freely of its own volition approved and launched the NDP (2007-2013).

The Irish authorities note that the Commission's letter of 29<sup>th</sup> June, 2007, does not address in detail whether or not the NDP is "a plan or a programme" under Article 2(a). The Commission's letter merely states that the "the NDP appears to come within the definition of "plans and programmes" found in Article 2(a)". No evidence, argument, reason or logic is advanced for this assertion by the Commission. It seems clear to the Irish authorities that, without prejudice to the further legal points made in this letter, the effect of Article 2(a) alone is unambiguously to exclude the NDP (2007-2013) from the scope of the Directive.

In this context, the Irish authorities wish again to draw to your attention some relevant extracts of the judgement of 31<sup>st</sup> July, 2007, of the Irish High Court:-

*"Unlike previous Development Plans, which were required by EU regulations to drawdown EU structural funds - the 2007 NDP is not required by any legislative, regulatory or administrative requirement."*

and

*"I am satisfied that the NDP does not require a Strategic Environmental Assessment under the above Directive as:-*

*"(a) The NDP does not fall within the definition of plan or programme in that it is not required by legislative, regulatory or administrative provisions.(Article 2(a) of the Directive)"*

#### **Article 3.2 (a) and Article 3.4**

The Irish authorities do not accept that the example of the recent decision of An Bord Pleanála cited by the Commission is indicative of the NDP constituting a plan or programme within the meaning of the Directive. As is clear from the terms of the decision of An Bord Pleanála (copy of decision enclosed herewith) insofar as An Bord Pleanála had any regard to the NDP it was in respect of a single discrete issue, namely that of funding. The decision to grant planning permission was based on a much wider range of considerations and it is inaccurate to attempt to suggest that the question of funding was decisive in relation to the planning issues raised. The

relevant framework document within which planning decisions are made is the local authority's development plan and, where relevant, any regional planning guidelines in force. An Bord Pleanála is required under the Planning and Development Act, 2000, to have regard to both the local authority development plan and to the regional planning guidelines. Conversely, there is no statutory obligation to have regard to the NDP. Local authority development plans and regional planning guidelines are subject to strategic environmental assessment under the Planning and Development (Strategic Environmental Assessment) Regulations, 2004.

The fact that the reference to the NDP was only in respect of funding simply serves to emphasise the point made above that the NDP is excluded from the terms of the Directive on the basis that it is a financial or budget plan or programme. Moreover, the commitment on behalf of the Irish Government to provide funding for the redevelopment at Lansdowne Road was made in January, 2004, that is at a time about three years in advance of Government approval and launch of the NDP. Thus the NDP merely repeats a decision which had been made previously.

It is also to be emphasised that the proposed redevelopment at Lansdowne Road had been subject to a comprehensive environmental impact assessment as part of the decision-making process on the application for planning permission. There is no question therefore of the redevelopment having been authorised without its environmental impact having been properly considered and assessed.

The Commission seems to be under the misapprehension that Government policy, whether in the NDP or elsewhere, has determinative effect in the Irish planning system. The Irish authorities consequently wish to emphasise in the strongest terms the statutory independence of Bord Pleanála. In this context, the Irish authorities wish to draw to your attention a recent decision of Bord Pleanála in June, 2007, to reject the planning application for a new headquarters for the Department of Community Rural and Gaeltacht Affairs at Knock Airport, which location had been proposed by Government and whose construction would have been financed from within the allocation for the Decentralisation Sub-Programme of the NDP.

### **Irish legislation transposing the SEA Directive**

The Commission also suggests that there "may" be a deficiency in the Irish legislation transposing the SEA Directive and "consequently takes the view that Ireland has failed to fulfil its obligations under Articles 3 to 10 inclusive and 13 of Directive 2001/42/EC".

While the Irish authorities have difficulty in comprehending the Commission's position on this subject, as set out in their Letter of Formal Notice, it rejects the suggestion that it has failed to fulfil its obligations under the Directive.

In Ireland, two distinct pieces of legislation have been put in place to fully transpose the Directive. Statutory Instrument (SI) No. 436 of 2004 provides for the transposition of the Directive insofar as it relates to land-use planning. SI No. 435 of 2004 transposes the Directive in relation to other plans and programmes.



All plans and programmes falling within the terms of the Directive are subject to the provisions of one or other of these SIs.

The Commission contends that the NDP does not appear to be subject to the provisions of SI No. 436. This contention seems to be founded on the erroneous view that the NDP relates to land-use planning. As stated above, the NDP is a financial/budgetary plan and does not set the framework for future development consent. Therefore, as outlined in the foregoing material, Ireland is of the firm view that the NDP is not subject to SEA. Furthermore, the NDP does not come within the meaning, as defined in Article 2(a) of the Directive, of "plan or programme" for the purpose of the SEA Directive.

In relation to the Commission's contention that no reference is made in SI No. 435 to plans for particular land-uses, the Irish authorities are satisfied that plans for land-use, which set the framework for future development consent, fall within the provisions of SI No. 436 of 2004 and, as a consequence, are subject to SEA.

### **The NDP and Environmental Sustainability**

The Irish Authorities would like to draw the Commission's attention to the monitoring regime that will apply to measuring the contribution of NDP-funded investment to environmental sustainability. The NDP provides for a Central Monitoring Committee with a wide representation including environmental interests. The Environmental Protection Agency and Comhar (The National Sustainable Development Partnership) will both be represented on the Central Monitoring Committee. Environmental sustainability is one of the key horizontal themes that the monitoring arrangements will encompass. Government Departments and agencies will report on the impacts on environmental sustainability of relevant NDP investment on an annual basis. This will include not only the impact of investment in areas such as Sustainable Energy, Water Services, Waste Management and Climate Change but also the impact of investment in areas like Transport, Energy and any other NDP Sub-Programme which impacts on the environment.

### **Conclusion**

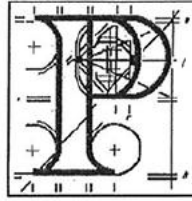
To conclude, the Irish Authorities would ask the Commission to note the critical importance to the Irish Government of implementation of the NDP as published and the firm contention of the Irish authorities that, for the reasons set out in this letter, the NDP does not come within the scope of the SEA Directive. The Irish authorities are confident that bilateral engagement between the Commission and Ireland will clarify the nature and purpose of the NDP and satisfy the Commission that the NDP does not come within the scope of the SEA. Irish officials are available to meet with the Commission to discuss the issue.

Yours sincerely

  
Permanent Representative



# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Dublin City

**Planning Register Reference Number: 1086/06**

An Bord Pleanála Reference Number: PL 29S.218917

**APPEAL** by Anne Twomey of 6 Lansdowne Lane, Ballsbridge, Dublin and by others against the decision made on the 31<sup>st</sup> day of July, 2006 by Dublin City Council to grant subject to conditions a permission to the Lansdowne Road Stadium Development Company Limited care of Tom Phillips and Associates of The Chancery, 3-10 Chancery Lane, Dublin in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** Construction of multi-purpose stadium (62,032 square metres gross floor space) including a stadium with an all-seater capacity of 50,000 persons (plus provision for up to 1,000 non-paying persons), stadium management building, toilet block, forecourt to Lansdowne Road DART station, and associated development (including an underground car park of 7,115 square metres).

The development will consist of the demolition of the stadium and ancillary buildings, number 70 Shelbourne Road (a habitable house), part of the perimeter wall of number 62 Lansdowne Road (a Protected Structure - Reference Number 4393) and portions of the external perimeter wall (the World War I Memorials shall be preserved and re-erected within the new stadium), the remodelling of the gable wall and roof profile of the adjoining number 68 Shelbourne Road, construction of an eight levels (including mezzanines) over basement multi-purpose stadium (including provision for the holding of sports and events) (60,409 square metres) with ancillary accommodation (to include spectator pedestrian concourses, (18,393 square metres), circulation areas (8,287 square metres), hospitality, licensed restaurants (2,410 square metres), food serving facilities (2,048 square metres), bar serving facilities (1,134 square metres), players and officials facilities (1,713 square metres), press and media facilities (1,043 square metres), medical support facilities (230 square metres), administrative offices (218 square metres), retail (131 square metres), viewing/entertainment boxes/meeting rooms (2,109 square metres), kitchens/cooking facilities (4,971 square metres), pitch management facilities (790 square metres), reception/information facilities (2,040 square metres), general storage (691 square metres), telecommunications, broadcasting and receiving facilities including television studios (230 square metres), betting kiosks (33 square metres), security/control rooms (226 square metres), staff facilities (492 square metres), general toilets (4,136 square metres),

waste management facilities (250 square metres), plant rooms (including those at basement level) (8,834 square metres), turnstiles, associated advertising hoardings and signage, provision of an open sided podium over the railway line, provision of an underpass under the railway line north of Lansdowne Road Level Crossing, sports lighting and public address systems, maintenance and utility services, facilities for operational and emergency services, provision of a three-storey (over partial basement) stand-alone stadium management building, (1,532 square metres) including access to underground car park, retail/ticket pick-up (208 square metres), administrative offices (467 square metres), players facilities (159 square metres), bar and dining facilities (254 square metres), kitchen (31 square metres) and ancillary areas (413 square metres), provision of a single storey stand-alone toilet block (91 square metres), provision of new links between the existing railway station underpass and platform to the new station forecourt to the south of Lansdowne Road, provision of a 200 number space car park under the back pitch (7,115 square metres) adjacent to the Dodder Walk, provision of cycle parking facilities, incorporation of a strip of the Dodder Walk into the development to facilitate the replacement of the two back pitches with a re-orientated and elevated pitch along with associated works, remodelling and landscaping of the Dodder Walk, construction of ancillary works around the exterior of the stadium comprising boundary treatments (including works of repair/remodelling of existing walls and fences and the provision of new walls and fences, [including sports fences]), hard and soft landscaping, including the provision of statuary and entrance details on the site of number 70 Shelbourne Road, the provision of access and egress points, two of which are new (at Dodder Walk and at number 70 Shelbourne Road [between number 68 Shelbourne Road and number 2 Lansdowne Terrace]) and existing (at O'Connell Gardens [including the regrading part of the roadway]), Havelock Square, Lansdowne Lane and along Lansdowne Road and all ancillary and incidental works above and below ground, including works to the rail line and the realignment of part of the Swan Culvert. The proposed stadium will have a curved roof profile, (which will be approximately 48 metres above pitch level at its highest point), will principally comprise a multi-tier reinforced concrete and steel structure, overlaid with a translucent glazed façade and with a translucent polycarbonate roof and other materials all on a combined site of 6.55 hectares, approximately principally identified as Lansdowne Road Stadium and adjoining lands, Lansdowne Road, Dublin. (The site is split into two sections, north [6.40 hectares approximately] and south [0.15 hectares approximately] of Lansdowne Road). The development site comprises Lansdowne Road Stadium (including the back pitches, but excluding the Lansdowne Football Club clubhouse), part of the garden of number 62 Lansdowne Road (a Protected Structure - Reference Number 4393), numbers 68 and 70 Shelbourne Road, (and including part of the former rear garden of number 66 Shelbourne Road), part of the Dodder Walk (west of the River Dodder), a small section of a cul-de-sac roadway in O'Connell Gardens and the incorporation of part of the gardens of 65 Lansdowne Road and part of the Swan Culvert area to the rear of numbers 49 and 50 O'Connell Gardens. The northern (stadium) element of the site is bounded principally by Lansdowne Road to the south, buildings off Lansdowne Road, Lansdowne Terrace, Lansdowne Lane, and Shelbourne Road to the west, by the Swan Culvert and the rear of buildings off Vavasour Square, Havelock Square and O'Connell Gardens to the north, and by the Dodder Walk and River Dodder to the east. The southern (station forecourt) element abuts the Lansdowne Road DART station to its west, and is bounded on the north by Lansdowne Road, the south by the River Dodder and the east by number 65 Lansdowne Road.

## DECISION

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## REASONS AND CONSIDERATIONS

Having regard to:

- (a) the historical and long-established use of the Lansdowne Road site as an international football stadium,
- (b) its location close to the city centre of Dublin, in immediate proximity to good quality public transport facilities (including the DART line),
- (c) the provisions of the Dublin City Development Plan, 2005 to 2011, including the zoning objective for the site of the proposed stadium,
- (d) the need for an additional modern stadium in the capital city,
- (e) the site specific design of the proposed stadium,
- (f) the arrangements for access/egress, and
- (g) the planned mitigation measures,

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an appropriate redevelopment of the Lansdowne Road facility, which would contribute to the maintenance of sustainable transportation patterns, would be acceptable in terms of traffic safety and convenience and acceptable in relation to residential amenity in the environs, would not seriously injure the visual amenities of the area, would not increase the risk of flooding or be prejudicial to public health and would not give rise to an excessive intensification of use of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area and of the City of Dublin.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board was not satisfied that a more suitable site for a stadium can currently be provided, having regard to considerations of transportation, access and availability. The Board had particular regard to the long-established use of the Lansdowne Road site and its accessibility by public transport and also noted that it is an objective of the National Development Plan 2007 to 2013, to provide funding for the redevelopment of the stadium.

In relation to residential property in the vicinity, the Board noted the impact of the existing stadium structures and took into account the design measures aimed at minimising the effect of the proposed stadium on the amenity of such property. The Board concluded, having regard to the overall sum of the factors outlined above, that the residual impacts on residential property would not be sufficient to warrant a refusal of permission and did not agree with the Inspector's conclusion that permission should be refused on this account.

In relation to arrangements for spectator access, the Board considered that, subject to further modification as set out by condition hereunder, the overall proposals are acceptable, notwithstanding some adverse impact on property in the vicinity and did not agree that permission should be refused for reasons related to this factor.

Finally, the Board noted the Inspector's criticisms regarding the contribution of the proposed development to the urban landscape and public urban space, but considered that a successful stadium project would provide opportunities for future enhancement of the public realm.

### CONDITIONS

1. (1) The development shall be carried out in accordance with the plans and particulars, including the Environmental Impact Statement, lodged with the application, as amended by the further plans and particulars received by the planning authority on the 6<sup>th</sup> day of June, 2006, except as may otherwise be required in order to comply with the following conditions.  
  
(2) The mitigation measures set out in the Environmental Impact Statement shall be fully implemented.

**Reason:** In the interest of clarity.

2. This permission is for a period of five years from the date of this order.

**Reason:** In the interest of clarity.

3. The number of outdoor concert events shall not exceed three per annum.

**Reason:** To protect the amenity of residential property in the vicinity.

4. (1) The access points from Havelock Square and O'Connell Gardens shall not be used by the public, except for egress in emergencies.
- (2) The access point from the Dodder Walk shall not be used by the public in relation to attendance at concerts, except for egress in emergencies.
- (3) Details in respect of the redistribution of access/egress movements to/from the northern part of the stadium, using the other proposed access points, shall be submitted to the planning authority for written agreement prior to commencement of development. In default of agreement, the matter shall be referred to the Board for determination.
- (4) A safety audit in respect of access/egress movements, as amended in compliance with (1), (2) and (3) above, shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** To mitigate the impact of the proposed development on the amenity of property in the vicinity.

5. The eastern boundary along the proposed back pitch shall be relocated one metre westwards and this area shall be landscaped and included within the Dodder Walk.

**Reason:** To mitigate the impact of the proposed development on the amenity of the area.

6. A two metre high railing (formed of 20 millimetres mild steel round bars or similar) shall be erected along the western side of the Dodder Walk in lieu of the proposed safety rail, from Bath Avenue to the Swan Culvert to the rear of existing houses on O'Connell Gardens. The railing shall be painted black or green. Details in this regard shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** To enhance the security and protect the amenity of residential property in the vicinity.

7. Prior to commencement of development, revised details of the fence enclosing the back pitch and attendant landscaping shall be submitted to and agreed in writing with the planning authority.

**Reason:** To achieve a more open aspect along the Dodder Walk.



8. Prior to commencement of development, details of the construction access to the proposed development and the times of delivery or removal of materials to/from the site shall be submitted to and agreed in writing with the planning authority.

**Reason:** In the interest of traffic safety and residential amenity.

9. Sample panels of all proposed external cladding materials shall be erected on site, for inspection and agreement with the planning authority, prior to the installation of any such cladding.

**Reason:** In the interest of visual amenity.

10. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard, the following details shall be submitted to the planning authority and development shall not commence until the planning authority has indicated its agreement in writing.

- (a) Details in relation to the reconstruction of the Swan Culvert and removal/backfilling of the section of culvert proposed to be abandoned.
- (b) Proposals for landscaping the area of the disused section of the culvert.
- (c) Design and construction details for the headwalls at the outfalls to the River Dodder.
- (d) Measures to protect the Rathmines and Pembroke Number 1 Trunk Sewer, including where the proposed new section of surface water culvert passes under it.
- (b) Details of the attenuation of surface water.
- (f) Details of the provision of a suitably sized watermain to be laid from Shelbourne Road to the site.

**Reason:** In the interest of public health and to ensure a proper standard of development.



11. The developer shall facilitate the planning authority in the archaeological appraisal of the site and in preserving and recording or otherwise protecting archaeological materials or features which may exist within the site. In this regard, the developer shall:-
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
  - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:-

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

Prior to commencement of development, a report containing the results of the assessment shall be submitted to the planning authority. Arising from this assessment, the developer shall agree with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to the Board for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

12. No masts, aerials, ducts or other plant shall be installed projecting from the external surfaces or roof of the stadium.

**Reason:** In the interest of visual amenity.

13. No advertisement or advertisement structure shall be erected or displayed on the building or within the curtilage of the site without a prior grant of planning permission.

**Reason:** In the interest of visual amenity.

14. (1) The two war memorials (protected structures) currently located inside the Lansdowne Road frontage wall and the war memorial plaque on the Wanderers Pavilion building shall be relocated inside the site in a position to be agreed in writing with the planning authority prior to commencement of development.
- (2) Survey drawings and a conservation report of the Wanderers Football Club pavilion building and the Lansdowne Football Club pavilion shall be prepared and submitted to the planning authority prior to commencement of development.
- (3) Slate and brick from number 70 Shelbourne Road shall be salvaged for reuse in the new gabled/hipped roof.

All the above works shall be carried out under the supervision of an architect or expert with conservation expertise in accordance with best conservation practice.

**Reason:** In the interest of best conservation practice and recording the historic environment.

15. The landscaping proposals, submitted as part of the application, including all planting, seeding and earthworks shown on lodged plans, shall be completed by the end of the first planting season following completion of the stadium development. All trees specified for retention shall be enclosed within a stout fence, which shall enclose at least the area covered by the spread of the branches, and shall be erected before any site works begin and maintained during the construction period.

**Reason:** In the interest of visual amenity.

16. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

17. The demolition and construction works in connection with the development shall only be carried out between 0700 hours and 1800 hours, Monday to Friday, and between 0800 hours and 1400 hours on Saturdays, with no work being carried out on Sundays or public holidays except as may otherwise be agreed in writing with the planning authority in respect of necessary and exceptional after-hours work, including at night-time, on Sundays or public holidays (for example in the case of works affecting the DART line).

**Reason:** To protect the amenity of property in the vicinity.

18. The use of the stadium for outdoor events, including concerts and matches, shall cease at or before 2300 hours and all outdoor lights, except those required for safety and security, shall be extinguished by 2300 hours.

**Reason:** To protect the amenity of property in the vicinity.

19. (1) Prior to commencement of development, the developer shall ascertain the requirements of the Irish Aviation Authority. In the event that obstacle lighting is required, details in this regard shall be submitted to the planning authority for written agreement.
- (2) There shall be no helicopter landings/take-offs at the stadium or back pitch, except for emergency purposes.

**Reason:** To ensure air traffic safety and to protect the amenity of property in the vicinity.

20. Arrangements for monitoring noise, vibration, dust and air quality during the construction phase and the operational phase of the development shall be submitted to the planning authority for written agreement prior to commencement of development.

**Reason:** To protect the amenity of the area and of property in the vicinity.

21. The car-park spaces shall be used only for purposes associated with the development and shall not be otherwise sold, leased or otherwise rented out for parking.

**Reason:** In the interest of good traffic management.

22. (1) Development shall not commence until a Project Monitoring Committee has been established under the aegis of the planning authority. Details of the structure, detailed functioning and membership of the committee, including representation from the developer/stadium operator, the local community and the planning authority shall be agreed in writing with the planning authority.
- (2) The Project Monitoring Committee shall systematically assess the impacts on the environment, both during the construction and operational phases of the development, within an area up to one kilometre from the stadium and shall send a report in writing to the planning authority in June and December each year, which shall identify any problems arising and put forward mitigation measures. In default of agreement on any of the foregoing matters, the matter shall be referred to An Bord Pleanála for determination.

- (3) The developer/stadium operator shall make annual payments of €75,000 (seventy five thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office) to a funding programme, which may be used to meet the costs of the general activities of the Project Management Committee, including in respect of works of environmental maintenance and improvement in the area and for social and educational activities benefiting the local community.

**Reason:** To monitor environmental impacts arising from the proposed development and to improve the local environment, in accordance with the proposals put forward with the “Planning Report” accompanying the application for permission.

23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

**Dated this                      day of                      2007.**

