



An
Bord
Pleanála

Inspector's Report ABP-301144-18

Development	CPO Application 8, 9, 11 Hepburn Court
Location	8, 9, 11 Hepburn Court, Portlaoise, County Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	
Objector	Kelly Whitham
Date of Site Inspection	11 th May 2018
Date of Oral Hearing	28th June 2018

1.0 Introduction

- 1.1. This is an application by Laois County Council for confirmation by the Board of a Compulsory Purchase Order, entitled 'Compulsory Order of Lands 01/2018, 8,9 and 11 Hepburn Court, Portlaoise, Co. Laois'.
- 1.2. One objection has been received to the CPO and an Oral Hearing to consider this objections was held on 28th June 2018 in the Midlands Park Hotel, Portlaoise. The objection is from the owner of no. 8, Kelly Whitham.
- 1.3. I have read the contents of the file, inspected the site and conducted the Oral Hearing in this case.

2.0 Site location and description

- 2.1. The site is located at Hepburn Court, which is a vacant and derelict housing development located off the Ballyfin Road located to the north west of the Portlaoise Town Centre. The site is part of a housing development of 12 permitted houses, of which two have been demolished and the remaining 10 are vacant and boarded up. The CPO relates to no.s 8 and 9, which are part of terrace of 4 dwellings of which two have been demolished (7 and 8) and no. 11, a semi-detached unit (with no. 12). To the west of the site is a vacant two-storey building (The Squash Club) and adjoining the south west corner a vacant single-storey community centre (Kingdom Hall). To the west is also an existing housing development (Mountain View Square). To the south is an electrical substation and open space area, and to the east is the housing development of Oaklawn.

3.0 Application for Confirmation of CPO

- 3.1. This CPO of two dwellings, no.s 9 and 11 and land at no 8, Hepburn Court, Portlaoise, Co. Laois, is made under the Housing Act, 1966, as amended. The stated purpose of the CPO is "for the purposes of the Housing Act 1966".

- 3.2. The CPO states that the two dwellings no.s 9 and 11 are described in Part I of the Schedule as 'land consisting of a house unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense'. It is stated in Part II of the Schedule that the land at no. 8 is 'land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense'.
- 3.3 The official seal of the Local Authority was affixed to the Order on 26th day of February 2018, signed by Laois County Council's County Secretary and by Laois County Council's Cathaoirleach. The order was issued to the owners last known address and financial institutions with a registered interest on the 26th of February 2018, purchase notices were erected on the relevant properties on the same date. The compulsory purchase order and schedule was published in the Irish Independent and Leinster Leader on the 27th of February 2018.
- 3.4 Other documentation forwarded to the Board by the Local Authority includes the deposited maps, site notices, notice to the landowners and proof of registered post, and a memo from the Michael Rainey SEO of the Housing Department to the Head of Finance and Housing stating that the properties would be considered suitable as a location for social housing as well as planning report setting out the policy context for the sites and area.

4.0 **Planning History**

- 4.1 98/51: Permission granted for 12 houses.

5.0 **Policy Context**

5.1. **Rebuilding Ireland: Action Plan for Housing and Homelessness July 2016**

- 5.1.1. This Plan, published by the Department of Housing, Planning, Community and Local Government, states that it will address the needs of homeless people and families in emergency accommodation, accelerate the provision of social housing, deliver more housing, utilise vacant homes and improve the rental

sector. In particular, the Plan sets out to deliver 47,000 units of social housing in the period to 2021.

5.1.2. The Plan identifies five key pillars, including Pillar 5 which is 'Utilising Existing Housing'. It states "Ensure that existing housing stock is used to the maximum degree possible – focussing on measures to use vacant stock to renew urban and rural areas".

5.1.3. Pillar 2 is to 'Accelerate Social Housing'. Key Actions are listed including "Extensive support for Local Authorities and Approved Housing Bodies". Table 4 lists 'Our Programmes' and includes a programme "Local Authority Construction and Acquisition (also known as the Social Housing Investment Programme (SHIP))". The objective is noted as "to provide funding to local authorities for the provision of social housing by means of construction and acquisition".

5.2. **Department of Housing, Planning, Community and Local Government Circular PL 8/2016**

5.2.1. This Circular followed the publication of 'Rebuilding Ireland' and relates to the identification of planning measures to enhance housing supply. The Circular states that vacant stock represents a potentially very significant resource to assist in meeting the key goals of the Action Plan and that in advance of the approaching work on the vacant homes re-use strategy, planning authorities are requested to initiate preparatory work such as surveys of, for example, the levels of, condition and potential availability of vacant housing stock in key urban areas and/or areas with very high demand for housing.

5.3. **Development Plan**

5.3.1 The relevant Development Plan is the Portlaoise Local Area Plan 2012-2018.

The site is zoned 'Residential 1' with a stated objective 'to protect and enhance the amenity of developed residential communities'.

5.3.2 Laois County Development Plan 2017-2023

Laois County Housing Strategy

HP1: Facilitate the provision of housing units to sufficiently cater for social and specialist housing needs over the plan period, as established in the County Housing Strategy.

6.0 **Objections**

6.1. One objection was received from Kelly Whitham. The issues raised on the objection dated 18th April 2018 are as follows.

- The objector noted that they were not aware of the CPO and that they were not adequately informed by Laois County Council and An Bord Pleanala.
- The objector noted that the house on the site was demolished without the objector's knowledge and that she is still paying a mortgage on the property.

7.0 **Oral Hearing**

7.1. General

7.1.1. An Oral Hearing was held on 28th June 2018, in the Midlands Park Hotel, Portlaoise. A digital sound recording was made of the Hearing and should be consulted for a full representation of proceedings. The Hearing commenced at 10:10 and there follows below a summary of the main areas covered and issues arising.

7.2. **Attendees**

7.2.1. Representation on behalf of each Party was as follows:

7.2.2. Laois County Council:

- Dermot Flanagan SC
- Michael Rainey, Senior Executive Officer, Housing Department.
- Angela McEvoy– Senior Planner.

7.2.3. Objectors:

- Kelly Whitham

7.3. **Submission of Louth County Council**

7.3.1. Michael Rainey, Senior Executive Office, Housing Department, read from a written statement (Item 1 – appended), which can be summarised as follows:

- There is significant social housing pressure in the County. The Council has a waiting list of 1599 applicants for Social Housing with 1,114 expressing a preference for housing in Portlaoise.
- The CPO concerns Hepburn Court in which all of units are vacant and derelict and the Local Authority have secured either by voluntary agreement or under the derelict sites act 10 of the units with a further two demolished. The Local Authority have also acquired two adjoining properties (Kingdom Hall and the Squash Club).
- The Local Authority intend to redevelop the lands of Hepburn Court and adjoining lands to provide up to 60 new 2 and 3 bed social housing units. It is expected to refurbish no.s 1-6 Hepburn Court with the remaining units demolished.
- It was noted that the Order for the CPO was signed on the 14th February 2018 and issued to the owners last known address and financial institutions with a registered interest on the 26th of February 2018, purchase notices were erected on the relevant properties on the same date. The compulsory purchase order and schedule was published in the Irish Independent and Leinster Leader on the 27th of February 2018.
- It is noted that the Local Authority received notification of an objection from Kelly Whitham on the 1st May 2018 from the Bord.

- It was noted that the lands subject to the CPO are necessary and suitable for the housing purpose intended as provided for in the Housing Acts and the acquisition accords with housing and planning policy. It is noted that the objection raised relates to matters that will be addressed by the statutory compensation code.

7.3.2. Dermot Flanagan SC outlined the fact that the Local Authority had made significant attempts to contact the owners of nos 9 and 11. The owner of no. 9 had noted that the issue is now a matter for a financial institution and had not objected to the CPO. Efforts were made to contact the owner of no. 11 at her last known address and no objection had been received. Mr Flanagan noted that the lands at Hepburn Court were part of a larger landholding and plans for a larger house development.

7.3.3. Angela McEvoy, Senior Executive Planner, then read from a written statement in respect of planning matters (Item 2 – appended). The contents of this submission can be summarised as follows:

- Ms McEvoy outlined planning policy including national and regional planning context (Action Plan for Housing and Homelessness-Rebuilding Ireland 2016 (DOHPLG)).
- Ms McEvoy outlined local planning context including housing policy objectives under the Laois County Development Plan 2017-2023 and objectives in relation to implementation of the Derelict Sites Act under the Portlaoise Local Area Plan 2012-2018.
- The zoning objective for the site was noted under the Portlaoise Local Area Plan 2012-2018, residential 1 and the zoning objective and type of development permitted under such was outlined.
- The planning history of the site was noted and it was stated that the potential of the lands in question to regenerate the area and facilitate residential development is significant. It was stated that the lands subject to the compulsory purchase order are necessary and suitable for the housing

purpose intended, as provided in the Housing Acts and the acquisition accords with housing and planning policy. The CPO facilitates implementation of polices at national, regional and local levels.

7.3.4. Dermot Flanagan SC noted that Laois County Council are the housing authority for the area and noted the powers for such under section 212(1) of the Planning and Development Act, 2000 (as amended) in terms of development of land, reference was made to subsection 212(1)(d) and (e). Reference was also made to Sections 212(2)(a), 212(2)(b), 212(2)(d), 212(4), 216(1) and 216(2). It was noted that property arbitrator would deal with matters of compensation and reference was made to a judicial case, Clinton v An Bord Pleanala.

7.4. Objector Questioning of Local Authority

7.4.1. Kelly Whitham, then questioned the Local Authority.

- The objector questioned the Local Authority regarding the level of communication and notice she had received and that she had not received notice of the CPO at the time of the issue of order.
- Michael Rainey responded outlining that the notice was posted to no. 8 Hepburn Court and posted to Ulster Bank and that notices were checked and replaced on site. It was noted that there was an email response by the objector on the 18th of April 2018.
- The objector questioned why the Local Authority had sent a letter to no. 8 Hepburn Court when they knew there was no house on the site, which has since been demolished and that there were other addresses available for the objector.
- The Local Authority reiterated the fact that they had sent notices to the owners last known addresses and that notices had been posted on site.

7.5 Submission of Kelly Whitham.

7.5.1 The objector reiterated the lack of communication in relation to her property that she had perceived to be the case and noted that the house on site was demolished as result of arson in November 2013. The objector does not object to principle of the plans proposed by the Local Authority however noted that she still is paying a mortgage in relation to the property in this case.

7.6 Local Authority questioning of Kelly Whitham

7.6.1 The Local Authority had no questions

7.7 Inspector's Questions

7.7.1 No questions.

7.8 Closing Statements

7.8.1 I provided an opportunity for both parties to make closing statements.

7.8.2 Local Authority

Dermot Flanagan SC summarised the issues raised in the Local Authorities submission and noted in relation the issues raised by the objector that the property arbitrator would deal with matters of compensation.

7.8.3 Objector

Kelly Whitham had no further comments to make.

7.8.4 I then read a Closing Statement, and the Oral Hearing closed at 11.20am.

8.0 **Assessment**

8.1. Previous Board decisions and case law have established four key areas upon which a CPO is typically assessed, as follows:

- Does the CPO serve a community need?
- Is the property in question suitable to meet that community need?
- Does the stated purpose / proposed use / works accord with the Development Plan for the area?
- Have alternative means of meeting the community need been explored?

8.2. I will address these in turn below, along with other issues arising from the objections.

8.3. **Community Need**

8.3.1. Laois County Council's case for the CPO as noted in the Order itself was for the purposes of the Housing Act 1966. As subsequently expanded upon and as originally received by the Board refers to a Chief Executive Order (Order Ref. 95/2018) it was clarified that the land and dwellings are required for social housing and the order directing that the lands be acquired by Compulsory Purchase Order. The documents submitted include a report from Mr Michael Rainey, SEO, Housing Department, dated 13th February 2018, which confirmed that the scheme was necessary and that the lands are suitable and necessary for a provision of a social dwelling unit and which recommended that the land be the subject of a CPO. A copy of this report was subsequently submitted to the Board, and I note that it also stated that the current housing list consists 809 applicants with a preference for Social Housing in Portlaoise. During the course of the Oral Hearing, issues relating to the community need for the subject CPO were addressed in more detail by the statement of Michael Rainey, Senior Executive Office, and Housing Department (Item 1) and in Angela McEvoy, Senior Planner's submission in respect of the planning policy context (Item 2).

8.3.2 Arising from the above, the key tenets of the Local Authority's position are that there is significant demand for social housing in County Laois, with a current waiting list of 1599 applicants for Social Housing with 1,114 expressing a preference for housing in Portlaoise. In addition the existing housing development at this location is in vacant and derelict state and has a history of anti-social behaviour with the need for a regeneration of the area that would be provided for through the CPO of the properties. The properties in question are part of a wider plan for a social housing development in which 60 social housing units are to be provided incorporating Hepburn Court and adjoining lands with vacant structures (the Squash Club and Kingdom Hall) also included. It is proposed to retain no.s 1-6 Hepburn Court and refurbish them as part of the new development (no permission has been sought for such yet).

8.3.3 In light of the above, I consider that the Local Authority has adequately demonstrated that the subject CPO would serve a community need by addressing an urgent social housing need, as well as providing much needed regeneration of an area subject to vacancy, dereliction and anti-social behaviour. Notwithstanding this, however, further consideration is required to establish whether an adequate case and justification has been made for the CPO of the subject lands and the interference with private property rights that compulsory acquisition represents. This will be addressed further below.

8.4. Suitability of the Site

8.4.1. The subject sites consist of the site of no. 8, which formerly had a dwelling and no.s 9 and 11, which have existing dwellings. The sites are part of an existing housing development in an established residential area, zoned Residential 1 under the County Development Plan. The sites are part of zoned and serviced residential land, which is suitable for new residential development as proposed by the Local Authority. As noted earlier the existing housing development the sites are part of is a vacant and derelict development subject to anti-social behaviour and suitable for regeneration. I would consider the sites to be suitable for social housing and having regard to the fact that the Local Authority have acquired the rest of the existing

properties in Hepburn Court the ability to regenerate the area in a coordinated and comprehensive manner is dependent on acquiring the remaining properties within Hepburn Court, I therefore, consider the acquisition to be reasonable and proportional in these circumstances.

8.5. Accordance with Housing and Planning Policy

8.5.1. The Board is referred to Section 5 above, which outlines the housing and planning policy context. It is clear that there are various National and County level policies promoting the re-use (and acquisition, where necessary) of existing dwellings in order to meet housing need.

8.5.2. With regard to the residential zoning of the site and its stated objective, I am satisfied that the acquisition of the properties for social housing accord with the zoning and would contribute to the protection and improvement of the existing residential amenity of the area. The acquisition of the properties would allow for regeneration of an area subject to vacancy, dereliction and anti-social behaviour. In conclusion, I consider that the compulsory acquisition of the subject property would be in accordance with housing and planning policy.

8.6. Use of Alternative Methods

8.6.1. Given the protection accorded to private property ownership in Ireland, the compulsory acquisition of any property should generally be seen as a last resort having considered other alternatives first. I would consider in this case that given the existing condition and history of the housing at Hepburn Court there would appear to be no other alternatives but for the Local Authority to acquire the properties in question to ensure the sites and the existing housing development can be redeveloped comprehensively for social housing. It appears that a significant number of properties at this location have been acquired by agreement. I would consider that it would be difficult for the remaining properties to be dealt with by the individual owners considering the need for comprehensive approach to regeneration at this location. The existing condition of the housing development has necessitated such action

from the Local Authority and there is a requirement for the acquisition of these final three properties including the objector's to ensure comprehensive redevelopment for the purposes of social housing.

8.6.2. In conclusion, I am satisfied that there are no alternatives to the process that Local Authority has undertaken to compulsory purchase the properties in question. I am also satisfied that the acquisition of properties in question for social housing is supported by housing policy.

8.7. Issues Raised by Objectors

8.7.1. The objector raised concerns about lack of notification and communication from the Local Authority as well as An Bord Pleanála. The Local Authority set out the process and dates on which the order was issued and notices erected on site. I am satisfied that such accord with the requirements set down under the Planning Act and that the objector has been sufficiently aware of the compulsory purchase order. The objector has been able to lodge an objection and therefore I would consider that this issue is not a reason to preclude confirmation of the compulsory purchase order.

8.7.2. The objector has noted that the dwelling on site was demolished without her knowledge and that she is still paying a mortgage on the property. As noted above the Local Authority have demonstrated that there is need to acquire the properties in question for the good of the community at this location and that their reason for acquisition to provide for social housing is in accordance with national, regional and local policy for housing. I would also note that Board has no role or jurisdiction in the determination or the assessment of compensation.

8.7.3. Having reviewed the Regulations in question, I am satisfied that the format and text of the CPO is adequate and consistent with the prescribed requirements. Given that Ms Whitham made a written objection to the CPO and participated in the Oral Hearing, I do not consider that her rights have been adversely affected in this regard, and I am satisfied that correct procedures were followed by the Local Authority.

9.0 Conclusion and recommendation

9.1 The Local Authority has demonstrated the pressing need for increased social housing provision in the Portlaoise area, and that the acquisition of the properties for the purposes of social housing is consistent with both National and County level policies and objectives as expressed in the Rebuilding Ireland Action Plan for Housing and Homelessness 2016, the Laois County Development Plan 2017-2023, and the Portlaoise Local Area Plan 2012-2018. The proposed acquisition would allow for a comprehensive redevelopment and regeneration of an area subject to vacancy, dereliction and anti-social behaviour. I am satisfied, having regard to the facts of this case, that adequate justification has been put forward by the Local Authority for the purpose nature and extent of the acquisition of these private properties. I am satisfied that the process and procedures undertaken by the Local Authority have been fair and reasonable and that Laois County Council has demonstrated the need for the CPO and that the properties being acquired are both necessary and suitable. I consider that the proposed acquisition of these properties would be in the public interest and the common good and would be consistent with the policies and objectives of both strategic and statutory planning policy.

9.2 In summary, I am satisfied that the subject properties are required by the Local Authority for the purposes of performing its statutory functions, that they are needed for the purposes of the Housing Act 1966 namely, and that the requirements of the Third Schedule have been complied with. I recommend that the Board confirm the CPO subject to attached Schedule.

10.0 Reasons and Considerations

10.1 Having considered the objection made to the compulsory purchase order and the report of the person who conducted the oral hearing into the objections, and having regard to the provisions of the current Laois County Development Plan 2018-2023, the Portlaoise Local Area Plan 2012-2018, and the DoHPCLG's Action Plan for Housing and Homelessness and to the social housing , it is considered that the

acquisition by the Local Authority of the properties in question is necessary for the purposes stated in the order and the objection cannot be sustained having regard to the said necessity.

Colin McBride
Planning Inspector
05th July 2018