



An
Bord
Pleanála

Inspector's Report ABP-301481-18

Nature of Application

Application for confirmation of compulsory purchase order for the purposes of the Housing Act 1966, as amended.

Location

No.'s 1-4 The Close, John's Hill,
Waterford.

Local Authority

Waterford City and County Council.

Objectors

1. Tom O'Regan & Co. Solicitors.
2. Brennan & Co. Solicitors.

Date of Site Inspection

15th June and 10th July 2018.

Date of Oral Hearing

11th July 2018.

Inspector

Susan McHugh.

1.0 Introduction

- 1.1. This case relates to objections received to a CPO served by Waterford City and County Council, entitled 'Waterford City and County Council, Vacant Properties, Waterford Compulsory Purchase Order 2018 (No.1) (Revised) No.'s 1-4 The Close, John's Hill, Waterford'.
- 1.2. Two objections have been received to the Compulsory Purchase Order (CPO) and an Oral Hearing to consider these objections was held on 11th July 2018 in the Tower Hotel and Leisure Centre, Waterford.
- 1.3. The four properties which are the subject of this Compulsory Purchase Order are jointly owned by four individual parties. One of the four parties are deceased, and an objection was made on behalf of the Executor to his Estate. The second objection was on behalf of the remaining three parties.
- 1.4. 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. No.'s 1-4 The Close are located at John's Hill in Waterford Town Centre. John's Hill is a relatively narrow residential street which slopes northwards towards the junction with the R708 South Parade and towards John's River. The Close is located on the western side of the street along which are terraces of residential properties.
- 2.2. The overall acquisition site extends to c.0.0314ha, and is occupied by four no. three storey terraced houses with a landscaped area to the front. The houses form part of a larger residential development known as John's Hill which was constructed within the grounds of the adjoining Old Infirmary building, a Protected Structure. The overall scheme is accessed via a gated entrance to the south of house no. 1 from John's Hill.
- 2.3. The terrace fronts onto a shared pedestrian and landscaped area, bounded by a low wall and railing with pedestrian gate and steps to the pavement. There is a small rear garden associated with each house. The CPO map indicates five separate plots, 101-105.

- 2.4. The houses do not appear to have off-street car parking. Limited on-street car parking is permitted to the front of the units and along another section of John's Hill road, on the western side, while there are double yellow lines on the eastern side of the street.
- 2.5. The houses have a painted render finish, a slate roof and timber windows and doors. It was not possible to gain access to the houses on the dates of my site inspections. I noted that externally the houses appeared to be in good condition with no obvious evidence of significant structural defects and the roofs appeared intact. The windows and doors on the front, side and rear elevations were also intact. House No. 1 appeared occupied, house No. 2 was fully furnished, while refurbishment work was taking place at house no. 3 and 4. See photos attached.

3.0 Application for Confirmation of CPO

- 3.1. This CPO Waterford, is made under the Housing Act, 1966, as amended. The stated purpose of the CPO is for "securing and facilitating the development and renewal of property".
- 3.2. The CPO states that the land described in Part II of the Schedule 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. Each of the five Plot Ref. No's within Part I of the Schedule of the CPO are recorded, with the owner or reputed owners listed as being John O'Dolan (deceased), Joe Hynes, Sean Hynes and Eugene Hyland. Lessees or reputed Lessees are listed as 'Unknown' and occupiers are listed as 'None'.
- 3.4. The official seal of the Local Authority was affixed to the Order on 12th April 2018, signed by Waterford City's Major and seconded by Waterford City and County Council's Chief Executive. The proposed CPO was advertised in 'The Munster Express' Newspaper on 17th April 2018, advising that owners, lessees and occupiers of the land described in the Schedule would receive individual written notice, and that a copy of the Orders and the maps referred to, could be inspected at the offices of Waterford City and County Council, Waterford.

- 3.5. Other documentation forwarded to the Board by the Local Authority includes: the deposited map; copy of a letter from Director of Services Economic Development and Planning dated 27th March 2018 stating that the acquisition of land at 1-4 The Close relating to the CPO is in accordance with the planning and development objectives for the area contained in the Waterford City Development Plan 2013-2019, as adopted on 11th February, 2013, copy of notices to the landowners; and a copy of the Register of Post.

4.0 Planning History

4.1. *Parent Permission*

- 4.1.1. **P.A. Reg. Ref. 00500067:** Permission **granted** 13/09/2000 to refurbish, extend and alter the Infirmary Building (Protected Structure) to accommodate 57 apartments and construct 12 no. 3-storey and 8 no. 4 storey town houses and associated site development works to Kemberton Properties Ltd.

4.2. *Alterations to Parent Permission*

- 4.2.1. **P.A. Reg. Ref. 02500231:** Permission **granted** 31/10/2002 for modifications to a previous permission for development works at the Infirmary Protected Structure Ref. 00-67, including change of apartment and house type at sites 16-19 and to provide 4 No. 3 storey town houses, alterations to site boundary and internal road and carparking layout at The Infirmary Johns Hill, Waterford to Kemberton Properties Ltd.

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. **Department of Housing, Planning, Community and Local Government Circular PL 7/2017**

- 5.3.1. This Circular followed the Circular PL 8/2016 and relates to the preparation of Vacant Homes Action Plans.

5.4. **Waterford County Development Plan 2011-2017**

- 5.4.1. On 1st June 2014, Waterford City & County Council was established following the amalgamation of Waterford City Council and Waterford County Council.
- 5.4.2. The three existing development plans within the amalgamated Council area, Waterford City Development Plan 2013 – 2019, Waterford County Development Plan 2011 – 2017, & the Dungarvan Town Development Plan 2012 – 2018, had their lifetime extended, as

per Section 11A of the Planning & Development Act 2000 (as amended) and remain in effect until the new Regional Spatial & Economic Strategy is made by the Southern Regional Assembly, thereafter a new City and County Development Plan will be prepared.

- 5.4.3. This Plan remains current until it is replaced by a new County Development Plan by virtue of the provisions of the Electoral, Local Government and Planning and Development Act 2013.

5.5. **Waterford City Development Plan 2013-2019**

- 5.5.1. Under the Waterford City Development Plan 2013-2019, the lands are zoned 'Developed Residential' *'to protect and improve existing residential areas and their amenities and provide for appropriate residential infill opportunities where feasible.'*
- 5.5.2. As outlined in the Core Strategy in Chapter 2, an estimation of the level of population to be planned for the Plan period is 5,003 persons. Applying an average household size of 2.6 persons per household translates into a housing requirement of 1924 units required over the new Plan period. These figures are based upon a disaggregation of RPG 2010 -2022 population growth estimates figures for the City, in conjunction with utilisation of the 2011 preliminary census results as a baseline figure.
- 5.5.3. The following objectives are of relevance;
- Objective 2.1.4: To require new housing proposals to demonstrate compliance with the core strategy.*
- Objective 2.1.5: To provide a variety of housing types, tenures and densities reflective of the diverse needs of the people of Waterford, mitigating current leakage and unsustainable travel patterns.*
- Objective 2.1.7: To protect and enhance the vibrancy and vitality of Waterford City Centre.*
- Objective 2.1.17: To provide a socially inclusive society.*
- 5.5.4. Chapter 5 of the Plan refers to the City Centre and Section 5.4.1 states that *'The City Council will continue to target obsolete/derelict sites within the City Centre for redevelopment and investment.'*

- 5.5.5. Chapter 8 of the Plan refers Housing, with particular regard to housing policy, section 8.1. refers '*The core objective of housing policy is to enable every household to have available affordable residential accommodation, suited to its needs, in a good environment and as far as possible, at the tenure of its choice*'.

6.0 **Objections**

- 6.1. Two objections were received from Tom O'Regan & Co. Solicitors acting on behalf of the Administrator in the Estate of John O'Dolan (the deceased owner of the site), and from Brennan & Co. Solicitors, acting on behalf of Joseph Hynes, Sean Hynes, and Eugene Hyland.

6.2. **Tom O'Regan & Co. on Behalf of the Estate of John O'Dolan**

- 6.2.1. The issues raised in the **1st letter** of objection dated 28th May 2018 can be summarised as follows:
- The properties No.'s 1-4 The Close, John's Hill, Waterford were constructed under planning permission 02500231, are fully completed but have never been occupied.
 - The properties remained vacant for a number of years following the death of John O'Dolan.
 - Difficulties arose in finalising his Estate, however a High Court Order was granted to Tom O'Regan to take out administration in the Estate.
 - Object to the CPO application on the basis that the properties have been fully completed in accordance with the planning permission.
 - The assertion by Waterford City and County Council (WC&CC) that the properties are unfit for human habitation and not being capable or fit for human habitation at a reasonable expense, is incorrect.
 - The properties are being fitted out with furniture by the owners and 2 of the 4 properties will be available to rent by July 2018 with the remaining properties being available in August 2018 for rent by the owners.

- The application by WC&CC to acquire the properties by CPO is an attempt to purchase the properties at under value and take advantage of the situation pertaining to the death of John O'Dolan and the complications in finalising his Estate.
- There has been no correspondence between the owners and WC&CC in advance of serving the CPO, and they were given no prior notice.
- As such the owners were not given the opportunity of rectifying the situation and the Local Authority wrongly assumed that the present application would not be challenged because of the death of John O'Dolan and the administration of his estate.
- The present application is an unjust attack on their clients natural and constitutional rights under the European Convention of Human Rights.

6.2.2. Tom O'Regan & Co. Solicitors attached a copy of the High Court (Probate) Order dated 23rd April 2018 granting Tom O'Regan liberty to apply for and extract a Grant of Letters of Administration and Will in the Estate of the deceased John O'Dolan.

6.2.3. The issues raised in a **2nd letter** of objection dated 26th June 2018 can be summarised as follows;

- They are not in a position to lodge papers to extract the Grant of Administration until they have received the original Will and a number of files from another firm of Solicitors who previously handled the matter. This matter is the subject to a further High Court application on 2nd July 2018. Copy of Notice of Motion which is returnable for the 2nd July 2018 submitted.
- Expect that after they have received the appropriate Order from the High Court that they would be able to take up the files and Will, but do not expect to be in a position to lodge papers in the Probate Office seeking a Grant of Administration prior to the 11th July 2018, and as of yet have not been appointed Administrators in the Estate of John O'Dolan.
- Do not wish for the Estate of John O'Dolan to be in any way prejudiced and will as soon as possible lodge papers to take out the Grant of Administration.

- Ask in the circumstances that the matter be put back until September 2018 and will arrange for the Probate Office to issue a Grant in favour of Tom O'Regan in the meanwhile.

6.2.4. The issues raised in a **3rd letter** of objection dated 6th July 2018 can be summarised as follows;

- Express disappointment with the way the matter is being dealt with, and cannot see why the matter cannot be put back to September/October 2018.
- Cannot see what prejudice the Local Authority will suffer with respect to the matter being put back to September/October next.
- Ask the Board to outline the reasons why they have refused to put the matter back.

6.3. **Brennan & Co. on Behalf of Joseph Hynes, Sean Hynes and Eugene Hyland**

6.3.1. The issues raised in the objection dated 28th May 2018 can be summarised as follows:

6.3.2. Background

- Mr. John O'Dolan built a housing estate at John's Hill, and tragically died in 2009. At the time of his death, all four parties still had an interest in four of the housing units which are the subject of the CPO.
- Mr. O'Dolan named his wife Eileen O'Dolan as executrix who by Order of the High Court dated the 19th April 2010 was permitted to renounce her rights. His Estate was insolvent.
- This caused considerable difficulties for their clients, and resulted in them having to issue proceedings to the High Court to protect their rights.
- Their clients and the late John O'Dolan had obtained funding from Ulster Bank to develop the housing estate at John's Hill. Ulster Bank took security over most of this development.
- In November 2011, their clients called upon Ulster Bank to furnish the balances due in relation to the joint loans of their clients and the late Mr. O'Dolan so that they could redeem the loans, and also sought confirmation

that upon discharge of the joint loans, Ulster Bank would furnish the deeds of Discharge/Release over the housing estate.

- Ulster Bank wrongfully refused to do this claiming that their security over that part of the development also secured the late Mr. O'Dolans other liabilities with Ulster Bank. What Ulster Bank were purporting to do was wrongfully fetter their client's equity of redemption by obstructing them from redeeming the loans based on other loans due by the Estate of John O'Dolan.
- Various correspondence ensued over the years between their clients and Ulster Bank, but the bank maintained their stance.
- In 2015, Ulster Bank Limited sold the loans to a capital venture entity called Promontoria (Aran) Limited. Again, their clients sought to redeem the joint loans but Promontoria (Aran) Limited adopted the same unlawful approach as Ulster Bank.
- In 2017, Promontoria (Aran) Limited unlawfully purported to appoint a receiver Tom O'Brien. As a result of the unlawful actions of Promontoria (Aran) Limited, proceedings were issued by their clients last year against them and the receiver. Copy of Plenary Summons and Statement of Claim served on behalf of their clients submitted.
- A defence to those proceedings were recently served by Solicitors for Promontoria (Aran) Limited and the receiver. Copy of the defence was submitted. These proceedings are pending in the High Court.
- Within the last few weeks, Tom O'Regan & Co. Solicitor obtained an Order from the High Court allowing him to extract a general grant of administration for the Estate of the late John O'Dolan. Therefore, Mr. O'Regan will be able to administer the entire Estate of the late Mr. O'Dolan including the Estate's interest in the property. Believe that it may be necessary to have Mr. O'Regan joined to the proceedings.
- Their Clients are arranging to fit out the units at considerable cost for the purpose of renting them out. The units are already connected for gas and electricity. They expect two of the units to be ready in June 2018 and the

remaining two in July 2018. Intention is to place all four units in the hands of a local firm of letting agents for the purpose of securing suitable tenants.

6.3.3. Grounds of Objection to the CPO

- A decision would be unlawful whilst proceedings relating to the four units are pending in the High Court. Such a decision would be sub-judice.
- A decision would undermine their clients proceeding in the High Court, and vindicate their rights before the Court, and would undermine the Courts role in determining their client's rights in the property.
- Their client's property rights are enshrined in the Irish Constitution and a decision would infringe their client's constitutional rights.
- All units will be made available for letting purposes within the next few weeks, therefore such a decision serves no common good or social purpose and the decision would be of no public benefit.
- The decision will prejudice the position of the Estate of Mr. John O'Dolan, which will be put it in the invidious position of not being able to make representations in relation to the application to compulsory acquire the property until Mr. O'Regan has extracted the grant of administration. Mr. O'Regan does not have the locus standi to make representation until the grant has been extracted.
- The decision will amount to an unjust attack on their clients natural and constitutional rights.
- The decision will breach their client's rights protected under the European Convention on Human Rights.

7.0 Oral Hearing

7.1.1. An Oral Hearing was held on 11th July 2018, in the Tower Hotel and Leisure Centre, Waterford. A digital sound recording was made of the Hearing and should be consulted for a full representation of proceedings. The Hearing commenced at 10:05am 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. Waterford City and County Council:

- Mr. David O'Connor – Solicitor, Nolan Farrell & Goff.
- Mr. Paul Johnston – Senior Resident Engineer.
- Ms. Mary Quigley – Property Management.
- Mr. Anton Lennon – Executive Engineer.

7.2.3. Objectors:

7.2.4. The first Objector, representing John O'Dolan (the deceased):

- Mr. David McGrath – Barrister.
- Mr. Tom O'Regan – Solicitor.

7.2.5. The second Objector, representing Joseph Hynes, Sean Hynes, and Eugene Hyland:

- Mr. Ronan Brennan - Solicitor.
- Mr. Joseph Hynes – Landowner.

7.3. Submission of Waterford City and County Council

7.3.1. I noted that just prior to the hearing it had been brought to my attention by Waterford City and County Council, that correspondence relating to the case was sent by email to the Board the previous evening. I invited the Local Authority to circulate copies of the letter.

7.3.2. Mr. David O'Connor clarified that the letter was from Byrne Wallace law firm acting on behalf of Promontoria (Aran) Limited and Tom O'Brien as receiver over certain assets of Joe Hynes, Eugene Hyland, Sean Hynes and John O'Dolan (deceased), in which it was stated that they had no issue with regard to the CPO. (Item 1 – appended).

7.3.3. Mr. O'Connor provided a brief overview of the legal background to the CPO.

7.3.4. Mr Paul Johnston, Senior Resident Engineer, read from a written statement (Item 2 – appended), which can be summarised as follows:

- The properties were initially identified as being vacant in May 2016 during a vacancy survey undertaken by Waterford City and County Council and are still vacant. The initial vacancy survey of the area indicated a vacancy level of 11.8% which is clearly unsustainable. Census 2016 figures indicated a 15% vacancy rate for the electoral district.
- Waterford City and County Council (WC&CC) have an ongoing programme to deal with property vacancy that currently involves nine CPO's that target thirty-eight individual properties.
- Pillar 5 of Rebuilding Ireland Action Plan recognises that vacant dwellings provide an opportunity to address housing pressures by utilising existing stock.
- Notes Ministerial correspondence and Planning Circular PL7/2017 that mandated all Local Authorities to develop and adopt Vacant Homes Action Plans.
- Under the WC&CC Vacant Homes Action Plan 2017, there is provision of €100,000 in the 2018 budget to facilitate the commencement of a programme of compulsory purchase of vacant residential units with the objective of returning those properties to the market for productive use, which is in accordance with Pillar Five of the Rebuilding Ireland Action Plan.
- The Housing Agency Housing Supply-Requirements 2016-2020 published in February 2017 estimated the Minimum Housing Requirement over the Projected Period 2016-2020 in Waterford City and suburbs to be 713 and 1,223 in Waterford County.
- The Summary of Social Housing Assessments 2017 published in December 2017 by the Housing Agency determined that 1,444 households qualified for social housing supports within WC&C.
- The 2016 Census Total Population data for the Poleberry area (i.e. area where properties are located) shows that the population in this area has increased from 1,055 in 2011 to 1,370 in 2016. It can be reasonably expected

that the population of the Poleberry area and Waterford City will increase in the years ahead.

- The rental and second-hand property market in Waterford are already under supply constraints e.g. the number of properties for sale in Waterford City on 20th June 2018 was 205 and for rent was 91, the lowest numbers since March 2007 (Daft.ie).
- There is very little building activity in Waterford City. Housing Completions for Waterford County in 2017 were 278 – of which 103 were one-off individual private houses. (CSO, New Dwelling Completions Q1 2018).
- Compared nationally, Waterford's relatively low property prices, coupled with similar build costs to Cork, Galway and Limerick, indicates that house building is not comparably rewarding and new supply will therefore lag behind these other cities (Daft.ie SCSl sources).
- The return to use of vacant properties at No's 1-4 The Close, would meet the housing need for 4 households that would otherwise not be realised.
- Each property is a four-bedroom dwelling over three floors and the properties appear to be in reasonably good condition. There is significant demand for these types of properties in this location.
- Mazars notified WC&CC on the 10th July 2017 that Tom O'Brien had been appointed receiver to the assets of certain individuals that included No.'s 1-4 The Close, John's Hill, Waterford.
- WC&CC offered to acquire the properties on the 17th July 2017, however the offer was refused by Mazars on behalf of the charge holder on the 22nd August 2017.
- CPO notices for Nos. 1-4 The Close were published in the Waterford News and Star on 17th April 2018, notification was also sent to Mazars as the receiver over the properties.

Response to the Objection by Tom O'Regan & Co. Solicitors

- The purpose behind the CPO is that the properties were never occupied which is the contention of the Local Authority and acknowledged by the objector.
- The reference in the CPO Notice to the properties being unfit for human habitation and not being capable of being fit for human habitation at reasonable expense refers to an earlier CPO Notice which was withdrawn. The Local Authority acknowledges the properties are in reasonably good condition.
- The fact that the properties are currently being fitted out in preparation for renting is at odds with correspondence from Eugene Hyland who states that the reputed owners have to assess if it will be possible for them to rent the properties given the appointment of a receiver to the properties.
- Tom O'Brien of Mazars, Block 3, Harcourt Centre, Harcourt Street Dublin 2 was appointed on 15th May 2017 as receiver of the properties on foot of a mortgage dated 21st July 2000, between the parties and Ulster Bank Limited and to enter upon and to take possession of those lands, and to exercise the powers conferred by the mortgage.
- On this basis, it would appear that the receiver is the person entitled to exercise control over the properties. Where a receiver is appointed, it would seem that the objectors do not have legal entitlement to possession of the properties or to rent the properties. From the perspective of the receiver, it would appear that in carrying out their current fit-out works, they are in effect 'trespassing' on the properties unless the consent of the receiver has been obtained.
- WC&CC is concerned that there is significant doubt over the legal entitlement of the objectors to rent out the properties, and it would seem unlikely given the ongoing litigation that such doubt will be resolved for the foreseeable future.
- WC&CC having been notified by Mazars of their appointment, made offers on the properties that were subsequently rejected.

- WC&CC strongly rejects the suggestion that the CPO is an attempt to acquire the properties at an undervalue. In default of agreement between the parties, the appropriate compensation to be paid will be assessed in the normal way by an independent arbitrator.
- The purpose of the CPO is to return these vacant properties to productive use.
- The acquisition of the properties is clearly justified by the exigencies of the common good, arises from a pressing social need and is proportionate to the objective to be achieved.

Response to the Objection by Brennan & Co. Solicitors

- The overriding issue for the Local Authority is to return the properties to use as they have never been occupied. The events and issues portrayed are not ones that indicate that the reputed owners are in a position to deliver the properties to use any time in the near future.
- As noted, Tom O'Brien of Mazars has been appointed as receiver over the properties and it would appear that the receiver is the person entitled to exercise control over the properties.
- As a result of the appointment of the receiver, it would appear that the objectors have no legal entitlement to possession of the properties or to rent the properties.
- It would appear that it will be necessary to await the outcome of the High Court proceedings before it can be established which of the parties is entitled to deal with the properties. It is unknown how long those proceedings may take to be finalised.
- There seems no reasonable likelihood that the properties will be legally tenanted in the foreseeable future.
- The objectors have had many opportunities over the years to rent out the properties but have not done so.
- It is only since the publishing of the CPO notices by WC&CC that the objectors have undertaken any works to the properties.

- Do not accept that the compulsory acquisition of the properties will undermine the objector's High Court proceedings, their entitlement to vindicate their rights before the Court or the Court's role in determining their rights. It is not apparent from the objection lodged that the objectors would suffer any prejudice as a result of their rights in the properties being translated into a right to monetary compensation.

7.3.5. The LA concluded their presentation.

7.4. I asked the objectors if they had any questions for the Local Authority. Mr. David McGrath stated, that as it was the first opportunity that he and his clients had to understand the reasons behind the CPO, and having listened to the presentation from the Local Authority, asked that they might have a recess to allow some time to consider the presentation. This was agreeable to all parties.

7.4.1. I agreed to a recess of 30 mins and that the hearing would reconvene at 11.00am.

7.5. First Objector Questioning of Local Authority

7.5.1. Mr. David McGrath, acting for John O'Dolan (the deceased), circulated a copy of their submission to the CPO (Item 3 – appended) which can be summarised as follows:

- Local Authority failed to justify an unnecessary incursion into their client's lands, when all four units will be in the hands of a local firm of letting agents for the purpose of securing suitable tenants imminently.
- Local Authority failed to state a clearly defined purpose for the CPO as required under the Housing Act, 1966 (Acquisition of Land) Regulations, 2000 (Statutory Instrument No. 454 of 2000.)
- A report from a certifying Architect in respect of the Scheme, dated 9th July 2018, and confirmation of the Architectural practices current professional insurance cover attached.

7.5.2. Mr. David McGrath then questioned the Local Authority.

7.5.3. Mr. McGrath stated that he had distilled down the justification from the report presented by the Local Authority to two points. The justification for the CPO is that

the properties are vacant, and that there is a pressing need for social housing. Secondly that they (the landowners) are not legally entitled to rent out the properties, leaving aside the matter of the receiver.

- 7.5.4. Mr. McGrath then asked if whether the properties are rented that the issue of vacancy goes away, which is ultimately what is going to happen when they are acquired by the Local Authority.
- 7.5.5. Mr. Johnston stated that the issue of vacancy is no longer an issue if the properties are occupied, and the Local Authority would no longer be interested. He makes the point that the properties have never been occupied and that there is no certainty as to when they will be occupied.
- 7.5.6. Mr. McGrath accepts that they have not been rented in the past but once they are occupied then that's the end of the matter.
- 7.5.7. Mr. Johnston accepted that that would be the case.
- 7.5.8. Mr. McGrath then asked in relation to the second issue whether the Local Authority are entitled to make a determination in terms of whether the properties can be rented out by the objectors or if it is for the receiver to decide.
- 7.5.9. Mr. O'Connor states that it is the High Court who would ultimately decide on the issue, and it would not be within their gift to adjudicate on the matter.
- 7.5.10. Mr. McGrath stated that the CPO simply could not be justified and the Local Authority have no entitlement to determine who can rent the properties.
- 7.5.11. Mr. McGrath asked what the view of the Local Authority would be if the properties were occupied, and stated that two of the properties are now rented and two are about to be rented. He stated that Mr. Brennan will give more evidence in relation to an update on the properties.
- 7.5.12. Ms. Quigley added that if the CPO is confirmed by ABP, then the Local Authority could monitor the situation, and noted that the CPO could be confirmed but that the Local Authority may not act on it. They just want to get the properties back into use in a reasonable period.
- 7.5.13. Mr. McGrath stated that the suggestion is that the CPO is confirmed, but that his clients constitutional right can only be infringed where there is a serious and pressing

need, so where they have rectified the situation there should be no infringement of their rights and there is no justification for the CPO.

7.6. Submission of Mr. Ronan Brennan

7.6.1. Mr. Ronan Brennan then made a submission. This took the form of an introduction by way of background, followed by him asking questions of Joseph Hynes. The issues raised can be summarised as follows:

- He has been involved in the case for 8 or 9 years, there are 4 properties owned by 4 separate individuals, Mr. Dolan died in 2009, his widow took steps to take out a Grant and renounced that Grant in 2010. This caused lots of difficulties not least for his clients. No one took up the Grant, and because of this his clients were not in a position to rent or sell the properties.
- There has been a history of correspondence between his clients and the High Court which was submitted to the Hearing (Item 4 – appended).
- Mr. Brennan read out correspondence into the hearing dated November 2011 which states that Tom O'Regan is ready willing and able to discharge the outstanding loan on the property. The core issue is that they have been looking for relief from the High Court, and that this has caused the delay, but that now this is in the process of being resolved.
- Mr. Brennan states that his clients have been expeditious in making the properties available to rent. Two units have been fully furnished, and Unit 1 was let through a letting agent this week. Tenants have been found for Unit 2 through a letting agent. Units 3 and 4 are at an advanced stage of refurbishment and will be available to let in the next couple of weeks.
- Mr. Brennan states that Ulster Bank have been acting unlawfully, and that the appointment of a receiver is unlawful, now that the Grant of Administration has been granted. A copy of the High Court Order (Probate) dated 2nd July 2018 was circulated (Item 5 – Appended).
- Mr. Brennan then questioned his client Mr. Joseph Hynes one of the four landowners, who confirmed that since the Grant of Administration has been taken out and two leases are in place. In respect of plot ref. 101, House No. 1

is occupied by 3 doctors, plot ref. 102, House No. 2 is leased and the letting agent is checking references, plot ref. 103, House No. 3 they would expect to get occupants shortly and that for plot ref. 104, House No. 4 it may take a bit longer. The properties are being rented through a local letting agent Liberty Blue and a copy of correspondence from Liberty Blue confirming the above was circulated (Item 6 – Appended).

- Mr. Hynes then explained that the units were furnished with beds and furniture, curtains etc. and that the units have been repainted and new floors have been laid. A copy of photographs of the interiors of properties No.'s 1 and 2 were circulated along with photographs of House No's 3 and 4 (Item 7 - Appended).
- Mr. Hynes also noted that over the years other repair and maintenance works had been carried out, and referenced pipe damage which had burst during cold weather three years ago and that this was repaired.

7.7. Local Authority questioning of Mr. Ronan Brennan

- 7.7.1. Mr. David O'Connor Solicitor for the Local Authority, questioned Mr. Ronan Brennan.
- 7.7.2. He asked when were the properties advertised for letting, and whether they had been advertised on Daft.ie., and asked when were the properties completed.
- 7.7.3. Mr. Brennan stated that the construction of the properties was completed in 2007-2008, but that at that time there was no market for selling or renting the properties up until about two years ago. He explained that they were Section 23 properties which benefitted from tax relief and noted that the houses were not suitable for families.
- 7.7.4. Mr. O'Connor stated that they would still question who is entitled to rent them out, as they consider that the objectors are not legally entitled to do so, and would consider seeking an interlocutory injunction.
- 7.7.5. Mr. Brennan stated Mazars the receiver can only take possession of the properties if they have been lawfully appointed, and that it is his client's contention that they have not been.

- 7.7.6. Mr. Brennan noted that there had been a pattern of delays and referred to the upcoming High Court proceedings between his clients and Promontoria (Aran) Limited, Tom O'Brien scheduled for 23rd July 2018.
- 7.7.7. Mr. O'Regan noted that he had tried to redeem the loan but that Ulster Bank wanted to hold the loans. He stated that the receiver cannot sell the properties.
- 7.7.8. I asked if the parties would like a short break before giving their closing statements, and this was agreeable to all parties.
- 7.7.9. I agreed a recess of 15 mins and that the hearing would reconvene at 11.50am.

7.8. **Inspector's Questions**

- 7.8.1. I asked with reference to the WC&CC report and details in relation to social housing in the City whether the LA had identified a specific social housing need for these types of properties in this part of the City. Mr. Johnston said the information they had was contained in the Housing Agency Housing Supply Requirements 2016-2020 published in February 2017.
- 7.8.2. I asked if any alternative approaches were taken in respect of the properties prior to commencing the CPO process, such as acquisition with consent, or repair and lease. Mr. O'Connor said that they had approached the receiver with a view to acquiring the properties.
- 7.8.3. Mr. Johnston stated that it was not correct to state that the receiver cannot sell the properties. They explained that they had approached the receiver with an offer 9-12 months beforehand, but they rejected the offer based on the value of the offer made.
- 7.8.4. Mr. Brennan stated that he was not aware of negotiations between the Local Authority and the receiver and that a Land Registry search would show that his clients were the registered owners. Mr. Brennan asked if the receiver had made the Local Authority aware of the correspondence going back to 2011. The Local Authority said the receiver had not. Mr. Brennan said that this was the crux of the case as this correspondence clearly sets out his clients position and the unlawful approach taken by Ulster Bank.

- 7.8.5. Mr. O'Connor clarified that it would be a registry of deeds rather than land registry but that also shows Mazars as the receiver and registered owner.
- 7.8.6. I asked if, having heard the Objector's submission, if the Local Authority still considered there was a pressing community need to acquire these particular houses through the CPO process at this time to bring them back into use, or if they would come back into use in any event in due course. Local Authority stated that it still considered the CPO process to be the appropriate course of action.

7.9. Closing Statements

- 7.9.1. I provided an opportunity for all parties to make closing statements.
- 7.9.2. Local Authority
- 7.9.3. Mr. O'Connor stated that there is a significant demand for properties of this nature. He noted that it was a co-incidence that since the CPO process had commenced there was now a letting agreement in place since last Friday 6th July. The receiver has indicated to the Local Authority that they intend to seek interlocutory relief to remove residents if necessary. He stated that the Local Authority do not accept that the CPO process would prejudice the outcome of the High Court proceedings. He referred to the Blake v Attorney General legal case, and the current housing crisis in the Country. He asked that the Board confirm the CPO.
- 7.9.4. Mr. Johnston also stated that there are other three storey residential properties in Waterford City which are tenanted and have received an award for social housing. He noted the problem which is vacancy, and the solution which is the CPO process. He explained there has been a legal saga behind this case and in his view, there are in fact three issues. Firstly, the issue of vacancy, secondly the legal issue which have both been addressed and thirdly the issue of tenancy. He states in relation to the latter that these could be addressed through the Residential Tenancies Board or by eviction. He is concerned that the implication presented is that the tenancies are not legal. The Local Authority have been mandated to use the CPO powers.

7.9.5. Objectors

7.9.6. Mr. McGrath again summarised the key points as presented by the Local Authority which relate to the case, in his opinion the situation was less complicated and that only two issues remain. In relation to vacancy in circumstances where this has been solved and consequently there is no justification whatsoever for the CPO process to be confirmed. The second issue is a question for the Local Authority to decide in terms of whether they are entirely satisfied that the purpose for which the CPO is being required is warranted. The tenancy issue will be resolved in the High Court. He concludes that the Local Authority have not demonstrated that the CPO is required to return these properties into occupied units.

7.9.7. Mr. Brennan stated that he concurred with the closing submissions of Mr. McGrath.

7.9.8. I then read a Closing Statement, and the Oral Hearing closed at 12:03pm.

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. Waterford City and County Council's case for the CPO as originally received by the Board relied largely upon a Chief Executive Order (Order Ref. 2018/881) stating that the land and vacant properties are required for the purposes of securing and facilitating the development and renewal of the properties and that it be acquired by Compulsory Purchase Order. A report from Waterford City and County Council dated July 2018, was circulated at the Oral Hearing. This report confirmed that the scheme

was necessary and that the lands are suitable and necessary for a provision of social dwelling units and which recommended that the land be the subject of a CPO. I note however the case made by the Objectors on behalf of John O'Dolan that the wording of the Order was not explicit in its reference to the purpose of the works.

- 8.3.2. I note that it also stated in the report that the minimum housing requirement over the projected period 2016-2020 in Waterford City and suburbs to be 713 units, and that in December 2017 the Housing Agency determined that 1,444 households qualified for social housing supports within Waterford City and County. During the Oral Hearing, issues relating to the community need for the subject CPO were addressed in more detail by the statement of Mr. Paul Johnston, Senior Engineer in respect of the planning policy context (Item 2).
- 8.3.3. Arising from the above, the key tenets of the Local Authority's position are that there is significant demand for social housing in Waterford City and County, with the 2016 Census Total Population data for the Poleberry area (i.e. the area that the properties are located) showing an increase in population from 1,055 in 2011 to 1,370 in 2016. There appears to have been minimal delivery of units to date through direct-build or the Part V process.
- 8.3.4. While the principal purpose of the CPO is stated to be for purposes of securing and facilitating the development and renewal of the properties, the Local Authority contended at the Hearing that the properties appear in reasonably good condition. I am of the view that currently the vacant houses do not have a detrimental effect on the streetscape or the residential amenity of the area. However, I would accept that renovating the houses and bringing them back into active residential use – regardless of whether private or social housing use – could be considered to serve a community need, by making appropriate use of existing serviced dwellings and by improving the streetscape and protecting residential amenity in the area by arresting any deterioration in the condition of the properties.
- 8.3.5. Considering 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, and that the protection and improvement of residential amenity and estate management in the area would serve a secondary community need and can be considered to be a material consideration in terms of addressing

social housing provision. 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 properties are existing residential units in an established urban housing area. The sites are zoned for residential development, and are in close proximity to town centre facilities and amenities and, as such, I consider them to be suitable for use as social housing units.
- 8.4.2. No internal inspection or structural survey was undertaken by the Local Authority, however, having inspected the site, I would consider that the dwellings are readily capable of being utilised as housing units, notwithstanding any required refurbishment works. In forming this opinion, I note that the roof appears intact, that windows and doors are intact and that there was no obvious evidence of any significant structural defects to the front elevation. The Local Authority has not provided an estimate in terms of how long the refurbishment works required to return the houses to active use would take, allowing for design and procurement. The Local Authority also stated at the Hearing that Waterford City and County Council has made provision of €100,000 in the 2018 budget to facilitate the commencement of a programme of compulsory purchase of vacant residential units but has not indicated specific estimates in respect to the subject properties.
- 8.4.3. Considering the above, I am therefore satisfied that the sites are capable of being renovated for the purposes of providing social housing units, and I consider this to be an appropriate use of these existing dwelling units in a zoned and established residential area which is close to a range of services and facilities. It should also be noted, however, that the Objector Mr. Hynes indicated at the Hearing that they have already renovated two of the properties and are in the process of renovating the other two houses and bringing them back into use. This is addressed further below.

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. 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 and renovation 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.
- 8.5.3. The renovation and active use of the houses would also ensure their long-term protection and would contribute to the protection and enhancement of the character of the area, within which the houses are located.
- 8.5.4. The renovation of the subject dwellings for social housing use would assist in fulfilling Housing Policy 8.1 of the Waterford City Development Plan 2013-2019 which seeks to *'to enable every household to have available affordable residential accommodation, suited to its needs, in a good environment and as far as possible, at the tenure of its choice'*.
- 8.5.5. Notwithstanding, my overall opinion that the acquisition of vacant houses for social housing use accords with various strategic and statutory policy, I would note that nowhere is it explicitly stated that such acquisition should be carried out compulsorily. Having said that, neither does any of the policy prohibit such an approach, and having regard to the provisions of Planning and Development Act 2000 and the Housing Act 1966, both as amended, it is clear to me that compulsory acquisition of land is one of a number of tools that has been placed at the disposal of Local Authorities to fulfil their functions, which includes the delivery of social housing.
- 8.5.6. 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. In this regard, I consider that the onus is on the Local Authority to demonstrate that alternative methods are not available to them.

- 8.6.2. As noted in Section 8.3 above, there is significant pressure on the Local Authority to deliver social housing in the Waterford area, due to demand from eligible applicants and targets given to the Local Authority by Central Government. The Local Authority stated at the Oral Hearing that the delivery of social housing units to date had primarily been through the acquisition of units through the CPO process, (with currently nine CPO's that target 38 individual properties).
- 8.6.3. In respect of the subject sites at No.'s 1- 4 The Close, the Local Authority stated in response to my questioning at the Hearing that they had not pursued any alternative methods such as acquisition with consent or the 'Repair and Lease' scheme, prior to preparing and serving a CPO on the owner. They did indicate however that they had attempted to purchase the units from the receiver in July 2017, but that their offer had been rejected. The assessment of the Local Authority's Senior Engineer, as expressed to the Oral Hearing by Mr. Johnston, was that the Local Authority decided to utilise its compulsory purchase powers as the properties have been vacant for a considerable time.
- 8.6.4. While I do consider that a less intrusive approach to these properties (such as acquisition by consent or a leasing arrangement) would have been preferable, I do accept that the Local Authority is seeking to meet a wider community need by providing social housing units.
- 8.6.5. While the primary purpose of the proposed compulsory acquisition is to provide social housing units, the Local Authority, has also noted that the acquisition and refurbishment of vacant houses for social housing use is supported and promoted by the Department's Rebuilding Ireland Action Plan for Housing and Homelessness 2016 and associated Circulars PL 7/2017.
- 8.6.6. In terms of other methods available to the Local Authority, and noting the apparently long-vacant nature of the houses, the Board may wish to satisfy itself that the provisions of the Derelict Sites Act 1990, as amended, would not have been a more appropriate course of action than the CPO route. In this regard, while three of the houses are now currently unoccupied and appear to have been so for a considerable

period, I do not consider that they would meet the definition of a derelict site, as set out in section 3 of the Derelict Sites Act. In my opinion they are not in a ruinous, derelict or dangerous condition, they do not appear particularly unsightly or objectionable, and there is no evidence of significant litter or waste build-up. Despite the use of the term 'reasonably good condition' in the Senior Engineer's report describing the houses, I would not consider the houses to comprise a derelict site within the meaning of the aforementioned Act. I therefore do not consider that the provisions of the Derelict Sites Act would be of use in seeking to ensure that the houses are refurbished or brought back into use through, and in any event, I also note that the purpose of the Derelict Sites Act is not primarily linked to the provision of social housing.

8.6.7. I am satisfied that the Local Authority has considered certain alternative means of meeting the community need (i.e. the provision of social housing), albeit that they did not appear to consider less intrusive means in respect of the lands in question, and I am satisfied that the acquisition of vacant houses for social housing is supported by housing policy.

8.6.8. However, in light of circumstances pertaining and as set out below, there would appear to be alternatives to acquisition for the formally stated purpose of acquisition as set out in the Order 'for securing and facilitating the development and renewal of property', having regard to the matters set out below.

8.7. Issues Raised by Objectors

8.7.1. Vacancy

8.7.2. The properties at No.s 1-4 The Close, Waterford are owned by four separate parties and because of legal and financial difficulties arising a receiver has been appointed by Promontoria (Aran). The Local Authority confirmed at the Hearing that they had received confirmation from the receiver that they had no objection to the CPO.

8.7.3. At the Oral Hearing, Mr. Brennan acting on behalf of three of the parties, submitted copies of correspondence between Brennan & Co. Solicitors and the solicitors representing the Executors of John O'Dolan (the deceased). It appears from this correspondence, and from the Objector's submission at the Hearing that the Local Authority were unaware that one of the properties had already been rented out and

that a second was about to be rented, and that works were currently being undertaken on the two remaining properties with a view to them being rented.

- 8.7.4. The Objector confirmed at the Oral Hearing that the probate process in respect of Mr. O'Dolans estate is still ongoing, and indicated that they are hopeful that this will be completed shortly.
- 8.7.5. Given the protection afforded to private property ownership in Ireland and the imposition on these rights that compulsory purchase represents, it is clear to me that the Local Authority must demonstrate a pressing need and public interest served to acquire these particular properties at this particular time. While the Local Authority has demonstrated the urgent need for additional social housing units in the Waterford area and the planning, community and social merits of bringing four long-vacant houses back into active residential use, I do not consider that it has sufficiently proven the need to acquire these properties at the present time, considering the particular circumstances of the case.
- 8.7.6. In my opinion, the fundamental circumstances underlying this case are as follows: In this regard, I note that the Objectors are actively engaged in renovating the units and have already secured tenants for one of the properties, with a view to bringing the other vacant houses back into active use; that Tom O'Regan Solicitors are in the process of obtaining probate on the Estate of John O'Dolan, and Brennan and Co. Solicitors on behalf of three of the parties are also engaged in proceedings with the appointed receiver relating to the four units which are pending in the High Court.
- 8.7.7. Given these circumstances, and noting the timeframes associated with the various events and the constitutional protections afforded to private property rights in Ireland, I do not consider that the Local Authority has demonstrated that the compulsory acquisition of the lands in question for the purpose stated in the Order is justified at the present time. I consider it reasonable and appropriate that the Objectors be afforded an opportunity to return the vacant properties to active use prior to confirming a CPO. In this regard I would note that while the houses have been vacant for a considerable time and are stated to be in need of repair and maintenance works, they are not derelict or in immediate danger of becoming derelict in my opinion. Further, at the close of the Oral Hearing at least one of the

houses was stated to be tenanted, another to be tenanted that week and the remaining two to follow the same process in fairly short notice.

8.7.8. I am therefore recommending that the CPO be annulled in light of the particular circumstances of the case. However, given that here is some uncertainty with regard to when the probate process will ultimately be concluded, and the outcome of the High Court proceedings, I would note that the Local Authority would remain empowered to seek the compulsory acquisition of the property at any stage in the future, should this be considered necessary in light of ongoing circumstances at the property.

8.7.9. **Legal Entitlement to Rent the properties**

8.7.10. The Objectors queried the claim made by the Local Authority, contending that the objectors were not legally entitled to rent out the properties. The Local Authority contended that as the properties were currently in the hands of a receiver the objectors did not have a legal entitlement to rent out the properties.

8.7.11. This was expanded upon at the Oral Hearing by the two Objectors, who stated that it was not within the gift of the Local Authority to adjudicate on such a matter. Instead it was contended that it was a matter to be resolved between the parties and the receiver and that they are currently contesting the appointment and role of the receiver in the circumstances through the Courts. The Objectors also noted that they are the registered land owners as identified on Land Registry Maps.

8.7.12. I am of the view that it is not a matter for the Board to adjudicate upon.

9.0 **Recommendation**

9.1. While the Local Authority has demonstrated the pressing need for increased social housing provision in the Waterford area, and while the acquisition of vacant properties for such social housing purposes 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 Waterford County Development Plan 2011-2017 and the Waterford City Development Plan 2013-2019, and notwithstanding the suitability of the properties for use as social housing units, I am not satisfied, having regard to the particular facts of this case, that adequate

justification has been put forward by the Local Authority for the acquisition of these private properties at this time. In this regard, I note that the Objectors are actively engaged in renovating the units and have already secured tenants for one of the properties, with a view to bringing the other vacant houses back into active use.

9.2. I therefore recommend that the Board ANNUL the Compulsory Purchase Order based on the reasons and considerations set out below.

10.0 Reasons and Considerations

10.1. Having considered the objections made to the compulsory purchase order, the report of the person who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following:

- The documentation on file including the case made by the Local Authority;
- The submissions and observations made at the Oral Hearing held on 11th July 2018;

And notwithstanding the numerous supporting policies and objectives in respect of social housing provision and re-use of vacant houses set out in:

- Waterford County Development Plan 2011-2017;
- Waterford City Development Plan 2013-2019;
- Rebuilding Ireland: Action Plan for Housing and Homelessness, 2016, and associated Circular letters PL8/2016 and PL7/2017;

The Board is not satisfied that, in this instance, the acquisition by the Local Authority of the lands in question, as set out in the order and on the deposited map, has been justified and is necessary, at this stage, for the purposes stated.

Susan McHugh
Planning Inspectorate

19th July 2018