



An
Bord
Pleanála

Inspector's Report ABP-301556-18

Local Authority Project	Compulsory Acquisition of property Waterford Compulsory Purchase Order 2018 (No. 2).
Location	Clarendon Court, 14 Penrose Lane, Waterford.
Applicant	Waterford City and County Council
Local Authority	Waterford City and County Council
Objectors	<ol style="list-style-type: none">1. Brian Parker2. Jack Cunningham, Teresa Cunningham and Theresa Cunningham3. Anthony Kelly and Eileen Kelly
Observer	Maurice Hartery.
Date of Site Inspection	12 th July 2018
Inspector	Derek Daly

1.0 Introduction

1.1. This report refers to the objection received to a Compulsory Purchase Order made by Waterford City and County Council in respect of the property Clarendon Court on Penrose Lane. The purpose of the CPO is to acquire compulsorily the land described for the purpose of securing and facilitating the development and renewal of the property. The CPO as advertised refers to an individual property comprising of 24 apartments, common areas of the property a retail unit, and ESB substation and a switch room and seeks to acquire all of these:

- The acquisition of plot nos 101 to 128B as indicated in the schedule and accompanying map.
- The proposal entails the acquisition of land totalling 0.0204 hectares

Objections are made in respect of the proposed acquisition.

2.0 Statutory Basis

2.1. The application is made by Waterford City and County Council under Section 76 and the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government Act (No 2) Act, 1960 (as substituted by section 86 of the Housing Act 1966 and as amended by Section 6 and the Second Schedule to the Road Act 1993) and the Planning and Development Acts 2000 to 2015.

3.0 Site Location and Description

3.1. The development consists of a property Clarendon Court 14 which has frontage onto Penrose Lane in the central area of Waterford City. The site is irregular in configuration and is located in an area with a mix of uses but a high level of apartment buildings. The front elevation and building line adjoins the inner edge of the public footpath.

3.2. On the site is a five storey building which is currently vacant but which is an apartment block with 24 residential units. The layout provides for a retail unit and two apartment units on the ground floor on the ground floor, six apartment units on the

first, second and third floors and four apartment units on the fourth floor. On the ground floor there is also an ESB substation and switch room within the building and an open area. The building on the site also includes common internal spaces, corridors, stairwell and lift.

3.3. The CPO refers to 50 plots of land which are illustrated on the submitted drawing nos. CPO 2018-02 002.

3.4. The plots as indicated occupies the lands from the inner edge of the public footpath and incorporates the building on the site and associated private open space and communal areas and space within the site.

3.5. The plots which are the subject of the CPO comprise the following:

- plot 101 refers to the common areas;
- plot 102 the retail unit;
- plot 103 the ESB substation;
- plot 104 to the switch room and
- 46 of the plots 105 to 128B inclusive relate to apartment units 1 to 24.

4.0 Purpose of the CPO

4.1. The development underlying the CPO is described in Waterford City and County Council's documents to the Board, which include:

- The Order of the Chief Executive authorising the making of the CPO (25th April 2018).
- The CPO maps, drawing nos CPO 2018-02 001 and CPO-2018 002 (25th April 2018) and schedule (25th April 2018).
- Chief Executive Order dated 25th April 2018 referring to the property as vacant and to acquire compulsorily the land described for the purpose of securing and facilitating the development and renewal of the property.
- Public notices dated the 1st of May 2018.
- Copy of CPO notice dated the 26th of April 2018 served on affected owners / occupiers and certificate of postage in relation to notices served.

- Photographs of the front of the property and notices as an appendage to the building.

4.2. Requirement for CPO

The reason for the CPO is to acquire compulsorily the land described for the purpose of securing and facilitating the development and renewal of the property.

4.3. Nature of CPO.

4.3.1. The CPO as advertised refers to 50 plots of land.

4.3.2. In relation to land purchase it is proposed to compulsorily purchase the plots of land.

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.

5.4.4. The relevant plan is the Waterford City Development Plan 2013-2019.

5.4.5. Under the provisions of the Waterford City Development Plan 2013-2019, the land is zoned 'Developed Residential' *'to protect and improve existing residential areas and*

their amenities and provide for appropriate residential infill opportunities where feasible.'

5.4.6. 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.

5.4.7. 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.

5.4.8. 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.*'

5.4.9. Chapter 8 of the Plan refers Housing, with particular regard to housing policy, section 8.1. refers to '*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. Objections are lodged in respect of the CPO.

6.1.1. Brian Parker

A & L Goodbody Solicitors on behalf of Brian Parker in a submission dated the 8th of June 2018 refers to;

- Their client is the owner of plot references 109A, 109B, 121A and 121B being apartments 5 and 17.
- An oral hearing is requested.
- The Council did not serve their client with a notice stating the effect of the order is to submit to An Bord Pleanála for confirmation and the client received a copy of the order from an independent third party.
- The objector / client purchased the apartments in May 2005 and rented out units until approximately August 2012.
- The building fell into disrepair and was closed by the fire officer in August 2012.
- The objector was advised that prior to the closure the majority of the apartments were in receivership and despite of the receivership many of the other owners continued to receive rents.
- When common areas fell into disrepair the client attempted to gather funds from other landlords to carry out necessary maintenance but could not obtain the funds for the management company to carry out the necessary repairs.
- Their client carried out works to secure the building and cut off utilities.
- In 2014 he engaged consultants to get an agreement with other landowners for a refurbishment plan and failing such agreement to purchase all the apartments however no one was willing to engage.
- It is submitted that the notice is invalid as the notices were not served in the manner required by law. The client was not served with the CPO and notice and is not listed as the owner in Part 1 of the Schedule to the CPO.
- It is not necessary for the Council to compulsorily acquire the property for the securing and facilitating its development and renewal or at all.
- A clear necessity must be found to exist before the CPO is upheld and the *state (Cork County Council) v Judge Fawsitt and Others* is referred to in this regard.

6.1.2. **Jack Cunningham, Teresa Cunningham and Theresa Cunningham**

Lally Solicitors on behalf of Jack Cunningham, Teresa Cunningham and Theresa Cunningham in a submission dated the 8th of June 2018 refers to;

- An oral hearing is requested.
- The objectors dispute the nature and scope of the proposed acquisition which includes common areas, switch room and apartments 1,5, 17, 22, 23 and 24 which they are alleged to be the reputed owners of.
- Reference is made to section 213(3) of the PDA and to acquiring land for a particular purpose. Land cannot be acquired without the Council demonstrating the particular purpose for acquiring the Cunningham lands.
- Reference is this regard to *Reid v Industrial Development Agency* 2015.
- CPO powers must be exercised narrowly.
- The Council can only act proportionately and may not proceed in an arbitrary manner by acquiring properties which could not be described as vacant to justify compulsory acquisition.

6.1.3. **Anthony Kelly and Eileen Kelly**

AKM Design on behalf of Anthony Kelly and Eileen Kelly in a submission dated the 8th of June 2018 refers to;

- The objectors are the owners of apartment 3.
- The objectors have sought to contact the Council since receiving the notice and has not received a reply.
- The proposed CPO is unacceptable and is a breach of property rights.
- Their clients' property is wrongly identified in the CPO documentation as their apartment is identified as 2 Clarendon Court and they are the owners of 3 Clarendon Court.
- The notice does not include the street name, Eircode or county and there are a huge number of properties called Clarendon Court in the country. The description is too vague.
- There is no mapping of the clients' property and the mapping provided does not provide individual details of property ownership for the CPO.

- The objectors have not been able to access the property and have prevented from accessing the property for repairs and maintenance but the property being blocked up.
- The council has misread the purpose of acquiring the property which is to sell the properties to an approved housing body.
- The property is not derelict and they do not agree with the assertion of the council that the property is “*unfit for human habitation and not capable of being rendered for human habitation at reasonable expense*”.
- The objectors request a hearing and request that the CPO be refused.

7.0 The Oral Hearing

7.1. An oral hearing into the objection lodged to the Compulsory Purchase Order was held in the Tower Hotel Waterford on the 23rd of August 2018. A digital sound recording was made of the Hearing and should be consulted for a full representation of proceedings. The Hearing commenced at 10.00 hours and concluded at 18.25 hours. 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 Johnson, Senior Resident Engineer.
- Ms. Jennifer Doran, Property Management.
- Mr. Anton Lennon, Executive Engineer.
- Tony Murphy, Fire Service
- Mr Michael Walsh, Chief Executive

7.2.3. Objectors:

1, Brian Parker

- Michael O'Donnell BL

2. Jack Cunningham, Teresa Cunningham and Theresa Cunningham

- David Browne BL

Richard Rea

3. Anthony Kelly and Eileen Kelly

- John Kim

Observer

Maurice Hartery

7.3. Documents submitted to the Board in the course of the hearing are attached to this report

7.4. Key points raised at the oral hearing by the parties are summarised below:

7.5. **Waterford City and County Council**

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

7.5.2. Mr Paul Johnson, Senior Resident Engineer, read from a written statement (submission 1), which can be summarised as follows:

- Reference made to page 4 of his report; to photographs relating to the property and the current problems and issues relating to the current condition of the property.
- A wish to bring vacant property into productive use.
- The property is an apartment development and wish to CPO the property and reference is made to a current ongoing programme to deal with property vacancy that involves 16 CPOs that target 44 individual properties.
- Reference is made to National and Local Policy; to the objectives of *Rebuilding Ireland Action Plan for Housing and Homelessness* which has targeted five pillars of action and reference is made specifically to pillar 5 Utilising Existing Housing.
- Reference is also made to the *National Vacant Housing Strategy 2018-2021* and in particular to *Planning Circular PL 7/2017* (submission 10) and that in

the circular in relation to addressing vacant private housing there is reference to the possibilities of using CPO powers in targeted areas for the purpose of bringing vacant properties into use and to create sustainable communities and targeting reduction of vacant properties and bring them back to use.

- Reference is made to the *Waterford City and County Council Vacant Homes Action Plan 2017* (submission 6) and that the plan outlines that the Council will use the full range of legislative and regulatory powers to seek to reduce the level of vacant residential units including CPO and that an initial budget of 100,000 euro was provisioned in 2018 for the commencement of a programme to compulsory purchase property in accordance with pillar 5.
- Reference was also made by Mr Johnson to the provisions of the current Waterford City Development Plan.
- In relation to justification reference was made to current housing needs nationally and specific to Waterford City and County and that in December 2017 1,444 households qualified for social housing supports in the City and County. Reference was made to current housing and demand and in particular housing constraints with few properties available for sale or rent and that there is very little residential building activity in Waterford City. There is demand for the housing units which is the subject of this CPO.
- There is a current supply shortage in Waterford in relation to housing. Reference was made to a current vacancy rate of 10.6% in the city and county and based on national levels this unsustainable. The current proposal to CPO the property is therefore in line with national and local policy to bring underutilised residential property into productive use to address a pressing current need.
- Specifically, in relation to the property itself, the ground floor units have never been utilises.
- Difficult to contact owners and Mr Cunningham indicated that getting consent of owners was difficult as has Mr Parker in his objection
- In October 2003 the apartment block was granted planning permission.

- A management company set up in 2004 and history of this company outlined with the management company dissolved in 2010.
- Individual properties were occupied without a management company in place.
- Property in its current use not suitable for habitation and surveys and reports confirm this. Reports indicate a cost of 1.236 million euro to refurbish the property. (Submissions 2, 12,13, and 14)
- Responding to the objections received.
- In relation to the objection of the Cunningham's, the intention of the local authority is to restore the property to productive use and to renew the property in accordance with national policy. It is not the intention to develop a land bank and is to meet a pressing local need.
- The condition of the property is obvious and the objector is not in a position to restore the property. The council made all reasonable efforts to identify owners of the individual units which was indicated as a problem in the past by Mr Cunningham.
- In response to the Kelly objection,
- The council in the notice and schedule addressed and identified the owners of the property of the Kelly's. The property has been abandoned and the Council has never denied access to the property. The properties have no electricity or running water.
- In relation to the Parker objection.
- Leaseholder of apartments 5 and 17.
- The council made all reasonable efforts in relation to the ownership of properties and Mr Parker has made an objection.
- Concluding Mr Johnson indicated the property is vacant since 2012 and owners have been unable to return the property to use. The confirmation of the CPO is the only way this vacant property can be effectively and timely returned to use and provide much needed housing in Waterford.

7.5.3. In relation to the local authority submission the inspector required clarification in relation to ownership of individual units and on particular issues of freehold and leasehold within the overall property.

Mr Browne on behalf of Mr Cunningham outlined clarification in relation to title and that site was acquired in 2003 and received planning permission and that the common areas which were to be transferred to a management company did not transpire and freehold remains in the ownership of Mr Cunningham. Individual units were transferred under long leases of 999 years. Mr Cunningham retains freehold of units 5, 17, 22, 23 and 24.

Forfeiture notices were served in February of this year on all apartment units but not on 5 and 17 which are in the leasehold title by Mr Parker. No objections to the forfeiture notice were received and Mr Cunningham is entitled to freehold of the units where there was no objection to the forfeiture notice. Mr Cunningham is therefore in a position to refurbish the property.

John Kim on behalf of Mr Kelly in relation to apartment number 3 does not accept the forfeiture notice.

Mr O'Donnell indicated there is no dispute in relation to the interest of Mr Parker in apartments 5 and 17. Mr Parker is however the co-owner of the lease with a third party. They are joint tenants and the Local Authority is aware of this and the other co-owner was not corresponded by the local authority and the co-owner is Patricia Parker. The leasees have also as part of their lease have interests in the common areas and entitlements in relation to the common areas. The notice should have referred to the termination of interests in the common areas of the leasees.

Mr O'Connor on behalf of the local authority was asked for a response to the issue of ownership and the matters raised by the objectors. The Cunningham ownership is not in dispute but the issue of the lease of units 5 and 12 arises and Mr O'Connor indicated that all efforts were made to notify all owners and notices were displayed on the property. The Local Authority were not aware of the co-owners and that the Cunninghams remain the freehold owners. Ownership is a matter in relation to compensation. In relation to the forfeiture issue it is more of a compensation issue and the local authority is not aware of the procedures which were followed by the

Cunninghams and the forfeiture procedure may be subject of dispute and further legal procedure and that appears to be the case.

asked to address the hearing and indicated that he is the freehold owner of the ground floor units 1 and 3 and received no notification of the CPO. His solicitor made a submission he understood to the Board later clarified sent to the local authority in relation to ownership of the two units.

Mr Browne indicated that property of Mr Hartery was transferred to Mr Cunningham in 2003.

Mr O'Donnell referred to the planning permission which refers to 2 planning units and the schedule refers to a retail unit.

Mr O Connor indicated that the retail units were not fitted out it is a shell to be sub divided. The ownership of the retail units is confused but Mr Hartery was informed of the CPO.

7.5.4. **Questions to the Local Authority.**

Mr Browne to Mr O'Connor re ownership. No dispute in relation to Mr Cunningham ownership of the freehold title. Questions in relation to due diligence in relation to establishing ownership. **Ms Doran** indicated the process used in relation establishing ownership in the month previous issuing ownership including registry of deeds. On line searches were carried out it was indicated by Ms Doran.

Mr O'Donnell indicated the process used was crucial given that his client was not referred to in the notice and the issue is failure to comply with the process and the implications then arising for this CPO. It was indicated that information should be made available for the oral hearing. Proper notice must be served to comply with legal requirements.

Mr Browne addressed questions to Mr Johnson. Vacant Homes Action Plan referred to, process followed and as to whether Clarendon Court was specifically part of the survey carried out and the methodology followed. Mr Johnson identified the site as vacant and suitable for reuse. The criteria used in identifying properties for CPO was raised and how Clarendon Court was deemed as a priority for CPO. There was no similar property having 24 units identified.

Issue of who can carry out refurbishment was raised and the calculation of the 2.65 million budget as indicated in pages 14, 15 and 16 of Mr Johnson's report, the associated studies and page 33 of the report which refers to costs sent to Department of Housing which includes acquisition and refurbishment. It was contended that Mr Cunningham can refurbish at a lower cost than those presented by the local authority.

In response to the inspector Mr Johnston indicated the period of refurbishment would take 6 months and cost were based on the study of the property carried out.

The issue of whether the site was derelict was raised and why the Derelict Sites Act remedy was not pursued instead of CPO but Mr Johnston indicated that the local authority chose the CPO and the site is not on the Derelict Site register. The CPO was considered the appropriate route to refurbish the site to habitable use. The issue of vacant site register was raised and that it is not on the register.

Mr O'Donnell raised the issue of the status of the documents presented by the local authority and the status of how the order was prepared and procedures followed to making the order authorising the CPO. Was there a report prepared which grounded the CPO. Reference made to Mr Galligan's Book on how considerations are prepared for the ultimate decision to make the order. Mr Johnston indicated that there was no specific report prepared.

Immediately after the lunch break there was clarification on Mr Hartery's letter which indicated that the letter was sent to Waterford City and County Council and not the Board.

Mr O'Donnell addressed further questions to the local authority and Mr Johnston indicated that there was a file on the property and the property had questions from elected members back to 2015 and the management and chief executive officer were aware of the issues on the site leading to CPO and a memorandum was prepared for the Mr Michael Walsh Chief Executive in agreeing to the CPO. The Chief Executive was aware of the site and issues in advance of CPO recommendation.

Mr O'Donnell referred to whether there was any documentation and evidential basis and analysis for instance stating community need for the Chief Executive to consider. The issue is whether the validity of the process and there must be a basis

to making a decision to go ahead with a CPO. There is no report to question the basis of the CPO and other steps for instance that the property is suitable to meet community need over other properties, alternative methods considered, is there a planner's report, are equally not in a report prepared for the Chief Executive.

There is no proposal for a Part 8 on the property Mr Johnston indicated which Mr O'Donnell questioned whether that could be the case.

Reference was made to reports prepared in relation to the property and the works involved and costs and Mr O'Donnell raised the issue of the Habitats Directive and whether the obligations of the directive were considered and Mr O'Donnell believes there was a requirement that the works referred to in the reports should have met the obligations of the Directive.

The issue of service of notices was raised and Mr O'Donnell referred to Schedule 3 Article 4(b) of the 1966 Housing Act and that owners, lessees and occupiers must be notified and this must be complied with and his clients, the Parkers, were not served. His clients become aware in an informal way. Mr O'Connor referred to section 3(1)(d) in relation to the serving of notices.

Ms Dolan responded to the issue of investigating of title and she identified owners and carried out a search of deeds in relation to Clarendon Court which formed the basis of the schedule (15.09 of recording). An online was carried out and no examination was carried out in the office of the registry of deeds. Mr O'Donnell's clients engaged law searchers who established that Brian and Patricia Parker were lessees since 2005 and this information can be produced. Ms Dolan did not dispute this. Mr O'Donnell referred to a letter which was sent out under section 4 of the Housing Act on the 2nd of August 2018 to the Parkers as the council under this section are able to clarify and investigate the particulars of an estate and wrote to the Parkers prior to the oral hearing. Ms Dolan indicated that her function was to identify owners relating to Clarendon Court and did so online and did not carry out hand searches in relation to title.

No documentation has been directly on the Parkers to date and notices were attached to the site. A copy of the law search referred to by Mr O'Donnell and copies of the letter of the 2nd of August 2018 and the solicitor's response to that letter.

Mr O'Connor indicated that Mr Parker is aware of the proceedings and is present and Mr O'Donnell indicated that no documentation was sent and Ms Patricia Parker has never received any correspondence and has not been able to engage.

Mr Browne indicated that a similar letter re ownership from the council was sent to the Cunninghams and the letter was responded to and the correspondence was submitted at the hearing. Mr Kim also indicated a similar position in relation to his clients the Kellys.

Mr O'Connor responded as to why the council issued the letter and it was in relation clarification of ownership arising from the letter

Mr Browne submitted a copy of a land searcher confirming the Parkers as lessees and submitted copy of same and then addressed questions to Mr Johnson.

Tables 11 and 12 of capital appraisal report referring to costs of refurbishment of 2.64 million euro which equates to an average 110,417 euro per unit. The inspector asked the question also in relation to the matter of considering alternatives to CPO. In this context the cost of purchasing an apartment was raised and Mr Johnson indicated there is few properties on the market and the price varies depending on condition and they cost between 80,000 and 120,000 per unit. **Mr Lennon** of the local authority indicated there are few properties available presently on the market and the local authority purchase properties which on the market.

Mr Browne questioned the CPO in the context of cost effectiveness of spending public money and Mr Johnstone also indicated that vacancy and returning to habitable use also required to be considered among many factors that has to be considered.

Mr Browne indicated that he was unable to access the Vacant Homes Action Plan which he was informed was available on the internet and this made it difficult appraise the basis of the CPO. There is no basis for CPO in any published and adopted plans. Was the Vacant Homes Action Plan subject to AA screening was raised.

7.5.5. **Submission of the Cunninghams**

Mr Cunningham made a submission on the history of the site answering questions from Mr Browne and in 2002/2003 acquired site from Mr Hartery which had tax

designation. Pre planning was carried out and applied and received planning permission in 2003 for 15 no 2 bedroom apartments and 9 no1 bed apartments and also for retail units. Apartments were sold to investors and put into tenancies. Difficulties arose with some parties and ended up with judgements against some parties involving 7 or 8 apartments in 2011.

The management company proved difficult with some new owners not paying management charges and issues were difficult in relation to the apartment block. An informal non-minuted meeting was held with Mr Johnston in 2016 in relation to the apartments which was not followed up and also Mr Cunningham also engaged with the Parkers in relation to refurbishment of the apartments.

Reference was made to the forfeiture notices and Mr Cunningham intends to take back apartments refurbish them and lease to a housing agency. The refurbishment would take 3 to 4 months and a 345,000 euro provisional quotation received in 2017 in relation refurbishing the apartments from a local contractor and copies were circulated. (submission 20). A walk over survey was undertaken and figures may change.

Mr Cunningham disputes the 1.2 million figure of the local authority and even a 30% increase would not come close to the extent of the local authority cost of refurbishment. Mr Cunningham has been looking at this for a period and he and Mr Parker have sourced funding for the refurbishment. Mr Cunningham indicated they wished to seek the same outcome as the council in relation to the property.

Mr Lennon from the local authority asked questions to Mr Cunningham in relation to the condition of the building at the time of the survey. There is no electricity in the building; there are upgrades required; Mr Lennon questioned the validity of the quotation and that there is a lot of damage within the building based on their examination of the building and reports prepared for the council.

Mr O'Donnell raised the issue of whether the building is unfit for habitation and the wording of CPO order and in particular the second paragraph of the order in this regard.

Mr Johnston believes it is not that simple to refurbish the building and issues may arise in relation to ownership and title. Mr Cunningham he considered has not established clear title to conduct the refurbishment.

Mr Browne essentially indicated that there is an alternative to the local authority proposals for refurbishment and the intention to do so. Mr O'Donnell raised the issue of forfeiture notice and there are formal procedures in relation to seeking relief from such notices and no relief has been sought. It is more likely that works can be planning permission procedures which may not be the case for the local authority.

7.5.6. Submission of the Kellys.

Mr Kim on behalf of the Kellys referred to the forfeiture notice and the service of the notice remains an issue to his clients who was an original investor and is now locked out of his property, and paid changes to the management company. His clients do not agree with the forfeiture notice. Anthony Kelly on his behalf reiterated this position and that he paid his management fees up to 2013.

Mr O'Connor for the local authority indicated that forfeiture notice is not itself sufficient and there are further procedures to follow and courts are sympathetic in relation to relief from forfeiture.

Inspector asked how long the building has not had a management company and was informed since 2010 and building has been locked since 2015.

7.5.7. Evidence of Mr Michael Walsh Chief Executive

Mr Walsh of the local authority wished to address the oral hearing. In response to questions from the inspector he indicated that making the decision for signing the CPO order he was aware of the compelling housing need position to deliver social issue; he had visited the property with his management team and was aware of the idle nature of the property and the decision was therefore simple. There were verbal reports but not a specific written report presented.

Mr O'Donnell raised the issue of all properties as fit for human habitation and whether they should be included in part 2 and why is there an absence of documentary evidence in relation to signing the order. Mr Walsh reiterated that the visually looked at the building and currently is not fit for habitation and the CPO process is the appropriate response.

7.5.8. Closing submissions

7.5.9. Mr Browne circulated a closing submission (submission 24). Referred to the provisions of Section 76 of the Housing Act 1966 as amended and the current novel

way of applying CPO powers to acquire housing. Reference to third schedule of the Act. Reference made to title interest and the schedule is not complied with as correct details are indicated.

Section 213 of the planning act also referred to and to the Crosby and Clinton cases. In particular, the Clinton case and the exacting standards to be applied. It is beyond normal planning procedure and to the protection of private property rights. It requires proportionality and not impair rights. Reference to the Meadows case and for rationality and application for proportion. Balance of private rights and common need.

Other case law reiterates rights and limitation of rights and proportionality. Board must meet the four steps of community need, particular site must address community need, alternatives must be considered and works must comply with the development plan. Board has precedence for refusing similar development and reference made to a case in case in Dundalk.

Mr Cunningham has an intention to refurbish the site and reference is made to the forfeiture notice and procedures in this regard. Even with a tenant in place can enter property and restore to use.

Reference made in relation to the schedule and why select this property and refers to the examination of alternative sites and the cost of refurbishment which is excessive compared to alternatives available.

7.5.10. **Mr O'Donnell** in closing referred to the position that the Board has no alternative to annul the order. Statutory provisions not complied with. Clinton case is highly relevant in the context of constitutional rights of land owners.

Not just dealing with land. Reference to Article 40.5 of the constitution and also Articles 43 and 40.3 and the rights enshrined within. The importance of statutory process must be addressed as stated in Clinton. Need for a positive obligation on behalf of the local authority is protect citizens and their rights.

Matter addressed in a level of casualness and never seen a CPO proposed without a planning report and other matters set out before making the decision.

Community need must be met but the case appears to be based on the question of aesthetics and based on the property being vacant and unsightly and no rationale is set out and decision is based on verbal discussions.

That a particular property is suitable must be based on evidence and nothing submitted other than vacant and unsightly and there must be more visible analysis.

Alternative means of meeting community need is the next test and there was not a consideration of vacant sites register and levy or of the derelict site legislation. These allow owners to put the property right but not followed and if not followed then acquisition could have been considered. There is no planning input.

Obligation of service of notices is also fundamental to CPO and Housing Act 1966 is clear in these obligations. Requirement to establish owners, lessees and occupiers. This obligation not established in relation to the Parkers at the time of the order and since the preparation of order. A lessee must be informed under statute and permitted to make a submission and Brian Parker was not afforded this right and this is not disputed.

No answer to say a notice was placed on the site and that applies if a local authority cannot find an address but due diligence was not carried out. Mr Parker was able to establish and demonstrate that he was a lessee and the local authority should have been able to do so

Ms Parker not served with a notice and has not been engaged in the process in any way. The process Mr O'Donnell contends is fundamentally flawed.

No evidence submitted of the basis on which the land is acquired, multiple failures in the process in this regard with reference to the Third Schedule of the Housing Act. There would also be disproportionate interference on the Parkers who has met all his obligations in relation to his property and the local authority has not engaged with his clients.

Section 213 refers to starting my looking at agreement first, engage with the parties to see if there can be an appropriate response and CPO is then the last resort. All of these matters must be adhered to before proceeding to CPO.

The Board cannot authorise the procedures as followed and the Board should not confirm. It is open to the local authority to come back again following the appropriate procedures.

7.5.11. **Mr Kim** restated the position on the forfeiture notice, astonished at the lack of professional planning input in the case. Decisions appear to have been made and the process and procedures forgotten about. No approach from the local authority.

7.5.12. **Mr O'Connor** stated the basis of the CPO and that notices were published. Intention to put a vacant property back in use and the council is entitled to use these powers and to follow national and local policy. Property can be restored at reasonable expense and meets a pressing community need. There are grave doubts in relation to the forfeiture process.

There are doubts that owners can refurbish the properties within a reasonable period. All parties have engaged and presented their case. The proposal and order is proportionate.

7.5.13. **Inspector** concluded hearing at 18.25.

8.0 **Assessment**

8.1. In relation to the assessment of this particular case I wish to assess the matter under two headings. The first relates to key areas upon which a CPO is typically assessed and secondly procedural/legal matters.

8.2. 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?

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

8.4. Community Need

- 8.4.1. 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. 2018/982) 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. It was also certified by the Director of Services Economic Development and Planning that the acquisition of the land is in accordance with the planning and objectives for the area contained in the Waterford City Development Plan 2013-2019 in a letter dated the 23rd of April 2018.
- 8.4.2. A report from Waterford City and County Council was circulated at the Oral Hearing with accompanying documents in relation to national and local policy in relation housing and vacant property and also three detailed reports from external consultants relating to an overall appraisal of the building, a fire safety audit and a report mechanical and electrical services.
- 8.4.3. The report as presented by Mr Johnson Senior Engineer at the oral hearing 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 and also highlighted national guidance in relation a National Vacant Housing Reuse Strategy and a Vacant Homes Action Plan 2017 for Waterford City and County. The overriding aims and objectives of the action plan was to maximise the potential and reuse of empty homes for social and private housing and provide for programmes to meet a range of housing needs whilst providing a choice of accommodation prioritising the areas with the highest housing demand and applying the full range of legislative and regulatory powers to seek to reduce the levels of vacant residential use.
- 8.4.4. 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, in respect of the planning policy context stressing the urgent housing need in the city and county and the

issues in relation to addressing this in terms of an absence of new housing construction and low availability of residential property for rent and purchase notwithstanding the identified high level of vacant properties.

- 8.4.5. 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. There appears to have been minimal delivery of units to date through direct-build or the Part V process. There is also limited availability of properties for purchase and there is a current supply shortage in Waterford in relation to housing.
- 8.4.6. Reference was made to a current vacancy rate of 10.6% in the city and county and based on national levels this unsustainable. The current proposal to CPO the property is therefore in line with national and local policy to bring underutilised residential property into productive use to address a pressing current need.
- 8.4.7. 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 oral hearing that the property required remedial action. In relation to the property itself, the ground floor units have never been utilised. Issues had arisen in relation to the management company over years and dissolved in 2010 and individual properties were occupied without a management company in place. The building is currently unoccupied and issues of anti-social behaviour had arisen owing to the state of the property.
- 8.4.8. The property in its current use is not suitable for habitation and surveys and reports confirm this. Reports indicate a cost of 1.236 million euro to refurbish the property with the intention is to restore the property to productive use and to renew the property in accordance with national policy. It was also indicated that it is not the intention to develop a land bank and the CPO is to meet a pressing local need.
- 8.4.9. The objectors contended that evidential based community need had not been established by the local authority and that it was based on aesthetics relating to the visual appearance of the building and no specific case was established for the building in question.
- 8.4.10. There is no dispute that there are many vacant properties in the city area and that a structured appraisal and strategy is the desired approach in identifying properties but it is also evident that the site was identified as important to restore to an active use

given its location, the possibility to reuse of 24 residential units in a period of need for additional housing units and that the local authority were aware of difficulties in the past relating to the site and difficulties in realising refurbishment and that acquiring the property would address this.

- 8.4.11. I am of the view that currently the vacant property has a detrimental effect on the streetscape and wider area which is an important consideration in relation to overall area. I would also be of the view that renovating the building and restoring it back into an active residential use regardless of whether private or social housing use or to a housing agency could be considered to serve a community need, by making appropriate use of existing serviced apartment building in keeping with national and local policy and would also enhance the streetscape which is located in the city centre area between two important streets in the centre area. It would also enhance and protect the overall amenity in the area by arresting any further deterioration in the condition of the property. It is more than a question of aesthetics but in meeting and providing additional social housing in a current vacant property a community need is served.
- 8.4.12. 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 which was clearly demonstrated by the local authority at the oral hearing in terms of addressing social housing provision and addressing restoring a vacant property. 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.

8.5. Suitability of the Site

- 8.5.1. The subject property is located in the city centre area and there are similar apartment buildings in the area which were built under schemes of urban renewal and providing residential accommodation in the city centre area.
- 8.5.2. Internal inspections of the building were undertaken by the Local Authority and as indicated at the oral hearing a survey was also carried out by Mr Cunningham. I did not enter the property. However, having inspected the site and viewed the exterior of

the building and based on the information submitted in the consultants reports prepared for the local authority and evidence presented at the oral hearing by the objectors, I would consider that the building is readily capable of being utilised for habitable residential units and this is not in dispute by any party.

- 8.5.3. The Local Authority has provided an estimate in terms of how long the refurbishment works required to return the building to an active use would take, stating a cost of in excess of 1.2 million exclusive of acquisition cost and Mr Cunningham indicated a refurbishment period of 3 to 4 months and a 345,000 euro provisional quotation received in 2017 in relation refurbishing the apartments. It was indicated in relation to the latter that it was a provisional figure which may change but the cost of refurbishment would likely be considerably lower than the local authority's estimate of refurbishment. A true comparison would only be possible if similar survey work was undertaken.
- 8.5.4. 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 and that specific approval for the purchase and refurbishment of Clarendon Court had been received from the Department of Housing.
- 8.5.5. Considering the above, I am therefore satisfied that the site is capable of being renovated for the purposes of providing social housing, and I consider this to be an appropriate use in a zoned and established residential area which is close to a range of services and facilities and the city centre. It should also be noted, objectors dispute the expense and cost of refurbishment as indicated by the local authority and were better placed to carry out the refurbishment. This is addressed further below in the report.

8.6. **Accordance with Housing and Planning Policy**

- 8.6.1. 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.

- 8.6.2. The site is within an area zoned 'Developed Residential' *'to protect and improve existing residential areas and their amenities and provide for appropriate residential infill opportunities where feasible.'*
- 8.6.3. There are objectives in relation to housing including 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* and objective 2.1.17: *to provide a socially inclusive society.*
- 8.6.4. 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.'* Chapter 8 of the Plan refers to Housing, with particular regard to housing policy, section 8.1. refers to *'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'.*
- 8.6.5. With regard to the current use on the site and the residential zoning of the site and its stated objective and other objectives stated, I am satisfied that the acquisition and renovation of the property for social housing accords with the zoning and would contribute to the protection and improvement of the existing residential amenity of the area. Also having regard to the above provisions the site I consider to be suitable for use as social housing.
- 8.6.6. The renovation and active use of the apartment building would contribute to the protection and enhancement of the character of the area, within which the site is located.
- 8.6.7. The renovation of the subject dwellings for social housing use would clearly 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'.*
- 8.6.8. My overall opinion is that the acquisition of vacant residential property for social housing use accords with various strategic and statutory policy, in this regard I would refer to the National Vacant Housing Reuse Strategy 2018-2012 which refers in objective 2 to "bring forward measures to ensure, to the greatest degree possible,

that vacant and underused private owned properties are brought back to use". I would note that nowhere is it explicitly stated that such acquisition should be carried out compulsorily neither however does it prohibit such an approach, and having regard to the provisions of Planning and Development Act 2000 and the Housing Act 1966, both as amended, the compulsory acquisition of land is one of a number of statutory provisions at the disposal of Local Authorities to fulfil their functions, including the delivery of social housing.

8.6.9. In conclusion, I consider that the compulsory acquisition of the subject property would be in accordance with current housing and planning policy.

8.7. Use of Alternative Methods

8.7.1. 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 and this point was stressed by the objectors in submissions in writing and at the oral hearing. In this regard, I consider that the onus is on the Local Authority to demonstrate that alternative methods are not available to them.

8.7.2. 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.

8.7.3. The local authority indicated current difficulties in relation to number of properties available in relation to purchase and rent in the city and also to a low level of construction activity in relation to the provision of new residential accommodation. It is apparent that the vacant nature of the property has been known to the local authority for a period of time, that there were issues in relation to the overall management of the building, that circumstances dictated that the building had to be closed up by the fire officer and some level of contact was made to discuss the condition of the building and its restoration to habitable use.

8.7.4. It is disputed by the objectors that compulsory purchase is of necessity the only option to rendering the building habitable and that a higher engagement to reach

agreement with the owners should have occurred before resorting to compulsory purchase. 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 property have been vacant for a considerable time and represented the optimum response to restoring the building to habitable use and meeting community need.

- 8.7.5. 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.
- 8.7.6. 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.
- 8.7.7. In terms of other methods available to the Local Authority, and noting the history of the site, 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, although the property is fully vacant since at least 2014 I do not consider that it would meet the definition of a derelict site, as set out in section 3 of the Derelict Sites Act. In my opinion it is not in a ruinous, derelict or dangerous condition, although unsightly in its current state it is not overly unsightly or objectionable.
- 8.7.8. I therefore do not consider that the provisions of the Derelict Sites Act would be of practical use in seeking to ensure that the structure is 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 and the main thrust of the CPO is the refurbishment of the dwelling and to provide additional social housing.
- 8.7.9. I also consider that there are provisions in relation to the Vacant Sites Register which could have been considered to be applied. Given the issues of ownership and absence of a management company it is difficult to consider that the application of

the statutory powers relating to Vacant Sites would have achieved the necessary desired response in an expeditious manner.

- 8.7.10. I am satisfied that the Local Authority has considered certain alternative means of meeting the community need but there was difficulty in establishing a form of dialogue which would have advanced this procedure and process. I am also satisfied that the acquisition of vacant houses for social housing is supported by housing policy.
- 8.7.11. There remains however the issue of whether the property can be renewed by the objectors and this was raised by the objectors at the oral hearing and whether this would appear to present an alternative to the acquisition for the formally stated purpose of acquisition as set out in the Order 'for securing and facilitating the development and renewal of property'.

8.8. Issues Raised by Objectors

- 8.8.1. The vacancy of the site is not disputed by the objectors. It was indicated that a number of circumstances arose in relation to the property but that both Mr Cunningham and Mr Parker were in a position to address the refurbishment of the property. In this regard Mr Cunningham had carried out an assessment of the building and prepared a preliminary estimate of the refurbishment and that Mr Cunningham and Mr Parker were in a position to secure the necessary funding to carry out the refurbishment and it could be carried out at a cost considerably lower than that estimated by the local authority.
- 8.8.2. The issue that arises in considering this approach is whether this can be considered as an alternative to compulsory acquisition by the local authority and importantly is whether the objectors are in a position to undertake this refurbishment.
- 8.8.3. It was indicated at the oral hearing that Mr Cunningham had initiated a procedure of forfeiture notices by which he would obtain control of the overall property, that notice had been sent to the various parties with interest in apartments and that in effect the overall property would return to him as a single entity and that by this process he would be able to carry out the necessary works. It was indicated that no party had raised objections to the forfeiture notices though Mr Kim on behalf of Anthony and

Eileen Kelly and Mr Kelly at the oral hearing dispute this and clearly indicated an objection to the forfeiture notice served in relation to their apartment.

- 8.8.4. The issue of forfeiture notice is a separate legal matter but it is of importance in considering alternatives to compulsory acquisition and as to whether it presents a viable alternative that can be realised in a period of time. Mr O'Connor for the local authority raised concerns that there are grave doubts in relation to the forfeiture process in terms of the timeframe it can be achieved in particularly if there are objections to the forfeiture notices which it is evident there is on behalf of the Kellys and other parties may possibly arise.
- 8.8.5. In this context there is an undefined level of certainty that Mr Cunningham can secure the property in a manner which would ensure he can undertake the refurbishment and also in relation to the timeframe.
- 8.8.6. In relation to cost it is difficult to make comparison in relation to divergence of the cost of refurbishment presented by the local authority and that of Mr Cunningham given one was a relatively detailed survey and the other was a preliminary survey. It is likely that the cost of refurbishment is likely to be higher than the initial estimate presented by Mr Cunningham but unlikely to rise to the level presented by the local authority.
- 8.9. The matter to be primarily addressed I consider is the appropriate means for the securing and facilitating the development and renewal of the property under consideration.
 - 8.9.1. There is no dispute that the property is vacant for a period of time; ongoing maintenance of services and common areas has ceased; that the property although not derelict is deteriorating in the absence of maintenance and habitation and its visual appearance is detrimental to the streetscape, adjoining properties and the area. There is clear policy guidance at national and local level to address vacant properties and secure properties for residential accommodation and to address social needs in relation to housing.
 - 8.9.2. The Local Authority has presented a case whereby securing the property in question will address current policy and that the property can be restored to an appropriate housing use within a defined timeframe. The local authority has carried out surveys of the property and estimated the cost of the refurbishment and the timeframe for

such works. The local authority has also indicated that refurbishing the property can only arise by the compulsory acquisition of the property.

- 8.9.3. The objector Mr Cunningham has indicated an intention to refurbish the property with a timeframe indicated for the refurbishment and a provisional cost of refurbishment and that it can be financed in conjunction with Mr Parker.

If there was a definitive clarity in relation to this matter, there would be no requirement for a compulsory acquisition of the property. The issue arises as to whether Mr Cunningham is in a position to execute the carrying out of these works and that outstanding matters in relation to ownership does not thwart this undertaking. To this end Mr Cunningham has applied the forfeiture notice procedure and although it was indicated by Mr Cunningham there was no objection from any party to this process it is clear from the oral hearing that there is an objection to the forfeiture notice procedure and this raises an issue of uncertainty that it will be successful and the timeframe in which it could be successful.

This uncertainty would raise the prospect of having the property vacant into the future for an indeterminate time frame with no definitive programme advanced to remedy. This would lead to a view that if the property is not acquired by the local authority that the ongoing vacancy could continue for an indeterminate period which would not be the appropriate response for the securing and facilitating the development and renewal of the property under consideration and against current policy of addressing vacant housing accommodation.

8.10. Procedural/legal Matters

- 8.10.1. The Third Schedule of the Housing Act 1966 outlines provisions applicable as respects Compulsory Purchase Orders and article 4 of the schedule requires “*before submitting the compulsory purchase order to the Minister the housing authority shall—*

(a) publish in one or more newspapers circulating in their functional area a notice in the prescribed form stating the fact of such an order having been made and naming a place where a copy of the order and of the map referred to therein may be seen at all reasonable hours

(b) serve on every owner, lessee and occupier (except tenants for a month or a less period than a month) of any land to which the order relates a notice in the prescribed

form stating the effect of the order and that it is about to be submitted to the Minister for confirmation and specifying the time within which and the manner in which objections can be made thereto”

8.10.2. In relation to the serving of notices the objection of Mr Brian Parker and Ms Patricia Parker refers to that as lessees they were not served with a copy of the order and the map relating to the CPO and in relation to Part 1 of the schedule their title as lessees is not referred to and that if due diligence was carried out by the local authority in discharging statutory requirements as required by the provisions of the Housing Act 1966 their position as lessees would have been established by a registry search and documentary evidence establishing their title dating back to 2005 was submitted at the oral hearing (submissions 15 and 16) and that the local authority should have been able to establish a similar position.

It was also pointed out that Brian Parker having informed the local authority of their title the local authority in the period between the publication of the order and the oral hearing never served the order and map and in the case of Patricia Parker the local authority have never communicated in any form.

It was contended that it was not sufficient that the order was placed on the property and the order is fundamentally flawed by not referring to the lessees. It is noted that at the oral hearing the local authority did not dispute the evidence presented at the hearing regarding the fact that Brian and Patricia Parker are lessees in relation to apartments 5 and 12 but did indicate that notices were attached to the site and the parties were present.

In relation to this matter I consider that the third schedule is quite clear in relation to who notices of the order should be served which includes lessees. Given the fundamental impact on individual property rights arising from compulsorily acquiring property it is also absolutely important that a local authority carry out due diligence in relation to establishing title be it owners, lessees and occupiers and that the schedule accompanying the order provides for parties to be named and described relevant to a plot reference number and this has not occurred in this case.

I do not consider that the local authority has correctly named all relevant parties in the schedule as required by statute and the issue is that the order and accompanying schedule does not comply with statutory provisions and also that the

objectors have clearly demonstrated that with due diligence the title of the Parkers would have been established and placed in the schedule. The issue is that the schedule is flawed and is not in accordance with the stated provisions of the third schedule one of the required steps to be adhered to in acquisition under the Housing Act 1966. The notices are therefore incorrect and rights provided for by statute therefore are not recognised.

- 8.10.3. The second issue which arises is whether in stating in part 1 the nature of lands being permanently acquired as “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” and whether the order should have referred to a part 2 and that the Board is based on case law unable to amend the order.

At the oral hearing the issue of whether the property is land unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense was discussed both in terms of the condition of the property and the cost of refurbishment. In relation to cost of refurbishment Mr Cunningham contended the costs presented by the local authority as excessive and therefore not reasonable expense but this is a subjective matter and has to be considered in the wider context of the market and standard of refurbishment which is difficult to determine.

In relation to whether the property is unfit for human habitation this is difficult to determine. The property is vacant and unoccupied but there is I consider no dispute that the property is fundamentally structurally sound and the works are to restore services to a modern standard and the costing of refurbishment although varying widely between the local authority and Mr Cunningham reflect this. It is difficult to consider that the property not capable of being rendered fit for human habitation at reasonable expense and that a part 2 of the schedule applies.

- 8.10.4. The issue of overall procedures and the absence of a report and evidence presented in advance of the chief executive approving the order was presented and that a procedure similar to Part 8 should have been followed and that this would have facilitated an examination of the case presented for the CPO.

Such a report would have desirable and appropriate given a public body’s intention was to compulsorily acquire a property and reports similar to those as presented by the local authority at the oral hearing would have facilitated parties including the

Board had they been presented as part of the process before an order was made but although there is a clear process defined in relation to Part 8 such procedures are not as clear and defined in relation to CPO.

9.0 Recommendation

9.1. While the Local Authority has demonstrated the pressing need for increased social housing provision in the Waterford City 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 City Development Plan 2013-2019, and notwithstanding the suitability of the property for use as social housing units, I am not satisfied, having regard to the particular facts of this case, that adequate requirements in relation to complying with the stated provisions of the Housing Act 1966 and in particular the requirements as set out in the Third Schedule of that Act, that the required statutory provisions have been adhered to and evidence was presented by the objectors confirming this to the position.

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 the 23rd of August 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 City Development Plan 2013-2019;

- Waterford City Vacant Homes Action Plan 2017;
- Stated National policy in Rebuilding Ireland: Action Plan for Housing and Homelessness, 2016, and associated Circular letter PL7/2017;

Having regard to the Order and Schedule presented by the Local Authority and submitted to the Board, the Board is not satisfied that the documentation as submitted complies with the stated requirements of Article 4(b) of the Third Schedule of the Housing Act 1966 in relation to the identification of various owners, lessees and occupiers of the property and the service of notices in relation to the compulsory acquisition of the property and that all lessees were not appropriately identified and stated in the documentation prepared, published and advertised by the Local Authority.

Derek Daly
Planning Inspector
12th October 2018