



An  
Bord  
Pleanála

## Inspector's Report ABP-303216-19

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<b>Compulsory Purchase Order</b>	Of dwelling house and site under Section 76 of the Third Schedule to the Housing Act, 1966, as extended by Section 11 of the Local Government (No. 2) Act, 1960, as amended by the Planning and Development Acts, 2000 – 2019.
<b>Location</b>	125 Elm Park, Castletroy, Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	CE/2018/143
<b>Objector</b>	Mr. Tim Brosnan
<b>Date of site visit</b>	2 <sup>nd</sup> May 2019
<b>Date of Oral Hearing</b>	5 <sup>th</sup> June 2019
<b>Inspector</b>	Hugh D. Morrison

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## **1.0 Introduction**

- 1.1. The subject Compulsory Purchase Order (CPO) relates to lands at 125 Elm Park, Castletroy, Limerick. This CPO was made on 30<sup>th</sup> November 2018 and it has been objected to by the owner of the said lands, Mr. Tim Brosnan.
- 1.2. The aforementioned objection to the CPO was the subject of an Oral Hearing, which took place in Castletroy Park Hotel, Limerick, on 5<sup>th</sup> June 2019.

## **2.0 Statutory Basis and Purpose of the CPO**

- 2.1. The CPO was made under Section 76 of the Third Schedule to the Housing Act, 1966, as extended by Section 11 of the Local Government (No. 2) Act, 1960, as amended by the Planning and Development Acts, 2000 – 2019.
- 2.2. The stated purpose of the CPO is to enable Limerick City and County Council (LCCC) to acquire the said lands as they are suitable and necessary for the provision of a social dwelling unit.

## **3.0 Site Location and Description**

- 3.1. The site is located close to the entrance to Elm Park Avenue from Plassey Park Road, an east/west distributor road which serves the wider area, including the University of Limerick to the north. Elm Park Avenue is the spine road to a residential estate to the north of the Dublin Road (R445). Within the vicinity of the said site, this Avenue is composed of two storey semi-detached dwelling houses with attached single garages to one site and front and rear gardens.
- 3.2. The site itself is of regular shape and it extends over an area of 503 sqm. This site accommodates a two-storey, four-bedroomed, semi-detached dwelling house with an attached converted single garage to one side. This dwelling house is served by front, side, and rear gardens and a drive-in.
- 3.3. During my site visit, I observed that window and door openings in the exposed side and rear elevations of the dwelling house were boarded up and that the external paint work was discoloured. The continuous layout of the front, extensive side, and rear gardens, which are laid out as lawns, gave the property an unusually open

appearance. These attributes combined to signal to the public that the residential property is vacant.

## 4.0 Policy Context

4.1. The CPO has been made within the housing policy context of the following national and local documents:

- Rebuilding Ireland: An Action Plan for Housing and Homelessness 2016,
- DoHPLG Circular PL8/2016,
- DoHPLG Circular Housing15/2019: Social Housing Investment Programme – Acquisition of Properties for Social Housing Use,
- National Vacant Housing Reuse Strategy 2018 – 2021,
- Assessment for Selecting Sites for Social Housing Sites in Limerick 2016, and
- Limerick City and County Council (LCCC) Vacant Homes Strategy 2017.

4.2. The first of these documents is of particular importance as it cites five pillars, the second and fifth of which are of particular relevance:

- Pillar 2 sets out the Objective: “To provide funding to local authorities for the provision of social housing by means of construction and acquisition.”
- Pillar 5 set outs the Objective: “To ensure that existing housing stock is used to the maximum degree possible – focusing on measures to use vacant stock to renew urban and rural areas.”

4.3. The CPO has also been made within the planning policy context of the following documents:

- Castletroy Local Area Plan 2019 – 2025 (LAP), and
- Limerick County Development Plan 2010 – 2016 (as extended).

4.4. Under the LAP, the site is shown as lying within an area zoned “existing residential”, wherein the Objective is “To protect the amenity of existing residential areas.”

4.5. Under the CDP, Policy HOU P6 is to support and enhance existing residential areas by (a) supporting the development of high-quality residential development, and Objectives HOU 018, 02, and 03 undertake to do the following:

- Promote the re-utilisation of suitable redundant or obsolete structures,
- Residential developers will be required to provide some social housing in accordance with the “Joint Housing strategy for the Administrative Areas of Limerick City and County Councils and Clare County Council, 2010 – 2017”, and
- Promote social integration, provide a mix of house types and sizes to meet demand, and utilise the range of housing initiatives to assist households in acquiring or improving a dwelling suitable for their needs.

## 5.0 Planning History

5.1. The site has been the subject of the following two planning applications:

- 87/27325: Outline: Construction of two-storey dwelling house + entrance: Refused.
- 98/898: Outline: Construction of two-storey dwelling house + ancillary works: Refused.

## 6.0 Objections

6.1. The Objector, Mr. Tim Brosnan, wrote to the Board on 6<sup>th</sup> January 2019 to “vigorously oppose” the CPO on the following grounds:

- He has owned the subject residential property for over 40 years. It was purchased as a hedge against inflation,
- LCCC’s offer price is too low,
- He plans, as an emigrant, to return to Ireland in a year or two and to retire to the said property,
- The property has sentimental value as his mother worked on it and there are memorial trees to her planted in its grounds,

- The property has situational value insofar as it is located close to the University of Limerick and the surrounding neighbourhood enjoys a wide range of amenities,
- The property comprises extensive grounds and it is maintained by a neighbour who resides next door, and
- The property was not purchased only to be compulsorily acquired by LCCC for the benefit of another family. He was notified of the scale of demand for housing by LCCC. Given that the supply is so limited, the price offered to him is surprisingly low.

6.2. Mr. Tim Brosnan drew attention to his place of residence, which is in Alaska, unduly tight timelines set by LCCC, and family circumstances that involved a medical emergency. He, therefore, requested the Board to postpone the Oral Hearing to a later date.<sup>1</sup>

## 7.0 **Written Submissions made by Limerick City and County Council (LCCC)**

7.1. Prior to the Oral Hearing, LCCC submitted the following three documents to the Board, which were received on 30<sup>th</sup> May 2019:

- A Statement of Ms. Aoife Duke, Director of Services, Housing Department,
- A Statement of Ms. Karen Burke, Senior Executive Planner, and
- A Communication Log between LCCC and Mr. Tim Brosnan.

7.2. The above documents were drawn upon by LCCC in its submissions to the Oral Hearing.

## 8.0 **Oral Hearing**

8.1. An oral hearing was held on 5<sup>th</sup> June 2019 in the Castletroy Park Hotel in Limerick. Those in attendance were as follows:

- For Limerick City and County Council (LCCC):

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<sup>1</sup> Following further correspondence between the Board and Mr. Tim Brosnan, the date of the Oral Hearing was arranged for early June 2019.

- Mr. Gerard Reidy, Legal Counsel,
  - Ms. Aoife Duke, Director of Services, Housing Department,
  - Ms. Noreen O'Connell, Senior Executive Planner (i),
  - Ms. Karen Burke, Senior Executive Planner (ii), and
  - Ms. Sinead Hourigan, Vacant Homes Officer.
- The Objector Mr. Tim Brosnan, who called the following to make submissions:
    - Mr. Tom Closse of GVM Auctioneers,
    - Mr. Tom McGrath, Builder,
    - Mr. Ahmet Haliscelik, neighbour who resides at 126 Elm Park Avenue, Castletroy, and
    - Ms. Anakarin Brosnan, daughter of Mr. Tim Brosnan.

**(i) Summary of the Submissions made by Limerick City and County Council (LCCC)**

- 8.2. Mr. Gerry Reidy, LCCC's Legal Counsel, outlined that the Council is satisfied that the subject CPO complies with the relevant statutory provisions and national and local housing and planning policies. The Council is also satisfied that the subject CPO is justified by the common good and that it fulfils the relevant minimum criteria for such acquisitions.
- 8.3. Ms. Aoife Duke, LCCC's Director of Services, stated that the Council presently has a waiting list of over 6000 households for social housing, 1600 of which have expressed a preference for the Castletroy area.
- 8.4. LCCC has had an active case on the subject property for 15 years. Twenty-one complaints and representations are on file pertaining to this property. Staff have sought to work with the owner over this period; nevertheless, it has remained vacant. In 2018 agreement was reached with the owner on the purchase of the property. However, access to the same for inspection was denied. An offer was still made to the owner. As progress was not forthcoming, a CPO was signed by the Chief Executive on 30<sup>th</sup> November 2018.
- 8.5. LCCC's actions accord with the following:

- The national and local housing policies comprised in:
  - Rebuilding Ireland: An Action Plan for Housing and Homelessness 2016,
  - DoHPLG Circular PL8/2016,
  - DoHPLG Circular Housing15/2019: Social Housing Investment Programme – Acquisition of Properties for Social Housing Use,
  - National Vacant Housing Reuse Strategy 2018 – 2021,
  - Assessment for Selecting Sites for Social Housing Sites in Limerick 2016, and
  - LCCC Vacant Homes Strategy 2017.
- They meet a community need for housing.
- The property is suitable to meet this need: As a four-bed dwelling house it would meet the need of 1 of the 53 households on the waiting list, who require this size of property. Furthermore, the dwelling house could also be extended to provide bedroom accommodation for a resident with disabilities (1 of the 9 households in this category could thereby be provided for). LCCC is reliant solely on buying or renting existing properties: 32 have been obtained since 2017.
- Alternative means of meeting this need have been explored.

8.6. Ms. Karen Burke, LCCC's Senior Executive Planner (ii), addressed the proposition that the works to be carried out accord with the Development Plan. She stated that the site is the subject of the Limerick County Development Plan 2010 – 2016 (as extended) (CDP) and the Castletroy Local Area Plan 2019 – 2025 (LAP). Policy HOU P6 and Objectives HOU 018, 02 & 03 of the CDP were cited. Under the LAP the site is shown as zoned "existing residential", wherein the Objective is "To protect the amenity of existing residential areas."

8.7. In Quarter 1 2019, there were 47 vacant residential units in Castletroy (population 14,718), which represents a very low vacancy rate.



8.8. The site occupies a prominent position at the entrance to the Elm Park Estate and, as the dwelling house thereon is of unkept appearance, the resumption of its use and associated active management would be welcome.

**(ii) Summary of the Submissions made by the Objector**

8.9. Mr. Tom Crosse, a local residential property market expert, drew attention to the location of the subject property, which is close to the University of Limerick Campus and Plassey Technology Park, and in a prominent position. The site affords the opportunity for the existing dwelling house to be extended or for an additional dwelling house to be built beside it. The Elm Park Estate is much sought after and the demand for student accommodation means that rental opportunities abound, e.g. monthly rents for dwelling houses can be as much as 2K euro.

8.10. No. 123 Elm Park Avenue was sold in August 2018 for 195K euro and elsewhere on this Estate prices ranged between 180 and 195K euro last year.<sup>2</sup>

8.11. In the absence of an inspection of the subject property and in the knowledge that it needs work doing to it, the view was still expressed that this property was worth 195 to 200K euro, rather than the 130K euro offered by the Council.

8.12. Mr. Tim Brosnan took exception to the process. He drew the Oral Hearing's attention to item 5 of a letter from LCCC dated 30<sup>th</sup> November 2018, which omitted to specify the date upon which objection to the CPO could be made by, and to the schedule attached to this letter, which identified the owner or reputed owner as a woman in St. Camilus geriatric hospital. He also drew the hearing's attention to the difficulties attendant upon trying to communicate with LCCC from his workplace in Alaska, in the month of December. Later that month his daughter became very unwell and had to be hospitalised in Anchorage rather than in the town of Fairbanks, his place of residence, thus necessitating a period of time away from his home. No postponement of the process was forthcoming from LCCC only An Bord Pleanala facilitated an extension of time.

8.13. Mr. Tim Brosnan drew attention to an earlier letter dated 12<sup>th</sup> November 2018, in which an offer was made to him to purchase the subject property, and to the short period in time that elapsed between this letter and the subsequent one.

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<sup>2</sup> A Property Services Regulatory Authority Search Document was circulated with sale prices of residential properties in Castletroy for 2018.

- 8.14. In the light of the flawed process, as outlined above, the Board is requested to deny the CPO.
- 8.15. Mr. Tim Brosnan expressed surprise that the CPO was for the purpose of social housing, when he is a lone parent with a single daughter for whom he has sole custody.
- 8.16. Mr. Tim Brosnan recalled that when he acquired the subject property in the 1970s the University of Limerick did not exist nearby, but an industrial estate, famous for the presence within it of the firm Ferenka. He now owns this property outright as the mortgage has been paid off. In his absence, his mother managed it and, following her death in 2002, he planted a tree in its grounds in memory of her. He intends to retire to the property shortly and to leave it to his daughter.
- 8.17. Mr. Tim Brosnan cited the Constitution's vindication of the right to private property.
- 8.18. Mr. Tim Brosnan intimated that his daughter wishes to pursue a career in medical services and she plans to study in the University of Limerick. He would love for her to be able to reside in the subject property, which is beside this University.
- 8.19. Mr. Tim Brosnan plans to upgrade the subject property and to let it out short term and, thereafter, to live in it long term.
- 8.20. Mr. Tim Brosnan purchased the subject property as a bulwark against inflation and to ensure that he would have a place that he could afford to retire to.
- 8.21. Mr. Tim Brosnan commented on the first complaint concerning his property in 2004 to the effect that dwelling houses on Elm Park Estate were poorly built and so they have deteriorated prematurely, thus necessitating upgrades. Juvenile vandalism resulted in several broken windows, which were the subject of the said complaint. He responded by arranging for new upvc windows to be installed at a cost of 12K euro. Further breakages were seen to, too.
- 8.22. Also, in 2004, the LCCC placed the property on the Derelict Sites Register (DSR). Following the aforementioned remedial measures, he was assured that this property was to be removed from this Register. He heard nothing further to indicate anything to the contrary.

- 8.23. Mr. Tim Brosnan did rent out the subject property to Ferenka workers, who could be relied upon to be good tenants. His subsequent experience of students was otherwise.
- 8.24. Mr. Tom McGrath, the objector's builder, stated that Mr. Tim Brosnan does not own any dwelling house in the USA, as he always planned to retire to Ireland. LCCC's submissions are essentially irrelevant, as the Brosnans' need the subject property to meet their housing need. The effect of the CPO is to render them homeless and so it should be dropped straightaway.
- 8.25. Mr. Ahmet Haliscelik has been a neighbour to Mr. Tim Brosnan since 2008. Each time he met Mr. Brosnan, when he was in Ireland, he spoke of retiring to his property in Ireland. Two years ago, he planted hedges on the subject property. Broken windows are a common place on the Elm Park Estate. Anti-social behaviour is difficult to counteract. Student dwelling houses that are vacant during the summer months are particularly susceptible.
- 8.26. Mr. Ahmet Haliscelik drew attention to the replacement windows fitted by Mr. Tim Brosnan as proof of his intention to reside therein. Subsequent breakages have been attended to promptly. He also drew attention to his own role in keeping the grounds of the subject property clean and the grass cut.
- 8.27. Mr. Tom McGrath, a long-time friend of Mr. Tim Brosnan and a builder with 40 years' experience, undertook to supervise the works that need to be done to restore and modernise the dwelling house so that it will be ready for the Brosnans when they return home to Ireland in 2 years-time.
- 8.28. Ms. Anakarin Brosnan expressed her aspiration to be a student in the University of Limerick and to reside in the subject property, which is her father's.
- 8.29. Mr. Tim Brosnan stated that the subject property is his long-term investment. It is not for sale.

**(iii) LCCC's Questions for the Objector.**

- 8.30. Mr. Gerry Reidy enquired as to when Mr. Tom McGrath received instructions from Mr. Tim Brosnan to prepare an estimate? Subsequently, this enquiry was revised to has such an estimate been prepared and for how much?
- 8.31. Mr. Tom McGrath replied that an estimate has been prepared and that this is for 30K euro, rising to 55K euro if an annexe goes ahead.
- 8.32. Mr. Gerry Reidy enquired as to when Mr. Tom Brosnan last resided in the subject property? Subsequently, this enquiry was revised to when was the property last resided in on a permanent basis?
- 8.33. Mr. Tim Brosnan did not accept that 2004 was the last such date, as relatives would have used the property in the summer time.
- 8.34. Mr. Gerry Reidy contended that works were only undertaken following the service of notices upon Mr. Tim Brosnan.
- 8.35. Mr. Tim Brosnan did not accept this contention and he reiterated that he replaced the windows.
- 8.36. Mr. Gerry Reidy enquired as to whether Mr. Tim Brosnan was aware of the reasons for the CPO? He also enquired as to whether he had fully set out his reasons for objection in his letter to An Bord Pleanala?
- 8.37. Mr. Tim Brosnan confirmed that he was aware of the reasons for the CPO. He also replied that his letter set out a minimal version of his reasons for objection.
- 8.38. Mr. Gerry Reidy enquired as to whether Mr. Tim Brosnan was satisfied that he had been given a full opportunity to express his reasons for objection at the oral hearing?
- 8.39. Mr. Tim Brosnan did not answer the question directly, but he reiterated his central concern that his property should not be the subject of a CPO in the light of his personal and anticipated future circumstances.

**(iv) Inspector's Questions for LCCC**

- 8.40. The inspector enquired as to whether LCCC had any comments to make on Mr. Tim Brosnan's critique of their paperwork?
- 8.41. Ms. Sinead Hourigan stated that there were errors in the original letter and notice of the CPO and that a revised letter and notice dated 17<sup>th</sup> December 2019, were issued, thereby extending the original period for objection.

- 8.42. The inspector enquired as to whether LCCC had thereby corrected the errors in question and made clear that the revised version superseded the original one.
- 8.43. Ms. Sinead Hourigan confirmed that this was so.
- 8.44. The inspector enquired as to whether LCCC had any comments to make on Mr. Tim Brosnan's contention that the effect of the CPO would be to render him homeless?
- 8.45. Ms. Aoife Duke stated the Mr. Tim Brosnan is not resident in Ireland and that the CPO process would compensate him for the loss of his dwelling house here. She set out the backdrop to this CPO, which is that of a housing crisis with families residing in emergency accommodation and the corresponding quest to ensure that vacant properties are brought back into use.
- 8.46. The inspector enquired as to whether there was any legal anxiety prompted by the scenario as outlined?
- 8.47. Mr. Gerry Reidy responded by referring to the common good as set out in the Supreme Court case of Clinton -v- An Bord Pleanala. Resort to the use of CPO powers occurs when other avenues have been unsuccessful and such powers are only exercised in accordance with the relevant statutory and case law provisions. Furthermore, Mr. Tim Brosnan would be entitled to the full market value of his property.
- 8.48. The inspector enquired as to the present and previous situations with respect to the subject property and the Derelict Sites Register (DSR).
- 8.49. Ms. Aoife Duke stated that in LCCC's opinion the subject property remains derelict and so it continues to be on the DSR. This property first came to the attention of LCCC in 2004, when it was entered onto the DSR. Works then proceeded, and it was removed from the DSR later that year. Further complaints arose in 2007 and 2008, and, following a fire within it, the property was re-entered onto the DSR, where it has remained.
- 8.50. Ms. Aoife Duke continued by saying that, in 2009, a notice was served to CPO the subject property under the Derelict Sites Act. Following works to this property, the said CPO did not proceed. Levies have not been sought, and, while they were considered in 2018, as negotiations on the property were taking place, they were not pursued at that time.

- 8.51. Mr. Gerry Reidy added that the question of what legislation to use in making a CPO was addressed under a comparable case, i.e. Board ref. no. PL15.CH3287. Thus, the current CPO was not made under the Derelict Sites Act, as the purpose of the CPO is the provision of social housing.
- 8.52. Mr. Tim Brosnan objected to the involvement of LCCC's Legal Counsel on the basis that he had not been informed of this in advance and he was, therefore, not legally represented himself.
- 8.53. Mr. Tim Brosnan responded to what Ms. Aoife Duke said by drawing attention to a registered letter that had pages missing, thus impairing his understanding of what was in prospect. A further letter created confusion due to its earlier dating.
- 8.54. Mr. Tim Brosnan stated that he had not previously been advised of the complaints against his property and, in particular, he took exception to the statement that there had been a fire at his property.
- 8.55. The inspector enquired as to whether the chronological list of complaints had been made available to Mr. Tim Brosnan and LCCC advised that it had been e-mailed to him on the day before the oral hearing. Mr. Tim Brosnan stated that he had not received this list and so he was furnished with a copy of it at the oral hearing.
- 8.56. The inspector also enquired as to details of the alleged fire. LCCC responded by stating that it occurred on 30<sup>th</sup> October 2008 and that there was an invoice from the Fire Service dated 27<sup>th</sup> November 2008 relating to their call out in this respect.
- 8.57. Mr. Ahmet Halscelik did not recall a house fire and he suggested that it may have been a fire in the garden.
- 8.58. LCCC showed their copy of the said invoice to the inspector and Mr. Tim Brosnan.
- 8.59. Mr. Tom McGrath stated that there was no fire damage in the dwelling house in question and so the likelihood was that the fire was indeed in the garden.
- 8.60. Mr. Gerry Reidy stated that the said invoice was for the call out fee only and it bore no relation to the extent of any fire damage.
- 8.61. The inspector enquired as to whether the absence of a tenant has had a bearing on the decision to make a CPO?

8.62. Ms. Aoife Duke stated that the property is vacant and so it is a dwelling house that is available and yet is not being used to meet the very real housing need that exists and is pressing. LCCC sought initially to acquire this property by agreement, but when access was denied for the purpose of a site inspection, this approach could not be continued.

**(v) Inspector's Questions for the Objector**

8.63. The inspector enquired as to the time line envisaged for the proposed renovations to the subject property.

8.64. Mr. Tom McGrath stated that the plan was to have an engineer inspect the dwelling house on 10<sup>th</sup> June 2019 and for renovation works to commence before the end of June and to be completed before the end of September. (A proposed extension would be considered with respect to the need or otherwise for planning permission).

8.65. The inspector enquired as to whether Mr. Tim Brosnan resided in the subject property and, if so, for what period?

8.66. Mr. Tim Brosnan stated that he did during the 1980s.

8.67. The inspector enquired as to why Mr. Tim Brosnan having rented out the property chose to, subsequently, leave it vacant?

8.68. Mr. Tim Brosnan stated that, following a bad experience of renting to students, he looked to rent to a different category of household. However, he was reliant on other people to help in this respect. Personally, he had expected to return to Ireland sooner, but work opportunities for him here had not materialised. In recent years, the rearing of his daughter has been his priority and so he now sees Ireland as the place to which he will retire.

**(vi) Objector's questions for LCCC**

8.69. Mr. Tim Brosnan drew attention to two other properties, which have been acquired by LCCC on Elm Park Avenue. Unlike the subject property, these properties do not have land to the side and yet they fetched 200K euro, while LCCC offered him only 130K euro and 18 days later he received a CPO, all of which left a "bad taste". *Bon fides* was not visible and so no sale ensued. He enquired of LCCC whether a higher figure might be considered, only to be advised that this was a one time offer for the stated amount. By contrast, he felt as if he should have been naming the price. After

all negotiations are normal in cases of property transactions. Prospects of higher values in the future in Limerick were also eluded to.

- 8.70. Mr. Tim Brosnan raised the question as to what lies behind complaints and whether LCCC has pursued him in the absence of other property owners with broken windows in the area.
- 8.71. Mr. Tim Brosnan first emigrated in 1972. When notified by LCCC, he attended to any works that were required to be undertaken at his property.
- 8.72. Mr. Tim Brosnan enquired as to whether LCCC would consider his daughter and himself a family?
- 8.73. Ms. Aoife Duke stated that LCCC acknowledged that the Objector and his daughter constitute a family.

#### **(vii) Closing Statements**

- 8.74. Mr. Tim Brosnan thanked everyone for their attendance and he expressed his appreciation for the Board's role as arbitrator. CPOs for infrastructure purposes is one thing, to use one to effectively replace one household with another is quite another thing. He stated his intention to remain in Ireland for several weeks and he "thought aloud" about the possibility of commencing works and having a tenant in the dwelling house. He also eluded to the relative costs of higher education in the USA and Ireland.
- 8.75. Mr. Tim Brosnan stated that he had spoken with one complainant about broken windows at his property and he had challenged him to speak to either the parents of the children concerned or the Garda. Instead the complainant advised him that he went to LCCC out of concern to ensure that the windows were replaced and to prevent a "domino" effect in the street.
- 8.76. He expressed surprised that the CPO had not been rejected out of hand, but he expressed confidence in the process of assessment that is on-going.
- 8.77. Mr. Gerard Reidy stated that the subject property has been vacant from even before 2004. Significant periods of time have elapsed since either Mr. Tim Brosnan or members of his family resided in this property and yet it lies in an area of high demand, where it could easily have been rented out.



- 8.78. LCCC has established that the property is a vacant dwelling house, which would be suitable to meet a social housing need. The CPO, which has been made, is reflective of national and local policies and, in particular, it is reflective of Pillar 5 of Rebuilding Ireland: An Action Plan for Housing and Homelessness, which promotes the maximisation of the usage of the existing housing stock, and Appendix B of the National Vacant Homes Reuse Strategy, which sets out a case study of the making of a CPO for a vacant dwelling house. The current subject property is comparable to this case study and its purchase, which was initially sought by agreement, is based on the knowledge that it is a long-term vacant dwelling house.
- 8.79. Turning to three points raised by Mr. Tim Brosnan. Firstly, he takes issue with the offer made to him. In doing so he appears to be prepared to sell, but not for the price offered to him. In this respect, under the CPO, there is an independent means of establishing the value of the property. Secondly, he raises the scenario of the CPO rendering him homeless. However, he resides in the USA and, if the CPO proceeds and he returns to Ireland, then with the compensation that he receives he would be able to purchase another dwelling house. Thirdly, he proposes to commence works for the renovation of the property. This proposal is inconsistent with his approach to date whereby he has only undertaken minimal repairs to damage incurred. LCCC is keen to proceed with the acquisition of the property as it lies in a sought-after area and it would contribute to the alleviation of homelessness.
- 8.80. Mr. Gerry Reilly expressed his thanks to all present.
- 8.81. The inspector closed the oral hearing.

## 9.0 **Assessment**

- 9.1. I will review the CPO made by LCCC for 125 Elm Park, Castletroy, Limerick and the objection lodged to it by the owner of this the subject residential property, Mr. Tim Brosnan, in the light of the documentation submitted to the Board by the parties in advance of the Oral Hearing, my site visit, and the proceedings of the Oral Hearing itself. I will utilise the following headings in undertaking my review:

- (i) Procedural matters,
- (ii) The four-fold criteria, and

(iii) The objector's case.

**(i) Procedural matters**

- 9.2. The objector drew attention to the original CPO notification, which, under Item 5, omitted to specify a date by which objection to the Board could be made, and which, under Part II of its Schedule, contained erroneous information. This notification bore the date of 30<sup>th</sup> November 2018.
- 9.3. The objector spoke of the confusion that the original CPO notification had generated.
- 9.4. LCCC acknowledged the foregoing omission and errors. These had been corrected in revised CPO notification that was sent to the objector bearing the date 17<sup>th</sup> December 2018.
- 9.5. When I asked LCCC's Vacant Homes Officer if she was satisfied that the revised notice had been understood by the objector to supersede the original one, she confirmed that this was her view.
- 9.6. The objector did not contend that confusion arose between the two notifications, but only as a result of the original one.
- 9.7. I note that the submitted Communication Log records that in a telephone conversation on 17<sup>th</sup> December 2018 the objector was told that a new notice had been issued to him and that the relevant period for objection would lapse on 23<sup>rd</sup> January 2019. I note, too, that his subsequent objection was dated 6<sup>th</sup> January 2019.
- 9.8. In the light of the foregoing, I conclude that LCCC's correction of its original notification appears to have been understood by the objector and so his initial confusion was dispelled and LCCC's procedural lapse was remedied.

**(ii) The four-fold criteria**

- 9.9. For the Board to confirm the subject CPO proposal, it must be satisfied that LCCC has demonstrated that this CPO "is clearly justified by the common good".<sup>3</sup> Legal commentators<sup>4</sup> have stated that this phrase requires that the following minimum criteria must be satisfied:

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<sup>3</sup> Para. [52] of judgement of Geoghegan J in *Clinton v An Bord Pleanala (No. 2)* [2007] 4 IR 701.

<sup>4</sup> Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath and published by Bloomsbury Professional (West Sussex and Dublin, 2013).

- There is a community need that is to be met by the acquisition of the site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable (taking into account environmental effects, where appropriate), and
- The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.

9.10. In relation to the first of these criteria, LCCC has outlined that it presently has a housing waiting list of over 6001 households, of which 1620 have expressed a preference for the Castletroy area. LCCC also outlined that, of the 1620 households, 53 need four-bed accommodation and, of these, 9 include someone with a disability.

9.11. The subject residential property is located within the Castletroy area. It comprises a four-bedroomed dwelling house with scope to one side to extend. Thus, not only could the dwelling house accommodate one of the households with a need for this size of accommodation, but it could also, potentially, accommodate one with a disabled person, too. Thus, the property would meet the first criterion.

9.12. In relation to the second of these criteria, LCCC outlined that it does not own any land in the Castletroy area and so the opportunity for it to build new dwelling houses does not arise. Instead, it has to rely upon Part V dwelling units and the purchase/ lease of existing dwelling units. Since 2017, only 32 no. dwelling units have been forthcoming and so LCCC has been able to do little to meet the demand for housing in this area. As outlined in my discussion of the first criterion, the subject residential property would provide much needed accommodation for one household on the housing waiting list and so it would meet the second criterion, too.

9.13. In relation to the third of these criteria, LCCC has outlined how it initially sought to agree to the purchase or lease of the subject residential property from its owner Mr. Tim Brosnan. Its contact with the owner for this purpose commenced in March 2018 and, while he expressed interest in selling his property, he subsequently denied LCCC access to the interior of the dwelling house for the purpose of inspection in

late April 2019. In late October 2019, LCCC made the owner an offer to purchase the property for 130K euro. This he refused, and he subsequently stated that the property was not for sale.

- 9.14. Cognisant of the high demand for social housing in the Castletroy area, LCCC decided at the end of November to proceed to CPO the subject property.
- 9.15. As outlined under LCCC's comments on the second criterion, its options are limited with respect to the provision of dwelling units in the Castletroy area. The record shows that it explored with the owner the possibility of either purchasing or leasing the subject property. While the former of these possibilities was pursued, in the absence of an internal inspection of the dwelling house, LCCC made an offer that reflected the limited information available to it, which the owner found unacceptable. I understand the position adopted by LCCC in these circumstances. Thus, if the owner felt that the offer was unrealistic and that it could have been increased by means of an internal inspection, then it was in his gift to facilitate the same.
- 9.16. In the light of the foregoing chronology, I consider that LCCC has explored the alternative options available to it and that the use of its CPO powers is a last resort. While the interval in time between making the offer and issuing the CPO could be considered tight, I note that in LCCC's letter of 12<sup>th</sup> November 2018, in which the offer was made, reference was also made to the pursuit of compulsory acquisition, in the absence of agreement upon the offer. I note, too, the protracted period during which LCCC has known of the vacant status of the subject property<sup>5</sup> and the pressure that it is under to utilise such properties for the purposes of relieving the demand for social housing. I, therefore, consider that it meets the third criterion.
- 9.17. In relation to the fourth of these criteria, LCCC stated that, under the relevant LAP, the site is zoned "existing residential", wherein the Objective is "To protect the amenity of existing residential areas." Furthermore, CDP policy and objectives are supportive of the re-use of vacant properties, the provision of accommodation that meets the needs of households, and social integration.

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<sup>5</sup> Submissions to the Oral Hearing in this respect indicate that the subject property has been vacant since at least 2004. The objector indicated that relations may have used this property during summer months since 2004. However, holiday accommodation would not constitute permanent residency and so I consider that it is fair to say that the property has been vacant since at least 2004, i.e. 15 years.

- 9.18. Under the CPO, the subject property would be brought back into use. The disamenity that has resulted from its vacancy and relative neglect over the years would thereby be remedied. Thus, the restored residential use would, in principle, be acceptable from a land use perspective and the resulting benefits would promote the amenities of the area. Compliance with the LAP and CDP would thereby be assured and the fourth criterion would be met.
- 9.19. I conclude that LCCC has satisfactorily demonstrated that the CPO would fulfil the recognised four-fold criteria for establishing that the common good would be furthered by its intended compulsory acquisition of the subject property.

**(iii) The objector's case**

- 9.20. The objector's case can be summarised under the following points:
- The offer made to him by LCCC, prior to the CPO, was unrealistic,
  - The CPO would render his daughter and himself homeless, and
  - He has plans to renovate the subject property for future use by his daughter and himself.
- 9.21. In relation to the first of these points, the objector's auctioneer outlined that the Castletroy area is indeed an attractive and sought-after residential location. He cited examples of prices that dwelling houses in this area have achieved in 2018 and he expressed the view that prices could be expected to have risen in the intervening period of time. In the absence of an internal site inspection and in the knowledge that renovation works were required, he stated that in his view the subject property was worth 195 – 200K euro and thus considerably more than LCCC had offered.
- 9.22. The objector expressed the view that the offer made to him should have reflected the fact that demand for social housing is high and yet, by LCCC's own admission, supply is low.
- 9.23. LCCC drew attention to the fact that, under the CPO process, the Board's Oral Hearing is not the appropriate forum within which to discuss matters of valuation and future compensation. It also drew attention to the fact that, under this process, an independent valuation exercise is undertaken to establish the full market value of the subject property and that compensation would be based upon the same.

- 9.24. In relation to the second of these points, the objector outlined that the subject property is the only residence that he owns and so the effect of the CPO would be to render his daughter and himself homeless.
- 9.25. LCCC responded to this scenario by drawing attention to the fact that the objector is not resident in the state at present and that, in view of both the protracted period of vacancy of his property and the very significant social housing need in Limerick, the common good would be served by the CPO.
- 9.26. I note LCCC's response. I note, too, that the objector resides in Alaska and that, as he only owns the subject property, he, by deduction, rents his place of residence there. He did not suggest that he was "homeless" there and so within that jurisdiction "owner-occupation" is not a prerequisite for having a home. His contention that the effect of the CPO would render him homeless here in Ireland is thus too narrowly construed, i.e. it would not necessarily follow that in the absence of the opportunity to be an owner-occupier here in Ireland he would be "homeless". In any event, as already eluded to under my discussion of the objector's first point, the compensation that would be forthcoming under the CPO process would ensure that he would be in a position to acquire a comparable residential property elsewhere in Limerick.
- 9.27. The objector spoke of the sentimental and situational value that the subject property has for him. In relation to the former, he spoke of his mother's connection with the property while she was alive and of tree planting that has been undertaken in the grounds in her memory. He also spoke of his own longstanding personal connection with this property and how he intends to retire to it in two years' time. In relation to the latter, he spoke of his daughter's aspiration to be a student in the University of Limerick, which is close to the property. She, too, would hope to study there in two years' time. Clearly, these more personal factors need to be weighed in coming to a decision on the CPO.
- 9.28. In relation to the third of these points, the objector's builder stated that he intended to undertake renovation works over the course of the summer to ensure that the property would be ready for the objector and his daughter's use in the future. He stated that these works would be likely to cost 30K euro and that, prior to the said usage, the property would be rented out on a short-term basis.

- 9.29. LCCC expressed some scepticism over the renovation scenario thus presented, based on its previous experience of the objector undertaking minimal works in response to notices from LCCC only for the property to fall back repeatedly into an unsatisfactory condition.
- 9.30. I note that the subject property was placed on LCCC's Derelict Sites Register (DSR) in 2004, it was re-entered in 2008, and it remains on the Register at present. I note, too, that the property was previously the subject of a CPO in 2009, which was made under the Derelict Sites Act, only for this CPO to be withdrawn once the owner undertook remedial works.
- 9.31. Clearly, if since the closure of the Oral Hearing the objector's builder undertakes the said renovation works and the property is tenanted, then, in the event that the Board confirms the CPO, LCCC would have to take a view as to whether to proceed with it.

## 10.0 Conclusion and Recommendation

I conclude that LCCC has complied with the relevant statutory procedures for making the CPO in question and that by means of the Oral Hearing the objector has been given the opportunity to present his case.

I conclude, too, that LCCC has demonstrated that this CPO would meet the four-fold criteria for establishing that the common good would be served by its confirmation. Furthermore, the CPO would reflect the imperatives of national and local housing policies in seeking to tackle the issue of homelessness arising from the current housing crisis in the state.

In the light of the foregoing conclusion, I do not consider that the weight that can be given to the objector's case is of such an order as to set aside the need for the CPO. I, therefore, recommend that the CPO be confirmed without modification.

## 11.0 Reasons and Considerations

Having regard to the written and oral submissions made by Limerick City and County Council and by the objector to the Board, relevant national and local housing documents and, in particular, the one entitled "Rebuilding Ireland: An Action Plan for

Housing and Homelessness 2016, and the provisions of the Limerick County Development Plan 2010 – 2016 (as extended) and the Castletroy Local Area Plan 2010 – 2016, it is considered that the compulsory acquisition of the subject residential property by the Local Authority is necessary for the purpose stated in the Compulsory Purchase Order and that the objections raised to this Order are not of such moment as to justify either quashing or modifying it.

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Hugh D. Morrison  
Planning Inspector

28<sup>th</sup> August 2019