



An
Bord
Pleanála

Inspector's Report

ABP-304992-19.

Compulsory Purchase Order:	Waterford City & County Council - Vacant Properties, Waterford Compulsory Purchase Order 2019, (No. 13).
Local Authority:	Waterford City & County Council
CPO:	Waterford City & County Council, in exercise of the powers conferred upon them by Section 76 of the Housing Act, 1966 and the Third Schedule thereto, as extended by Section 10 of the Local Government (No 2) Act, 1960 (as substituted by Section 86 of the Housing Act, 1966) and amended by the Planning & Development Acts, 2000 to 2006, have made an order entitled as above. If approved, the local authority will acquire compulsorily, the land described for the purposes of securing and facilitating the development and renewal of property.
Location of Lands:	Main Street North Side, Cappoquin, County Waterford.
Objectors to CPO:	Mr. Michael Uniacke
Date of Site Inspection	31 st October, & 20 th November 2019
Date and location of Oral Hearing:	Lawlors Hotel, Bridge Street, Dungarvan, Co. Waterford, 21 st November 2019.
Inspector:	A. Considine

1.0 INTRODUCTION

- 1.1 Waterford City & County Council is seeking approval for an application to purchase compulsorily, land for the purposes of securing and facilitating the development and renewal of property at Main Street North Side, Cappoquin, County Waterford. This report is prepared in response to the Compulsory Purchase Order application.
- 1.2 One objection has been received in respect of the CPO.
- 1.3 An oral hearing to consider objections/submissions to the CPO file was held on the Thursday 21st November, 2019, at Lawlors Hotel, Bridge Street, Dungarvan, Co. Waterford. Lawlors Hotel was considered to be an appropriate location with facilities to accommodate the Oral Hearing. An agenda was advised to the parties during the inspectors opening statement. An attendance sheet was circulated at the hearing and is enclosed in the documents pertaining to the oral hearing.

2.0 SITE INSPECTION AND DESCRIPTION

- 2.1 I carried out a site inspection on the 31st of October, and the 20th of November 2019. The lands subject to proposed CPO are located in the town centre and within the settlement boundaries of Cappoquin, and to the east of Cook Street. The area comprises a part two / part three storey terraced building in the streetscape of Main Street, Cappoquin. The property is currently unoccupied and is falling into a state of disrepair. The property includes a number of original features including timber sash windows and large shop windows at ground floor level.
- 2.2. Given the location of the property in Main Street, it is evident that the building has been in commercial use in the past, with a likely residential element at first and second floor levels. The purpose of my second site inspection was to photograph the interior of the property.
- 2.2 The site lies within a primarily commercial area of the town and has a site area of 0.0122ha.

3.0 PROPOSED WORKS

The property the subject of this CPO is being sought for the purposes of securing and facilitating the development and renewal of property. The local authority has not presented any clear details with regard to the development and renewal of the property.

4.0 DETAILS OF THE CPO

4.1 The CPO relates to the compulsory purchasing of lands for the purpose of securing and facilitating the development and renewal of property at the Main Street, North Side, Cappoquin, Co. Waterford. The lands are described as land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.

4.2 The land to be acquired consists of 3 separate plots, all within the ownership of Mr. O'Brien as follows:

Plot 101: Mr. Michael Uniacke is identified as the owner and the occupier is unknown.

The area of this plot is indicated 0.0037ha.

Plot 102: Mr. Michael Uniacke is identified as the owner and the occupier is unknown.

The area of this plot is indicated 0.005ha.

Plot 103: Mr. Michael Uniacke is identified as the owner and the occupier is unknown.

The area of this plot is indicated 0.0035ha.

4.3 The various documents and memorandum prepared by the Council in connection with the making of the CPO and forwarded to the Board include:

- Copy of the Director of Services Economic Development & Planning Certificate dated 16th July 2019¹, certifying that the acquisition of the land the subject of Compulsory Purchase Order 2019 (No. 13) is suitable for

¹ A second copy of this certificate was provided at the Oral Hearing on the 21st of November, numbered 'OH Document 8'.

the purpose for which it is being acquired and its acquisition is necessary for that purpose, ie to facilitate the regeneration of Cappoquin town centre through refurbishment & reuse of derelict buildings

- Copy of the Executive Order, No. 2019/1,913, authorising the making of Compulsory Purchase Order, dated 23rd July 2019
- Copy of Deposit Map drawing No.001, Job NO CPO 13-2019.
- Copies of public notices in the Munster Express, dated Tuesday 2019.
- Copy of notices served on landowner, dated 22nd July 2019.
- Certificate of Registered Post - dated 22nd July 2019.
- Schedules containing details of quantity, description and situation of land along with owner or reputed owner, lessee or reputed lessee and occupiers.

5.0 CPO OBJECTIONS

There was one objection/submission received in respect of the CPO case within the appropriate timeframe. Joseph P. Gordon & Co. Solicitors made a submission on behalf of his client, Mr. Michael Uniacke, Lower Main Street, Cappoquin, Co. Waterford. The submission includes the objections from Mr. Uniacke and the issues raised are summarised as follows:

- The property is commercial on the ground floor facing Main Street
- The remainder of the property is residential and is quite capable of being rendered fit for human habitation at reasonable expense. The fact that the property has been unoccupied does not alter this.
- The current house occupied by the owner is rented and it is the owners' intention to rehabilitate the property at Main Street for his own occupation.
- No appraisal of the property has been carried out by the LA prior to its publishing of notice to compulsorily acquire the property. Consequently, the LA is not in a position to determine whether or not the property comes

within the statutory definition required to enable the acquisition procedure to proceed.

6.0 SITE HISTORY

There is no relevant planning history associated with the subject site.

7.0 PLANNING POLICY CONTEXT

Waterford County Development Plan, 2011-2017 as extended.

- 7.1 Volume 2 of the Plan provides zoning plans for towns, villages and settlements in the County, including Cappoquin. The subject site is located on Main Street and within the settlement area of Cappoquin and is zoned for residential uses. It is the stated objective of the R1 Residential - Medium zoning,
- “to protect the amenity of existing residential development and to provide for new residential development at medium density.”
- 7.2 It is a stated development objective of the Plan **DO**₁ ‘to strengthen the village core by promoting the redevelopment underused village centre sites such as the derelict house on Mill Street.’ **DO**₁₂ states It is an objective of the Council to protect the vistas and settings of protected structures and the streetscape by the retention of vernacular houses such as those on Barrack Street, Main Street, the Green and Mill Street. Other features worthy of protection include rubblestone walls, freestanding water pumps and post boxes as identified on the NIAH survey.’
- 7.3 The building the subject of this CPO is included in the National Inventory of Architectural Heritage, reg no. 22810016 and dates from 1830-1850. The building lies within an area which includes a number of structures included in the NIAH.
- 7.4 The property is currently unoccupied and is in a state of disrepair. The property includes a number of original features including timber sash windows and large shop windows at ground floor level.

8.0 THE ORAL HEARING

8.1 An Oral Hearing was held on 21st November 2019 in Lawlors Hotel, Bridge Street, Dungarvan, Co. Waterford. The agenda was advised to all parties prior to the hearing opened. A copy of the Inspectors Opening Statement is included with this report.

8.2 The format of the hearing was as follows:

1. Waterford City & Co. Co: Opening Statement
Planning Submission
2. Questions and cross examination of Local Authority
3. Objector: Mr. Michael Uniacke submission
4. Questions and cross examination of objector
5. Summing up / closing statement - Mr. Michael Uniack
6. Summing up / closing statements Local Authority.

8.3 The Inspector sought to open the hearing at 10am, however, the objectors had not arrived at that time, so I afforded a further 10 minutes before opening as they were in the lobby of the hotel. The hearing opened at 10.10am. Following the opening of the hearing, Mr. Gordon, on behalf of Mr. Unicake, raised an objection to the holding of the hearing, questioning the validity of the hearing and submitting that the hearing was unlawful. It was submitted that the presence of the objector is strictly without prejudice.

8.4 Local Authority opening statement involved a presentation/overview of the CPO case from Mr. Kieran Curran, Lanagan & Curran Solicitors who noted the Councils policy to regenerate small rural towns such as Cappaquin. Mr. Curran introduced two speakers on behalf of the Council, Mr. Richard Walsh, Senior Executive Officer, and Mr. Maurice Conway, Executive Architect, Waterford City & County Council. A booklet of documents was presented to the Inspector and is on file, numbered 'OH Document 1'. The key points of the presentation are summarised as follows:

- Mr. Curran noted that efforts were made to reach an agreement with the objectors, but to no avail. A statement from Mr. Aidan Walsh Planning Officer is presented in the booklet. Mr. Gordon, on behalf of the Objector objected to the reading into the record in the absence of Mr. A. Walsh.

The Inspector noted the objection and advised that she would consider the information presented and would advise if Mr. A. Walsh was required for questioning after the morning break. Mr. Gordon accepted this.

- Mr. R. Walsh referred to Project Ireland and the National Development Plan and advised that Waterford City & County Council is tasked with the responsibility for rural development. The Council leads a multi-agency Rural Development task Force whose function is to identify rural priorities for Waterford and to align supports and services across all the agencies. Using a number of criteria, the Task Force identified Cappoquin as being the town in Waterford most in need of targeted attention. Working with Cappoquin Community Development Company and other community organisations, a study was commissioned with the purpose of proposing a number of interventions to reverse the social and community decline in the town. The need to address vacancy in the town was highlighted and 6 town centre properties were identified as requiring immediate attention in order to bring them back into positive use. The subject property is one of those properties identified, the remaining 5 properties have all had solutions to address the long-term vacancy agreed.

Since the joined-up approach towards the towns' regeneration, the Council has been successful in acquiring €100k for a Town Centre Residential Pilot and €100k from the Town & Village Renewal Scheme for improvements to the public domain.

In terms of the property, it is described as a retail outlet with living quarters overhead. It has been vacant and abandoned for more than 17 years and it is submitted that efforts were made to encourage the owners to sell or let the property. The CPO was initiated in the hope of

addressing the issue. The Local Authority advised that a letter was sent to the owners by standard mail requesting a meeting which was not responded to. Mr. R. Walsh called to the current residences of the owner on the 2nd October, 2019 and access to the property the subject of the CPO was facilitated on the 11th October. It is submitted that the given the current condition of the property, it would take significant resources in order to bring it back into use and to take it out of vacancy.

- Mr. Conway noted that Cappoquin has a much higher vacancy rate of vacancy than other towns in the County with the Main Street having twice the vacancy rate of the rest of the town. It is critical to bring units back into use to increase the population of the town. In terms of statistics, Mr. Conway advised that the vacancy rate across the County is 11.5%. There are 505 properties in Cappoquin town centre with 17% vacancy rate in the town overall and 40% in the Main Street.

8.5 Following on from the Council's presentations, Mr. P. Gordon, on behalf of his client Mr. Michael Uniacke, questioned the Local Authority presentation as follows:

1. Requested a copy of the initial correspondence to the objector regarding the acquiring of the property. It is submitted that the Objector did not receive this letter. A copy of the letter, dated 24th of June, 2019 and signed by pp Mary Quigley was provided to the Objector.
2. The letter to the objector is dated 22nd July while the CPO Order is dated 23rd July – one day before the Order was made.

The LA argues that pre-preparation of letters is not surprising, and that the letter was received by Mr. Uniacke after the Order was signed.

Mr. Gordon questioned whether it was lawful for the LA to issue an Order to an Objector a day before the Order was made. Mr. Walsh submitted that the Objector did not receive the Order before it was signed. Mr. Gordon submits that he got an invalid notice.

The Inspector advised that this issue would be brought to the Boards attention.

3. Mr. Gordon questioned who attended the meeting with Mr. R. Walsh and the objector and queried Mr. Walshs qualifications.

Mr. Walsh advised that he met with Mr. Uniacke alone on the first meeting and on the date of the meeting at the property, 2 other colleagues were with him. Mr. Walsh advised his qualifications.

4. Mr. Gordon questioned the population and number of properties in the town of Cappoquin and where the figures came from.

Mr. Conway advised that a survey was carried out by the Task Force including the Cappoquin Development Company and two other bodies to verify the findings.

5. The Objector asked who the Cappoquin Development Company are, and who were their Directors.

Mr. Walsh advised that they are company who represent a lot of interests in the town and has taken upon itself to undertake the building of various things, eg the Creche in Cappoquin. It is described as an all-embracing development group. Mr. Walsh advised that he did not know all of the Directors off the top of his head.

The Inspector queried the relevance as the Cappoquin Development Company is not a party to the CPO. Mr. Gordon noted that the LA relied on surveys carried out by the Development Company. The reason the Cappoquin Development Company is relevant is that the Objector was advised by a representative of the LA that the CPO was being pursued for the benefit of one of the Directors of the Development Company.

The Inspector noted that the stated Director was not a party to the CPO. It was also advised that the purpose of the hearing was to deal with the issues of the CPO and for the Inspector to hear those issues to assist the Board in making its decision on the matter.

6. Mr. Gordon addressed the discussions between the parties with regard to the building.

Mr. Walsh advised that the discussion centred around the condition of the building. It was noted that the views of the Objectors children differed to that of their father, who, understandably, wants to retain the building as it was handed down to him and he wanted to hand it on to his children. A number of options were discussed, including lease and repair, but given the condition of the building, it was considered that the CPO process was appropriate.

Mr. Walsh also noted that a philanthropic group, Tornount Trust, has guaranteed €1 million to act as match funding for the redevelopment of Cappoquin. The priority in this regard was determined to be vacant properties. The Objector does not want the property to come into the ownership or shared ownership of Cappoquin Community Development Company. It was requested that this be guaranteed, a guarantee which could not be given by the Local Authority.

Mr. Walsh accepted that the Objectors had advised their intention to paint the property but submitted that the CPO is not about painting but rather the long-term vacancy issues in the street.

7. Mr. Gordon restated that the family do not want the Cappoquin Development Company to have the building. He also referred to a comment made by Ms. M. Quigley of the Council, who is stated to have suggested that a Director of the Cappoquin Development Company would be told 'he can have it'.

At this suggestion, the Inspector intervened, and Mr. Gordon presented a document entitled 'Submission of Michael Uniacke' to the Inspector and is on file, numbered 'OH Document 2'.

8. Mr. Gordon proceeded with questions in relation to the zoning of the site and submitted a copy of the zoning plan numbered 'OH Document 3'. The property is identified on the NIAH and the Objector considers that the protected nature of the building is an integral part of the process.

The Inspector considered that the protected or otherwise status of the property is more a matter for development control rather than the CPO process.

9. Mr. Gordon suggests that the rehabilitation of the property is capable at a reasonable cost. A Valuers Report was submitted to the hearing numbered 'OH Document 4' which suggests that the property can be rehabilitated with a modest capital investment.

The Inspector asked if any cost assessment was carried out on the property, but Mr. Gordon advised that they had not been asked and did not have the time to have an assessment done.

10. Mr. Gordon asked what the plans were for the property and noted that the adjacent building was in the ownership of the Cappoquin Development Company.

Mr. Walsh advised that it was the intention to combine it with the property next door to provide a community driven development.

Mr. Gordon submitted a copy of the title deeds for the property next door to the subject CPO site, which show that the Cappoquin Development Company as the owners. There was a discussion around the directors of the company which the Inspector did not consider appropriate or relevant. Mr. Gordon considers it relevant and does not want the Board to be blindfolded to the matter.

- 8.6 Mr. Gordon on behalf of his client Mr. Michael Uniacke presented a submission in relation to the CPO, by way of presenting questions to Mr. Uniacke, who responded. The submission is summarised as follows:

- Mr. Uniacke is 86 years old and has lived in Cappoquin for 74 years.
- He became aware of the CPO proceedings from the newspaper. The notice appeared in 2 papers and a letter was received after the publication of the newspaper notices. A copy of 2 notices were submitted to the Inspector and are on file, numbered 'OH Document 6'

(public notice dated 26th July, 2019) and 'OH Document 7' (public notice dated 9th August, 2019).

- Mr. Uniacke advised that the letter sent in June was not received and no one approached him to discuss the acquisition of the property.
- Mr. Uniacke does not want the Development Company to get the property because of the way they went about it. He is upset that they went behind his back to get it.
- He proposes to do up the outside of the property first and do up the inside bit by bit with the possibility of him living back there. The property, while in need of attention, is not as bad as the council say.

The Inspector noted that there was a third public notice dated the 23rd of July 2019. The objectors were not aware of this notice.

8.7 Following the above statement, Mr. Gordon put a number of questions to Mr. Karl Uniacke, the son of the Objector and the key points raised are summarised as follows:

- Mr. Uniacke advised that he sought to deal with the issues and discussed the possibility of a lease agreement etc. He also advised that he could not give an answer as he was not the owner of the property and was acting on behalf of his father.
- He noted that Ms Quigley has no interest in any other options.
- Mr. Walsh advised Mr. Uniacke, during a phone call after the onsite meeting, that the Council had no plans for the building, but that the Development Company do. Mr. Uniacke advised that they would not deal with anyone else, only the Council. The Council could not give this guarantee.
- It was advised that there was a new Company establishing in Cappoquin in the next 6 months and Mr. Uniacke was asked if they would deal with them. Mr. Uniacke advised that they would consider it. It was requested that the Objector seek to postpone the CPO proceedings.

- Mr. Uniacke noted that there are 18-20 properties derelict on the Main Street of Cappoquin.
- Mr. Uniacke does not understand how the Development Company has such an influence on the council.

8.8 The final submission from the Objector was from Mr. Michael Morrissey, DNG Morrissey Properties. The key points raised are summarised as follows:

- Structurally, the property looks sound.
- It has been unoccupied for a number of years, but the ground floor could be turned around at a reasonable cost. The same is true for the upper floors.
- Notes that the property once comprised two properties.
- There is an issue with the flat roof to the rear of the property and a couple of loose slates.
- It is submitted that approximately €35,000 would make the residential element habitable.
- Mr. Morrissey noted that there are a lot of vacant properties on the Main Street of Cappoquin.

8.9 Following on from the Objectors presentations, Mr. Curran on behalf of the Local Authority posed a number of questions as follows:

To Mr. K. Uniacke:

- The comment made in reference to Cappoquin Community Development Company was questioned. Mr. K Uniacke considers that they went behind their backs but accepted that the Company is for the benefit of the community and the area and has the interests of the community at the heart but also considers they benefit themselves. Don't like their attitude.
- Mr. Curran advises that only the Council has the ability to acquire property. Mr. Uniacke said that the town was small and comments from

directors of the Development Company to other third parties, including builders, raises questions.

- Mr. Uniacke supports the redevelopment of the town.
- Mr Walsh said it was vital that the council works in harmony with local community groups to get work done and to secure funding.
- There is a new development company being organised in the town, but this will take time.
- The Cappoquin Development Company has charity status and the Directors have no financial benefit being a director.
- Any development in the town will include all parties, including the Development Company.

Other questions:

- Mr. Conway questioned Mr. Morrissey's valuation figures.
- Inspector asked if any estimates were sought by the council in relation to the refurbishment costs. The Council has no estimates for the refurbishment of the property but based on other projects of similar sized properties, 850sq ft, the costs have been estimated at €100,000.
- Mr. Gordon, on behalf of the Objector asked why the Council did not ask to examine the property with a view to get costings. Mr. Walsh submitted that the property has been vacant for 17 years, the owners do not have the resources to carry out the works and there is a raft of issues that require to be addressed, eg the roof, the stairs etc to bring it up to habitable standards. An assessment was not necessary as the works required are evident and a significant amount will be needed to bring it up to standard. Mr. Gordon suggested that the Council are asking the Board to take a leap and agree with the councils' assessment of the costs to repairs. Facts should have been provided.

- The Inspector advised that both arguments were acknowledged and that there is a difference between the two parties as to the costs. Mr. Curran suggested that given the location of the site, the cost of the refurbishment was not the issue, rather the vacancy is the issue.
- Mr. Gordon asked if the building was derelict. The building is not on the derelict site register.
- Mr. Morrissey also submitted that the commercial part of the site could be brought back into use at a reasonable cost.

8.10 Prior to the commencement of closing statements, the Inspector advised the hearing that she had considered the earlier question of requiring Mr. Aidan Walsh, Planning Officer who prepared the Planning Statement, Section 6 of the Local Authority's booklet, to attend the hearing for questioning. It was decided that as the information presented sets out the planning status of the building and the development plan policies and objectives afforded to the site only, it was not necessary to have him present. Mr. Gordon agreed.

8.11 Inspectors questions to the Council asked if there were any established community need in Cappoquin for the building to be acquired.

- There is a significant housing list for the town but also that the social housing provision in the town is extensive. It is the preference of the LA that the building will be private with a mixed use.

Mr. Walsh referenced the Cappoquin Town Centre Strategy 2018 and the Prescience Business document. The Town Centre Strategy is in draft form and the Prescience document identifies the number of properties which are vacant, and which are in private ownership. The Council offered to make the documents available to both the Board and the Objector. Following a discussion, it was decided that as the documents were either in draft form and/or not in the public domain, they would not be made available.

8.12 In terms of closing statements, the following is relevant:

- Mr. Gordon on behalf of Mr. Uniacke concluded as follows:
 - The manner in which the LA went about the acquisition was raised and it is submitted that the Board is being used as a stalking horse by the County Development Plan and the Cappoquin Development Company.
 - Issue of *ab initio* – the whole procedure is invalid because the LA did not comply with its statutory obligation to inform the Objector once the Order was made. The Order was published on the 23rd of July, the letter that was sent to the Objector was sent before the Order was made. The whole process is invalid and will be subject to Judicial Review if the decision goes against the Objector.
 - It is further submitted that the Board is being looked on by the Council as a rubber-stamping exercise to endorse the acquisition. It is almost taken for granted by the LA and is borne out by observations made.
- Mr. Curran on behalf of Wexford County Council
 - The Board has the benefit of the evidence presented.
 - Despite the objections, the Council has approached the CPO in an objective manner and that they have the best interests of Cappoquin at the heart.
 - The Board is urged to confirm the CPO as the works are entirely in the public interest and are in accordance with the proper planning and sustainability of the area as well as the Development Plan.
 - Mr. Uniacke would have received the notice after the Managers Order was made on the CPO, effectively being notified after the making of the Order and therefore the statutory requirement was complied with.

8.18 As the presiding Inspector I formally closed the hearing at approximately 12.25pm.

8.19 A summary list of documentation and copy of all submissions received at the Oral Hearing are enclosed on the file ABP-304992-19 for reference by the Board.

9.0 ASSESSMENT

9.1 Background

9.1.1 Waterford City & County Council are seeking to acquire land by compulsory purchase for the purposes of securing and facilitating the development and renewal of property. It was indicated at the Oral Hearing that while the final detail of any development on the site is yet to be determined, it is considered that it is likely to be a combination of commercial and residential uses. It was also noted that the property adjacent to the subject site has already been acquired and the overall development may include the amalgamation of the units to facilitate redevelopment and reuse. The Local Authority submits that redevelopment and renewal of property is a valid purpose for CPO.

9.1.2 The Executive Order, No. 2019/1,913, authorising the making of Compulsory Purchase Order, dated 23rd July 2019. It is noted that the order was made following the Local Authority's efforts to acquire the lands by agreement. The notice of the CPO sent to the property owner, and objector Mr. Michael Uniacke, is dated 22nd July 2019, being the day before the Order was made. This issue formed a significant content of the discussion at the Oral Hearing and the Local Authority addressed the matter by noting that it is not uncommon for documents to be prepared in advance. It is also notable that the Objector advised that he was not made aware of the CPO before seeing it published in the newspaper dated 26th July 2019 and 9th August 2019. The Board will also note that a notice was published in a local paper on 23rd July 2019. During the OH, the LA advised that a letter had been sent to the objector on the 24th June 2019 advising on the matter. A registered letter was sent by the Local Authority on the 22nd of July, which would have been delivered to the Objector soon thereafter, and after the CPO was made, although I do acknowledge the submission of the Objector as to when he saw the notice in the paper.

9.1.3 In terms of the obligations of the Local Authority, Section 78 of the Housing Act, 1966 is relevant and states as follows:

78.—(1) As soon as may be after the Minister has made a confirmation order confirming a compulsory purchase order, whether in respect of all

or part of the land to which the compulsory purchase order relates, the housing authority shall publish in a newspaper circulating in their functional area a notice in the prescribed form stating that the compulsory purchase order has been confirmed as respects all or part of the land, as the case may be, and naming a place where a copy of the compulsory purchase order as so confirmed and of the map referred to therein may be seen at all reasonable times and shall serve a like notice on every person having an interest in the land as respects which the compulsory purchase order has been confirmed who, having given notice to the Minister of his objection to the compulsory purchase order, appeared at the local public inquiry in support of his objection.

In terms of the above, I am satisfied that the Local Authority published in three newspapers circulating in the local area, details of the Compulsory Purchase Order for the property and also served like notice on persons having an interest in the property which the CPO relates, including Mr. M. Uniacke. As such, I am generally satisfied that the obligations on the Local Authority regarding notice of the CPO were met.

9.1.4 The Board will note that the Local Authority sought to acquire 6 properties in Cappoquin with the subject site the only one not acquired by agreement. At the Oral Hearing, Mr. Uniacke and his son presented their concerns in terms of the CPO and it is clear that the objectors are concerned as to the manner in which the Local Authority has conducted this CPO process. It was also made clear that they did not want the Cappoquin Development Company to 'get the building'.

9.2 Legal Framework

9.2.1. The statutory powers of the local authority to acquire land are contained in section 213 of the Planning and Development Act 2000, as amended. The section of the Act states as follows:

Section 213

- (1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.

(2)(a) A local authority may for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect or facilitating implementation of its development plan or its housing strategy under section 94 do all or any of the following:

- (i) Acquire land, permanently or temporarily, by agreement or compulsorily,
- (ii) Acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,
- (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

and the performance of all or any of the functions referred to in sub paragraphs (i), (ii) and (iii) are referred to in this Act as an “acquisition of land”.

- (3)(a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority the land will be required by the authority for that purpose in the future.
- (b) The acquisition may be effected by agreement in respect of any land which in the opinion of the local authority it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land.
- (c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.

4. A local authority may be authorised by Compulsory Purchase Order to acquire land for any of the purposes referred to in sub-section (2) of this section and section 10 (as amended by section 86 of the Housing Act 1966) of the Local Government (No. 2) Act 1960 shall be construed so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in section (2) of this section.

9.2.2. Under the above provisions the planning authority *may acquire land compulsorily for the purpose of performing any of its functions including giving effect to or facilitating the implementation of its development plan....*

9.2.3. There is extensive case law with regard to the powers of compulsory purchase, including the Reid v IDA case [S.C. Nos. 442, 446 & 453 of 2013], judgement date 5th November, 2015. The most relevant case in terms of the above section of the Planning & Development Act, 2000 as amended, is contained in *Clinton (No. 2)* and particularly as it relates to what constitutes a ‘particular purpose’ as well as land required for ‘future use’. This case determined that compulsory purchase powers are available (S213(3)(a)) where land is required, but only where the particular purpose for its acquisition is already known and disclosed by the local authority. Under subsection (3)(b), it has been determined in *Clinton (No. 2)*, that land cannot be compulsorily acquired for future use where the authority has not determined the manner in which, or the purpose for which, the lands will be so used.

9.2.4. The Local Authority is satisfied that it has meet the criteria for the compulsory purchase of the lands and considers that the final specific intended use of the lands will be determined following the CPO process. In principle, I accept the submission of the Local Authority in this regard and consider it sufficient to justify the acquisition of the lands at this time for the purposes of securing and facilitating the development and renewal of property.

9.3 CPO Demonstration

Notwithstanding the above, and should the Board be of a different view, it is accepted that there are four criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property

as documented in “Compulsory Purchase and Compensation in Ireland: Law and Practice” (Mc Dermott and Woulfe 1992):

- There is a community need, which is met by the acquisition of the property in question.
- The particular property is suitable to meet the community need.
- The works to be carried out accord with the Development Plan.
- Any alternative method of meeting the community need have been considered but are not available.

These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the comments of the objector.

9.3.1 Community Need

At the Oral Hearing, the Council outlined that they lead a multi-agency Rural Development Task Force whose function is to identify rural priorities for Waterford and to align supports and services across all the agencies. The Task Force identified Cappoquin as being the town in Waterford most in need of targeted attention and in collaboration with a number of local community groups, a study was commissioned with the purpose of proposing a number of interventions to reverse the social and community decline in the town. I would accept that the development of the lands, for residential and commercial uses might be construed as satisfying a community need.

The Board will note that the site is zoned for residential purposes in the Cappoquin Settlement Plan and given its location on Main Street, Cappoquin, together with the previous use of the ground floor as a shop, I am generally satisfied that a commercial use is also acceptable. The purpose of the CPO is to secure and facilitate the development and renewal of the property.

I am therefore, satisfied, that there is a community need which can be met by the acquisition of the property in question.

9.3.2 Need for the Lands

In terms of establishing the need for the lands to satisfy a community need, I would consider that given the location of the lands on Main Street, Cappoquin, together with the use potential proposed, it is reasonable to accept that particular property would be suitable to meet a community need and in particular the redevelopment of disused buildings in the town of Cappoquin.

9.3.3 Compatibility with Development Plan provisions

In terms of compatibility with the Development Plan provisions, the Board will note that the Waterford County Development Plan zones the subject lands for residential uses. In the Cappoquin settlement plan, it is the stated objective, DO₁ refers 'to strengthen the village core by promoting the redevelopment underused village centre sites such as the derelict house on Mill Street.' In addition, the building the subject of this CPO is DO₁₂ states that 'it is an objective of the Council to protect the vistas and settings of protected structures and the streetscape by the retention of vernacular houses such as those on Barrack Street, Main Street, the Green and Mill Street. Other features worthy of protection include rubblestone walls, freestanding water pumps and post boxes as identified on the NIAH survey.' The building the subject of this CPO is included in the National Inventory of Architectural Heritage, reg no. 22810016 and dates from 1830-1850.

In terms of the information before the Board, together with the submission of the Local Authority at the Oral Hearing, it is clear that the intentions for the site will likely include both residential and commercial uses and the development of the site for such purposes would facilitate the redevelopment of the building, included in the NIAH and of Main Street in Cappoquin, which is an objective of the Development Plan and therefore, would be acceptable.

In principle, the development of the subject lands for the purposes advised, might reasonably be considered as complying with the requirements of the Waterford County Development Plan, 2011.

9.3.4 Consideration of Alternatives

With regard to the consideration of alternatives, I would note that the final uses for with the building will be determined after the CPO process has been completed. At the very minimum, confirmation of the CPO will result in the securing of the building, which has been vacant for over 17 years, and its protection from the elements by way of necessary works to the roof. Having undertaken a site inspection, I refer the Board to the attached photographs, it is clear that the building is falling into further disrepair.

The issue of costs associated with the repairs and works required to get the building back into productive use were discussed at the hearing. The Objectors suggests that €30,000 would render the building habitable while the Local Authority considered this to be substantially underestimated. Neither party had any costings prepared, but the Local Authority submitted that having undertaken works on buildings of a similar nature and scale, the costs would be in excess of €100,000. Mr. Uniacke advised the hearing that he hoped to carry out the necessary works to protect the building with a view to returning to live there in the future.

While I acknowledge the good intentions of the Objector, I am not convinced that the resources are available to instigate the redevelopment of this building, which is included in the NIAH and which includes original features and fabric warranting protection in the near future. Further, I am satisfied that the case made by the Local Authority with regard to the urban regeneration of Cappoquin and to reduce the 40% vacancy rate of Main Street is in accordance with the provisions of the Development Plan and the common good. I am satisfied that the compulsory purchase order should be confirmed.

9.3.5 Other

The Board will note that an application for costs was made by Mr. Joseph P. Gordon & Co. on behalf of the Objector, by letter dated 4th December, 2019.

9.4 Appropriate Assessment & EIA

In terms of AA, the Board will note that the site is a brownfield site within the urban centre of Cappoquin. The site is not located within any designated site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC, Site Code 002170 which is located approximately 230m to the south of the site. The Blackwater River and Estuary pNHA, Site Code 000072, is located 275m to the west.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

The proposal does not exceed any of the thresholds that trigger the requirement to prepare an EIS. I suggest that the proposed sub threshold development is not likely to have significant effects on the environment and that the undertaking of EIA is not warranted.

10.0 CONCLUSION

With regard to the Compulsory Purchase Order made by Waterford City & County Council, who are seeking to acquire land by compulsory purchase for the purposes of securing and facilitating the development and renewal of property, it is recommended, having regard to all the submissions on file and presentations/evidence submitted at the oral hearing, that the CPO be approved.

The proposed acquisition of these lands would facilitate the redevelopment of underused village centre sites, which is considered to be consistent with the policies and objectives of the Waterford County Development Plan 2011-2017, that such regeneration is a valid purpose within the meaning of the Planning and Development Act, and in the light of relevant case law, and therefore represents a reasonable exercise by a local authority of its powers under the Planning and Development Act in order to achieve a

comprehensive redevelopment of an area in need of regeneration for the public good.

I am further satisfied that the regeneration of the site would not be achieved without the involvement of the local authority, and the use of its powers to assemble the overall site in question.

11.0 RECOMMENDATION

CONFIRM the Compulsory Purchase Order based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having considered the objections made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearing into the objections, and having regard to

- (a) the purposes of the acquisition as set out in the Order, for the purposes of securing and facilitating the development and renewal of property at Main Street North Side, Cappoquin, Co. Waterford,
- (b) The objectives of the Cappoquin Settlement Plan for Cappoquin in the Waterford County Development Plan, 2011-2017,
- (c) The submissions and observations made at the Oral Hearing held on 21st November 2019 in Dungarvan;

It is considered that, the acquisition by the local authority of the lands in question, as set out in the order and on the deposited map, has been justified and is necessary for the purpose stated in the order, and that the objection cannot be sustained against this necessity.

A. Considine
Inspectorate
21st December 2019