



An  
Bord  
Pleanála

## Inspector's Report

**ABP-305093-19.**

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<b>Compulsory Purchase Order:</b>	Waterford City & County Council - Vacant Properties, Waterford Compulsory Purchase Order 2019, (No. 15).
<b>Local Authority:</b>	Waterford City & County Council
<b>CPO:</b>	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 as amended, 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.
<b>Location of Lands:</b>	2 St. Carthage's Avenue, Waterford City.
<b>Objectors to CPO:</b>	Start Mortgages
<b>Date of Site Inspection</b>	21 <sup>st</sup> November 2019
<b>Date and location of Oral Hearing:</b>	Tower Hotel & Leisure Centre, The Mall, Waterford, 22 <sup>nd</sup> November, 2019.
<b>Inspector:</b>	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 2 St. Carthage's Avenue, Waterford City. 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 Friday 22<sup>nd</sup> November, 2019, at Tower Hotel & Leisure Centre, The Mall, Waterford. Tower Hotel & Leisure Centre 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. The objector did not attend the hearing.

## **2.0 SITE INSPECTION AND DESCRIPTION**

- 2.1 I carried out a site inspection on the 21<sup>st</sup> of November, 2019. I contacted Start Mortgages on Monday 18<sup>th</sup> November to arrange access to the property on the 21<sup>st</sup> of November, 2019 at 4pm.
- 2.2 The lands subject to proposed CPO are located to the south west of, and within walking distance to, Waterford City Centre in an established residential area. Walsh Park, the County GAA Grounds, is located approximately 440m to the west of the site, with The Tycor Waterworks and industrial campus further west. To the east of the site, lies St. Josephs House, which is a former religious institution and has been operated as a Nursing Home and a school. This property extends to approximately 2ha and includes a number of buildings and large open spaces/gardens. The Waterford Institute of Technology lies beyond St. Josephs House.
- 2.3 The site comprises a mid-terrace two storey house which is located on St. Carthage's Avenue. Cathage's Avenue runs in a north west to south east

direction, before turning in a right angle to run from north east to south west. The Avenue comprises blocks of two storey terraced properties and include a mix of two bay and three bay houses. Access to the site is via the R686, Barrack Street, which is a main access road to the city centre. The site has a site area of 0.0138ha.

### **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 Chief Executive's Order states that full title up to and including the fee simple in the said land be acquired by Waterford City & County Council for the purposes of facilitating the development and renewal of property at 2 St. Carthage's Avenue, Waterford City.

### **4.0 DETAILS OF THE CPO**

4.1 The CPO relates to the compulsory purchasing of lands for the purpose of facilitating the development and renewal of property at 2 St. Carthage's Avenue, Waterford City. The land to be acquired consists of 1 plot, comprising a mid-terrace house including its associated front and rear gardens, and has a stated site area of 0.0138ha.

4.2 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 Executive Order, No. 2019/2,039, authorising the making of Compulsory Purchase Order, dated 6<sup>th</sup> August, 2019
- Copy of Deposit Map drawing No.001, Job NO CPO 2019-15.
- Copies of public notices in the Munster Express, dated Tuesday, 6<sup>th</sup> August, 2019.
- Copy of notices served on landowner, dated 6<sup>th</sup> August, 2019.
- Certificate of Registered Post - dated 6<sup>th</sup> August, 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. Initially, the Council identified that the subject site was within the ownership of Mr. Lee Dalton. Following the issuing of a letter to Mr. Dalton advising about the CPO, the letter was returned to the Council marked 'Gone Away', and whereabouts unknown. A copy of the CPO was sent to Permanent TSB Mortgages, as it had been advised that PTSB may have had an interest in the property. The Council was advised, via telephone call on the 31<sup>st</sup> August, 2019, that PTSB had sold the mortgage to Start Mortgages. On the 3<sup>rd</sup> September, 2019, An Bord Pleanala received an objection to the CPO from Start Mortgages, Mr. Derek Dennison.

The objection relates the full site area and the issues raised are summarised as follows:

- By Deed of Transfer dated 1<sup>st</sup> February, 2019, Permanent TSP transferred its interest in the property to Start Mortgage.
- Start Mortgages object to the proposed acquisition on the basis of this interest and submits that Start are currently in the process of appointing a Receiver to the property who, when appointed, can use all powers available to them to rectify any grievances that the Council may have relating to the property in question.
- It is requested that the CPO be removed or suspended until such time as the receiver has been appointed.

## **6.0 SITE HISTORY**

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

## **7.0 PLANNING POLICY CONTEXT**

### **Waterford City Development Plan, 2013-2019.**

7.1 The subject site is located within the development area of Waterford City, and is zoned for residential uses. It is the stated objective of the R2 Existing Residential, where it is the stated objective

“to protect, provide and improve residential areas and their amenities.”

7.2 To the north of the site, and fronting onto Barrack Street, the zoning is M5 General Business, where it is the stated objective to provide and improve General Business uses.

## **8.0 THE ORAL HEARING**

8.1 An Oral Hearing was held on the 22<sup>nd</sup> November, 2019 in the Tower Hotel & Leisure Centre, The Mall, 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: Start Mortgages submission
4. Questions and cross examination of objector
5. Summing up / closing statement - Start Mortgages
6. Summing up / closing statements Local Authority.

8.3 The Inspector sought to open the hearing at 10am. However, the objectors had not arrived by this time so I facilitated a delay for 10 minutes. The Objectors did not arrive for the hearing. The hearing opened at 10.10am

8.4 The solicitor for the Local Authority, Mr. David O'Connor, initially presented a legal opinion on the validity of the Objection to the CPO by Smart Mortgages – CPO Doc 1. A summary of the submission is presented as follows:

- The term 'owner' is defined in the 1966 Housing Act as 'a person other than a mortgagee not in possession (my emphasis) who is entitled to dispose the title of the land'.
- Receiver – no evidence that a receiver has been appointed. Mentioned in correspondence but no copy of appointment of a receiver and no evidence that Start Mortgages are entitled to appoint a receiver. It was noted that while it was advised that a Receiver had been appointed to the property, no details of this person was advised to the Local Authority. It is submitted that the Receiver is not an owner of a property and is deemed to be an agent of the registered owner (Mr. Dalton) and not the bank. The legal statutory powers to manage the property and to deal with rents etc, but has no power to sell unless stated under Conveyancing Acts, but can be included in the mortgage documents.
- The mortgagee does not have to be notified of CPO unless they have become a Mortgagee in Possession. Due to the many implications of being a mortgagee in possession, it is rarely done as it brings with it all sorts of complications with it. It is more common to appoint a receiver. The Objector in this case, Start Mortgages, is a mortgagee and not a mortgagee in possession, as they have advised that a Receiver is to be appointed.
- It is submitted that the persons that the Council are required to notify about the CPO are the only ones who are entitled to object to the CPO. Start Mortgages, who are not Mortgagee in Possession, is not entitled to make an objection under the Act.
- It is submitted that it is unfortunate that Start Mortgages did not appear at the hearing to provide the evidence and clarification of the exact circumstances in which they obtained possession of the property.

- If Start Mortgages is not a ‘Mortgagee in Possession’, they have no standing to object to the making of the CPO.

8.5 Following on from Mr. O’Connors legal submission, Mr. Paul Jonhston, Senior Engineer, Waterford City & County Council, Planning Submission – CPO Doc 2, was presented. A number of documents were also provided by the Local Authority as follows:

- Waterford City & County Council Vacant Homes Action Plan 2017 – CPO Doc 3
- National Vacant Housing Reuse Strategy 2018-2021, DoHPLG – CPO Doc 4
- Action Plan for Housing and Homelessness, Rebuilding Ireland 2016– CPO Doc 5

The following is a summary of Mr. Johnstons presentation:

- The submission advises that the objective of the CPO is to bring vacant units in Waterford City back into productive use for housing purposes by securing and facilitating the development and renewal of the subject property in accordance with national and local objectives, as outlined in the submission.
- The submission describes the context of the site and provides a summary of the relevant national and local policies and objectives in relation to housing and vacant homes.
- In terms of justification for the CPO, the submission notes that there is a demonstrated housing need nationally and in Waterford City. The summary of the Social Housing Assessment 2018 published by the Housing Agency determined that 1,117 households qualified for social housing within Waterford City & County, with significant demand for 2-bed properties such as the subject property. There are almost 3,000 persons waiting to be accommodated on the social housing waiting list alone.

- Census 2016 indicated an 11% vacancy rate in Waterford City & County, while the national Vacant Housing Reuse Strategy 2018-2021 indicates that a normal vacancy rate is between 2.5-6%.
- The submission presents a history of the property noting that it was originally built in 1938 and has been owned by Mr. Lee Dalton since 18<sup>th</sup> February, 2006. Irish Life & Permanent PLC were registered charge holders on the property. Start Mortgages Designated Activity Company became the owner of the charge on the property in March 2019.
- The property was brought to the attention of the Local Authority in April 2019 when it was advised that it had been vacant for over 5 years and was in a state of neglect and wildly overgrown. The CPO process was initiated in August, 2019.
- An offer for the property was made to Start Mortgages by the Local Authority on the 15<sup>th</sup> of November, following a period of correspondence between the parties. Start Mortgages subsequently provided details of the Receiver, (Grant Thornton) and the same offer was made to the Receiver. There has been no response to date and the property remains vacant.
- The submission includes a number of photographs.
- By their own admission, the objectors are not in a position to carry out works to the property or to occupy or tenant the property. It is submitted that the acquisition of the property is clearly justified by the exigencies of the common good, arises from a pressing social need and is proportionate to the objective to be achieved.

8.6 In terms of closing statements, Mr. O'Connor summarised the Local Authority submission and the purpose of the CPO. It was advised that it appears that the objection arose in the context of compensation, which is outside the scope of the Boards assessment of the CPO. It is requested that the CPO be confirmed.

8.7 As the presiding Inspector I formally closed the hearing at approximately 10.50am.



8.8 A summary list of documentation and copy of all submissions received at the Oral Hearing are enclosed on the file ABP-305093-19 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 clearly indicated at the Oral Hearing that the purpose of the CPO is to bring the vacant property back into productive use, reduce vacancy in Waterford City and to increase the occupancy of existing homes, increasing housing supply.

9.1.2 The Executive Order, No. 2019/2,039, authorising the making of Compulsory Purchase Order, dated 6<sup>th</sup> August 2019. It is noted that the order was made following the Local Authority's efforts to acquire the property by agreement.

9.1.3 I note that on the date of the Oral Hearing, the objector did not attend. Nor has the Board been formally advised of a Receiver being appointed. In this context, the Board may wish to consider the legal arguments made by the Local Authority with regard to the validity of the objection to the CPO in the first instance.

9.1.4 Article 4(b) of the Housing Act, 1966 notes that in making a CPO, the Local Authority is required to serve 'on every owner, lessee and occupier of any land to which the CPO relates a notice stating the effect of the Order'. An 'Owner' is defined in Section 75(e) of the Act as:

'A person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term whereof exceeds three years'.

In this context, it is argued that as Start Mortgages is not a Mortgagee in Possession, they have no standing to object to the making of the CPO.

9.1.5 Article 5(2) of the Act states that the Board ‘shall not confirm a compulsory purchase order in so far as it relates to any land in respect of which an objection is duly made by any of the persons upon whom notices of the making or the order are required to be served until he has caused to be held a public local inquiry into such objection and until he has considered such objection and the report of the person who held the inquiry’.

9.1.6 The Local Authority submission at the OH noted that on a date on or after 15<sup>th</sup> November 2019, they were advised by Start Mortgages that Grant Thornton had been appointed as Receivers for the property.

9.1.7 As a Receiver has been appointed to the property, and Start Mortgages is/was ‘a mortgagee not in possession’, Start Mortgages were not a ‘required’ notice party to the CPO in accordance with the Housing Act, 1966. In the context of Article 5(2) of the 1966 Act, I am inclined to agree with the Local Authority, that Start Mortgages were not entitled to object to the CPO. In the event that the Board does not agree, I will continue my assessment of the CPO below.

## **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 5<sup>th</sup> 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 has satisfactorily met the criteria for the compulsory purchase of the vacant property the subject of this CPO in my opinion, with the clear intention to reduce vacancy and increase the housing stock in the City. I consider the submission of the Local Authority sufficient to justify the acquisition of the property 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.

### **9.3.1 Community Need**

I would accept that the development of the vacant property, for residential uses might be construed as satisfying a community need. The Board will note that the site is zoned specifically for residential purposes with a stated objective “to protect, provide and improve residential areas and their amenities.” The Board will also note the submission of the Local Authority with regard to the existing housing list and the level of vacancy across the City & County.

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

### **9.3.2 Need for the Lands**

In terms of establishing the need for the vacant property to satisfy a community need, I would consider that given that the property is located within an existing and long standing residential area of Waterford City, it is reasonable to accept that the particular property would be suitable to meet a community need and in particular the redevelopment of disused residential building in the city of Waterford.

### **9.3.3 Compatibility with Development Plan provisions**

In terms of compatibility with the Development Plan provisions, the Board will note that the Waterford City Development Plan zones the subject lands for residential uses. 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 is for residential uses and the redevelopment of the site for such purposes would facilitate the development and renewal of the vacant residence in Waterford City, which would be acceptable in my opinion.

In addition, the Board will note the aims and objectives of the Waterford City & County Council Vacant Homes Action Plan, 2017, which primarily seeks to maximise the potential for the reuse of empty homes for social and private housing.

Overall, the development of the subject vacant property for the purposes advised, is reasonably considered as complying with the requirements of the Waterford City Development Plan, 2013.

#### **9.3.4 Consideration of Alternatives**

With regard to the consideration of alternatives, I would note that final use of the vacant property as residential is in accordance with its history and would compliment the existing uses in the immediate vicinity of the house. In addition, I again note the objectives of the Local Authority to address vacancy in the City and accept the demonstrated housing needs within the City for such residential properties. As such, I accept the case made by the Local Authority that the proposed CPO is in the interests of the common good and arises from a pressing social need.

## **10.0 CONCLUSION**

With regard to the Compulsory Purchase Order made by Waterford City & County Council, who are seeking to acquire the vacant property 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 this property would facilitate the redevelopment of a currently vacant residential property within the City, which is considered to be consistent with the policies and objectives of the Waterford City Development Plan 2013-2019, and those of the Waterford City & County Council Vacant Homes Action Plan 2017, and 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 evidence to the contrary has not been provided to suggest that the regeneration of the site would not be achieved without the involvement of the local authority.

## 11.0 RECOMMENDATION

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

## 10.0 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 vacant property at 2 St. Carthage's Avenue, Waterford City,
- (b) The objectives of the Waterford City Development Plan, 2013-2019,
- (c) The Aims and Objectives of the Waterford City & County Council Vacant Homes Action Plan 2017
- (d) The submissions and observations made at the Oral Hearing held on 22<sup>nd</sup> November 2019 in Waterford;

It is considered that, the acquisition by the local authority of the vacant property 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.

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A. Considine  
Inspectorate  
07/01/2020