



An  
Bord  
Pleanála

## Inspector's Report ABP-308687-20

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<b>Development</b>	Compulsory Purchase Order (no.4 of 2020), no. 10 Black Mill Street, Kilkenny, Co. Kilkenny
<b>Location</b>	10 Black Mill Street, Kilkenny, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Applicant</b>	Kilkenny County Council
<b>Type of Application</b>	Notice of Compulsory Purchase under Section 216 of the Planning and Development Act 2000 as amended and under the Housing Act 1966.
<b>Objector</b>	Angela Rungen
<b>Date of Site Inspection</b>	1 <sup>st</sup> June 2021
<b>Inspector</b>	Paul O'Brien

## Contents

1.0 Introduction.....	3
1.1. Overview.....	3
1.2. Purpose of the CPO.....	3
1.3. Accompanying Documents .....	3
1.4. Format of CPO Schedule.....	4
2.0 Site Location and Description.....	5
3.0 Planning History .....	6
4.0 Proposed Wastewater Infrastructure .....	7
5.0 Planning Policy Context .....	8
6.0 Objections .....	10
7.0 Response from Kilkenny County Council .....	10
8.0 Oral Hearing.....	11
9.0 Assessment.....	11
9.1. Overview.....	11
9.2. Community Need .....	12
9.3. Suitability of Lands to Serve Community Need.....	13
9.4. Compliance with Development Plan .....	14
9.9. Consideration of Alternatives.....	15
9.10. Proportionality and Necessity for the Level of Acquisition Proposed .....	18
9.11. Additional Issues Raised by the Objector.....	19
10.0 Conclusions and Recommendations .....	21

## 1.0 Introduction

### 1.1. Overview

- 1.1.1. Kilkenny County Council is seeking confirmation by the Board of a Compulsory Purchase Order No.4 of a property at no. 10 Black Mill Street, Kilkenny.
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over a single parcel of land which includes a house at no. 10 Black Mill Street, Kilkenny. The confirmation of the CPO is made pursuant of the powers conferred on Kilkenny County Council, which is designated as a Planning Authority and as a Housing Authority under the Local Government Acts.
- 1.1.3. One objection was received in respect of the CPO. This objection was submitted on behalf of Angela Rungen by Mary Molloy, Solicitor. This report considers the issues raised in the objections submitted to the Board and more generally, the application to acquire the site.

### 1.2. Purpose of the CPO

- 1.2.1. According to the documentation submitted with the application, and specifically I refer to the Kilkenny County Council Report, the purpose of the CPO is to:
  - Secure and facilitate the development and renewal of property at no. 10 Black Mill Street, Kilkenny.

### 1.3. Accompanying Documents

- 1.3.1. The application was accompanied by the following documentation:
  - The Compulsory Purchase Order, signed by the Chief Executive.
  - The Compulsory Purchase Order, Sealed, and signed by the Cathaoirleach and dated 11<sup>th</sup> of November 2020.
  - The Chief Executive Order for the Compulsory Purchase Order, signed by the Chief Executive dated 10<sup>th</sup> November 2020.
  - A CPO map comprising of a single sheet indicating the lands to be acquired for permanent acquisition.

- Public notices published in the Kilkenny People and dated the 13<sup>th</sup> of November 2020.
- A copy of the site notices as erected on site.
- A photograph which demonstrates that the site notice was erected on site.
- A 'Housing Technical Appraisal for Compulsory Purchase Order of derelict house at 10 Blackmill St. Kilkenny, R95 X8WH' prepared by the Project Liaison Architect & Vacant Homes Officer, which details the proposal, highlighting the need for the scheme.
- A Planning Report, this report sets out details of the site, the community need for the development, the alternatives considered, a description of the project, relevant planning history and the planning policy context relating to the CPO.

#### **1.4. Format of CPO Schedule**

- 1.4.1. There is only one property listed in Part 1 of the Schedule – This is No. 10 Black Mill Street, Kilkenny, an 'Existing Residential Dwelling of 102 square metres' and its associated grounds which consists of the rear garden.
- 1.4.2. Drawing No. B1St10-R95 X8WH provides a location map of the property at a scale of 1:1000.

## **2.0 Site Location and Description**

- 2.1. No. 10 Black Mill Street is a two-storey mid terrace house located on the north eastern side of Black Mill Street, to the western side of the centre of Kilkenny. Black Mill Street connects Jame's St/ Kickham St to the south and curves around to meet Dominic Street to the west. The subject site is located almost midway along Black Mill Street.
- 2.2 Access into the house was not possible on the day of the site visit. The front of the house looked to be poorly maintained, and damage was evident to the window frames, however repair of the windows and painting would significantly improve the appearance of the house. The roof and rainwater goods appeared to be in generally good condition. The house did not look to be of such poor condition as to be noticeable from a close distance as to be clearly visible as a vacant property.

### **3.0 Planning History**

- 3.1. There is no recent relevant planning history associated with this site.

### **4.0 Planning Policy Context**

- 4.1. The lands to which the CPO relate are governed by the policies and provisions contained in the Kilkenny City & Environs Development Plan 2014 – 2020. The subject site is located on lands zoned 'Existing Residential' with an objective 'To protect, provide and improve residential amenities'.
- 4.2. All of Black Mill Street, including the subject site, is located within the 'St. Mary's Architectural Conservation Area (ACA)' as indicated on Figure 7.12 of the Kilkenny City & Environs Development Plan 2014 – 2020. There are no specific references to Black Mill Street in the 'ACA Development Management Standards based on assessment of special character'.

### **5.0 Objections to the CPO**

A single objection was received from Mrs Angela Rungen, the owner of the site.

The objection is set out as follows:

1. The first indication of the Compulsory Purchase Order of her property was in November 2020 when a relative informed her by telephone of the notice in the local newspaper and that a notice had been placed on the front door of her house. This came as a shock to Mrs Rungen.
2. Contact was made with the County Council but no explanation was given for the CPO and Mrs Rungen received the formal CPO by post a few days later; there was no cover or explanatory letter with the CPO.
3. Mrs Rungen explains that the house is a holiday home and is used by her family on a regular basis, most recently in December 2020. It is acknowledged that maintenance work is required due to damage caused by a broken pipe. This has been fixed and a dehumidifier was hired to address issues of dampness caused by the damage pipe. Other works around the house were not carried out including gardening, but were planned to be undertaken in 2021, however the due to Covid 19 no further works were undertaken.

4. The property has fully functioning electricity and running water and poses no risk to any of the adjoining properties.

5. The whole process has put a strain on Mrs Rungen, especially over the last year and a half due to the added stress and worry over Covid 19. The methods used to notify the public of the CPO also alerts members of the public to the fact that the property is currently vacant and which opens up the possibility of damage/ vandalism to the building. This has only added to the level of stress that Mrs Rungen is experiencing. The issuing of the order just before Christmas has also cast a shadow over her.

## 6.0 Response from Kilkenny County Council

6.1. No additional comments made at this stage.

## 7.0 Oral Hearing

7.1. An oral hearing was held on Tuesday the 15<sup>th</sup> of June 2021. Due to public health restrictions arising from the ongoing Covid-19 Pandemic, the oral hearing was conducted virtually by use of Microsoft Teams. The Board retained the services of Artane Audio to record the oral hearing proceedings and a copy of the hearing is available.

An agenda was posted out to all parties on the 27<sup>th</sup> of April 2021 and a copy of this is available on file.

7.2 The hearing commenced at 10.00. The attendees introduced themselves as follows:

### **Local Authority:**

- Evelyn Graham – Senior Executive Architect, Kilkenny County Council
- Denis Malone – Senior Planner, Kilkenny County Council
- John Harte – Solicitor, acting for Kilkenny County Council

### **Objectors:**

- Angela Rungen – Landowner

- Aimee Rungen – Daughter of Angela Rungen
- Mary Molloy – Solicitor, acting for Angela Rungen

### 7.3 **Submission by Local Authority**

7.3.1 Mr Harte solicitor for the local authority, spoke first, and set out the Legal basis for the CPO and outlined what the Local Authority case would be. The process is under the Housing Act 1966 and the Planning and Development Act 2000 as amended. Particular reference made to Section 147 of the Planning and Development Act 2000 and the need for the Board to have regard to National Guidance – State policy on vacant homes.

Sets out the CPO requirements – should meet the common good. 2006 Case law, consideration of alternatives. No statement has been made by the objectors to date. Proportionality and common good – should be necessary and in this case there is a social need for this CPO.

Items to be considered –

1. There is a community need that will be met by the acquisition.
2. The property is suitable to meet that need.
3. Alternatives have been considered.
4. The Landowner is entitled to compensation.

7.3.2 Evelyn Graham, Senior Executive Architect, read her report into the record, a copy of which is available on file. In summary the following points were made:

- Mrs Graham has been working in the Kilkenny County Council Housing Department as Senior Executive Architect since early 2018 and was appointed as Vacant Homes Officer under the Kilkenny County Council Vacant Homes Action Plan. This position covers a range of duties including the identification of vacant homes, the identification of the owners of vacant homes and contact with such owners to give them options to enable their properties to be brought back into use for private/ social housing purposes.

- **Mrs Graham** outlined the background to the process. The Government policy 'Rebuilding Ireland: Action Plan for Housing and Homelessness' was launched in 2016. Pillar 5 of this plan seeks to 'Utilise Existing Housing' to the maximum possible and to use vacant stock as a means to renew urban and rural areas. A 'National Vacant Housing Reuse Strategy 2018 – 2021' was developed and includes five key objectives of which the following are relevant:
  - a) Objective 2: 'Bring forward measures to ensure, to the greatest degree possible, that vacant and underused privately owned properties are brought back to use'.
    - Action 2A: Gain an understanding as to the barriers that exist for the reuse of privately-owned vacant properties.
    - Action 2B: Continuously review and evaluation of available schemes to ensure that they are effective in bringing vacant homes back to viable use.
    - Action 2D: Examine the greater use of available legal powers to enable the reuse of vacant properties such as under CPOs.
- Kilkenny County Council commenced its Vacant Homes Action Plan in 2018 in accordance with Circular Letter PL7-2017 issued by the Department of Housing, Planning and Local Government. The Kilkenny Vacant Homes Action Plan seeks to identify vacant homes and to reactivate them for housing purposes. The focus is on the areas of greatest need – Kilkenny City and the scheduled towns in County Kilkenny. The Action Plan sets out a number of measures that are required to achieve the objective and include:
  - a) Appointment of a Vacant Homes Officer
  - b) Vacant property assessment to be carried.
  - c) Prioritise properties based on housing needs assessment.
  - d) Engage with property owners to develop resolution plans.
  - e) Prepare site-specific plans for private/ social housing units.
  - f) Option of implementing CPO procedures where this is appropriate.
- Contact is made with property owners with a view to returning vacant properties to residential use under a range of schemes including the 'Repair & Lease Scheme' and the 'Buy & Renew Scheme'.



- Information on the 'Buy & Renew Scheme' were sent to Angela Rungen in September 2019. The scheme operates on the basis of buying properties by agreement and restoring them for residential use. A significant number of houses have been dealt with under this process. The Department of Housing, Planning and Local Government provide funding for such works and details were provided.
- **Need to Acquire Property:** A vacant house is defined as a home that is a residential property which is:
  - a) Not currently occupied
  - b) Has remained unoccupied for longer than 6 months
  - c) Is not currently being actively marketed or renovated by the owner

The house was included in the Kilkenny County Council Vacant homes Survey, which commenced in April 2018. A site inspection indicated that the house was vacant for some time – visual indicators included:

- Overgrown rear garden
- Signs of poor maintenance in the form of chipped paint, rotten window frames, torn net curtains, peeling paint on fascia, unpainted front door, damaged rain water goods.
- No indication that the house is for sale and no application for planning permission has been made.

Neighbours confirmed that the house has not been occupied for some time and has fallen into disrepair since the death of the previous owner, Catherine Byrne, in November 2009. Concerns have been expressed about vermin, overgrown shrubbery and for the potential for break-ins and illegal dumping.

- Kilkenny County Council wish to acquire this property to address issues of vacancy and the acute housing need in the county. A table is provided (included in the Statement of Evidence) of the current housing need in Kilkenny City & County.
- **Suitability of Property:** The house is in poor condition but is located in an area with high demand for such properties. During the winter of 2010, the water pipes burst and water flowed out the front door, causing damage to the property. It is the understanding of Kilkenny County Council that the house is uninhabitable due to this water damage. Subject to refurbishment, it can be returned to residential use as a two bedroom/ four person family home. It is located in the centre of the city

close to educational, amenity and other services. The Local Authority has many families on their list who could be accommodated in this property.

- **Planning Code and County Development Plan:** The site is located on residentially zoned lands and is located within the St Mary's Architectural Conservation Area. It is essential that the area be maintained and occupied to ensure that its character is protected. Acquisition and reuse will promote the urban renewal of the area.
- **Alternative Methods of Acquisition:** Engagement with the owner was attempted on a number of occasions. A letter was sent to the owner in June 2019, but no response was received. The landowners address was obtained via an elected member, and she was written to her address in the UK in September 2019. Full details were provided including a suggestion that the house be purchased under the 'Buy & Renew Scheme'. Further emails were sent with no response received. A reminder email was sent on the 21<sup>st</sup> of January 2020 and no response was received. The CPO order was served/ advertised in November 2020. The property was one of ten advertised at this time and a further 10 will be advertised under the CPO process in 2021.
- **Proportionality:** The process is in accordance with the 'National Vacant Housing Reuse Strategy 2018 – 2021'. The property is vacant and is under occupied' and there is an acute need for such housing, approximately 1200 houses are needed, in the Kilkenny City and County area. The Local Authority is justified in making this CPO.
- Mrs Graham concluded her statement.
- **Mr Malone**, Senior Planner Kilkenny County Council, made his statement.
- The location of the house is identified and is located on residentially zoned lands in accordance with the current Kilkenny City & Environs Development Plan 2014 - 2020. The site is located within an Architectural Conservation Area but is not a protected structure.
- The zoning remains the same under the Draft City & County Development Plan 2021 – 2027. The Core Strategy for Kilkenny City seeks to grow Kilkenny 'in a compact urban form to advance sustainable development'. A number of relevant sections of the Plan were identified and in particular Objective 3A which seeks 'To promote the redevelopment and renewal of areas in need of regeneration'.

- Mr Malone concluded by saying that “The proposed acquisition of the house is in accordance with the proper planning and sustainable development of the area, and I recommend to the Board to confirm the order”.
- Mr Harte referred to the Photographs submitted in support of the CPO and whether there was a need for Mrs Graham to describe these. It was confirmed that the photographs of the rear of the property were taken from an adjoining property. I decided that there was no need at that time to detail the photographs as the images of the site were as expected.

That concluded the submission of the Local Authority and a short break was held to enable the objector to consider the points raised.

#### 7.4 **Submission by the Objector**

- Mary Malone spoke first and outlined that the objectors would make their own case. Mary Malone commented on the fact that the photographs were received relatively late.
- Aimee Rungen spoke and requested that there be a short delay to review the received information. It was agreed to this request and a break was had between 10.37 and 10.46.
- The hearing resumed at 10.46. Aimee Rungen noted that the County Council stated that the house was vacant for 12 years since Aimee’s granny passed away. The house was regularly visited over this period, at least once every six months, the neighbours have access to the house and the Solicitor has a key to the house.
- The leak was from a pipe that broke in an outdoor toilet. Angela Rungen noticed the leaked point, stayed with the neighbour and fixed the pipe and put a dehumidifier into the house.
- Due to medical reasons, she was not able to carry out further repairs/ maintenance to the house. The neighbour was asked to carry out works to the house.
- With regard to the contact made by the County Council, Aimee’s father was in hospital at the time and then due to the Covid 19 Pandemic and subsequent lockdown, travel to Kilkenny was not possible.
- Angela Rungen spoke at this stage. She could not understand how the notice was put up on the door, breaking confidentiality and GDPR regulations. She notes that there are many houses in a similar condition. She apologises for the state of the house and the garden would be overgrown due to no maintenance over a period of

two years. Concerned about how the house was identified as a vacant property. Due to family reasons, Christmas holiday period and Covid. Concerned about the taking of the property and unsure what she may want the house for in the future. Accepted that the house needs work done but this is not significant.

- Concern raised again about the notice put on the front of the house and she was contacted by a stranger looking to buy the house. Her address in England was on the notice. Very annoyed about the process and the fact that 'her own people' were trying to take the property from her. This has given rise to great stress to her. She has lost eight neighbours in the last year and the process has been stressful to her.
- I accepted that the process is somewhat unusual and the placing of the notice on the front of the property is in accordance with the requirements of the CPO process and is outside of the control of An Bord Pleanála.
- Mary Molloy outlined the process to date and that the fact that the Rungen's were not interested in selling the property. The CPO process was initiated. The house is visited every six months and due to health reasons and Covid, the house has not been visited. No photographs of the house in earlier years have been provided. The lack of maintenance is not denied. The house is not abandoned and the Rungens wish to keep it.
- A short break of five minutes was had at 11.00 and the hearing resumed at 11.06.

## 7.5 Questions

- The objectors were afforded the opportunity to ask questions.
- First question was about the CPO process and the hurry to acquire the property. Mrs Graham responded setting out the mandate of the Local Authority to identify and acquire vacant houses and to return them to residential use. If it was confirmed that the house would be restored to use and a plan provided, the process would not have been commenced. Aimee Rungen confirmed that her mother was not able to come over due to health and Covid reasons. Mrs Rungen stated that she did send an email to Kilkenny County Council saying that she would think about selling the house. The next thing was a phone call from a relative in London telling her about the notice on the front of her property. Mrs Rungen was not able to come over to Ireland. The CPO process had commenced.

Mrs Rungen contacted Kilkenny County Council and the following week a CPO notice was received. There was no cover letter, and no personal care was given by Kilkenny County Council. This is not a priority of Mrs Rungen at present.

- The placing of the public notice was and remains a concern with the Rungens. I commented on the notice process being in accordance with the relative legislation and I referred this issue to Kilkenny County Council. Mr Harte outlined that the placing of the notices was in accordance with Section 3 of the Housing Act of 1966 and was to enable the identification of any landowners or those with an interest in the land. The house was not listed as being registered. The public notices clearly worked as it enabled the objection to be made. I noted that the house was not registered with the Property Registration Authority and this may not be unusual.
- Query about what would happen to the property within the house if the CPO is confirmed. Mr Harte confirmed that the property within the house remains with Mrs Rungen and would not be discarded. The house would be subject to the full market value.
- I outlined that the Planning Process was deemed an essential service during the Covid 19 Pandemic and although travel was restricted, processed such as CPOs continued over the last 14 months.
- I put a question to Mrs Graham in relation to alternative ways of acquiring the property. The 'Repair and Lease Scheme' is where a loan is given to the owner to renovate a property and it may be leased by the Local Authority for social housing use. The system was restricted by a limit of €40,000 on repairs and Kilkenny County Council did not use this process much, though its use has increased recently due to an increase in the amount of the loan that can be offered.
- I had no further questions to ask and the Local Authority had no questions to put to the objectors.
- Mary Molloy referred to Page 3 of the Local Authority precis and the need to acquire the property. Covid has been the reason that travel to Ireland has not been possible and it was not possible to put the house up for sale and the poor maintenance was again due to Covid. Whilst the planning process did not stop, Covid prevented travel and the means to address the issue. I noted the issue regarding the garden and the inability to travel to Ireland during the lockdown process.

## 7.6 Closing Statements

- John Harte outlined the process under the Housing Act 1966, the house is vacant and that is the issue. If a derelict site, then the restoration of the property may be adequate. The issue is vacancy and not the condition of the house. The state of the house as per the photographs demonstrates a house that has been vacant for more than 15 months. Government policy is to bring these properties back into use. The landowner did not engage with Kilkenny County Council. The acquiring of a vacant house to help meet the housing need, demonstrates that it is in the common good. The actions of the Local Authority is in accordance with National Policy. Full compensation will be given for the purchase of this house in accordance with market values.
- The opportunity was afforded to the Objectors to make a closing statement. They wished to ask additional questions, however I informed them that the opportunity had now passed to do. Aimee Rungen outlined that the house is a holiday home and is occupied every six months. Concern about the CPO due to the condition of the house. No further comments have been made.
- Mary Molloy added that the objectors are not disputing the fact that the house has been unoccupied in recent times due to health and covid 19 reasons. The photographs are noted, and the state of the house is not disputed though when the deterioration occurred is not certain. The objectors did make contact with the Council but perhaps not in the form that was expected by the Local Authority.
- I closed the oral hearing and it concluded at 11.33.

## 9.0 Assessment

### 9.1. Overview

For the Board to confirm the subject CPO it must be satisfied that Kilkenny County Council has demonstrated that the CPO is clearly justified by the “common good”. Case law has determined that, in order to satisfy the above phrase, the following minimum criteria are required to be satisfied.

- There is a community need that is to be met by the acquisition of the property in question.

- The particular property is suitable to meet the community need.
- Any alternative method of meeting the community need have been considered but are not demonstrably preferable.
- The works to be carried out should accord or at least not be in material contravention of the policy and objectives contained in the statutory development plan relating to the area.

The proposed development is assessed in the context of the tests set out above prior to addressing the specific issues raised in the objections lodged.

## 9.2. **Community Need**

- 9.2.1. The community need for the acquisition was set out by Kilkenny County Council in the documentation submitted with the Compulsory Purchase Order (CPO) and was further detailed in the oral hearing.
- 9.2.2. Kilkenny County Council have provided a detailed breakdown of the current housing list for the City and County area. There is a requirement for 1,211 units in the Kilkenny City area of which 454 or 37% are two-bedroom units. Clearly there is a need to identify and acquire such houses where they become available on the market or otherwise. The local authority has confirmed that the house is viable to be restored to full residential use.
- 9.2.3. It is also a function of the local authority to address issues of vacancy. A vacant property is one that is not currently occupied, has remained unoccupied for more than six months and is not currently under renovation by the owner or on the market for sale. No. 10 is located midway on a terrace of houses located within the St Mary's Architectural Conservation Area and the presence of vacant properties that deteriorate due to a lack of maintenance would erode the status of the architectural conservation area. In accordance with the criteria for vacancy, the objectors did not dispute that the house has not been occupied over the last year, and as such it would fall under the criteria to be deemed to be a vacant unit.
- 9.2.4. The local authority has outlined the current condition of this house and refer to the overgrown rear garden, damaged window frames, peeling paintwork, torn net curtains and damaged rainwater goods. The objectors have not disputed the current condition of the house.

9.2.5. Having reviewed the information submitted, I am satisfied that there is a need for the local authority to address the housing list as it stands and also to reduce the levels of vacancy in the county. I am therefore satisfied that Kilkenny County Council have demonstrated a clear and pressing community need that would be met by the project and would be facilitated by the acquisition of rights over the lands in question, should the Board consider it appropriate to confirm the CPO.

### 9.3. **Suitability of Lands to Serve Community Need**

9.3.1. No. 10 Black Mill Street is located on lands that are zoned 'Existing Residential' and is in an established urban/ residential area. The house is located towards the centre of a terrace of similar two-storey units.

9.3.2. The site is located in the centre of Kilkenny City and is located within walking distance of the main shopping area and a number of schools. The refurbishment of this property would provide for a two bedroom/ four-person house in an area with high demand for such properties. Kilkenny County Council consider the house to be viable and suitable for refurbishment.

9.3.3. I would concur with the local authority that the subject property, having regard to its central location, could be refurbished, and put back into fulltime residential use. Having regard to all of the above, I am satisfied that in principle, the house is suitable for reuse.

### 9.4. **Compliance with Development Plan**

9.4.1 The site is zoned for 'Existing Residential' use and as there is a house on site, the use of these lands is in accordance with the zoning objective. The house is also located within the St. Mary's Architectural Conservation Area, and it is important that properties within such an ACA should be maintained in good condition to ensure the integrity of the ACA is protected.

9.4.2 The status of the site is supported by the documentation submitted in with the CPO and confirmed by the Senior Planner in his submission and by the Senior Executive Planner in her submission to the oral hearing.

9.4.3 Having regard to all of the above, I am satisfied that that the proposed development is substantially in compliance with Development Plan policies and objectives.



## 9.5. Consideration of Alternatives

- 9.5.1. The Kilkenny Senior Executive Architect has outlined the process of identifying suitable houses that may be acquired to address the housing needs list. No. 10 Black Mill Street was considered to be a suitable property for inclusion on the acquisition list.
- 9.5.2 Kilkenny County Council have outlined their attempts to engage with the landowner over a period of time. This process started with a letter to the house in June 2019, and then a letter to her UK address in September 2019. A number of emails were sent back and forth between the local authority and the landowner. The CPO notice was served in November 2020 and No. 10 was one of ten such properties advertised for CPO in the Kilkenny area at this time. The house was included on the list of vacant properties back in April 2018.
- 9.5.3 No specific alternative sites were indicated by the local authority, however the process in this case is clear – Identify suitable properties and proceed as appropriate. The alternatives would be to not chose this site or to proceed with other sites only. I have no objection to the process that Kilkenny County Council undertook in this case.

## 9.6. Issues Raised by the Objector

- 9.6.1 Just to clarify that only one objector to the CPO is listed but at the oral hearing Mrs Angela Rungen, the landowner, and her daughter Aimee Rungen spoke. They were also aided by the comments of Mary Molloy, Solicitor.
- 9.6.2 I have outlined the case made by Kilkenny County Council for the CPO and their case is strong under the four tests outlined above and they can demonstrate that the process is justified by the common good. They have also undertaken the process having full regard to National Policy including ‘Rebuilding Ireland: Action Plan for Housing and Homelessness’ and the ‘National Vacant Housing Reuse Strategy 2018 – 2021’.
- 9.6.3 As I outlined in the Oral Hearing, the planning process was deemed by the Government to be an essential service during Level 5 of the Covid 19 Pandemic and as such processes that had commenced were able to continue. The process to

acquire No. 10 Black Mill Street commenced in June 2019, but inclusion on the vacant property list went back to April 2018.

- 9.6.4 The objectors case relies on personal circumstances. Mrs Rungen inherited this property on the death of her mother in 2009. Mrs Rungen lives in Leeds in England and this house has functioned as a holiday home with a family member staying in it every six months or so for various lengths of stay. Due to health and other personal reasons, no visits were made to the house following the initiation of the CPO process. Since March 2020, Covid 19 has prevented any visits to the house as travel to and from the UK/ Ireland has been severely restricted. I have to accept that this information is all correct.
- 9.6.5 The objectors did not reject that the house has not undergone any maintenance in recent times as they were unable to visit the property for the reasons outlined above. Kilkenny County Council raised an issue regarding a water pipe leak in the house and Mrs Rungen outlined in the oral hearing that she found the source of this issue and provided details on the measures that she took to resolve the problem. Further maintenance/ decorating works were not able to be completed. Kilkenny County Council also referred to the overgrown nature of the back garden. Mrs Rungen stated that a person was employed to address this issue, but it seems that the work was not carried out. I noted in the oral hearing that a garden could become very overgrown in a relatively short period of time depending on weather conditions. A house/ garden that has not been visited since at least 2019 would be prone to problems of uncontrolled garden growth.
- 9.6.6 One of the tests as set out in '*Planning and Development Law*' (Garrett Simons – Second Edition) requires consideration of whether the measures proposed under a compulsory purchase order will have an excessive or disproportionate effect on the interests of the affected persons. Mr Harte, the Solicitor representing Kilkenny County Council, made clear that the market value for the property would be paid to the landowner. From a financial point of view, they would not suffer a loss and would probably be better off than if the house were sold in 2009/ 2010 at the time of its acquisition.
- 9.6.7 Mrs Rungen made clear in the oral hearing that this house functioned as a holiday home for herself and her family. This was her original family home and clearly, she

has an attachment to it. I accept that she has not been able to visit this property for some time due to reasons of Covid and other personal issues. She does not live in the state and was not able to visit in accordance with UK and Irish regulations in place that restricted unnecessary travel.

- 9.6.8 From the site visit, it was clear that the house had not been maintained for some time, however I consider that relatively minor cosmetic works would significantly improve the appearance of this property. Whilst it may be a vacant property, I would not consider it to be an eyesore and it does not negatively impact on the ACA at present.
- 9.6.9 As I have already outlined, Kilkenny County Council properly followed all procedures and demonstrate that the CPO is appropriate. The issue of proportionality is therefore critical – would the order have an excessive or disproportionate effect on the interests of the affected persons? I consider that it would. This is a family home that is now used as a holiday home. A holiday home by its nature would not be in full time occupancy and whilst there may be an opinion as to what constitutes a holiday home – a chalet by a lake or a cottage in a seaside location for example, they do come in many forms and a house on Black Mill Street may provide for the ideal holiday location for a former resident of Kilkenny who now resides in Leeds, West Yorkshire. There are countless such properties throughout the Country that are in various states of repair. They can be defined as vacant properties in strict interpretation of the test above but are not vacant in the view of the landowners.
- 9.6.10 Whilst the market value for the property may be significant, it cannot be certain in this case that the received money would adequately compensate for the loss of this property. This may be a case that its not the money that matters but the house is of significant personal importance and continues to provide for a use in the form of a holiday home. I therefore consider that the CPO would have a disproportionate impact on the property owner.
- 9.6.11 A key consideration in this case is the impact of Covid 19. As the objectors have outlined, they were unable to visit the property due to the constraints placed on them preventing travel. As I have already reported, the Local Authority carried out its functions correctly and efficiently. I do accept that the objectors did not appreciate the significance of the process and hence did not respond in an appropriate manner.

## 10.0 Conclusions and Recommendations

Having regard to all of the above, I am satisfied that Kilkenny Council have demonstrated a need for the acquisition of No. 10 Black Mill Street, Kilkenny and that the house is necessary to meet the partial needs of the Housing List. The acquisition of this house is on the basis of the vacancy/ under use of this property. However, the objectors have outlined that the house is used as a family holiday home and due to personal reasons and due to the Covid 19 Pandemic and its associated restrictions, access to Kilkenny and the subject house has not been possible since 2019. Whilst the house has not been maintained over this time, they do not consider it to a vacant property. The compulsory purchase of this property would have a disproportionate impact on the property owner, which may not be offset by financial compensation.

### DECISION

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

### REASONS AND CONSIDERATIONS

Having considered the objection made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following;

- (a) The purpose of the compulsory acquisition of No. 10 Black Mill Street, Kilkenny for refurbishment of this house, to address vacancy and the acute housing need,
- (b) The policies and objectives of the Kilkenny City & Environs Development Plan 2014 – 2020,
- (c) The submissions and observations made at the Oral Hearing held on 15<sup>th</sup> of June 2021;
- (d) The impacts of restrictions placed by the Governments in Ireland and the United Kingdom on the ability of their citizens to travel to/ from both jurisdictions, resulting in

the landowner, whose permanent place of residence is in Leeds, West Yorkshire, being unable to visit the site and to carry out necessary maintenance works to the property,

It is considered that, the acquisition by the Local Authority of the property in question, as set out in the order and on the deposited map, would result in an excessive and disproportionate impact on the property owner.

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Paul O'Brien  
Planning Inspector

8<sup>th</sup> July 2021