



An
Bord
Pleanála

Inspector's Report ABP310243-21

Development	Compulsory Acquisition of Lands
Location	108 Charnwood, Bray, County Wicklow.
Planning Authority	Wicklow County Council
Applicant(s)	Wicklow County Council
Type of Application	Notice of Compulsory Purchase Order under Section 216 of the Planning and Development Act 2000, as amended.
Objector	Edel Bannon
Date of Site Inspection	11 th August 2021
Inspector	Hugh Mannion

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1.0 Introduction

- 1.1. Wicklow County Council is seeking confirmation by the Board of a CPO entitled the Wicklow County Council Compulsory Purchase Order Number 3 of 2021 No.108 Charnwood, Bray, County Wicklow.
- 1.2. The CPO relates to the compulsory purchase of a house and site at No.108 Charnwood, Bray, County Wicklow. The order was made pursuant to Section 11 of the Local Government (No 2) Act 1960 as substituted by section 86 of the Housing Act 1966 as amended by section 6 of the Second Schedule of the Roads Act 1993 as amended by the Planning and Development Acts 2000 to 2021.
- 1.3. The Board received a single objection to the CPO from the landowner Edel Bannon. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property.

2.0 Site Location and Description.

- 2.1. Charnwood is a residential development of about 150 houses accessed from Vevay Road (R761) to the west of Bray town centre, County Wicklow. The houses are two storeys with front a rear garden and there are several pockets of public open space within the development.
- 2.2. Number 108 is one of a pair of semi-detached two storey houses close to the end of a cul de sac within the Charnwood estate.

3.0 Planning History.

- 3.1. No relevant planning history.

4.0 Policy and Context

4.1. Wicklow County Development Plan 2016-2022

- 4.2. In relation to Urban Regeneration and Housing the County Development Plan (objective HD19) provides that “in many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

- adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- urban blight and decay,
- anti-social behaviour, or
- a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

It is an objective of this plan to encourage and facilitate the appropriate development of such sites/lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development. In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with stand-alone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

- 4.3. The site is zoned Existing Residential with the objective "to protect, provide and improve residential amenities of existing residential areas" in the Bray Municipal District Local Area Plan 2018-2024.
- 4.4. **Rebuilding Ireland: Action Plan for Housing and Homelessness July 2016**
- 4.5. This Plan, published by the Department of Housing, Planning, Community and Local Government, states that it will address the needs of homeless people and families in emergency accommodation, accelerate the provision of social housing, deliver more housing, utilise vacant homes and improve the rental sector. In particular, the Plan sets out to deliver 47,000 units of social housing in the period to 2021.
- 4.6. The Plan identifies five key pillars in meeting the stated goals, including 'Pillar 2: Accelerate Social Housing'. This Pillar seeks to 'Increase the level and speed of delivery of social housing and other State supported housing'. Key Actions are listed including "Extensive support for Local Authorities and Approved Housing Bodies".
- 4.7. Table 4 lists 'Our Programmes' and includes a programme 'Local Authority Construction and Acquisition (also known as the Social Housing Investment Programme (SHIP))'. The objective is 'to provide funding to local authorities for the provision of social housing by means of construction and acquisition'.

4.8. **Department of Housing, Planning, Community and Local Government Circular PL 8/2016**

4.9. This Circular followed the publication of 'Rebuilding Ireland - Action Plan for Housing and Homelessness' and relates to the identification of planning measures to enhance housing supply. The Circular states that vacant stock represents a potentially very significant resource to assist in meeting the key goals of the Action Plan and that in advance of the approaching work on the vacant homes' re-use strategy, planning authorities are requested to initiate preparatory work such as surveys of, for example, the levels of, condition and potential availability of vacant housing stock in key urban areas and/or areas with very high demand for housing.

4.10. **Department of Housing, Planning, Community and Local Government Circular PL 7/2017**

4.11. This Circular reminded local authorities of the overall strategy of bringing vacant homes back into use as quickly as possible. The circular advised the adoption of Vacant Home Action Plan which would include the possibility of using the CPO process to acquire suitable homes as part of a strategy to address the matter of vacant private houses.

5.0 **Purpose of the CPO.**

5.1. The purposes of the CPO set out by the local authority are;

5.2. The local authority is a housing authority for the purposes of the Housing Acts with the powers to provide and allocate houses.

5.3. The intent of the CPO is the acquisition of the property so that it may be renovated and made suitable for occupation by a household to whom the house is allocated by the housing authority.

5.4. The house is a three bedroomed house that has been vacant for about 20 years and is in an area of very high housing demand within walking distance of Bray town centre.

5.5. The CPO arises from the requirements set out in Rebuilding Ireland: Action Plan for Housing and Homelessness July 2016 (Dept of Housing, Planning, Community and Local Government July 2016) which sought to deliver 47,000 housing units by 2021.

One of the pillars of the process designed to achieve this objective is the focus on using vacant housing stock including through the acquisition of such properties.

- 5.6. Two further departmental circulars (PL8/2016 and PL07/2017) reinforce the requirement on local authorities to prepare a Vacant Homes Action Plan and appointment of a Vacant Homes Officer to give effect to this aspect of the overall Rebuilding Ireland strategy.
- 5.7. The National Vacant Housing Reuse Strategy 2018-2021 seeks, *inter alia*, to renew, refresh and revitalise communities through, in part, recognising that vacant and abandoned properties are damaging to the quality of surrounding neighbourhoods and communities. The CPO process can be used effectively to bring vacant and derelict sites back into use.
- 5.8. The Wicklow County Development Plan (policy objective HD19) seeks to encourage the development and appropriate use of sites in need of development and renewal by all available tools and mechanisms in order to avoid adverse effects on existing amenities, urban blight and decay, anti-social behaviour and a shortage of habitable houses.
- 5.9. The CPO complies with the provisions of the Wicklow County Council Vacant Homes Action Plan 2017.

6.0 **Objection**

- 6.1. The local authority did not give adequate notice to the objector of the making of the CPO.
- 6.2. The local authority did not comply with the statutory provisions in making the CPO.
- 6.3. The local authority did not have adequate regard to the objector's constitutional rights.
- 6.4. The objector had already started carrying out works to ready the houses for sale/renting, but health problems have delayed this works. The objector intends to sell the house to her niece.
- 6.5. There is no adequate basis for the CPO in this case.

7.0 Response to the Objection.

- 7.1. The prior to the initiation of the CPO process the local authority contacted the landowner/objector making the points that the property had been vacant for a long time, that the landowner may be eligible for refurbishment grants, that there were rental assistance schemes available and that the local authority could avail of its powers under the CPO process.
- 7.2. Further contact was made in February 2021 with additional information in relation the sums of money available under the Repair and Leasing Scheme. Despite 2 years of contacts with the objector the property was vacant and at risk of dereliction. The notice was properly served under the Third Schedule to the Housing Act.
- 7.3. The local authority had proper regard to the objector's constitutional rights. The objector had 2 years to carry out repairs to make the house suitable for habitation. Even if some works were commenced this is not sufficient grounds to not confirm the CPO.
- 7.4. It is not clear what works were commenced by the objector, but such works are not a reason to prevent the making of the CPO. An intention to dispose of the property to a niece is insufficient reason to prevent the making of the CPO.
- 7.5. The acquisition of the house by the local authority will meet a specific need for a three-bed house in an area of high housing demand and complies with the provisions of Rebuilding Ireland: Action Plan for Housing and Homelessness July 2016 (Dept of Housing, Planning, Community and Local Government July 2016), National Vacant Housing Reuse Strategy 2018-2021 and the Bray Municipal District Local Area Plan 2018-2024.

8.0 Assessment

8.1. Overview

- 8.2. This assessment will consider the issues raised in the written objection submitted to the Board, the points made at the oral hearing and the four general principles to be considered in assessing CPOs of this nature.

- There is a community need to be met by the acquisition of the property.
- The particular property is suitable to meet the community need.
- The works carried out accord with the relevant Development Plan made in accordance with the Planning and Development Acts.
- Any alternative methods of meeting the community need have been considered and are not available.

8.3. **Community Need.**

- 8.4. The national policy in relation to meeting housing needs is, in part, set out in the Action Plan for Housing and Homelessness adopted by the Government in 2016. This policy recognises that there is a lack of housing supply in the state. The Plan sets as its core objective the “ramp up of delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs, and to help those who are currently housed to remain in their homes or be provided with appropriate options of alternative accommodation, especially those families in emergency accommodation”. There are a number of pillars supporting the objective of bringing additional housing supply and pillar 5 seeks to “ensure that existing housing stock is used to the maximum degree possible - focusing on measures to use vacant stock to renew urban and rural areas”. A detailed strategy will be developed that ascertains the extent of vacant units and set out measures to incentivise their re-use as residential units.
- 8.5. The National Vacant Housing Reuse Strategy 2018-2021 includes several objectives including to bring forward measures to the greatest degree possible that vacant and underused privately owned properties are brought back to use. One step in achieving this objective is the adoption by local authorities of Vacant Homes Action Plans. Such a Plan should, *inter alia*, examine the potential for greater use of legislative powers available to local authorities to reactivate vacant dwellings and such powers will include compulsory purchase orders.
- 8.6. Wicklow County Council adopted a Vacant Homes Action Plan (2017) that lists incentives available to vacant homeowners to bring vacant homes back into use including the provision of financial supports under the Repair and Leasing Scheme,

the buy and renew scheme, the purchase of vacant homes under CPO legislation, the rental accommodation scheme and housing assistance payments.

- 8.7. I conclude therefore that there is a lack of available housing to meet community housing needs country wide and that each local authority has been required by national policy provisions to take measures to tackle this deficit in housing supply. Wicklow County Council has put in place the local policy framework to implement national guidance. The Local Authority's submission at the oral hearing was that there are 225 households (which would mean several multiples of that in individuals) on the waiting lists in the area for three-bed family accommodation. The average waiting time is 13 years. There is a significant shortage of housing supply suitable for households classified as vulnerable. This house – because of its relatively large size, proximity to community services and facilities – would suit a vulnerable household.
- 8.8. Having regard to the level of homelessness in the country, to the public policy responses to that shortage of houses, to the particular level of homelessness in the administrative area of Wicklow County Council, to the nature of the house the subject of this CPO as a house with front and rear gardens in a residential area close to public services and facilities I conclude that there is an established community need which the purchase of the house would help to meet.
- 8.9. **Suitability of the House.**
- 8.10. A second criteria for considering if to confirm a CPO is the suitability of the house to meet that community need.
- 8.11. The local authority makes the point that there are a large number of households on the housing waiting list. About 20% of these households are classified as vulnerable, the average waiting time in the lists is 13 years but the vulnerable households may wait longer. Larger three bed houses with private amenity space in established areas are the more suitable houses for these types of households.
- 8.12. Having regard to the zoning of the site for residential uses in the Bray Municipal Local Area Plan, the quieter nature of the Charnwood estate, the proximity of the house to community facilities (including educational facilities) and transport infrastructure, and to the relative privacy of a semidetached house with a front and rear garden I conclude that the house is suitable to meet a housing need identified by the local authority.

8.13. The CPO Complies with the County Development Plan.

8.14. The County Development Plan at chapter 4 sets out policy in relation to regeneration and housing. The Plan states that in many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

- adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- urban blight and decay,
- anti-social behaviour, or
- a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

It is an objective of this plan to encourage and facilitate the appropriate development of such sites / lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

8.15. The site is zoned RE: Existing Residential in the Bray Municipal District Local Area Plan 2018-2024 with the objective to protect, provide and improve residential amenity of existing residential areas.

8.16. Having regard to the poor standard of maintenance of the house and site generally over a period of years, the negative impact such poor standard of maintenance has had on the house and the amenity of neighbouring houses, to the works of maintenance and repair set out in the quantity surveyor's submission on behalf of the local authority I conclude that the purchase of the house and bringing up to habitable standard would accord with the policy set out in the County Development Plan in relation to urban regeneration and with the residential zoning objective for the area set out in the Local Area Plan.

8.17. Alternative Methods are Not Available.

8.18. The landowner in this case set out in considerable detail in the written objection made to the Board and in submissions at the oral hearing that the landowner has done her best to bring the house back into residential use. The landowner has purchased materials necessary to carry out maintenance and repair of the property and has carried out some maintenance including gardening. The landowner's efforts

have been undermined by a family illness and by the intervention of the covid-19 related restrictions. The local planning authority states that, while it is not necessary to offer alternatives to landowners when the local authority is proposing to CPO property, it contacted the landholder several times and drew her attention to a number of grants and other financial supports available in relation to repair and maintenance of property which would assist in making it suitable for occupation. The landowner disputed the timing and extent of these contacts. Additionally, the local authority and the landowner disagreed on the period the house had been left unoccupied, the upper limit being 20 years and (as per the landowner) somewhat less than that.

- 8.19. A further point made by the landowner was that the notice of CPO was incorrectly served and the publication of her address in County Roscommon opened her to unwanted contacts from the public. Having regard to the material on file including the public notice and details of serving the CPO I am satisfied that the notice was properly served.
- 8.20. In relation to the boarder issue of finding alternatives to the purchase of this house the local authority states that there are 10 long term vacant homes in the CPO process; three are in Arklow, one in Roundwood, one in Newtownmountkennedy, one in Ashford, two in Delgany, one in Greystones, one in Wicklow town and one in Bray (this site).
- 8.21. The landowner made the point that the constitutional protection for the right to private property sets a very high bar when public authorities are making a CPO and distinguished between the acquisition of houses by CPO and other forms of land stating that houses should be considered to have the highest levels of protection from unwarranted interference. I agree with the landowner on this point. Nevertheless, the process of CPO seeks to balance the right to private property against the attainment of goals in the public interest.
- 8.22. Having regard to the numbers of households on the housing waiting lists in County Wicklow, the long period (although subject to dispute I'm satisfied that the house was unoccupied for several years), the efforts made by the local authority to meet the identified housing needs in the county by the adoption of a number of CPOs in relation to unoccupied houses and the effort made by the local authority to return the

subject house to a state fit for occupation and return to the housing market I am satisfied that no alternative method is available to make the house available for occupation.

9.0 Recommendation.

9.1. Having regard to the foregoing I recommend confirming the CPO in accordance with the draft decision below.

10.0 Decision.

10.1. Having considered the objection made to this compulsory purchase order, and not withdrawn, to the report and recommendation of the planning inspector who carried out the oral hearing into the objection, the purposes for which the subject house is to be acquired and having regard to the following.

- The Action Plan for Housing and Homelessness (Rebuilding Ireland) (Department for Housing, Planning, Community and Local Government July 2016),
- The National Vacant Housing Reuse Strategy 2018-2021 (Department for Housing, Planning, Community and Local Government July 2018),
- The Wicklow County Development Plan 2016-2022,
- Bray Municipal District Local Area Plan 2018-2024,
- The Wicklow County Council Vacant Homes Action Plan 2017,

The Board is satisfied that, in this instance, the acquisition of the property at No.8 Charnwood, Bray, County Wicklow as set out in the order and on the deposited map has been justified and is necessary for the purposes stated.

11.0 Oral Hearing Report.

- 11.1. The oral hearing opened at 10am on the 17th August 2021 on-line. The inspector read an opening statement in relation to the conduct of oral hearings for CPOs.
- 11.2. Objectors present were Sean Mahon Solicitor and Edel Bannon landowner. For the local authority were Liam O'Connell BL, John Dunphy Engineer, Helena Fallon Engineer, Triona Irving Administrative Officer Housing Office, Diarmuid MacGabhann Quantity Surveyor and Ian Munnelly Solicitor.
- 11.3. Mr Mahon made the point that the local authority's written submission has not been shared with the objector in advance of the hearing. The inspector stated that local authority's submissions were generally made live at the hearing but that in so far as possible time would be given to the objector to read the emailed submission. The inspector would pause the hearing for 20 minutes and then the submission would be gone through in real time in the presence of both parties. The objector's solicitor reiterated his unhappiness with not being in possession of the local authority's submission before the hearing.
- 11.4. The hearing was paused for 20 minutes and then resumed. The local authority (John Dunphy – Wicklow Vacant Homes Officer) described the site the subject of the CPO. He explained that his job includes finding and assessing potential vacant homes which can be acquired by agreement with the landowner or made subject to CPO. This is a three-bed semidetached house in a suburb of Bray, located in an area of high housing demand close to schools, bus service and within walking distance of the Dart station in Bray. The house is vacant for 19 or 20 years and in disrepair. The roof is leaking, the house would require a good deal of work. Complaints from neighbours have been received. The purpose of this CPO is to bring the house into the ownership of the local authority to meet an identified social housing need. The local authority contacted (phoned/emailed) the owner with the objective of the landowner bringing the house back into residential use and the local authority explained streams of funding available for repair works of up to €60,000. The local authority would purchase the house by agreement if that were possible. No substantial works were carried out to the house.
- 11.5. Rebuilding Ireland (2016) is the basis of public policy in relation to vacant homes. Pillars 2 and 5 of this national policy requires local authorities to identify vacant

homes and bring them back into use. The National Vacant Houses Re-Use Strategy requires local authorities to adopt a specific policy in relation to getting vacant homes back into use. The CPO process is one of the powers available to local authorities to acquire identified vacant homes. Additionally vacant homes are acquired through voluntary agreement.

- 11.6. The site is zoned residential in the Bray Municipal District Local Area Plan 2018-2024. The proposal to bring the house back into use is consistent with the plan.
- 11.7. Mr Mahon (for the objector) requested that rather than leave questioning to the end of the local authority submission as set out in the oral hearing agenda previously circulated to parties by the Board that he should be able to ask questions when the matter is fresh in the mind of the objector. The inspector agreed to this arrangement. Mr Mahon asked if the local authority had contacted the objector since service of the CPO, the local authority confirmed that there had been contact including arranging for a site visit/report by a quantity surveyor. Mr Mahon stated that contact after the serving of the CPO should not be considered by the Board as supporting the local authority's case for the CPO. Mr Mahon questioned the sequence of emails/phone calls between the landowner and the local authority and stated that there had been only one email and one phone call to the landowner. The local authority had some other informal contact. Mr Mahon made the point that the communications with the landowner were inadequate and that the decision not to participate in the Repair and Lease scheme should not have triggered the CPO process. The local authority responded that the CPO process is a statutory power in and of itself with no requirements to engage with a landowner. In this case the local authority engaged with the landowner independently of the statutory process. Mr Mahon stated that the CPO process interfered with the landowner's constitutionally protected property rights. Because the landowner did not engage with the Repair and Lease scheme during the covid pandemic should not have so readily triggered the CPO process. The planning authority confirmed that two letters and a phone call were sent/made to the landowner in relation to acquiring the property.
- 11.8. Ms Triona Irving made an oral submission without a written document. Ms Irving job is to look after social housing tenancies in the Bray municipal area. There are 225 households on the housing waiting lists in the area for three-bed family accommodation. The average waiting time is 13 years. There is significant shortage

of housing supply suitable for households classified as vulnerable – this is one such house. Mr Mahon made the point that Wicklow County Council's housing target exceeds the figure given in rebuilding Ireland.

- 11.9. Diarmuid MacGabhann (QS) had intended to make a submission in relation to the submitted report but was unable to make contact. The parties at the hearing agreed that since the QS report was on file no further issue arose.
- 11.10. Mr Mahon made the point that photographs 5, 9, 12, 13, 14, 22, 24, 28, 29, 31, 32, 34 in the local authority's quantity surveyors report illustrate works going on in the house that demonstrate the landowner's willingness to bring the house back into residential use.
- 11.11. Mr Mahon stated that the Irish constitution and the European Convention on Human Rights protected the right to private property. While the local authority has a right to CPO lands there is an expectation that the state protects the right to property against unjust attack. The local authority's view is that it is not obliged to engage with the landowner under the CPO scheme. The local authority sent two letters and made one phone call which are insufficient to properly protect the right to private property. The policy requirement to bring houses back into use has many aspects and before the CPO process is commenced additional steps should have been taken to encourage the landowner to bring the house back into residential uses. The planning authority's engagement was insufficient and a fundamental failing of consultation.
- 11.12. Mr Mahon continued that it is not correct that the landowner carried out no works to the house. No importance should be placed on contact after the CPO process had been commenced. Care should be taken when compulsorily purchasing a house over and above other forms of land. The house is not idle for 20 years. The landowner has lived in the house over that period. The landholder's family is equally entitled to the house over and above other persons with a housing need. The landowner's right is differentiated from other persons by virtue of having a constitutional protection. The photos submitted by the local authority demonstrate that the landowner was carrying out works to the house. This should have been considered by the local authority. Unwillingness on the part of landowners to participate in the repair and lease scheme is insufficient grounds to CPO a house.

Securing the common good should more properly refer to compulsorily purchasing other forms of land and not private houses.

- 11.13. The landowner Edel Bannon stated that she and her husband have been deeply upset by the registered letter service of the CPO. The CPO notice posted on the subject house included personal details including landowner's name and address. The landowner's right to privacy has been infringed. Persons of ill repute can find out the landowner's address in County Roscommon. Inadequate opportunity has been given to the landowners to carry out repairs to the house. The landowner once lived there with her late uncle. The landowner carried out maintenance and repair of the house over the years.
- 11.14. The local authority asked the landowner in relation to the sequence of communications from the local authority to the landowner. The landowner confirmed that maintenance was carried out, that gardening was undertaken and that the house had not been vacant for 20 years.
- 11.15. The local authority (Liam O'Connell) made a closing submission. The right to private property is not absolute and that in specific cases the CPO process is an appropriate mechanism to achieve the common good. Proportionate interference in the right to private property arises where there is a community need to acquire the property, that the property is suitable to meet the need, that alternative methods acquiring the property are not preferable, and that the works required to be carried out comply with the relevant development plan. In this case there is a demonstrated housing need in the area, the site is close to the town centre and transport links, public services including education. The CPO is consistent with public policy, Wicklow Vacant Home Action Plan, and Chapter 4 in the Wicklow County Development Plan. Vacant properties are damaging to the wider area and taking them back into the housing supply meets the general objectives of Government housing policy. The local authority did engage with the landowner which did not take the measures necessary to bring the property back to residential use. The intervention of the Covid pandemic was not a significant block to carrying out remedial works as the house was in basically the same condition before as after the pandemic. The house is unfit for human habitation and requires €90,000 to bring it up to a suitable standard. Confirmation of the CPO is reasonable.

11.16. Mr Mahon (for the landholder) made a closing statement as follows. The local authority refers to many public documents setting out policy in relation to housing. The landowner is subject to CPO even though prior to 2018 she was preparing to carry out remedial works. The intervention of a family illness and then the covid pandemic prevented the carrying out of the planned works. The planning authority failed to meet its house building plans – therefore it is unjust that only the landowner in this case should be penalised for the failure of her house repair plans. The local authority should have given adequate time to the house holder to carry out the proposed works. The policy to acquire vacant homes does not necessarily require the serving of CPO notices. It is unfair to single out this landowner because she lives in Roscommon; greater engagement would have been preferable.

11.17. Mr Mahon concluded that there is not a level playing pitch between landholders and the local authority which fails to comply with its own policy in relation to housing provision. The lack of hedge trimming is not sufficient to justify a CPO. The local authority should be very careful when compulsorily purchasing a house rather than other forms of land.

Hugh Mannion
Senior Planning Inspector

20th July 2022.