



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310778-21

---

<b>Development</b>	Compulsory Purchase Order No.7 of 2021 for a dwelling situated at 6 Ashleigh, Ashford, Co. Wicklow
<b>Location</b>	6 Ashleigh, Ashford, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Applicant</b>	Wicklow County Council
<b>Type of Application</b>	Notice of Compulsory Purchase Order under Section 214 of the Planning and Development Act 2000, as amended.
<b>Objector</b>	Anne Fitzgibbon
<b>Date of Site Inspection</b>	13 <sup>th</sup> January 2022
<b>Inspector</b>	Máire Daly

## Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Planning History.....	3
4.0 Policy and Context.....	4
5.0 Background and Purpose of the CPO.....	7
6.0 Objection .....	10
7.0 Response to the Objection .....	10
8.0 Oral Hearing .....	11
9.0 Assessment.....	12
10.0 Recommendation .....	18
11.0 Reasons and Considerations .....	18
Appendix 1 .....	20

## **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 7 of 2021 No.6 Ashleigh, Ashford, County Wicklow.
- 1.2. The CPO relates to the compulsory purchase of a house and site at No.6 Ashleigh, Ashford, 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 Act 2000, as amended.
- 1.3. The Board received a single objection to the CPO from the landowner Anne Fitzgibbon. 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. Ashleigh is a residential development of 9 no. similar dwellings which consist of a mixture of detached and semi-detached dwellings on the western side of the Ashleigh estate road which runs in a north south direction off the Ballinalea Road/Ashford Downs Road which in turn leads to the R772 regional road to the east.
- 2.2. The house on site is a single storey semidetached dwelling, with skylights along the front roof plane. The site comprises an area of c.557sq m and has both a front and rear garden space, with the rear garden in an overgrown state at the time of site visit. A public footpath runs to the outside of the front boundary of the site. The development forms part of a number of housing estates in this area of southeast Ashford. The main town centre is located c.880m to the north of the subject site.

## **3.0 Planning History**

- 3.1. No relevant planning history.

## 4.0 Policy and Context

### 4.1. Wicklow County Development Plan 2022-2028

- 4.1.1. The Board should note that since the initiation of this CPO process the Wicklow County Development Plan 2022-2028 has been adopted. This plan was adopted by the Council on 12<sup>th</sup> September 2022 and came into effect on 23<sup>rd</sup> October 2022 and therefore is the relevant plan to consider for this assessment.
- 4.1.2. Chapter 6 of the Plan refers to the adopted housing policy. Section 6.2 states that the Wicklow County Housing strategy shall include an estimate of the amount of social housing required during the plan period and shall provide that as a general policy a specified percentage (not exceeding 10%) of the land zoned in the development plan for residential use, or for a mixture of residential and other uses, shall be reserved for those in need of social housing in the area. The Housing Strategy for 2021-2027 is included as an Appendix to this plan.
- 4.1.3. The plan highlights that while the Housing Strategy has found that there is rationale for seeking 10% of eligible residential development to be reserved for social housing (or 20% social and affordable in certain circumstances) during the strategy period of 2022-2028, this only addresses social housing needs that will arise during the 2022-2028 period and does not take into account the considerable demand for such housing that has built up over the currency of the previous strategy. It is also clear that the combination of the Council's own construction and Part V will only cater for a proportion of the population experiencing affordability problems in the County. The plan therefore states that the Council must continue to utilise all policy avenues open to it and any new schemes that become available to ensure the greatest delivery of social housing possible and to ensure a regionally equitable balance of housing delivery. Policies CPO 6.9, CPO 6.10, CPO 6.11 and CPO 6.12 refer to Social and Affordable Housing.
- 4.1.4. It is also an objective of the plan to encourage and facilitate the appropriate development of sites/lands and all available tools and mechanisms, including the Vacant Site levy, to stimulate such development. In this regard CPO 6.35 states that in many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

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

4.1.5. It is an objective of the plan to encourage and facilitate the appropriate development of such sites / lands and all available tools and mechanisms. All lands zoned for residential development in this plan (this refers to Level 4 and 5 settlements), including all lands zoned: - Existing Residential (RE), are deemed to be lands that may be in need of new development in order to ensure there is no shortage of housing. The site is zoned Existing Residential in the Ashford Town Plan with the objective "To protect, provide and improve residential amenities of existing residential areas". Ashford is a designated Level 5 Small Town settlement. Level 5 town plans form part of Volume 2 of the CDP 2022-2028.

4.1.6. Appendix 3 of the CDP contains the Housing Strategy, Table 8.2 of which outlines the Provision of Social Housing Units 2016-2020 which shows that in total 109 units were provided for in total from 2016-2020 by 'direct acquisition'. In 2020 this figure was 22.

#### 4.2. **Housing for All – A New Housing Plan for Ireland, Department of Housing, Local Government and Heritage September 2021.**

4.2.1. This Plan recognises that in order to resolve the housing crisis we need to give consideration to every viable and sustainable option at our disposal. The Plan introduces incentives and measures to bring vacant and derelict properties back into residential use. The government's overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

4.2.2. One pathway to addressing vacancy is identified as the launch of a CPO programme for vacant properties and in this regard, it is confirmed that “the objective will be for Local Authorities to acquire at least 2,500 vacant units by 2026 and present them to the market for sale”.

4.3. **Programme for Government – our Shared Future’ launched in 2020**

4.3.1. This document emphasised the role of the private housing stock, addresses the challenge of viability, access to finance, land availability, infrastructure delivery, building standards, quality and regulation, as well as sufficient skilled labour capacity.

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

4.4.1. 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.

4.5. **Rebuilding Ireland: Action Plan for Housing and Homelessness July 2016**

4.5.1. 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.

4.5.2. 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”.

4.5.3. Table 4 lists ‘Our Programmes’ and includes a programme called ‘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’.

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

- 4.6.1. 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.

### **5.0 Background and Purpose of the CPO**

#### **5.1. Background to case**

- 5.1.1. Internal correspondence within WCC stated that neighbours had highlighted the house had been vacant for at least 8 years and that it had been under surveillance by the Council since 2017/2018. The owner of the property Miss Anne Fitzgibbon had informed the Council previously that she had let the house out and had a bad experience with tenants and therefore was wary of letting again. The Council made her aware of the RAS scheme which would have been available to her as an alternative. Since then, the Council learned that a bank had seized the property and changed the locks. WCC advertised their intent to compulsorily acquire no. 6 Ashleigh, Ashford, Co. Wicklow on 28<sup>th</sup> June 2021.
- 5.1.2. In response to this the registered owner Ms. Fitzgibbon engaged an Insolvency Practitioner who submitted an objection on her behalf. The objection outlined that the property constituted an asset of her likely insolvent estate, and it was stated that all her assets were to be preserved for the benefit of her creditors. The property was at the time stated to be charged in security for a loan to a mortgage and in this matter, it was intended to agree the sale of the property to assist in clearing the balance of monies due to said mortgagee. It was anticipated at the time (July 2021) that the property could well be sold within the following three months. The Council was therefore requested to reverse the CPO in order to allow the sale of the property to proceed.

- 5.1.3. On 16<sup>th</sup> November 2021 a letter was received by WCC from Sean Mc Ivor & Associates stating that he was now acting on behalf of his client Ms. Anne Fitzgibbon.
- 5.1.4. On 22<sup>nd</sup> January 2022 an email was sent to An Bord Pleanála from the Vacant Homes Officer (VHO) of WCC which stated that WCC was at the time in the process of buying no.6 Ashleigh from the Receiver (Price Waterhouse Cooper - PWC) and that contracts to buy were at the time being handled by the solicitors for PWC and WCC. In the event that the property was purchased by WCC an Oral Hearing would no longer be required, however the VHO stated that it was unlikely that the sale would be completed before the first scheduled OH date, which was originally proposed for February 2022, and therefore WCC asked that the date may be postponed for a period of 6 weeks to allow for the sale process and thus save time and resources from something that may result in an un-necessary OH.
- 5.1.5. The OH date was then postponed and regular correspondence with WCC was ensured to check on any progress. When no progress had been made by May 2022 an OH date was set for June 21<sup>st</sup> 2022.

## 5.2. Purpose of CPO

- 5.2.1. The purposes of the CPO set out by the local authority are;
- The local authority is a housing authority for the purposes of the Housing Acts with the powers to provide and allocate houses.
  - The purpose of the CPO is for the Local Authority to acquire the subject Dwelling so that it may be renovated and rendered suitable for occupation by a household to whom the property may be allocated under the provisions of the allocation scheme.
  - The dwelling house is a three bedroomed house that has been vacant for approximately 10 years and has been allowed to deteriorate to some extent but can be rendered fit for habitation without entailing excessive costs. The house is located within an area of very high housing demand within walking distance of Ashford centre, with the various amenities and services it offers.
  - As of the 13<sup>th</sup> June 2021, there were 502 households with live applications for social housing who had indicated Ashford as their first, second or third



preferred area, 82 of whom stated a preference for a three-bed house. Three-bedroom houses are far scarcer than two- and one-bed properties in the Council's housing stock. The Council state that there are currently no social housing units due to be delivered in Ashford by any of the housing delivery various streams. The acquisition of a long-term vacant house will therefore make a material contribution to meeting demand that is not likely to be met by any other means in the near future.

- There are no alternative vacant dwellings in Ashford that can be acquired instead of the subject dwelling.

5.2.2. 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 (Pillar 2) of the process designed to achieve this objective is the focus on using vacant housing stock including through the acquisition of such properties.

5.2.3. 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.

5.2.4. 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.

5.2.5. The CPO complies with the provisions of the Wicklow County Council Vacant Homes Action Plan 2017 and also the Government's Housing for All – A new Housing Plan for Ireland (September 2021). The latter states that one pathway to addressing vacancy is identified as the launch of a CPO programme for vacant properties and in this regard, it is confirmed that “the objective will be for Local Authorities to acquire at least 2,500 vacant units by 2026 and present them to the market for sale”.

### 5.3. **Accompanying Documents:**

5.3.1. The submission from WCC received on 16<sup>th</sup> June 2022 for the Oral Hearing included the following documentation:

- Outline submissions on behalf of the Local Authority
- CE Order and Report of John Dunphy Executive Engineer (VHO)
- CPO and Map
- Notice together with copy of newspaper advertisement
- Notice delivered to Ms. Fitzgibbon dated 28<sup>th</sup> June 2021
- Photographs
- Copy of the following documents: Action Plan for Housing and Homelessness, Rebuilding Ireland Circular PL8/2016 dated 8<sup>th</sup> July 2016, Circular PL7/2017, Vacant Houses Strategy, Extract from Wicklow County Council Development Plan relevant to Ashford, Vacant Homes Action Plan, Housing for All – A New Housing Plan for Ireland.
- Email dated 12<sup>th</sup> February 2019 and letter dated 14<sup>th</sup> April 2021 between Mr. Dunphy and Ms Fitzgibbon.

## 6.0 **Objection**

6.1. The property in question constitutes an asset of what Mr. Reynolds (objector's appointed insolvency practitioner) described as likely to be Ms. Fitzgibbon's insolvent estate. He also stated that it was necessary to preserve such asset for the benefit of her creditors.

6.2. It was intended in July 2021 to agree to the sale of the property to assist in clearing the balance of certain monies owed by Ms. Fitzgibbon and charged on the dwelling.

## 7.0 **Response to the Objection**

7.1. The only means by which the property may be used to discharge the liabilities secured thereon is by the sale thereof. That the property would be sold is the *raison d'être* of the CPO and it is thus entirely consistent with the object of Ms. Fitzgibbon that the dwelling be sold and the sale proceeds would contribute towards discharging

the monies secured thereon. Any dispute as to the consideration to be paid for the dwelling are matters to be addressed by the arbitrator.

- 7.2. Prior to the initiation of the CPO process the local authority attempted to engage with Ms. Fitzgibbon over a number of years to make her aware of various state sponsored schemes and incentives which would enable her to bring the dwelling back into use. Specifically, Ms. Fitzgibbon was made aware of the Repair and Lease scheme as well as the Rental Accommodation Scheme (RAS) and Housing Assistance Payment (HAP) scheme. WCC state that the Vacant homes Officer on several occasions attempted to contact with Miss Fitzgibbon via email/phone in 2019/2021 but no response was received.
- 7.3. The compulsory acquisition of a vacant property for the purpose of restoring its use as a dwelling is not only consistent with Government policy but actively encouraged by same, as well as being consistent with the policies of the Ashford Town Plan 2016-2022 and the Wicklow County Development Plan 2016-2022.
- 7.4. There are no alternative vacant dwellings in Ashford that can be acquired instead of the subject dwelling whereas there is a sustained demand for housing of that nature. WCC is actively advancing similar measures in respect of other vacant properties in its functional area.

## **8.0 Oral Hearing**

- 8.1. An Oral Hearing was held on Tuesday 21<sup>st</sup> June 2022. The objector and Wicklow County Council were represented at the hearing and oral submissions were heard by, or on behalf of, all parties. The proceedings of the oral hearing are summarised in Appendix 1 of this report. The entire proceedings were also recorded and are available to the Board.

## 9.0 Assessment

### 9.1. Overview

9.1.1. For the Board to confirm the subject CPO, it must be satisfied that, as set out in the judgement of Geoghegan J. in *Clinton v An Bord Pleanála (No. 2) (2007) 4 IR 701*, WCC has demonstrated that the CPO is clearly justified by the “common good”. This has been interpreted by legal commentators, as per ‘*Compulsory Purchase and Compensation in Ireland: Law and Practice, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath (2013)*’, as a requirement to satisfy the following four-fold criteria:

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

9.1.2. Furthermore, as set out by Garrett Simons in ‘*Planning and Development Law, Second Edition (2007)*’, the Board should consider whether the acquisition will have an excessive or disproportionate effect on the interests of the affected person/s.

9.1.3. The proposed CPO is now assessed in the context of the above tests prior to addressing the specific issues raised in the objection lodged.

### 9.2. Community Need

9.2.1. The national policy in relation to meeting housing needs is, in part, set out in *Rebuilding Ireland: Action Plan for Housing and Homelessness* adopted by the Government in July 2016. This policy recognises that there is a lack of housing supply in the state. The Action Plan identifies 5 pillars which include Pillar 2: Accelerate Housing and Pillar 5: Utilise Existing Housing. The Action Plan identifies pathfinders to achieving its objectives including: “Acquiring Vacant Homes for Social Housing”. Pillar 2 states that it is an objective “to provide funding to local authorities

for the provision of social housing by means of construction and acquisition”. 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”.

- 9.2.2. 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. The vision of the strategy includes “to return as many recoverable vacant properties back to viable use as possible, increasing the supply of sustainable housing available, while also revitalising the vibrancy of local communities”. The potential for greater use of legislative powers available to local authorities to reactivate vacant dwellings and such powers will include compulsory purchase orders.
- 9.2.3. Wicklow County Council adopted a Vacant Homes Action Plan (2017) which provides for a number of measures to be engaged in with a view to bringing a vacant house back into use. The plan lists incentives available to vacant homeowners including the provision of financial supports under the Repair and Leasing Scheme, the Buy and Renew Scheme, Rental Accommodation Scheme and Housing Assistance Payment.
- 9.2.4. The making of a CPO is recognised by the Plan as a means by which a vacant house may be brought back into use. In this regard the Plan provides that “Where deemed appropriate, CPO is recommended to acquire suitable houses”.
- 9.2.5. The Housing for All – a new Housing Plan for Ireland published in September 2021 recognises that in order to resolve the housing crisis we need to give consideration to every viable and sustainable option at our disposal. One pathway to addressing vacancy is identified as the launch of a CPO programme for vacant properties.
- 9.2.6. 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. WCC 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 502 households with live applications as of June 2022 who had indicated Ashford as their first, second or third preference area. 82 of these had indicated a preference for a

three-bed house. A total of 375 households have indicated Ashford as their first preference area and those households may be subdivided as follows:

- 61 no. households with three-bed housing need
- 155 no. households with two-bed housing need; and
- 159 no. households with one-bed housing need.

9.2.7. Households have been awaiting allocation of social housing for years and in many cases over a decade. For example, WCC state that the household at the top of the waiting list for allocation for a 3-bedroom house in Ashford has been waiting for 14 years since they were first placed on the housing list in 2008. The Board should note that initially WCC stated that there were no current social housing units due to be delivered in Ashford by any of the various housing delivery streams, however, as was later detailed at the oral hearing (see comments from Ms. Fallon on page 27 of attached Appendix 1) there are in fact 14 no. Part V social houses to come online as part of a scheme in Ashford scheduled for completion by August 2022. 7 no. of these two-bed and 7 no. three-bed. Taking account of these properties to come on stream in August 2022 the demand for a three-bed house in the Ashford area would be reduced to 54 households and demand for a two-bed house would be reduced to 148 households. Therefore, notwithstanding these units coming on stream there is still a significant demand for both two- and three-bedroom houses within Ashford. In addition, Ms. Fallon also stated that approximately between 10 and 20 units are also in the pipeline and would become available within the settlement of Ashford in 2023 and 2024. Again, while this increase in supply is welcomed there will still be an excess demand in the area for social housing units and it is also noted that 3-bedroom houses are far scarcer than two- and one-bedroom properties in the Council's housing stock. Therefore, this house because of its relatively large size (3 bedrooms) and proximity to community services and facilities would suit a vulnerable household and contribute to addressing the demand in the area of Ashford.

9.2.8. Having regard to the level of homelessness in the country, the demand for social housing, to the public policy responses to that shortage of houses, to the particular level of housing demand in the administrative area of Wicklow County Council and to the nature of the house the subject of this CPO as a 3 bed 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.

### **9.3. Suitability of the House**

- 9.3.1. The second criteria necessary to consider is if the particular site (house) is suitable to meet that community need. The local authority makes the point that there are a large number of households on the housing waiting list for three-bedroom houses (82) with the house at the top of the housing list for allocation of a 3-bedroom house in Ashford waiting 14 years to date from 2008. Moreover, larger three bed houses with private amenity space in established areas are extremely scarce.
- 9.3.2. Having regard to the zoning of the site for residential uses (Existing Residential as per Volume 2 of the County Development Plan 2022-2028) , the quieter nature of the Ashleigh 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.

### **9.4. Alternative Methods are Not Available**

- 9.4.1. WCC stated in their submission (received by the Board on 16<sup>th</sup> June 2022) that there were no alternative vacant dwellings in Ashford that could be acquired instead of the subject dwelling and that there is a sustained demand for housing of that nature. As already outlined under para. 9.2.7 above it emerged as part of the proceedings during the oral hearing that in fact 7 no. three-bed houses were to come on stream in August 2022 and also 7 no. two-bed houses. In addition, it was expected that between 10 and 20 no. dwelling units were to also come on stream between 2023 and 2024.
- 9.4.2. The local planning authority stated that, while it was not necessary to offer alternatives to landowners when the local authority is proposing to CPO property, it did contact 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 interactions. Additionally, the local authority and the landowner disagreed on the period the house had been left unoccupied. Ms Fitzgibbon stated that there was a lapse in the supply of electricity in the subject

house in 2017 and given that the property was over 35 years old that the ESB would not reconnect the unit unless there was a certificate of rewiring submitted for the property. Ms Fitzgibbon got a quote for the works for c. €6,000 and stated that this prohibitive cost had then prevented her from reconnecting the electricity and subsequently renting the house. Therefore, in terms of any allegations that she allowed the property to become vacant, that was not the situation.

- 9.4.3. A further point made by the landowner was that the notice of CPO was incorrectly served and sent to an address which was not hers and in fact does not exist (Friars Way, Violet Hill, Church Road, Killiney). I accept that there was dispute regarding the serving of the CPO and that while the objector was not satisfied with the process that the Council were satisfied that it had been served correctly and that the registered post record had been submitted to confirm same. Notwithstanding Ms Fitzgibbon's protest regarding same I am satisfied that notice of the CPO did reach Ms Fitzgibbon in a timely fashion and this is evidenced by the submission (objection) received on her behalf from her insolvency expert of the time Mr. Gabriel Reynolds. Therefore, having regard to the material on file, including the public notice, details of serving the CPO and the response received in the form of the objection, I am satisfied that Ms Fitzgibbon was not impeded in anyway in relation to her claimed lack of knowledge of the CPO or receipt at the postal address at Friars Way.
- 9.4.4. It is also worth noting that Ms Fitzgibbon, during her submission at oral hearing, outlined that she had been restricted from taking up any of the Council's offers of assistance or grant schemes (RAS, HAP etc.) which had been outlined to her during previous discussions with Mr. Dunphy (VHO), as Ulster Bank, who held the mortgage to the house, would not consent to any of those schemes at the time. She stressed that she had in fact been very interested in the Repair and Lease Scheme at the time.
- 9.4.5. In conclusion, having regard to the numbers of households on the housing waiting lists in County Wicklow, the vacancy 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 and the effort made by the local authority in attempting to return the subject house to a state fit for occupation and return to the housing market (through previously outlining the various



schemes available to the objector) I am satisfied that no alternative method is available to make the house available for occupation.

#### **9.5. The CPO Complies with the County Development Plan**

- 9.5.1. Chapter 6 of the County Development Plan 2022-2028 sets out policy in relation to regeneration and housing. Section 6.2 of this chapter presents a summary of the Wicklow County Housing Strategy and outlines that the combination of the Council's own construction and Part V housing supply will only cater for a proportion of the population experiencing affordability problems in the County. The plan therefore states that the Council must continue to utilise all policy avenues open to it and any new schemes that become available to ensure the greatest delivery of social housing possible and to ensure a regionally equitable balance of housing delivery. Policies CPO 6.9, CPO 6.10, CPO 6.11 and CPO 6.12 refer to Social and Affordable Housing.
- 9.5.2. Policy CPO 6.35 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. This policy goes on to further state that it is an objective of this plan to encourage and facilitate the appropriate development of such sites / lands and that all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.
- 9.5.3. Ashford is designated as a Level 5 small town settlement under the operative development plan (Volume 2 of the CDP 2022-2028) and the subject site is zoned RE: Existing Residential with the objective to "protect, provide and improve residential amenity of existing residential areas". The introduction to Level 5 Town Plans expands on that objective for Existing Residential zones as follows: "To provide for housing improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity". The plan also states that Existing Residential (RE) lands are deemed to be lands that may be in need of new development in order to ensure there is no shortage of housing. Appendix 3 of the CDP contains the Housing

Strategy, Table 8.2 of which outlines the Provision of Social Housing Units 2016-2020 which shows that in total 109 units were provided for in total from 2016-2020 by 'direct acquisition'. In 2020 this figure was 22.

- 9.5.4. 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 and the clear demand for social and affordable housing in the area, I conclude that the purchase of the house and bringing same 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.

## 10.0 Recommendation

10.1. Having regard to the above, I conclude that:

- the acquisition of lands under the CPO would serve a community need that advances the common good,
- the particular land is suitable to meet that need,
- alternatives have been considered and that there is no alternative which is demonstrably preferable,
- the proposal does not materially contravene the development plan, and
- the proposed acquisition is proportionate and necessary.

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

## 11.0 Reasons and Considerations

11.1. Having considered the objection made to this compulsory purchase order, 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.

- Housing for All – A New Housing Plan for Ireland, Department of Housing, Local Government and Heritage, September 2021.

- The National Vacant Housing Reuse Strategy 2018-2021 (Department for Housing, Planning, Community and Local Government July 2018).
- The Action Plan for Housing and Homelessness (Rebuilding Ireland) (Department for Housing, Planning, Community and Local Government July 2016).
- The Wicklow County Development Plan 2022-2028, and
- The Wicklow County Council Vacant Homes Action Plan.

The Board is satisfied that, in this instance, the acquisition of the property at 6 Ashleigh, Ashford, County Wicklow, as set out in the order and on the deposited map has been justified and is necessary for the purposes stated.

---

Máire Daly  
Planning Inspector

25<sup>th</sup> October 2022

## **Appendix 1: Proceedings of the Oral Hearing**

An oral hearing (OH) was held in relation to the proposed compulsory acquisition of lands on Tuesday 21<sup>st</sup> June 2022. It was held remotely from the offices of An Bord Pleanála using Microsoft Teams Software. The following were in attendance and made submissions at the oral hearing:

### **Submissions on behalf of Wicklow County Council (WCC)**

- Ms. Dorothy A. Kennedy, Law Agent, Law Department, WCC.
- Ms. Helena Fallon, Senior Engineer, Housing Department, WCC.
- Mr. John Dunphy, Executive Engineer/Vacant Homes Officer, WCC.
- Mr. Liam O' Connell, Barrister.

### **Submissions on behalf of the Objector**

- Ms. Anne Fitzgibbon.

The Inspector formally opened the hearing at 10:07am on Tuesday 21<sup>st</sup> June 2022. The inspector read an opening statement outlining the conduct and approach to oral hearings for CPOs. Following some introductory remarks and confirmation of attendees she requested that the acquiring authority make its formal submission.

Ms. Fitzgibbon (objector) interjected and from the outset highlighted that she had not received a copy of any submission made by the local authority or any other documents in connection with the oral hearing, apart from emails from Ms. Jennifer Mc Sherry of An Board Pleanála. Ms. McSherry confirmed that an email had been circulated to the objector the previous week and that a hard copy had also been posted to her address. The objector stated she had not received either. In response Ms. McSherry stated that she would immediately email a soft copy of the local authority submission to the objector. The objector stated for the record that these could not be taken as read as she was not privy to them previously. In order to address this issue, she asked that the submission would be given in oral evidence. The inspector stated that WCC would be running through their submission as part of the initial stages of the OH and that the OH could be delayed slightly to give Ms. Fitzgibbon the opportunity to have the submission open in front of her. Ms. Fitzgibbon stated that this would not be possible given she was restricted to just one

screen. She stated that she was happy to hear the submission via address to the oral hearing.

Mr. O' Connell on the inspector's request then delivered the full local authority written submission orally so as to allow Ms. Fitzgibbon to hear same. A copy of this submission is attached to the main file of the OH.

Mr. O' Connell then introduced Mr. John Dunphy who is the Vacant Homes Officer for WCC. Mr. Dunphy then described the Vacant Homes Scheme and the approach that WCC takes. He described the site, the subject of the CPO, and 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. The circumstances of why the house is vacant, as well as the owner's circumstances are taken into account. The owner is then made aware of the state sponsored schemes and incentives such as those outlined in the Council's written submission (Repair and Lease Scheme, Buy and Renew, HAP, RAS, etc). All these schemes are in place to allow the owner to refurbish the house or bring it up to a standard which would allow it to be rented out under current legislation. If this approach is not deemed successful the local authority then investigates acquiring the property by CPO for use as a social housing unit. He stated that there are 4,500 houses in the Council's stock at the moment but there are also an additional 4,500 families on the social housing list seeking allocation of a property.

Mr. O' Connell then queried when the Council became aware of the subject property. Mr. Dunphy stated that they became aware of the current property around 2017, when the vacant homes strategy was initiated and that one of the main channels which the Council have is the vacant homes website run by Mayo County Council. This allows members of the public to anonymously or otherwise report vacant properties in their area and these reports in turn are forwarded on to the relevant Council. In 2017 the subject site at no. 6 Ashleigh was reported via the website. Mr. Dunphy then stated that the subject site was visited and enquiries were made into who the landowner was and contact with Ms. Fitzgibbon was initiated in 2018 (at least two phone calls to discuss the matter). Details of the various schemes in place which are intended to assist the property owner in bringing their property back into use were then discussed with Ms. Fitzgibbon (Repair and Lease Scheme).

Mr. Dunphy stated that Ms. Fitzgibbon highlighted her reluctance to rent out said property again given her bad experience with tenants in the past. She was therefore reluctant to take up the Council's offer with regard to HAP and RAS scheme options. The house was inspected again in 2021 and there had been no change in its condition which Mr. Dunphy stated was quite obviously vacant. Reference was made by Mr. O'Connell to Tab no. 5 of the Council's submission for photographic evidence of the condition of the house e.g. overgrown back garden, paint peeling from exterior facades, overgrown parts of the driveway etc.

Mr. O'Connell then asked Mr. Dunphy to outline the Community Need that is satisfied by the question of the property. Mr. Dunphy outlined the process involved and the social housing list and that the person who has been longest on the social housing list has been waiting since 2008 (14 years) for a suitable social house in Ashford. He stated that the current property is suitable to meet this need, the house is vacant it is not currently derelict and would not incur excessive costs to bring it back into use as a social house and up to appropriate housing standards (Housing Standard Regulations). He outlined that it is an ideal house for the Council to acquire, given that it is a three-bed semidetached house, located in an area of high housing demand close to schools, and within walking distance of other services/shops/amenities. It is also in an area where there are currently no other housing schemes or where the council is acquiring houses by other means e.g. Part V. It is one house that would go towards meeting the Council's needs and local demand.

Mr. O'Connell queried what alternatives were investigated which could be used to meet the current housing demand/need within the Ashford area? Mr. Dunphy stated again that there were no new builds underway in Ashford and therefore no housing stock.

Mr. Dunphy outlined that an objection had been received from Mr. Reynolds (insolvency practitioner and mediator) on behalf of Ms. Fitzgibbon. Mr. Reynolds outlined that the principal objection was that the house was required to be preserved as an asset to allow Ms. Fitzgibbon to discharge any outstanding monies on the mortgage etc. It was his intention to assist Ms. Fitzgibbon with the sale of the property as soon as possible (July 2021). Mr. Dunphy outlined that no further contact had been made by Mr. Reynolds. Mr. Dunphy also outlined that the Council would

have been willing to purchase same property if possible and was aware that a receiver had been appointed for the property to assist Ms. Fitzgibbon. According to Mr. Dunphy, the Council acquiring the house by CPO would be one way of dealing with this. The Council are in contact with the receiver presently. It was left at the point where Mr. Reynolds was asked to submit a valuation of the property to the Council for further consideration.

The inspector then welcomed Ms. Fitzgibbon to make her submission and ask any relevant questions to Mr. Dunphy and Mr. O'Connell. Ms. Fitzgibbon outlined that she could neither confirm nor deny that the information presented by Mr. Dunphy regarding the social housing list and numbers related to same was accurate as she did not have the relevant information in front of her nor had in the past had the opportunity to examine any information. She then stated that in terms of his dealings with her she recalls phone calls but not emails or letters. She did recall meeting Mr. Dunphy and him explaining the various schemes open to her but that he never said at the meeting, at any point, or any other time that this was a precursor to the CPO process. Mr. Dunphy then interjected stating that this was not a precursor to the CPO process and at the time the meeting was just to outline the schemes available to her. Ms. Fitzgibbon stated that there was a lapse to the ESB in the house in 2017 and the ESB would not reconnect unless there was a certificate of rewiring submitted as the property was over 35 years old. Ms. Fitzgibbon got a quote for the works for c. €6,000. She said this prohibitive cost had then prevented her from getting the works completed and subsequently renting the house. She was very interested in the Repair and Lease Scheme. The reason that she did not follow this up was because Ulster Bank who held the mortgage to the house, would not consent to any of those schemes. They also would not let her sell the house at the time. Therefore, in terms of any allegations that she allowed the property to become vacant, that was not the situation, she could not afford to reconnect the property to ESB. Ms. Fitzgibbon stated that she was in negotiations with Promintoria Scarriff. She then went on to state that the current situation (CPO process) was depriving her of the opportunity to negotiate with Promintoria Scarriff for full and final settlement with the mortgage sale of the property. She then stated that she believed Mr. Dunphy was aware that a receiver went into occupy the property on 16<sup>th</sup> March 2021. Mr. Dunphy confirmed that they were aware the receiver had taken possession and changed the locks. Ms.

Fitzgibbon then stated that given that the CPO was made in June 2021 then the property was technically not vacant and actually in occupation by the receiver. Mr. Dunphy stated that he couldn't possibly comment on this as he believed it was a legal issue. He then went on to state that it was vacant in the sense that a person was not living in it. Ms. Fitzgibbon then queried if every property needs to be occupied 24/7. Mr. Dunphy said no, this would not be the case and that he was referring to long term vacancy.

Ms. Fitzgibbon then queried what proof Mr. O'Connell had that the notice of CPO was actually served on her, the objector. He stated that the evidence was that an objection had been received from her on the matter, and therefore she was clearly aware of the issue and also that registered post has been used. Ms. Fitzgibbon then stated that she had heard about the CPO but was not served the CPO by the Council, she asked if anyone could prove service. She then asked for an affidavit to show that the notice had been sworn and served to her, as the objector. Mr. Dunphy then said that it was served by register post to the address at Friars Way, Violet Hill, Church Road, Killiney. Mr. Dunphy then stated that it must have been clearly served as Ms. Fitzgibbon's insolvency expert Mr. Reynolds on foot of this then contact WCC. Ms. Fitzgibbon then said the address that he gave does not exist, her father lives in a house called Fairways, Violet Hill, Church Road, Killiney but the address stated by Mr. Dunphy does not exist. Her father does not recall receiving a CPO to that address and in turn she never received it either. She states that according to legislation the CPO was not correctly served. Mr. O'Connell stated that as this was a legal issue then it should be dealt with at the appropriate time and not as part of the cross examination of Mr. Dunphy. Ms. Fitzgibbon stated she had no problem with dealing with this through legal submission as it is a requirement under the Act. Mr. Dunphy also stated that it may be worth noting that a public notice was also erected on the subject site. Ms. Fitzgibbon stated that she was not aware of this.

There was then some discussion on what would occur next. The inspector stated that Mr. Dunphy would be given the opportunity to respond to Ms. Fitzgibbon's statement and ask questions where appropriate. This was not to be construed as a form of cross examination.

A 20-minute comfort break was then had and the OH recommenced at 11:37.



The Inspector then welcomed any response from Mr. Dunphy. He stated that it was a pity that Ms. Fitzgibbon did not approach the Council when she was struggling to reconnect the ESB as the whole purpose of the Repair and Lease initiative is to assist people that may be experiencing financial difficulties and to get the property up to a standard to rent. He also stated that the Council were not aware that Ulster Bank would not allow her to take up the scheme.

Ms. Fitzgibbon was then welcomed to present her case, as it was understood that her previous oral interaction was actually to question Mr. Dunphy. Ms. Fitzgibbon stated that she had been interested in the Repair and Lease Scheme, and she tried her utmost to get approval from Ulster Bank. She stated that it was disturbing to hear that Mr. Dunphy is in consultation with the receiver and also engaging in this CPO process. She stated that she had not been given information on the property figures or details being discussed. She then outlined again that she was not aware of what case she actually had to meet today given that the CPO was not served on her.

The inspector then posed questions to Mr. Dunphy regarding policies within the Ashford Town Plan and if there was anything specific that should be highlighted. Mr. Dunphy stated that the house is located on lands zoned RE- existing residential. Point 15 of the submission elaborates on this. He stated that the acquisition is consistent with the CDP and the Town Plan.

The inspector then asked for clarification regarding the social housing stock within Ashford. Mr. Dunphy stated that there were no current housing schemes in the pipeline for Ashford. He also stated that just because there are houses for sale in Ashford it does not mean the Council can buy them, they are prohibited from doing this and bidding against first time buyers. Vacant houses are open for acquiring. In addition, he stated that this house actually has existing infrastructure in place, water supply and wastewater which makes its suitable.

The Inspector then welcomed any final questions between parties. Mr. O' Connell then queried if Ms. Fitzgibbon had been notified by the Board of this meeting and that the Board's agenda stated that written submissions should be made. Ms. Fitzgibbon stated she received the invite by email for the OH but did not receive any Council submission. Ms. Fitzgibbon clarified that the property had been occupied up until the wiring issue in 2017. Mr. O' Connell stated that the condition of the property

in 2018 would suggest that the property had been vacant for a longer period of time e.g. paint flaking off facade and overgrown garden. Ms. Fitzgibbon stated that this could not be a determination of a vacant property. Mr. O'Connell stated that on 14<sup>th</sup> April 2021 a letter was issued which outlined the CPO process. Ms. Fitzgibbon stated that the address on the letter does not exist. The inspector interrupted and stated that these points had already been discussed and are on the record. Mr. O'Connell confirmed that the folio in relation to the property has a stated address of Friars Way. Ms. Fitzgibbon again stated that she is not aware of this address. Ms. Fitzgibbon stated that she could not possibly confirm if the current property is vacant or not.

Some further discussion occurred in relation to the address at Friar's Way. Again Ms. Fitzgibbon denied receipt of any registered post and stated that this address does not exist. Mr. O'Connell showed the registered post certificate which stated that it had been delivered. The Inspector noted the document within Tab 4 of the Council's submission which contained a record of the registered post for the address at Friars Way.

The Inspector then called for closing statements.

Firstly, Ms. Fitzgibbon was welcomed to present her closing statement. She briefly reiterated her previous points in relation to the serving of the CPO under the Housing Act of 1966. She asked for the opportunity from the Board to allow her to sort this issue out with the lender outside of the CPO process. She then asked for permission to submit the ESB letters from 2017 for the case file record. The Inspector stated that these could be sent in and that they would also then be circulated to the other parties. In conclusion Ms. Fitzgibbon asked the Board to annul the OH.

Then WCC were welcomed to present their closing statement. Mr. O'Connell stated that the only objection the local authority is aware of is the one submitted by Mr. Reynolds dated 22<sup>nd</sup> July 2021 on behalf of Ms. Fitzgibbon. Mr. O'Connell then reiterated the fact that registered post had been issued and therefore no prejudice in this regard can be claimed. The CPO process should not have any effect on Ms. Fitzgibbons ability to negotiate with the receiver. Mr. O'Connell highlighted to the inspector the tests that have to be considered for CPO.

He also highlighted that it had come to light during the OH proceedings that there are some properties for the purpose of social housing via Part V on stream in Ashford but not enough to meet the current demand. The Inspector then questioned if the Part V houses were in place or in the pipeline. Mr. Dunphy stated that he could not give an exact number of Part V units that may be coming on stream. Ms. Fallon was asked to go query this and confirm numbers.

Ms. Fitzgibbon stated her surprise that she was now hearing that there are in fact Part V units available and that this introduction of new information was not acceptable at this stage in the OH.

A short while later Ms. Fallon returned and stated that there were 14 Part V houses coming up in Ashford in August 2022, a combination of two and three bed properties and that approximately between 10 and 20 units were also in the pipeline and would be made available in 2023 and 2024 within the settlement of Ashford.

The Inspector queried if the units that would be available in August 2022 had been allocated to the people on the housing list. Mr. O' Connell then stated that taking account of these properties to come on stream in August 2022 it would reduce the demand for a 3-bed house to 54 households and it would reduce the demand for a 2-bed house to 148 households. Therefore, notwithstanding these units coming on stream there is still a significant demand for both two- and three-bedroom houses within Ashford.

The inspector noted the new figures and stated that the updated information would now inform her assessment on alternatives available.

The inspector then presented her closing statement and the OH was closed at 12:26.