



An
Bord
Pleanála

Inspector's Report

ABP-315077-22

Development	Fingal County Council Compulsory Purchase Order (17 & 17A North Street, Swords, Co. Dublin), 2022
Location	17 & 17A North Street, Swords, Co. Dublin
Planning Authority	Fingal County Council
Applicant(s)	Fingal County Council
Type of Application	Compulsory Purchase Order
Objector	Angela Heavey
Date of Site Inspection	6 th March 2023 and 6 th April 2024
Oral Hearing	2 nd April 2024
Inspector	Ian Boyle

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1.0 Site Location and Description

- 1.1. This is an application by Fingal County Council (FCC) for confirmation by the Board of a Compulsory Purchase Order (CPO) for a property at 17 and 17A North Street, Swords, Co. Dublin, K67 DP44 ('the subject site').
- 1.2. The site accommodates a single storey (former office) building. It is in the centre of Swords town on the western side of North Street, roughly 25m north of the junction between North Street and Seatown Road. The Swords Court House is opposite, on the other side of the street, and the offices of Fingal County Council are roughly 150m to the south on the corner of Main Street and Seatown Road.
- 1.3. The Board has received a single objection to the CPO from the landowner, Angela Heavey. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property.
- 1.4. The Board previously annulled a CPO application for the property in 2004. This CPO had sought to accommodate a widening of the street and construction of a walkway around Swords Castle. Ms. Heavey was the objector and property owner in this case also.

2.0 Application of the CPO / Proposed Development

Rationale for Acquiring the Lands

- 2.1. The CPO includes for the permanent acquisition of the property identified as 'Plot 1' on the relevant deposit map. The order is made pursuant to Section 76 of the Housing Act, 1966 (as amended) and all other necessary Acts, thereby, enabling the compulsory purchase of lands published in accordance with article 4(a) of the Third Schedule to the Housing Act, 1966 (as amended).
- 2.2. The stated purpose for the acquisition of the lands is to assist in:
 - protecting, conserving and enhancing the historic site and views of Swords Castle (a national monument), and its environs,
 - the development of Swords Castle as a major amenity, tourist attraction and cultural hub for Swords,

- the development of Swords Castle as a central feature of an enhanced and improved public realm and urban space for Swords Town Centre, improving connectivity and accessibility between and around Swords Castle, Swords Town Centre and Swords Town Park, and
- the development of the Swords Cultural Centre, including a new County Library, Theatre, Arts Centre, civic spaces, and public realm improvements within the Swords Cultural Quarter.

2.3. Certain local authority projects are subject to a public consultation process, known as the Part 8 process under the Planning and Development Regulations, 2001 (as amended). The procedure is set out in Part 11, section 179 of the Act.

2.4. In July 2022, a Part 8 application was made under Reg. Ref. PartXI/002/22 to progress the Swords Cultural Quarter (SCQ) project¹. The development proposed was permitted in September 2022 and gave consent to a civic and cultural building, various public realm upgrades and improvements, demolition works and associated site works in the middle of Swords town centre, at the junction of North Street, Seatown Road, Main Street and Bridge Street, adjacent to Swords Castle and Fingal County Offices. The application included the subject site (nos. 17 and 17A North Street, Swords) and is identified as part of the SCQ project as a significant civic open space area and important public realm element.

2.5. The Part 8 Consent addressed the relevant planning and environmental considerations arising.

Statutory Basis

2.6. The CPO has the seal of the Council affixed on the 3rd November 2022 and was advertised on the 10th November 2022 in the Dublin Gazette. Formal notice was issued to the affected landowner on 9th November 2022. The application was lodged with An Bord Pleanála on the 10th November 2022.

2.7. The Board decided to hold an Oral Hearing, which took place on 2nd April 2024.

¹ Sections 1.2 and 1.3 of the Witness Statement presented by the County Architect (FCC) during the Oral Hearing provides further details and background to the Swords Cultural Quarter Project.

Application Documentation

- 2.8. The application documentation includes the following:
- 3 copies of the sealed map (Drawing No. LA-265-22).
 - 3 copies of the sealed order.
 - 2 copies of the Dublin Gazette, 10th November 2022, in which notice of the making of the CPO was published (page 14).
 - Copy of certified statement of service of notice indicating the name and address of person on whom notice was served and the manner of service. There is no certificate of delivery as An Post did not complete delivery. Therefore, the notice was hand delivered to the individual's address.
 - Copy of correspondence served on interested parties.
 - Copy of Chief Executive's Order EECD/490/2022, dated 2nd November 2022.
 - Copy of certificate of Mr. Malachy Bradley, Senior Planner (Planning and Strategic Infrastructure Department), dated 20th of October 2022.

3.0 Planning History

Subject Site

- 3.1. Reg. Ref. PARTXI/002/22: In September 2022, Fingal County Council **granted approval** for a proposed development forming part of the Swords Cultural Quarter (SCQ) project. The approval was made by way of Council Resolution.

The project consists of extensive enhancement of the public domain to the south and east of Swords Castle. The development approved under Part 8 includes the demolition of No. 17 and 17A North Street. The public realm element of the development is referenced under paragraph (e) of the description of the Part 8 development and specifically refers to nos. 17 and 17A North Street.

- 3.2. ABP Ref. PL06F.212263 (Reg. Ref. F05A/0244): The Board **refused outline permission** in November 2005 for the demolition of existing offices and an outbuilding and the construction of five storey commercial development.

The Board Order specifies three reasons for refusal, including that the proposal would represent overdevelopment of the site and be out of character with the existing pattern of development, that it would injure or interfere with the setting and views and prospects of a historic monument, and that adequate car parking spaces, loading areas and turning space have not been provided within the curtilage of the site.

[Fingal County Council had previously issued a notification of decision **to refuse permission** for five reasons, including that the proposal by way of its visual intrusiveness and dominance would materially contravene the zoning for the site, that the proposal would injure or interfere with the setting and views and prospects of Swords Castle (a National Monument), would be overdevelopment of the site, fails to provide any carparking on the site (leaving a shortfall of 58 carparking spaces), and that it fails to make adequate provision for foul sewer, surface water or water supply to the site, and would thus be prejudicial to public health.]

- 3.3. ABP Ref. 06F.CH22107: In June 2004, the Board **annulled a compulsory purchase order** entitled 'Fingal County Council Compulsory Purchase (North Street, Swords) Order, 2003' at the subject site. The stated reasons and considerations are as follows:

'Having regard to the stated purpose for the acquisition and to the objections made to the Compulsory Purchase Order, the Board does not consider that the acquisition of the entirety or a substantial part of the lands referred to in the order is necessary in order to carry out a specifically defined proposal or satisfy any significant community need or in the interest of the common good.'

[Emphasis added.]

4.0 Policy Context

4.1. Local Planning Policy

4.1.1. Fingal Development Plan 2023-2029

The Fingal Development Plan 2023-2029 ('Development Plan / CDP') was made on 22nd February 2023 and came into effect on 5th April 2023.

Map Based Objectives

Zoning Map (Sheet No.8)

The subject site is zoned 'MC – Major Town Centre' which seeks to 'protect, provide for and/or improve major town centre facilities'.

The zoning vision is to consolidate the existing Major Towns in the County, (Blanchardstown, Swords and Balbriggan). The aim is to further develop these centres by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise urban conservation, ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic and enhance and develop the existing urban fabric.

Protected Structures (Appendix 5)

Swords Castle (Protected Structure; RPS Ref. 351) is to the south of the site. It is also a National Monument (NIAH Ref. DU011-034001).

The Swords Courthouse (Protected Structure; RPS Ref. 350) is to the east of the site across North Street.

Zone of Archaeological Notification

The site is within a Zone of Archaeological Notification.

GDA Cycle Network Plan

The section of North Street running along the front of the site is part of the Greater Dublin Area Cycle Network Plan.

Chapter 2 – Planning for Growth

- Policy CSP30 ‘Swords as a Vibrant Key Town’ is to support the continued development of Swords as a vibrant Key Town with a thriving economy; an integrated public transport network; an attractive and highly accessible built environment with the highest standards of housing, employment, services, recreational amenities and community facilities.
- Objective CSO37 ‘High Quality Services’ seeks to encourage a range and quality of retail, commercial, civic, cultural, leisure, community and other services commensurate with the role of Swords Town Centre as a Key Town.
- Objective CSO39 ‘Sustainable Swords Project Support’ is to promote the implementation of key recommendations arising from the Sustainable Swords’ project including the implementation of the Swords Cultural Quarter.
- Policy CSP7 ‘Masterplans’ is to prepare masterplans for areas designated on Development Plan maps in co-operation with relevant stakeholders, and actively secure the implementation of these plans and the achievement of the specific objectives indicated.
- Policy CSP8 ‘Implementation of Masterplans’ seeks to implement masterplans prepared in accordance with the Development Plan.
- Objective CSO42 ‘Enhanced Urban Environment’ is to facilitate the strategic regeneration of Swords to build on the resilience of the local economy and provide for an enhanced urban environment with a particular focus on the development of Swords Civic Centre and Cultural Centre, the delivery of the conservation plan for Swords Castle, and the delivery of an enhanced public realm in the town centre and to promote recreational and amenity uses in accordance with a healthy placemaking strategy.

Chapter 9 Green Infrastructure and Natural Heritage

- Policy GINHP6 'Multi-Functionality' is to ensure delivery of multifunctional green and civic spaces that meet community needs, promote active and passive recreation, flood and surface water management and local habitat improvements. The multi-functionality of spaces will be balanced against the need to protect and enhance local habitat and the recreational and functional requirements of parks.
- Objective GINHO7 'Provision of Open Space' is to provide a range of accessible new parks, open spaces and recreational facilities accommodating a wide variety of uses (both passive and active), use intensities and interests.
- Policy GINHP8 'Archaeology and Green Infrastructure Protect' seeks to conserve and enhance landscape, natural, cultural and built heritage features, and support the implementation of the Fingal Heritage Plan in relation to the provision of green infrastructure.

Chapter 10 Heritage, Culture and the Arts

- Objective HCAO58 'Swords Castle Cultural Quarter' is to support the enhancement of the identity, cultural and tourism development of Swords by protecting, conserving, and enhancing the historic site of Swords Castle and its environs and the improvement of public and civic facilities and spaces of Swords Town Centre through the delivery of the Swords Cultural Quarter.
- Objective HCAO28 'Conservation Plans for Protected Structures' seeks to demonstrate best practice in relation to the management, care and maintenance of Protected Structures by continuing the programme of commissioning Conservation Plans for the principal heritage properties in the Council's ownership (several of which are also ACAs), implement the policies and actions of these Conservation Plans where they exist, and ensure the Plans are used by all sections of the Council to inform and direct the design of interventions within the heritage properties, both to buildings and landscapes.

4.1.2. **Your Swords – Strategic Vision 2035**

The document entitled 'Your Swords – Strategic Vision 2035' sets out a strategic vision for Swords through a series of long-term objectives focusing on the creation of a coherent and legible spatial structure.

The document acknowledges the deficiency in the provision of social, cultural, recreational and community facilities in Swords and, therefore, proposes services in new defined areas, including both the Cultural Quarter and Civic Quarter. These areas have been identified as Town Centre nodes.

4.1.3. **Swords Castle Cultural Quarter Architectural Masterplan**

The 'Swords Castle Cultural Quarter Architectural Masterplan ('Masterplan')' was prepared in 2015. It seeks to energise the layout potential of the existing town centre – focusing on the castle environs as a new cultural hub. With regard to Swords Castle and its environs, the Masterplan states Main Street is of poor quality in terms of its finishes, pedestrian spaces, landscaping, materials and interface with its buildings.

The proposed public realm works would assist in improving the quality of Main Street through proposing a Main Street Plaza at the front of Fingal County Hall. As part of the design, Main Street would be re-aligned, and the pedestrian zone widened to allowed for increased pedestrian activities. The proposed public realm upgrade works would create pedestrian usable spaces through design, landscaping and the use of street furniture.

The Planning Authority envisages that the Main Street Plaza would create an attractive focal point within Swords Town Centre where North Street, Seatown Road, Main Street and Bridge Street would meet. In addition to this, the proposed Swords Civic and Cultural Plaza is intended to form a fulcrum of intersecting pedestrian circulation to provide a better defined area for various community events.

4.2. Regional Policy

4.2.1. The Regional and Economic Spatial Strategy for the Eastern and Midland Region, 2019 ('RSES')

The 'Regional and Economic Spatial Strategy for Eastern and Midland Region, 2019 ('RSES')' includes relevant planning policies and objectives in relation to the delivery of the Swords Cultural Quarter.

Chapter 4 People and Places

Section 4.6 'Key Towns' states that due to its strategic location in proximity to Dublin City, the airport, national road network and with the planned Metrolink, Swords acts as a Key Town for the metropolitan area. Swords is the County Town in Fingal, and is a major town with a young and growing population of over 39,000 people in 2016. It provides a strong economic and service function for its catchment. Key priorities are to promote compact growth and enhanced public realm in the town centre along with the planned sequential development of Swords (emphasis added).

Under the heading 'Regeneration', the RSES states that the Sustainable Swords Project will consolidate and strengthen Swords historic town centre. The identity of the town centre will be enhanced through the development of Swords Civic Centre and Cultural Centre, the delivery of the conservation plan for Swords Castle, and the delivery of an enhanced public realm in the town centre, in accordance with a new healthy placemaking strategy. Additionally, core recreational and amenity spaces will be promoted, in particular Ward River Valley Park, Swords Cultural Quarter including Town Park, and Ward River Walk, west of Main Street (emphasis added).

- Regional Policy Objective 4.30 is to facilitate the strategic regeneration of Swords to build on the resilience of the local economy and provide for an enhanced urban environment with a particular focus on the development of Swords Civic Centre and Cultural Centre, the delivery of the conservation plan for Swords Castle, and the delivery of an enhanced public realm in the town centre and to promote recreational and amenity uses in accordance with a healthy placemaking strategy' (emphasis added.)

4.3. National Policy

4.3.1. National Planning Framework (NPF) - Project Ireland 2040

The acquisition of the subject site to facilitate the overall development of the Swords Cultural Quarter is consistent with the general focus of NPF policy, which is to focus development towards key urban centres, target brownfield sites and to support infill and compact growth in existing settlements.

The NPF recognises that that a key future growth enabler for Dublin includes public realm and urban amenity projects, focused on streets and public spaces, especially ... where linked to social regeneration projects.

- National Policy Objective (NPO) 60 is to conserve and enhance the rich qualities of natural and cultural heritage of Ireland in a manner appropriate to their significance.

4.3.2. Design Manual for Urban Roads and Streets, 2019 ('DMURS')

DMURS states that:

- *Public Realm Strategies may address broader strategic issues similar to an LAP or Masterplan, but they are more closely associated with detailed design outcomes. In some cases, Public Realm Strategies may include detailed material palettes and construction specifications.*
- *Better street design in urban areas will facilitate the implementation of policy on sustainable living by achieving a better balance between all modes of transport and road users. It will encourage more people to choose to walk, cycle or use public transport by making the experience safer and more pleasant.*

4.3.3. The Architectural Heritage Protection Guidelines for Planning Authorities, 2011

The Architectural Heritage Protection Guidelines for Planning Authorities ('the Architectural Heritage Protection Guidelines') are a practical guide for planning authorities and for others who must comply with Part IV of the Planning and Development Act 2000 on the protection of the architectural heritage.

The Guidelines stress the importance of protecting and enhancing the curtilage of, and views, of and into Protected Structures. In this regard, they state the setting of an area, together with views in and out of it, can contribute greatly to its overall character and should always be considered when assessing its importance.

5.0 The Objection

5.1. A single objection has been received by the Board. The objection is from the owner of the property proposed to be acquired (Angela Heavey). The main concerns raised are summarised as follows:

- There is a 'Protection and Prohibition Order' made by An Bord Pleanála from early 2000 which states that the development of the Old Castle Walls and Garden at Swords could not forcibly involve a CPO of the subject property.
- Fingal County Council (FCC) were free to appeal this Order to the High Court within a specific time. However, they did not do this and, consequently, the Board's Order is now the law.
- The Board cannot now undermine or second guess this Order – this would be ultra vires – and it cannot be lawfully called back to the present for further assessment. The legal principles of res judicata and estoppel apply.
- FCC has neglected to secure and police the old castle walls, gardens, and parklands for many years.
- FCC has 'taken away' several car parking spaces associated with the property and business.
- FCC had made previous attempts to buy the property. However, this was not accepted.
- The inclusion of the subject property is not essential to the development of the old castle walls and its environs.
- The Council has engaged in oppressive behaviour and inappropriate conduct to force through a sale through of the property.
- The Local Authority intends on purchasing the site using their CPO powers to sell the property on at a future date.

- 5.2. [Note: Other matters were raised in the objection that are not relevant to whether the proposal is in keeping with the proper planning and sustainable development of the area. For example, there is various correspondence on the file from the Objector, and submissions made during the Oral Hearing, regarding non-payment of rates, that the Objector's intention to develop the site for a commercial building has been refused by the Local Authority for reasons other than proper planning and development, and that the Council is seeking to compulsorily acquire the site for reasons improper.]

6.0 Oral Hearing

Background

- 6.1. An Oral Hearing (OH) was held at the offices of An Bord Pleanála on Tuesday, 2nd April 2024. Both the objector, Angela Heavey, and Fingal County Council (FCC) were in attendance. Ms. Heavey was accompanied by Joe Morton (Morton & Flanagan Auctioneers, Property Agents and Auctioneer) and FCC were represented by Eamon Galligan (Senior Counsel). Other Council officers were also in attendance and contributed towards the proceedings. Oral submissions were heard by, and on behalf of, the parties during the course of the Hearing.
- 6.2. As the presiding Inspector, I commenced proceedings with an opening statement. Participants were informed that the purpose of the Hearing was an information gathering exercise to assist in the consideration of the merits of the case and in drafting the report and recommendation to the Board in relation to the CPO order. They were also advised that the planning merits of the Part 8 Scheme have already been determined by a separate approval process. It was explained that the purpose of the Hearing was to deal with the CPO process only. I.e., The merits, or otherwise, of the proposed acquisition of the lands by the Planning Authority. Participants were also reminded that the Board has no role or jurisdiction in the determination of compensation.
- 6.3. The proceedings of the Oral Hearing are summarised in Appendix A of this report and referenced, where necessary, in the assessment below under Section 7.0.

Modifications

There were no modifications to the CPO either prior to, or during, the Oral Hearing.

7.0 Assessment

7.1. Overview

- 7.1.1. The proposed CPO is for confirmation by the Board of a Compulsory Purchase Order (CPO) for a property at 17 and 17A North Street, Swords, Co. Dublin, K67 DP44 ('the subject site').
- 7.1.2. The site accommodates a single storey office building. It is in the centre of Swords town on the western side of North Street, roughly 25m north of junction between North Street and Seatown Road. The Swords Court House is on the opposite side of the street.
- 7.1.3. The Board has received a single objection to the CPO from the property owner, Angela Heavey. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property. Fingal County Council state that the acquisition of the land is to facilitate public realm works in the area, including to assist in:
- protecting, conserving and enhancing the historic site and views of Swords Castle (a national monument), and its environs,
 - the development of Swords Castle as a major amenity, tourist attraction and cultural hub for Swords,
 - the development of Swords Castle as a central feature of an enhanced and improved public realm and urban space for Swords Town Centre, improving connectivity and accessibility between and around Swords Castle, Swords Town Centre and Swords Town Park, and
 - the development of the Swords Cultural Centre, including a new County Library, Theatre, Arts Centre, civic spaces, and public realm improvements within the Swords Cultural Quarter.

- 7.1.4. My assessment of this case considers the issues raised in the written objection to the Board, the points made at the Oral Hearing (OH), and the general principles to be applied in assessing CPOs of this nature.
- 7.1.5. For the Board to confirm the subject CPO proposal, it must be satisfied that Fingal County Council has demonstrated that this CPO is clearly justified by the common good. It is generally accepted that there are five test criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property. These are that:
- i. There is a community need that is to be met by the acquisition of the lands in question.
 - ii. The project proposed and associated acquisition of lands is suitable to meet the community need.
 - iii. The works to be carried out should accord with, or at least not be in material contravention of, the policy and objectives contained in the statutory Development Plan relating to the area.
 - iv. Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.
 - v. The extent of land-take should have due regard to the issue of proportionality.
- 7.1.6. Furthermore, the Board should consider whether the acquisition will have an excessive or disproportionate effect on the interests of the affected persons.
- 7.1.7. The proposed CPO is assessed below in the context of the above tests prior to addressing the specific issues raised in the objections lodged.

7.2. Community Need

- 7.2.1. The community need for the proposal is referenced in the legal submission made by Eamonn Gilligan (SC) and expanded upon in the Witness Statements by Fingal County Council (FCC). This issue was discussed at length during the Oral Hearing, where it was submitted by the Local Authority that the acquisition of the site is necessary for the realisation of an enhanced and improved urban space as provided for under the Swords Cultural Quarter Project (SCQ) and permitted Part 8 development (Reg. Ref. PARTXI/002/22).

- 7.2.2. There would be other benefits derived from the CPO, including the unveiling of the Swords Castle eastern curtain walls and improved access to the existing town park which is adjacent nos. 17 and 17A North Street. However, in my view, the main community need which would be met by the CPO is the full delivery and implementation of public realm works in this part of Swords Town Centre.
- 7.2.3. During the OH proceedings, the main contention made by Mr. Galligan was that if the land cannot be acquired, the Council will not be able to deliver on a key objective of the SCQ – which is to provide for improved connectivity and accessibility between and around Swords Castle, Swords Town Park and Swords Town Centre. It was submitted that the acquisition would benefit the wider community and is justified in the interests of the common good.
- 7.2.4. Conversely, I note the argument made by Ms. Heavey in that the compulsory acquisition of her property is not essential to achieve this vision, and that the Council has not demonstrated adequate compliance with the required test relating to community need. Ms. Heavey made several points of this nature during the Oral Hearing, such as that An Bord Pleanála would be acting ultra vires if it were to confirm the proposed CPO; as they had annulled a previous CPO application on the same property some twenty years ago; and the Council now intends to unfairly purchase the site at a value much less than its actual worth through improper use of its CPO powers. [I note that some of these issues are further examined under Section 7.7 of my report below.]
- 7.2.5. During the Hearing, Ms. Fionnuala May (County Architect) made a submission stating that the properties at 17 and 17A North Street are unique in that they represent the last remaining element of the curtilage forming the eastern curtain wall of Swords Castle which is not owned by FCC. Ms. May stated this has meant that this section of the national monument has not been able to be ‘opened up’ or revealed to a clear public view from along North Street. The acquisition of the site would facilitate an uninterrupted visual link into the Town Park and connect it with the centre of the town, thus, making it more visible and accessible. It would also provide for a better appreciation of the Castle and enhance visitor appreciation of it. This would support the development of Swords Castle as a major amenity and tourist attraction, which, I note is a specified purpose of the CPO, namely ‘the development of Swords Castle as a major amenity, tourist attraction and cultural hub for Swords’.

- 7.2.6. It was further noted by Ms. May that given the presence of the onsite buildings in this location that one of the main public entrances to Swords Town Park is hidden away and concealed such that it is not easily identifiable to passersby or visitors to the area. I would concur with this, noting that the current entrance to the park does not 'stand proud', or is particularly apparent, and that is partly due to its closed off physical appearance due to existing buildings which are positioned tight up against it and, as such, obscure the entry point into the grounds of the park.
- 7.2.7. In my opinion, the main community benefit which would be delivered through permitting the acquisition of these lands, and subsequent demolition of the in-situ structures, would be the potential full realisation of the Swords Cultural Quarter project. This is a scheme which has been in train for a significant amount of time and has been the focus of several strategic planning documents stretching back over an extended period. I note that the Swords Castle Architectural Masterplan was released back in 2015 ('Masterplan'). One of the main aims of the Masterplan was to revitalise and rejuvenate the northern part of Swords town centre and that a crucial way in which to achieve this was by recognising and focusing on the Castle and its parkland environs, as an identifiable landmark, and one which would have the ability to anchor a new cultural hub for Swords. I would concur with the Local Authority that until recently Swords Castle – despite its historical importance and central location in the town centre – has not capitalised on the opportunity it presents in terms of enabling heritage-led urban regeneration and acting as a catalyst for urban renewal.
- 7.2.8. Having regard to this, I consider the submission made by the County Architect very relevant in the assessment of this CPO application, particularly where it states that the Swords Masterplan has sought to take advantage of existing resources of the lands around the Castle to create outstanding and sustainable civic and cultural spaces, but that this has not happened to date. Although the Masterplan is accepted as non-statutory, I note that it subsequently fed into a comprehensive design brief being worked up. There are also several related planning policies and objectives set out in the Fingal Development Plan 2023-2029, which is the relevant statutory document governing the area. [See Section 4.1.1 of my report above includes the main relevant policies and objectives from the Fingal CDP.]

- 7.2.9. The Local Authority makes the case that if the subject buildings were able to be removed, and replaced with a high-quality civic space, this would provide a much-improved perception and appreciation of this National Monument within the town (NIAH Ref. DU011-034001), including potential for lighting, which would give the structure an enhanced night-time presence. I note that this would also facilitate the physical removal of a section of modern concrete wall which is tacked onto the Castle. This would allow for a better appreciation of this Protected Structure, which, I note, is a policy aspiration set out in County Development Plan and in the interests of the wider community (see Section 7.4 below).
- 7.2.10. During my physical inspection of the site, and its surrounding area (6th March 2023 and 6th April 2024), it was clear that certain elements of the Masterplan have come to fruition, that physical elements of the Castle have been recently restored, and there is a concerted focus by the Council to improve the public realm in accordance with the general aims and objectives of the SCQ Project. The Witness Statement by the County Architect provides affirmation of this, in my opinion, and notes that the creation of a cultural quarter in this part of the town has been a longstanding ambition with significant investment being made since 2014 through property acquisitions, enabling works and consultant appointments. I consider that the delivery of a useable, valuable and community-focussed civic plaza would be aided through the acquisition of the subject lands, and that the space would allow for better integration between the Castle, Town Park and town centre as a result.
- 7.2.11. In summary, I accept there would an adverse impact on the owner of the land if the property acquisition were to be approved. However, the relevant test here is whether – on balance – the overall benefits accruing to the wider community outweigh the localised impact on the individual. I also note that a separate scheme of compensation is available as a form of redress to compensate for any loss incurred, and that the Council has attempted to purchase the site on a voluntary basis from the owner over an extended period of time. I note that FCC has made several efforts to purchase the property prior to the making of the CPO. The witness statement by the Director of Services (FCC) submits a series of attempts, through direct approaches and correspondence, have been made, which culminated in a rejection by Ms Heavey of the Council's final offer shortly prior to the CPO application being made. In response, Ms. Heavey stated that the offer(s) made by

FCC did not reflect the true value of the property, which has been informed by a professional valuation and appraisal provided by an independent commercial estate agent.

- 7.2.12. Therefore, and in having regard to the benefits outlined above, it is clear in my opinion that the proposed project would constitute an appropriate means of meeting the stated objectives of the Swords Cultural Quarter project and would be in the interests of community need and of the common good. The proposed acquisition of nos. 17 and 17A North Street is in accordance with national, regional and local policy, including several planning objectives outlined in the County Development Plan. I consider that the implementation of the SCQ project would help to deliver an enhanced public realm for the town centre, promote recreational and amenity uses in accordance with a healthy placemaking strategy and improve accessibility to Swords Town Park. It would also help to facilitate tourism and community events / festivals and assist in the delivery of the conservation plan for Swords Castle, which is an important National Monument and landmark in the centre of the town.
- 7.2.13. In summary, a failure to acquire the property and 'building around' the site would prevent the full delivery of the SCQ project. It would take away from the other public realm enhancements and streetscape improvements which can be implemented and would result in an inferior town centre and pedestrian environment overall. The site sits directly opposite the proposed Swords Cultural Centre and a wider, enhanced civic space and entrance into the public park would be a significant and important community gain, in my opinion, and aligned within meeting the needs of the community.
- 7.2.14. I conclude that the proposed CPO would benefit the wider community and that it is justified in the interests of the common good. I conclude that 'the community need' for this scheme has been established and this principle in terms of assessing the CPO has been shown to be met.

7.3. Suitability of Lands to Serve the Community Need

- 7.3.1. One of the CPO tests requires consideration of whether the proposed acquisition of the land would serve the community need, and whether the lands is suitable to meet this need.
- 7.3.2. During the Hearing, the Local Authority confirmed that the total area of land proposed to be acquired is 545sqm. This information is shown on the relevant Deposit Map, which is on the file (drwg. no. LA-265-22). This includes the full extent of Nos. 17 and 17A North Street. The CPO would affect a single landowner.
- 7.3.3. I note that the Council has been successful in acquiring other properties in the area on a voluntary basis and that the CPO relates to the last remaining parcel of land required to deliver the full range of public realm works envisaged for this part of North Street. There are no other sites required to allow the eastern Castle Walls to be opened-up and exposed to uninterrupted views to the public.
- 7.3.4. I am satisfied that the property which is subject to this CPO is suitable and required to accommodate the proposed project and that this is in the interest of serving the community need.

7.4. Compliance with Planning Policy (including County Development Plan)

- 7.4.1. The proposed acquisition of the subject property is part of a wider interconnected project comprising various public realm upgrades and the delivery of community-focused amenities and facilities in Swords town centre which, together, comprise the Swords Cultural Quarter (SCQ) Project. The works seeks to enhance the public domain to the south and east of Swords Castle. The project was approved by the elected members on 12th September 2022 under a Part 8 application (Reg. Ref. Part XI/002/22).
- 7.4.2. The approved development includes the demolition of No. 17 and 17A North Street ('the subject site'). I note that the public realm element of the development is referred to under paragraph (e) of the public notices' description of the Part 8 development and specifically refers to nos. 17 and 17A North Street as forming part of the overall works proposal.

- 7.4.3. The delivery of the Swords Cultural Quarter Project would meet several national and regional policy-based objectives, in my opinion. These national policy objectives are mainly focused on directing development towards key urban centres (which includes Swords), targeting brownfield sites and supporting infill and compact growth in existing settlements. The proposed acquisition is therefore consistent with several national and regional planning policy documents in this regard,, including the National Planning Framework (2018) (NPF), Regional Spatial and Economic Strategy for the Eastern and Midland Region (2019) (RSES) and Design Manual for Urban Roads and Streets (2019) (DMURS), where the need to secure more compact forms of development in urban and serviced areas is cited at national and regional level. NPO 60 is particularly relevant, in my opinion, in that a key objective stated as part of the CPO application is to assist in protecting, conserving and enhancing the historic site and views of Swords Castle (a national monument), and its environs. NPO 60 is 'to conserve and enhance the rich qualities of natural and cultural heritage of Ireland in a manner appropriate to their significance'.
- 7.4.4. The Architectural Heritage Protection Guidelines for Planning Authorities (2011) seek to enhance built heritage and promote care and maintenance of protected structures. In this regard, I note that the proposed CPO, and related Swords public realm strategy, seek to reveal the original eastern curtain wall of the Castle, which would enhance the setting and curtilage of the castle as an important national monument and protected structure. The acquisition of nos. 17 and 17A North Street would help to achieve this objective, in my view, by making it possible to walk around the greater part of the perimeter castle walls on its eastern side and to open-up views towards the monument both along North Street and facing northwards from Main Street.
- 7.4.5. RPO 4.30 of the RSES is to facilitate the strategic regeneration of Swords to build on the resilience of the local economy and provide for an enhanced urban environment with a particular focus on the development of Swords Civic Centre and Cultural Centre, the delivery of the conservation plan for Swords Castle, and the delivery of an enhanced public realm in the town centre and to promote recreational and amenity uses in accordance with a healthy placemaking strategy' (emphasis added).
- 7.4.6. The Fingal Development Plan 2023-2029 includes several policies and objectives which are consistent with the acquisition of the site and to achieve the aims of the Swords Cultural Quarter project. These are cited under Section 4.1.1 of my report

above. I draw particular attention to Objectives HCA058, CSO42 and GINHP6, which are in relation to the strategic regeneration of Swords town centre, the conservation and enhancement of the Swords Castle Cultural Quarter, and the delivery of multifunctional green and civic spaces to meet community needs, respectively. Furthermore, the site is zoned 'MC – Major Town Centre' which to protect, provide for and/or improve major town centre facilities. The vision for this zone is to consolidate the Swords through further appropriate commercial and residential development to ensure a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The proposal is therefore compatible with the zoning of the site.

7.4.7. Section 2.4.6 ('Compulsory Purchase Orders') of the County Development Plan states that where the context so requires and once identified, the use of Compulsory Purchase Orders (CPOs) will be pursued in as timely a manner as possible under the relevant legislation, for the betterment of the community as part of Active Land Management measures. Section 2.4 (Page 55) states that active land management measures, provided for under legislation, are to ensure that land hoarding is discouraged, and that development potential is released through available mechanisms. In my view, one such legislative option available to the Council – insofar as it is used properly and correctly and in accordance with the relevant procedures – is the power to compulsorily acquire land.

7.4.8. Importantly, I note that the subject site is the only property situated along the eastern curtain wall of the Castle which is not owned by Fingal County Council. Therefore, this side of the Protected Structure has not been able to be revealed to clear, unobstructed public views, either within the Town Park or from along the local street network. I consider that were the buildings at nos. 17 and 17A North Street removed, this would lead to a much-enhanced appreciation of this historic building both during the day and at night and enable significant public realm upgrades to be achieved. The removal of a concrete wall, which at present extends deep into the grounds of the park and abuts the Castle Walls, would also be able to be removed. In my opinion, this would further help to facilitate best practice in relation to the management, care and maintenance of Protected Structures, which is in accordance with CDP Objectives HCAO58 and HCAO28.

- 7.4.9. During the Oral Hearing, a series of CGI's were presented as part of the County Architect's Witness Statement. The images are taken from an interactive digital model which helped inform the public consultation phase for the previous Part 8 application. The images are on file and show the buildings at nos. 17 and 17A North Street demolished, thus, allowing for the new public realm and town centre improvements (Series A images). They also illustrate the said buildings retained, which would limit and constrain certain public realm upgrades and other proposed civic works from taking place.
- 7.4.10. Furthermore, I note that Fingal County Council has successfully secured funding through the European Regional Development Fund (ERDF) under the 'Designated Urban Centre's Grand Scheme (2014-2020)'. In this regard, I note the OH submission made by Mr John Quinlivan (Director of Services, FCC), which confirms the project has been awarded a total investment of €3,000,000.00 under Investment Priority 6(e) of the ERDF Regulation (EU) 1301/2013. I note that the application for funding included three main components, including proposed upgrade works to Swords Castle, that buildings on North Street which partially block access around the Castle to be redeveloped, and the implementation of public realm improvements in front of the Castle where North Street and Main Street converge. In my opinion, this provides further affirmation that FCC has made steady progress in recent years in terms of delivering the overall public realm strategy and an enhanced urban environment.
- 7.4.11. In conclusion, I am satisfied that the purpose of the proposed CPO is in compliance with national, regional and local planning policy, including the Fingal Development Plan 2023-2029. This includes policies and objectives relating to the delivery of multifunctional green and civic space which meet the needs of the community; provision of accessible new parks, open spaces, and recreational facilities capable of accommodating a wide variety of uses; conservation and enhancement of natural, cultural, and built heritage features; the delivery of the Swords Cultural Quarter project; and adherence to best practice in relation to the management, care and maintenance of Protected Structures and National Monuments.

7.5. Consideration of Alternatives

- 7.5.1. There are two alternatives in this case; i.e., the 'do-nothing' scenario, which would be annulment of the CPO, or to approve the CPO and therefore permit the Council to compulsorily acquire the site.
- 7.5.2. The 'do nothing' scenario would mean the onsite buildings remain in-situ and the civic space envisaged to be in their stead would not be realised. This would not prevent other streetscape enhancements and works from taking place, however. Conversely, the acquisition of the site would facilitate the full extent of the proposed public realm upgrades, as per the SCQ project, and allow FCC to provide a high-quality civic space at the entrance to Swords Town Park, directly opposite the proposed Swords Cultural Centre (which contains a new library, performance venue and arts space).
- 7.5.3. The objector has raised a concern in relation to the extent to which Fingal County Council has explored alternative options as part of the scheme, particularly given the impact the acquisition of lands would have on her constitutional property rights.
- 7.5.4. The Council makes the argument that there are no other sites, or property, in the surrounding area which need to be acquired to achieve the stated purposes of the SCQ project. In this regard, I note FCC has successfully acquired other sites in the vicinity of the Castle grounds and this has occurred on a voluntary basis with different landowners. The CPO application was therefore needed for the subject site only, and the acquisition of these lands is required to facilitate the enhancement of the Sword Castle historic site and delivery of a civic space considered integral to the overall scheme.
- 7.5.5. The County Architect stated as part of their Witness Statement at the OH that the 'do nothing' scenario was considered but rejected in view of the continuing negative impact caused by the property on the setting of the Castle. The point was made that the new Swords Cultural Centre would – unless the proposed acquisition were confirmed – continue to have its view of a significant portion of the (eastern) Castle walls obscured by the existing buildings on the site. The CPO would therefore be able to facilitate the enhancement of the historic site by 'protecting, conserving and enhancing the historic site and views of Swords castle, a National Monument, and its

environs', which is, I note, is a specific purpose referenced within the CPO application documentation under paragraph (a).

- 7.5.6. In terms of what would happen if the site were not acquired, I note that the Council maintained the view that a key purpose of the SCQ is to provide for improved connectivity and accessibility between and around the Castle, town centre and town park as identified under paragraph (c) of the CPO and this would be able to be achieved without the approval of CPO. This purpose relates to 'the development of Swords Castle as a central feature of an enhanced and improved public realm and urban space of Swords Town Centre, improving connectivity and accessibility between and around Swords Castle, Swords Town Centre and Swords Town Park.
- 7.5.7. I have reviewed the deposit maps and relevant Part 8 application information from previous, including the Proposed Landscape Plan (drwg. no. SCQ-ZZ-L00-DR-DFLA-LA-02001). I consider that a proportion of the wider proposed public realm improvements and related works surrounding the Castle could still be delivered independent of acquiring the site. This includes works south of the Castle along Main Street, towards the west on Bridge Street, and a portion of works at North Street. However, the exclusion of the site would significantly undermine the design arrangement and unification of the public realm at this important confluence between where the Castle, town centre and entrance to the park meet. It is clear to me that the removal of the site from the proposed redevelopment and public realm improvement works would be a significant 'lost opportunity' in terms of facilitating the envisaged improved linkages, connectivity and legibility – both physical and visual – in this part of the urban fabric and would lead to a lack of cohesion, integration and consistency between the three aforementioned elements (i.e., the castle, town and park).
- 7.5.8. As discussed during the Hearing, Mr. Morton queried as to why the Pound Pub was not included for acquisition as part of the CPO or considered as an alternative. This property is to the south of the Castle grounds, on Bridge Street, and I would concur with Mr. Morton that the in-situ buildings currently obscure views of the Castle. However, I consider that the obstructed views are from Bridge Street, and not North Street, which it to the far side (east) of the Castle grounds. Furthermore, the potential acquisition of the Pound Pub has not been ruled out by FCC as an option to pursue sometime in the future, should such a need arise. However, notwithstanding this, I

note that the acquisition and potential demolition of the Pound Pub is not referenced as a specific purpose in the CPO application. It therefore lies outside the scope of assessment for this CPO, and it cannot be added to the scheme, as to do so would be ultra vires.

- 7.5.9. During the OH, Mr Galligan spoke to a series of site layout plans, and CGIs and 3D renderings of the proposed redevelopment works. The images are on file and depict the 'do nothing' scenario (i.e., the site not being acquired and the existing buildings remaining in situ) vrs the 'proposed' scenario (where the buildings are removed, and civic works fully implemented). I consider that there are several useful comparisons in this respect and highlight for the Board's particular attention Images 2.A and 2.B, 3.A and 3.B, 4.A and 4.B, 7.A and 7.B, and 13.A and 13.B. The images show the potential community benefits which would be derived in terms of an enhanced public realm, the unveiling of the Castle walls, and improved physical linkages, but only if the subject site can be acquired by the Council and the project implemented as envisaged.
- 7.5.10. In summary, I am satisfied that the relevant test in relation to consideration of alternatives has been shown to be met.

7.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 7.6.1. One of the criteria required to be satisfied is consideration of whether the measures proposed under a Compulsory Purchase Order will have an excessive, or disproportionate effect, on the interests of the affected person(s).
- 7.6.2. I consider that the delivery of the SCQ project, including an enhanced and improved public realm and urban space at the location of the subject site, would benefit all future users in the long run, including local people, tourists, and visitors to this part of Swords. The project would also help to assist in the protection, conservation and enhancement of Swords Castle (a national monument), and its surrounding curtilage and the wider townscape environment, which is a key objective of the County Development Plan and of other relevant national and regional planning policy and guidelines.
- 7.6.3. I acknowledge that the acquisition of these lands would have undeniable negative effect on the third party due to loss of land and disturbance. The Board will know

that this type of impact on private property can only be justified and necessitated by the exigencies of the common good, and that the CPO application process must have regard to the principles of social justice and proportionality.

- 7.6.4. However, whilst I accept that there would be certain negative, but unavoidable, impacts caused by the CPO on the affected landowner I consider its overall impact proportionate to the objective being pursued. I am satisfied that the extent of the proposed amount of land-take is acceptable and does not exceed the requirement of the scheme. Furthermore, the Local Authority has demonstrated as part of their submission to the Board that they have purchased sites from other landowners on a voluntary basis and that this been in the interests of achieving the overall aims and objectives of the wider project. The subject site could therefore be described as the last remaining 'oasis' of land not controlled by the Council and that this prevents the full implementation of the Swords Cultural Quarter project.
- 7.6.5. Following the CPO process, I note that the landowner may be liable for compensation. However, as confirmed during the Oral Hearing, this is a matter for a separate forum. I note that such issues relating to arbitration and compensation payable lie outside the scope of this case, which is exclusively concerned with land acquisition matters only. However, it would provide potential redress for the landowner and compensate for loss incurred.
- 7.6.6. In summary, I am satisfied that the process and procedures undertaken by the Local Authority as part of this CPO application process have been fair, reasonable and proportionate. Fingal County Council has demonstrated the need to acquire the lands and that the property sought to be acquired is both necessary and suitable to facilitate the Swords Cultural Quarter project, as approved under the Part XI process. I acknowledge that there would be certain an unavoidable, but necessary impact incurred by the landowner. However, the impacts are proportionate to the objective being pursued, in my opinion, when considered on balance against the benefits that would be derived by the community.
- 7.6.7. I am also satisfied that the acquisition of the site lands and extinguishment of the identified rights of way is consistent with national, regional, and local planning policy, as outlined in Section 7.4 of my report above. In this regard, I have given particular consideration to Objectives CSO42 and HCAO58 of the County Development Plan,

which seek the strategic regeneration of Swords through an enhanced urban environment, and enhancement of the historic site of Swords Castle, and its environs, and the improvement of Swords Town Centre through the delivery of the Swords Cultural Quarter, respectively.

- 7.6.8. In summary, I consider that Fingal County Council has demonstrated that the CPO meets the relevant criteria for establishing that the proposed acquisition of 17 and 17A North Street is justified by the common good. I conclude that the CPO is necessary and proportionate to the community need and I do not consider that the extent of land-take proposed is excessive for its intended purpose.

7.7. Additional Issues Raised by the Objector

Request for Oral Hearing Adjournment

- 7.7.1. During the Oral Hearing, the Objector requested an adjournment on the Oral Hearings on legal grounds relating to the legal principles of res judicata and estoppel. The Inspector responded by stating that the Oral Hearing was being facilitated by legislation contained in the Planning and Development Act, 2000 (as amended) ('the Act') and that there was no reason or grounds to cease the Hearing and that it would proceed as planned.
- 7.7.2. The Inspector acknowledged that the Objector would be entitled to raise any concerns of a procedural nature, or otherwise, that they had in relation to the CPO application process as administered by the Council. This would be facilitated during the OH proceedings and made clear to the Board before determining the matter.
- 7.7.3. As the Board would be aware, Section 135 of the Act sets out the main provisions governing an Oral Hearing. This includes that the person conducting the Hearing must do so expeditiously and without undue formality; can decide the order of appearance of persons at the hearing; may limit the time within which each person may make points or arguments; and refuse to allow the making of a point or an argument if it is not relevant to the subject matter of the Hearing, or whether it is considered necessary, so as to avoid undue repetition of the same point or argument.

Previous CPO Application (Annulled by the Board)

- 7.7.4. I note the Council made a previous CPO application on the site in 2003. This was discussed during the Oral Hearing by both Ms. Heavey and Fingal County Council and subject to questioning by the Inspector. In relation to this, I note from reading the historical file that FCC were of the view that the acquisition of the site was required to advance the 'North Street Swords Regeneration Project' – as it was referred to then. However, the Board annulled the CPO, in accordance with the recommendation of the presiding Inspector, as it was not considered that the acquisition of the lands was necessary to carry out a specifically defined proposal or that it would satisfy any significant community need or be in the interest of the common good.
- 7.7.5. As part of his assessment of the application, I note that Inspector found that while elements of the 'notional' regeneration project for North Street were laudable, he could not be convinced of the necessity to formally acquire Ms Heavey's property. The main reason for this was that the Inspector considered that the proposed works to Swords Castle, and a 3m walkway around it, did not require the compulsory purchase of Ms Heavey's property for the works to physically take place. The Inspector also questioned the statutory basis for the North Street Regeneration project noting that the project was not referenced in the Development Plan, or any other statutory plan, and considered that the proposed CPO was vague and nebulous.
- 7.7.6. In this regard, I note that the Inspector's Report stated the following:
- 'I am not convinced that there is a particularly urgent community need which is to be matched by the acquisition of the lands in question. I consider that the strongest arguments presented on behalf of the local authority relate only to the lands required to provide the walkway outside the castle walls. I do not consider that compulsory acquisition of the entire property for the stated purpose will be justified to provide this walkway. I accordingly recommend that their compulsory purchase order be annulled.'*
- 7.7.7. In relation to the current CPO application, Ms. Heavey submitted during the Hearing that the 2004 Decision (Ref. PL06F.CH.2107) is the correct one and that nothing has changed in the intervening 20 odd years since the earlier CPO was annulled and the

new (current) one made. The landscape remains completely unchanged, was Ms. Heavey's view, such that the current CPO should also not be approved.

7.7.8. Ms. Heavey also asserted that because of the previous Board Order, the Board is now precluded from 'overturning' its previous Decision. Ms. Heavey stated the Board cannot now undermine or 'second guess' this Order – as this this would be ultra vires – and it cannot be lawfully called back to the present for further assessment. This would be against the principles of res judicata and estoppel.

7.7.9. In response to this, Mr Galligan, who relied upon various case law citations, made several points, which can be summarised as follows:

- The doctrine of res judicata applies principally to decisions of the courts and has limited application to administrative decisions.
- The decision of the board does not concern matters of status or involve an action between private individuals.
- There is no rule that a statutory power can be exercised once and only once.

7.7.10. Mr Galligan stated that, in any case, res judicata cannot be applied where there are essential differences between the issues and that this applies in this particular instance, not least because several new versions of the Development Plan that have come and gone and the purposes of the earlier CPO have now changed. I note also that under the previous CPO the site was said to be needed to be acquired to accommodate a new walkway along the castle walls. This was part of a somewhat vague and unclear urban renewal project, referred to colloquially by the Council at that time as the North Street Swords Regeneration Project. I therefore consider that the current CPO application has a more clearly defined focus, and that its intended purpose is not confined to general works to the Castle Walls and provision of a pedestrian walkway only; they are far more wide-ranging than that, as has been shown to be the case above (and as set out in the formal CPO documentation itself).

7.7.11. The current CPO application is underpinned by several specific planning policies and objectives contained in the Fingal Development Plan 2023-2029, which is the relevant statutory plan for the area. These are clearly set out under Section 7.4 of my report and, as noted above, it is my view that the CPO meets the required test in this

regard. Furthermore, I note that the applicable Development Plan provisions have changed significantly in the intervening years since 2003, with a clear emphasis now being placed on delivering the objectives and aims of the Swords Cultural Quarter project within a planning and development context.

- 7.7.12. In addition, Fingal County Council has successfully been awarded funding through the ERDF to help deliver the project. I consider this provides further confirmation of progress made by the Council since 2004 in terms of physically implementing the scheme. The Board's Inspector considered the earlier 2003 CPO to be vague and lacking in terms of supporting planning policy. However, I do not consider this to be the case for the current CPO and believe it is clearly underpinned by a well-defined strategic planning vision and statutory basis.
- 7.7.13. In summary, I do not consider that the assessment of this CPO application should entail a detailed exercise centred around legal judgements, court jurisdiction, or concepts of law. However, in any case, and in having regard to the above, there are clear differences between the earlier CPO (Ref. PL06F.CH.2107) and the one currently before the Board for consideration.
- 7.7.14. In conclusion, I am satisfied that Fingal County Council has demonstrated that the proposed compulsory acquisition of the subject lands meets the required test(s), and that it serves to meet a community need which advances the common good, and that the land identified is suitable to meet that need.

Presentation of Material at the Oral Hearing

- 7.7.15. Ms. Heavey raised concerns that the information presented by FCC during the Oral Hearing had not been shared with her, or her agent, prior to proceedings taking place. Ms. Heavey was of a view that this put her in a disadvantageous position, as she had not been given the opportunity to review and absorb the material in the days leading up to the Hearing.
- 7.7.16. The Inspector explained during the OH that it is the normal practice of the Board to accept information on the day of the Hearing and for the material to be formally read into the record to the benefit of parties in attendance. It was also explained to Ms. Heavey that where an Oral Hearing is to be held remotely, the Board requests that written copies of submissions, or use visual aids when speaking (presentations, maps, photos, etc.), should be submitted in a digital format to the Board three

working days in advance of participation in the hearing. Whilst it was the original intention of the Inspector to hold the Hearing online (via MS Teams) it was noted that Ms. Heavey had made a request in writing to have the Hearing in person. The Board decided to accommodate this request and, thus, the protocol of requesting submissions to be sent into ABP before the (remote) hearing no longer applied.

7.7.17. Ms. Heavey still expressed dissatisfaction with this and maintained she was being treated unfairly. It was conveyed to Ms. Heavey the Hearing would continue, but that her concerns would be put on record and if the Board considered it to be necessary, the Oral Hearing could be reconvened at a future date.

7.7.18. During the OH itself, I note that the information submitted by FCC was presented to all parties in attendance and that this was done in manner that was comprehensive and meticulous. On occasion, the Council exceeded the time allotted to them on the agenda to present certain parts of a submission. However, I consider this was in the interest of thoroughness and to allow the Inspector, and other parties, to gain a full and clear understanding of the material being spoken to.

7.7.19. I note the parties had the opportunity to ask questions near the end of the Hearing and that Ms Heavey selected to do this by posing several queries to Fingal County Council. Ms. Heavey and Mr. Morton also contributed with closing statements.

7.7.20. Therefore, in summary, I am satisfied that the material on file was presented thoroughly and comprehensively, and that no party was disadvantaged or disadvantaged by the manner in which the Oral Hearing was held.

Planning History

7.7.21. I also note that there was much discussion during the Hearing in relation to future intentions Ms. Heavey has in terms of potentially redeveloping the site which is the focus of this CPO. Both parties referred to an application made in 2005 for outline permission which comprised the proposed demolition of existing offices and an outbuilding and the construction of five storey commercial development (ABP Ref. PL06F.212263, Reg. Ref. F05A/0244 refers). I note that both the Planning Authority and the Board, on appeal, refused permission for generally the same reasons, including overdevelopment of the site; interference with the setting, views, and prospects of a historic monument (Swords Castle); and provision of inadequate car parking spaces, loading areas and vehicular turning space on the site.

7.7.22. The Council, through Mr. Bradley, confirmed that subsequent to the refusal decision, there would have been an opportunity for Ms. Heavey to engage with the Planning Authority in pre-planning discussions or to lodge a fresh planning application, but that neither option was taken by Ms. Heavey.

7.7.23. Ms. Heavey inferred that she has still intentions to develop the property but that a form of collaborative project between herself and the Planning Authority was, and still is, not possible. The option of her making a planning application alone is also not feasible, she said, not least because of the expensive outlay required for such a project and because of the treatment she has received from the Council to date. Ms. Heavey indicated she does not believe the Planning Authority would fairly assess any proposal prepared by her and that it would be again refused permission for spurious reasons and, therefore, an inefficient use of financial resources.

Proposed Landscaping Works

7.7.24. I note that the agent representing the objector, Mr. Morton, raised concerns with the landscape strategy, stating, that the additional planting of trees on North Street would impede views of the Castle which, it was asserted, is part of the rationale behind the CPO. Mr. Morton made specific reference to CGI images to support this argument. In taking on board this comment, I have reviewed the landscape proposal and do not consider the planting of new trees a 'like-for-like comparison' with that of the existing onsite structures. I consider the new trees would present as a soft landscaping feature which would help to enhance the proposed civic space and relates public realm works.

7.7.25. I am of the view that the proposal to plant trees, partly due to their species variety and location within the public domain, has been prepared carefully and considered the specific site conditions, visual amenity, aspect and physical suitability of the area and setting of the Castle Walls. This is borne out in the Proposed Landscape Plan (Part 8 Drawing no. SCQ- ZZ-L00-DR-DFLA-LA-02001 refers). The proposed trees would also not inhibit any public events, festival or other recreational occasions from taking place, which is the part intention of the SCQ project brief.

Other Issues

- 7.7.26. Ms. Heavey states that due process has not been observed and that the CPO process administered by the Council infringes on various legal principles. She raises several concerns and accusations of alleged trespass, oppressive behaviour and tortuous conduct carried out by the Council in their dealings with her.
- 7.7.27. These concerns span across several matters, including Council allocation of car parking spaces, setting of property rates, failure to secure and police the old castle walls, gardens, and parklands over many years, and other behaviour described by Ms. Heavey as dishonest, incompetent, and unfair, all of which has been designed to exert pressure and force through a sale of the property to the Local Authority against her will.
- 7.7.28. I do not consider that any of these accusations have been supported by evidence or any substantiating material but that, in any case, such matters lie outside the remit of the Board in terms of assessing this application. I understand that Ms. Heavey may contest that viewpoint, but from the evidence made available at the OH, and which is on file, I do not believe there is sufficient reason to believe Ms Heavey has been victimised or treated unfairly or differently from other individuals; and I do not propose to address such contentions as part of my report. The relevant considerations in relation to this proposed acquisition of land are those which are confined to the CPO process only, and this does not extend beyond into other unrelated matters.
- 7.7.29. In summary, it is my view that the Council has acted properly, in good faith, and that their motivation is such that they believe CPO is justified and necessitated by the exigencies of the common good.

8.0 Recommendation

- 8.1. 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,
 - the proposal does not materially contravene the development plan, and

- alternatives have been considered, and that there is no alternative which is demonstrably preferable,
- the proposed acquisition is proportionate and necessary.

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

9.0 Reasons and Considerations

9.1. Having considered the objections made to the compulsory purchase order, the written submissions and observations made at the Oral Hearing held on the 2nd April 2024, the report of the Inspector (who also conducted the Oral Hearing), the purposes for which the lands are to be acquired as set out in the compulsory purchase order, 'Fingal County Council Compulsory Purchase Order (17 & 17A North Street, Swords, Co. Dublin), 2022', and also having regard to the following:

- i. the constitutional and European Human Rights Convention protection afforded to property rights,
- ii. the approval of a proposed development forming part of the Swords Cultural Quarter (SCQ) project under the Part 8 Process (Reg. Ref. PARTXI/002/22),
- iii. the community need, public interest served and overall benefits to be achieved through the delivery of the Swords Cultural Quarter Project,
- iv. the policies and objectives of the Fingal Development Plan 2023-2029, which are not materially contravened, and
- v. the submissions and observations made at the Oral Hearing, and
- vi. the report and recommendation of the Inspector,

it is considered that the permanent acquisition of the lands in question, as set out in the Order, Schedule, and deposited map by Fingal County Council, is necessary for the stated purpose, which is a legitimate objective being pursued in the public interest, and that the CPO and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

[I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.]

Ian Boyle
Senior Planning Inspector

8th May 2024

Appendix A: Proceedings of the Oral Hearing

[Note: The following is a brief summation of the proceedings of the Oral Hearing and the persons in attendance. It is not intended to be a comprehensive overview of the proceedings and should be conjunction with the main body of the report above.]

Background

An Oral Hearing (OH) was held on Tuesday, 2nd April 2024 in relation to the proposed compulsory acquisition sought by Fingal County Council (FCC) for 17 & 17A North Street, Co. Dublin. The Hearing was held in person at the offices of An Bord Pleanála. The persons listed below were in attendance and made submissions / witness statements at the Oral Hearing.

1. Submissions on behalf of Fingal County Council (FCC)

- Eamonn Galligan (Senior Counsel and Member of the Inner Bar of Ireland), representing Fingal County Council – *opening remarks, legal context and overview of the proposed CPO.*
- John Quinlivan (Director of Services, Economic Enterprise, Tourism and Cultural Development, FCC) – *further background to the SCQP with reference to funding secured through the ERDF and an overview of previous attempts to acquire the land (leading to the making of the CPO).*
- Malachy Bradley (Senior Planner, FCC) – *planning context and CPO's compliance with the relevant planning policy, including the Fingal Development Plan 2023-2029.*
- Fionnuala May (County Architect, FCC) – *background to the CPO and Swords Cultural Quarter Project (SCQP), design evolution and rationale for the SCQP, landscape and public realm design, and general compliance with the relevant CPO test criteria.*

2. Submissions by the Objector

- Angela Heavey (Barrister at Law and Landowner)
- Joe Morton (Morton & Flanagan Auctioneers) (agent acting on behalf of Ms. Heavey)

3. Opening of Oral Hearing

- The Inspector formally opened the hearing at 10.02am.
- Following some introductory remarks, and confirmation of attending parties, it was requested that the Local Authority make its formal submission.

4. Submissions by Fingal County Council

Eamonn Galligan

- Mr Galligan, BCL acting on behalf of the Fingal County Council (FCC) opened the Council's submission by confirming who was present and would give evidence on behalf of the Local Authority.
- Mr Galligan proceeded to set the context for the CPO stating that it is necessary to acquire the subject properties, 17 and 17A North Street, Swords, Co. Dublin, for the purposes set out in the formal application documentation.

This includes:

- protecting, conserving and enhancing the historic site and views of Swords Castle (a national monument), and its environs,
 - the development of Swords Castle as a major amenity, tourist attraction and cultural hub for Swords,
 - the development of Swords Castle as a central feature of an enhanced and improved public realm and urban space for Swords Town Centre, improving connectivity and accessibility between and around Swords Castle, Swords Town Centre and Swords Town Park, and
 - the development of the Swords Cultural Centre, including a new County Library, Theatre, Arts Centre, civic spaces, and public realm improvements within the Swords Cultural Quarter.
- Mr. Galligan explained who would make submissions / present witness statements on behalf of FCC, and that this would include Malachy Bradley (Senior Planner), Fionnuala May (County Architect) and John Quinlivan (Director of Services). Other personnel, on behalf of the Council, would also

be available to answer particular questions, including Pat Boyle (Senior Architect).

John Quinlivan

- Mr. Quinlivan opened his submission by confirming he has been delegated the responsibility to develop the Swords Cultural Quarter, including administration of property acquisition and compulsory purchase functions of FCC.
- Mr. Quinlivan confirmed that over the last two years he has overseen the development process for the SCQP, including attempts to assemble the site by agreement, the design, planning and procurement process, and project management of the site works. He noted this includes refurbishment of the Carnegie Library on North Street, which was recently opened by Minister for Housing, Local Government and Heritage, Darragh O'Brien, and ongoing preservation works at Swords Castle.
- Mr. Quinlivan provided background information on the development of the Swords Castle Project. This includes FCC acquiring Swords Castle in 1985 by CPO and since that time the Council has progressed with a series of further land acquisitions backing onto the Castle Walls with the purpose of demolishing the properties to reveal the walls.
- Mr. Quinlivan confirmed that in addition to the Castle, there have been 8 further acquisitions (during the period 2000 - 2018). Of these, 7 have been resolved by agreement and 1 compulsorily. The buildings have been demolished with a view to revealing the Castle Walls, thereby achieving the CDP Objective of 'enhancing the historic site of Swords Castle and its environs and the improvement of public and civic facilities and spaces of Swords Town Centre through the delivery of the Swords Cultural Quarter' (Objective HCAO58).
- Mr. Quinlivan confirmed FCC has been successful in applying for funding from the ERDF to assist in the delivery of the Swords public realm strategy, various upgrade works to the Castle, and redevelopment of buildings on North Street which partially block access around the Castle grounds.

- Mr. Quinlivan confirmed that after it become evident the Council would not be able to acquire the site by agreement it would be necessary to consider the compulsory acquisition of the site.

[A copy of the submission made by Mr. Quinlivan was circulated to the parties attending the Hearing. This is available on file for the Board to review, as appropriate.]

Malachy Bradley

- Mr Bradley further briefly outlined the CPO scheme and how the subject lands form part of a larger landbank relating to a permitted Part 8 development under Reg. Ref. PARTXI/002/22.
- He confirmed how the scheme is compliant with national, regional and local planning policy, including the Fingal Development Plan 2023-2029 with specific reference to particular planning policies and objectives.
- Mr. Bradley provided a brief overview of the earlier (annulled) CPO application made in 2003 for the site and why, in his opinion, the context with regard to planning policy and objectives had developed considerably. He stated that there is now significant statutory policies and objectives to support the acquisition of the subject property and the basis of the previous CPO decision has been superseded.
- Mr. Bradley stated that outline permission had been refused on the site for the construction of a commercial development over five floors. He stated the planning application had been refused by Fingal County Council, and subsequently by An Bord Pleanála on appeal, on grounds of overdevelopment of the site, impact upon the setting of a national monument and inadequate car parking provision. Mr Bradley confirmed that he considered that the substance of these refusal reasons remained valid.
- Mr. Bradley concluded that it was his opinion that the proposed compulsory acquisition of the site would be in accordance with the proper planning and sustainable development of the area, including national and regional planning policies and objectives.

[A copy of the submission made by Mr. Bradley was circulated to the parties attending the Hearing. This is available on file for the Board to review, as appropriate.]

Fionnuala May

- Ms. May confirmed as part of her oral submission that she has been involved with the Swords Cultural Quarter Project since its inception in 2014. In her role as County Architect, she has provided ongoing architectural and conservation services and advice to FCC and its CEO.
- Ms. May proceeded to set out the architectural and design context underpinning the Council position and a rationale for development proposal associated with the SCQP. This included the proposed demolition of 17 and 17A North Street, justification for the formal acquisition of the entire property (having regard to community need), and how the consideration of alternatives has been addressed as part of the overall CPO application process.
- Ms. May stated that the Part 8 approval demonstrates that a significant cultural centre for the community can be developed with unfettered views towards Swords Castle (national monument) from along the street.
- She also stated that the site is unique within the cultural quarter area in that no other site can offer the full unveiling of the eastern curtain wall to North Street and that significant community benefit could be derived from this in terms of an enhanced public realm, civic space and improved linkages that could accrued as a result.
- Ms. May concluded that it is on this basis FCC can justify the acquisition of the full property.

[A copy of the submission made by Ms. May was circulated to the parties attending the Hearing. This is available on file for the Board to review, as appropriate.]

- While some smaller matters were clarified during this stage of the OH, no new or significant matters arose.
- The Inspector called for a brief recess in proceedings.

5. Submissions by the Objector, elaborating on written submissions

- The Inspector recommenced the OH by calling for the Objector to present their submission(s).
- The objector, Ms Heavey, and her representative Joe Morton (of Morton & Flanagan Auctioneers) made submissions to the CPO. Concerns are summarised in Section 6 of this report and assessed in further detail under Sections 7 and 8.
- I note that the issues raised by the Objector are covered within the main body of my report above. No significant new issues outside of the written submissions made to the Board were identified by the submitters during this part of the OH.
- The written submissions are on file and available for the Board. However, the objecting party took the opportunity to expand upon written submissions during the proceedings and, in some cases, posed questions to the Local Authority to clarify certain matters, and supported arguments previously made by reference to letters, photographs, and other visual aids.
- A recurring matter raised was in relation to accusations of alleged trespass, oppressive behaviour and tortuous conduct by the Council. As noted in Section 7.7.24 to 7.7.27 above, I do not consider such matters relevant for the purposes of the Board assessing this CPO application.

7. Questioning between Parties

- The objecting party was afforded the opportunity to question Fingal County Council and its representatives.
- Several items were discussed and expanded by the parties upon during this part of the agenda. However, no new significant matters arose. Relevant points of interest are referred to in the assessment section of this report above (Section 8).

7. Closing Comments

The following parties made closing statements, and these are summarised as follows:

Angela Heavey

- Ms. Heavey referred the Board to the entirety of her evidence stating that the Council is not fair, competent or honest, and that most of their conduct has been unlawful.
- The burden of proof has not been satisfied and the trespass on the property is an abuse of power and contrary to equity law.
- The Board is requested to annul the CPO and to direct Fingal County Council to cease in their attempts to acquire the property compulsorily.
- The CPO test is not whether it is necessary, but whether it is absolutely essential.

Joe Morton

- Mr. Morton confirmed he would like to echo his opening comments in that Board has already adjudicated on the proposed acquisition of Nos. 17 and 17A North Street and that their continued attempts to do so are GUBU ('grotesque, unbelievable, bizarre and unprecedented').
- It has been proved during the Oral Hearing that the views of the Castle will instead be obstructed by the proposed planting of trees.

Eamonn Galligan (on behalf of FCC)

- Ms. Heavey clearly has a particular perspective on Fingal County Council which is unjustified and her remarks in relation to trespass, oppression or tortious behaviour are rejected.
- Ms. Heavy's accusations went too far when she spoke about the Council selling on the property for the purpose of an expanded courthouse or to other wealthy individuals.
- Notwithstanding this, the Board must focus on the 'real issues' that are relevant to this CPO. This includes whether the Board has the statutory

jurisdiction to make the CPO Order and whether this has been correctly applied by FCC.

- It is not necessary for the property to be put to a profitable use. Many uses that are in the interest of the community and common good are not profitable.
- The alternatives have been considered and no alternative is demonstrably preferable. In this regard, the acquisition of the Pound Pub has not been ruled out by FCC as a potential future option. However, this is not referenced as a specific purpose of the CPO.
- All of the lands included in the CPO documentation are required to achieve the stated aims and objectives of the CPO.
- The contention raised by Ms Heavey that the CPO is res judicata is unfounded as the two CPO's (i.e., the earlier version vs. the present one) can be clearly distinguished.
- The Board has full jurisdiction to make the CPO.

8. Closing

The Inspector closed the Oral Hearing at 17:23.