



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315229-22

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<b>Development</b>	Compulsory Purchase Order No.5 of 2022
<b>Location</b>	No.8 Laurence Avenue, Maynooth, Co. Kildare, W23 H5H9
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	
<b>Applicant(s)</b>	Kildare County Council.
<b>Type of Application</b>	Compulsory Purchase Order under Section 216 of the Planning and Development Act, 2000, as amended.
<b>Objector:</b>	Brigitte Dervyck
<b>Date of Site Inspection</b>	14 <sup>th</sup> June 2023
<b>Date of Oral Hearing</b>	31 <sup>st</sup> January 2024.
<b>Inspector</b>	Lucy Roche

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## 1.0 Introduction

### 1.1. Overview

- 1.1.1. This is an application by Kildare County Council (KCC) for confirmation by the Board of a CPO entitled Compulsory Purchase Order No. 5 of 2022 of No. 8 Laurence Avenue, Maynooth, County Kildare.
- 1.1.2. The CPO relates to the compulsory purchase of a house and site at No. 8 Laurence Avenue, Maynooth, County Kildare (W23 H5H9). The order was made pursuant to the powers conferred on the local authority by section 76 and the third schedule of the Housing Act 1966, as extended by section 11 of the Local Government (No. 2) Act 1960, as amended by the Planning and Development Act 2000-2014
- 1.1.3. The Board received a single objection to the CPO from the landowner, Brigitte Dervyek. An Oral Hearing was held on the 31<sup>st</sup> of January 2024. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property.

### 1.2. Purpose of CPO:

- 1.2.1. The stated purpose of the CPO is to acquire compulsorily a residential property (No. 8 Laurence Avenue, Maynooth, County Kildare (W23 H5H9)) for the provision of a social housing unit.
- 1.2.2. The subject property is described in the schedule to the CPO as land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense. In other words, according to the CPO, the house is in reasonable condition and generally fit for human habitation.

### 1.3. Accompanying Documents

- 1.4. The application was accompanied by the following documentation:

- The Compulsory Purchase Order, Sealed, and signed by the Chief Executive and Cathaoirleach and dated 18th of November 2022.
- The Chief Executive Order (CE42609) for the Compulsory Purchase Order, signed by the Chief Executive dated 10th October 2022.
- Three copies of a No.22-100 Co. Kildare Deposited Map 2022, comprising of a single sheet indicating the lands to be acquired for permanent acquisition.
- Public notices published in the Leinster Leader and dated the 22<sup>nd</sup> November 2022.
- A photograph which demonstrates that the site notice was erected on site.
- Evidence of service of Notice of CPO on interested parties – Brigette Dervyck; EBS DAC and Mars Capital Finance Ireland DAC.
- Certificate dated 15<sup>th</sup> July 2022 signed by Amy Granville A/Director of Services, Planning and Strategic Development Unit which confirms that the acquisition is in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023.

## 2.0 Site Location and Description

- 2.1. Laurence Avenue is a residential cul-de-sac comprising a single row of two storey dwellings in a mix of mainly terrace and semi-detached formats. All houses face onto an amenity strip and the R405 (Celbridge Road) beyond. Laurence Avenue is situated c1km south of Maynooth Town Centre and is proximate to the Greenfield Shopping Centre.
- 2.2. No.8 comprises a 3-bedroom, end-of-terrace, two-storey house with front and rear gardens. Access into the house was not possible on the day of the site visit. The house appeared to be in a reasonable condition but was clearly vacant and falling into a state of disrepair. The front garden area was overgrown / unkempt.

## 3.0 Planning History

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

## 4.0 Policy Context

### 4.1. Kildare County Development Plan

- 4.1.1. While the Kildare County Development Plan 2017-2023 was in force at the time this CPO was lodged, the 2023-2029 county development plan has been adopted in the interim and is now the operative plan for the area.
- 4.1.2. Maynooth, together with the town of Naas, is designated as a “Key Town” at the top of the settlement hierarchy. Key Towns are defined as large economically active service and/or county towns that provide employment for their surrounding areas and with high-quality transport links and the capacity to act as growth drivers to complement the Regional Growth Centres.
- 4.1.3. In relation to the *Housing Strategy*, it is a policy of the Council (**HO P3**) to implement, in conjunction with the Housing Section, the Housing Strategy and Housing Need Demand Assessment (HNDA) to meet the projected population, changing household size and housing needs, including social and affordable housing requirements for County Kildare over the lifetime of the County Development Plan.
- 4.1.4. In relation to *‘Regeneration, Compact Growth and Densification’* it is an objective of the Council (HO O12) to support and promote the renovation and re-use of obsolete, vacant and derelict homes, through the following measures:
- (i) Encourage the redevelopment and reuse, including energy retrofitting, of the existing housing stock.
  - (ii) Support Government programmes and incentives to bring empty homes into use through various means, including potential expansion of the Town and Village Renewal Scheme as referred to in the Government’s Rural Development Policy 2021-2025.
  - (iii) Maximise the effective use of local authority housing stock and minimise local authority housing stock vacancy, including through effective refurbishment and retrofitting of older stock where appropriate.

- (iv) Promote the conversion of vacant properties into new social and affordable homes through schemes including the Repair and Leasing Scheme and the Buy and Renew Scheme. Kildare County Council will endeavour to promote these schemes and encourage owners of vacant properties to avail of these schemes, directly or in cooperation with Approved Housing Bodies.

4.1.5. In relation to 'Social, Affordable Purchase and Cost Rental Housing', it is an objective of the Council (HO O39) to meet the county's housing need for social housing provision through a range of mechanisms, including Part V of the Planning and Development Act 2000 (as amended), a social housing building programme, **acquisition**, Repair and Lease Scheme, the Housing Assistance Payment (HAP) scheme, the Rental Accommodation Scheme (RAS) and the utilisation of existing housing stock.

#### 4.2. **Maynooth Local Area Plan 2013-2019**

The Maynooth LAP 2013-2019 has expired, and as such, the land use zoning assigned to the appeal site under this plan (B Existing Residential & Infill), no longer applies. At the time of writing this report, the draft Maynooth LAP 2024-2030 has not been prepared.

#### 4.3. **Housing for All a new Housing Plan for Ireland, 2021**

The Housing for All Plan, published by the Irish Government on 2nd September 2021, replaces the 'Rebuilding Ireland Strategy' launched in 2016. The overall aim of the plan is that: *Everyone in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life.* The plan sets a goal of 33,000 new homes per annum until 2030

The Plan provides four pathways to achieving four overarching objectives:

- Supporting home ownership and increasing affordability.
- Eradicating homelessness, increasing social housing delivery and supporting social inclusion.
- Increasing new housing supply; and
- Addressing vacancy and efficient use of existing stock.

Each of the pathways contains a comprehensive suite of actions to achieve these Objectives. Pathway 4, *Pathway to addressing Vacancy and Efficient Use of Existing Stock*, seeks to ensure through a range of incentives and other measures that existing housing stock is utilised to the fullest extent possible. The key measures to be introduced to achieve this objective include:

- ***The implementation of a CPO Programme for vacant properties***, the objective of which will see Local Authorities acquire at least 2,500 vacant units by 2026 and present them to the market for sale.
- The incorporation of activation of vacant properties as key criteria in the Urban Regeneration and Development Fund (URDF) and the Rural Regeneration and Development Fund (RRDF).
- Potential introduction of a vacant property tax, the merits of which will be assessed on receipt of the data from the Local Property Tax returns in November 2021.
- The enhancement of the Repair and Leasing Scheme which targets owners of vacant properties who cannot afford or who do not have access to the funding required to bring the properties up the standard of a rental property.

## 5.0 **Objection to the CPO**

### 5.1. **Context**

- 5.1.1. The objector is, Ms. Brigitte Durvyek, and she is represented by McAlister O'Connor Solicitors.

### 5.2. **Objection**

- 5.2.1. An objection to the CPO was received on behalf of Brigitte Dervyek dated 5<sup>th</sup> December 2022. As this objection did not include grounds, a letter was issued (7<sup>th</sup> December 2022) to request grounds, and these were received on the 12<sup>th</sup> of December 2022.
- 5.2.2. The documentation received on the 12<sup>th</sup> of December 2022, included a copy of a letter of the 1<sup>st</sup> of December 2022 addressed to Kildare County Council which sets

out Ms. Dervyék's objection to the CPO and the title page of instant legal proceedings Record No. EQ001/20154. In accordance with the details submitted Ms. Dervyék was the victim of serious criminal fraud in relation to the subject property and consequently, she has been denied possession of the property.

5.2.3. Further correspondence was received on the 20<sup>th</sup> of December which included a copy of a letter of Patrick J. Farrell, solicitors for EBS addressed to McAllister O'Connor Solicitors and dated 10<sup>th</sup> June 2004 setting out the discovery of possible criminal fraud

5.2.4. Further to this, correspondence was received on behalf of Ms. Durvyék (4<sup>th</sup> January 2023), outlining criminal fraud in relation to this case and requesting that the Board take no further action. The Board sought legal advice and subsequently issued a letter to the solicitors of Ms. Brigitte Durvyék stating that the Board will continue to consider this case unless otherwise directed by the Courts.

## **6.0 Response from Kildare County Council**

6.1. No additional comments made at this stage.

## **7.0 Assessment**

### **7.1. Overview**

For the Board to confirm the subject CPO it must be satisfied that Kildare County Council has demonstrated that the compulsory acquisition of No. 8 Laurence Avenue is clearly justified by the "common good" and that its effects on the property rights of affected landowners are proportionate to the project objective. Case law has determined that in order to satisfy the above, the following minimum criteria are required to be satisfied.

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



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

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

## 7.2. Community Need

7.2.1. National policy on housing provision is, in part, set out in *Housing for All, a new Housing Plan for Ireland*, adopted by the Government in 2021. The overall aim of the plan is that every citizen in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life. The plan, recognising the gap between housing supply and demand, estimates that Ireland will need an average of 33,000 new homes per annum until 2030. The Plan provides four pathways to achieving housing for all:

- Supporting home ownership and increasing affordability.
- Eradicating homelessness, increasing social housing delivery and supporting social inclusion.
- Increasing new housing supply; and
- Addressing vacancy and efficient use of existing stock.

7.2.2. The pathways contain actions to be taken by government departments, local authorities, State agencies and others. Pathway 4, *Pathway to addressing Vacancy and Efficient Use of Existing Stock*, seeks to ensure through a range of incentives and other measures that existing housing stock is utilised to the fullest extent possible. One of the key measures introduced to achieve this objective is the implementation of a nationwide, Local Authority led, Compulsory Purchase Order scheme to purchase vacant properties. The plan sets a target for Local Authorities to acquire at least 2,500 vacant units by 2026.

- 7.2.3. The Local Authority's submission at the oral hearing was that there are currently 7,000 households in County Kildare who qualify for social housing supports with 1,174 of these households listing Maynooth as their preferred area of choice. The Local Authority also raised the current housing shortage in Maynooth, noting that as per the 3<sup>rd</sup> of January 2024 there were only 11 properties for sale and 1 property for rent in the settlement. The return to productive use of No'8 Laurence Avenue Maynooth, Co. Kildare would meet the housing need for a household that would otherwise not be realised.
- 7.2.4. Having regard to the demand for housing across the country, to the demand for Social Housing Supports in the administrative area of Kildare County Council, to the public policy responses to the shortage of houses, to the nature of the house the subject of this CPO as a house with front and rear gardens in a residential area close to public services and facilities I conclude that there is an established community need which the purchase of the house would help to meet.

### **7.3. Suitability of the Property to Meet the Community Need**

- 7.3.1. The second criterion for considering the CPO is the suitability of the property to meet the identified community need.
- 7.3.2. The property of concern, No. 8 Laurence Avenue, comprises a three-bedroom, semi-detached two-storey house, in a mature residential estate and within walking distance of local shops and services.
- 7.3.3. There are no special designations affecting the site and there are no apparent development constraints. In terms of built heritage, there are no Protected Structures, National Monuments or ACAs in the vicinity, and no sites / zones of archaeological interest.
- 7.3.4. The property is currently vacant and appears to have been vacant for some time - Kildare County Council confirmed during question that the last known occupant of the property (the Objectors Mother), was rehoused by the Council in 2014. The Local Authority also confirmed during questioning at the Oral Hearing that they have been

unable to access the property to determine its condition and the nature / extent of works that would be required to return the property to current rental standards for social housing. While they do anticipate that works will be required, due the length of time the property has been empty, they are satisfied that funding is available, through the Buy and Renew scheme etc, to cover refurbishment costs.

- 7.3.5. I am satisfied based on the information provided and my own inspection of the property (undertaken in July 2023) that if the subject property were to be acquired by the Local Authority, it could be restored to a habitable condition relatively easily in my view. It would then form part of the Council's social housing stock and serve a household that currently needs accommodation. Accordingly, I am satisfied that the property, subject to refurbishment, is suitable to meet a housing need identified by the local authority.

#### **7.4. Compliance with Development Plan Policy**

- 7.4.1. I refer the Board to Section 4 above, which outlines the planning policy context for the subject property. At the time of preparation, Kildare County Council was satisfied that the acquisition of No. 8 Laurence Avenue through CPO was in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The Board will note that the Kildare County Development Plan 2017-2023 has since been superseded by the Kildare County Development Plan 2023-2029 (KCDP 2023-2029) which came into effect on the 28<sup>th</sup> of January 2023, and which is now the operative plan for the area.
- 7.4.2. The KCDP 2023-2029 at chapter 4 sets out policy in relation to housing. The plan has regard to Kildare County Council's Housing Need & Demand Assessment (HNDA) and Housing Strategy which address issues associated with housing in the county, including housing need. KCDP Policy HO P3 is relevant in this regard. The HNDA finds that for the period 2023 to 2031, c. 30.2% of new households formed will need social housing support while a further 10.6% will fall within the bracket of 'affordability constraint' and therefore will require affordable housing.
- 7.4.3. The Housing Strategy found that social and affordable housing provided under Part V during the strategy period of 2023-2031 will only address social housing needs

that will arise during the strategy period of 2023 to 2030 and will not address the considerable demand for such housing that has built up to date. Therefore, the plan recognises 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 and affordable housing possible and to ensure a regionally equitable balance of housing delivery.

- 7.4.4. On the issue of *Regeneration, Compact Growth and Densification*, the plan recognises the existing housing stock of County Kildare as being a valuable resource in terms of meeting the needs of a growing population. It is an objective of the Council (Objective HO 012) to support and promote the renovation and re-use of obsolete, vacant, and derelict homes, through various measures.
- 7.4.5. In relation to *Social, Affordable Purchase and Cost Rental Housing*, the plan recognises the demand for social housing in the state and in County Kildare and includes an objective (HO O39) to meet this demand through a range of mechanisms, including acquisition.
- 7.4.6. The subject site was zoned 'B - Existing Residential' under the Maynooth Local Area Plan 2013-2019 with an objective to protect and improve existing residential amenity; to provide for appropriate infill residential development and to provide for new and improved ancillary services. The Maynooth Local Area Plan 2013-2019 has expired, and as such, the residential land use zoning assigned to the appeal site under this plan, no longer applies. The Maynooth Local Area Plan 2024-2030 is currently under review however its status is unknown. When questioned on the issue of zoning during the Oral Hearing, Kildare County Council noted the location of the property within an established residential area and stated their contention that the residential zoning for the area was unlikely to change. I would agree that this is likely to be the case.
- 7.4.7. Having regard to the above, it is my opinion the purchase of the subject property by the local authority, its restoration and return to use as a housing unit would accord with the policies and objectives set out in the Kildare County Development Plan, 2023-2029.

## 7.5. Consideration of alternatives

7.5.1. On the issue of alternatives, the Local Authority noted at the Oral Hearing that there are various schemes available to support and promote the renovation and re-use of vacant properties, including Vacant Property Refurbishment Grant and the Repair and Lease Scheme. With regard to No.8 Laurence Avenue, the subject of this CPO, KCC noted that the property has been vacant for some time and has been deteriorating year after year. The property is located within a mature estate in Maynooth, and neighbours have been in contact with the Council regarding the state of the property. In response to the legal issues pertaining to the property, Kildare County Council, noted that the case has been ongoing for some (20+ years) with no sign of resolution in place. As it stands the objector is not in possession of the property and cannot do anything with the property. The decision was made to CPO the property to address the vacancy and to meet the housing need in the area.

7.5.1.1. It is clear to me that there is an urgent need for social housing across the State and that Kildare County Council are under pressure to meet the demand for social housing within their functional area. Kildare County Council in their closing statement at the OH referred to the methods used by the Council to address this demand, mainly the construction of houses on council land, the purchase of houses from the private market and other housing schemes. However, they state that these methods are not sufficient to address the current housing crisis and as a result it is policy to acquire, by CPO (if necessary), vacant properties and to bring them back into use.

7.5.2. Kildare County Council contend that the acquisition of the property would be in keeping with the development plan, the policies of the local authority and central government and represents a proportionate response to the current housing crisis.

7.5.3. Having regard demand for housing / social housing in Kildare and in Maynooth, the efforts made by the local authority to meet this demand, the legal issues pertaining to this property, the lack of a timeline for the resolution of these issues and the long period that the property has remained vacant (although subject to dispute I'm satisfied that the house was unoccupied for several years), I am satisfied that there

are no demonstrably preferable alternatives available to return this property to habitable use.

## **7.6. Issues Raised by Objector**

- 7.6.1. The objectors case centres around allegations of criminal fraud and ongoing legal issues associated with the property for acquisition, No.8 Laurence Avenue. The objector in this case is Ms. Brigitte Durvyek. In accordance with the Land Registry documentation provided by the Objector, Ms. Durvyek was registered as the full owner of the property in February 1998.
- 7.6.2. Ms. Durvyek was represented at the Oral Hearing by Declan O'Connor – Solicitor. In his submission, O'Connor set out the background to the legal proceedings which led to EBS obtaining a Possession Order against the property in the Circuit Court (c2013) and the objector, Ms. Brigitte Durvyek being physically excluded from the property. Proceedings are still ongoing.
- 7.6.3. It is contention of Mr O'Connor, as expressed during in the hearing, that Kildare County Council, should as a matter of law and public policy respect the court process and defer to the court process. It is argued that the CPO should be deferred until the case is decided by the courts and a decision made on the property (CPO or otherwise) at that time. Mr O'Connor in his submission refers to a recent high court judgement where exemplary damages were awarded in circumstance where receivership continued despite strong evidence of forged signature on mortgage documents. It is noted that when questioned at the Oral Hearing, Mr. O'Connor, was unable to confirm Ms. Durvyek intentions for the property (in the event that she regains possession).
- 7.6.4. Kildare County Council in response to the submission and questioning of Mr O'Connor at the hearing, acknowledge the situation and are sympathetic; however, the property has been tied up in litigation for over 20 years with no sign of resolution, the property has been vacant for 9 or more years and is falling into a state of disrepair at a time of housing shortage. KCC are satisfied that they can claim title of the property, though the lodgement of a vesting Order with the Land Registry. On the issue of compensation, they note that money can be lodged with the courts until the

ongoing legal issues are dealt at which time compensation can then be paid out to the entitled party. They are satisfied that the acquisition of the property is in keeping with the policies of the local authority and central government and represents a proportionate response to the current housing crisis.

- 7.6.5. Whilst I acknowledge the legal issues surrounding the property, these have been ongoing for some time with no sign of resolution. The acquisition of this property would facilitate its return to productive use at a time when there is an identified need for housing. Therefore, in my opinion the acquisition of No.8 Laurence Avenue, Maynooth, Co. Kildare for the purpose of social housing is justified in the public interest.

## **8.0 Conclusions and Recommendation**

### **8.1. Conclusions:**

- 8.1.1. I am satisfied that the process and procedures undertaken by Kildare County Council have been fair and reasonable, that Kildare County Council has demonstrated the need for the lands, and that all the lands being acquired are both necessary and suitable to facilitate the provision of social housing.
- 8.1.2. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of No.8 Laurence Avenue, Maynooth, Co. Kildare as set out in the compulsory purchase order and on the deposited maps, pursues, and is rationally connected to, a legitimate objective in the public interest, namely, the provision of social housing.
- 8.1.3. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible; in this respect, I have considered alternative means of achieving the objective referred to in submissions to the Board, and am satisfied that the acquiring authority has established that none of the alternatives are such as to

render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.

8.1.4. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of No.8 Laurence Avenue, Maynooth, Co. Kildare would be consistent with the policies and objectives of Kildare County Development Plan 2023-2029. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.

## 8.2. Recommendation

8.2.1. 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 to the Oral Hearing held on 31<sup>st</sup> January 2024*, the report of the Inspector who conducted the oral hearing into the objections, the purpose of the compulsory purchase order to provide for social housing, and also having regard to

- (i) Housing for All - a New Housing Plan for Ireland (Department for Housing, Local Government and Heritage, September 2021),
- (ii) The provisions of the Kildare County Development Plan 2023-2029
- (iii) The identified need for housing nationally and in County Kildare.
- (iv) The purpose of the compulsory acquisition *No.8 Laurence Avenue, Maynooth, Co. Kildare, to bring a vacant unit back into productive use for the purpose of social housing.*
- (v) the suitability of the lands for use as social housing.
- (vi) the constitutional and Convention protection afforded to property rights,



it is considered that the *acquisition of No.8 Laurence Avenue, Maynooth, Co. Kildare*, by the Kildare County Council, as set out in the compulsory purchase order and on the deposited maps, is necessary for the purpose stated, 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.*

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Lucy Roche  
Planning Inspector,  
12<sup>th</sup> February 2024

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

### **1. Background**

An Oral Hearing (OH) was held on 31<sup>st</sup> January 2024 in relation to the proposed compulsory acquisition of No.8 Laurence Avenue, Maynooth, Co. Kildare (W23 H5H9). It was held remotely at the offices of An Bord Pleanála using Microsoft Teams Software. An agenda was posted out to relevant parties on the 21<sup>st</sup> of December 2023 and a copy of this is available on file.

### **2. Attendance**

The following were in attendance and/or made submissions at the Oral Hearing.

#### On behalf of Kildare County Council (KCC)

Submissions made by:

- Matt Malone – Solicitor, representing Kildare County Council
- Eileen McGrath – A/Administrative Officer – Kildare County Council

Also in attendance:

- Fiona Byrne – Administrative Officer – Kildare County Council

#### Submissions on behalf of the Objector:

- Declan O'Connor - Solicitor

### **3. Opening of Oral Hearing:**

- The Inspector formally opened the hearing at 10.11am.
- Following some introductory remarks, it was requested that the Local Authority make its formal submission.

### **4. Submission by Kildare County Council**

- Mr Malone, Solicitor representing KCC, started by setting out in the legal and legislative basis for the CPO. He then called on Ms. Eileen McGrath (KCC) to outline the justification as to why the property is being acquired.
- Ms. McGrath referred to the location of the property in Maynooth and the high demand for housing in the area. The property has been empty for some time, and has been deteriorating year after year. There is no timeline or plan in place to the address the vacancy and no definitive plan or date for when a court case may take place in respect of the property. The decision was made to CPO the property in order to address the vacancy and to meet the housing need in the area.
- Mr Malone referred to the housing shortage in Maynooth noting that in early January (2024) there were only 11 properties for sale and 1 for rent in Maynooth. The reasoning DP and Housing for All strategy
- The inspector raised the question of alternatives. Ms. McGrath noted that there are various schemes available, including Vacant Property Refurbishment Grant and the Repair and Lease Scheme, however, there has been no engagement from the landowner and no plan in place to address vacancy. There has been no upkeep on the property. The property is located within a mature estate in Maynooth and neighbours have been in contact regarding the state of the property.
- The Inspector questioned the condition of the property and the likely costs of refurbishments. Ms. McGrath confirmed that that the Council have been unable to access the property to determine its condition and that as such it is not possible to establish the costs involved. It is expected, given the length of time the property has been vacant, that extensive works will be required to bring it up to current rental standards for social housing. Mr. Malone confirmed that funding was available through the Buy and Renew scheme etc to cover the costs.
- On the Objector's submission, Mr Malone, referred to the legal case involving the Objector, EBS and Mars Capital (who took over the charge on the property in 2021) and the documentation submitted in support of the objection. The case

has been going on for some time, no details have been provided as to where the case is current at or if there is any sign of a resolution. The Council served CPO papers on the objector and on EBS and Mars Capital. They did not receive any correspondence or objection from EBS or Mars Capital. In terms of title, Mr. Malone stated that if the CPO is confirmed, the Council can vest the property to acquire a clean title. While the Council is sympathetic to the objector, the legal case has been ongoing for some time and the property vacant. The Objector is not in possession of the property and her intentions for it are unclear. The CPO would bring the property back into use. Under the CPO compensation would be paid either by agreement or arbitration. If there is an ongoing case between the objector and now Mars Capital, money can be lodged in court for that matter to be dealt with and for compensation to be paid out to the entitled party. This is a separate matter to the CPO and not a concern for the Board.

#### **5. Submission by Objector**

- Mr. O'Connor (solicitor representing the Objector), opened after the break. He started by providing a background to the case. The Objector lives in Belgium, she purchased No.8 Laurence Avenue for her mother, stepfather, and her son. Her Mother and stepfather took out a fraudulent loan on the property which was not repaid. EBS discovered the fraud and admitted to same in a letter to McAllister O'Connor Solicitors, dated the 10<sup>th</sup> of June 2004. EBS obtained a possession order in the Circuit Court against the property. It is alleged that EBS did not inform the Circuit Court of the fraud. The Objector then commenced legal proceedings seeking an injunction. AIB take over EBS and sell the loan to Mars Capital in the knowledge that the load was passed on fraud. Throughout this time the Objector is physically excluded from her property. Her son is living in rented accommodation elsewhere and her mother is living in housing provided by the Council. No legal action is taken against her mother.
- Mr. Malone / Kildare County Council in their submission failed to refer to the ongoing legal proceedings. KCC as a matter of law and public policy will have to respect the court process and defer to the court process, instead they are asking

ABP to by-pass the legal process. Should KCC proceed with the CPO, this will result in further expensive litigation.

- Mr O'Connor refers to a recent high court judgement where exemplary damages were awarded in circumstance where receivership continued despite strong evidence of forged signature on mortgage documents.
- If KCC still elects to become a complicit partner in this fraudulent transaction, it will be doing so at its own considerable reputational and financial risk. This may result in a formal complaint to the Local Government Auditor.

## **6. Questioning between Parties**

### Mr O'Connor on behalf of Objector to KCC:

- Mr O'Connor refers to the circumstances of fraud outlined in his submission and queries KCC feelings on the matter. In response, Mr. Malone confirms that KCC are sympathetic to Objectors situation, however, the property has been tied up in litigation for over 20 years with no sign of resolution, the property has been vacant for 9 or more years and is falling into a state of disrepair at a time of housing shortage. It is government policy to acquire vacant property and that is why the Council is pursuing the CPO.
- Mr O'Connor queries why the Council is seeking to get ahead of the Court process and pre-empt the decision. In response Mr. Malone states that the court process does not seem to be making progress and queries when it will be resolved. Compensation will be paid but that is a separate matter.
- Mr. O'Connor queries why, if the Council are sympathetic, they do not step back and let the court process finish. He asks does the Council accept what Patrick J Farrell solicitors say as an open admission of criminality? In response, Mr. Malone acknowledged the letter of Patrick J Farrell solicitors while noting that it was dated over 20 years ago. Mr. Connor does not accept this as an answer and repeats the question, querying the position of the Council on the issue of illegality /fraud. In response, Mr. Malone notes as there is no resolution in sight the Council are seeking to acquire the property, which has been vacant for many years and falling into a state of disrepair.

- Mr O'Connor asks again why the Council does not let the Court process finish. The Inspector interjects stating that this line of questioning has already been covered. Mr. O'Connor outlines his reasoning for the question and redirects it to Mr. Malone. In response, Mr. Malone asks Mr O'Connor when will the process finish? Mr. O'Connor is unable to provide a timeline for resolution noting the complexity of the case.
- Mr. Malone states that the Council have waited for some time. He notes again that compensation will be paid, let the court case proceed and the Courts decide who is entitled to such compensation. As it stands the Objector cannot do anything with the property, can't sell the property and MARS the same.
- The inspector asks KCC to clarify how, if at all, the question of title affects the CPO process. In response Mr. Malone states that if the CPO is granted, the Local Authority can vest the property and lodge a vesting order with the Land Registry. The Land Registry will then register the property freehold title to the Local Authority and that will deal with the current situation regarding the title and any charges on the title.
- Mr O'Connor confirms that he has no further questions.

#### KCC to Objector

- Mr Malone queries the Objectors future intentions for the property. In response, Mr. O'Connor states that while he cannot speak for the objector, her intention would be for son to live in the property and for it to be rented. The property is in bad condition and any compensation she got would reflect that. She wants her property back.
- Mr Malone asks when the Objector was last in the property. Mr. Malone cannot give an answer but states that she saw the property from the outside in 2016. She has been denied access to the property.

#### Inspector to KCC:

- The inspector queries the zoning of the lands and the status of the Maynooth Local Area Plan. The Maynooth Local Area Plan 2013-2021 has expired and the Maynooth LAP 2024-2030 is currently under review. Ms. McGrath (KCC) cannot provide a timeline on when the new LAP will be adopted however, given the location of the site within an established residential area, the zoning for the area will not change.

#### Inspector to Objector (Mr. O'Connor)

- The Inspectors queries the length of time that the property has been vacant.
- Mr. O'Connor does not have this information and he is unaware of when the objector's mother (former occupant) vacated the property. KCC confirm that the objector's mother was housed by Kildare County Council in 2014.
- Returning to the issues of title, the Inspector notes issue raised by Mr. Connor and that this will be brought to the attention of the Board for their consideration.

#### **7. Closing Comments**

- Mr O'Connor concludes by stating that the legal process must and should be respected by Kildare County Council and by An Bord Pleanála. He acknowledged that this is an unusual case but considers that the court should be allowed to decide and the process, CPO or otherwise, take place after that.
- Mr Malone closed by reiterating the purposes of this CPO. The Council submit that 1) There is a need for the acquisition of this property which advances the common good i.e., the acquisition of a vacant property to address the housing shortage, 2) the property is suitable to meet this housing need, 3) the property is suitable to meet the needs of the Council in terms of compliance with government policy 4) alternative methods to meet the need for housing have been considered by the local authority, mainly the construction of houses on council land, the purchase of houses from the private market and other housing schemes. However, these methods are not sufficient to address the current housing crisis and as a result it is policy to acquire, by CPO, if necessary, vacant

properties and to bring them back into use. 5) the acquisition of the property would be in keeping with the development plan, the policies of the local authority and central government and represents a proportionate response to the current housing crisis 6) the landowner's entitlement to compensation is important factor in CPO, this is however a separate matter. The house has been vacant for a number of years with no sign of a resolution, the CPO would bring the house back into use.

#### **8. Closing of Oral Hearing**

- The Inspector made some brief final comments and closed the Oral Hearing (11:25).