



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319868-24

#### Development

Waterford City & County Council,  
Dungarvan Landfill, Co. Waterford,  
Waterford Compulsory Purchase  
Order 2024 No. 1

#### Location

Dungarvan, County Waterford

#### Planning Authority

Waterford City and County Council

#### Applicant(s)

Waterford City and County Council

#### Type of Application

Notice of Compulsory Purchase Order  
under Section 216 of the Planning and  
Development Act 2000.

#### Objector

Jim Dempsey.

#### Date of Site Inspection

13<sup>th</sup> October 2024.

#### Date of Oral Hearing

26<sup>th</sup> November 2024

#### Inspector

Peter Nelson

## **1.0 Site Location and Description**

- 1.1. The site is located to the c. 2.3km northwest of the town centre of Dungarvan and is in the townland of Ballynamuck. The site is accessed from the LP3172 local primary road which forms the eastern boundary of the site. The Colligan River is along the northern and western boundaries of the site. There is agricultural land to the south of the site.
- 1.2. The site was a former landfill site which operated from the 1960s and was capped and restored by 2008. The former alignment of the Dungarvan-Mallow Railway Line traverses the site. The Dungarvan Town Civic Amenity Site is currently operating to the east of the site.
- 1.3. Part of the River Colligan adjoining the site is included in the Dungarvan Harbour Special Protection Area (SPA). The proposed Dungarvan Harbour Natural Heritage Area adjoins the site to the east.
- 1.4. At the time of site inspection there were horses grazing on the lands.

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

### **2.1. Purpose of CPO**

The CPO includes for the permanent acquisition of land identified as pots 101 to 107 in the relevant deposit maps on file. The Compulsory Purchase Order is made pursuant to Section 76 of the Housing Act, 1966 (as amended) and all other necessary Acts, thereby, enabling the lands published in accordance with article 4(a) of the Third Schedule to the Housing Act. 1966 (as amended).

The stated purpose for the acquisition of the lands is for the strict management of the site in order to adhere to licence conditions imposed by the E.P.A. at the former Dungarvan Landfill site.

Details of the plots are set out in the table below:

Plot No.	Area (Hectares)	Description	Owners or Reputed Owners
101	3.569	Closed Landfill	Estate of Charles P Curran
102	0.937	Closed Landfill	CIE, Vicent Morrissey, Dungarvan UDC
103	0.055	Closed Landfill	Dungarvan Urban District Council
104	0.062	Closed Landfill	Alan Curran
105	1.469	Closed Landfill	Estate of Charles P Curran
106	1.065	Closed Landfill	Dungarvan Urban District Council
107	0.272	Closed Landfill	Waterford Joinery

## 2.2. Accompanying Documents with the Compulsory Purchase Order

- Original of the Compulsory Purchase Order.
- Original of the deposited map.
- Original of The Dungarvan Observer containing the advertisement of the making of the Order etc.
- Copy of the Notice served on the owners/lessee/occupier of the lands.
- Copy page of Register of Post showing notice displaced to the owners/lessee/occupier.
- Original of Chief Executive's Order dated 24<sup>th</sup> May 2024 for the making of the Compulsory Purchase Order.
- Certificate dated 23<sup>rd</sup> May 2024 of Mr. Paul Johnson, Acting Director of Services Planning, Corporate Services, Cultural, HR and IS that the acquisition of the lands the subject of the Order is in conformity with the planning and development objectives of the area under the Waterford City and County Development Plan 2022-2028 and in accordance with the Local Government (Planning and Development) Acts, 2000 as amended.
- Certificate dated 23<sup>rd</sup> May 2024 of Mr. Fergus Galcin, Director of Services Roads, Water & Environment, that the lands the subject of the Order are suitable for the purpose for which they are being acquired and that their acquisition is necessary for that purpose.

- Planning Report signed by Adrian Walsh, Executive Planner.

### 3.0 Planning History

3.1. None.

### 4.0 Policy and Context

4.1. Waterford City and County Development Plan 2022-2028 is the current development plan operating in this area. This plan came into effect on the 19<sup>th</sup> of July 2022.

4.2. The site is subject to a Specific Development Objective:

#### **DO12:**

To support the redevelopment of the former landfill in Ballinamuck, Dungarvan into a nature park.

This site is located in a **High Amenity Zone (HA)**

The objective of which is to - *Protect highly sensitive and scenic location from inappropriate development that would adversely affect the environmental quality of the locations.*

4.3. Relevant Policies

#### **UTL 20: Waste Management Regulations and Closed Landfills**

The Council shall continue to fulfil its duties under the Waste Management (certification of historic unlicensed waste disposal and recovery activity) Regulations 2008 (S.I. No 524 of 2008), including those in relation to the identification and registration of closed landfills.

4.4. **ENV 08: Soil Protection, Contamination and Remediation**

Ensure that adequate soil protection measures are undertaken where appropriate. Adequate and appropriate investigations shall be carried out into the nature and extent of any soil and groundwater contamination and the risks associated with site development work, where brownfield development is proposed.

The EPA's publication *Code of Practice: Environmental Risk Assessment for Unregulated Waste Disposal Sites* (2007) shall be taken into account as relevant by proposals for development within or adjacent to old landfill sites. All undeveloped, contaminated sites shall be remediated to internationally accepted standards prior to redevelopment. All applications shall be accompanied by a report from a qualified, expert remediation consultant incorporating international best practice and expertise on innovative ecological restoration techniques including specialist planting and green initiatives that create aesthetically improved sites, healthy environments and contribute to the provision of new green open spaces as integral parts of newly created areas.

Treatment/management of any contaminated material shall comply as appropriate with the Waste Management Act 1996 (waste licence, waste facility permit), as amended, and under the EPA Act 1992 (Industrial Emissions licensing, in particular the First Schedule, Class 11 Waste), as amended. These measures will ensure that contaminated material will be managed in a manner that removes any risk to human health and ensures that the end use will be compatible with any risk.

Prior to the grant of approval on contaminated sites, developers will be required to carry out a full contaminated land risk assessment to demonstrate:

- How the proposed land uses will be compatible with the protection of health and safety (including the durability of structures and services) - during both construction and occupation; and,
- How any contaminated soil or water encountered will be appropriately dealt with.

### **BD01 Biodiversity Policy Objectives**

We will protect and conserve all sites designated or proposed for designation as sites of nature conservation value (Natura 2000 Network, Ramsar Sites, NHAs, pNHAs, Sites of Local Biodiversity Interest, Geological Heritage Sites, TPOs) and protect ecological corridors and networks that connect areas of high conservation value such as woodlands, hedgerows, earth banks and wetlands.

We will contribute towards the protection and enhancement of biodiversity and ecological connectivity, including woodlands, trees, hedgerows, semi-natural

grasslands, rivers, streams, natural springs, wetlands, the coastline, geological and geo-morphological systems, other landscape features, natural lighting conditions, and associated wildlife where these form part of the ecological network and/or may be considered as ecological corridors or stepping stones in the context of Article 10 of the Habitats Directive.

## **5.0 Objection**

5.1.1. The main points of the objection to the CPO from Mr. Jim Demsey can be summarised as follows:

- Mr Jim Demsey purchased the homestead of Charels Paul Curran from Vicent Morrissey in 1993 on the understanding that the adjoining lands at the time used by Dungarvan Urban District Council as a landfill, would return to the owner of the homestead as grazing ground.
- Mr Jim Demsey has farmed, fenced and maintained these lands on a not-for-profit basis.
- Mr Jim Demsey is available 24/7 should it be necessary for Gardai or any emergency services vehicles to access the lands.
- Waterford City and County Council have not occupied any of the lands farmed by Jim Dempsey for the last 15 years.
- Mr Jim Demsey understands the commitment, effort and energy that is required to keep the land in its current condition, mainly evenings, nights and on weekends as this is the busiest time for locals who come to swim, have picnics, walk and to fish when permitted.
- It would be a retrograde step for Waterford City & Council to acquire these lands as they would not be able to give the commitment to maintain the lands and would become a haven for antisocial behaviour having a negative effect in the local and Dungarvan area in general.

## **6.0 Oral Hearing**

- 6.1. An Oral Hearing (OH) was held via MS Teams (a Virtual Oral Hearing) on Tuesday, 26<sup>th</sup> November 2024. The objector Jim Dempsey was in attendance.
- 6.2. Waterford City and County Council were also in attendance and were represented by Ms Dawn Wallace, Senior Executive Officer, Ms Mary Quigley, Head of Property Management, Ms. Anne Doyle, Executive Planner and Mr. Niall Kane, Senior Executive Engineer.
- 6.3. The proceedings of the Oral Hearing are detailed in Appendix 1.

## **7.0 Assessment**

### **7.1. Overview**

The proposed CPO is for confirmation by the Board of a Compulsory Purchase Order (CPO) for land at the former Dungarvan Landfill, Ballynamuck Middle, Dungarvan. There are a total of 7 no. sites, and these are as indicated on the deposit map on file (Drawing no: CPO 2024-01 No.001)

- 7.1.1. Waterford City and County Council propose to acquire the land in the schedule for the purposes of strictly managing the site in order to adhere to licence conditions imposed by the E.P.A at the former landfill site.
- 7.1.2. I note in the oral hearing that the objector claimed that he has adverse possession of all the site except the pumping station and the recycling center.
- 7.1.3. In the oral hearing Waterford City and County Council stated that the purpose of seeking the CPO is to regularise the title to the lands that they have occupied since the late 1960s and to ensure the protection of the adjoining waterways and to ensure compliance with EPA license conditions on the site. The council consider themselves to be the reputed leases of the site as they have been an occupation of the site since 1960.
- 7.1.4. My assessment of this case considers the issues raised in the written objections 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 Waterford City and 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:

- There is a community need that is to be met by the acquisition of the lands in question.
- The project proposed and associated acquisition of lands is suitable to meet the community need.
- The works to be carried out should accord with, or at least not be in material contravention of, the policies and objectives contained in the statutory Development Plan relating to the area.
- Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.
- 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. One of the CPO tests requires consideration of whether the proposed acquisition of the lands would serve the community need, and whether the lands is suitable to meet this need.

7.2.2. The stated purpose for the CPO of these lands is to strictly manage the site in order to adhere to licence conditions imposed by the Environmental Protection Agency (EPA). At the oral hearing Waterford City and County Council (WCCC) stated that the site is subject to an EPA license which requires the collection of landfill gas, the collection the treatment of leachate and monthly quarterly and annual monitoring of surface ground groundwater and landfill gases.



- 7.2.3. There is a collection system where leachate is taken from the landfill and is diluted with groundwater in a tank and subsequently goes through 5 no. integrated constructive wetlands. If there is sufficient dilution it will be passed into the waterway and if there is not, it goes back through the whole system again. Gas is collected from 23 no. gas wells in three separate manifolds and flared in LFG flare on the site and the gas flow requires monthly balancing on site.
- 7.2.4. WCCC states that Condition 6.23.5 of the EPA license sets out that there should be no animal grazing permitted at the facility.
- 7.2.5. WCCC stated that they have an issue with unauthorized animal grazing on the site which is causing damage to the infrastructure and may cause the transport of sediment and or nutrients into the adjoining water courses.
- 7.2.6. WCCC state that they took alternative measures including spending substantial sum on erecting fences to protect the integrated constructed wetlands from grazing.
- 7.2.7. In the oral hearing the Objector, Mr. Dempsey stated that he is currently grazing livestock on the site.
- 7.2.8. WCCC stated that the redevelopment of the site into the nature park, as required under Specific Development Objective DG D012 is dependent on the council being able to remediate the subject lands as required under an EPA license.
- 7.2.9. In his submission at the oral hearing the objector, Mr. Dempsey claims that Waterford City and County Council are at present leaking untreated effluent into the river and claims that the transfer shed on site is an illegal building. Mr. Dempsey claims that the EPA accepts that animal and birds are being poisoned along the River Colligan. The full extent of Mr. Dempsey claims and concerns are highlighted in the Proceedings of the Oral Hearing in Appendix A of this report and in the recording of the oral hearing.
- 7.2.10. The issue of compliance with the site's EPA licence is evaluated under a separate legal code and thus need not concern the Board for the purpose of this CPO.
- 7.2.11. As stated above the purpose for this CPO is to strictly manage the site in order to adhere to the licence conditions imposed by the EPA license and it would appear that at present there are impediments preventing them doing so. Given the proximity of the Dungarvan Harbour Special Protection Area (SPA) and the Dungarvan

Harbour proposed Natural Heritage Area (pNHA) and that the redevelopment of the site into a nature park is depended on the requirement of the EPA and the restoration of the lands, I consider the acquisition of these lands to facilitate of adherence to the conditions of the EPA licence would serve a community need.

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

- 7.3.1. One of the CPO tests requires consideration of whether the proposed acquisition of the lands would serve the community need, and whether the lands is suitable to meet this need.
- 7.3.2. The purpose for the compulsory purchase of these lands relates specifically to the restoration of the former Dungarvan Landfill and the adherence to the conditions of the EPA Waste Licence to ensure adequate restoration and prevent pollution of the adjoining River Colligan. As the EPA Waste Licence relates specifically to this site, I consider that the lands are suitable to serve the community need to restore the former landfill site in line with the EPA licence to prevent pollution and in turn redevelop the site to create a nature park.

### **7.4. Compliance with Planning Policy**

- 7.4.1. In accordance with the licence conditions imposed by the EPA the council will fulfil its duties under the Waste Management (certification of historic unlicensed waste disposal and recovery activity) Regulations 2008 (S.I. No 524 of 2008). Therefore, acquisition of land for the purpose of managing the site in order to adhere to the EPA licence conditions would comply with Waterford City and County Development Plan 2022-2028 policy UTL 20: Waste Management Regulations and Closed Landfills.
- 7.4.2. The acquisition of land for the purpose of managing the site in order to adhere to the EPA licence conditions would also comply with Waterford City and County Development Plan 2022-2028 policy ENV 08: Soil Protection, Contamination and Remediation as it facilitates the undertaking of adequate soil protection measures.
- 7.4.3. The stated intention of WCCC to redevelop former landfill in Ballinamuck, Dungarvan into a nature park is in compliance with Waterford City and County Development Plan 2022-2028 Specific Development Objective: DO12. The acquisition of land for

the purpose of managing the site in order to adhere to the EPA licence conditions will aid the restoration of the site and will facilitate the redevelopment of the site to a nature park.

- 7.4.4. Given the proximity of the Dungarvan Harbour Special Protection Area (SPA) and the Dungarvan Harbour pNHA the acquisition of these lands to facilitate of adherence to the conditions of the EPA licence would comply with Waterford City and County Development Plan 2022-2028 Policy BD01 which states that the council will protect and conserve all sites designated or proposed for designation as sites of nature conservation value including Natura sites and pNHAs.

## **7.5. Consideration of Alternatives**

- 7.5.1. The purpose of the CPO relates specifically to the former Dungarvan Landfill site and therefore alternative sites are not applicable in this instance.
- 7.5.2. At the oral hearing WCCC highlighted incidents of claimed trespassing and animal induced erosion and that the council took alternative measures including the erection of fences to protect the integrated constructed wetlands from grazing. They stated that the council's environment department and legal representatives have written letters to Mr. Dempsey seeking an ending to the trespassing on the lands.
- 7.5.3. The Council considered taking legal action to obtain possessory title however it considered that this would take too long and would present an ongoing risk to the waterways and the EPA license conditions.
- 7.5.4. Again, I would note that the objector stated that he currently using the site for grazing.
- 7.5.5. Having regard to the above I consider that Waterford City and County Council have madequately considered alternatives to the compulsory purchase of the lands.

## **7.6. Proportionality and Necessity for the Level 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. The objector Mr. Dempsey has stated that he has farmed, fenced and maintained these lands for almost 15 years. At the oral hearing Mr. Dempsey stated that he is not the legal owner of the lands but has adverse possession on the site. Mr. Dempsey stated that he has yet to go through the legal process of adverse possession and will now due to the current CPO proceedings.
- 7.6.3. The purpose of the CPO is to enable WCCC to strictly adhere to the conditions of the EPA Licence for the Dungarvan Waste Disposal Site. Condition 6.23.5 of the EPA licence states that 'There shall be no animal grazing permitted at this facility'. In order to comply with the conditions of the EPA licence I consider that the entire site is required to be purchased.
- 7.6.4. In conclusion, then, whilst I accept that there would be certain negative, but unavoidable, impacts caused by the CPO on the affected person 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 to carry out the intended purposed. I also comsider that the acquisition will not have an excessive or disproportionate effect on the interests of the affected persons.

## **8.0 Recommendation**

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

- the acquisition of lands under the CPO schedule, 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 are no alternatives 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

Having considered the objections made to the compulsory purchase order, the written submissions and observations made at the Oral Hearing held on the 26<sup>th</sup> November, 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, 'Waterford City and County Council Compulsory Purchase Order No.1 2024', and also having regard to the following:

- the constitutional and European Human Rights Convention protection afforded to property rights,
- the community need, public interest served and overall benefits to be achieved through the strict managing of the former landfill site in order to adhere to licence conditions imposed by the E.P.A.
- the policies and objectives of the Waterford City and County Development Plan 2022- 2028, which is not materially contravened, and
- the submissions and observations made at the Oral Hearing,
- the report and recommendation of the Inspector,

it is considered that the permanent acquisition of the lands in question, as modified is necessary for the stated purpose, which is a legitimate objective being pursued in the public interest, and that the CPO, as modified, 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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Peter Nelson  
Planning Inspector

9 December 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 read in conjunction with the main body of the report above.]

## **1. Background**

An Oral Hearing (OH) was held on Tuesday, 26th November 2024 in relation to the proposed compulsory acquisition sought by Waterford City and County Council – ‘Waterford City and Council Compulsory Purchase Order No.1 2024.’ The Hearing was held virtually via MS Teams. The persons listed below were in attendance and made submissions / witness statements at the Oral Hearing.

## **2. Submissions on behalf of Waterford City and County Council**

Dawn Wallace - Senior Executive Officer

Mary Quigley - Head of Property Management

Anne Doyle - Executive Planner

Niall Kane – Senior Executive Engineer

## **3. Submission on behalf of the Objector**

Jim Dempsey - Objector

## **4. Opening of Hearing**

The Inspector formally opened the hearing at 10.03am with introductory remarks, and confirmation of attending parties.

## **5. Submission by Waterford City and County Council**

*Ms Dawn Wallace (Senior Executive Officer) –*

- Ms Wallace gave a detailed overview of the proposed CPO.
- The stated purpose of seeking the CPO is to regularise the title to the lands that they have occupied since the late 1960s and the key to this is to ensure the protection of the adjoining waterways and to ensure compliance with EPA license conditions for the site.
- Ms. Wallace gave a brief history of the site. Dungarvan urban District Council obtained planning permission for a landfill on the site in 1968 and filling started shortly afterwards.
- With the introduction of the Waste Management Act 1996 and the Waste Management Licensing Regulations in 1987 the council were required to obtain a license from the EPA for this site.
- The first license was granted in 2002 with revised licenses subsequently granted in 2005 and 2014.
- An estimated 3365 tons were accepted at the site prior to the site ceasing to accept landfilling in 2003. The restoration and capping of the site was completed in 2008.
- The Council have an ongoing commitment to maintain the site for a minimum of 30 years from final restoration.

[A copy of the submissions made by Waterford City and County Council, which were submitted in advance of the Oral Hearing on Friday ,22<sup>nd</sup> November was circulated via email to all parties on Friday, 22<sup>nd</sup> November. This is available on file for the Board to review, as appropriate.]

- I would note that, during this session of the hearing, the Inspector sought confirmation from Ms. Wallace that the ongoing maintenance of the site was part of the EPA licence, and this was confirmed by Waterford City and County Council.

*Ms. Mary Quigley (Head of Property Management)-*

Ms. Quigley give a summary of the process and timeframe for the CPO carried out by Waterford City and County Council.



*Ms. Ann Doyle, (Executive Planner)-*

Ms. Doyle outlined the Development Policy justification for the proposed CPO.

- Ms. Doyle stated the northern and eastern boundaries of the site adjoin the Dungarvan Harbour Special Protection Area which is a Natura 2000 site, the eastern boundary joins the Dungarvan Harbour Proposed Natural Heritage Area, and that the council would be bound by its obligations under various environmental legislation in relation to the protection of these sites.
- The lands are governed by the Waterford City and County development plan 2022 to 2028 and are zoned as high amenity.
- Ms. Doyle summarised the Development Plan Policies which have informed the CPO. These include Policy UTL 20, ENV 08 and ECON 23.
- Ms. Doyle commented that the site is subject to Specific Development Objective DG D012 which is to support the redevelopment of the site into the nature park and that the realization of this objective is dependent on the council being able to remediate the subject lands and as required under an EPA license.
- She concluded that the acquisition of the subject lands would accord with all development plan policies and objectives, and it will support the council's ongoing work to remediate the former landfill.
- I would note that, during this session of the hearing, the Inspector asked if there was a timeline for the proposed nature park and whether it can take place while the maintenance of the site is ongoing. Waterford City and County Council replied that it is envisaged that it would happen on phased basis, but it would be dependent on the requirement of the EPA and the restoration of the lands.

*Ms Dawn Wallace (Senior Executive Officer) –*

Ms. Wallace give an overview of WCCC's environmental justification for the CPO.

- Ms. Wallace stated that the site is subject to an EPA license which requires the collection of landfill gas, the collection the treatment of leachate and

monthly quarterly and annual monitoring of surface ground groundwater and landfill gases.

- There is a collection system where leachate is taken from the landfill and is diluted with groundwater in a tank and subsequently goes through 5 no. integrated constructive wetlands.
- If there is sufficient dilution it will be passed into the waterway, if it is not, it goes back through the whole system again.
- Gas is collected from 23no. gas wells in three separate manifolds and flared in LFG flare on the site and the gas flow requires monthly balancing.
- Condition 6.23.5 of the EPA license sets out that there should be no animal grazing permitted at the facility.
- Ms. Wallace stated that the Council has an issue with unauthorized animal grazing on the site which is causing damage to the infrastructure and may cause the transport of sediment and or nutrients into our water courses. This grazing presents an ongoing risk of pollution into the river.
- Ms. Wallace highlight incidents of claimed trespassing and animal induced erosion. She stated that the council took alternative measures including spending substantial sum on erecting fences to protect the integrated constructed wetlands from grazing.
- She stated that the council's environment department and legal representatives have written letters to Mr. Dempsey seeking an ending to the trespassing on the lands.
- The alternative of possessory title was discussed but the legal processed would take too long and presents an ongoing risk to the waterways and to compalaince of the EPA license conditions.
- Ms. Wallace stated that a decision was made to initiate the CPO process as it gives WCCC clear title to the land.
- Ms. Wallace summarized their case for CPO.
- The Inspector asked clarification of the Council's Legal interest in the site and whether they had a lease on the site. The council replied that they consider themselves to be the reputed lessees of the site. This was checked with the

legal representatives and as they have been an occupation of the site since 1960, they consider they have an entitlement to a lease. The council does not have a physical lease. As they have been in occupation and possession of the site, they consider that WCCC could make an application for possessory title, but they decided to use the CPO process on the advice of their solicitor.

- The inspector asked if there would be any restrictions on the use of the lands after the 2038 restoration period. The council answered that there will be ongoing maintenance on the site and that the use of the land would be restricted but a nature park would be a suitable use.

## **6. Submission from the Objector**

*Jim Dempsey*

- Mr. Dempsey stated that as a neighbour downstream of the site, his issue relates to the current management of the site.
- He sighted letter from the EPA to Waterford City and County Council when they were proposing to build a transfer shed on the site and stating that the council were required to submit details and Environment Impact Statement. Mr. Dempsey stated that none of the requested details were given, and the council then built the shed on the riverbank without the authorization of the EPA.
- Mr. Dempsey refers to a letter from the EPA that he claims states the shed as built it was below the standards of the EPA.
- Mr. Dempsey claims that there were two inspections by the EPA who objected to the use of the shed.
- The following year a license was issued by the EPA.
- Mr. Dempsey claims that Waterford City and County Council are at present leaking untreated effluent into the river and claims that the shed is an illegal building.
- He claims that the EPA accepts that animal and birds are being poisoned along the River Coolligan.

- He stated that work he has carried out on site was in conjunction with the EPA as there was contaminated water from an attenuation tank on site was overflowing into the river.
- Mr. Dempsey commented that there is no trust between the EPA and the Council.
- He stated that some of the lands in the photographs showing the effects of grazing in the Council's submission are not included in the CPO and therefore are not relevant.
- Mr. Dempsey stated that the council have no lease or right to title on the property and the occupier is himself.
- The inspector asked if Mr. Dempsey was the legal owner of CPO plots 101 and 105. He replied that he bought the homestead of Charles P Curren, and it was his understanding that the lands are to revert to the owner of the homestead. He is not the legal owner of plots 101 and 105 but he has adverse possession of all the site except the pumping station and the recycling center.

## **7. Question between Parties**

The objector was afforded the opportunity to question Carlow County Council

### Question

Why was a section of land in the council's presentation included as it is not part of the site included in the CPO.

### Response

The council responded that all the photos used in their presentation were taken on land which are subject to the current CPO proceedings. The council stated that they have a full remediation plan for the protection of the waterways.

Waterford City and County Council had no questions for Mr Dempsey

## **8. Closing Statements**

After a 5-minute break the Inspector asked if Mr. Dempsey had adverse possession of the land.

He stated that he has occupied the land full time for 15 years and has not seen a presence from Waterford City and County Council on the site. He stated that he will have to go through the process of adverse possession due to the current CPO proceedings.

In reply to a question from the inspector, Waterford City and County Council confirmed that grazing is still taking place on the CPO lands.

Mr. Dempsey stated that the grazing was taking place by his animals.

In his closing comments Mr. Dempsey stated that he would like the Council to concentrate on the job in hand and not on future plans.

Waterford City and County Council has no closing statement.

## **9. Closing**

The inspector closed the Oral Hearing at 11.28am.