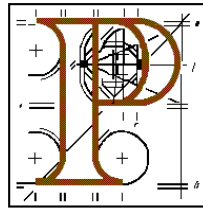


**An Bord Pleanála**



**Inspector's Report**

**Board Reference No.:** 26.CH3243

**Compulsory Purchase Order:** No. 3 of 2015 in the County of Wexford.

**Local Authority:** Wexford County Council

**CPO:** Wexford County Council, in exercise of the powers conferred upon them by Section 76 of the Housing Act, 1966 and the Third Schedule thereto, as extended by Section 10 of the Local Government (No 2) Act, 1960 as substituted by Section 86 of the Housing Act, 1966 as amended by Section 6 of the Second Schedule to the Roads Act, 1993 and as amended by the Planning & Development Acts, 2000 to 2006, have made an order entitled as above. If approved, the local authority will acquire compulsorily, the land described for the purposes of Redevelopment.

**Location of Lands:** Lands at the rear of Market House, Main Street, Gorey, Gorey Corporation Lands, Gorey Urban, County Wexford.

**Objectors to CPO:** Mr. Michael Wade

**Date of Site Inspection** 2<sup>nd</sup> & 23<sup>rd</sup> October & 16<sup>th</sup> November 2015

**Date and location of Oral Hearing:** 17<sup>th</sup> November, 2015, Gorey, Co. Wexford.

**Inspector:** A. Considine

## **1.0 INTRODUCTION**

- 1.1 Wexford County Council is seeking approval for an application which relates to the redevelopment of lands to the rear of Market House, Main Street, Gorey, Co. Wexford. This report is prepared in response to the Compulsory Purchase Order application. The purpose of the CPO is for the redevelopment of the subject lands.
  
- 1.2 One objection has been received in respect of the CPO.
  
- 1.3 An oral hearing to consider objections/submissions to the CPO file was held on 17<sup>th</sup> November 2015 in the Amber Springs Hotel in Gorey, Co. Wexford, considered to be an appropriate location with facilities to accommodate the Oral Hearing. An agenda was advised to the parties during the inspectors opening statement and was amended on the day of the hearing in order to accommodate a second objector. An attendance sheet was circulated at the hearing and is enclosed in the documents pertaining to the oral hearing.

## **2.0 SITE INSPECTION AND DESCRIPTION**

- 2.1 I carried out a site inspection over a number of days in both October and November, 2015. The subject site is located to the rear of Market House, and the adjoining property, no 76, Main Street, in the town centre of Gorey. There is a second access to the subject lands from Market Street, which runs perpendicular to Main Street. The surrounding area comprise a number of town centre uses with the graveyard located to the east. The graveyard forms the boundary of the subject lands in this area. Access to the site is via a gated entrance onto Market Street, with access available through Market House and the adjoining pharmacy at No. 76, Main Street. Access to the western area of the lands was restricted on the date of my inspection.
  
- 2.2 The lands subject to proposed CPO are currently deemed to be under-utilised. The largest area of the site is not derelict and has been recently resurfaced by the Local Authority, providing for a hard stand space. A smaller area of the site, located behind high walls, appears to be in an overgrown state and does not appear to be in any appreciable use. This area is located to the rear of the residential property, which remains occupied.

2.3 The Board will also note that an area to the west of the subject lands has already been acquired by the local authority. The local authority is also the identified owner of Market House. The remaining persons involved are advised by the Local Authority, as having indicated willingness to sell their interests to the Council but the terms could not be agreed on a basis that represents appropriate value for the rate payer. This willingness was disputed at the oral hearing.

### **3.0 PROPOSED WORKS**

3.1 The lands the subject of this CPO are being sought in order to affect a redevelopment / regeneration project supported by the local authority. The local authority advise that the details of the project have yet to be finalised. The purpose of the CPO is to consolidate the ownership of the land to facilitate redevelopment / regeneration of the area.

3.2 There are 4 plots of land affected by the proposed redevelopment / regeneration. One of these plots has already been acquired by the local authority and as such, does not comprise part of this CPO process. The Board will also note that there is an area the subject of this CPO which is identified as a right of way and another which comprises part of the rear private open space of a residential property.

### **4.0 DETAILS OF THE CPO**

4.1 The CPO relates to the compulsory purchasing of lands for the purpose of redevelopment /regeneration of the area within the town centre. It is submitted that the acquisition of the lands by Compulsory Purchase will open a large block of urban land for redevelopment at the centre of the commercial district of Gorey. The actual detail of the proposed redevelopment / regeneration has not been finalised.

4.2 The land to be acquired consists of 3 separate plots representing 3 potential landowners / occupiers as follows:

Plot 100a: Wexford County Council are identified as the owners with both Wexford County Council and Michael Wade

identified as an occupiers. The area of this plot is indicated 0.0505ha.

Plot 100b: The owners of this area is indicated as being unknown with both Wexford County Council and Michael Wade identified as an occupiers The area of this plot is indicated at 0.0171ha and comprises the area affected by the right of way.

Plot 100c: Ms. Angela Byrne is identified as the owner with no known occupiers noted<sup>1</sup>. This plot has a stated area of 0.0139ha

4.3 The various documents and memorandum prepared by the Council in connection with the making of the CPO and forwarded to the Board include:

- Copy of the Executive Order, No. 470/2015, authorising the making of Compulsory Purchase Order, dated 18<sup>th</sup> August, 2015
- Copy of Deposit Map drawing No. CPO WX 2015 Revision A<sup>2</sup>.
- Copies of public notices in the Wexford Echo and Wexford People, both dated Tuesday, 25<sup>th</sup> August, 2015.
- Planning Policy Report dated 20<sup>th</sup> July, 2015.
- Compulsory Purchase of Land report from DoS, Economic Development & Planning, dated 27<sup>th</sup> July, 2015.
- Copy of notices served on landowners / lessees, dated 20<sup>th</sup> August, 2015.
- Certificate of Registered Post - dated 21<sup>st</sup> August, 2015
- First and Second Schedules containing details of quantity, description and situation of land along with owner or reputed owner, lessee or reputed lessee, occupier and details of rights of way to be extinguished.

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<sup>1</sup> The Board will note that at the Oral Hearing, Mrs. Byrne indicated that her adult children currently live in the residential property from which the subject lands comprise the rear garden area. Mrs. Byrne objects to the CPO.

<sup>2</sup> The Board will note that drawing submitted is not the original and does not include the official seal.

## **5.0 CPO OBJECTIONS**

5.1 There was one objection/submission received in respect of the CPO case within the appropriate timeframe. David French, Land & Property Services Ltd., made a submission on behalf of his client Mr. Michael Wade, 76 Main Street, Gorey, Co. Wexford. The objection relates only to plots 100a and 100b, and the issues raised are summarised as follows:

- Mr. Wade occupies and maintains the lands Plots 100a and 100b and has made an application for registration where title is based on possession. Details of same have been submitted.
  
- The land identified is currently used for:
  - Access to and is ancillary to his use of the pharmacy and residence.
  - Delivery to the pharmacy / residence.
  - Off street parking to the pharmacy / residence.
  - A safe exit in an emergency from the pharmacy / residence.
  - Regulation working time breaks area for pharmacy.
  
- The loss of this area will impact on the:
  - Potential redevelopment of the pharmacy / residence.
  - Security and safety of the pharmacy prescription drugs and its residence.
  - Amenity value of the residence.
  - Will restrict access for repairs to the premises.

5.2 In the interests of completeness, the Board will note that a second objection was heard during the course of the Oral Hearing. The objection appeared to have been sent to the Local Authority in error and not to An Bord Pleanala as required. As the Inspector hearing this case, I was only informed of the second objector just before the hearing opened. I advised the objector that in the interests of fairness, and in the absence of any objection from the Local Authority, that I would hear their submission and present it to the Board for their consideration. I also advised that it was at the discretion of the Board whether it would be taken into consideration as part of their assessment.

## **6.0 SITE HISTORY**

There is no relevant planning history associated with the subject site.

In 2003, permission was sought for a change of use to a café for a section of the Market House by Mr. Patrick Pierce in 2008. Further information was sought but not responded to so the application was deemed withdrawn, Application no. 20033501

In 2008, Mr. Wade, at no. 76, Main Street, sought, and was granted planning permission for the erection of a new shopfront and signage on the building which is a protected structure, Application no 20080613.

## **7.0 PLANNING POLICY CONTEXT**

### **Gorey Town & Environs Local Area Plan, 2010-2016**

7.1 The subject site is located within the urban area of the town of Gorey and is zoned for Town Centre uses in the LAP. It is the stated objective of this zoning,

“to protect and enhance the character of the existing town centre by providing for the development and improvement of appropriate town centre uses including residential, retail, commercial, office and civic offices.”

It is the objective of the LAP to encourage the development of infill sites and backlands within the town centre.

7.2 The site is located to the rear of buildings fronting onto Main Street and to the rear of the identified retail core of the town, and the Main Street designated Architectural Conservation Area. Three properties to the north of the site are also identified as protected structures.

7.3 Section 5 of the LAP deals with Development Management Policies and Objectives and the following are considered relevant:

- Section 5.3 deals with retail and commercial and it is the policy of the Council to ‘improve pedestrian access to and within the town centre. Objective RC1 provides that it is the objective of the Council to ‘encourage the development of infill sites and backlands within the

town centre and adjoining area as locations for retail, commercial and residential uses, having regard to the surrounding building uses in the area.'

- Section 5.10 deals with the Town Centre and it is a policy of the Council to 'encourage uses that support pedestrian activity on the Main Street and adjoining streets. It is an Objective, TC3, to 'prepare a public realm plan for Gorey, and particularly, the town centre during the life of this Local Area Plan.
- Chapter 6 of the LAP deals with Conservation where Market House is identified as a protected structure. It is the policy of the Council to promote the maintenance, continued use or / and appropriate reuse of its protected structures and facilitating and promoting uses in Market House that would protect and enhance the building, both externally and internally, with particular regard to the civic function of the council chamber.

The site is also located within the Architectural Conservation Area.

There are a number of Recorded Monument in and in the vicinity of the subject lands, including the adjoining graveyard, parish church and the tomb-chest of Archbishop Ram also within the graveyard.

### **Public Realm Plan, 2011**

- 7.4 A public consultation process was undertaken in March, 2011 in relation to the Public Realm Plan, prepared for Gorey by ICON. The plan was prepared in order to support the stated objective of the Gorey Town and Environs Local Area Plan, Objective TC3 refers. The status of the plan was unclear, but the Board will note that at the Oral Hearing, Mr. Larking, Wexford County Council, advised that the plan, was adopted by the Gorey Town Council, prior to its abolition in 2014, but that the Town Council was not a Planning Authority, which gave rise to confusion as to the status of the Plan. The Public Realm Plan is essentially an aspirational plan and again at the Oral Hearing, it was advised that it is unlikely that the Plan would be implemented or considered in its entirety due to financial constraints. It is proposed that the Elected Members will consider the Plan, or a variation of same at some future date.

7.5 The subject site is identified within the Public Realm Plan as a proposed thoroughfare from Main Street to Market Street / Market Square, which would continue on to the Avenue and the Civic Square. The Public Realm Plan identified the subject lands as the potential location for an Arts, Crafts and Books Market.

## **8.0 THE ORAL HEARING**

8.1 An Oral Hearing was held on 17<sup>th</sup> November 201 in the Amber Springs Hotel Gorey Co. Wexford. The agenda was advised to all parties prior to the hearing opened, which included the facilitation of the second objector to the CPO. A copy of the Inspectors Opening Statement is included with this report. The Board will note that on the date of the OH a second objector, Mrs. Angela Byrne, requested to make a submission. It appears that Mrs. Byrnes submission was sent to Wexford County Council within the appropriate time frame and not to An Bord Pleanala as required. The Board will note that I asked the Local Authority if there were any objections from them with regard to hearing Mrs. Byrnes submission. Mr. Larkin of Wexford County Council supported the hearing of the objection and advised no objection to the Board taking same into consideration in their determination of the CPO.

8.2 The format of the hearing was as follows:

1. Wexford Co. Co: Opening Statement & Presentation
2. Questions and cross examination of Local Authority by
  - a) Mr. Michael Wade
  - b) Mrs. Angela Byrne
3. Mr. Michael Wade Submission
4. Questions of Mr. Wade by Local Authority
5. Mrs. Angela Byrne Submission
6. Questions of Mrs. Byrne by Local Authority
7. Summing up / closing statement – Mrs. Angela Byrne
8. Summing up / closing statement - Mr. Michael Wade
9. Summing up / closing statements Local Authority.



8.3 The Inspector opened the hearing at 10am.

8.4 Local Authority opening statement involved a presentation/overview of the CPO case from Mr. Tony Larkin, DoS Economic Development & Planning, Deputy Chief Executive of Wexford County Council who presented the Councils case. Mr. Larkin is also responsible for the Local Authoritys property portfolio. The key points of the presentation are summarised as follows:

- Background to the town of Gorey and the rapid growth of same during the Celtic Tiger when the population doubled. Wexford County Council has made it a priority to establish a town core.
- Significant lands have been acquired and developed in the vicinity of the subject lands.
- Market House is owned by the Town Commissioners / Gorey Town Council and now Wexford County Council for decades, including the lands to the rear, since 1953. Deeds for same available.
- The Council engaged ICON to prepare a Public Realm Plan for Gorey. The Plan was developed but not pursued due to the news that the Town Council was to be abolished in 2014. It was advised however, that the Public Realm Plan has the support of the Council. New Council and executive looking at the proposal now.
- Private Sector interest to develop the lands.
- In order to appropriately develop, ownership of the lands the subject of this CPO are needed to be consolidated. There are 4 relevant plots:
  - Lands to the rear of Market House, in the ownership of the Council but the subject of an adverse possession order by Mr. Wade, which is being challenged.
  - Mrs. Mary Doran plot has been purchased by acquisition following negotiation.
  - Mrs. Byrnes derelict site, rear garden to the rear of an unoccupied house. Negotiations entered into but no agreement.
  - Right of Way claimed by Mr. Wade. It is submitted that while there is no evidence of an established ROW, it is not being disputed and will be dealt with by way of compensation. Successful negotiations were entered into but not concluded with Mr. Wade.

- The Council wants to redevelop the block in the interests of enhancing the urban development of Gorey. It is submitted that the lands need to be acquired before a final plan for the overall site will be finalised. Expressions of interest will then be invited to develop the lands which will be of benefit to Gorey for economic (retail or office) and or cultural benefit. Any proposals will be considered against the Public Realm Plan and the heritage protection of Market House.
- Wexford County Council, while having never considered the previous plans, are fully committed to the redevelopment plans.
- All proposals will be considered and the most appropriate scheme selected to go forward for planning. The planning documents to be prepared for the site is very expensive and the lands need to be assembled before this part of the process.

8.5 Following on from the Council's presentations, Mr. Michael Cullen, on behalf of his client Mr. Michael Wade, questioned the Local Authority presentation as follows:

1. Not clear why the Council want the lands? Is it a landbank assembly?

Resp: The Council want to redevelop derelict lands to the benefit of the town. It is necessary to assemble the lands to bring it into redevelopment by 2017, not to hold it. It is not speculative for the future, rather for immediate redevelopment.

I asked for clarification in relation to the submission that private developers have approached the Council to develop town centre sites. I sought to clarify that the subject lands were part of these approaches. Mr. Larkin advised that a private developer had approached Gorey Town Council with a view to developing Council lands, and have approached the other parties also, for recreation centre / concert venue in the Market House. The Council has taken no view on the private developer proposal and will not consider supporting same without going to the market to see if there are other proposals. The only two proposal options for the site at present are the private developer proposal which hasn't developed any further and the Public Realm Plan. This is not the Council looking to assemble lands on the cheap.

2. Mr. Wade is very concerned as to the proposals / intentions for the site. Asked what will be there in 2020?

Resp: The lands will be developed for either economic and / or cultural for the benefit of the town. Finer detail is not available until lands are assembled, acquired and proposals brought forward. The final proposals won't be developed until all parties are at the table. There will be extensive public consultation for the proposed development.

3. Mr. Wade will have no access to the rear of his property should the CPO be finalised. He currently parks his car to the rear of his property. How will Mr. Wade be accommodated to maintain his property?

Resp: The RoW is to be extinguished but the Council will consult with relevant parties to accommodate the needs of parties.

Issues were raised regarding the resurfacing of the RoW and adverse possession. I considered that these matters were not particularly relevant to the Boards consideration of the CPO. The Board will also note that issues of consultation were also raised as a concern.

- 8.6 Mr. Kevin O'Doherty, on behalf of his client Mrs. Angela Byrne, questioned the Local Authority presentation as follows:

1. As a matter of Law, the Council is not entitled to CPO unless there is a particular purpose for same and the Supreme Court made that clear in a recent case.

Resp: The cited case related to the IDA and has different requirements from Local Authority CPO powers. LAs can assemble sites for the purpose of redevelopment.

References made to the fact that a private developer has been promoting his proposed development for the lands, but the Local Authority has not advised support for same. The purposes of the CPO is to assemble the lands for the purposes of redevelopment.

2. If CPO is approved, how far will the boundary wall be to the residential property?

Resp: Line on maps.

3. Agents of the Council have attended on the objectors site acting as agent on behalf of a private developer and it is questioned whether the maps / drawings produced by him are the ones being put forward as part of the CPO. Have all of the documents been forwarded to the Board.

Resp: Mr. Larkin advised of no knowledge of the above and advised that he was the only negotiator for the Council. The maps produced are as discussed with the objector. The private developer submitted a business plan for the site. The LA is not seeking to CPO lands on behalf of the private developer, there is no council endorsement for said plans.

4. Mr. O'Doherty asked did the CPO arise because of the private developers prompting? Did he approach the Council first? Question raised in relation to the action of Council members. Questions whether the private developer could provide the development?

Resp: Yes. The private developer proposal came to the Council before it was decided to CPO lands. The current executive were not in their positions when this happened. Elected members cannot act on behalf of the Council in such matters, or bind the Council to any such agreements. There is no commitment to any private developer and any proposals presented for the site, which might include a public / private partnership will be considered following the consultation period and subject to established criteria.

- 8.7 I sought clarification from the LA regarding the Public Realm Plan for Gorey and in particular its status in relation to the objective in the current Gorey Town & Environs Local Area Plan to prepare such a plan.

Mr. Larkin advised that the Public Realm Plan has not been adopted by the current Wexford County Council and is to be considered by the County Council in terms of its future.

Gorey Town Council did consider the Public Realm Plan, and public consultation was undertaken. The Gorey Town Council did adopt the plan, but they were not a planning authority. It is unlikely that the plan will be carried on in full by the current Council.

- 8.8 Mr. Cullen on behalf of his client Mr. Wade made a submission in relation to the CPO. Mr. Cullen presented a book of photographs which were discussed. In addition, Mr. Cullen circulated a copy of Mr. Wades Statement of Evidence

of Michael Wade which was read into the record by Mr. Cullen. A copy of this statement is included in the appendix to this report. The key points of the presentation are summarised as follows:

- Legal grant of right of way as indicated.
- The RoW is used in connection of the business for a number of purposes including delivery of goods, transfer of dangerous drugs, access for staff, removal of refuse and hazardous waste and for repair and maintenance.
- Loss of the RoW will result in significant impacts on existing amenity and inconvenience, will restrict access to the rear of the property by emergency services, will affect the security of the pharmacy and will impact on the privacy and confidentiality of the service they provide at the rear of the pharmacy, damaging business.
- The sewer line serving the house runs along the line of the right of way. The loss of the RoW will hinder access for maintenance.
- The development will contravene the Development Plan which support mixed use of property in the Town Centre and encourages the use of upper floors on the Main Street. The Plan also encourages the retention of off street car parking.
- Wexford Co. Co. entered on the lands prior to the conclusion of the Compulsory Purchase process and without invitation or consent, and have interfered in the use of the RoW.

8.9 Following the above statement, Mr. Cullen advised of a further report from Mr. Diarmaid O'Suilleabhain, Chartered Engineer, on behalf of Mr. Wade. This report deals with the fire safety issues arising for Mr. Wade in relation to the use of his premises if the rear access to the property was removed. Mr. O'Suilleabhain sought to address 3 issues and advised that:

1. If the first & second floor was to be rented for commercial purposes, if there was no second, rear, access, major works would be required to ensure compliance with fire safety. The works required would not be financially practical.
2. On the ground floor, to close off the rear access, would require a Fire Safety Cert. and would require the installation of a protected corridor to the front of the shop. Given the long and narrow nature of the building, such a protected corridor would take up approximately  $\frac{1}{4}$  -  $\frac{1}{3}$  of the existing shop width.

3. The lands marked 100a and 100b incorporate the concrete plinth and shelter to the rear of Mr. Wades property.

8.10 Mr. Wade made a statement with regard to the CPO and the points raised are summarised as follows:

- Mr. Wade has maintained the area since 1988.
- The back door is required as a fire escape for the pharmacy for staff.

8.11 Mr. Larkin, on behalf of Wexford County Council considered that the comments made above could be dealt with during arbitration rather than these CPO proceedings. He wished to state however, that the CPO is in compliance with the Development Plan. A number of photographs were presented to show that prior to the resurfacing of the area, it would not have been useable on a daily basis. Mr. Larking asked a number of questions of Mr. Wade as follows:

- Given the surface of the area prior to the works carried out, the area could not have been in daily use.  
Mr. Cullen on behalf of Mr. Wade, advised that the area may not be used every day, but rather for larger deliveries and is used particularly with regard to the delivery and transportation of dangerous drugs to local doctors surgeries in the area and as such, the car is pulled up to the back door of the pharmacy.
- Is it accepted that it is a shared entrance for many years?  
Mr. Cullen advised that it is Mr. Wades consideration that he has used the lands more often than the Local Authority, and almost exclusively.
- It is stated that in light of the above that the lands are clearly underutilised. If Mr. Wade parked his car at any point along the RoW, other than at the rear of his property, he would block access to the LA who has a RoW.  
Mr. Cullen suggested that given the lack of use of the area by the LA, this never arose.
- Mr. Larkin asked if Mr. Wade accepted that there was an agreement between him and the LA to purchase the lands, although it didn't close?

This agreement happened prior to Mr. Wades consideration of the impacts the CPO would have on his business and property.

8.12 I asked the LA if the valid issues of security raised by Mr. Wade had been considered to date?

Mr. Larkin advised that he would hope that all concerns would be reasonably addressed.

8.13 Mr. Kevin O'Doherty on behalf of his client Mrs. Angela Byrne presented a submission in relation to the CPO, by way of presenting questions to Mrs. Byrne, who responded. The submission is summarised as follows:

- The property is a residential property currently occupied by Mrs. Byrnes adult children. It was the family home until 2006.
- The rear of the garden is derelict due to the presence of dangerous walls, including the Council wall.
- Private developer has approached Mrs. Byrne and arrived on her property without her consent advising that he was entitled to be there due to an agreement with the Council since 2013. He showed plans and proposals for the site.
- Mrs. Byrne spoke with Mr. Larkin and advised him that she did not want to sell. It is Mrs. Byrnes understanding that it is the private developer and the Council acting together to facilitate the private developers proposed development. The third party developer told Mrs. Byrne that she was holding up the development. Money was offered
- Mrs. Byrne was advised that the lands could not be CPO'd as it was not a roadway.

8.14 Mr. Larkin responded acknowledging that Mrs. Byrne is an unwilling seller and no agreement was made.

- The derelict wall is outside the control of the Local Authority, being along the RoW at present and this is a reason to secure title.
- LA is aware of the private developers activity on site from Mrs. Byrne, but he has no authority to act on behalf of the Council or offer on behalf of the Council. The Council has never stood behind the private developers proposal.

8.15 Mr. O'Doherty also makes the point that Mrs. Byrnes land does not lie to the rear of the Council owned lands and rather, the CPO proposes to open like an umbrella. It is not a natural boundary and as such, it is more incumbent on the LA to specifically identify the purposes for which they wish to acquire the land.

8.16 Mr. Larkin submitted that this approach does not take into consideration that Mrs. Dorans property has been purchased. To this response, Mr. O'Doherty submitted that therefore, it is a landbank that is being acquired. Mr. Larkin stated the LA set out to acquire an overall integrated site. One element was purchased by agreement and the CPO is for the remaining pockets. Finally, Mr. Larkin indicated that the actual line from the rear window of Mrs. Byrnes property is not the 6ft 10ins indicated by the private developer, rather 13-14ft in accordance with the boundary identified on the CPO maps.

8.17 In terms of closing statements, the following is relevant:

- Mr. O'Doherty on behalf of Mrs. Byrne concluded as follows:
  - that there is no right to Compulsory Acquire land when the Council does not have a specific purpose for it. This is enshrined in the 2000 Act, S213.
  - To acquire for cultural purpose is too vague when there is no evidence that there is a cultural deficit in the town or what the economic purpose is and the Council admits that the Market House has not been used for commercial purpose for years.
  - There is no entitlement to acquire a landbank in statute.
  - EU Convention on the Constitution requires that consideration be given to the rights of the property owner balanced with the benefits to the public. As we don't know what the intended use is, we cannot consider or establish what the benefits to the public are.
  - There has been inadequate public consultation on the matter.
  - The whole process has the fingerprint of a third party, which is not permissible, and it is submitted that the ability of the said third party are diluted over the last number of years. If the private developer drops out, the Council will have acquired lands with no discernable purpose in mind.
  
- Mr. Cullen on behalf of Mr. Wade concluded as follows:
  - Mr. Wades concern is that the lands are being acquired with no specific purpose in mind.
  - Reference is made to the recent Supreme Court Judgement that it is not acceptable to acquire land for general purpose, albeit in the public



interest, without knowing what it is to be used for.

- Serious loss of amenity and access, security and fire safety aspects restated as well as the ability of Mr. Wade to continue his business and arbitration will not deal with these issues.
  
- Mr. Larkin on behalf of Wexford County Council
  - The LA embarked on this CPO purely to pursue the twin goals of proper planning and economic development of Gorey
  - The LA is appropriately seeking to develop the town centre area of Gorey using underutilised backlands where they exist. Before the third party developer, there was a plan to develop these lands in the Public Realm Plan.
  - The private developer proposal is only one proposal, there will be a formal process to invite other proposals and it is not likely that the LA will lose control of the process.
  - It is not the intention of the LA to acquire a landbank and there is a clear purpose for the lands in mind.
  - Reference to the IDA was noted, but the LA has wider acquisition powers and can CPO for future uses where required.
  - A mixed use development of the site is likely, and urban regeneration is a valid purpose for CPO. The Market House is likely to be used for cultural purposes, and is a protected structure. The rear will be a public domain and there will be some commercial element.
  - The Council will drive and control the development.
  - Every effort will be made to address concerns raised.

8.18 As the presiding Inspector I formally closed the hearing at approximately 12 noon.

8.19 A summary list of documentation and copy of all submissions received at the Oral Hearing are enclosed on the file CH3243 for reference by the Board.

## **9.0 ASSESSMENT**

### **9.1 Background**

9.1.1 Wexford County Council are seeking to acquire land by compulsory purchase in order to establish an integrated site for the purposes of redevelopment. It was indicated at the Oral Hearing that while the final detail of any development on the site is yet to be determined, it is considered that it is likely to be a combination of commercial and cultural uses. The importance of the Market House is highlighted and any development of the lands the subject of the CPO will have regard to the protected structure status of the building. The Local Authority advised that the lands to the rear of the Market House will likely be a public domain with some commercial use. The Local Authority submits that urban regeneration is a valid purpose for CPO.

9.1.2 The Executive Order, No. 470/2015, authorising the making of the Compulsory Purchase Order was dated 18<sup>th</sup> August, 2015, and it is noted that the order was made following the Local Authority's efforts to acquire the lands by agreement.

9.1.3 The Planning Policy Report submitted in support of the CPO, and dated 20<sup>th</sup> July, 2015, considered the subject lands in terms of land use zoning afforded in the Gorey Town & Environs LAP 2010-2016, being Town Centre. The report also noted that the LAP also seeks to encourage the full use of buildings and backlands. The report also refers to all other relevant sections of the LAP with regard to the subject lands.

9.1.4 The Board will note that the Local Authority sought to acquire 4 plots of land, of which one was acquired by agreement. There are three plots submitted under this CPO, and the owners for two of the plots are identified, being Wexford County Council and Mrs. Angela Byrne, while Mr. Michael Wade is identified as an occupier of two plots, including a right of way. At the Oral Hearing, the identified parties presented their concerns in terms of the CPO and while there are issues of access and security raised, I suggest that the lack of any detail or clarity on what is actually proposed for the site, is the primary concern for the objectors.

### **9.2 Legal Framework**

9.2.1. The statutory powers of the local authority to acquire land are contained in section 213 of the Planning and Development Act 2000, as amended. The section of the Act states as follows:

## Section 213

- (1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.
- (2)(a) A local authority may for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect or facilitating implementation of its development plan or its housing strategy under section 94 do all or any of the following:
  - (i) Acquire land, permanently or temporarily, by agreement or compulsorily,
  - (ii) Acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,
  - (iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,and the performance of all or any of the functions referred to in sub paragraphs (i), (ii) and (iii) are referred to in this Act as an “acquisition of land”.
- (3)(a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority the land will be required by the authority for that purpose in the future.
  - (b) The acquisition may be effected by agreement in respect of any land which in the opinion of the local authority it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land.
  - (c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.
4. A local authority may be authorised by Compulsory Purchase Order to acquire land for any of the purposes referred to in sub-section (2) of this section and section 10 (as amended by section 86 of the Housing Act 1966) of the Local Government (No. 2) Act 1960 shall be construed

so as to apply accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in section (2) of this section.

9.2.2. Under the above provisions the planning authority *may acquire land compulsorily for the purpose of performing any of its functions including giving effect to or facilitating the implementation of its development plan....*

9.2.3. There is extensive case law with regard to the powers of compulsory purchase, including the recent Reid v IDA case [S.C. Nos. 442, 446 & 453 of 2013], judgement date 5<sup>th</sup> November, 2015. The most relevant case in terms of the above section of the Planning & Development Act, 2000 as amended, is contained in *Clinton (No. 2)* and particularly as it relates to what constitutes a ‘particular purpose’ as well as land required for ‘future use’. This case determined that compulsory purchase powers are available (S213(3)(a)) where land is required, but only where the particular purpose for its acquisition is already known and disclosed by the local authority. Under subsection (3)(b), it has been determined in *Clinton (No. 2)*, that land cannot be compulsorily acquired for future use where the authority has not determined the manner in which, or the purpose for which, the lands will be so used.

9.2.4. The Board will note that the third party submissions in relation to this CPO specifically references the above judgements. The Local Authority is satisfied that it has meet the criteria for the compulsory purchase of the lands and considers that the final specific intended use of the lands will be determined following a public consultation and tendering process. The final details cannot be determined until the title of the lands has been addressed. While I accept the submission of the Local Authority, I would not consider that the description of the development as clarified at the Oral Hearing, being ‘cultural / commercial or most likely a combination of both’ is sufficient to justify the acquisition of the lands at this time.

### **9.3 CPO Demonstration**

9.3.1. Notwithstanding the above, and should the Board be of a different view, it is accepted that there are four criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property as documented in “Compulsory Purchase and Compensation in Ireland: Law and Practice” (Mc Dermott and Woulfe 1992):

- There is a community need, which is 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 accord with the Development Plan.
- Any alternative method of meeting the community need have been considered but are not available.

These criteria will be applied to the compulsory acquisition of land currently before the Board for confirmation prior to addressing the issues raised by objectors. However, given that there is no clear proposal for the subject lands at this point, it is difficult to apply the criteria confidently.

### **9.3.2 Community Need**

I would accept that the development of the lands, for cultural / commercial uses might be construed as satisfying a community need. However, the Board will note that there is no specific zoning afforded to the area for a particular community need and while it is the policy of the Council, in the Gorey Town Local Area Plan, to promote the continued development of the arts and cultural diversity in Gorey and to facilitate infrastructural improvements that assist in the development of the arts and culture, there is no stated need for same. In terms of the provision of commercial development, the Plan provides that it is the policy of the Council to provide for anticipated car parking and commercial delivery demands within the town centre.

### **9.3.3 Need for the Lands**

In terms of establishing the need for the lands to satisfy a community need, I would consider that given that the lands are associated with Market House, it is reasonable to accept that particular property would be suitable to meet a community need. However, I again advise concern that given the lack of any proposals for the site, it is not possible to confirm that a community need exists at this stage.

### **9.3.4 Compatibility with Development Plan provisions**

In terms of compatibility with the Development Plan provisions, the Board will note that the Gorey Town Local Area Plan zones the subject lands for Town Centre uses. In terms of the information before the Board, together with the submission of the Local Authority at the Oral Hearing, it is clear that the

intentions for the site include cultural / commercial uses or most likely a combination of both. Both uses would be acceptable in principle in my opinion.

In addition to the zoning objective afforded to the site, the LAP also seeks to encourage the development of infill sites and backlands within the town centre.

In principle, the development of the subject lands for the purposes advised, might reasonably be considered as complying with the requirements of the Gorey Town LAP, 2010. However, the lack of any specific details, gives rise to concern in my opinion with regard to the compulsory purchase of the lands.

### **9.3.5 Consideration of Alternatives**

With regard to the consideration of alternatives, I would refer to the Public Realm Plan which was prepared for the Town of Gorey. This plan presents a proposal for the subject lands which would incorporate a public domain providing pedestrian access from Main Street to Market Street, and the establishment of various markets at identified locations. As established at the Oral Hearing, this Plan has no legal status and has not been considered by the current Council. It is unlikely that the plan as presented will be implemented and some commercial development will be required to finance the public domain elements.

The Local Authority advised at the Oral Hearing that a tendering process will be commenced once the title of the subject lands has been addressed and that any development proposal for the site will include extensive public consultation. It was acknowledged that the CPO process was begun following the approach of a private developer interested in developing the lands. The possible inclusion of a concert venue at the site was advised during the OH, but the LA clearly stated that no agreement has been made with any private developer in this regard.

In terms of the consideration of alternatives, it might reasonably be considered that this has not happened as yet, and will not happen until the tendering process has commenced as advised by the LA.

- 9.3.6 In addition to the above, and in conclusion, I consider, notwithstanding the good intentions of the Local Authority to do so, that the lack of any detail of a proposed development for the lands results in my inability to consider or assess any or all potential impacts on the objectors. Further, it is not possible to adequately consider or assess if the community need, public interest or

overall benefit to be achieved from the proposed acquisition has been adequately demonstrated at this stage. Given the nature of the objections to the acquisition, being the impact on the activities of Mr. Wades pharmacy and the residential amenity of Mrs. Byrnes house, I am not satisfied that the compulsory purchase order should be confirmed at this time.

#### **9.4 Appropriate Assessment & EIA**

The proposal does not exceed any of the thresholds that trigger the requirement to prepare an EIS. I suggest that the proposed sub threshold development is not likely to have significant effects on the environment and that the undertaking of EIA is not warranted.

In terms of AA, the Board will note that the site is a brownfield site within the urban centre of Gorey. In the absence of any development proposals as such, I do not consider at this stage, that AA is warranted or necessary.

#### **10.0 CONCLUSION**

With regard to the CPO application, it is considered, having regard to all the submissions on file and presentations/evidence submitted at the oral hearing, that the objections to the CPO must be sustained. I arrive at this conclusion on the basis that Wexford County Council has failed to demonstrate at this stage, the need for the public acquisition of lands or that the lands being acquired are necessary at this time, to provide for any specific proposed development for the benefit of the town. While the proposed acquisition of these lands would facilitate the development of underutilised backlands, which is considered to be consistent with the policies and objectives of the Gorey Town & Environs Local Area Plan 2010-2016, no specific development or declared purpose for the lands, other than for redevelopment purposes which may or may not include 'cultural / commercial or most likely a combination of both', has been put forward, contrary to the requirements of the Planning & Development Act, 2000 as amended, S213(3) refers.

#### **11.0 RECOMMENDATION**

Having considered the objections made to the compulsory purchase order together with the information provided in support of the CPO and the relevant policy and guidance documents, it is considered that CPO should be ANNULLED as the acquisition of the lands in question by the local authority is

not necessary for the purpose stated in the order at this time, by reason of the lack of any established declared purpose.

## **DECISION**

**ANNUL** the Compulsory Purchase Order based on the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

Having considered the objections made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearing into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following;

- (a) The purpose of the compulsory acquisition for redevelopment,
- (b) The policies and objectives of the Gorey Town & Environs Plan 2010-2016,
- (c) The absence of any detailed proposals or uses for the redevelopment of the site, and therefore, the absence of any demonstrated community need, public interest and overall benefit to be achieved from the proposed acquisition,
- (d) The insufficient information available and inadequate case made to justify the need for the acquisition at this time
- (e) The submissions and observations made at the Oral Hearing held on 17th November 2015 in Gorey;

It is considered that, the acquisition by the local authority of the lands in question, as set out in the order and on the deposited map, has not been justified and is not necessary for the purpose stated in the order at this time, by reason of the lack of any established declared purpose.

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A. Considine  
Inspectorate  
15/12/2015