



An
Bord
Pleanála

Inspector's Report 29N. CH3335

Compulsory Purchase Order

Bonham Street/Island Street
Compulsory Purchase (Provision of
social housing, community centre,
public park, public plaza and private
amenity space) Order 2017.

Location

Bonham Street/Island Street, Dublin 8

Local Authority

Dublin City Council

Objectors

1. The Wolseley Estate
2. Zoe Developments (In Liquidation)
and Danninger (In Liquidation)

Date of Site Inspection

18th September 2017

Date of Oral Hearing

20th September 2017

Inspector

Stephen J. O'Sullivan

1.0 Compulsory Purchase Order

1.1. The city council made the order on the 26th April 2017 under section 76 and the Third Schedule of the Housing Act 1966, as amended. It authorised the local authority to acquire compulsorily certain lands for the provision of social housing, a community centre, a public park, a public plaza and private amenity space. The lands consist of 4 plots described as follows-

Plot 1 consists of 1,014m² which is part of a public park that is occupied and leased by the council

Plot 2 consists of 333m² which is part of a public park that is occupied and leased by the council

Plot 3 consists of 140m² which is part of the public road

Plot 4 consists of 212m² which is part of the public road.

Plots 1, 2 and 3 are contiguous. Plot 4 is c28m to the south.

1.2. The owners or reputed owners of plots 1 and 2 are stated to be

The Wolseley Estate

The Legal Personal Representatives of Mary Buckley (Deceased)

Zoe Developments (In liquidation)

Michael Buckley (Liquidator)

- 1.3. The local authority submitted the order to the board for confirmation on 29th May 2017, along with copies of a newspaper notice of the order and a list of persons upon whom notice of the order was served. The submission included a certificate from the City Planning Officer that the stated purpose of the order was consistent with the objectives of the city development plan; one from the City Architect stating that the site was suitable for those purposes; one from the Principal Environmental Health Officer stating that the site was suitable for housing; and one from the city engineer stating that water and drainage services can be provided to the site.

2.0 Description of Site

- 2.1. The lands are in the south inner city of Dublin. They form the larger part of an open space, along with some of the roads and footpaths around it. The space is grassed but was not open to the public at the time of inspection. Streets run along its north, east and west sides, with a railing on a low plinth marking its boundary with the footpath. The western boundary of the open space adjoins the side wall of a 5-storey apartment building known as the Maltings that occupies the rest of the block formed by Bonham, Island and Watling Streets. It appears to date from the later part of the last century. There is a large vacant site on the other side of Bonham Street to the east of the site that extends to Bridgefoot Street. The site across the street to the south is occupied by a recent development of student housing.

3.0 Objections

- 3.1. The objection from the Liquidator of Zoe Developments and Danninger states that the site has significant development potential that could be realised through a private development process and that the objector is in negotiations with an interested party regarding these lands that are well advanced, after which a planning application could be made to the city council.
- 3.2. The objection from the Wolseley Estate states that the lands are an integral part of the estate which comprises numerous other properties in the vicinity. The estate has its own plans for the development of its properties the frustration of which would constitute a breach of natural justice, as would any entry by the applicant onto the lands pursuant to a notice to treat inasmuch as the title to the estate's land would

have passed to the applicant before the value of said land had been assessed or paid. The said notice of the making of the compulsory purchase order has not been seen by Dublin City Council.

- 3.3. The local authority made a written response to the objections which stated that it had a lease on plot 1 for 300 years from 25th March 1929 for £50 per annum, and one on plot 2 from 15th April 1809 forever for a peppercorn.

4.0 The Oral Hearing

- 4.1. The hearing opened on 20th September 2017 at the board's offices in Dublin.
- 4.2. Mr Stephen Lyons and Mr Tom Kennedy spoke for the local authority. They stated that the land had been assigned and conveyed to Dublin Corporation under a lease dated 21st December 1954. The term of the lease was 300 years from 25th March 1929. A copy of the lease was submitted. The local authority has had exclusive control of the property since then. The local authority has followed the procedures laid down in the applicable legislation for the compulsory acquisition of property, a record of which was submitted in the form of a booklet. These procedures have been upheld by the courts after numerous challenges. No breach of natural justice arises in this case. The local authority does not have to enter onto the land as it already occupies it. The lands which are the subject to this order do not impinge on the apartment building at the Maltings. In response to a question from the inspector, the local authority stated that plans to give effect to the purpose of the order were being prepared but they were not ready to be made public. An outline of a development plan could be submitted to the board but not to the other parties. The inspector declined to accept a document at an oral hearing that could not be made public, but reminded the parties of the board's power to request additional information.
- 4.3. Representatives of the Wolseley Estate did not attend the hearing.
- 4.4. Mr Cathal Young spoke for Danninger and Zoe Developments (in liquidation). He stated that Zoe Developments were entitled to the beneficial ownership of the land that was to be passed to them from the Wolseley Estate following a court order in 1996, although it was not clear whether the estate had signed over its interest following the order. Zoe Developments entered into a management agreement for

the apartment building at the Maltings. The interests of Zoe Developments were assigned to Danninger in 1999. A copy of the assignment is submitted. Both companies are in liquidation. The liquidator intends to sell the Danninger's interests in land and is in negotiation with third parties to do so. The properties at Nos 12, 13 and 14 were controlled by Zoe Developments under a series of leases and became part of the apartment development at the Maltings. The confirmation of a compulsory purchase order in respect of these properties would interfere with the company's property and its ability to dispose of it. It would affect the apartment building at the Maltings and the interests of the owners of the several apartments there.

- 4.5. The inspector reminded the parties of the target date for the board's decision on the case, and closed the hearing on 20th September 2017.

5.0 Policy Context

5.1. Rebuilding Ireland – Action Plan for Housing and Homelessness

The plan was adopted by the government in 2016. An overarching aim of this action plan is to ramp up the delivery of housing from its current undersupply, with a target to deliver 47,000 units of social housing by 2021. A range of actions to achieve this target is set out in Pillar 2 of the action plan. The provisions of the action plan are relevant to the board's consideration of this case by virtue of section 143(1)(a) of the Planning and Development Act, 2000 as amended.

5.2. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned under objective Z5 as part of the city centre. Residential use is permissible in this zone.

6.0 Assessment

- 6.1. The local authority did not elaborate upon the purpose for which the acquisition of these lands is proposed beyond that set out in the title of the order, which essentially refers to social housing with ancillary works that would serve the amenities of that housing. The need for social housing is established by government policy, in

particular the provisions of the action plan Rebuilding Ireland that was adopted in 2016. The need would be particularly acute in larger settlement, including central Dublin.

- 6.2. The lands that are the subject of this order are suitable for the provision of housing as they occupy a residual undeveloped part of a city block where residential use is established by the apartment building known as the Maltings. The form of that building appears to be compatible with the provision of housing on the rest of the block, as its fenestration indicates that habitable rooms do not depend on windows that face the eastern part of the block for natural light. The residential development of the lands might occur as part of a perimeter block facing Bonham Street and Island Street, or a different form might be used which incorporated the lands into a development that included the extensive vacant site between Bonham Street and Bridgefoot Street. The local authority stated that it does not have plans on the matter that are ready for publication. This does not detract from the suitability of the lands to be used as part of a residential development.
- 6.3. The construction of housing on the lands would be in keeping with the provisions of the development plan, in particular their zoning under objective Z5 as part of the city centre. The lands are centrally located in a city where the demand for housing significantly outstrips its supply, and where the affordability of housing and access to it for all social groups are pressing concerns. It is unlikely, therefore, that there are lands that would be more suitable for the provision of social housing to a degree that would diminish the suitability of the lands in question for that purpose. A failure to provide social housing on the land would diminish the amount of social housing that was available to the community.
- 6.4. It is clear, therefore, that the acquisition of land that would occur under the submitted CPO would meet a public need, that the particular property is suitable to meet that need, that the proposed works would be in keeping with the provisions of the development plan, and that alternative or preferable methods of meeting the need which did not involve this acquisition are not available. The acquisition of the interests in land that would occur under the CPO that has been submitted to the board for confirmation would therefore be justified by the common good.

- 6.5. The consolidation of the lands occupied by the local authority that constitute the undeveloped remainder of this city block is necessary to facilitate a coherent form of residential development there whether or not this occurs in conjunction with the vacant land to the east. The size, shape and location of the individual pieces of land are not conducive to their separate or individual development. The alternative to the proposed acquisition is therefore likely to be an absence of development, whether for residential purposes or otherwise, and a failure to meet the community need that is the stated purpose of the CPO. The local authority already occupies the lands which are the subject to the CPO, part of which are the public road. The acquisition of the other interests in the land would not prejudice their development by other persons as no significant potential for such development exists. The local authority would not require confirmation of the CPO to effect an entry upon the lands. The local authority made and advertised the CPO in accordance with the relevant legislation affording the opportunity for objections to be made to the board and at an oral hearing. These objections have been considered. The confirmation of the order would not, therefore, constitute or facilitate a breach of natural justice.
- 6.6. At the oral hearing Danninger expressed concern that the CPO would impinge upon the apartments at the Maltings. It referred to the interest in land which the companies had acquired for the development and management of the apartments which had a basis in leases that referred to properties at Nos. 12, 13 and 14 which are also cited in the schedule of the CPO. It is abundantly clear from the submitted maps and an inspection of the site that the acquisition of land under this CPO would not impinge on the lands included in the apartment building at the Maltings or its curtilage or the legal interest of any person in them. The street numbers cited in the CPO and the other leases and conveyances cited by the objectors and the local authority refer to buildings that have long since been removed. The street layout around the site was also altered during the development of social housing in the middle of the 20th century. The street numbers that appeared on postal addresses in central Dublin were prone to variation over time until the 1960s even if the buildings to which they referred were not altered. Having regard to these historic circumstances, and to the clarity with which the boundaries of the Maltings have been laid out on the site and the precision of the deposited map, it is not considered that the citation of former street numbers in the CPO would assist in the identification

of the property to which it refers. Their omission would not imply that there was any defect in the making of the order by the local authority or the notices of it, but would tend to reduce the possibility of future confusion as to the effect of the CPO.

7.0 Recommendation

7.1. I recommend that board confirm the compulsory purchase order with modifications to remove the references to street numbers in the schedule to the order, which would involve the omission of the following text –

with respect to plot 1 “(formerly No.’s 10 & 11)”,

with respect to plot 2 “(formerly part of No. 10)”,

with respect to plot 4 “(Including part of the properties formerly known as No.’s 12, 13 & 14)”

8.0 Reasons and Considerations

Having regard to the objections made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearing into those objections, and having regard also to:

- The policy of the government to increase the supply of housing and of social housing stated in *Rebuilding Ireland – Action Plan for Housing and Homelessness* published in 2016,
- The provisions of the Dublin City Development Plan 2016-2022 including the Z5 zoning objective that applies to the area under which residential use is permissible, and
- the pattern of development in the area including the relationship between the lands described in the schedule to the order and the apartments at the Maltings and the surrounding streets

it is considered that, subject to the modifications set out above, the acquisition by the local authority of the lands described in the Schedule of the Order is necessary for the purposes stated and that the objections cannot be sustained having regard to the said necessity.

Stephen J. O'Sullivan
Planning Inspector

September 22nd 2017