



An
Bord
Pleanála

Inspector's Report

ABP-320306-24

Development	Compulsory Purchase Order No 3 of 2024.
Location	Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare.
Planning Authority	Kildare County Council
Applicant(s)	Kildare County Council
Type of Application	Compulsory Purchase Order under the provisions of the Local Government (No. 2) Act 1960, the Housing Act 1966 (as amended), the Roads Act 1993 (as amended) and the Planning and Development Act 2000 (as amended).
Objector	Sabrina Macari
Date of Site Inspection	11 th October 2024

Date of Oral Hearing

21st November 2024

13th February 2025

Inspector

Enda Duignan

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Appendix A: Proceedings of the Oral Hearings

1.0 Introduction

1.1. Overview

- 1.1.1. This is an application by Kildare County Council (KCC) for confirmation by the Board of a Compulsory Purchase Order (CPO) for the properties at Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare. The order was made pursuant to the powers conferred on the local authority by section 76 and the third schedule of the Housing Act 1966, as extended by section 11 of the Local Government (No. 2) Act 1960, as amended by the Planning and Development Act, 2000 (as amended).
- 1.1.2. The Board received a single objection to the CPO from the landowner, Sabrina Macari. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the property.

1.2. Purpose of CPO

- 1.2.1. The stated purpose of the CPO is to acquire compulsorily a number of properties (Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare) for the purposes of the Housing Act, 1966. The subject properties are described in the schedule to the CPO as land other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.

1.3. Accompanying Documents

- 1.3.1. The application was accompanied by the following documentation:
- Copies of the Compulsory Purchase Order, Sealed, and signed by the Chief Executive and Cathaoirleach and dated 18th of June 2024.
 - Copy of Chief Executive Order (CE52572) authorising the making of the CPO.
 - Three copies of a No. 24-062 Co. Kildare Deposited Map 2024, comprising of a single sheet indicating the lands to be acquired for permanent acquisition.
 - Copy of the public notice published in the Leinster Leader, dated the 9th July 2024.
 - 3 no. photographs which demonstrates that the site notices were erected on site.
 - Evidence of service of Notice of CPO on interested party – Sabrina Macari, and details of the registered post.

- Certificate dated 14th June 2024 signed by Alan Dunney, Director of Services, Planning and Strategic Development Unit which confirms that the acquisition is in accordance with the policies and objectives of the Kildare County Development Plan 2023-2029.

2.0 Site Location and Description

- 2.1.** The subject site comprises a terrace of double storey properties located on the southern side of Main Street, Leixlip, Co. Kildare (i.e. Nos. 29, 31, 33, 35, 37 and 39). The site is located immediately to the west of the junction of Main Street and Captain's Hill and comprises a number of vacant commercial properties. Nos. 31 & 33 Main Street are centrally located within the terrace and have suffered extensive fire damage which is understood to have occurred c. 2012. I note that Nos. 31 & 33 Main Street are designated as Protected Structures (RPS Ref. B11-124) under the current County Development Plan (2023-2029). The remaining units appeared to be in a reasonable condition from my observations on site. There is an existing gated archway between Nos. 29 & 31 Main Street which provides access to the external area to the rear of the properties. The area to the rear of the site was overgrown with vegetation at the time of my site inspection.
- 2.2.** In terms of the site surrounds, the Court Yard Hotel is located to the west and south of the site. There are also a number of commercial properties to the east of the site and on the opposite side of Main Street which are reflective of the site's location with the centre of the town. Further to the south of the site is River Liffey and the Leixlip Heritage Trail. I note that there is access to this trail via the Arthur Guinness car park further to the site's west.

3.0 Planning History

3.1. Subject Site

- 3.1.1. 19/1433:** Planning permission granted by the Planning Authority in November 2020 for the refurbishment and remodelling of the existing two-storey terraced properties numbers 29, 31, 33, 37 and 39 Main Street, including for reconstruction of existing fire damaged

two-storey terraced property 33, 35 Main Street; demolition of existing rear garden structures and associated boundary walls and the construction of a new three-storey apartment building linked to existing terraced properties at first floor level and accessed via an existing arched opening at 29/31 Main Street. The proposal originally included 2 no. shops and 1 no. café at ground floor level, 3 no. apartments at first floor level and 8 no. apartments with the new 3 no. storey apartment building to the rear.

- 3.1.2. The application was amended at Further Information stage, whereby the commercial units at ground floor level were omitted and replaced by residential units. This resulted in a total of 11 no. apartments/duplex units being permitted on site. The expiry date of the permission is the 16th November 2025.
- 3.1.3. **14/223 (33-35 Main Street):** Planning permission granted by the Planning Authority for the reconstruction of existing fire damaged two storey terraced dwelling to provide living room, kitchen/dining room and w.c. to ground floor and three bedrooms with ensuites and bathroom to first floor. The development included re-roofing of original two storey element, new door and timber up-down sash windows to front elevation, re-construction to rear to include kitchen to existing single storey annex with two rooflights, two storey extension to rear to accommodate bedroom, en-suite and bathroom.
- 3.1.4. **07/2129 (33-35 Main Street):** Planning permission granted by the Planning Authority for the change of use of retail units (as granted permission ref no. 04/2706) to Betting Office and all associated site works
- 3.1.5. **04/2706:** Planning permission granted by the Planning Authority to retain and reconstruct Nos. 33, 35, 37 & 30 Main St, Leixlip, to provide for 2 no. ground floor shop units and 1 no. ground floor two bedroom apartment, 2 no. one bedroom and 1 no. two bedroom first floor apartments and 1 no. one bedroom.

4.0 Policy Context

4.1. Kildare County Development Plan, 2023-2029

- 4.1.1. The Kildare County Development Plan, 2023-2029 is the operative plan for the area. Under the current Plan, Leixlip is identified as a Self-Sustaining Growth Town. It is noted that these towns will continue to attract a moderate level of jobs and services through a range of employment types including biotechnology, ICT, high-tech manufacturing and research, bloodstock, tourism and food and beverage products.
- 4.1.2. As per the 'Core Strategy and Settlement Strategy', it is an objective (**CS O6**) to 'Promote, and initiate where feasible, measures to reduce vacancy and the underutilisation of existing building stock and support initiatives that promote the reuse, refurbishment and retrofitting of existing buildings within settlements throughout the county'.
- 4.1.3. In relation to the 'Housing Strategy', it is a policy of the Council (**HO P3**) to implement, in conjunction with the Housing Section, the Housing Strategy and Housing Need Demand Assessment (HNDA) to meet the projected population, changing household size and housing needs, including social and affordable housing requirements for County Kildare over the lifetime of the County Development Plan.
- 4.1.4. In relation to 'Regeneration, Compact Growth and Densification' it is an objective of the Council (**HO O12**) to support and promote the renovation and re-use of obsolete, vacant and derelict homes, through the following measures:
- (i) Encourage the redevelopment and reuse, including energy retrofitting, of the existing housing stock.
 - (ii) Support Government programmes and incentives to bring empty homes into use through various means, including potential expansion of the Town and Village Renewal Scheme as referred to in the Government's Rural Development Policy 2021-2025.
 - (iii) Maximise the effective use of local authority housing stock and minimise local authority housing stock vacancy, including through effective refurbishment and retrofitting of older stock where appropriate.
 - (iv) Promote the conversion of vacant properties into new social and affordable homes through schemes including the Repair and Leasing Scheme and the

Buy and Renew Scheme. Kildare County Council will endeavour to promote these schemes and encourage owners of vacant properties to avail of these schemes, directly or in cooperation with Approved Housing Bodies.

- 4.1.5. As per Section 3.12 of the current Plan (Social, Affordable Purchase and Cost Rental Housing), it is an objective of the Council (HO O39) to meet the county's housing need for social housing provision through a range of mechanisms, including Part V of the Planning and Development Act 2000 (as amended), a social housing building programme, **acquisition**, Repair and Lease Scheme, the Housing Assistance Payment (HAP) scheme, the Rental Accommodation Scheme (RAS) and the utilisation of existing housing stock.
- 4.1.6. As per Map V1 - 8.7 (Leixlip Core Retail Area), the site lies partially within the Leixlip Core Retail Areas. Section 8.7.2.7 (Leixlip) of the Plan notes that Main Street offers a range of convenience and comparison stores, pharmacies, restaurants, a hotel and public houses which create an ambience that attracts both locals and visitors. A number of residential properties are also located in the town centre which helps retain a living centre. Objectives of note include:
- RET O50 Protect the visual character, cultural heritage, ambience and vitality of the traditional heart of the town centre in order to meet the retailing and service needs of the area, in addition to offering a pleasant and attractive environment for shopping, business, tourism, recreation and living.
 - RET O51 Support the retail function of Leixlip through a combination of redevelopment of appropriate infill and opportunity sites in the town centre and on other suitably zoned lands within the local area plan boundary.
- 4.1.7. It is an action (**RET A3**) of the Council to 'Identify obsolete and potential renewal areas and, through active and positive engagement with landowners, to encourage and facilitate the re-use and regeneration of derelict land and buildings in the county's main towns, villages and smaller centres. The Council will use its statutory powers, including the Derelict Sites Act (as amended), the Vacant Site Levy 4 and/or **Compulsory Purchase**

Order, where necessary.

4.1.8. As noted, Nos. 31 & 33 Main Street are designated as Protected Structures (RPS Ref. B11-124) under the current Plan. As per Map V1 - 11.9, the site also lies within the boundary of the Leixlip Architectural Conservation Area (ACA).

4.1.9. Section 14.4.3 (Town Centres: Challenges and Opportunities) of the current Plan acknowledges that the size of some town centres also has an effect on their functionality. It is stated that settlements such as Celbridge and Leixlip originally developed as villages and were not designed to serve their present day heavily urbanised hinterlands. The result is a combination of large-scale retail leakage to other settlements and their main streets being choked with vehicular traffic. The Plan notes that many of Kildare's town centres continue to experience particularly elevated levels of retail and residential vacancies. An objective of note includes:

- UD O6 Continue to pursue a Town Centre First Approach to renewing and developing town centres through the following:
 - i. Prioritising the town centre as the primary location for commercial, civic, social and cultural development and promoting new high quality infill and backland development that consolidates and regenerates the existing urban core.
 - ii. Preparing and implementing Town/Village Renewal Masterplans for settlements of all sizes across the county.
 - iii. **Actively engaging with the community, landowners, developers and other agencies to secure support and develop a shared vision for the renewal and enhancement of Kildare's towns and villages.**
 - iv. **Implementing the provisions of Government's 'Housing For All' plan (2021) with regard to addressing vacancy and maximising efficient use of existing stock in our town centres.**
 - v. Implementing the provisions and Actions of 'Town Centre First – A Policy Approach for Irish Towns' (2022) including supporting the work of any appointed Town Regeneration Officers within the Council.

- **UD A5 Continue to tackle vacant residential and derelict sites within town**

centres through various initiatives, including the following:

- Targeted engagement with landowners.
- Promoting awareness of the Buy and Renew and Repair and Lease Schemes.
- Developing tailored responses through selected Town Renewal Masterplans.
- Applying for any funds made available under the Government's Housing for All plan (2021) to increase residential living opportunities in vacant or underutilised buildings.

4.1.10. Section 16.3.3 (Active Land Management and Urban Renewal) highlights that a comprehensive approach to active land management in the county is considered vital in achieving key provisions of the Core Strategy relating to compact growth, housing delivery and urban renewal. The Council will accelerate its active land management activities across the following areas:

- 'Strategic Projects and Public Realm Team – securing funding for urban, town and village renewal projects across the county.
- Application of the Vacant Site Levy¹ to key residential and regeneration sites.
- Appointment of a Vacant Homes Officer to maximise housing occupancy and potential residential living opportunities.
- Preparation of Local Area Plans which implement the principles of compact growth in individual settlements, identifying key regeneration sites and providing a supporting policy framework for town centre renewal...
- Engagement with key/strategic landowners, government departments and community groups in relation to the delivery of infrastructure projects or site acquisition for social infrastructure.
- Site coordination and site assembly, including the use of the Compulsory Purchase Orders.

- The Derelict Sites Act, (1990) (as amended)'

4.2. Leixlip Local Area Plan (LAP) 2020-2023 (Extended to March 2026 and Amended by Amendment No.1)

- 4.2.1. Under the current LAP, the appeal site is located on lands zoned A (Town Centre), where it is an objective (To protect, improve and provide for the future development of Town Centres).
- 4.2.2. As per Section 5 (Urban Centre and Retailing), it is an objective of the LAP (UCR1.3) 'To encourage and facilitate the full use of buildings and sites and in particular the use of upper floors and backlands, with due cognisance to quality of urban design, integration and linkage'. An 'Action' listed under this section of the LAP is 'To investigate unused premises and seek to bring them back into economic activity using incentives where required'.
- 4.2.3. Under the heading 'Town Centre Regeneration' (Section 5.3), it shall be an objective (**TCR 1**) of the Council 'To facilitate and progress the regeneration of the town centre through 'Active Land Management' measures set out under the Urban Regeneration and Housing Act 2015 (as amended) and the Derelict Sites Act 1990 (as amended).
- 4.2.4. It is an objective of the LAP (BH1.9) 'To address dereliction, vacancy and promote appropriate and sensitive reuse and rehabilitation of Protected Structures'.

4.3. Rebuilding Ireland: Action Plan for Housing and Homelessness, 2016

- 4.3.1. 'Rebuilding Ireland' was published by the Department of Housing, Planning, Community and Local Government in 2016. The overall aim of the plan is that: *Everyone in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life.* It states that it intends to address the needs of homeless people and families in emergency accommodation, accelerate the provision of social housing, deliver more housing, utilise vacant homes

and improve the rental sector.

4.3.2. The Plan identifies five key pillars, including ‘Pillar 2: Accelerate Social Housing’. This Pillar seeks to *‘increase the level and speed of delivery of social housing and other State supported housing’*. Key Actions are listed including ‘Extensive support for Local Authorities and Approved Housing Bodies’. Pillar 5 of the Action Plan also seeks to ensure that existing housing stock is used to the maximum degree possible – focusing on measures to use vacant stock to renew urban and rural areas.

4.3.3. Table 4 lists ‘Our Programmes’ and includes a programme ‘Local Authority Construction and Acquisition (also known as the Social Housing Investment Programme (SHIP))’. The objective is *‘to provide funding to local authorities for the provision of social housing by means of construction and acquisition’*.

4.4. Department of Housing, Planning, Community and Local Government Circular, PL8/2016, 2016

4.4.1. The Local Government Circular followed the publication of ‘Rebuilding Ireland’ - and relates to the identification of planning measures to enhance housing supply.

4.4.2. The Circular states that vacant stock represents a potentially very significant resource to assist in meeting the key goals of the Action Plan and that in advance of the approaching work on the vacant homes re-use strategy, Planning Authorities are requested to initiate preparatory work such as surveys of, for example, the levels of, condition and potential availability of vacant housing stock in key urban areas and/or areas with very high demand for housing.

4.5. Department of Housing, Planning, Community and Local Government Circular, PL7/2017

4.5.1. This Circular reminded local authorities of the overall strategy of bringing vacant homes back into use as quickly as possible. The circular advised the adoption of Vacant Home

Action Plan and includes the option of using the CPO process to acquire suitable homes as part of a strategy to address the matter of vacant private houses.

5.0 Objection

5.1. Context

- 5.1.1. The objector is the owner of the properties, Ms Sabrina Macari. She is represented by Con O'Leary & Co. Solicitors and a detailed objection to the proposed CPO has been prepared on her behalf.

5.1. Objection

- 5.1.1. The objection notes the land has been acquired by Ms Macari in various parcels and at various stages over a number of years. During that time, the properties at Nos. 35, 37 and 39 Main Street have been let to commercial operators at various stages. It is stated that prior to the fire damage to No. 33 Main Street in 2012, it was used intermittently as a residential dwelling. A summary of the background chronology in relation to Ms Macari's ownership of the land is provided within the objection. The main issues raised in the objection can be summarised as follows:

Flawed Procedures

- 5.1.2. Ms Macari does not accept that the Council has followed the correct procedures in relation to the proposed CPO and the Council is placed on full proof that it has complied with all necessary statutory procedures as set out inter alia in the Third Schedule to the 1966 Act. It is argued that they were not served with the necessary notice in the prescribed form as required by paragraph 4(b) of the Third Schedule, or indeed any notice, and they only became aware of the making of the Order upon seeing the signage erected on Nos. 29 and 33 Main Street which stated that an Order had been made and could be viewed on the Council's website. It is submitted that the Council's procedures in relation to the service of the relevant notices and compliance with the necessary statutory prerequisite steps to the making of the Order are fundamentally flawed.

Failure to Provide Reasons

- 5.1.3. Save for the broad and undefined reason of "for the purposes of the Housing Act, 1966", the Local Authority has failed to provide even a statement of the purpose for which the Council seeks to acquire the land. The Board cannot assess the objective to be served by, and the necessity and proportionality of this compulsory acquisition in circumstances where the Council has failed to set out the basis for the acquisition. Moreover, the Council's failure to do so makes it impossible for the landowner to engage properly with the objective of the CPO, and to make meaningful submissions as to (i) the necessity of the CPO to achieve any stated objective, (ii) alternative means of achieving any stated objective, and/or (iii) the proportionality of the CPO. For this reason alone, the acquisition should not be confirmed.
- 5.1.4. Given that the sole reason provided by the Council is "for the purposes of the Housing Act, 1966", it is stated that it may be presumed that the Council's objective is related to the provision of housing. However, it is contended that the actions of the Council will, if anything, delay or potentially frustrate the development of the site by the owner. It is highlighted that there is an extant planning permission in respect of the land which has now been imperilled by the actions of the Council in unilaterally making the Order without consultation with the Owner, without direct notification to the owner and, it appears, without consideration of the likely ramifications of making such Order (in terms of the effect which such Order would have on the ability of the Owner to secure funding to carry out the development which the Council had previously granted permission for).

The Right to Private Property & the Disproportionate Interference with the Owner's Constitutional Rights

- 5.1.5. The objection notes that the compulsory purchase of land is a *prima facie* breach of the right to private property and reference is made to be specific case law where this issue is discussed. It goes on to note that the proportionality principle is an essential element of the balancing of the protection to be afforded to the personal rights of the citizen with the justifiable needs of the common good. The proportionality of a decision to compulsorily

acquire land falls to be considered at two levels. The first is whether the compulsory scheme is proportionate to the end to be achieved in the abstract. The second is whether the particular CPO is proportionate to the specific end to be achieved by it.

5.1.6. It is submitted that the Order is a disproportionate interference with the Owner's constitutionally protected property rights and that it has not been shown by the Council that the Order satisfied any of the three limbs of the Heaney test (Heaney v Ireland [1994 3 I.R. 593] by (a) being rationally connected to the (unstated and, therefore, unknown) objective and not arbitrary, unfair or based on irrational considerations, (b) impairing the Owner's constitutionally protected property rights as little as possible, and (c) being such that its effects on the Owner's property rights are proportional to the objective. The following points are noted:

- The absence of a stated objective by the Council means that both the test of the CPO being rationally connected to that objective and the required proportionality analysis cannot be conducted. The objection notes that it is simply not possible to assess rational connection and proportionality where the objective is unknown.
- Notwithstanding that the absence of a stated and/or rationally supported objective renders it difficult, if not impossible to conduct a proportionality analysis, if one presumes that the Council's objective is related to the provision of housing (given that the only stated objective is "the purposes of the Housing Act, 1966"), then the effect of the making of the Order has been solely to delay and potentially frustrate the provision of housing by the Owner by carrying out the development for which permission has already been granted by the Council. As such, there is no rational connection between the Order and any presumed objective.
- The actions of the Council throughout its dealings with the Owner and the Council's failure to follow correct procedures (or, indeed, its decision to adopt incorrect and/or inappropriate procedures) gives rise to significant concerns on the part of the Owner that the Order is arbitrary, unfair and/or based on irrational considerations.
- The Order by its very nature entails a wholesale and total invasion of the Owner's

constitutionally protected property rights and, as such, the question of whether a less extreme invasion of those rights would be possible while achieving the same (albeit unstated and unknown) objectives appears not to have been considered by the Council.

- 5.1.7. It is again reiterated that the land is subject to an extant planning permission which the Owner is actively pursuing and seeking to act upon is a critical factor - and, it is submitted, a determinative one - in this analysis. The acquiring authority is required to consider alternative means of achieving the objective sought to be achieved. It is stated that there is no evidence that this was done. Overall, it is submitted that the existence of the extant planning permission, which the Owner sought and obtained for the comprehensive redevelopment of the land, militates overwhelmingly against the confirmation of the CPO.

6.0 Response to the Objection

- 6.1. The Local Authority made the following points in their submission to the objection:
- The Objective of the Compulsory Purchase Order is to bring vacant units in Kildare back into productive use for housing purposes by securing and facilitating the renewal of the subject property. It is stated that they are proposing to acquire the properties through CPO and return them to use in line with its objectives to increase the occupancy of existing homes and increase housing supply.
 - In terms of the 'Justification', the submission refers to the National Policy (Housing for All – a New Housing Plan for Ireland) and relevant objectives of the current Plan that support for the Order. Figures are also provided with respect to current number of households that qualify for social housing supports and the limited number of rental and second-hand properties in Kildare. It is argued that the productive use of vacant housing is vital and a viable source of housing supply.
 - Details are provided with respect to the history of the property and steps taken by the Local Authority up until this point in time.
 - In view of the history of the properties and length of time the units are vacant, it is concluded by the Local Authority that the confirmation of the CPO is the only way

this property can be effectively and timely returned to use and thus provide much needed housing in Leixlip.

- A timeline is provided from when the properties were first reported to the Local Authority as being vacant.

7.0 Oral Hearing

- 7.1.** Correspondence was received from Kildare County Council's solicitor on the evening of the 20th November 2024. The correspondence was purported to be on behalf of both the Council and landowner and an adjournment of the Oral Hearing was requested to allow negotiations to continue between the parties. Notwithstanding the receipt of the correspondence, an Oral Hearing was held on Thursday, 21st of November 2024 and the objector and Kildare County Council were represented at the hearing.
- 7.2.** As the presiding Inspector, I commenced proceedings with an opening statement. Participants were informed that the purpose of the hearing was an information gathering exercise to assist in the consideration of the merits of the case and in drafting the report and recommendation to the Board in relation to the CPO order. It was explained that the purpose of the Hearing was to deal with the CPO process only i.e., the merits, or otherwise, of the proposed acquisition of the lands by the Local Authority. Participants were also reminded that the Board has no role or jurisdiction in the determination of compensation.
- 7.3.** Both the Council and the Landowner were given an opportunity to elaborate on the rationale for the adjournment and provide an outline of the negotiations which had been undertaken to date. After considering the verbal submissions by the representatives of both parties, I agreed to an adjournment of the Oral Hearing.
- 7.4.** In advanced of the reconvened Oral Hearing, the landowner submitted a set of refurbishment drawings for a number of units in the landowner's possession and an associated schedule of accommodation prepared by Tyndall Architects. In addition, the

submission included a report prepared by French Estates Property Consultants. The Oral Hearing was reopened on Thursday, 13th February 2025. During the Local Authority's oral submission, it was evident that documentation which they were referring to had not been circulated to either the Board or the Objector for consideration in advance of the hearing. Following discussions between the parties representing the Local Authority, it was indicated that there were 3 no. submissions that had not been circulated to the Board or the Objector in error. These included:

- A report from the Planning Authority of Kildare County Council dated 20th November 2024.
- A submission by Eileen McGrath of the Housing and Regeneration Section, and,
- A note from Kildare County Council's A/Senior Architect.

This information was then circulated to all parties and at the conclusion of the Local Authority's and landowner's submission, the Oral Hearing was adjourned for a short period to allow the material in question to be considered. Following a review of the material, it was agreed that the Oral Hearing could proceed.

7.5. I note that the proceedings of the Oral Hearing are summarised in Appendix A of this report and referenced, where necessary, in the assessment below under Section 8.0.

8.0 Assessment

8.1. Overview

- 8.1.1. The proposed CPO is for confirmation by the Board of a Compulsory Purchase Order (CPO) for the properties at Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare ('the subject site').
- 8.1.2. The Board has received a single objection to the CPO from the property owner, Ms Sabrina Macari. This report considers the issues raised in the objection submitted to the Board and more generally the application to acquire the properties. The Local Authority state that the acquisition of the land is to bring vacant units in Kildare back into productive use for housing purposes by securing and facilitating the renewal of the subject

properties.

8.1.3. My assessment of this case considers the issues raised in the written objection to the Board, the points made at the Oral Hearing (OH) and the general principles to be applied in assessing CPOs of this nature.

8.1.4. For the Board to confirm the subject CPO proposal, it must be satisfied that the Local Authority have demonstrated that this CPO is clearly justified by the common good. It is generally accepted that there are five test criteria that should be applied where it is proposed to use powers of compulsory purchase to acquire land or property. These are that:

- i. There is a community need that is to be met by the acquisition of the lands in question.
- ii. The project proposed and associated acquisition of lands is suitable to meet the community need.
- iii. The works to be carried out should accord with, or at least not be in material contravention of, the policy and objectives contained in the statutory Development Plan relating to the area.
- iv. Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.
- v. The extent of land-take should have due regard to the issue of proportionality.

8.1.5. Furthermore, the Board should consider whether the acquisition will have an excessive or disproportionate effect on the interests of the affected persons. The proposed CPO is assessed below in the context of the above tests prior to addressing the specific issues raised in the objections lodged.

8.2. Community Need

8.2.1. Within their written and oral submissions, the Local Authority have stated that there is a demonstrated housing need both nationally and within Co. Kildare. They go on to note

that there are currently 7,000 households within the County who qualify for social housing supports, with 1,058 of these having listed Leixlip as their preferred area of choice. The submission also highlights the constraints that currently exist in the rental and second-hand markets in the County, with supply being raised as a significant issue. As indicated, a submission was received from the Housing and Regeneration Section of the Local Authority during the course of the Oral Hearing. It was indicated that the Local Authority have an identified purpose for the units and if the CPO is confirmed, it is the intention to refurbish the current properties and allocate them to persons in need of housing, therefore, addressing vacancy and dereliction.

8.2.2. Within their detailed objection on file, it is contended that the Local Authority have failed to identify the purpose for which the Council seeks to acquire the land, and they refer to the broad and undefined reason stated on the CPO Order i.e. 'for the purposes of the Housing Act, 1966'. It is the objector's contention that the Board cannot assess the objective to be served by, and the necessity and proportionality of this compulsory acquisition in circumstances where the Council has failed to set out the basis for the acquisition. It is presumed by the objector that the Council's objective is related to the provision of housing. However, it is the objector's contention that the actions of the Council will, if anything, delay or potentially frustrate the development of the site by the owner. It is evident from the documentation supporting the CPO, including the evidence presented at the Oral Hearing, that the acquisition of the lands in question has a dual purpose, i.e. addressing vacancy within the town of Leixlip and also delivering additional housing units for social housing purposes. Whilst I accept that this may not have been clear to the objector at the outset of the process, I am satisfied that the facilitation of the Oral Hearing has allowed the objecting party to sufficiently engage with the process and respond to the rationale presented by the Local Authority for the proposed acquisition.

8.2.3. To give some background context regarding the number of households nationally who qualify for social housing, I refer to the 'Summary of Social Housing Assessments 2023 (Key Findings)', which states that in total, the number of households qualified for social housing support was 58,824 nationally. The Mid-East (Louth, Kildare, Meath and

Wicklow) region had 8,411 households identified as being qualified for social housing support. This figure was up by 6.8% (533 households) on the 2022 assessment. This region continues to account for 14.3% of the national figure. Table 1.1 (Number of households qualified for social housing support by Local Authority) of the report indicates that there are 3,450 households that qualify for social housing support within Co. Kildare in 2023 which represents an 14.7% increase on the 2022 figures. Whilst I note that there is a significant variation between these figures and figures more recently quoted by the Local Authority, it is clear to me that there is a demonstratable and urgent need for social housing provision both nationally and within the County itself.

- 8.2.4. In relation to national policy provisions, the Action Plan for Housing and Homelessness, 2016 recognises that there is a chronic lack of housing supply in the State and a core objective is to 'ramp up of delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs, and to help those who are currently housed to remain in their homes or be provided with appropriate options of alternative accommodation, especially those families in emergency accommodation'. Of relevance in this instance is Pillar 5 of the Action Plan which seeks to ensure that existing housing stock is used to the maximum degree possible – focusing on measures to use vacant stock to renew urban and rural areas.
- 8.2.5. I note that the Local Authority have published a Housing Deliver Action Plan (2022-2016) which recognises the importance of addressing vacant properties in tackling dereliction and improving streetscapes across the county. It is detailed within this document that a Vacant Homes Officer was appointed in 2018 who carries out tasks that support the implementation of the Vacant Homes Action Plan which includes carrying out visual inspections/assessments of residential properties with a view to identifying possible vacant recoverable homes, identifying the registered owners and making contact where possible. This process is undertaken to make owners aware of the options to assist in bringing their properties back into use for private or social housing purposes through schemes such as the Buy & Renew Scheme, the Repair & Leasing Scheme and Croi Connaithe. Furthermore, it is indicated within this document that the Vacant Homes

Officer is developing a programme of Compulsory Purchase Orders that will aim to reduce vacancy across the county with a particular focus on areas of significant housing demand.

- 8.2.6. In summary, it is evident that there is a lack of available housing to meet existing community housing needs across the country and that each Local Authority, including Kildare, is required by national policy to pursue measures in tackling the deficiency in supply. In response, the Local Authority have put in place the local policy framework to implement national guidance including the adoption of the Housing Deliver Action Plan (2022-2016) and the appointment of a Vacant Homes Officer. Having regard to the public policy response to the shortage of housing and the figures provided by the Local Authority in terms of the number of households that qualify for social housing supports, I am satisfied that there is a need for the Local Authority to address the housing list as it stands and to reduce the levels of vacancy in the county. I am therefore satisfied that the Local Authority have demonstrated a clear and pressing community need that would be met by the project and would be facilitated by the acquisition of rights over the lands in question, should the Board consider it appropriate to confirm the CPO.

8.3. Suitability of the Lands to Serve the Community Need

- 8.3.1. A second criteria for considering the CPO is the suitability of the lands in question to meet the community need. I note that the lands are located on Main Street with the town of Leixlip. Under the current Leixlip LAP, the appeal site is located on lands zoned 'A' (Town Centre), where it is an objective 'to protect, improve and provide for the future development of Town Centres'. Furthermore, it is noted that dwellings are identified as a 'permitted-in-principle' land use within areas zoned 'A'. Whilst there are no special designations affecting the site nor does there appear to be any significant development constraints, Nos. 31-33 are designated Protected Structures, and the site lies within the Leixlip Architectural Conservation Area (ACA). As noted, Nos. 31-33 have suffered extensive fire damage which is understood to have occurred c. 2012.
- 8.3.2. It is evident from the landowner's chronology and the Local Authority's planning

application register that permission was granted in November 2020 (Ref. 19/1433) to comprehensively redevelop the site to provide a total of 11 no. residential units. The permission was not implemented by the landowner and is due to expire before the end of 2025. It was accepted by the landowner during the course of the Oral Hearing that this permission is now likely to wither and further discussion regarding this point is provided below in Section 8.6 of this report. In terms of the Local Authority's proposals for the subject site, a submission of the A/Senior Architect was circulated to the Board and the landowner during the course of the Oral Hearing. It is detailed within this submission that the Local Authority's approach would be to renovate/restore the existing houses and provide adequate private open space and access, while maximising the number of units within the existing footprint. The submission also sets out why, in their view, the permitted scheme (i.e. (Ref. 19/1433)) would be unable to secure funding from the Department of Housing, Local Government and Heritage in its current format for social housing provision. In his verbal submission at the Oral Hearing, the A/Senior Architect indicated that if the CPO is confirmed, the intention would be to engage relevant consultants (including conservation consultant) to progress proposals for the site. Initial site investigations would be undertaken to inform the design and identify any constraints that may exist. Although no formal plans/proposals or a specified timeframe have been provided for the site's redevelopment, it was reiterated by the A/Senior Architect that the intention is to simply renovate the properties to provide housing. Whilst it was confirmed that funding streams are available for the renovation of vacant properties, I note that no indicative figures were provided by the Local Authority in terms of the costs associated with bringing the existing properties out of vacancy and providing housing.

- 8.3.3. In advance of reconvening the Oral Hearing, indicative plans were submitted by the landowner and circulated to all parties. The circulated plans provide for the refurbishment of Nos. 29, 35, 37 & 39 Main Street to provide a total of 5 no. 1 bed residential units. During the course of the Oral Hearing, evidence was given by the landowner's architect who confirmed that it is the landowner's intention to undertake the proposed works by way of exempted development provisions (S.I. No. 75/2022 - Planning and Development Act (Exempted Development) Regulations 2022). Noting the expiration date of these

provisions (31st December 2025), it was indicated throughout the Oral Hearing that the landowner is committed to comply with the various conditions and limitations that apply and complete these works within the specified timeframe. Nos. 31-33 (Protected Structures) have been excluded from the landowner's proposals. I note that there is a specific limitation of the Regulations that would preclude the landowner from availing of the exemptions, given the heritage designation that applies to these buildings. It was verbalised by the landowner's husband (Mr. Pietro Macari) during the Oral Hearing that they have already engaged a quantity surveyor and secured funding for the refurbishment of the properties.

- 8.3.4. With the exception of Nos. 31-33, the remaining units appear to be in good condition from my observations on site, a point that was also noted by the landowner in their submission. Whilst the overall level of investment required from the Local Authority to deliver housing remains unclear, I am generally satisfied that the site is capable of being made good for the purposes of providing a social housing. Whilst the Local Authority have suggested during the Oral Hearing that the landowner's recent proposals would unlikely satisfy their statutory requirements, the costs associated with the refurbishment of Unit Nos. 29, 35, 37 & 39 Main Street as quoted by the landowner are not unreasonable. Therefore, I consider that the subject properties, having regard to their central location, could be refurbished, and put into permanent residential use and I am satisfied that in principle, the buildings are suitable to meet the housing need as identified by the Local Authority.

8.4. Compliance with Planning Policy

- 8.4.1. I refer the Board to Section 4 of my report above, which outlines the planning policy context for the subject properties. There are various strategic and statutory policies that support the return of vacant sites into viable use. As part of their initial submission, the Local Authority was satisfied that the acquisition of the subject properties through CPO was in accordance with the policies and objectives of the Kildare County Development Plan (CDP) 2023-2023. A further submission from the Local Authority's Senior Planner was circulated during course of the Oral Hearing which outlined the policy support both

in the CDP and the Leixlip Local Area Plan (LAP), 2020-2023 (extended to 2026) for the CPO in question. Having regard to the 'A' zoning of the site, and its stated objective and the policy provisions outlined in Section 4, I am generally satisfied that the acquisition and renovation of the properties for social housing purposes would accord with the site's zoning by protecting, improving and providing the future development of Town Centre.

8.4.2. Chapter 4 of the current CDP has had regard to Kildare County Council's Housing Need & Demand Assessment (HNDA) and Housing Strategy which address issues associated with housing in the county, including housing need. The HNDA finds that for the period 2023 to 2031, c. 30.2% of new households formed will need social housing support while a further 10.6% will fall within the bracket of 'affordability constraint' and therefore will require affordable housing. Furthermore, the Housing Strategy found that social and affordable housing provided under Part V during the strategy period of 2023-2031 will only address social housing needs that will arise during the strategy period of 2023 to 2030 and will not address the considerable demand for such housing that has built up to date. In this regard, there is a recognition under the current CDP that the Local Authority must continue to utilise all policy avenues open to it and any new schemes that become available to ensure the greatest delivery of social and affordable housing possible and to ensure a regionally equitable balance of housing delivery. Of note, the CDP recognises the demand for social housing in the state and in County Kildare and includes an objective (HO O39) to meet this demand through a range of mechanisms, including acquisition. There is also a clear endorsement and mandate from central government, across several national policy documents, that support the compulsory purchase of vacant properties and the utilisation of existing building stock to help resolve the housing crisis which I have touched on in Section 8.2 above.

8.4.3. Therefore, having regard to the national policy provisions, the 'A' zoning of the site and the various objectives outlined in both the current CDP and LAP, which seek to address vacancy, dereliction, underutilisation of lands and the demand for social housing, I consider that the acquisition of the subject properties by the Local Authority, and their refurbishment and renovation to a habitable standard, would accord with the relevant

settlement and urban regeneration policies outlined in the Kildare CDP, 2023-2029 and the Leixlip LAP, 2020-2023 (extended to 2026).

8.5. Consideration of Alternatives

8.5.1. Given the protection afforded to private property ownership in Ireland, the compulsory acquisition of any property should generally be seen as a last resort. The Local Authority should, therefore, be required to show how they have considered other alternatives first and prior to initiating the CPO process. In this regard, the onus is on the Local Authority to demonstrate that alternative methods are not available to them. When examining the timeline provided in the Local Authority's submission, it is outlined that the properties were first reported as being vacant in January 2019. A Pre-CPO letter was issued to the landowners in February 2023 and a Pre-CPO Notice was erected on the site in April of the same year. At the same time, a Section 8(2) Notice in relation to No. 33 Main Street was erected on the site and served on the landowner. Correspondence was received from the landowner's solicitor in May 2023 requesting the notices to be withdrawn. The timeline suggests that as no response was received, a Section 8(7) Notice in relation to the derelict property was issued to the landowner in June 2023. This is confirmed in the landowner's chronology, where they note that No. 33 Main Street was designated as derelict in June 2023. I note that a recent review of the Kildare's Derelict Site's Register confirms that the site remains on the register (i.e. File No. DS-2021-19). A further site inspection by the Local Authority was undertaken in April 2024 and as the units remained vacant, a decision was made to address the issue of vacancy and therefore pursue the acquisition process. During their submission at the Oral Hearing, the Local Authority indicated that the first alternative is that they do nothing. However, they note that this is not deemed to be an appropriate alternative given the stated need for housing and the stated policy considerations that support the replacement of vacancy and dereliction with housing. It was discussed at the Oral Hearing that as there was no engagement with the Vacant Homes Officer from the landowner, the only option to address the vacancy of the lands was through compulsory acquisition.

8.5.2. During the course of the Oral Hearing, Mr. O'Connell refers to the written objection

prepared by the landowner's solicitor which he fully stands over. On the matter of alternatives, it is suggested that potential alternatives would include acquiring other vacant properties within the town or indeed, the potential for the Local Authority to develop lands in their own ownership within the town, including the former ESB building which has remained vacant for a significant period of time. Mr. O'Connell asserted that the targeting of his client's property was not done on the basis of any analysis carried out by the Local Authority regarding vacancy but stemmed from earlier complaints from members of the public. It was his view that this fails the test of achieving the stated objective when considering the extent of vacancy in the town and other options available to the Local Authority. Whilst he acknowledged that the landowners' proposals are only recently brought to the table, this is another alternative that must be considered.

- 8.5.3. Evidence was presented during the Oral Hearing from Mr. French of French Estates. Mr. French was the author of a report which had been prepared on behalf of the landowner and circulated to the parties in advance of the hearing. As Mr. French gave evidence, Mr. O'Connell discussed Section E of his report which identified occupancy and vacancy levels of commercial properties within the town. The questioning centred on existing vacancy and Mr. French outlined that many of the identified properties have remained vacant for considerable periods of time and most would be suitable for their conversion to housing. In addition, there was discussions regarding Section F of his report which provided an overview of the acquisition of the former ESB site by the Local Authority in 2005. Mr. French noted the lack of progress in the intervening years and outlined that there is scope to redevelop the site to provide c. 36 residential units.
- 8.5.4. As noted, it is the objector's contention that the Local Authority have failed to clearly set out the basis for the acquisition and they object to their reliance on vacancy and dereliction as the objective that this acquisition seeks to satisfy. This argument is based on the details provided in the CPO Order, i.e. 'for the purposes of the Housing Act, 1966'. Notwithstanding this, I am satisfied that the Local Authority have demonstrated that the acquisition of the lands in question has a dual purpose, i.e. addressing vacancy within the town of Leixlip and also delivering additional housing units for social housing purposes.

This has been clearly stated within the Chief Executive's Order (CE52572), their Oral Hearing Submission that was circulated in advance of the hearing and the evidence that was circulated during the course of the hearing. I note that the landowner has contended that they were unaware of the Chief Executive's Order in advance of preparing their objection. However, the Local Authority confirmed that all relevant material was available for their inspection which is a point that I accept. Although I acknowledge the landowner's argument that vacancy is a significant issue in the town and there are a number of properties that could be refurbished as an alternative to their site, I would agree with the Local Authority that the consideration any of these alternatives would not address the objective that this CPO seeks to satisfy, i.e. to bring a prominent row of properties within Leixlip's Main Street out of vacancy to provide housing.

- 8.5.5. Notwithstanding the foregoing, the landowner has now put forward an alternative for the Board's consideration. As I have touched on previously, this involves the refurbishment of a number of the properties to provide 5 no. residential units. Plans and an associated schedule was circulated in advance of the hearing and the landowner's architect gave evidence on the nature of the proposed works which he outlined could be implemented through the existing exempted development provisions. Whilst I accept the concerns raised by the Local Authority regarding the timing in which these proposals have come to light, issues were raised at the hearing regarding the Local Authority's engagement with the landowner which I will discuss in further detail in Section 8.6 below. Given the evidence presented at the hearing, I am not satisfied that options other than CPO have been fully explored and ruled out and that there is no other viable alternative method available which would both address the issue of vacancy and help meet the pressing need for housing in this case.

8.6. Proportionality and Necessity for the Level of Acquisition Proposed

- 8.6.1. The Local Authority have indicated that they have pursued this acquisition process due to the length of time these properties have in remained vacant state, their prominent location on Main Street, the number of reports they have received from members of the public, Councillors etc. and because of a failure of the landowner to actively engage with

the Local Authority following an attempt made by the Vacant Home's Officer. Notwithstanding this it is important to consider the background context and the evidence provided by the landowner's husband during the course of the hearing. I also refer to the detailed chronology provided within the landowner's objection which dates back to 1998 when No. 33 Main Street was first acquired. It indicates that Nos. 35, 37 and 39 Main Street were then purchased in August 2000, and it is outlined that there were a number of permissions which did not proceed. This was due to mitigating circumstances such as delays in securing consent for works from a neighbouring landowner and the impacts of the financial crash. Following the acquisition of Nos. 29 and 31 Main Street in September 2019, the landowner submitted an application for the comprehensive redevelopment of the site. Ultimately, planning permission was granted by the Planning Authority in November 2020 for the refurbishment of the existing structures and the construction of a block to their rear to provide a total of 11 no. residential units. As the works have not commenced to implement this permission, it is the Local Authority's view that the only option to address vacancy is through the compulsory acquisition of the properties in question.

- 8.6.2. As I have already outlined, I am generally satisfied that the Local Authority have properly followed all procedures and have demonstrated that there is a community need for the acquisition, the site is suitable to address this need and there is local through national level policy support for the CPO. The issue of proportionality is therefore critical, and the question must be asked whether the order would have an excessive or disproportionate effect on the interests of the affected persons? I consider that it would. Whilst it is generally accepted that the extant permission will not be implemented given its expiration date, I do believe that there are again mitigating circumstances which have impacted the landowner's ability to implement the permission. Permission was granted during the Covid-19 Pandemic, a period where it is generally accepted that there was a significant degree of uncertainty in the construction industry due to associated restrictions, rising material costs and general uncertainty in the market. In advance of securing permission for the site's redevelopment, Nos. 31 and 33 were designated as Protected Structures (3rd November 2023 as per objector's chronology). In June and July of 2022, the

landowner and their representatives engaged with the Local Authority's Architectural Conservation Officer (ACO) regarding restoration works to the Protected Structures given their current state due to fire damage. It is detailed within the objection that the ACO confirmed that a schedule of works would be sent to them in order to progress discussions, but it is indicated that no further correspondence was received. Although the vacancy of the subject properties was on the Local Authority's radar from c. 2019, it wasn't until February 2023 when the landowner was first contacted by the Local Authority's Vacant Homes Officer (Pre-CPO Notice also erected on site). This document outlined that it was within the Local Authority's remit to compulsorily acquire vacant properties if deemed necessary and it was confirmed in the Oral Hearing that the landowner was requested to engage with the Local Authority on this issue to discuss the various supports that are available. The Local Authority confirmed that they received correspondence from the landowner's solicitor in May 2023 requesting the notices to withdrawn.

- 8.6.3. It is detailed in the landowner's chronology and verbalised by them in the hearing that, efforts resumed in early 2023 following the easing of the Covid-19 related restrictions to secure funding to implement the extant planning permission. It was confirmed that they were in the process of engaging with 2 no. private equity firms and negotiations continued over the period of approximately 1 year. It is stated that there were favourable discussions towards either a joint venture or straightforward financing with a private equity firm in March 2024. However, in July 2024 the CPO Notice was erected on site and it is the landowner's contention that it is the actions of the Local Authority that have then prohibited them from securing funding for the project and advancing the implementation of the permission given the uncertainties that now arose. Whilst it was confirmed by the Local Authority that they have proceeded with the acquisition process given the lack of engagement with the Vacant Homes Officer, it is evident that from the date the Pre-CPO Notice was issued, there was a clear line of communication between the landowner and the Local Authority. The landowner's submission confirms that a further meeting was held with the Local Authority's ACO in July 2023, an application was made to the Local Authority for an exemption under Section 57 of the Planning and Development Act, 2000 (as amended) to carry out emergency works to No. 33 Main Street and planning

permission was then ultimately granted for said emergency works in January. Given the nature of the works involved, it was confirmed at the hearing that the intention was to carry out the permitted works once the weather improved given the condition of the Protected Structures. Whilst I accept there may not be always direct engagement between various departments within a Local Authority, it was confirmed at the Oral Hearing that the Vacant Homes Officer was aware of the meetings that took place between the ACO and the landowner and the progress of same in terms of an application being made for remedial works. Therefore, in my view there has been a genuine effort by the landowner to engage with the Local Authority and there has been mitigating circumstances as why works have not progressed up until now. Although the properties in question have remained vacant for a considerable period of time, it was outlined at the hearing by the landowner's husband they were actively trying to lease the commercial properties, whereby they have been continuously advertised in a local estate agent and that commercial vacancy is an issue in the town in general and beyond his control. He also confirmed that when Nos. 29-31 were purchased in early 2019, these properties were not put up for lease as he was progressing the application for to redevelop the site (i.e. extant permission)

- 8.6.4. As noted, plans were circulated for the refurbishment of a number of the properties through the exempted development provisions that apply to vacant commercial properties. Ultimately, it is proposed to provide a total of 5 no. residential units on the site. Nos. 31-33 have been excluded from these proposals given the exemptions do not apply due to their designation as Protected Structures. The landowner has confirmed that a quantity surveyor had been engaged, costs for the works have been identified and the landowner's architect gave evidence at the hearing that the works could be completed within a reasonable timeframe. I note that the Local Authority had a genuine concern that there is a risk that the proposed works may not be lawful or implemented before the expiration of the Regulations and concerns were also raised that the exclusion of the Protected Structures would not address the issue vacancy within the street. Whilst the landowner confirmed during the hearing that they may be open to the Local Authority acquiring the building associated with the Protected Structures only, the Local Authority

confirmed that this would be an unsatisfactory outcome and they would not be satisfied with a modification of the CPO. The Local Authority suggested that an option for the Board to consider would be that if the CPO is confirmed and the suggested works were completed by the landowner, the option is available to them to not serve the notice to treat and therefore not progress the CPO. However, it was confirmed by the landowner's representative that whilst this may be superficially attractive, the confirmation of the CPO would impact the landowner's ability to secure funding for the aforementioned refurbishment works.

- 8.6.5. Although I accept that there is a risk that the refurbishment works may not be carried out, it is evident that there has been mitigating circumstances as to why the extant planning permission has not been implemented. It is evident that landowner has been actively engaging with the Local Authority, and they have now put forward a strong alternative proposal for the site which can address vacancy of a number of the properties and provide much needed housing within the short term. Whilst the market value for the properties in question may be significant, it cannot be certain in this case that the received money would adequately compensate for the loss of these properties. I therefore consider that the CPO would have a disproportionate impact on the property owner in this instance and for this reason, it is my recommendation to the Board that the CPO be annulled.

9.0 Conclusions and Recommendations

- 9.1. Having regard to all of the above, I am satisfied that Kildare County Council have demonstrated a need for the acquisition of Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare and that the properties in question are necessary to meet the partial needs of the Housing List. The acquisition of the properties is on the basis of their vacancy, and it has been demonstrated that they are suitable to meet the community need i.e. housing. However, the objector has outlined why a number of the properties have remained vacant over the last number of years and has demonstrated that there have been various mitigating circumstances as to why the extant planning permission that pertains to the lands has not been implemented. The landowner has also put forward

robust proposals for the refurbishment of Nos. 29, 35, 37 and 39 Main Street, Leixlip, Co. Kildare to provide housing which must be considered as a reasonable alternative to the compulsory acquisition of their properties. In this regard, the compulsory purchase of these properties would have a disproportionate impact on the property owner, which may not be offset by financial compensation.

9.2. DECISION

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

10.0 Reasons and Considerations

Having considered the objection 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;

- The purpose of the compulsory acquisition of Nos. 29, 31, 33, 35, 37 and 39 Main Street, Leixlip, Co. Kildare for refurbishment of the properties, to address vacancy and the acute housing need,
- The policies and objectives of the Leixlip Local Area Plan, 2020-2023 (extended to 2026) and the Kildare County Development Plan, 2023-2029,
- The submissions and observations made at the Oral Hearing held on 21st of November 2024 and the 13th of February 2025,
- The evidence provided by the landowner regarding the reasons why a number of the properties have remained vacant over the last number of years and the various mitigating circumstances as to why the extant planning permission has not been implemented to date, and,
- The proposals for the refurbishment of Nos. 29, 35, 37 and 39 Main Street, Leixlip, Co. Kildare to provide housing which must be considered as a reasonable alternative to the compulsory acquisition of the lands.

It is considered that, the acquisition by the Local Authority of the properties in question, as set out in the order and on the deposited map, would result in an excessive and disproportionate impact on the property owner.

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.

Enda Duignan
Planning Inspector

4th March 2025

APPENDIX A: PROCEEDINGS OF THE ORAL HEARINGS

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

Background

An Oral Hearing (OH) was held on Tuesday, 14th November 2024 in relation to the proposed compulsory acquisition sought by Kildare County Council – ‘Kildare County Council Compulsory Purchase Order No. 3 of 2024’. The Hearing was held virtually via MS Teams. As indicated in Section 8 of this report, the Council and the Landowner were given an opportunity to elaborate on their request for an adjournment and provide an outline of the negotiations which were undertaken to date. An adjournment was agreed, and the Oral Hearing was reopened on Thursday, 13th February 2025. The Hearing was held virtually via MS Teams. The persons listed below were in attendance and made submissions / witness statements at the Oral Hearing.

Submissions on behalf of Kildare County Council

- Dermot Flanagan, Senior Counsel,
- Matt Malone, Solicitor,
- Eilleen McGrath, Acting Administrative Officer,
- Patrick Henderson, A/Senior Architect, and,
- Stephen Willoughby, Senior Planner.

Submission on behalf of the Objector

- Micheál O'Connell, Senior Counsel,
- James Nerney, Junior Counsel,
- Con O'Leary, Solicitor,
- Sabrina Macari, Landowner,
- Pietro Macari, husband of Landowner

- James Bosco French - French Estates, and,
- Paul Tyndall, Architect.

Opening of Hearing

The Inspector formally opened the hearing at 10.00am. and included introductory remarks, and confirmation of attending parties. The Inspector questioned the progress of negotiations, and it was confirmed by both parties that an agreement had not been reached between the parties.

Submission of Kildare County Council

Dermot Flanagan, Senior Counsel

- One of the functions of the Local Authority is to provide housing and the purpose in this instance is to provide housing and replace vacancy and dereliction.
- It is the intention of the Local Authority to acquire the sites in question and to develop the lands to provide housing.
- It is indicated that there is an extant planning permission on the site that hasn't been implemented but it is noted that the permitted development would not meet the statutory requirements of the Local Authority and reference is made to a report of the A/Senior Architect of the Local Authority.
- Mr. Flanagan also refers to the submission regarding the planning background of the site and refers to relevant planning policy at national, regional and local level that seeks to address vacancy and dereliction.
- The Local Authority have no evidence that any form of permission would be implemented on the site.
- It is noted that the Board is precluded from engaging on the issue of compensation.
- It is outlined that the Orla Hearing will allow fair procedures. In relation to the statutory test compulsory acquisition, it is stated that there can be no doubt that the replacement of vacant and derelict location with housing will meeting a public need and the location on Main Street is suitable for providing a use of this nature.

Mr Flanagan indicates that this has been demonstrated by the Local Authority A/Senior Architect.

- In the case of alternatives, the first is a 'do-nothing' scenario. This in their view is not acceptable given the policy support for to address vacancy and dereliction and to provide housing. The other issue is the capacity of the landowner to redevelop the site. It is indicated that nothing has happened on the ground in many years despite permission being granted. Mr Flanagan also refers to work not undertaken by the landowner pursuant to Section 57 of the Planning and Development, Act relating to the Protected Structures.
- It is argued that an annulment or modification of the CPO will not address vacancy or dereliction. A confirmation of the Order will provide certainty regarding a plan for the lands in question.
- It is indicated that there is funding available to develop the lands for housing.
- Mr Flanagan refers to the refurbishment plans submitted by the landowner in advance of the hearing. Concerns are raised that it excludes the Protected Structures, one of which is on the Derelict Site's Register and therefore presents an obstacle in addressing dereliction.
- It is noted that they have very little detail of the intention of the landowner based on the new material submitted. They don't know the underlying basis upon which any lawful authorised development can take place within such a limited timeframe. It is noted that no material has been submitted that would justify an annulment of the Order.

At the conclusion of Mr. Flanagan's submission, the Inspector noted that there was documentation referenced within the oral submission that had not been circulated to the Board. The Objector was questioned whether they were in receipt of this documentation and they also confirmed that they were not and they were only in receipt of 1 no. written submission. In response, Mr. Flanagan requested the Local Authority's A/Senior Architect to make an oral submission.

Patrick Henderson, A/Senior Architect

- It is outlined that they proposed to renovate the existing building and maximise the number of units. It is stated that as the proposal progresses, the Local Authority will engage consultants to assist with the delivery of a scheme.
- It is noted that high level proposals have only been considered at this stage.
- It is confirmed that a report has been prepared that should have been circulated by the Local Authority to the relevant parties.

Eileen McGrath, Acting Administrative Officer

- It is confirmed that a funding scheme for the refurbishment of the properties is available.

Following a break, Mr. Flanagan confirmed that a number of additional brief reports had been prepared and were intended to be circulated but had not in error. These included:

- A report from the Planning Authority of KCC dated 20th November 2024 by Stephen Willoughby, Senior Planner.
- A submission by Eileen McGrath of the Housing and Regeneration Section, and,
- A note from Kildare County Council's A/Senior Architect.

It is indicated that it is their intention now to present these reports as evidence during the course of the hearing and they have now emailed the correspondence to the Board to circulate. In response, Mr. O'Connell raised significant concerns that this evidence had not been circulated for their consideration. However, it is stated that the works proposed by the objector which had been circulated to parties needs to be completed by the end of the year so to avail of the planning exemptions that apply. Therefore, they now object to the admission of the material submitted to Board. The Inspector requested Mr. O'Connell to proceed with this submission on behalf of landowner and on its conclusion, a short adjournment of the Oral Hearing would be provided to consider the material submitted by KCC.

Submission of the Objector

Micheál O'Connell, Senior Counsel

- Mr. O'Connell refers to the detailed written submission prepared on behalf of the objector. It is stated that there is a jurisdictional problem for the Board in confirming this Order. It is contended that order cannot be confirmed as the notice is invalid and the Local Authority are pursuing this CPO for an improper purpose, which is dereliction.
- A different purpose under different legislation underlies this application.
- Although it is stated that vacancy and dereliction is now the stated purpose, it is noted that dereliction applies to only one of the properties in question.
- Mr. O'Connell explains that the CPO has impacted the Objector's ability to secure funding and implement the extant permission on site.

Pietro Macari, husband of Landowner

- Mr. Macari confirms that he is authorised to speak on behalf of the landowner and an explanation is provided in terms of the site's ownership and its planning history.
- It is confirmed that they previously were able to avail of waivers of commercial rates for their properties as they were vacant. However, it is stated that over the last two years, these have been refused despite other vacant commercial properties within the area being approved. In this regard, they feel they are being targeted by the Local Authority.
- Mr. Macari explained that he was delayed commencing development due to Covid 19 and the lack of certainty around this period. They were then prohibited from securing funding for the project due to KC the Local Authority's proposals to CPO the properties.
- It is indicated that they have a new plan to refurbish the properties and to avail of the planning exemptions that apply, and it is highlighted that there are funding sources available for projects of this nature. It is also confirmed that they have engaged a quantity surveyor and have secured funding for the refurbishment works which will renovate a number of properties to provide 5 no. 1 bedroom units on the site.

- In terms of the restoration works for the Protected Structure, it is indicated that the works are currently cost prohibitive given the looming CPO. However, when questioned by Mr. O'Connell, Mr. Macari confirmed that he was open to the option of the Protected Structure being acquired by KCC (building only). Mr. Macari mentioned that there was a desire to submit a planning application in the future for the rear portion of the site.
- Mr. Macari confirms that he is a native of the town and a business owner who only wants to make a positive contribution to the town.

James Bosco French - French Estates

- Mr. French confirms that he is a real estate agent in the town and is the author of the report circulated to the relevant parties. When questioned by Mr. O'Connell about the Objector's recent proposals to refurbish the site, Mr. French notes that it is a very viable project, particularly in light of the high levels of demand that exists for housing in the town.
- Mr. O'Connell questions Mr. French regarding the vacancy that exists in the town as quoted in his report and confirmation is provided by Mr. French that there is a significant number of vacant properties within the town that would be suitable for use as housing, many of which would not require planning permission
- Mr. French discusses the former ESB site within the town which is within the Local Authority's ownership and has not been brought forward for redevelopment despite being vacant for many years. It is contended that the site has the potential to be developed for 36 no. residential units.

Paul Tyndall, Architect.

- It is confirmed that he has worked with the landowner since 2019 and was the architect for the extant permission on the lands.
- It is confirmed that he has now designed drawings for the renovation of a number of the properties in question (excluding Protected Structure) and an overview of the indicative development has been provided. It is also outlined that the

development can be carried out without the benefit of planning permission. The detailed drawings can be finalised in 2 no. weeks and Mr. Tyndall is confident that the works can commence within 4-6 weeks and can be completed before the end of December when the exempted development provisions expire.

The Inspector adjourned the hearing for 15 minutes to consider the new documentation circulated by the Local Authority. It was confirmed by Mr. O'Connell that they were agreeable in this instance to a continuation of the hearing. The Inspector reconvened the hearing, noted the nature of documentation and they were satisfied that the hearing could proceed. The opportunity for questioning between the parties was then provided.

Question between Parties.

Several items were discussed and expanded upon by the parties upon during this part of the agenda. I have summarised same below. Relevant points of interest are referred to in the assessment section of this report above.

Objector questioning KCC

Question

Questions are directed to Ms. McGrath regarding the justification for the CPO, in particular the argument made by the Local Authority that the acquisition of the site would meet the housing need of the area. Noting the significant number of households on the social housing list, it is put to Ms. McGrath that the site itself would only make a very limited contribution.

Response

Ms. McGrath responded that it would meet a proportion of the housing need.

Question

Questions are directed to Ms. McGrath regarding existing vacancy within the town of Leixlip, noting the information contained within the report of Mr. French. Mr. O'Connell

questioned why the landowner's properties were targeted for acquisition.

Response

Ms. McGrath provided details in terms of the Local Authority's role in identifying vacancy within towns and noted the prevalent location of the site within the town of Leixlip and that there had been numerous reports about the site in question from Councillors and members of the public. Mr. O'Connell interjected and queried whether any of these reports had been disclosed to the landowner. Ms. McGrath in her response claimed that she attempted to make contact with the landowner through written correspondence but received no response. Mr. O'Connell further noted that the landowner was in contact with various departments within the Local Authority and questioned why there was more internal engagement on this matter.

Question

Mr. O'Connell questioned Ms. McGrath whether she was aware of the extant planning permission that was granted to the landowner in 2020. It was put to Ms. McGrath that her submitted report confirmed that they had monitored the sites in question for several years. Mr. O'Connell also queried when did they first tell the landowner that they were monitoring the site.

Response

Ms. McGrath confirms that she was aware of the extant permission, and they had monitored the site for several years given the number of reports from the public. She believed the file was open since c. 2019/2020 and her department was continually monitoring the site until they formally made contact. The Inspector interjected and sought clarity on the timeline provided and it was indicated by Ms. McGrath that the formal correspondence in the form of a pre-CPO notice was issued to the landowner in February 2023. Mr. O'Connell queried Ms. McGrath as to why they had not sent this to his client via post despite knowing where she lived. Ms. McGrath responded by stating that correspondence had been sent by registered post. There was further dialogue between

the parties regarding the notification process. Concerns were raised by Mr. O'Connell regarding same.

Question

Questions are now directed to Mr. Henderson regarding the Local Authority's proposals for the site. Mr. O'Connell also queried Mr. Henderson on the acceptability or otherwise of the drawings submitted by the landowner.

Response

Mr. Henderson provided a summary of his experience and confirmed that their plan is to renovate the existing buildings for housing and to maximise the number of units that can be delivered. He goes on to note that no formal investigations of the site have been undertaken to date. Mr. Connell speaks further on the landowners plans for refurbishing the properties and his client's intention to deliver same before the expiration of the exempted development provisions that apply. The point is made by Mr. Connell that the Local Authority would not be able to deliver units before the end of the year, a point which is accepted by Mr. Henderson.

Question

The Inspector then questioned the Local Authority regarding the range schemes that are promoted by the Local Authority to address dereliction and deliver housing. The Local Authority were also requested to clarify why the objectives of the County Development Plan and Local Area Plan which were originally quoted for the CPO in the Chief Executive's Order were not included in KCCs submission to the Board. Clarification was also sought as to whether the Chief Executive's Order had been furnished to the objector or whether it had been made available for their inspection.

Response

Ms. McGrath listed a range of funding mechanisms that are available to assist landowners in the renovation vacant of derelict properties. It is confirmed by Ms McGrath

that the Chief Executive's Order was not issued to the objector. However, it was confirmed by Mr. Flanagan that all documentation was available for inspection at the offices of the Local Authority. Mr. O'Connell strongly objected to this point and emphasised that his client did not have sight of this document and was unaware that it was available for inspection. Further dialogue continued between the parties on this point.

Question

The Inspector then questioned KCC as to whether the Local Authority had an estimation of the costs associated with bringing the properties out of vacancy and through what mechanism could housing be delivered on the site, i.e. Part 8 etc.

Response

Mr. Henderson confirmed that they have not looked into associated costs with the redevelopment of the site but were aware of the funding would be available for projects of this nature. Further investigation is required to undertake a feasibility study. It is indicated that the proposal would be brought through the Part 8 process.

KCC questioning Objector

Question

Questions are directed to Mr. Macari by Mr. Flanagan regarding the extant planning permission on site and whether Covid 19 was a significant problem in terms of advancing the scheme. Mr. Macari was also questioned as to how long he owned the properties and how long have they been vacant?

Response

Mr. Macari confirmed that Covid 19 slowed everything down and had an impact on him progressing the development as was the case for everyone during that time. In terms of the existing properties, Mr. Macari indicated that they started purchasing the site's c. 20 years ago and he noted that the properties have been let out to small businesses

continuously over that period. He stated that it is no fault of his own that there have been more recent issues with vacancy and he has never asked tenants to leave. They have been put up to let with the local estate agency continuously during this period and he highlighted concerns regarding a lack of footfall through the Main Street which has had a negative impact in terms of retaining tenants.

Question

Mr. Flanagan references each of the units in question and queries how long each unit has remained vacant?

Response

Mr. Macari responds and provides an approximate date for each unit. He again confirms that each of the commercial units were advertised for lease and he noted that waivers in paying the commercial rates were approved during this period until 2 no. years. He confirmed that when 29-31 were purchased in early 2019 and that he did not put the properties up for lease as he was progressing the application for planning permission to redevelop the site.

Question

Mr. Flanagan notes that between the grant of planning permission in November 2020 and the correspondence issued to the landowner in February 2023, KCC weren't responsible for the non-implementation of the planning permission. Mr. Macari was requested to respond.

Response

Mr. Macari responds and noted the following:

- Planning permission granted in 2020 and during the pandemic. However, they not that they were looking at the proposals with their architect and trying to advance the development.
- The real issue was when the notices were erected on site by the Local Authority.

This prohibited any plans progressing on site and it is the actions of the Local Authority that has stopped them from securing funding to progress the development.

Mr. Flangan then interjects and notes that Mr. Macari or his wife had never communicated with the Local Authority regarding their intention to either implement the planning permission or anything else. Mr. Macari responded by indicating that he met with Ruth Kidney (ACO) in July 2022 and July 2023 about remedial works to the Protected Structures. He strongly refutes the contention that he did not engage with the Local Authority. The Inspector then noted to Mr. Flanagan that there is not an obligation on the objector to engage with the Planning Authority regarding the implementation of the permission, particularly if they were unaware of the reports received from members of the public and Councillors regarding the vacancy of the properties and the Local Authority's intentions to acquire the properties.

Question

Mr. Flanagan notes that the objection to the CPO made no reference to their intentions to undertake works to refurbish the units to provide housing by way of the relevant exempted development provisions. Mr. Flanagan indicates that the Regulations regarding the exempted development provisions were enacted in 2022 and it is noted that the Local Authority only heard of the intentions to utilise these provisions on the 6th February 2025.

Response

Mr. Macari responded that his wife has her constitutional rights to own the property. Following dialogue between the parties, it accepted by Mr. Macari that the Local Authority were first formally notified of these proposals on 6th February 2025. Mr. Tyndall then interjects and notes that they had discussions in December 2025 regarding the drafting the plans for the refurbishment of the units (excluding Protected Structures).

Question

Mr. Flanagan questions Mr. Macari as to whether they are guaranteeing that the refurbishment works will be completed before the expiration of the exempted development provisions at the end of 2025. Mr. Flanagan also asserts that refurbishment proposals are all new material to this CPO process, given the Local Authority have only been informed of these intentions in 2025. Mr. Flanagan speaks further on the various conditions and limitations that apply to the exempted development provisions and then outlines the obligation on the proposer to demonstrate to the Local Authority that they are compliant with same.

Response

Mr. O'Connell responds on behalf of the objector and confirms that the intention is to undertake and complete the works with the time period allowable (i.e. December 2025). Mr Tyndall then speaks on behalf of the objector regarding the proposed works and notes that all works will be completed in accordance with the relevant exempted development provisions and the associated timelines.

Question

Mr. Flanagan mentions the status of the existing Protected Structure and the fact that it is on the derelict site's register. He goes on to note that the objector sought consent for works to the Protected Structure under Section 57 of the Act. However, it is indicated that none of the permitted works have advanced.

Response

Mr. Macari responds by confirming that permission was granted during winter when the delicate works, as defined by the Local Authority, could not be undertaken. The intention was to implement the works but they were then threatened by the Local Authority regarding the site's acquisition. It was therefore unreasonable for them to progress with costly works in the event the properties were going to be taken off them. Following questioning by Mr. Flanagan, Mr. O'Connell confirms that the landowner is willing to

withdraw the objection to the acquisition of the Protected Structure (i.e. 31-33). Mr. Flanagan indicates that the acquisition of Nos. 31-33 only, would not satisfy the requirements of KCC and is therefore off the table.

Further discussion between the parties continues regarding the programming of works and Mr Tyndall sets out an approximate timeline for the works to be completed which would be the subject of the exempted development provisions. Mr. Flanagan raises concerns regarding the ability of the works to be completed within the timeframes that apply and the fact that no works are being proposed to the Protected Structure which would be left in a state of dereliction.

Question

The Inspector questions Mr. Macari regarding the funding stream available to execute the refurbishment works given that funding was unavailable to implement the extant permission following the actions taken by KCC.

Response

Mr. Macari gives an outline of the cost for the proposed refurbishment works and confirms that the funding has been secured to progress the project.

Closing Statements

Before the closing statements the Inspector agreed to a request for a 10 minute adjournment by Mr. Flanagan to consider the new information presented by the objector.

Objector

Mr. O'Connell refers to the written submission which he will not repeat but will stand over. On the matter of consideration of alternatives, he notes the potential alternatives would include acquiring other properties or developing the Local Authority's owned site within the town (former ESB building) which they have not done. The targeting of his client's property was not done on the basis of analysis regarding vacancy but stemmed from

earlier complaints from members of the public. It is argued that this fails the test of achieving the objective when considering the extent of vacancy in the town and other options available to the Local Authority. Whilst it is acknowledged that the landowners' proposals are only recently brought to the table, this another alternative that must be considered.

Kildare County Council

Mr. Flanagan notes that there is very significant information presented before them today. In terms of the statutory test, there can be no doubt that the properties in question are either vacant or derelict and there can be no doubt that there is a need for housing and refutes Mr. O'Connell's claims that the Local Authority are precluded from acquiring the properties for housing purposes.

In terms of suggestions by the Objector regarding the potential acquisition of the Protected Structure, Mr. Flanagan highlights that there would be major difficulties if the Order was to be modified by the Board.

If the landowner carries out the development on the basis of the annulled CPO that they are seeking, this still leaves the issue regarding the dereliction of the Protected Structures which does not form part of their plans. Mr. Flanagan again highlights the certainty that the confirmation of the CPO would bring. Furthermore, he questions whether the works proposed will be undertaken in accordance with the Regulations and concerns are raised that the works may not progress.

Mr. Flanagan outlines the various options that are available to both the Inspector and the Board, and it is indicated that the CPO doesn't become operative unless there are further steps enacted. If it is the case the landowner is committing to the completion of works by December 2025 and it is confirmed the works are done, the option is available to not serve the notice to treat. This might also provide the landowner with the opportunity to bring forward proposals for the refurbishment of the Protected Structures.

Mr. O'Connell responds by noting that Mr. Flanagan's are superficially attractive. However, the confirmation of the CPO would impact the landowner's ability to secure funding for the refurbishment works. Mr. O'Connell clarified to the Inspector that although funding is currently available, this would not be the case should the CPO be confirmed.

Closing

The inspector closed the Oral Hearing at 14.09pm