

**Complaint to The Public Accounts Committee**

Dear Chairman,

We are elected Public Representatives to Wicklow County Council.

We are extremely concerned about the contents of the file pertaining to the recent Compulsory Purchase Order made by the Authority on lands at Three Trout Charlsland, Greystones for an amount of €3 million.

We have been in correspondence with the Department of The Environment since July 2011(5 Months). A meeting was held on the 3/11/11 with the Political Advisor to Minister Penrose and a Department official.

At that meeting we presented our own report based on the content of the Council files. We were required to do this having received a letter from the Council stating they would repudiate any claims that may arise if any material was disclosed to a third party. (Copies enclosed)

Following the resignation of Minister Penrose I wrote to Minister Phil Hogan on the 17/11/11. I have received no response to date.

Deputies Anne Ferris and Simon Harris, members of your committee are on Public record stating that this CPO should be referred to the Public Accounts Committee for investigation.

The Department have failed to act in their Statutory Duty of oversight to safeguard Public Expenditure.

WCC have failed to disclose how the decision was made to CPO this land in the first place.

The Authority also failed to disclose relevant information to the Department, County Councillors and the Bord Pleanala hearing that this was a Flood Plain and unsuitable for the purpose of building Social Housing.

We request your office to commence an investigation into this matter. We are available to meet with you and provide information.

I can be contacted at 087 0505570 (Barry Nevin)

Cllr. James O'Shaughnessy MCC
Cllr. Thomas Cullen MCC
Cllr. Irene Winters MCC
Cllr. Barry Nevin MCC

28/11/11.

Strictly Confidential for Ministers Information Only

Compulsory Purchase Order Charlesland

The CPO by Wicklow County Council on lands at Three Trouts Charlesland, Greystones.

Background

In 2004 WCC decided to issue a CPO on 1.422 Hectares of land at Three Trouts, Charlesland, Greystones for the purpose, it was stated to provide social housing in the Greystones area.

This CPO was opposed by Mr. John Nolan at the subsequent Bord Pleanala hearing.

An Bord Pleanala approved this subject to conditions on 25/4/06.

Notice to treat on the 12/7/06 was served on the claimants Mr. John Nolan and Mr. William Irwin.

A claim totalling €10.425 million was made by the claimant Irwin and a claim from Nolan for €6.349 million against Wicklow County Council. Both individuals claiming title separately to the same property in a clear conflict of ownership.

Councils Valuation

WCC employed valuation consultants GVA Donal O'Buachalla to carry out a market valuation of this land in 2008.

In his report dated 30/6/08, the valuation of these lands being the sum of €5,215,000 million. This report was subsequently relied upon by Wicklow County Manager to raise a loan of €5 million from the Department of Environment, for the purpose to purchase this land. This land purchase was approved by the Department, but was never drawn down. This loan expired on the 31/12/09.

In 2011 the O'Buachalla valuation was once again used when the County Manager sought loan approval to raise a sum of €3 million by a vote of the Council on 18/7/11. This loan application was approved by a vote of 17: 3. One abstention.

Special Assumptions of the 2008 Report.

- (A) That this property was held Freehold by one or the other of the claimants.
- (B) That no ground adverse conditions such as Flooding was present on the land.

It is now clear that both such assumptions were incorrect.

Revised Valuation 2010

On the 27/8/10 GVA Donal O’Buachalla gave a new market value of the land, the subject of the CPO. He revised the valuation downwards to a figure of **€697,000** taking all factors into account. This revaluation of the land was never disclosed to the elected council members prior to the vote on the 18/7/11.

Issues Of Public Concern

(1) It is now evident from documents disclosed subsequent to the Council vote of the 18/7/11 that WCC were aware that the lands in question were subject to serious flooding as outlined in the “Barry Report” of 1997 on flooding in this area.

With this information why did WCC proceed to issue a CPO order on lands that were subject to serious flooding, in fact a flood plain in contradiction of national building policy and base common sense.

(2) In 2008, the Department of the Environment sanctioned a loan approval of €5 million for the purchase of this land. However the Department had initially expressed in writing to WCC their serious concerns at this funding application and have raised issues surrounding the price being paid and the requirement of the Council to purchase this land when they had an adequate stock of a land bank for social housing that remained un-used in the area.

Who in the Department overruled these initial well founded concerns by the Department and sanctioned the provision of the €5 million being the fund requested.

(3) Having being sanctioned as requested the €5 million to purchase these lands, WCC did not draw down this funding before the expiration date of 31/12/09. Why was this? Did the Department have contact with WCC as to why there was no draw down of these funds at a time of major difficulties in public financing.

(4) Have WCC ever declared to the Department of Environment the revised valuation report of Donal O’Buachalla of August 2010. What valuation report have WCC relied upon when seeking the €3 million loan approval from the Department of Environment in July 2011.

(5) Have WCC ever made available to the Department the information in their possession with regard to the serious flood plain difficulties on this site and if they did so, who in the Department gave sanction for the funding of the land in question with such knowledge.

(6) Contrary to suggestions in the media, there was no arbitration decision on the value of this particular site as it was agreed at a private meeting to pay the €3 million compensation plus costs to both the Nolan and Irwin estates. This had been formulated or agreed at the three hours of negotiations held on the 24/3/11 between parties including a statutory body WCC involved in these private negotiations involving public funding contrary to regulations. Extraordinarily there are no written memos, records or any documentation of this meeting. Why was this?

(7) A signed hand written agreement of this private meeting which committed WCC to purchase this land is undated. Why was such an important document of contract not dated?

(8) On the 24/3/11 the arbitrator Mr. Eoin O'Buachalla sought a copy from the legal representatives of the council following this private agreed contract but none was available to be given to the arbitrator.

(9) In may 2011 the Law agent of WCC wrote to the legal representatives of the Irwin estate requesting that they would come to an arrangement with the legal representatives of the Nolan estate that would allow the council to issue just one payment of €3 million of compensation to the Irwin estate contrary to the original agreement of two separate payments of €2 million to the Irwin estate and €1 million to the Nolan estate. As the Law agent expressed his concerns that the head of finance in WCC might raise awkward questions that could cause delays to the process.

What awkward questions would a Councils Law agent be concerned about with regards to questions being raised by the Councils Finance officer and why would this be discussed with a private solicitor representing a party seeking compensation against the Local Authority?

(10) The decision taken within WCC not to inform the site valuer Mr. Donal O' Buachalla of the serious legal conflict between the Nolan and Irwin estates with regard to the ownership of the site along with the withholding from the valuer of the flood risks involved on this land had a profound impact on the ability of the valuer to give an informed estimate of site valuation. On who's instructions was this critical information withheld and for who's benefit.

(11) In the formal response to notice to treat compensation claims, the Councils Law agent valued the lands in question at €600,000

In a written report planning officials state that .53 hectares of this site cannot be built on due to flooding concerns and in another report from a housing prospective the land is deemed useless. Has WCC made this information available to the Department in their consideration of loan approval?

(12) Despite making a compensation claim against WCC for the sum €6.349 million for the lands in question and over a number of years strongly perusing this claim represented by among others the present Attorney General on the 30/8/11 the Nolan estate in writing abandoned and waived all claims to this land. How and why was this claim withdrawn?

(13) It now appears that WCC have an existing land bank of 16 acres in the Greystones area which could be used in part or all for the provision of social housing without the requirement to purchase this landlocked and flood plain site. Would it not have been more reasonable to obtain Departmental sanction of funding to construct social housing on these existing councils lands as was suggested by the Department in 2008.

(14) John Nolan claimed on record at the an Bord Pleanala hearing into the CPO, That WCC were using their CPO powers to obtain this land for the benefit of "Zapi Developments" who's lands boarder the site in question and that this would be brought about a subsequent land swap.

(15) Following the initial Council meeting in July where serious concerns were expressed by a number of Councillors about the price being paid for this land. An urgent meeting was arranged to seek loan approval for the land purchased with the Minister for Housing Mr. Willie Penrose TD. Without consultation or explanation delegates from both the Labour group (The second Largest group on WCC) were not notified of this meeting and were excluded along with a Sinn Fein delegate. Why were the representatives of both those parties not allowed to meet Minister Penrose. Was this decision at the behest of the Department or WCC?

Summary

On the 29/6/11 the elected members of WCC received a notification seeking their approval to raise a €3 million loan to purchase the land in question. This notification indicated that the €3 million had been arrived at following arbitration.

This we now know was not the case.

This notification referred to the 2008 valuation of Donal O’Buachalla. It did not refer to the revised updated valuation of the same Donal O’Buachalla of the 27/8/10 which valued the lands at €697,000. Further, this notification does not inform the Councillors of the planning concerns with regard to the serious flooding issues involved.

The information outlined in this report to you only came about following a resolution for the disclosure of the files approved by the elected members.

It is of the most important public duties of elected representatives that public funding must be transparent and above reproach. That there be no hidden agendas or special relationships. Very serious questions in our view require independent investigation into the matter raised. We are all as elected public representatives subject to the highest ethical standards.

Cllr. James O’Shaughnessy MCC

Cllr. Thomas Cullen MCC

Cllr. Barry Nevin MCC

3rd. November 2011

Further to Councillors Report 3/11/11

Wicklow County Council held it's monthly meeting today 7/11/11

In the matter of the minutes of the 12/10/11, I raised the question of the insistence of the County Manager on Cllr. Jimmy O'Shaughnessy to withdraw his comments about not having all the facts prior to the vote of the 18/7/11 on the CPO at Three Trouts. As is now evident from the reading of the file that Cllr. O'Shaughnessy is the one who is owed an apology, as he was correct in his statement.

It's now clear that the Council have CPO a piece of land that is a Flood Plain and Landlocked; It's evident that there was a second valuation for the amount of €697,000.

I put the question to the Cathaoirleach Sylvester Bourke and the Deputy County Manager Mr. Bryan Doyle, did they know of the second valuation before the deputation seeking the €3 million from Minister Penrose and before Mr. Doyle signed the cheque at the end of August?

The Cathaoirleach replied "No" he did not know of the existence of the second valuation of 27/8/10 when he met Minister Penrose.

I asked a similar question of Mr. Doyle who signed the cheque for €3 million.

He could not confirm knowledge of the existence of the second valuation prior to the signing of the cheque. I repeated the question a second time.

Mr Culhane, this is critical information we did not have when we met you and your official in the Department last Thursday 3/11/11.

The question now arises why information was withheld from the Cathaoirleach of Wicklow County Council and the delegation that met with Minister Penrose seeking €3 million to purchase this land. The only valuation the delegation relied on was now out of date.

We reiterate our request to met Minister Penrose as a matter of urgency.

Cllr. James O'Shaughnessy MCC
Cllr. Thomas Cullen MCC
Cllr. Barry Nevin MCC

7/11/11.



Comhairle Chontae Chill Mhantáin

WICKLOW COUNTY COUNCIL

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13th October, 2011

Councillor Barry Nevin,
7 Sidmonton Gardens,
Bray,
Co. Wicklow.

**RE: LAND AT THREE TROUTS STREAM, GREYSTONES, COUNTY
WICKLOW - CPO MATTER**

Dear Councillor Nevin,

I refer to the above matter and to your recent inspection of the Council's files in relation to this matter and your request for extracts from those files to be furnished to you.

In this regard, with this letter I send the extracts which were marked on the files and which I have arranged to have copied for you.

The documents furnished are furnished to you arising from the resolution of the Council on the 12th September :-

'That the County Manager make available all information and communications between Wicklow County Council, its Representatives and all the other parties involved in these land transactions and Compulsory Purchase Orders. And furthermore that the County Manager make available all communications between the Department of the Environment, Heritage and Natural Resources and The Attorney General with Wicklow County Council in relation to this matter. This information shall be made available to all of the Members of Wicklow County Council.'

The information as it is furnished on this basis, is furnished to you on a confidential basis as an elected Member of Wicklow County Council following on from the above resolution and in response to your request to inspect the file and your subsequent request for copies of the extracts identified by you to be furnished.

Comhairle Chontae Chill Mhantáin

WICKLOW COUNTY COUNCIL



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These documents may contain

- 7) Confidential information
- 8) Sensitive personal information concerning the parties
- 9) Commercially sensitive information
- 10) Information which may be subject to legal privilege
- 11) Information which may be subject to the Data Protection Legislation
- 12) Information which could prejudice the Council's negotiating position in any future land acquisitions that the Council may be involved in.

Accordingly, this information should not be disclosed to any third party. The Council will repudiate any claims that may arise if any of the material is by any chance disclosed to any such third party.

Yours sincerely,

LORRAINE GALLAGHER
SENIOR EXECUTIVE OFFICER,
ENTERPRISE & COPORATE SERVICES