



An
Bord
Pleanála

Inspector's Report ABP-306423-20

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended

Location

46 Garryglass Avenue, Ballinacurra
Weston, Limerick City

Local Authority

Limerick City and County Council

Notice Party

Geraldine Lillis

Date of Site Inspection

26th May 2020

Inspector

Mary Kennelly

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 46 Garryglass Avenue, Ballinacurra Weston, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located in the suburb of Ballinacurra Weston to the south of Limerick City. It is located on Garryglass Avenue and runs parallel to Childer's Road, which is a main arterial route to the south of the city centre. This forms part of a residential housing estate which lies immediately to the north of Childer's Road, from which it is separated by merely a grass verge. The site is an end-of terrace property within a row of six terraced houses, Nos. 41-46. The remainder of the terrace comprises houses that appear to be occupied and well maintained. There is a pair of semi-detached houses immediately to the west.
- 2.2. The application site is situated at the western end of the terrace, adjacent to the corner with Ballyclough Avenue. The house is a two-storey single-fronted house with a roughcast render, and a pitched tiled roof, with a gable end. There is a concrete canopy over the front door with brick piers on either side that are painted cream. The photographs on file indicate that there was a garage attached to the gable-end wall and a window at first floor level overlooking the garage. The property has a vehicular and a pedestrian entrance from the street, each of which had gates according to the file photographs.
- 2.3. On the date of my site inspection, the property was secure with the front door and windows boarded up. The garage had been demolished and the render remaining on the gable wall had gaps along the line of the garage roof. The vehicular entrance had been removed and a fence had been erected around the property. Vegetation was growing out of the guttering. Parts of the boundary walls have been demolished or have collapsed. Tiles were either loose or missing from the roof. Paint was peeling from the render and there was debris and litter in the front garden which was overgrown with weeds.

2.4. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front and side elevations from the street through the fence, and the rear garden appeared to be completely overgrown and in need of maintenance.

3.0 Application for Consent for Acquisition

3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on 22nd September 2017, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on 18th April 2018, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Geraldine Lilis c/o Pat Punch of David Punch Solicitors) in letters dated 7th February 2019 and was published in the Limerick Leader newspaper on the 16th November 2019. The site was described as follows in the notices:

- A derelict site comprising of two-storey end of terrace residential property at 46 Garryglass Avenue, Ballinacurra Weston, Limerick. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-028-16 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by David Punch & Co. Solicitors, on behalf of Geraldine Lilis in a letter dated 13th December 2019. The objection can be summarised as follows:

- There has been a delay on the part of the owner, Mrs. Geraldine Lilis, in dealing with this property, arising from a dispute of the entitlement to certain parties under her mother's will. It has been decided by Mrs. Lilis to proceed in any case.
- She has retained a builder, who has carried out certain remedial works to date, but such works were stopped by her, by reason of the death of a neighbour, Mrs Ann Coyle, with whom she was quite friendly, in order not to disturb the Coyle family. While the works were being carried out, the builder encountered certain difficulties, such as unexpected pipes in the back garden
- The premises have been secured and it is intended that they would be renovated and lived in by Mrs. Lilis herself, who has no other place of residence, and is at present living as a guest of her daughter, Amanda Lilis. The owner is very familiar with the property, as it was owned by her mother Mrs. Mary O'Halloran, and she was brought up there. For that reason, it is hoped that she would be allowed to stay in the property, and to develop it so that she can live in it as her principal private residence.

4.3. **Local Authority's Application for Consent**

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 16th January 2020 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection. The report included photographs and a map of the site area.
- Copy of the notices served on the owners/occupiers of the site, dated 7th November 2019.

- Copy of the newspaper notice, dated 16th November 2019.
- Copy of objection made by Pat Punch of David Punch & Co. Solicitors, dated 13th December 2019.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.
- The property first came to the attention of the L.A. in February 2016 and has remained vacant and derelict since then. It first had a Derelict Site Case opened in 2016, Ref. DS-028-16. Photographs from each of the site inspections are included with the application. Despite efforts to work with the owners to improve the condition of the property and an offer by LCCC to acquire the property by agreement, no progress could be made.
- The adjoining properties are currently occupied and are kept to a good standard.
- The property has a very unsightly appearance, which detracts from the character of the neighbourhood. It is situated in a prominent location on one of the main arterial routes around the city. There is vegetation growing in the gutters, the boundary walls have been knocked, the garage at the side of the property has been demolished. All the glazing at the front of the property is broken and has been boarded in an ad hoc way. The rear of the property is very overgrown, and the boundary fencing is down. This gives access from the property to other properties in the terrace. The Local Authority has received multiple complaints regarding anti-social behaviour at the property.

- Following the first inspection of the property in February 2016, Land Registry and planning searches were carried out in an attempt to establish ownership, without success. A Section 29 Notice was served on 15th September 2017.
- On 27th September 2017, Punch & Co. Solicitors advised that they were the contact point for the property, on behalf of the owner, Mrs. Geraldine Lilis. In September 2018, correspondence was received from Mr. Punch stating that the reason for the delay was litigation proceedings in relation to the Succession Act and that the owner of a neighbouring property had died in the months prior to September 2018, and that the works had not commenced out of respect for the neighbour's family.
- The Local Authority decided to issue a Section 8(2) notice on 4th of March 2019 of its intention to enter the property onto the Register of Derelict Sites. An Inspector from the L.A. visited the site on 18th April 2019 and noted the condition of the property. Glazing in the windows had been broken and a garage and boundary wall to the rear/side had been demolished. A Section 8(7) notice was affixed to the property on the 12th July 2019 to advise that it had entered it onto the register.
- It was decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 in November 2019. The Notice was affixed to the property and issued by registered post on 7th November 2019.
- An objection to this notice was submitted by David Punch & Co. Solicitors on behalf of the owners on 13th December 2019. It was stated that the owners intend to renovate the property.
- The Local Authority considers that the owner has been given every opportunity to bring the property out of dereliction. Although some works had been carried out since 2016, it was considered that the result was to render the property more derelict. The Local Authority has also offered to purchase or lease the property by agreement from the owner on two separate occasions in 2019. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

- 4.4.1. A submission was made to the L.A. by David Punch & Co. Solicitors on 13th December 2019 in response to the Section 15 Notice. It was confirmed that they act for the owners of the property, Mrs. Geraldine Lilis.
- 4.4.2. It is stated that they object to the proposed acquisition of the property as the owners had indicated that they were willing to carry out works on the property some time ago but had postponed the works out of respect for a neighbour who had recently passed away. It was confirmed that the owner intends to live in the property as her permanent place of residence as she has no other home and is currently staying with her daughter.
- 4.4.3. No further correspondence has been submitted. There has been no further objection submitted to the Board.

5.0 Planning History

5.1. Application Site

- 5.1.1. I am not aware of any relevant planning history on the site.

5.2. Surrounding Area

- 5.2.1. I am not aware of any other recent relevant planning history in the surrounding area.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The applicable Development Plan is the Limerick City Development Plan 2010 – 2016 (As extended). The site is zoned Residential **Zoning Objective ZO.2(A)** seeks to provide for residential development and associated uses. Ballinacurra Weston is one of four areas in Limerick City that have been identified by the Government as areas in need of radical physical, social, and economic regeneration. A key objective for this area is to promote high quality living environments and the protection of the character of residential neighbourhoods.

- 6.1.2. In respect of **Derelict Sites** (3.5) it is stated that these detract from the attractiveness of the City as a location for inward investment and that the Derelict Sites Act 1990 provides a legal mechanism to seek elimination of such dereliction that includes compulsory acquisition. **Policy EDS.11** seeks to maintain an up to date Derelict Sites Register and to implement the provisions of the Derelict Sites Act 1990 to remove these sites from dereliction.
- 6.1.3. One of the key challenges of the **Ballinacurra Weston Regeneration Area** is presence of several under-utilised and vacant housing sites which detract from the overall appearance of the estate. It is stated that 337 units were built in the 1950s and that on the 31st December 2014 there were 192 occupied residences and that many houses had been demolished to make way for new development and urban spaces. It is stated (7.13) that “for the successful regeneration of Ballinacurra Weston, it is imperative that refurbishment of void houses is carried out in the medium term with new housing development scheduled for the longer term.”

6.2. **Derelict Sites Act 1990 (as amended)**

- 6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.
- 6.2.2. Section 3 of the Act defines ‘derelict site’ as:

“any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict, or dangerous condition, or

(b) the neglected, unsightly, or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of

such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.”

- 6.2.3. Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so. Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site. Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

7.0 **Assessment**

- 7.1. Internal access to the house was not possible on the date of my site inspection. However, I carried out my site inspection from the public road.
- 7.2. The house is vacant and has a neglected, unsightly, and objectionable appearance from the public road and the surrounding residential area. This is due to the fact that the paint is peeling off the render and there are holes/gaps in the render where the demolished garage had been attached to the side gable wall and the area previously occupied by the garage has been left in a neglected and unruly state with debris and construction materials strewn about the site. The doors and windows on the ground floor are boarded up with wire mesh grates on some of the windows and on the front door. Some windows are also broken, and the metal grates are rusted with rust marks on the window cills. The roof is in a poor state of repair with sections of the guttering

missing and vegetation growing within the remaining gutters. Barge boards, soffits and downpipes are broken or missing. The front garden is overgrown with weeds and there is litter lying about. The boundary wall to the side/rear is partly demolished and is visible and unsightly from the public road. The vehicular gate is missing, and the pedestrian gate is rusted and in a poor state of repair.

- 7.3. The house is situated at the end of a row of similar terraced houses, each of which is occupied and well maintained. Although the Ballinacurra Weston estate is one of the main regeneration areas of the city, this part of the estate is generally in good condition. The subject house and site, however, is derelict and is in an unsightly and neglected condition which detracts from the character and amenity of the estate. Garryglass Avenue runs parallel to and immediately adjacent to Childers Road. The street is separated from Childers Road by a grass verge with trees, but the site is prominently visible from this main arterial route traversing the southern suburbs of the city. It is an objective of the Local Authority to regenerate Ballinacurra Weston and the refurbishment of void properties are identified as a priority to enable the successful regeneration of this area to take place. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.
- 7.4. Apart from the paint peeling away and the poor state of repair of the roof, gutters and render, the house appears to be in reasonable structural condition externally. There is no obvious evidence of significant cracking or additional damage to the external walls, and the roof appears to be generally intact. The window and door openings are either fitted with metal grates or are boarded up. I note from the photographs provided with the Local Authority report, however, that the property has deteriorated further since the first inspection in 2016, when it appears that the garage and vehicular gate was demolished and the windows and doors have been boarded up.
- 7.5. Having regard to the above, I would consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly, and objectionable condition. With regard to category (a), this relates to structures which are in a ruinous, derelict, or dangerous condition. Having inspected the site, I consider that there is evidence that the structure is in a derelict condition and in a poor state of repair, but that it is not in a ruinous state. Thus, it is

considered that the site does not fall within category (a) of the Derelict Sites Act. 1990.

- 7.6. There was evidence of litter within the site, particularly in the front garden and of evidence of waste, including construction and demolition waste, being stored externally. It is considered that the presence of litter and waste is sufficient to materially detract from the amenity or appearance of the lands in the vicinity, and I consider, therefore, that the site also falls within category (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the amenity, character, and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.
- 7.7. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 4th March 2019, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 12th July 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 7th November 2019 and published in the Limerick Leader Newspaper on the 16th November 2019 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.8. I note the objection made to the Local Authority on behalf of the owner, Geraldine Lillis on the 13th December 2019 to the proposed acquisition of the site, stating that the owners had been willing to carry out some repairs but had been reluctant to do so out of respect for the family of a neighbour who had recently died. It was also advised that the owner had grown up in the property and had inherited it from her mother, but that there were some issues relating to the Act of Succession. Notwithstanding this, the owner had proceeded to retain a builder who had carried out certain remedial works which had been stopped due to the death of the neighbour and the discovery of unexpected pipes in the rear garden. It is further noted, however, that no further objection or submission has been made to the Board. I also note that the property has been secured and that maintenance works have been carried out to the property. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the house remains in a neglected and unsightly condition and the garden is still overgrown. I therefore consider that the site remains in a derelict condition.

7.9. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at No. 46 Garryglass Avenue, Ballinacurra Weston, Limerick is granted.

8.0 Recommendation

8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.

8.2. I consider it reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

9.1. Having regard to the neglected, unsightly and objectionable condition of the site and to the presence of litter, debris and waste materials on the site, it is considered that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in sections 3(b) and 3(c) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

Mary Kennelly

Senior Planning Inspector

29th May 2020