



An
Bord
Pleanála

Inspector's Report ABP-306698-20

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

15 The Glebe, Monagea, Newcastle West, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

Martin O'Sullivan

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 15 The Glebe, Monagea, Newcastle West, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. Monagea is a small village, which is situated approx. 5km to the south west of Newcastle West Co. Limerick. It is located approx. 3km south of the N21, which is the main road to Tralee/Killarney. The village includes a primary school and a church and a housing estate, The Glebe, which has been constructed within the last decade or so, and is an estate of approx. 50 dwelling units.
- 2.2. The application site is situated in the middle of the housing estate. The property comprises a partly completed detached house. It is located approx. 100m from the entrance to the estate and is directly adjacent to the corner site at the junction of the estate road and one of the cul-de-sac roads within the estate. It is described in the notice as a partly constructed dwelling house situate at 15 The Glebe, Monagea, Newcastle West. It is stated that the said property and surrounding land is in a state of dereliction. The majority of the remainder of the estate has been completed, although the adjoining site (No. 14) is also partially constructed.
- 2.3. On the date of my site inspection, the property was secure with notices on the front fence. The exterior walls have been constructed and the roof is in place and the windows have not been fitted. The external walls have not been plastered or painted but have been partially rendered and have been exposed to the elements. The garden area is overgrown and in need of landscaping and maintenance. There is a considerable amount of debris and various pieces of construction material scattered around the site. Some boundary walls have been erected and the site is secured by means of a mesh fence, which is broken in places.

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 21st June 2019, (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 12th August 2019, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites). The site was entered onto the Register of Derelict sites on 12th August 2019. A Section 15 notice was issued on 12th December 2019.

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 (Martin O'Sullivan) in a letter dated 12th December 2019 and was published in the Limerick Leader newspaper on the 21st December 2019. The site was described as follows in the notices:

- A derelict site comprising of a partly constructed dwelling house situate at 15 The Glebe, Monagea, Newcastle West, Co. 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-055-19 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 Denis A. Linehan & Co. Solicitors, on behalf of Martin O'Sullivan in a letter dated 6th January 2020. The hard copy was received in the post on 8th January 2020. The objection can be summarised as follows:

- The owner has a fundamental objection to the definition of the dwelling as a “derelict site”, as clearly, the structure is neither ruinous, derelict or in a dangerous condition.
- The partially constructed dwelling cannot be described as neglected or objectionable as the development, to date, has been built in accordance with planning permission and would have the same status as any partially constructed dwelling house. Therefore, Section 3(b) of the Derelict Sites Act 1990 does not apply.
- There is no litter, rubbish or debris on the site that would be within the definition of a “derelict site” as outlined in Section 3 of the Derelict Sites Act 1990. Any waste on the said site can be removed therefrom.
- Whilst the registered owner is Martin O’Sullivan, the property in question is mortgaged with Allied Irish Banks Plc and forms a significant part of security provided by Mr. O’Sullivan to his lending institution. The site in question is of strategic importance to Mr. O’Sullivan in so far as the standing with his lending institution is concerned. In the event of the site being compulsorily purchased, it would seriously compromise the security provided by Mr. O’Sullivan to his lending institution.
- The owner is invoking his statutory rights to continue with the development and intends to make whatever application is relevant to proceed with the construction of a dwelling house on the site with all due haste.

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 19th February 2020 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out planning 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 section 15 Notice served on the owners/occupiers of the site, dated 12th December 2019.
- Copy of the newspaper notice, dated 21st December 2019.
- Letter of objection from Denis A. Linehan dated 06.01.20

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 area 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 is located in the centre of Monagea village. It is located within the Glebe housing estate across the road from the National School on the L-1315, which is in the Newcastle West electoral area.
- The property at No. 15 comprises a partially constructed detached dwelling house that has been in a partially constructed condition for approximately 10 years. The property is one of several unfinished properties within the estate. The property first came to the attention of the local authority in 2018.
- The property is the second property as you enter a cul-de-sac side estate road consisting of nine properties. The neighbouring properties on the cul-de-sac include No. 14 which is also a partially constructed dwelling, and there is also an open Derelict Sites case on this property. There are two semi-detached completed dwelling houses adjacent to No. 15, which are fully finished and occupied.
- The site has been derelict for several years. It has an unsightly and very neglected appearance, which detracts from the character of the neighbourhood. The property consists of a detached two-storey un-plastered timber-frame shell with a tiled roof. There are no windows or doors fitted to the

property and there are no facias or gutters fitted. The site security fencing is in a poor state of repair and access can be gained to the property from public areas.

- The site was first inspected by an authorised officer, as a Derelict Site in August 2018. Land Registry and planning searches were then carried out in an attempt to establish ownership details, without success. The Local Authority decided to issue a Section 8(2) notice in June 2019 of its intention to enter the property onto the Register of Derelict Sites (affixed to the site) and a Section 8(7) notice on 12th August 2019 to advise that it had entered it onto the register. Confirmation was received on 18th September 2019 that the owner was Martin O’Sullivan, but that the lands are a matter of negotiations with a lending institution.
- The market value was determined and a Section 22 Notice of valuation was issued on 25th November 2019. The property was inspected in December 2019 with the consent of the owner and a subsequent offer was made to acquire the property by agreement through Buy and Renew Scheme. This offer was refused.
- In the absence of any progress to resolve the derelict condition of the property, a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 was issued on 12th December 2019.
- An objection to this notice was submitted by Denis A. Linehan & Co. Solicitors, Rathgoggin South, Charleville, Co. Cork on behalf of the owners on 6th January 2020.
- Planning permission was initially granted for the construction of 53 dwelling houses, a pre-school facility and 2 retail units with an apartment over (04/3492). A subsequent permission (15/579) was granted specifically in relation to the adjoining site, No. 14, for retention of that dwelling as constructed and permission for completion and construction of the same dwelling house.

4.4. Objector's Submission

A submission was made to the Board by Denis A. Linehan Solicitors on 18th March 2020) in response to the Section 15 Notice. The objection may be summarised as follows:-

- **Offer to acquire the property** – It is refuted that the local authority had made an offer to acquire the property by agreement and that no progress could be made. It is categorically stated that LCCC never made an offer to acquire the property by agreement.
- **CPO not required** – A process has been commenced with Limerick City and County Council to purchase the site and in that regard a copy of an email from Sarah Newell (LCCC) to Liam Gleeson (Owner's Architect) relating to Sites 14 and 15 is enclosed. This indicates that negotiations were at an advanced stage and that a CPO is wholly unnecessary.
- **Engagement of professional advisers**– the owner has engaged the services of a Quantity Surveyor to ascertain what the cost would be to complete the house in question. Thereafter, Mr. O'Sullivan would voluntarily continue with the sales process with Limerick City and County Council.
- **Fair Procedures** – The owner wishes to invoke "Fair Procedures" as stated in his letter of the 6th January 2020.

No further correspondence has been submitted.

5.0 Planning History

5.1. Application Site

- 5.1.1. **04/3492** – planning permission granted to Martin O'Sullivan in July 2005 for the construction of 23 no. detached dwelling houses, 30 semi-detached dwelling houses, pre-school (Montessori) facility, 2 no. retail units with apartment over and all associated site works subject to 25 conditions.
- 5.1.2. **06/2232** – permission granted for revision to layout as granted under 04/3492.
- 5.1.3. I am not aware of any further relevant planning history on the site.

5.2. Surrounding Area

- 5.2.1. **15/579** – adjoining site - permission was granted to Aine Mulcahy in October 2015 for the retention of an “as constructed dwelling” and for permission for the completion of the construction of the same dwelling at No. 14 The Glebe. This application was accompanied by a letter of consent from the owner, Mr. Martin O’Sullivan.
- 5.2.2. I am not aware of any 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 County Development Plan 2010 – 2016 (as extended and varied). Chapter 3 of the Plan sets out the settlement strategy. Monagea is designated as a **Tier 6 – Small Settlements** in the Settlement Hierarchy (3.1). The overall strategy is to encourage development to locate within the development envelope of towns and villages. Relevant policies include **SSP2** which seeks to support sustainable development of the settlements in Tiers 2-6 and **SSP3** which states that it is the policy of the Council to be pro-active in acquiring land and providing services and sites within small towns and villages as a means of stimulating a shift towards development within these areas.
- 6.1.2. Tier 6 Settlements are described as small settlements with limited essential infrastructure and services. Policy **SS P11** seeks to facilitate sustainable development within these settlements and to ensure that they retain their rural character.
- 6.1.3. Chapter 4 sets out the policies and objectives relating to housing. Section 4.8 relates to Regeneration of Vacant and Derelict Sites. Relevant objectives are as follows:
- HOU O17** – to use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.
- HOU O18** – to promote the re-utilisation of suitable redundant or obsolete structures in appropriate cases.

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 land owners 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. I carried out my site inspection from the public road and from the estate roads, as well as from within the front, side and rear garden of the house. Internal access to the house was also possible on the date of my site inspection.
- 7.2. The house is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding residential estate. This is due to the fact that the house is unfinished. It is of a timber-frame construction which has plasterboard applied externally but has not been rendered over and there is no plinth at the bottom. The roof is in place but there are no gutters, downpipes, fascias or barge boards. The flashing around the chimney has not been put in place and the associated ridge tiles seem to be missing. Although there are window cills in place, there are no windows or doors fitted and the external walls and internal spaces are open to the elements.
- 7.3. The wire mesh fence around the site was broken which allows access to the unfinished site. The garden areas to the front, side and rear consist of made ground with no topsoil and are overgrown with weeds. In addition, there are several piles of building materials scattered around the site. This includes pallets, steel rods (rusted), packs of tiles/slates, planks of wood, pieces of scaffolding, hose pipes, concrete blocks and fence panels. The boundary walls, where they exist, are un-plastered.
- 7.4. Internally, some of the walls and ceilings had plasterboard applied but had not been plastered and the chimney breast was of concrete block. The staircase was not in place. I could see that the first-floor ceiling was not in place as the rafters and battens were visible. There appeared to be a hole in the roof around the chimney and pigeons were flying around under the roof.
- 7.5. The site is situated in a prominent location near the entrance to the housing estate and is visible from the main street of the village which accommodates the primary school and church. The entrance to the estate has been attractively landscaped and the remainder of the Glebe estate is in good condition and very well maintained. Notwithstanding the presence of a small number of unfinished houses, the majority

of the sites have been completed to a high standard. These dwelling houses appear to be well maintained and occupied with attractively landscaped gardens. The estate in general has an attractive appearance and the public realm is well cared for.

Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the amenity, character and appearance of the surrounding residential area and of the village.

- 7.6. Apart from the exposed plasterboard, the hole in the roof and the absence of windows, doors and external finish on the walls, the house appears to be in a reasonable structural condition externally. There is no obvious evidence of significant cracking or additional damage to the external walls, and the roof structure appears to be generally intact, apart from one hole. The window and door openings are open to the elements, as is the interior of the building, which has been the case for many years. It is considered that these factors, together with absence of external finishing to the roof and walls and the missing rainwater goods and plinth, as well as the absence of secure hoardings at the entry point are matters of concern.
- 7.7. 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 dangerous condition, and that it could be considered ruinous, as the roof has a hole in it where the flashing is missing around the chimney, the internal spaces have been exposed to the elements for many years, the interior of the structure is not secure and is accessible to the public and the external walls consist of exposed, untreated plasterwork. There was a considerable amount of litter within the application site together with evidence of waste materials being stored externally. It is considered, therefore, that the site also falls within category (c) of section 3 of the Act.
- 7.8. 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.
- 7.9. 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 21st June 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 August 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 12th December 2019 and published in the Limerick Leader Newspaper on the 21st December 2019 regarding the Local Authority's intention to acquire the site compulsorily. It is further noted that the local authority has stated that it made an offer to acquire the property by agreement through the Buy and Renew Scheme but that the Notice Party strongly disputes this and claims that no such offer was made.

- 7.10. I note the objection made on behalf of the owner to the local authority on the 6th January 2019 and on the 18th March 2019 to the Board to the proposed acquisition of the site. The objection relates to the designation of the site as derelict, ruinous and dangerous and claims that it is neither unsightly nor objectionable and that there is no litter or debris stored within the site. It is pointed out that the applicant is a mortgage holder and that the site forms a significant element of security provided by him to his lending institution. He wishes to continue with the development and is prepared to apply for planning permission. In the meantime, it is stated that a process has commenced with the local authority with a view to purchasing the site. Emails (dated 16th March 2020) to support this point have been enclosed. However, the email correspondence appears to relate to queries regarding the planning status of the property only.
- 7.11. 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, which is in a ruinous and dangerous state, with the open storage of waste materials on the site. I therefore consider that the site remains in a derelict condition.
- 7.12. Having regard to all of the information on the file and to 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. 15 The Glebe, Monagea, Co. 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, which is in a ruinous and dangerous state, and the gardens are still overgrown, 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. I consider that it is 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, which is in a ruinous and dangerous state, with the open storage of waste materials, 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 section 3 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

11th June 2020