



An
Bord
Pleanála

Inspector's Report ABP-306700-20

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

22 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 22 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 dwelling house comprising a detached blockwork base constructed to ground floor level. It is located approx. 100m from the entrance to the estate and is at the end of a cul-de-sac road within the estate. The northern end of the cul-de-sac is directly adjacent to the main entrance to the estate. It is described in the notice as a derelict site comprising a partly constructed dwelling house situate at 22 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. 21) is also partially constructed with a blockwork base and two further sites at the other end of the cul-de-sac comprise partially constructed dwellings with roofs (Nos. 14 and 15). The intervening sites (Nos. 16-20 inclusive) are completed and occupied.
- 2.3. On the date of my site inspection, the property was secure with notices on the front fence. The foundation has been laid and the blockwork base is in place. There are wooden planks, steel grilles (rusted), foam blocks, concrete blocks and a series of wires, cables and ducts on the concrete base. There is a considerable amount of debris and various pieces of construction material scattered around the site. No boundary walls have been erected and the site is secured by means of a mesh fence at the front and a steel palisade fence along the western boundary, which has a panel missing. There were several earth mounds and waste vegetation on the site.

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 22 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-057-19 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. Therefore, Section 3(a) of the Derelict Sites Act 1990, as amended, does not apply.
- The description of a “partly constructed dwelling house” is erroneous as it merely contains the base of a dwelling house which would be the equivalent of a concrete yard or some such development. Thus, it cannot be described as neglected, unsightly or objectionable. Therefore, Section 3(b) of the Derelict Sites Act 1990 as amended does not apply.
- There is no litter, rubbish, debris or waste 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 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 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. 22 comprises a partially constructed detached dwelling house consisting of a single concrete blockwork base which has been constructed to ground floor level. It 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 first property as you enter the estate on the eastern side of the estate road, and is at the end of a cul-de-sac road consisting of nine properties. The neighbouring properties on the cul-de-sac include No. 21 (to the immediate east) which is also a partially constructed dwelling (concrete base), and there is also an open Derelict Sites case on this property. There is a detached dwelling (No. 20) and two pairs of semi-detached completed dwelling houses adjacent, which are fully finished and occupied. At the western end of the cul-de-sac, there are two further partially complete houses

which are constructed to roof level, which have open Derelict Sites cases on them.

- 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 concrete blockwork base constructed to ground floor level. 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 to a third party specifically in relation to a nearby site, No. 14 (also in the ownership of the

Notice Party), 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.
- **Not a derelict site** – it is re-iterated that the site is not derelict, dangerous or objectionable and does not come within the definition of a derelict site as set out in the Derelict Sites Act 1990, (as amended).
- **CPO not required** – A process has been commenced with Limerick City and County Council to purchase the sites at No. 14 and 15. Mr. O'Sullivan wishes to be given the opportunity to apply for planning permission for the completion of No. 22 and thereafter, it is his intention to offer the completed dwelling, (in the same manner as Site Nos. 14 and 15), to 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** – 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 018 – 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, including the cul-de-sac.
- 7.2. The site 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 consists of a concrete blockwork base which is constructed to ground floor level only. There is a wire mesh fence around the front of the site and the side boundary with the main estate road comprises a pallsade mesh fence, which has a missing panel. This allows access from the public areas adjacent to the site. The grounds to the front, side and rear of the base 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 and girders (rusted), planks of wood, pieces of scaffolding, concrete blocks and bags of cement. There are wires, ducts and cables within the base and rusted steel grilles laid on top of the base.
- 7.3. The site is situated in a prominent location adjacent to the main estate road at 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.

- 7.4. The presence of building materials, pipes, wires, cables and pieces of rusted steel are problematic as they pose a potential danger to children playing within the estate. It is considered that these factors, together with the absence of secure hoardings at the entry point are matters of concern.
- 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 dangerous condition, as there are construction materials, wiring and cables lying about the site, which is not secure and is accessible to the public. There was a considerable amount of litter/debris 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.
- 7.6. 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 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.
- 7.8. 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, stating that the applicant is willing apply for planning permission and to proceed with the completion of the house, which could then be sold to the local

authority. 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.

7.9. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the site 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.

7.10. 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. 22 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 associated lands 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

12th June 2020