



An
Bord
Pleanála

Inspector's Report ABP-300202-17

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 16 of the Derelict Sites Act 1990, as amended.

Location

Derelict Site at No. 15 Lough View Terrace, Cork

Local Authority

Cork City Council

Notice Party

1. The Estate of John O'Mahony (Deceased), c/o Vincent Toher & Company, Solicitors,
2. Mr. Edward Galvin, Personal Representative of John O'Mahony (Deceased)
3. The Newenham Estate, c/o Sean Durcan, Michael Powell Solicitors.

Date of Site Inspection

18th January 2018

Inspector

Fiona Fair

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1.0 Introduction

- 1.1. This file relates to a request by Cork City Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site, at No. 15 Lough View Terrace, Cork, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The property No. 15 Lough View Terrace is located in a cul de sac, south of Glasheen Road and east of Hartland's Road to the north west of the Lough area of Cork City. The Lough, which comprises a large body of water surrounded by open space, playgrounds and walks is situated in the central suburbs area to the south west of Cork City.
- 2.2. The site comprises a mid-terrace part two storey party single storey house and an associated parcel of land measuring some 52m x 12m, which is separated from the front of the dwelling, by way of a 4m wide tarmac carriageway / roadway. There are no demarcations or footpaths along the roadway which essentially comprises a short cul de sac serving approximately 7 dwellings. The heavily overgrown garden area/ lands to the south of the dwelling is defined along its northern boundary by way of a low masonry wall with a flat roofed shed located to its northern boundary facing the dwelling. The shed is in a poor visual state of repair with a boarded up front façade.
- 2.3. The dwelling is currently vacant and in a poor visual state of repair with broken glass to windows and front doorway. While some of the ground floor windows are boarded up, there are gaps and the dwelling is open to the elements. On the day of my site visit I witnessed a rotten timber door and window frames and plants growing out of the roof of the building, from views into the interior of the dwelling it appeared water damaged, mouldy, dilapidated and un-inhabitable.
- 2.4. The area of ground to the front of the dwelling / front garden was extensively overgrown with scrub, briars, bushes and a large mattress was dumped on this part of the site. The garden shed is generally in a dilapidated and visually poor state, from

views into the garage through openings in the front façade it appeared full with jumble.

- 2.5. Land use is predominantly residential and views towards Cork Lough are visible from the lands. The condition of the building and its gardens are in contrast with the generally well-kept nature of buildings in the vicinity of Lough View Terrace (see attachments).

3.0 Application for Consent for Acquisition

- 3.1. Cork City Council has applied to the Board for consent to compulsorily acquire the site under section 16 of the Derelict Sites Act, 1990, as amended. A section 8(2) notice, advising of the local authority's intention to enter the site on the register of derelict sites, was served on the owners/occupiers on the 9th October 2012. The site was subsequently entered onto the derelict sites register (DSR) on the 19th December 2012.
- 3.2. Derelict Sites Report on file dated 29th August 2012 indicates that the initial site inspection took place on the 8/03/2006 following a complaint received from the Housing Department on the 13/02/2006. Planning deemed the site derelict and referred the relevant Managers Order (MO) and documentation to the property section for placement on the DSR on the 29/03/06. The MO incorrectly labelled the site as 15 Lough Villas, Lough Road and the corresponding map was incorrectly drawn including the site to the rear of No. 15 which is actually the front garden of No. 6 Loughview Terrace (Dwelling to the north / rear).
- 3.3. The Planning Officers involvement in the case recommenced in April of 2011 after receiving an email from the property section on the 01/04/11 requesting a site inspection to determine if the site has been cleaned up and therefore no longer derelict. It was established that no further work had been undertaken to the site for reasons related to probate and difficulties in the will of the late John O' Mahony. The Derelict Site Report states that 'the site was originally owned by John O'Mahony (now deceased) and is, I understand, held in trust by Vincent Toher & Co. Solicitors. Difficulties would appear to relate to the multiple properties included in the Will including 15 Lough View Terrace. It is stated on the file (Letter from Vincent Toher & Co. Solicitors dated 26th June 2008 that 'under the Will of the late John O'Mahony,

he directed that full discretion be given to our Mr Toher to dispose of the properties both mentioned above to Charities nominated by Mr. Toher.'

- 3.4. It is clear from the Derelict Sites Report that the planning authority has been in communication with Mr. Vincent Toher & Co Solicitors, acting for the estate of John O'Mahony deceased, The Law Department and The Property Department of Cork City Council over the years. The planning officer also spoke with an interested party (Tom Malarky) on the 14/07/11 regarding a possible purchase of No. 15, however, a possible sale fell through.
- 3.5. The planning officer revisited the site on the 27/08/12. It was the opinion of the planning officer following the site visit that the building continues to deteriorate detracting from the visual amenities of the area due to its unsightly appearance.
- 3.6. The Derelict Sites Report states: 'The building and site can be considered a derelict site under Section 3 (b) of the DS Act 1990. The accompanying site is overgrown and unsightly. The use of Section 11 is not recommended in this case. Given the protracted nature of discussions with Vincent Toher on this property over the years and his failure to move matters forward in any meaningful way makes such a route unlikely to succeed. Redevelopment of the site is also the only long term solution to the removal of dereliction on site'.
- 3.7. The correct location address of the site and a new map and Managers Order was drawn up to rectify the former error in the Managers Order relating to the property.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of intention to acquire the site compulsorily was published in the Irish Examiner on the 15th September 2017.
- 4.1.2. Notice of Intention to Acquire Derelict Site Compulsorily, dated 11th September 2017 is attached to the file. Letters with notices attached were served on the following objectors / parties on the 14th September 2017:

1. The Estate of John O' Mahony (Deceased), c/o Vincent Toher & Company, Solicitors, Legal Chambers, No. 2, Washington Street West, Cork.

2. Mr. Edward Galvin, Personal Representative of John O' Mahony (Deceased) at his address of Gort, Vicarstown, Co. Cork.
3. The Newenham Estate, c/o Sean Durcan, Michael Powell Solicitors. 5 Lapps Quay, Cork.

4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Cork City Council on 18th October 2017 by Vincent Toher & Co. Solicitors, making the following arguments:

- Act for the estate of John O'Mahony, deceased (Executor - Edward Galvin)
- Attached, copy Deed of Assignment dated the 27th of June 1980, made between Charles Glavin of the One Part and John O'Mahony of 38 Gould Street in the City of Cork for "No. 3 Loughview Terrace".
- Whilst there is no official deed vesting the property to Mr O'Mahony, it is submitted that Mr O'Mahony has Title because of the manner in which he dealt with the property at 15 Loughview Terrace as his own over a period of 40 years.
- This will be supported by various Affidavits by various neighbours including a Miss Deirdre Moore who is presently the owner of No. 4 Loughview Terrace.
- Believe the Title to Mr O'Mahony's ownership is derived from a certain indenture of lease, dated the 22nd of March 1946, made between Nora Emily Blankinston-Houston of the One Part and Patrick O'Mahony of the Other Part, which indicates inter alia the property No. 15 Loughview Terrace. Copy of this particular lease is enclosed.
- Refer to Vincent Toher & Co Solicitors letter of same date in reference to the premises 38 Gould Street and the similar proposals/suggestions would apply to the premises, the subject matter of this letter, if the corporation were willing to open discussions in that regard.

4.2.2. An objection to the proposed acquisition was submitted to Cork City Council on 10th October 2017 by MP/S - Michael Powell Solicitors, making the following arguments:

- Objection on behalf of the Newenham Estate
- Newenham Estate were the beneficiaries of a Trust for a long number of years and only recently became the beneficial owners of all the Newenham Estate property in Cork.
- They have not received any previous correspondence in relation to this property and have instructed Hugh McPhillips of Marshs Auctioneers to give his advice in relation to the matter.
- It may be that, they would wish to clean up the site or perhaps, sell the site onto someone who would be obliged to clean up the property.
- It is noted that the City Council under the Act are obliged to pay compensation and the objectors clients might be interested in coming to an agreement with the City Council in that regard.

4.3. Local Authority's Application for Consent

4.3.1. The Council requests the consent of the Board to the compulsory acquisition of the derelict site on the following grounds:

- The property at No. 15 Lough View Terrace, Cork constitutes a derelict site and has been entered on the Derelict Sites Register. The deceased owner of the property, Mr. Patrick O' Mahony passed away on December 28th, 2002.
- By 2006, the property had deteriorated into a derelict condition. Cork City Council has both written to and met with Mr. Toher in an attempt to address the dereliction. From the correspondence, it was apparent that there are title issues with the property that Mr. Toher was either trying to resolve himself or hoped the City Council would aid him in resolving.
- Using the Derelict Sites Act to perfect title to help remove dereliction is supported in cases where the Council are confident that the applicant is in a practical position to remove the dereliction by way of development of the site or building.
- In those cases the Council extend the applicant a licence to complete the development and remove the dereliction within a definitive timeframe further

to which the clean title to the property is exchanged. In this case such a facility could not be extended as the applicant was not in a position to remove the dereliction and avail of the standard process outlined above.

- To use the Derelict Sites Act to perfect title to allow sale of property for full market value is not appropriate and would be considered an abuse of statutory powers. This position was made clear from the outset and in the interim Mr. Toher has not been in a position to improve the title of the property himself leaving the condition of the property to deteriorate.
- In an effort to move matters forward, taking account of the underlying title problems, a meeting was held with Mr. Toher on 7th June 2017, on a “without prejudice” basis, whereby the City Council made a final attempt to bring the matter to an agreeable conclusion by offering to purchase the property and title from Mr. Toher for fair value, based on the quality of title held, thereby allowing the Council to progress to perfect the title and seek the removal of dereliction in the short term. The urgency of the matter was outlined to Mr. Toher and the Council’s concerns regarding the continued dereliction and absence of any meaningful progress was made clear. It was also outlined to Mr. Toher that if an agreement could not be reached, the Council would have no alternative but to seek compulsory acquisition of the property.
- The Council received a follow up letter from Mr Toher (dated 13th of June 2017) which gave little comfort that the issues outlined at the meeting were to be addressed or a settlement reached. Copy of the letter is attached to the application for consent.
- In reference to the objection dated 10th October 2017 submitted by Mr. Sean F. Durcan c/o Michael Powell Solicitors on behalf of the Newenham Estate, Mr. Durcan is correct in stating that they had not received previous correspondence regarding the matter. Cork City Council did not serve the original notice of intention to enter on the register on the Newenham Estate as their interest (if any) was not identified during our ownership investigations.
- Their interest only became apparent after the aforementioned meeting with Vincent Toher in June 2017 whereby the possible interest of the Newenham

Estate came to light. Our Law Dept subsequently advised to include the Newenham Estate when serving a notice of intention to acquire the property.

- Given the poor condition of the property and its location in an established residential neighbourhood, the property continues to be a source of anti-social behaviour, is unsightly and a cause of concern and complaint.
- The absence of good marketable title inhibits its sale on the open market and future development and efforts to acquire the property by agreement have failed. Mr. Toher has been dealing with this matter for several years and in that time the condition of the property has continued to deteriorate and the Council given no confidence or assurance that matters will be dealt with.
- It is the view of the Council that the only remedy to the matter of dereliction available at this point is compulsory acquisition and as such, as provided for under Section 10 of the Act, the Council is using its statutory powers in an appropriate manner to allow this long-standing matter of dereliction on site to be addressed and resolved.

4.4. Objector's Submission

4.4.1. None submitted:

4.5. Cork City Council Submission

4.5.1. On the 29th January 2018 in response to a request by An Bord Pleanala for a copy of the letters informing the objectors / parties of the council's intention to purchase the property, Cork City Council made the following submission:

- Copy of letter dated 14th of September 2017, copy of notice and O.S map with property delineated sent to the Estate of John O' Mahony (Deceased), c/o Vincent Toher & Company, Solicitors,
- Copy of letter dated 14th of September 2017, copy of notice and O.S map with property delineated sent to Mr. Edward Galvin, Personal Representative of John O' Mahony (Deceased) and

- Copy of letter dated 14th of September 2017, copy of notice and O.S map with property delineated sent to The Newenham Estate, c/o Sean Durcan, Michael Powell Solicitors.

5.0 Planning History

5.1. No relevant planning history has been brought to my attention.

6.0 Policy Context

6.1. Development Plan

6.1.1. The operative development plan is the Cork City Development Plan, 2015-2021 according to which the site is subject to the zoning objective: ZO 4: *Residential, Local Services and Institutional Uses*". It is the objective of which 'to protect and provide for residential uses, local services, institutional use and civic uses, having regard to employment policies outlined in Chapter 3.

6.1.2. Provision for and protection of residential development is a central objective according to para 15.20. Strategic objectives for existing and future residential development are set out in Chapter 6.

6.1.3. The structure forms part of the Historic Street Character Area as per Map 8 - South Western Suburbs Objectives of the Cork City Development Plan 2015 - 2021

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 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. The subject application relates to 'No. 15 Lough View Terrace, Cork' an inner suburban area to the south west of Cork City. No. 15 Lough View Terrace comprises a mid-terrace part single storey part two storey dwelling, with a full gable roof profile. The site is in two parcels with the dwelling located on the northern portion of the site facing south and an area of land / garden area associated with the dwelling,

separated by a 4m wide tarmac roadway to the south. This garden area extends south by some 52m in length and 12m in width towards Cork Lough.

- 7.2. The dwelling is currently vacant and in a poor visual state of repair and neglect with broken glass to windows and front doorway. While some of the ground floor windows are boarded up, there are gaps and the dwelling is open to the elements. On the day of my site visit I witnessed a rotten timber door and window frames and plants growing out of the roof of the building, from views into the interior of the dwelling it appeared water damaged, mouldy, dilapidated and un-inhabitable.
- 7.3. The area of ground to the front of the dwelling / front garden was extensively overgrown with scrub, briars, bushes and a large mattress was dumped on this part of the site. The garden shed is generally in a dilapidated and visually poor state, from views into the garage through openings in the front façade it appeared full with jumble.
- 7.4. The condition of the building and its associated gardens appear neglected and unsightly and are in contrast with the generally well-kept nature of buildings in the vicinity of 15 Lough View Terrace (see attachments). Lough View Terrace forms part of the designated Historic Street Character Area of the South Western Suburbs of the Cork City, as per Map 8 of the Cork City Development Plan 2015 – 2021.
- 7.5. I would consider that the property falls within categories 9(a) (b) and (c) of section 3 of the Derelict Sites Act, 1990. Notably (a) the structure is in a ruinous and derelict condition (b) the property is neglected and unsightly and (c) litter, rubbish and debris are present on the site. Collectively, 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.
- 7.6. I note the actions of the planning authority and the statutory notices served on the owners in respect of the site. A section 8(2) notice, advising of the local authority's intention to enter the site on the register of derelict sites, was served on the owners on the 9th October 2012. A section 8 (7) notice, advising of the local authority's decision to enter the site on the register of derelict sites, was served on the owners on the 19th December 2012. At each instance, the owners had the opportunity to carry out works to improve or remedy the situation. A section 15 (1) (a) notice of

intention to acquire the site compulsorily was served on the owners on the 14th of September 2017.

- 7.7. Details of complaints and negotiations to resolve the dereliction at the property between the owner / occupier and the City Council, date back to 2006. While a section 11 notice, directing the owners to undertake measures would not appear to have been formally issued, the City Council submits that negotiations to resolve the matter with the owner have been exhausted, copies of letters and negotiations between the parties, attached to the file, are noted.
- 7.8. In particular, I note letter dated 10th June 2010 from the property section of Cork City Council to Mr. Vincent Toher in which it is stated: 'I note that you are going through the process of resolving the Estate of the late John O'Mahony, and that in that regard it would be proposed to allow a period of 3 months for progression of the issues outlined in your letter. However, it would be expected that some clean-up of the site take place in the interim, in order to reduce the unsightly nature of the property.' I also highlight the planning officers Derelict Sites Report, on file, dated 29/08/12, which states: 'the use of Section 11 is not recommended in this case. Given the nature of discussions with Vincent Toher on this property over the years and his failure to move matters forward in any meaningful way makes such a route unlikely to succeed. Redevelopment of the site is also the only long-term solution to the removal of dereliction on site'.
- 7.9. No response has been forthcoming by the personal representatives / solicitors of owners / occupiers for this property. I note the arguments made in both of the objector's submissions to the planning authority. I highlight that it is submitted that the site was originally owned by John O'Mahony (now deceased) and is currently held in trust by Vincent Toher & Co. Solicitors. Difficulties would appear to relate to the multiple properties included in the Will, deeds / title in respect of No. 15 Lough View Terrace and Mr. O'Mahony wishes that full discretion be given to our Mr Toher to dispose of the properties, including No. 15 Lough View Terrace, to Charities nominated by Mr. Toher. The interests and objection by Newenham Estate whom it is submitted were the beneficiaries of a Trust for a long number of years and only recently became the beneficial owners of all the Newenham Estate property in Cork, is also noted.

7.10. There was no evidence of any attempt to make the lands non-derelict at the time of my inspection. It is evident that basic maintenance works have not been carried out and that no works have been undertaken to improve the condition of the lands on foot of the notices served by Cork City Council. The house and associated lands are in a derelict, neglected, unsightly and objectionable condition. Furthermore, the owners have not put forward any substantial reason why no remediation works were undertaken or could not be carried out. While cognisance is had that the property is subject to probate, the property in its current state, detracts from the amenity, character and appearance of land in the vicinity, which in my view, renders it derelict under section 3 of the Act.

7.11. From the site inspection, it is evident that basic repair/maintenance works at the property have not been carried out. The Board to note response of the Local Authority Under Section 10 of the Derelict Sites Act.

7.12. 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 lands known as No. 15 Lough View Terrace Cork is granted.

7.13. Deeds / Title / Probate

7.13.1. I have cognisance to the objector's solicitor's (Vincent Toher & Co.) who act for the estate of John O'Mahony, deceased (Executor - Edward Galvin) submission, to the planning authority, that title for 15 Lough View Terrace Cork is problematic and searches in this regard are on-going. Cork City Council are aware of and acknowledge the underlying title problems. This legal matter, however, lies outside the scope of this assessment. I am otherwise satisfied that the property in question sought for acquisition constitutes a derelict site.

8.0 **Recommendation**

8.1. Having regard to the observed condition of No. 15 Lough View Terrace Cork, in particular, its derelict, neglected and unsightly state, overgrown character and the presence of litter on the site, 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 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 Cork City Council to compulsorily acquire the site.

9.0 Reasons and Considerations

Having regard to:

- (a) The ruinous and derelict condition of the structures on the site
- (b) The neglected, unsightly and objectionable condition of the site,
- (c) The overgrown character of the site and the presence of waste on it.

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 (a) (b) and (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.

Fiona Fair
Planning Inspector
07/02/2018