



An  
Bord  
Pleanála

## Inspector's Report ABP-300204-17

---

### 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. 38 Gould Street, 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)

### Date of Site Inspection

18<sup>th</sup> January 2018

### Inspector

Fiona Fair

## Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Application for Consent for Acquisition .....	3
4.0 Application and Objection .....	5
4.1. Notice of Intention to Acquire .....	5
4.2. Objection to Acquisition.....	5
4.3. Local Authority’s Application for Consent.....	7
4.4. Objector’s Submission .....	9
5.0 Planning History.....	9
6.0 Policy Context.....	9
6.1. Development Plan.....	9
6.2. Derelict Sites Act 1990 (as amended).....	10
7.0 Assessment .....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15

## **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.38 Gould Street, 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.38 Gould Street, is located on the northern side of the street which connects Pouladuff Road and Lough Road, to the north 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. Land use is predominantly residential.
- 2.2. The site comprises a small mid-terrace single storey house with a single box dormer window to the front and a small enclosed rear yard. The adjoining dwellings to the east and west, No. 39 and No. 37 Gould Street, respectively, comprise two storey dwellings. There is a mix of dwelling style along both sides of the street, with interwoven single, two storey and dormer dwellings on narrow plots. Gould Street is a narrow street with footpaths and double yellow lines on both sides.
- 2.3. The dwelling is currently vacant, dilapidated and in an extremely poor visual state of repair with boarded up windows and door. On the day of my site visit I witnessed no glass in the windows, holes surrounding the boarded up door and windows where the dwelling is open to the elements, cracks and loose masonry holes in the walls of the dwelling, a heavily rusted down pipe and broken guttering to the front.
- 2.4. The condition of the building and its gardens are in contrast with the generally well-kept nature of buildings in the vicinity of Gould Street (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 9<sup>th</sup> October 2012. The site was subsequently entered onto the derelict sites register (DSR) on the 19<sup>th</sup> December 2012.

- 3.2. Derelict Sites Report on file dated May 13<sup>th</sup> 2010. Following complaints with respect to dilapidated condition of the dwelling, problems with drains and leakage, a vermin problem in the connecting wall with neighbouring house, I note two letters of complaint on file from owner of No. 39 Gould Street, dated 15<sup>th</sup> April 2010 and August 29<sup>th</sup> 2015. The Council's planning and development department inspected the site on May 13<sup>th</sup> 2010 and deemed the site derelict and recommended that it should be entered on the Derelict Sites Register.
- 3.3. The Planning Department's involvement in the case recommenced in September 2011. It was recommended following an inspection that the owner be issued with a Pre Section 11 notice to do the following remedial works to the property.
  - 'Removal of all timber boarding to ground floor and reinstatement of windows and door.
  - Replacement of windows to dormer.
  - Generally clean up front elevation'.
- 3.4. The Council's Senior Executive Estates Officer, Property Section noted in a letter to the Council's Law Agent, dated 7<sup>th</sup> September 2010, that from the High Court probate document that Mr. O'Mahony was living at 38 Gould Street prior to his death. However, his Will does not mention the said property.
- 3.5. A Corporate Affairs Property Section Report on file dated 5<sup>th</sup> October 2012 sets out that the reputed owner of No. 38 Gould Street is a John O'Mahony (now deceased since 2002) and Mr Vincent Toher & Co. Solicitors is acting on behalf of the estate. The property department have been in contact with Vincent Toher & Co. Solicitors since 2007 and he indicated that he was trying to progress matters. Some of the proprietor's properties were bequeathed to charities in Mr. O'Mahony's Will but there appears to be difficulties in title
- 3.6. Under the Will of the late John O'Mahony, he directed that full discretion be given to his Solicitor Mr Vincent Toher to dispose of the properties situated at 3, 3a and 15 Lough View in the City of Cork to Charities nominated by Mr. Toher.'

- 3.7. 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 a number of years.
- 3.8. The Derelict Sites Report states: 'It is evident from the attached photographs that the site is detracting from the amenity of the area. I recommend that it should be entered on the Derelict Sites Register.' The report is accompanied with a Derelicts Sites Act 1990 – Internal Assessment Sheet which recommends No. 38 Gould Street as a Derelict Site.

## 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 15<sup>th</sup> September 2017.
- 4.1.2. Notice of Intention to Acquire Derelict Site Compulsorily, dated 11<sup>th</sup> September 2017 is attached to the file. On the 14<sup>th</sup> September 2017 a letter with Notice of Intention to acquire the site compulsorily was served on:
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.

### 4.2. Objection to Acquisition

- 4.2.1. An objection to the proposed acquisition was submitted to Cork City Council on 18<sup>th</sup> October 2017 by Vincent Toher & Co. Solicitors, making the following arguments:
- Act for Edward Galvin – Personal Representatives of John O'Mahony (Deceased) being the legal owners of the premises by reason of the following:
    - Submit a copy of Assignment dated 1967, (although unstamped) between Margaret Riordan of the One Part, John O'Mahony and his wife, Sheila O'Mahony, of the Other Part therein called "the

purchasers". This property relates to 38 Gould Street in the parish of St. Finbarr's and South Liberties of the City of Cork, and are part of the premises comprised in an Indenture of Lease dated the 19th day of May 1950 made between Catherine Twomey of the One Part and Patrick Holland of the Other Part for a term of forty-seven years from the 25th day of March 1949 at the yearly rent of ten shillings and six pence.

- Accept that the lease has expired, but despite that, the personal representatives of the late John O'Mahony has rights pursuant to the Landlord and Tenant Act.
- Our client's wife, Sheila O'Mahony is now deceased and therefore, the right of survivorship was vested in the late John O'Mahony is now vested in his personal representatives.
- Submit a copy of Grant of Probate in the estate of John O'Mahony dated the 13th of October 2003 appointing Edward Galvin and John J Sheehan as Executors of the estate of the late John O'Mahony. Mr John J Sheehan is now deceased and Mr Edward Galvin is the sole Executor of the estate.
- Object to the compulsory acquisition of lands, pursuant to Section 8 of the Derelict Sites Act 1961 and pursuant to Section 16 of the Derelict Sites Act 1990
- Discussions and meetings with Cork City Council, and proposals put forward by the representatives of John O'Mahony, to resolve the difficulties with the property were not thought acceptable by the Council.
- Understand that there are penalties associated with this property which, in the normal course of events, would have to be discharged in due course.
- Again suggest to the Board that a deal be done between the parties. Requesting that if the City Council were agreeable that the derelict sites notice would be permitted to be served and an Order made declaring the property and the lands on which it is situated to be a derelict site, that would give sufficient Title to the personal representatives to dispose of the property at arm's length or indeed to the local authority for an appropriate value.

- If a contract could be drawn up for the purposes of sale, the representative's solicitor would undertake to discharge the present penalties levied on the premises out of the proceeds of sale, either if it was vested in the City Council and subsequently sold by them or if it was vested in the City Council with the City Council discharging an agreed consideration for it.
- If an agreement can be reached between the parties, it would remove the objection pursuant to Section 8 and Section 16.
- Representative's solicitor is willing to discuss this matter with the City Council, even on a "Without Prejudice" basis.

### **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. 38 Gould Street, 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.
- From the correspondence, it was apparent that there are title issues with the property.
- Using the Derelict Sites Act to perfect title to help to 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 cases where 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 compulsorily 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.
- 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 from neighbours.
- 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 the past 17 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 29<sup>th</sup> 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 and for an OS Map with the site delineated in red; Cork City Council made the following submission:

- Copy of letter dated 14<sup>th</sup> 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, and
- Copy of letter dated 14<sup>th</sup> 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)

### 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 Architectural Conservation Area (ACA) 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. 38 Gould Street, Cork' an inner suburban area to the south west of Cork City. No. 38 Gould Street comprises a small mid-terrace single storey house with a single box dormer window to the front and a small enclosed rear yard. The adjoining dwellings to the east and west, No. 39 and No. 37 Gould Street, respectively, comprise two storey dwellings. There is a mix of dwelling styles along both sides of the street, with interwoven single, two storey and dormer dwellings on narrow plots.
- 7.2. The dwelling is currently vacant, dilapidated and in an extremely poor visual state of repair and neglect. The building has no glazing or window frames, it has boarded up windows and a boarded up door to the street / front elevation. There are holes and gaps surrounding the openings, thereby, the dwelling is partially open to the elements. On the day of my site visit I witnessed cracks and holes in the plaster work of the front façade and a heavily rusted down pipe.
- 7.3. The condition of the building is neglected and unsightly and in contrast with the generally well-kept nature of buildings along Gould Street (see attachments). Gould Street forms part of the designated ACA of the South Western Suburbs of the Cork City, as per Map 8 of the Cork City Development Plan 2015 – 2021.
- 7.4. I would consider that the property falls within categories 9(a) and (b) of section 3 of the Derelict Sites Act, 1990. Notably (a) the structure is in a ruinous and derelict condition and (b) the property is neglected and unsightly. 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.
- 7.5. 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 9<sup>th</sup> 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 14<sup>th</sup> of September 2017.

- 7.6. Details of complaints and negotiations to resolve the dereliction at the property between the owner / occupier and the City Council, date back to 2010. 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.
- 7.7. In particular, I note the pre section 11 notice referred to by the planning authority, which clearly sets out remedial works to be carried out, following an inspection of the property in September 2011 and also letter dated 27<sup>th</sup> July 2015 from the property section of Cork City Council to Mr. Vincent Toher in which it is stated:

‘With regard to your prior proposition to Cork City Council, I note from my file that a meeting was held with yourself on 25th November 2013 regarding the above properties, to discuss the matter, following which you were to forward full information on the title to the properties, together with your proposal for development, in order that the proposal could be considered. I do not appear to have received same and therefore we assumed that you did not wish to proceed’. In this letter the Council requested that the representatives of No. 38 Gould Street submit: copies of all title documentation for the property and confirm all parties who have a legal interest in the property: name, current address, legal interest held etc. Also that the development proposal incl. a timescale, whether planning permission is required and proof of finance for development of No. 38 Gould Street to be confirmed.

- 7.8. No response has been forthcoming by the personal representatives / solicitors of owners / occupiers for this property to the detail set out in this letter.

- 7.9. The Derelicts Site Report on file dated 1<sup>st</sup> July 2016 states: ‘

‘The house is having a significant negative impact on this residential area and has been the subject of third party complaints. Issues include both visual impact on the

neighbourhood and detrimental impacts on adjoining properties (including reported issues with rats and water ingress). It is my understanding per details on file that the property is part of the estate of John O'Mahony, deceased. The solicitor for the file has stated that there are issues with the title to the property that has prevented its sale. These issues have not been resolved in the past six years...I propose that the house would be sold on the open market following its acquisition, to a purchaser who would act quickly to remove the dereliction.'

- 7.10. I note the arguments made in 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). Difficulties would appear to relate to title in respect of No. 38 Gould Street.
- 7.11. The Councils Senior Executive Estates Officer, Property Section noted in a letter to the Councils Law Agent, dated 7th September 2010, that from the High Court probate document that Mr. O'Mahony was living at 38 Gould Street prior to his death. However, his Will does not mention the said property.
- 7.12. A Corporate Affairs Property Section Report on file dated 5<sup>th</sup> October 2012 sets out that the reputed owner of No. 38 Gould Street is John O'Mahony (now deceased since 2002) and Mr Vincent Toher & Co. Solicitors is acting on behalf of the estate. The property department have been in contact with Vincent Toher & Co. Solicitors since 2007 and he indicated that he was trying to progress matters. Some of the proprietor's properties were bequeathed to charities in Mr. O'Mahony's Will but there're appears to be difficulties in title
- 7.13. There was no evidence of any attempt to make the lands non-derelict at the time of 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 is 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, is ruinous, derelict and 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.

- 7.14. 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.
- 7.15. 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. 38 Gould Street, Cork is granted.

### **Deeds / Title / Probate**

- 7.16. 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 38 Gould Street, Cork is problematic and whilst they are relying on the documentation on file, as sufficient to prove title, they request that if Cork City Council were agreeable to assist by utilising its powers under the Derelict Sites Act 1990 to perfect the title, that would give sufficient title to the personal representatives to sell the property on the open market or to reach a sale agreement with the local authority.
- 7.17. From information contained on the file dating back to 2010 it is evident that the City Council indicated to representatives of the property (Vincent Toher and Co. solicitors) that it would not be possible for Cork City Council to consider acquiring the premises for a number of reasons, such as; costs involved, funding available and using statutory powers in an appropriate manner. It is also stated, in the request for consent to the compulsorily acquisition of the premises, that 'efforts to acquire the property by agreement have failed.'
- 7.18. Cork City Council are aware of and acknowledge the underlying title problems. The legal matter of title and the proposal by Vincent Toher and Co Solicitor for the City Council to acquire the property by agreement 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. 38 Gould Street, Cork, in particular, its ruinous, derelict, neglected and unsightly state, 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 structure on the site
- (b) The neglected, unsightly and objectionable condition of 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 section 3 (a) and (b) 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