



An  
Bord  
Pleanála

## Inspector's Report ABP-302994-18

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### 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

2 Charlotte Street, Carlow, Co. Carlow.

### Local Authority

Carlow County Council

### Notice Party

Dermot Hyland.

### Date of Site Inspection

8<sup>th</sup> February 2019.

### Inspector

Dáire McDevitt

## **1.0 Introduction**

- 1.1. This case relates to a request by Carlow County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 2 Charlotte Street, Carlow, Co. Carlow, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The application site is situated at on the eastern side of Charlotte Street. One of a pair of terraced houses. Charlotte Street has a number of properties in various states of disrepair with new infill development on the southern end adjoining Tullow Street (R726). The northern part of Charlotte Street has a paid parking and a Workmans Club.
- 2.2. The site in question refers to a two storey terraced house, bounded to the north by No. 3, a two storey terraced house which is in a serious state of disrepair. To the south is a modern infill development with vacant retail units at ground floor. Charlotte Street links Tullow Street, a prominent commercial street in the town, with Brown Street.
- 2.3. The house has a dashed finish, and pitched tile roof. All windows have timber hoarding. There is no front boundary, to the rear is a small yard enclosed by high walls and accessed via the house. The rear yard is overgrown.
- 2.4. On the date of my site inspection, the window openings of the house were covered in timber sheeting. The rear garden/yard were also heavily overgrown with vegetation. The interior of the house was gutted, all internal floors and walls have been removed.

## **3.0 Application for Consent for Acquisition**

- 3.1. Carlow 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) (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), section 8(7) (i.e. advising of the Local

Authority's decision to enter the site on the register of derelict sites) and section 11(2) (i.e. directing that specified measure be completed).

## **4.0 Application and Objection**

### **4.1. Notice of Intention to Acquire**

4.1.1. A Notice of Carlow County Council's intention to acquire the site compulsorily was served on the owner/occupier (Dermot Hyland) dated 11<sup>th</sup> September 2018 and was published in the Nationalist newspaper on the 11<sup>th</sup> of September 2018. The site was described as follows in the notices:

- All that and those the dwelling house and premises known as 2 Charlotte Street, being part of the townland of Carlow and the Barony of Carlow and being all of the property comprised in Folio 10308F of the Register of Freeholders, County Carlow.

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 Carlow County Council by Reidy and Foley Solicitors, on behalf of Dermot Hyland in a letter dated 15<sup>th</sup> October 2018. The objection can be summarised as follows:

- No documentation has ever been served on him with regard to the said compulsory acquisition. The objection outlines that if Mr Hyland had had the document served upon him, would have made arrangements to contact the Council with regard to repairing and/or developing his property.
- Their client has not been given the opportunity to repair and/or develop his property due to the fact that the documents were not served upon him. Their client, My Hyland has not resided at the address to where the documents were sent since 2010.

### **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 and the application for consent was accompanied by the following:

- Local Authority cover letter dated 14<sup>th</sup> November 2018 outlining documentation included with their referral to An Bord Pleanala for Confirmation of a Compulsory Purchase Order in respect of property at 2 Charlotte Street, Carlow under the Derelict Sites Act 1990 (as amended).
- Copy of objection dated 15<sup>th</sup> October 2018 made by Reidy & Foley Solicitors on behalf of Mr Dermot Hyland. Outlining that no documentation had been received by their client as he had not resided at 10 Coote Lane, Kilkenny since 2010.
- Copy of the newspaper notice, dated 11<sup>th</sup> September 2018.
- Copy of Notice of Intention to Acquire Derelict Site Compulsorily under Derelict Sites Act 2000 (as amended) dated 11<sup>th</sup> September 2018.
- Copy of Chief Executive's Orders dated 20<sup>th</sup> August 2018 in connection with the Initiation of Compulsory Purchase Order Process in accordance with Section 14-16 of the Derelict Sites Act (as amended) in respect of the 2 Charlotte Street, Carlow.
- Copy of Demand Notice dated 15<sup>th</sup> March 2018 that was served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 23(5) of the Derelict Sites Act 1990 for payment due. Notices returned to Carlow County Council. Reason: 'Not called for'.
- Copy of Invoice dated 13<sup>th</sup> March 2018 that was issued to Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny.
- Copy of Demand Notice dated 8<sup>th</sup> December 2017 that was served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 23(5) of the Derelict Sites Act 1990 for payment due. Notices returned to Carlow County Council. Reason: 'Not called for'.

- Copy of Invoice dated 28<sup>th</sup> November 2017 that was issued to Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny
- Copy of Demand Notice dated 12<sup>th</sup> December 2016 that was served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 23(5) of the Derelict Sites Act 1990 for payment due. Notices returned to Carlow County Council. Reason: 'Not called for'.
- Copy of Invoice dated 24<sup>th</sup> November 2016 that was issued to Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny
- Copy of notices dated 12<sup>th</sup> May 2016 that were served on Mr Dermot Hyland, 2 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 22 of the Derelict Sites Act 1990, as amended, regarding the determination of a Market Value of the property. And that a 3% levy, in accordance with Section 23 of the Derelict Sites Act 1990, will be applied from the 1<sup>st</sup> January 2016. Notices returned to Carlow County Council. Reason: 'Unknown at this address.'
- Copy of Derelict Sites Report dated 10<sup>th</sup> November 2015 with photographs dated September 2015. This noted the house in a state of neglect and general disrepair. Recommendation that a Section 8(7) Notice be served.

Works listed included:

1. Vegetation to be removed from roof.
  2. Boarded windows to be painted with mock panels.
  3. Entire front façade to public street to be painted.
  4. Damaged gutters and downpipes to be assessed and repaired.
- Copy of notices dated 22<sup>nd</sup> December 2015 that were served on Mr Dermot Hyland, 2 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 22 of the Derelict Sites Act 1990, as amended, regarding the determination of a Market Value of the property. And that a 3% levy, in accordance with Section 23 of the Derelict Sites Act 1990, will be applied

form the 1<sup>st</sup> January 2016.-Notices returned to Carlow County Council.

Reason: 'Unknown at this address.'

- Copy of notices dated 27<sup>th</sup> October 2011 that were served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 8(7) of the Derelict Sites Act 1990, as amended, regarding Notice of an entry having been made in the Derelict Sites Register. Notices returned to Carlow County Council. Reason: 'Not Known.'
- Map of the site area and Land Registry details.
- Copy of notices dated 27<sup>th</sup> September 2011 that were served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 11 of the Derelict Sites Act 1990, as amended, directing that specified measures be completed to prevent the site from becoming/continuing to be a derelict site. Notices returned to Carlow County Council. Reason: 'Gone Away'
- Copy of notices dated 7<sup>th</sup> September 2011 that were served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny pursuant to Section 11 of the Derelict Sites Act 1990, as amended, directing that specified measures be completed to prevent the site from becoming/continuing to be a derelict site. Notices returned to Carlow County Council. Reason: 'Not called For.'

Works included:

1. Clean and paint all external walls of the structure.
  2. Remove boarding on windows and doors.
  3. Repair/replace roofing and guttering where necessary.
- Copy of notices dated 10<sup>th</sup> June 2011 and 5<sup>th</sup> July 2011 that were served on Mr Dermot Hyland, 10 Cootes Lane, Patrick Street, Co. Kilkenny, respectively, pursuant to Section 8(2) of the Derelict Sites Act 1990, as amended, that the Local Authority intends to enter the site on the Derelict Sites Register. Notices returned to Carlow County Council. Reason: 'Not called For'

- Copy of Internal Memo from Garry Farrelly, Architectural Technician to Michael Brennan, Town Clerk (not dated) and Site Inspection Photographs (external) dated 25<sup>th</sup> January 2011. Recommendation that a Notice of Intention to enter the site on the derelict sites register, as set under Section 8(2) of the Derelict Sites Act 1990 be issued to the owners.

Works required:

1. Clean and paint all external walls of the structure.
2. Remove boarding on windows and doors.
3. Repair/replace roofing and guttering where necessary.

4.3.2. The derelict site report (10<sup>th</sup> November 2015) can be summarised as follows:

- House is in a state of neglect and general disrepair.
- Noted that a Section 8(7) Notice appears on file.
- Recommend that a notice under section 8(7) of the Derelict Sites Act be served on the owner of the property. Measures required:
  - Vegetation to be removed from roof.
  - Boarded windows to be painted with mock panels.
  - Entire front façade to public street to be painted.
  - Damaged gutters and down pipes to be assessed and repaired.

4.3.3. The Local Authority comments on the objection, which took the form of a letter to Reidy and Foley Solicitors, can be summarised as follows:

- The Planning Authority obtained the only available ownership details from a Land registry. Every effort was made by Carlow County Council to issue notices by registered post and ordinary post.
- The owner contacted Carlow County Council following the publication in the Newspaper of the Notice of Intention to Acquire the site by compulsorily acquisition under Section 14 of the Derelict Sites Act, 1990 as amended
- Charlotte Street is located in an area identified to be the Cultural Quarter of Carlow Town. To ensure the enhancement of this area Carlow County

Council has recently compulsorily acquired and purchased properties in this area during 2016 and 2018 which were vacant and derelict and detracting from the area.

- Since 2011 the owner has failed to adequately demonstrate compliance with Section 9 of the Derelict Sites Act 1990 (as amended).

#### **4.4. Objector's Submission**

An Objection by Reidy & Foley Solicitors on behalf of Mr Dermot Hyland is summarised as follows:

- Correspondence from Carlow County Council dated 14<sup>th</sup> November 2018 confirms their clients contention that no documentation has ever been served on him with regard to the Compulsory Purchase Order.
- Their client did not reside at the address Carlow County Council issued correspondence to.
- If their client had been aware of the matter, he would have made arrangements to contact Carlow County Council and gone about repairing/developing the property. He was not aware that there was an issue with this property. Therefore, he was not given the opportunity to repair and/or develop his property as the documentation was never served upon him.

### **5.0 Planning History**

#### **5.1. Application Site**

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

#### **5.2. Surrounding Area**

5.2.1. I am not aware of any 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 Carlow County Development Plan 2015 – 2021 and the Joint Spatial Plan Carlow Graigcullen Plan 2012-2018 (extended to 2022). The site and surrounding area are zoned 'Town Centre'.

### **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.** On the date of my site inspection I had access to the interior of the structure and I observed that all internal floors and wall had been removed and a small hole was noted in the ceiling.
- 7.2.** The house is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area. This is due to the fact that the window openings are covered by timber sheeting and that the house is unpainted and stained with dirt.
- 7.3.** The surrounding properties and streetscape in general is in a state of disrepair and could benefit from refurbishment works. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the area.
- 7.4.** Externally the house appears to be in reasonable structural condition. There is no obvious evidence of significant cracking or damage to the external walls, and the roof appears for the most part intact. Internally the property has been gutted, all internal walls and floors have been removed and the walls stripped back. Also, as noted above, the window openings are sealed with timber sheeting.
- 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, and that it could be considered ruinous, as while it appears to have a reasonably intact roof and external walls, the interior walls and floors have been removed. While there may be some litter within the application site, it was not particularly apparent due to the overgrown nature of the rear yard. I therefore do not consider that the quantity of waste is sufficient to materially detract from the amenity or appearance of lands in the vicinity, and I do not consider that the site falls within category (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.

- 7.6 I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. The derelict site report dated 25<sup>th</sup> January 2011 recommended that a section 8(2) notice be served on the owners, advising of the Local Authority's intention to enter the site on the register of derelict sites. I note that the report also set out measures required to be undertaken. However, as evident from the documentation on file, there is no evidence that a section 11 notice directing the owners to undertake the specified measures was served on the owner. Neither is there any evidence on file that a section 8(2) notice was subsequently served on the owners. Similarly, there is no evidence on file that the section 8(7) notice was served on the owners, advising of the Local Authority's decision to enter the site on the register of derelict sites. A subsequent derelict site report dated 10<sup>th</sup> November 2015 recommends that a section 8(7) notice be served on the owners.
- 7.7 Notwithstanding the Local Authority's failure to demonstrate that section 8(2) or section 8(7) notices were served on the owners, the Board should note that it is not a requirement under the Derelict Sites Act 1990, as amended, for a site to be placed on the register of derelict sites prior to an application being made to acquire it compulsorily.
- 7.8 A section 15(1)(a) notice of intention to acquire the site compulsorily was served on the 11<sup>th</sup> September 2018 and published in the Nationalist Newspaper on the 11<sup>th</sup> September 2018. It is clear that the owner of the site was aware of the newspaper notice, as demonstrated by the fact that an objection was made.
- 7.9 I note the objection made on behalf of Mr Dermot Hyland on the 15<sup>th</sup> October 2018 to the proposed acquisition of the site, stating that he had not received any Notices and had not been aware that works were required to his property. Having inspected the site, there is no evidence of any attempt to render the site non-derelict, the timber hoardings covering window openings that can be seen in some of the Local Authority photographs have not been addressed. Hoarding over the door has been replaced with a door. The house remains in a neglected and unsightly condition and the rear garden/yard is

unkempt and overgrown. Furthermore, photographs taken of the interior clearly show that all that remains of the structure is the external walls and roof, I therefore consider that the site remains in a derelict condition.

7.10 Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at No. 2 Charlotte Street, Carlow is granted.

## **8.0 Recommendation**

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

8.2. I consider 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 Carlow County Council to compulsorily acquire the site.

## **9.0 Reasons and Considerations**

Having regard to the neglected, unsightly and objectionable condition of the structure it is considered that the site detracts to a material degree from the amenity, character and appearance of the streetscape and, therefore, comes within the definition of a derelict site as defined in section 3 (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.

Dáire McDevitt

Planning Inspector

20<sup>th</sup> February 2019