



An  
Bord  
Pleanála

## Inspector's Report ABP-303271-18

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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

No.21 Connaught Street,  
Phibsborough, Dublin 7

### Local Authority

Dublin City Council

### Notice Party

Patrick Joseph Gallagher

### Date of Site Inspection

12<sup>th</sup> March 2019

### Inspector

Colm McLoughlin

# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Application for Consent for Acquisition .....	3
4.0 Application & Objection.....	4
4.1. Notice of Intention to Acquire .....	4
4.2. Objection to Acquisition.....	4
4.3. Local Authority's Application for Consent.....	4
4.4. Owner's Submissions.....	5
5.0 Planning History.....	6
5.1. Subject Site.....	6
5.2. Surrounding Area .....	6
6.0 Policy Context.....	6
6.1. Development Plan.....	6
6.2. Derelict Sites Act, 1990, (as amended).....	7
7.0 Assessment.....	8
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	12

## 1.0 Introduction

- 1.1. This file relates to a request by Dublin City Council for the consent of An Bord Pleanála for the compulsory acquisition of a site at No.21 Connaught Street, Phibsborough, Dublin 7, in accordance with the provisions of the Derelict Sites Act, 1990, as amended (hereinafter referred to as the 'Derelict Sites Act').

## 2.0 Site Location and Description

- 2.1. The subject site located within the Phibsborough residential neighbourhood, is on the southeastern end of Connaught Street, which is accessed off Phibsborough Road (R135 regional road) adjacent to Phibsborough Shopping Centre. It is approximately 1.7km north of Dublin city centre. The site backs onto a laneway that serves the rear of properties along the southside of Connaught Street. To the immediate south of the laneway is Dalymount Park.
- 2.2. It contains a two-storey terraced house with a two-storey rear return and a single-storey mono-pitch rear extension. The architecture of the dwelling is typical of the Victorian style, featuring front projecting-bay windows, red-brick to the façades, slate roof, decorative brick cornice, segment-headed window openings and arch front doorway. The windows and doors on the front elevation have been blocked up with fitted timber screens that have been painted grey. To the front of the dwelling is a small garden and pathway enclosed by a cast-iron rail. To the rear the garden space is extensively overgrown and there is a single-storey mono-pitch garage opening onto a rear laneway.
- 2.3. The immediate area is characterised by rows of terraced single and two-storey Victorian-style dwellings, fronting onto a grid network of streets. Ground levels in the vicinity drop gradually to the southeast. Attached to the east is No.19 Connaught Street, which is also the subject of a similar compulsory acquisition application by the Local Authority.

## 3.0 Application for Consent for Acquisition

- 3.1. Dublin City Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act. According to the documentation on

file, the site was entered on to the Local Authority Derelict Sites Register on the 23<sup>rd</sup> day of March 2018.

## **4.0 Application & Objection**

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

- 4.1.1. Notice of intention to acquire the site compulsorily is stated to have been served on the owner / occupier / lessee of the site on the 11<sup>th</sup> day of November 2018 and published in the Irish Times newspaper on the same date. I consider that the notices are generally in accordance with the requirements of section 15 of the Derelict Sites Act, albeit it would seem more thorough to specify on the notice served on the owner / occupier / lessee, the actual times during which the map of the derelict site may be inspected, rather simply referring to the 'office hours' of the Derelict Sites Section.

### **4.2. Objection to Acquisition**

- 4.2.1. An objection to the proposed acquisition was received in writing by the Local Authority on the 15<sup>th</sup> day of November 2018 from Patrick Joseph Gallagher, the stated owner of the site and the adjoining site at No.19 Connaught Street, in which the following arguments are made:
- 1) the Local Authority previously requested the repair of the property and, earlier in 2018, the owner stated that they would repair the property;
  - 2) the owner needs the property and is repairing it;
  - 3) the owner will be in contact with the Local Authority shortly.

### **4.3. Local Authority's Application for Consent**

- 4.3.1. The Local Authority state that the eradication of dereliction in the City and the return of derelict sites to active use are desirable from both planning and environmental perspectives.
- 4.3.2. The Local Authority outline that they first entered the subject site on the Derelict Sites register in 2009 and that following the carrying out of improvement works, including the boarding up of windows and the front doorway, the site was removed

from the register in 2012. It is stated by the Local Authority that the boarding up of windows and doors was never intended as a permanent solution. They now consider the site to be derelict, as it detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, due to its unsightly and neglected condition.

- 4.3.3. Prior to entering the site in the Derelict Sites register in March 2018, the Local Authority state that they advised the owner to arrange for the reinstatement of the front door and windows and to remove weeds and vegetation from the building and the front garden. The Local Authority state that prior to this they were unsuccessful in entering into discussions with the owner. In attempting to initiate action they state that they advised the owner to submit details of the improvement works that they intended to carry out and to provide a timeline for the commencement and completion of these works.
- 4.3.4. Despite repeated demands regarding the necessity for improvement works to render the site 'non-derelict', the Local Authority state that these works have not been carried out and that the owner was afforded ample opportunity to respond and to carry out the works and has failed to do so.
- 4.3.5. The application includes a copy of correspondence between the site owner and the Local Authority dating from June 2017 to November 2018. Correspondence to and from local residents and a local elected representative is also included, dating from November 2016 to October 2018. Site inspection records for November 2016, June 2017, October 2017 and March 2018 are also provided, including photographs from the front of the site.

#### **4.4. Owner's Submissions**

- 4.4.1. In response to the application to the Board for consent to compulsorily acquire the site at No.21 Connaught Street, Phibsborough, Dublin 7, the owner was afforded an opportunity by the Board to comment on the application. A submission was not received in this regard.

## 5.0 Planning History

### 5.1. Subject Site

5.1.1. I am not aware of any recent planning history associated with the subject site.

### 5.2. Surrounding Area

5.2.1. Recent planning applications for permission in the immediate vicinity primarily relate to domestic-scale alterations, as well as redevelopment proposals relating to Phibsborough Shopping Centre and part of the grounds to Dalymount Park.

## 6.0 Policy Context

### 6.1. Development Plan

6.1.1. The site has a zoning objective 'Z2 – Residential Neighbourhood (Conservation Areas)', with a stated objective 'to protect and/or improve the amenities of residential conservation areas'. The general objective for these lands is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. The site is not within an Architectural Conservation Area (ACA).

6.1.2. The Development Plan notes that the National Spatial Strategy, the predecessor to the National Planning Framework: Project Ireland 2040, placed particular emphasis on the physical consolidation of the metropolitan area, and necessitated the sustainable development of all vacant, derelict, and under-used lands. In aiming to make a more compact sustainable city, the Development Plan includes the following policy:

- SC29 – 'To discourage dereliction and to promote the appropriate sustainable re-development of vacant and brownfield lands, and to prioritise the re-development of sites identified in the Dublin Inner City Vacant Land Study 2015'.

## 6.2. Derelict Sites Act, 1990, (as amended)

6.2.1. The Derelict Sites Act includes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to undertake measures to derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.2.2. Section 3 of the Act provides a definition of a 'derelict site' as follows:

'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 Derelict Sites Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on relevant occupiers/owners of their intention to do so. Under the terms of section 9, every owner and occupier of land are required to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 of the Act 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. Local Authorities may serve notice on an owner or occupier of land under section 11 of the Act, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 enables a Local Authority to 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 or

occupier wish to object to the acquisition. Where an objection is made, section 16 of the Act states that a derelict site shall not be acquired compulsorily by the Local Authority without the consent of An Bord Pleanála.

## **7.0 Assessment**

- 7.1. In serving notice on the owner a reasonable and fair approach should be undertaken by the Local Authority, and in considering whether this occurred, it is necessary to outline the main events and communications between the parties prior to the Local Authority applying for the acquisition of the site at No.21. Below I note the actions of the Local Authority and the various statutory notices served on the owner in respect of the site.
- 7.2. In this regard I note that the Local Authority state that the site was previously entered on to the Derelict Sites register in March 2009 and that following the carrying out of improvement works, the site was removed from the Derelict Sites register in June 2012. The initiation of the process to once again enter the site (and the adjoining site at No.19) on to the Derelict Sites register, appears to stem from a complaint from a local resident of Connaught Street dating from November 2016. The first inspection of the site by the Derelict Sites Section of the Local Authority took place in November 2016 and during this inspection it was noted that the grey-painted timber sheets were fitted to the front door and window opes, some brickwork needed repointing, vegetation was growing from the first-floor brickwork and the gutters, and access was not available to the rear. Following the first inspection, the Local Authority responded to the local complainant and stated that they do not consider the site to be derelict or to be in a condition to warrant its acquisition under the Derelict Sites Act, as the front window and door opes are neatly boarded up and there are no visible holes in the roof.
- 7.3. A further inspection of the site was undertaken in June 2017 when similar conditions to the first inspection were noted and the front roof appeared to be in good condition, according to the Local Authority. Following this, the Local Authority contacted the owner requesting reinstatement of the front door and front windows and the removal of weeds and vegetation from the building and the front garden area. A subsequent inspection in October 2017 also noted similar conditions to the previous inspection,



with the board blocking the right hand upper-floor window slanted inwards and the front garden area was overgrown with weeds and vegetation. A section 8(2) notice dated the 27<sup>th</sup> day of November 2017, was then served on the owners / occupiers of the site, advising of the intention to enter the site on to the Register of Derelict Sites. The owner responded to the notice by stating that they could not undertake the requested repairs any sooner because of ill health and finance, and that they would be having both houses repaired as soon as possible in 2018.

- 7.4. An inspection in March 2018 noted similar conditions to the previous inspection, as well as noting that a front roof tile had slipped into the gutter and the front garden was reasonably tidy. A section 8(7) notice dated the 23<sup>rd</sup> day of March 2018, was served on the owners / occupiers of the site, advising of the Local Authority's decision to enter the site on to the Register of Derelict Sites. I am not aware of a response to this notice being received by the Local Authority. Following this the Local Authority Chief Valuer contacted the owner by letter dated the 30<sup>th</sup> day of July 2018, outlining the intention to acquire the site via compulsory purchase and that a valuation of the site needed to be undertaken. A section 15(1)(a) notice of intention to acquire the site compulsorily was published in the Irish Times Newspaper on the 11<sup>th</sup> day of October 2018 and a section 15(1)(b) notice was served on the owner of the site on the same date. Additional photographs of the front of the site on the day that the section 15 notices were served are included with the application to the Board.
- 7.5. Based on the particulars of the case, I am satisfied that the Local Authority took reasonable steps to make the owner aware of its concerns in relation to the condition of the site, including the intention to include the site in the Derelict Sites Register, the entry of the site on to the Register and the circumstances under which the site may be removed from the Register. However, I note that in response to a query from a member of the public in December 2016, the Local Authority advised that the site could not be considered derelict within the meaning of the Derelict Sites Act. Based on photographs dating from November 2016 on the application, I would consider that the site is in a very similar condition at present to its condition in November 2016.
- 7.6. The information provided by the Local Authority, suggests that the owner does not appear to have engaged extensively with the Local Authority regarding the site at any stage in the process. Nevertheless, photographic images available from the

Local Authority inspections and streetview images over the period March 2011 to August 2018, suggest that some maintenance works to the site has occurred intermittently over recent years, including the removal of weeds and the upkeep of the front garden area.

- 7.7. The site is only visible from the immediate streetscape. The streetscape at this location is characterised by well-established rows of terraced dwellings of Victorian style in a uniform and regular arrangement. The site or adjoining properties are not within an Architectural Conservation Area.
- 7.8. The site contains a two-storey mid-terrace red-brick Victorian-style house with slate roof and a small front garden area. Connaught Street is well used by pedestrians and road-users, as it links the Cabra residential area to the west with Phibsborough village and the city centre to the east. A 5m-wide laneway serving the rear of houses along Connaught Street runs along the rear of the site. The rear boundary of the site features a 2.5m high single-storey mono-pitch garage, which restricts views into the rear of the site from the service laneway.
- 7.9. The front doorway and all windows to the front of the house on site are boarded up with fitted and painted grey-timber panels, including the three windows set into the bay-window feature. The timber panel to the front first-floor window above the bay window is falling inwards. The walls, chimney and roofs of the house are in reasonable condition with no obvious signs of structural faults, although there are indications that some roof slates are becoming loose and brickwork to the front requires repointing, particularly between the first-floor opes. All typical Victorian-style features, including ornate cornices, brickwork and rainwater goods appear in reasonable condition. The area of the half-moon fanlight, the pilasters and the corbels to the front entrance doorway are identifiable under the grey paint. The cast-iron railings and gate securing the front garden area are in reasonable condition. Some of the tiled paving leading to the front doorway have become loose or are no longer in situ. The front garden area, featuring a grassed area, is not extensively overgrown with vegetation and is not littered. While the rear garden area is overgrown, views into this area are restricted to the immediately neighbouring houses.

- 7.10. While the house on site would appear to be vacant, the owner would appear to have undertaken some maintenance of the structure and a measured and orderly approach to the boarding-up of the window and door opens has been undertaken. With the exception of the boarded up windows and door, and the minor defects in the brickwork and slates along the Connaught Street side, the house would appear to be in reasonable condition and not substantially dissimilar in appearance to the immediate housing along the street. While the site can be considered to have some elements that are in neglected or in unsightly condition, I am not satisfied that this appearance is significant enough to detract to a material degree from the residential area in which it is located.
- 7.11. I recognise that under section 10 of the Derelict Sites Act, it is the duty of the Local Authority to take all reasonable steps to ensure that any land situate in their functional area does not become or continue to be a derelict site and I note that the Dublin City Development Plan 2016-2022 includes policy SC29, which aims, inter alia, 'to discourage dereliction', and such a policy is clearly in the interests of the common good. While the proposed acquisition by the Local Authority may be well-intended, I do not believe the Derelict Sites Act was ultimately intended to serve acquisition of a site in this condition. In this regard, there may be more appropriate means to bring the site into productive use.

## **8.0 Recommendation**

- 8.1. Having regard to the observed condition of lands at No.21 Connaught Street, Phibsborough, Dublin 7, I consider that the site does not and is not likely to materially detract from the amenity, character and appearance of land in the neighbourhood and is therefore not a derelict site within the meaning of section 3 of the Derelict Sites Act, 1990, as amended.
- 8.2. I consider that it is unreasonable that the Local Authority seeks to compulsorily acquire the site under section 14 of the Derelict Sites Act. I recommend, therefore, that the Board refuse consent to the Local Authority to compulsorily acquire the site in full.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the observed condition of the site, it is considered that the site does not detract to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, does not come 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 not warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.

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Colm McLoughlin  
Planning Inspector  
22<sup>nd</sup> March 2019