



An
Bord
Pleanála

Inspector's Report ABP-304277-19

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

1 Long Lane, Off Sir Harry's Mall,
Limerick City

Local Authority

Limerick City and County Council

Notice Party

Leo McNamara & Linda (Lynda)
McNamara

Date of Site Inspection

23rd August 2019

Inspector

Mary Kennelly

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 1 Long Lane, Off Sir Harry's Mall, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located on Long Lane which is situated off Sir Harry's Mall. This is a residential street which links George's Quay to the South with Athlunkard Street to the North. It is located on the western banks of the Abbey River, to the north of its confluence with the Canal, in Limerick's Medieval Quarter. Sir Harry's Mall is accessed via the R445 (Lock Quay), Sráid Séamus Ó'Cinneide and Long Lane. The Absolute Hotel occupies a triangular area of land bounded by Sráid Séamus Ó'Cinneide to the west, Long Lane to the north and the Abbey River to the east. The northern side of Long Lane comprises a short terrace of single-storey residential properties, all of which are unoccupied and in a poor state of repair.
- 2.2. The application site is situated at the western end of Long Lane, adjacent to the corner with Sráid Séamus Ó'Cinneide. The row of terraced houses immediately to the east has been the subject of Derelict Site Notices issued by Limerick City and County Council in the recent past. The site in question is an end-of-terrace site but does not incorporate the corner site. There is a c.2m high stone wall bounding Sráid Séamus Ó'Cinneide, extending from the western boundary of the site. The Absolute Hotel is located directly opposite the site. It has an area of approx. 0.007ha (70sq.m) and it is described in the notice as an end of terrace residential property. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. The house is a single-storey dormer style townhouse with a smooth render and painted finish, and a pitched slated roof, which included a dormer window with a pitched roof. The property is one of five similar properties, all of which front directly onto the street.
- 2.4. On the date of my site inspection, the property was secure with the front door and front windows boarded up. A large section of the render on the front façade had

been removed and the stonework underneath was exposed. A section of the guttering is missing and there is vegetation growing on the roof and out of the chimney. Part of the render around the chimney has fallen off or been removed. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the side elevation from the street over the top of the wall, and the rear garden appeared to be completely overgrown and in need of maintenance.

3.0 Application for Consent for Acquisition

3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on 22nd September 2017, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on 18th April 2018, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Leo McNamara and Linda (Lynda) McNamara) in letters dated 12th February 2019 and was published in the Limerick Leader newspaper on the 23rd February 2019. The site was described as follows in the notices:

- A derelict site comprising of end-of-terrace residential property situated at 1 Long Lane, Off Sir Harry's Mall, Limerick. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-100-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by Mary Murphy Solicitors, on behalf of Leo and Linda (Lynda) McNamara of Kerins Hill, Sligo, in a letter dated 5th March 2019. The objection can be summarised as follows:

- The owners have indicated that they were willing to carry out works on the property some time ago but were told by Mr. Joe Devan to hold on doing these works.
- A letter from Mary Murphy Solicitors addressed to the Local Authority and dated 23rd January 2019 states that their clients have indicated that they would be willing to carry out some remedial works such as painting and fixing up of doors and windows, and asked if this would be satisfactory to the Council.
- A letter of response from the Local Authority dated 12th February 2019 advised Mary Murphy Solicitors that it was the Local Authority's intention to Compulsorily Acquire the property under Section 15 of the Derelict Sites Act, 1990.

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

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 23rd April 2019 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection. The report included photographs and a map of the site area.
- Copy of the notices served on the owners/occupiers of the site, dated 13th February 2019.
- Copy of the newspaper notice, dated 23rd February 2019.
- Copy of objection made by Mary Murphy Solicitors, dated 23rd January 2019.

- Copy of correspondence between Mary Murphy Solicitors and the local authority dated 12th February, 2019, 5th March and 29th March, 2019.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.
- The property first came to the attention of the L.A. over 10 years ago and has remained vacant and derelict since then. It first had a Derelict Site Case opened in 2009, Ref. DS-006-09. It was re-inspected in 2017 and given the current case reference DS-100-17. Photographs from each of the site inspections are included with the application. Despite efforts to work with the owners to improve the condition of the property and an offer by LCCC to acquire the property by agreement, no progress could be made.
- The adjoining properties (Nos. 2, 3, 4 and 5) are currently vacant and uninhabitable and are each the subject of open Derelict Site cases. The L.A. has recently compulsorily acquired 2 Long Lane Ref. DS-101-17 under the Derelict sites Act 1990 without objection. The owners of No. 5 Long Lane recently submitted a planning application for the demolition of the existing derelict end of terrace cottage (Reg. Ref. 18/766).
- The property has a very unsightly appearance, which detracts from the character of the neighbourhood. It is situated across the road from the Absolute Hotel. The ground floor windows and entrance door have been secured with painted timber hoarding. A large section of plaster has had to be removed from the façade for public safety, which has exposed stonework to the elements. A section of guttering is missing and vegetation is present in the

remainder. There is vegetation on the roof slates and significant overgrowth in the rear yard.

- Following the first inspection of the property in September 2009, Land Registry and planning searches were carried out in an attempt to establish ownership, without success. The L.A. arranged for remedial measures to be carried out at No. 1 and No. 2 Long Lane in 2010 at a cost of €1,600.
- In 2017, large chunks of plaster began to fall off the façade onto the public footpaths, so the L.A. decided to remove any remaining loose sections and cleared debris from the footpath. The Local Authority decided to issue a Section 8(2) notice in September 2017 of its intention to enter the property onto the Register of Derelict Sites and the owner contacted the L.A. in March 2018. A Section 8(7) notice in April 2018 to advise that it had entered it onto the register. On 20th December 2018, a Section 22 Valuation Notice was issued.
- In December 2018, the property was inspected with the consent of the owners and a subsequent offer was made to acquire the property by agreement, through the Buy and Renew Scheme. The offer was refused. An objection was subsequently received from the owners' solicitors on 23/01/19 and a response issued on the 12/02/19.
- It was decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 in February 2019. The Notice was affixed to the property and issued by registered post on 19th February 2019.
- An objection to this notice was submitted by Mary Murphy Solicitors on behalf of the owners on 7th March 2019. It was stated that the owners have indicated that they were willing to carry out works on the property some time ago but were told to hold off doing so.
- The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

- 4.4.1. A submission was made to the L.A. by Mary Murphy Solicitors on 7th March 2019 in response to the Section 15 Notice. It was confirmed that they act for the owners of the property, Leo and Linda McNamara.
- 4.4.2. It is stated that they object to the proposed acquisition of the property as the owners have indicated that they were willing to carry out works on the property some time ago but were advised to delay doing so by Joe Devan. There is no indication of whether this person is an employee of the local authority and/or what his role is in the matter.
- 4.4.3. No further correspondence has been submitted. There has been no further objection submitted to the Board.

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. 18/766 – 5 Long Lane - Application for permission to demolish derelict end of terrace cottage, while providing support and weathering to adjoining property's gable wall – deemed withdrawn on 27/03/19.
- 5.2.2. I am not aware of any other recent relevant planning history in the surrounding area.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The applicable Development Plan is the Limerick City Development Plan 2010 – 2016 (As extended). The site is zoned **Retail Commercial – City Centre Area C1.1**. **Zoning Objective ZO.1** seeks to support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the City Centre as

defined in the 2030 Economic and Spatial Plan. The site is located approx. 60 metres from the Lower River Shannon SAC (002165).

- 6.1.2. Chapter 3 of the Plan sets out the Economic Strategy. The City Centre is described as the key driver of economic activity in the region (3.2). It is stated that the city Centre has seen significant development in the past 10 years and that the P.A. has an ambitious programme of works targeted at improving the attractiveness of the City Centre which includes pedestrianisation of the central core and a riverside improvement strategy. In respect of **Derelict Sites** (3.5) it is stated that these detract from the attractiveness of the City Centre as a location for inward investment. **Policy EDS.11** seeks to maintain an up to date Derelict Sites Register and to implement the provisions of the Derelict Sites Act 1990 to remove these sites from dereliction.
- 6.1.3. The overall strategy for the City Centre Retail Area is to reinforce the City Centre's role in the retail hierarchy by facilitating retail development. However, retail uses are not prioritised to the exclusion of other uses and other uses such as residential, hotel, office, cultural, leisure facilities etc are also encouraged

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. Internal access to the house was not possible on the date of my site inspection. However, I carried out my site inspection from the public road.
- 7.2. The house is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding residential area. This is due to the fact that the render is falling off the front façade, the doors and windows on the ground floor are boarded up and the roof is in a poor state of repair with sections of the guttering missing and vegetation growing within the remaining gutters. Barge boards, soffits and downpipes are broken or missing, the render and flashing around the chimney is in need of repair. There is vegetation growing out of the chimney. The rear garden is overgrown. The local authority reports indicate that a large section of the render had

to be removed for health and safety reasons as debris had fallen onto the public footpath. As a result, the stonework underneath is exposed.

- 7.3. The house is situated at the end of a row of similar terraced houses, each of which is unoccupied and derelict and are in an unsightly condition. The L.A. has already taken steps to, or is in the process of, compulsorily acquiring these properties also. There is a relatively new hotel situated directly opposite which overlooks the terrace. The remainder of Sir Harry's Mall (around the corner) appears to be well maintained and occupied and is generally in good condition. The Abbey River and riverside walkway is located at the end of the cul-de-sac and follows the line of the river adjacent to Sir Harry's Mall. The area in general is part of the medieval section of Limerick City and contains many historic sites. The area has an attractive appearance and the public realm is well cared for, with high quality public amenities such as the riverside walkway. The site also forms part of the City Centre for which there are Development Plan policies to promote the attractiveness of the city centre. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.
- 7.4. Apart from the render coming away at the front and the poor state of repair of the roof, the house appears to be in reasonable structural condition externally. There is no obvious evidence of significant cracking or additional damage to the external walls, and the roof appears to be generally intact. The window and door openings are either fitted with upvc or are boarded up. I note from the photographs provided with the Local Authority report, however, that the property has deteriorated considerably since the first inspection in 2008, when it appears that part of the render around one of the ground floor windows had been removed/fallen off, exposing the stone underneath.
- 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 part of the stonework is exposed and there is vegetation growing out of the chimney. Parts of the front render have previously fallen onto the public footpath, which necessitated

the Local Authority to take action on health and safety grounds. Thus, it is considered that the site falls within category (a) of the Derelict Sites Act. 1990.

- 7.6. It was not possible to see whether there was any litter within the application site or any evidence of waste being stored externally. However, I do not consider that the quantity of waste is sufficient to materially detract from the amenity or appearance of the lands in the vicinity, and I do not consider, therefore, 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.
- 7.7. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 22nd September 2017, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 18th April 2018, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 19th February 2019 and published in the Limerick Leader Newspaper on the 23rd February 2019 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.8. I note the objection made to the Local Authority on behalf of the owners, Leo and Linda (Lynda) McNamara on the 5th March 2019 to the proposed acquisition of the site, stating that the owners had been willing to carry out some repairs but had been deterred from doing so. In a previous letter, an offer had been made to carry out remedial works, such as painting and fixing up of doors and windows. It is further noted, however, that no further objection or submission has been made to the Board. I also note that the property has been secured and that maintenance works have been carried out to the property. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the house remains in a neglected and unsightly condition and the garden is still overgrown. I therefore consider that the site remains in a derelict condition.
- 7.9. 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. 1 Long Lane, Off Sir Harry's Mall, Limerick is granted.

8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, 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 Limerick City and County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

- 9.1. Having regard to the neglected, unsightly and objectionable condition of the site, 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 sections 3(a) and 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.

Mary Kennelly

Senior Planning Inspector

27th September 2019