



An  
Bord  
Pleanála

## Inspector's Report ABP-304278-19

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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

1 West Square, Askeaton, Co.  
Limerick

### Local Authority

Limerick City and County Council

### Notice Party

Thomas Casey, Aghalacka, Askeaton

### Date of Site Inspections

31<sup>st</sup> May 2019, 23<sup>rd</sup> 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 West Square, Askeaton, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. Askeaton is a small town located approx. 26km to the west of Limerick City on the N69 (Listowel road) and approx. 11km north of Rathkeale on the R518. The tow is bypassed by the N69 and is situated to the south of this national road. The main street runs east to west and links into the N69 and the R518 at either end of the town the River Deel flows through the centre of town (N-S) and the ruins of a large Norman castle are located at the point where the river crosses Main Street. West Square is situated just to the south of the Main Street, to the west of the castle and the bridge.
- 2.2. The application site is situated in the centre of the town with frontage to West Square. It is one of two terraced houses fronting the street, and is at the southern end of the terrace, with a shop attached to the second house. On the opposite side of the street, there is a row of 5 attached 2-storey buildings, one of which is occupied as a take-away on the ground floor and the remainder are residential. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. On the date of my first site inspection, (31/05/19), the property was secure with the front door and ground floor windows boarded up. I was unable to gain access to the interior, but I gained access to the rear garden. The house is two-storey with a smooth render and painted finish to the ground floor and a dashed render finish to the first floor and side gable elevation. It has a pitched slated roof. There is a two-storey flat-roof extension at the rear. The front of the house opens directly onto the street and there is a gate to the south which provides access to the rear. There are three windows on the first floor at the front which are broken and the frame of the central one is largely missing. There is ivy growing over the southern part of the front façade. The windows on the rear elevation have no frames or glazing and are open to the elements. The back door, however, is boarded up.

- 2.4. The paint was wearing away from the front façade, vegetation was growing out of the guttering and one of the window sills was cracked. There were several slates missing from the roof. Several sections of the fascia, soffits and downpipes were broken or missing. The rear garden is overgrown and in an unkempt state and is not defined or physically delineated. There is an outbuilding in the rear garden which is adjacent to the southern boundary, which is defined by a very high stone wall. The eastern boundary is defined by a brick wall with a large metal vehicular gate. There was a container with a portaloo in the rear garden and various abandoned items scattered around, which were partially visible through the thick undergrowth. The garden area, together with the rear sections of the adjoining properties to the north were severely overgrown and in need of maintenance.
- 2.5. Following the receipt of further information from the notice party regarding recent works carried out at the premises, a second inspection was carried out by arrangement on 23<sup>rd</sup> August 2019. Access was gained to the interior of the building but was confined to the ground floor as the stairs had disintegrated. Plaster had been removed from most of the walls, exposing stonework and brickwork underneath. The fireplace had been removed and a salvaged fireplace was leaning against a wall. The ceiling was falling in and disintegrating. A small part of the ground floor (at the front) had been plastered. The stud wall between the hall and the rear room was missing. The stairs were in a very poor state of repair with the bannisters almost completely disintegrated and the stair risers missing part way up the staircase. The area above the lintel over the back door was in a state of collapse. There were several salvaged doors and items stored within the house.

### **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 29 on 23<sup>rd</sup> October 2017 (seeking particulars of the estate, interest in the land), section 8(2), on 15<sup>th</sup> February 2018, (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 27<sup>th</sup> March 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 issued on 20<sup>th</sup> February 2019 and was published in the Limerick Leader newspaper on the 23<sup>rd</sup> February 2019. The Local authority stated that the property was not registered with Land Registry and that all attempts to establish ownership were unsuccessful. The site was described as follows in the notices:

- A derelict site comprising of a residential two-storey end of terrace property situate at 1 West Square, Askeaton, Co. Limerick. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-036-17 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 Thomas Casey in an undated letter, which was hand delivered to the Local Authority on 25<sup>th</sup> March 2019. The objection can be summarised as follows:

- The property is jointly owned by Thomas Casey and his wife Oonagh Jones. Mr. Casey can provide proof of ownership with a utility bill or with the deeds of the property (with a little notice).
- The reason that the property has deteriorated to such an extent is that it has been occupied by a local Men's shed for the past 3 years and has deteriorated, while in their possession to an unacceptable level.
- Mr. Casey intends to address the issues very soon and therefore objects to the compulsory purchase.

### 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 25<sup>th</sup> April 2019 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out planning 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, dated 13<sup>th</sup> February 2019.
- Copy of the newspaper notice, dated 23<sup>rd</sup> February 2019.
- Copy of objection made by Thomas Casey, dated 25<sup>th</sup> 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 area 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 is located in the centre of the town in a small square, just off the main street, with terraced properties on either side of the street. This residential two storey end-terraced property is vacant and has been in a derelict condition for a considerable period of time.
- The property has an unsightly appearance, which detracts from the local neighbourhood. The ground floor windows and door have been secured with timber hoarding. The front elevation is missing downpipes and there is vegetation growing in the guttering as well as ivy badly overgrown on the upper section. The paint on the front is badly worn away and the window sill is

cracked and broken. The roof is missing several slates and is in need of repair.

- It was first brought to the attention of the Local Authority in January 2017, at which point a Derelict Site case was opened, DS-036-17. The property is not registered with Land Registry and all attempts by the L.A. to establish ownership were unsuccessful. In October 2017 a Section 29 Notice was served on the property in a final effort to establish ownership. However, no response was received.
- The Local Authority decided to issue a Section 8(2) notice on 15<sup>th</sup> February 2019 of its intention to enter the property onto the Register of Derelict Sites. In the absence of any responses to the enquiries and notices to establish ownership, the Local Authority considered the property to be a derelict site. It was decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 on the 20<sup>th</sup> February 2019. A Section 8(7) notice was issued on 27<sup>th</sup> March 2019 to advise that it had entered it onto the register.
- An objection to the Section 15 notice was submitted by Thomas Casey on 25<sup>th</sup> March 2019. Mr. Casey claimed that the property had fallen into a state of disrepair whilst under the control of the local Men's Shed and that since he had regained possession, it was his intention to address the deterioration in the condition of the property in the near future. He also advised that he and his wife, Oonagh Jones, are the owners of the property and that he could provide evidence to this effect.
- 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 Board by Cunnane & Kiely Solicitors on 28<sup>th</sup> May 2019 in response to the Section 15 Notice. The main points may be summarised as follows:

- The reason that the property is not on the Land Registry is that their client's ownership is registered in the Registry of Deeds instead. This is quite common in urban properties. However, Cunnane and Kiely Solicitors can confirm that Thomas Casey and his wife Oonagh Jones are the legal and beneficial owners of the property.
- The delay in dealing with the Local Authority was due to the fact that an elderly aunt of the client needed his attention due to ill-health and old age.
- Mr. Casey allowed the local Men's Shed to use the property as part of his community spirit and they only vacated it recently. Unfortunately, it had fallen into disrepair.
- Mr. Casey has plans to develop the property during the next six months. He has set aside some funds for this purpose and intends to approach the planning authority with plans and proposals in the very near future.
- Mr. Casey is adamant that he does not want to lose control of this property as it allows him to get access from the public road to the rear of other property which he owns in the area. Mr. Casey owns the property to the rear of the plot in question and his only rear access is through the area that is proposed to be acquired by the local authority.

4.4.2. The proposed acquisition would cause untold harm to their client's remaining property by virtue of the fact that there would be no rear access to his remaining property. Furthermore, the proposal to acquire the property compulsorily is objected to as it is his intention to carry out improvement works in the near future.

4.4.3. Photographs were submitted which, it is claimed, show that Mr. Casey was in the process of carrying out remedial works in recent times.

4.4.4. No further correspondence has been submitted.

## **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. Limerick County Development Plan 2010-2016 (as extended)

- 6.1.1. The applicable Chapter 3 of the County Development Plan sets out the settlement strategy. Ardpatrick is designated as a **Tier 3 – Centres on Transport Corridors** in the Settlement Hierarchy (3.1). The overall strategy is to encourage development to locate within the development envelope of towns and villages. Relevant policies include **SSP2** which seeks to support sustainable development of the settlements in Tiers 2-6 and **SSP3** which states that it is the policy of the Council to be pro-active in acquiring land and providing services and sites within small towns and villages as a means of stimulating a shift towards development within these areas.

- 6.1.2. Tier 3 Settlements are described as centres on transport corridors which will be promoted as secondary settlement centres for significant future development. Policy **SSP8** seeks to encourage and facilitate sustainable balanced development within these settlements and to ensure that they act as the primary focus for investment in infrastructure, housing, transport, employment, education, shopping, health facilities and community.

- 6.1.3. Chapter 4 sets out the policies and objectives relating to housing. Section 4.8 relates to Regeneration of Vacant and Derelict Sites. Relevant objectives are as follows:

**HOU O17** – to use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.

**HOU O18** – to promote the re-utilisation of suitable redundant or obsolete structures in appropriate cases.

### 6.2. Askeaton Local Area Plan 2015-2021

- 6.2.1. The site is zoned **Town Centre** in the LAP, the objective for which is 'To protect and enhance the character of Askeaton town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the



town centre while guiding the development of an expanded and consolidated town centre area'. **Chapter 4** contains the **Housing** policies for the area and **Chapter 5** sets out the **Economic Development** policies, including **Objective ED 3 : Retail Development** which seeks to inter alia, enhance the physical environment of the town centre as a location for shopping and business through measures aimed at improving conditions for pedestrians. The site is also located within the Predictive Flood Zone A.

6.2.2. **Chapter 8 – Built Environment** includes policies and objectives for **Protected Structures** and **ACAs**. The site in question is listed as a Protected Structure (933) and also forms part of an Architectural Conservation Area. Askeaton is described in 8.2.3 as an attractive town of significant cultural and heritage value with a built form that extends 5 centuries. The many buildings which have survived to date contribute to the historical importance of the town and its sense of place, which the P.A. seeks to retain. The over-riding approach is one of retention, restoration, consolidation and improvement of the existing building and townscape fabric, in a manner which respects its special character. It is generally recognised that the best method of conserving historic buildings is to keep them in active use. Relevant policies – **Objective EH 1 Architectural Conservation Areas** – to protect, conserve and where appropriate, enhance the ACAs.

**Objective EH 2: Protected Structures** – to protect structures entered into the Record of Protected Structures and to encourage their appropriate re-use and restoration. The Council shall resist:

- a) Demolition of protected structures, in whole or in part
- b) Removal or modification of features of architectural importance
- c) Development that would adversely affect the setting of the protected structure.

6.2.3. **Chapter 10 – Urban Design** includes the following statement relating to **Derelict and Vacant sites**: It is noted that there were no sites on the Derelict Sites Register at the time of writing the LAP (2015) but it was acknowledged that this matter was under review, and that both commercial and residential vacancy was becoming a serious issue within the town. There were 80 vacant dwelling units in the town in the 2011 Census, which represents 18.4% of the housing stock. It is stated that the high

vacancy rate is having a very obvious negative impact on the amenity of the town and can have a contagion effect on adjoining properties.

### 6.3. **Derelict Sites Act 1990 (as amended)**

6.3.1. 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.

6.3.2. 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.”

6.3.3. 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 first site inspection in May. However, in light of the submission to the Board with photographs, in response to the application, wherein it was stated that the owner had recently carried out remedial works, it was decided to carry out a further inspection in August, when access was gained to the interior.
- 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 windows and window frames are either broken or missing and /or boarded up, the paintwork has worn off the front façade, the roof is in a very poor state of repair with slates and ridge tiles missing, and bits of the barge boards, fascia, soffits and downpipes are either broken or missing. The flat roof rear extension and the outbuilding to the rear are also in need of repair. The vegetation in the rear garden is growing out of control and is in an unkempt state with debris, waste materials and items such as a large container with a portalo, waste bins etc. stored there.
- 7.3. The interior of the building is in a very poor state of repair with most of the original historical and decorative features missing or severely damaged or in a state of deterioration. Plasterwork has been removed from the original stonework and it would appear that repairs to stonework, using bricks, has been undertaken at some point. Stud walls are missing, ceilings are falling in and the stairs is in a particularly poor state of repair. There are also gaping holes at the junction of the main wall and the rear extension and several windows are missing with no hoardings. Thus, the building is open to the elements and is likely to be in a continual state of decline.
- 7.4. The building is a Protected Structure and is situated within an Architectural Conservation Area. Askeaton LAP attaches great significance to the historical

importance and special character of the town, to which its many buildings, including Protected Structures, have contributed greatly. Policy Objectives EH1 and EH2 seek to protect and conserve such structures, to encourage their re-use and restoration and where appropriate, to enhance the character of the ACA. Reference is made in EH1 to the importance of the use of materials and finishes, features such as sash windows, gutters, downpipes and decorative plasterwork. Reference is made in EH2 to the need to avoid demolition, in whole or in part, and to removal or modification of features of architectural importance.

- 7.5. It is considered that the protected structure status of the building and its siting within an ACA underlines the need to arrest the decline and any further deterioration in the condition of the building, which could lead to the loss of further historic fabric or features of architectural interest, or to the partial demolition of the structure. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the Protected Structure and of the Architectural Conservation Area.
- 7.6. The site is situated at the end of a row of buildings, opposite a further row of dwelling houses, forming West Square, adjacent to the main street of the town. The buildings and dwelling houses in the immediate surrounding appear to be reasonably well maintained and occupied, although there are some further derelict or unoccupied sites in the general vicinity. Askeaton LAP has identified derelict and vacant sites as a matter of serious concern which has a very negative effect on the amenity of the town. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the town centre and the surrounding residential area.
- 7.7. Although the roof and external walls generally seem to be intact, the damage to the rear wall near the junction with the rear annexe raises concerns regarding the structural condition of the building. In addition, the window openings are either completely open to the elements or have damaged/broken frames and glazing, and the internal faces of the main rear wall have had their plaster removed and stonework exposed. The combination of these factors would contribute to the ruinous and derelict state of the building. Having regard to the above, it is considered that the building falls within the category of being in a ruinous, derelict and dangerous condition, i.e., category (a) of section 3 of the Derelict Sites Act 1990.

- 7.8. With regard to category (b), I would consider that on the basis of the foregoing, the site also 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. There was evidence of items of waste material stored and deposited on the site, particularly in the rear garden area. This included building materials, scrap and bits of piping/tubing, waste receptacles, and a large container within which a portaloo was present. It is considered, therefore, that the site also 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.
- 7.9. 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 issued on the 15<sup>th</sup> February 2019, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently issued on 27<sup>th</sup> March 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 20<sup>th</sup> February 2019 and published in the Limerick Leader Newspaper on the 23<sup>rd</sup> February 2019 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.10. I note the objection made on behalf of the owners on the 25<sup>th</sup> March 2019 and to the board on 28<sup>th</sup> May 2019 to the proposed acquisition of the site, stating that the property had been occupied by a third party for a number of years and that it was the intention of the owner to address the issues of deterioration of condition of the building. I also note that the property has been secured and that some works of maintenance have been carried out to the interior. 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 gardens are still overgrown. I therefore consider that the site remains in a derelict condition.
- 7.11. I also note the objection to the compulsory acquisition on the grounds that it would hinder or impede access to the Notice Party's other properties. However, no details of ownership of other properties has been provided or of any rights of way or wayleaves. It is considered that this is a matter for the Local Authority and the Notice Party to resolve as part of any compulsory acquisition agreement.

7.12. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at No. 1 West Square, Askeaton, Co. 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 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.

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Mary Kennelly

Senior Planning Inspector

30<sup>th</sup> September 2019