



An
Bord
Pleanála

Inspector's Report ABP-304282-19

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

Main Street, Ardpatrick, Kilmallock, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

The Estate of Michael O'Donovan

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 Main Street, Ardpatrick, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. Ardpatrick is a village on the R512 which links the N73 at Kildorrery with the N20 near Bruree. The village is located in the scenic area of Ballyhoura which is popular for its walking trails. It has a church, a café and a number of local amenities. Ardpatrick is located c.12 km to the east of Charleville, c.7km to the south of Kilmallock and c.15km north of Kildorrery.
- 2.2. The application site is situated in the centre of the village, on Main Street (R512), at the southern end of the street. There is a row of detached houses fronting the street to the north and a further row with a café opposite (to the west). The site in question is a corner site situated at the junction of the R512 and a local road, and St. Patrick's Church is located on the opposite corner, to the south. It has an area of approx. 690 sq.m and it is described in the notice as a detached two-storey residential property. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. The house is two-storey with a smooth render and painted finish, and a pitched slated roof. There is a single-storey flat-roof extension at the rear. The front garden is defined by a rendered and painted wall with a mature hedge, which incorporates a pedestrian and a vehicular gate. The side garden is defined by a stone wall with a mature hedge and includes a further pedestrian gate. There are several mature trees within the rear garden, with a dense mature hedge defining the rear boundary. There is an outbuilding in the rear garden which is adjacent to the northern boundary.
- 2.4. On the date of my site inspection, the property was secure with notices on the front door. The render was falling off the front façade around one of the windows and there were several slates missing from the roof. Several sections of the fascia, soffits and downpipes were broken or missing. The garden areas, boundaries and the existing hedges and trees were 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 2nd May 2014, (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 31st July 2017, (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 (Estate of Michael O'Donovan) in letters dated 23rd March 2019 and was published in the Limerick Leader newspaper on the 30th March 2019. The site was described as follows in the notices:

- A derelict site comprising of a derelict two-storey detached residential property situate at Ardpatrick, Kilmallock, Co. 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-009-14 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 Dunne Solicitors, on behalf of The Estate of Michael O'Donovan (RIP) in a letter dated 28th March 2019. The objection can be summarised as follows:

- Dunne Solicitors were instructed to obtain probate and to sell the property almost three years prior to the date of this letter. However, as Mr.

O'Donovan's will had been poorly drafted, there was considerable uncertainty regarding how to proceed with the probate of the estate so that the property could be sold. Furthermore, the executors of the will are also now deceased and there are no other residual legatees, which meant further uncertainty regarding who had the authority to extract the grant of probate.

- A relative of the deceased was contacted in 2017 and thereafter, signed documents were submitted to the Probate Office in Limerick. The property could not be sold as a new probate application was required to appoint a new representative. A Petition to the High Court was submitted to allow the relative to act as a representative, but a Court Order in this respect was required by the Probate Office. As a result, Dunne Solicitors have now lodged an application to the Probate Court in Dublin, (including a Notice of Motion and a Grounding Affidavit), which was time consuming. The matter was listed for 13th May 2019.
- It was advised that once the Court Order is issued, the application can then be re-lodged to the Limerick Probate Office. It was anticipated that the Court Order is likely to be issued within a week of the court date and that the grant of probate should be issued within two weeks of the court order.

4.2.2. Correspondence in the form of a series of emails between the planning authority and Dunne Solicitors (dated March 2019) were provided, seeking a delay of 6 months on the proceedings, on the basis of claims that the owners had secured purchasers for the property.

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 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 on the owners/occupiers of the site, dated 20th March 2019.
- Copy of the newspaper notice, dated 30th March 2019.
- Copy of objection made by Dunne Solicitors, dated 28th March 2019.
- Copy of correspondence between Dunne solicitor and the planning authority by way of email dated March 26th, 27th and 28th, 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 village within walking distance of local amenities, and within a scenic walking area. The site is c.690 sq.m.
- House is currently unoccupied and has been derelict for several years. There are slates missing, the render is falling off, the fascia, soffits and downpipes are broken. The flat roof extension is in need of repair.
- The garden area is overgrown but the Tidy Towns Group have been maintaining it in their own time and at their own expense over the last number of years. This group said that there had been a lot of interest in renting or buying the property.
- Following a complaint in 2012 from the Ardpatrik Tidy Towns Committee, efforts were made by the L.A. to establish who was responsible for the property, as the owner was deceased, but these were largely unsuccessful.
- The Local Authority decided to issue a Section 8(2) notice in May 2014 of its intention to enter the property onto the Register of Derelict Sites and a

Section 8(7) notice in July 2017 to advise that it had entered it onto the register.

- In March 2017 a Section 29 Notice was served on the property in a final effort to establish ownership. However, no response was received.
- 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 in March 2019.
- An objection to this notice was submitted by Dunne Solicitors on behalf of the O'Donovan family. It was stated that the will was in probate since 2017 and was due to be heard at the High Court in May 2019.
- 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 Dunne Solicitors on 14th May 2019 in response to the Section 15 Notice. The difficulties in obtaining a grant of probate, which had been outlined in the objection to the Local Authority, and summarised above, were reiterated. It was also restated that as the representatives and executors of the estate were now deceased, it was necessary to identify a person to represent the estate, but that even if this matter was resolved, the administration of the estate would still not be straightforward.
- 4.4.2. The case was heard before Jordan J. in the probate courts in Dublin on 13th May 2019. Jordan J. was of the view that the nephews and nieces should be put on notice of the application or else their consent would have to be furnished. The matter was adjourned until the 8th of July 2019.
- 4.4.3. The solicitor for the O'Donovan family has advised that she has had a meeting with one of the identified relatives of the estate and with prospective purchasers (not named), in March 2019. It is stated that at that meeting, a purchase price and terms of sale were agreed. It was further stated that the prospective purchasers are cash buyers, wish to buy the property as it is located opposite extended family, and that

they are anxious to move in as soon as possible. One of the prospective purchasers was in an accident in recent times and wishes to live close to family.

4.4.4. It is submitted that a considerable amount of work has been undertaken by the solicitor's office and by the Tidy Towns Committee in an effort to resolve the matter. It is therefore requested that the Board would withdraw the site compulsory acquisition to allow probate to issue in the estate of Michael O'Donovan and for the sale to complete shortly afterwards.

4.4.5. No further correspondence has been submitted. There has been no update of the court proceedings or of any progress with the grant of probate or sale of the property.

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 Limerick County Development Plan 2010 – 2016. Chapter 3 of the Plan sets out the settlement strategy. Ardpatrick is designated as a **Tier 6 – Small Settlement** 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 6 Settlements are described as smaller settlements with limited essential infrastructure and services. Policy **SSP11** seeks to facilitate sustainable development within these settlements and to ensure that they retain their rural character.
- 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. **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 and from within the front, side and rear garden of the house.
- 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 because the render is falling off the front façade, the roof is in a very poor state of repair with slates, ridge tiles and bits of the barge boards missing, and the fascia, soffits and downpipes are broken or missing. The flat roof rear extension and the outbuilding to the rear are also in need of repair. The lawns at the front, side and rear garden together with the front and side hedges, have been maintained to a certain extent by the Tidy Towns Committee. However, the remainder of the vegetation in the rear garden is growing out of control or has been cut back in a rudimentary fashion. It should be noted that this is a voluntary group and that it is unlikely to be sustained as a long-term solution.

- 7.3. It is situated at the end of a row of dwelling houses, opposite a further row of dwelling houses, adjacent to the village church and opposite a café. The dwelling houses in the surrounding residential area appear to be well maintained and occupied, and the village in general has an attractive appearance and the public realm is well cared for. The village is located within the scenic Ballyhoura area which has several popular walking routes and is well frequented by tourists. 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 residential area and the village.
- 7.4. Apart from the render coming away at the front and the missing roof tiles, 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 fitted with upvc windows and doors, which generally appear to be intact.
- 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 do not consider that there is any apparent evidence that the structure is in a dangerous condition, or that it could be considered ruinous, as it appears to have a reasonably intact roof and external walls. There was no litter within the application site or any evidence of waste being stored externally. It is not considered, 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.
- 7.6. 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 2nd May 2014, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 31st July 2017, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 28th March 2019 and

published in the Limerick Leader Newspaper on the 30th March 2019 regarding the Local Authority's intention to acquire the site compulsorily.

- 7.7. I note the objection made on behalf of the family of Michael O'Donovan on the 29th March 2019 to the proposed acquisition of the site, stating that the property forms part of the estate of Michael O'Donovan and that difficulties have arisen with regard to obtaining probate to enable the sale of the property. The difficulties relate to the fact that the executors of the will have died, that there were no further legatees mentioned and that the will had been badly drafted. I note the efforts made to date by the solicitor acting for the estate in respect of establishing legal representatives of the Estate with a view to resolving the issues with probate to facilitate the sale of the property. I also note that the property has been secured and that maintenance works have been carried out to the gardens. 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.
- 7.8. 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 Main Street, Ardpatrik, Kilmallock, 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.

Mary Kennelly

Senior Planning Inspector

26th September 2019