



An
Bord
Pleanála

Inspector's Report ABP-304390-19

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

1-4 Granby Row, Carlow.

Local Authority

Carlow County Council

Notice Party

Mr Michael Curran and Ms Joan Curran.

Date of Site Inspection

23rd July 2019.

Inspector

Dáire McDevitt

1.0 Introduction

- 1.1. This case relates to a request by Carlow County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 1 to 4 Granby Row, Carlow, Co. Carlow, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The application site consists of 4 terraced houses and is situated on the western side of Granby Row. The area is predominantly characterised by residential terraces, in various states of disrepair, with new infill development, including The Granby Clinic.
- 2.2. The site in question refers to 4 no. two storey terraced house, bounded to the north by Kilkenny Road and to the south by a two storey house, to the rear (west) are more residential properties
- 2.3. The houses have a napped plaster finish and pitched tile roof. No. 4 has boarded up windows and is unoccupied, No. 3 is also unoccupied and No. 1 and 2 are in a significant state of disrepair but are occupied. A shared front parking area which is bounded by walls is in a state of disrepair and neglect. A number of cars are located on site in varying conditions and rubbish is scattered across the property. The rear gardens are overgrown and in different conditions. On the date of my site inspection, I was unable to access the interior of No. 3 & 4 and could only observe the condition from outside and from the boundaries.

3.0 Application for Consent for Acquisition

- 3.1 Carlow County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2) (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), section 8(7) (i.e. advising of the Local

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

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. A Notice of Carlow County Council's intention to acquire the site compulsorily was served on the owners (Michael Curran and Joan Curran) dated 5th March 2019 and was published in the Nationalist newspaper on the 5th March 2019. The site was described as follows in the notices:

- All that and those properties known as Unit 1, 2, 3 & 4 Granby Row, Carlow situate in the townland of Carlow and the Barony of Carlow and being all of the lands comprised in Folio 26452F of the Register of Freeholders, County Carlow.

4.1.2. The Notices describe the properties as 'Units 1, 2, 3 & 4 Granby Row' which is not the correct address. A land registry Map is attached for the correct site (Folio 26452F). The correct address to describe the relevant properties is No. 1, 2, 3 & 4 Granville Court, Granby Row, Carlow.

4.1.3. Carlow County Council in correspondence dated 14th May 2019 to An Bord Pleanala have acknowledged that following a review of the Planning Register the address is given as Granville Court, Granby Row, Co. Carlow. The Council argue that all correspondence issued to the owners and other parties, including public notices describe the properties as Unit 1, 2, 3, 4 Granby Row and that this has never been disputed.

4.1.4. I consider that while the notices were served with the correct folio details, the Notices described the properties incorrectly by citing the wrong address and, therefore were not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

4.2. Objection to Acquisition

4.2.1. An objection to the proposed acquisition was submitted to Carlow County Council by Pat Buckeridge, Dean Design, on behalf of Michael Curran and Joan Lee Curran in a letter dated 28th March 2019. The objection can be summarised as follows:

- The address on the public notices and the address being used by the Local Authority in relation to the property is incorrect and refers to Unit 1, 2, 3 & 4 Granby Row which are different properties. The correct address is No. 1, 2, 3 & 4 Granville Court, Granby Row, Carlow which are contained within the confines of folio CW26452F Co. Carlow. Therefore the incorrect address is being used to acquire the site.
- Booklet of photographs submitted to support the argument that the four houses are no derelict, two properties (No. 1 and No. 2) are occupied.
- House No. 4 has broken windows to the front. However internally a general cleanup is all that is required and the boiler would require servicing. It is not classed as derelict.
- No. 3 requires a good clean out and redecoration and is not classified as derelict.
- The fact that No. 1 and 2 are occupied speaks for its self. These are no derelict.

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site and the application for consent was accompanied by the following:

- Local Authority cover letter dated 2nd May 2019 outlining documentation included with their referral to An Bord Pleanala for Confirmation of a Compulsory Purchase Order in respect of properties at No. 1, 2, 3 & 4 Granby Row, Carlow under the Derelict Sites Act 1990 (as amended).

- Copy of objection dated 1st April 2019 made by Mr Sean Byrne, Administrator, Grant Thornton (Receiver) on behalf of Permanent TSB plc.
- Copy of objection dated 28th March 2019 .made by Pat Buckeridge, Dean Design on behalf of Mr Michael Curran and Ms Joan Lee Curran. Outlining that the address used in the notices is incorrect. No. 1 to 4 Granby Row refers to different properties. Two houses are occupied (No. 1 & 2) and cannot be considered derelict. No. 1 & 2 require a clean-up and minor works and are not derelict properties.
- Copy of the newspaper notice, dated 5th March 2019.
- Copy of notice dated 5th March 2019 pursuant to Section 14 of the Derelict Sites Act 1990, as amended, that the Local Authority intends to acquire compulsorily 'all that and those the properties known as Unit No.'s 1, 2, 3, & 4 Granby Row, Carlow situate in the townland of Carlow and the Barony of Carlow and being all of the lands comprised in Folio 26452F of the Register of Freeholders, County Carlow. Copy of Land Registry Folio 26452F attached.
- Copy of Chief Executive's Orders dated 25th February 2019 in connection with the Initiation of Compulsory Purchase Order Process in accordance with Section 14-16 of the Derelict Sites Act (as amended) in respect of the Units No. 1, 2, 3 & 4 Granby Row, Carlow. A copy of the Notice be affixed in a conspicuous position on the land in accordance with Section 6(1)(d) of the Derelict Sites Act 1990, as amended.
- Copy of Derelict Sites Report 17th January 2018 with photographs dated 16th January 2018. This noted the structures and overall site is in a state of neglect and general disrepair and that none of the works contained in the Section 11 Notice dated 8th November 2017 had been carried out. Recommendation that a valuation of the properties can now be sought with the view to issuing a Section 22 Notice.
- Copy of Invoice dated 26th July 2018 that was issued to Mr Michael Curran, Green Road, Ballycarney, Co. Carlow and to Ms Joan Curran, Green Road, Ballycarney, Co. Carlow.

- Copy of Chief Executive's Orders dated 20th August 2018 in connection with the Initiation of Compulsory Purchase Order Process in accordance with Section 14-16 of the Derelict Sites Act (as amended) in respect of 1 to 4 Granby Row, Carlow.
- Copy of Demand Notice dated 10th August 2018 that was served on Mr Michael Curran, Green Road, Ballycarney, Co. Carlow and to Ms Joan Curran, Green Road, Ballycarney, Co. Carlow pursuant to Section 23(5) of the Derelict Sites Act 1990 for payment due.
- Copy of Memo dated 10th August 2018 to defer the CPO process.
- Copy of Derelict Sites Report dated 6th February 2017 with photographs dated 30th January 2017. This noted the structures and overall site is in a state of neglect and general disrepair. Recommendation that a Section 8(7) Notice be served a warning letter be issued informing them of the Council's intention to place this property on the Derelict Sites Register and of their obligations toward their property under the Derelict Sites Act 1990.

Works required to render the building/site non derelict

1. Front communal courtyard to be cleared of all waste with disposal to a registered waste facility only.
2. The front yard is to receive a sealed surface finish.
3. The external walls of the 4 no. units are to be cleaned down.
4. The external boundary wall to the street/public footpath side and to the communal yard side to be cleaned down and receive a fresh coat of paint.
5. Internal boundary with neighbouring property to be cleaned down and receive a fresh coat of paint.
6. All overgrown and unsightly vegetation and scrub to be cut back and removed.
7. All damaged openings to any of the units are to be repaired /or replaced where necessary.

8. Unoccupied units are to be secured to avoid any issues of trespass, squatting or further damage and degradation going forward.
 9. Details of the persons responsible for the on-going upkeep of the development to be submitted to The Planning Section of Carlow County Council.
- Copy of notices dated 15th March 2017 that were served on Mr Michael Curran, Green Road, Ballycarney, Co. Carlow and to Ms Joan Curran, Green Road, Ballycarney, Co. Carlow pursuant to Section 8(2) of the Derelict Sites Act 1990, as amended, that the Local Authority intends to enter the site on the Derelict Sites Register. Map attached.
 - Copy of Correspondence from owners solicitor dated 27th March 2017.
 - Copy of Derelict Sites Report 27th June 2017 with photographs dated 14th June 2017. This noted the structures and overall site is in a state of neglect and general disrepair and that none of the works contained in the Section 8(2) Notice dated 15th March 2017 had been carried out. Recommendation that a Section 8(7) Notice be served.
 - Copy of Derelict Sites Report dated 10th August 2017. The address is noted as Apart 1 to 4 Granby Row.
 - Copy of notices dated 11th August 2017 that were served on Mr Michael Curran, Green Road, Ballycarney, Co. Carlow and to Ms Joan Curran, Green Road, Ballycarney, Co. Carlow respectively pursuant to Section 8(7) of the Derelict Sites Act 1990, as amended, regarding Notice of an entry having been made in the Derelict Sites Register.
 - Map of the site area and Land Registry details.
 - Copy of Derelict Sites Report 27th October 2017 with photographs dated 25th October 2017. This noted the structures and overall site is in a state of neglect and general disrepair and that none of the works contained in the Section 8(7) Notice dated 11th August 2017 had been carried out. Recommendation that a Section 11 Notice be served.

- Copy of notices dated 8th November 2017 that were served on Mr Michael Curran, Green Road, Ballycarney, Co. Carlow and to Ms Joan Curran, Green Road, Ballycarney, Co. Carlow pursuant to Section 11 of the Derelict Sites Act 1990, as amended, directing that specified measures be completed to prevent the site from becoming/continuing to be a derelict site.

Works required to render the building/site non derelict

1. Front communal courtyard to be cleared of all waste with disposal to a registered waste facility only.
 2. The front yard is to receive a sealed surface finish.
 3. The external walls of the 4 no. units are to be cleaned down.
 4. The external boundary wall to the street/public footpath side and to the communal yard side to be cleaned down and receive a fresh coat of paint.
 5. Internal boundary with neighbouring property to be cleaned down and receive a fresh coat of paint.
 6. All overgrown and unsightly vegetation and scrub to be cut back and removed.
 7. All damaged openings to any of the units are to be repaired /or replaced where necessary.
 8. Unoccupied units are to be secured to avoid any issues of trespass, squatting or further damage and degradation going forward.
 9. Details of the persons responsible for the on-going upkeep of the development to be submitted to The Planning Section of Carlow County Council.
- Environment Section 9 Notices dated 5th May 2016 and 1st June 2017.

- Copy of anonymous complaint with photographs. Not dated.

4.3.2. There are no comments on file from the Local Authority on the objection, which took the form of a letter from Pat Buckeridge, Dean Design dated 28th March 2019 to the Planning Department.

4.3.3. In further correspondence dated 14th May 2019 in response to An Bord Pleanala query relating to the site address. The correspondence set out that the properties have always been known to Carlow County Council as Unit No. 1, 2, 3 & 4 Granby Row, however following a review of Carlow County Council's planning register carried out on the 13th May 2019 (copy attached to the correspondence) the address is given as Granville Court, Granby Row, Carlow. All correspondence issued to the owners and other parties including public notices described the properties as Units No. 1,2,3 & 4 Granby Row and this has never been in dispute.

4.4. Owners Submission to An Bord Pleanala

4.4.1 In response to the application to the Board to compulsorily acquire the site at No. 1 to 4 Granby Row, Carlow, the owners were afforded an opportunity by the Board to comment on the application. A submission was not received from Mr. Michel Curran or Ms Joan Lee Curran in this respect.

4.4.2 An objection was received from Sean Byrne, Receiver, Grant Thornton Property Team via email dated 21st May 2019 requesting that the Board confirm that Apt 1-4 Granville Court, Granby Road, Carlow will not be acquired as these are tenanted.

Copy of original objection to Carlow County Council included.

5.0 Planning History

5.1. Application Site

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

5.2. Surrounding Area

5.2.1. I am not aware of any recent relevant planning history in the surrounding area.

6.0 Policy Context

6.1. Development Plan

6.1.1. The applicable Development Plan is the Carlow County Development Plan 2015 – 2021 and the Joint Spatial Plan Carlow Graigcullen Plan 2012-2018 (extended to 2022). The site and surrounding area are zoned ‘R1 Established Residential’.

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 Notices

- 7.1.1 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. 1 to 4 Granby Row. The actions of the Local Authority and the various statutory notices served on the owner in respect of the site as summarised in section 4.3 of this report.
- 7.1.2 Carlow County Council served notices on properties No. 1 to 4 Granby Row, this address is incorrect as the properties in question are No. 1 to 4 Granville Court, Granby Row as per Carlow County Council planning register. This was confirmed by Carlow County Council in correspondence dated 14th May 2019 to An Bord Pleanála. I note the Council's argument that the properties in question have been referred to as No. 1 to 4 Granby Row in all correspondence.

7.1.3 The address used in correspondence to describe the properties, No. 1 to 4 Granby Row, refers to a terrace of houses, located along Granby Row to the southeast of the site which is the subject of this report. The postal address for the relevant properties is 1 to 4 Granville Court, Granby Row, Carlow. Carlow County Council in correspondence dated 14th May 2019 to An Bord Pleanála have acknowledged that following a review of the Planning Register where the address is given as Granville Court, Granby Row, Co. Carlow. The Council argue that all correspondence issued to the owners and other parties to include public notices described the properties as Unit 1, 2, 3, 4 Granby Row and that this was has never been disputed. I further note that both the owners and receivers described the properties as Granville Court in their correspondence to the Local Authority. I am not satisfied that the Notices served on the relevant parties are clear and unambiguous in terms of identifying the correct properties which the Council seeks to compulsorily acquire and therefore do not comply with the requirements set out in legislation.

7.1.4 A notice dated 5th March 2019 pursuant to Section 14 of the Derelict Sites Act 1990, as amended was published in the Nationalist Newspaper dated, 5th March 2019. It is clear that the owners of the site was aware of the erection of the notice on the site, as demonstrated by the fact that an objection was made by Pat Buckeridge on the 28th March 2019 on behalf of the owners. This objection highlighted the incorrect address used in the Notices.

7.1.5 The published notices set out that the 'Local Authority intends to acquire compulsorily 'all that and those the properties known as Unit No.'s 1, 2, 3, & 4 Granby Row, Carlow situate in the townland of Carlow and the Barony of Carlow and being all of the lands comprised in Folio 26452F of the Register of Freeholders, County Carlow. Copy of Land Registry Folio 26452F attached'. While the correct folio is attached, the description of the properties as No. 1 to 4 Granby Row renders the Notices incorrect.

7.2. Structures/Site

7.2.1 On the date of my site inspection I had access to the interior of No. 1 & 2. I observed that this properties were occupied. The properties are in poor

condition. I was only give access to one room in No. 3. I have attached photographs of the interior of the rooms I observed. I was unable to gain access to the interior of No. 3 and 4, photographs taken from the exterior of these properties shows the condition of same. I observed that No. 4 has boarded up windows at ground floor level and rubbish in the rear garden.

- 7.2.2 No. 3 & 4 are vacant and have a neglected, unsightly and objectionable appearance from the public road and the surrounding area. This is due to the fact that some window openings are covered by timber sheeting, some windows are broken and that the house is unpainted and stained with dirt.
- 7.2.3 The surrounding properties and streetscape in general is in a state of disrepair and could benefit from refurbishment works. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the area.
- 7.2.4 Externally the houses appear to be in reasonable structural condition. There is no obvious evidence of significant cracking or damage to the external walls, and the roof appears intact. Internally the properties are in varying sates of disrepair. Also, as noted above, the window openings at ground floor level to house No. 4 are sealed with timber sheeting.
- 7.2.5 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 no evidence that the structure is in a dangerous condition, and that it could be considered ruinous. There is some litter within the application site, it was not particularly apparent due to the screening of the rear gardens. I therefore do not consider that the quantity of waste is sufficient to materially detract from the amenity or appearance of lands in the vicinity, and I do not consider that the site falls within category (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 (b) of the Act.

- 7.2.6 Having inspected the site, there is no evidence of any attempt to render the site non-derelict, the timber hoardings covering a number of window openings that can be seen in some of the Local Authority photographs have not been addressed. The houses remains in a neglected and unsightly condition and the rear gardens are unkempt and overgrown.
- 7.3 Having regard, therefore, to all of the information available on the file and notwithstanding the continued appearance and condition of the properties, which as stated constitutes a derelict site. I am not in a position to confirm the Compulsory acquisition of the proper which is the subject of the Notices served on the owners for procedural reason as the address cited, No. 1 to 4 Granby Row, refers to different properties and not those which are the subject of this report. I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at No. 1 to 4 Granby Row is refused as the Notices do not comply with Section 15 of the Derelicts Sites Act 1990 (as amended).

8.0 Recommendation

- 8.1. Having regard to the observed condition of the site, it is considered that the site does detract to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, does 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 warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 8.2. However, having regard to the incorrect description of the properties in the notices as Units 1, 2, 3, & 4 Granby Row, Carlow, which refers to different properties. 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

The Notice of Intention to Acquire Derelict Site compulsorily under Derelict Sites Act, 1990 as amended by the Planning & Development Act 2000 (as amended) refers to the incorrect address of the properties and is therefore not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended. Therefore, in its current format the acquisition of the properties proposed by the Local Authority should not proceed.

Dáire McDevitt

Planning Inspector

17th September 2019