



An
Bord
Pleanála

Inspector's Report ABP-304578-19

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

43-46 Cecil Street, (basement of No. 46 only), Limerick City

Local Authority

Limerick City and County Council

Notice Party

Hirar Properties Ltd.

Date of Site Inspection

23rd August 2019, 23rd October 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 43, 44, 45 and basement of 46 Cecil Street, 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 Cecil Street which is situated in the Georgian area of Newtown Pery in Limerick City Centre. It comprises three four-storey over basement terraced properties and the basement of an adjoining five-storey over basement property on the southern side of Cecil Street. It is situated between Catherine Street and O'Connell Street.
- 2.2. The application site is situated within the Newtown Pery Architectural Conservation Area. No. 46 Cecil Street is listed on the National Inventory of Architectural Heritage (NIAH 21517262). Nos. 42 and 47 are also listed as NIAH 21517263. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. On the date of my site inspection, the property was secure with the front doors and front windows on the ground floor boarded up. Several sections of the render on the front façade had been removed or fallen off or was damaged, particularly around the windows, and the stonework/brickwork underneath was exposed. The top floor is comprised of exposed blockwork, which has not been plastered. The windows appear to be in need of repair. Some of the front doors seem to have been replaced and there is vegetation growing on the property. There is wiring and piping protruding from the property. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front and side elevations from the street and the laneway adjacent to No. 41 Cecil Street.

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 4th September 2013, section 8(2), on 17th September 2013, (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 22nd October 2013, (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 (Hirar Properties Ltd.) in letters dated 28th 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 former nightclub and licenced premises situate at 43-46 Cecil Street, (Basement of 46 Cecil Street), 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-012-13 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 Connellan & Associates, on behalf of Hirar Properties Ltd. in a letter dated 23rd April 2019. The objection can be summarised as follows:

- Objection is being made without prejudice to the validity of the notice and the placing of the property on the derelict sites register. It is considered that the notice that has been served is legally defective. Their client does not own or control or have any interest in 46 Cecil Street other than its basement. They have been instructed that no notice has been served on the owner of this property.

- The property was purchased in 2008 with the intention of developing it in conjunction with other properties in the general vicinity. The owners have spent a considerable sum of money on renovation works to date. They wish to vigorously object to the service of a section 15 notice, which is considered to be unreasonable and does not advance the proper planning and development of the area, nor the short-term effective elimination of dereliction.
- The owners have always engaged with the Council in an effort to seek a resolution to the matter. They have indicated that they were willing to carry out works on the property some time ago and had obtained planning permission for said renovation works as follows:-

09770075 – permission granted on 28/09/2009 to change the use of the property to a hostel for tourist accommodation, an extension to the rear and to construct a new façade. Substantial internal works including the taking out of 2 staircases was involved. In addition, €500-600,000 was spent on the rear extension and the installation of steel concrete floors at nos. 43-45.

1077080 – permission was granted on 27/7/2010 for revisions to the previous grant of permission. The application was for alterations to windows and elevations on Cecil Street, alterations to rear elevations, increase in overall roof height, taking down brickwork at third floor level at front and rebuilding in new brick to facilitate consistency in brick work, and provision of lightwell to basement adjacent to front elevation.

- Following the grant of these permissions and execution of some of the works, the owners encountered funding difficulties and the works were put on hold. The matter was the subject of lengthy legal proceedings including a high court case. However, matters have come to a head in the last year.
- The owners carried out substantial works to the property in an effort to render the property less derelict pursuant to a notice issued in 2013.
- Cecil Street is located in the centre commercial/retail area of the city which is the key driver of economic activity in the region. Comprehensive redevelopment would be facilitated by the owners on an extensive part of Cecil Street in co-operation with the landowners who have come on board

with them. The disposal of the subject property would undermine such a coordinated approach to re-development in the area.

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 28th May 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 20th March 2019.
- Copy of the newspaper notice, dated 30th March 2019.
- Copy of objection made by Connellan & Associates, dated 23rd April 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. in January 2008 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2013, Ref. DS-012-13, when it was first inspected. The notice had required certain works to be carried out and some remedial works were carried out, but not to the satisfaction of the L.A. and the entry remained on the Derelict Sites Register.

- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated January 2013, July 2013, September 2013, October 2013, October 2016 and August 2018 are included with the application.
- The properties are within the Newtown Pery Architectural Conservation Area, between O'Connell Street and Catherine Street, the centre of Georgian Limerick. No. 46 is recorded on the National Inventory of Architectural Heritage as NIAH 21517262. The adjoining properties are 42 Cecil Street, 47 Cecil Street and 42 Cecil Street, which is recorded on the National Inventory of Architectural Heritage as NIAH 21517263.
- The site comprises three terraced, two bay, five storey over basement Georgian properties. Works to redevelop the buildings as a youth hostel were stalled about 10 years ago and the properties remain unfinished and vacant. The appearance was described as follows:-

The brickwork on the front elevation is damaged and in poor condition, especially around some of the windows and doors where portions of the brickwork has broken off. The plaster rendering around the windows has also broken off in areas and needs repair.

The top floor of the building is exposed blockwork and requires plastering. All windows need to be secured or repaired. The doors facing the street need to be repaired or replaced.

Vegetation growing on property needs to be removed from front elevation.

There is wiring and piping protruding from the front of the building close to the doors.

- Following the notice and inspections in 2013, a section 29 notice was issued on 4th September 2013 and a Section 8(7) notice was served on 22/10/13. A market value of €200,000 was determined in December 2013 and a Section 22 was issued on 11th April 2014. The Derelict Site Levy was charged at 3% of the market value from 1st January 2014. The site has remained on the register since, and as a result, Section 23 Notices were issued in 2015, 2016 and 2017. The market value was again determined in December 2018 as

€300,000. Section 22 and Section 23 Notices were issued in March 2019 and the current amount of Derelict Site Levy due is €27,000.

- Taking into consideration the continued dereliction, unpaid levies and ongoing legal proceedings between the owner and a financial institution, the decision was made to compulsorily acquire the site. The owner was notified of this in 2018 and again in February 2019 and the Section 15 notice was issued on 28th March 2019.
- The L.A. states that it has maintained regular contact with the owners since the establishment of the Derelict Sites Team in 2017. The Council received a solicitor's letter on 16th May 2019 stating that Ms Theresa Ryan and Capital Trustees Ltd. have recently acquired 46 Cecil Street, excluding the basement, and are awaiting registration of the property with the land registry
- An objection to the section 15 notice was submitted by Connellan and Associates, Architectural, Planning and Energy Rating Consultants on behalf of the owners on 26th April 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 L.A. by Connellan and Associates on 31st July 2019 in response to the application for compulsory acquisition. It was confirmed that they act for the owners of the property, Hilar Properties Ltd.
- 4.4.2. The local authority's report does not deal with the validity of the notice and/or the placing of the site on the Derelict Sites Register.
- 4.4.3. There are properties numbered '43' on both Cecil Street and O'Connell Street. The map which has been submitted with the notice/displayed on the building, is inaccurate. This map forms part of the statutory notice. It includes part of the property number 43 O'Connell Street which is not owned or controlled by their client.
- 4.4.4. The whole of No. 46 is also included in the map, although their client only owns the basement.

- 4.4.5. The notice is therefore defective by reason of the description/map and should not be acted upon by the Board.
- 4.4.6. It is requested that the Board does not allow the compulsory acquisition for the reasons set out in the original objection to the Local Authority.

5.0 Planning History

5.1. Application Site

- 5.1.1. **09/77075** – planning permission granted by LCC on 28th September 2009 for the following:
- Change of use from nightclub/licensed premises to use as a tourist hostel at basement, ground floor, first floor, second floor and third floor levels.
 - Extension to rear at second floor and third floor levels for tourist accommodation.
 - Construction of new roof/attic structure at fourth floor level for tourist accommodation purposes.
 - Construction of new shopfront at ground floor level and signage and taking out 2 no. external staircases to basement.
 - It is noted that the permission included a lift shaft and a new mansard roof with dormer windows at fourth floor level of Nos. 43-45 as well as the reinstatement of doors and windows at ground floor level. The permission included the taking out of non-traditional later doors and windows and fitting with single panelled doors with fanlights, architraves, pilasters etc. it was also proposed to remove plaster and to make good the underlying brickwork on the front elevation to Cecil Street and to reinstate railings at the front.
- 5.1.2. **10/77080** – planning permission was granted on 27/07/10 for revisions to the above planning permission (09/77075). The revisions included the following:
- Alterations to windows and elevations fronting Cecil Street
 - Alterations and revisions to rear elevations including introduction of balconies.
 - Increase in height of parapet and in overall height of roof.

- Take down existing brickwork at third floor level to facilitate consistency of brickwork to front.
- Opening of lightwell to basement adjacent to front entrance to facilitate ventilation etc.

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. 200 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 property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road and from the laneways adjoining the site.
- 7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding city centre area. This is due to the fact that the plaster/render is falling off or has been taken off the front façade, brickwork is damaged and parts of it have broken off, the doors and windows on the ground floor are boarded up and the roof is in a poor state of repair with vegetation growing within the gutters. Downpipes are broken or missing, the render and flashing around the windows and doors is in need of repair and wiring and piping is protruding. There is blockwork at fourth floor level and this blockwork and the brickwork on the front façade is exposed to the elements.
- 7.3. The property is situated in the middle of a row of similar terraced properties which are generally occupied and in use as commercial premises, which appear to be well maintained and in good condition. The lands in the general vicinity form part of the Georgian area of Limerick City, known as Newtown Pery, and contains many historic sites. This area is designated as an Architectural Conservation Area and contains many historic and protected structures, with some of the adjoining sites being listed on the NIAH register. The area has an attractive appearance and the public realm is well cared for, with high quality public amenities such as the People's Park and the Art Gallery. 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 brickwork, the property 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 sash windows or are boarded up, although some are fitted with non-traditional windows/doors. 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 no evidence that the structure is in a dangerous condition, or that it could be considered ruinous. Thus, it is considered that the site does not fall within category (a) of the Derelict Sites Act. 1990.
- 7.6. There was no evidence of any litter within the application site or any evidence of waste being stored externally. 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 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 17th September 2013, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 22nd October 2013, 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.
- 7.8. I note the objection made to the Local Authority on behalf of the owners, Hirar Properties, on the 26th April 2019 to the proposed acquisition of the site, stating that the owners had expended a considerable sum of money on the refurbishment of the property to date and has been caught in the middle of an expensive court case to resolve the matter. At all times, the owners state that they have engaged with the Council and it is considered that the CPO would represent a disproportionate interference with their property rights. It was further indicated that the owners had been progressing discussions with adjoining landowners to undertake a

comprehensive development of a substantial land holding in the area. The properties in question are indicated in a map included with the objection.

- 7.9. It is further noted that a further objection was made to the Board on the 30th of July 2019. This letter focuses on what are considered to be irregularities in the service of the notices. These relate to a claim that the whole of No. 46 Cecil Street is included in the map, whereas their client owns only the basement of this property, and a further claim that the map which accompanied the notices included part of the property known as No. 43 O'Connell Street. However, the submission to the Board does not offer any further information regarding any progress made on advancing the works to enable the property to be removed from the Derelict Sites Register.
- 7.10. A copy of the map which is said to have accompanied the notices has been provided to the board by the local authority. The red line includes No. 46 Cecil Street, which is considered to be appropriate, given that the notice relates to the basement of that property. The notice clearly states that the derelict site relates to Numbers 43, 44 and 45 Cecil Street and to the basement only of No. 46 Cecil Street. The map does not appear to include any part of No. 43 O'Connell Street and no evidence has been provided to substantiate this claim.
- 7.11. I also note that the property has been secured and that maintenance works have been carried out to the property. It is further noted that part of the planning permission granted under Reg Ref. 09/77075, and as amended by Reg. Ref. 10/77080, has been implemented but that it has not been completed in accordance with the terms of the said permissions. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. I therefore consider that the site remains in a derelict condition.
- 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 Nos. 43, 44, 45 and the basement of No. 46 Cecil Street, 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

29th October 2019