



An
Bord
Pleanála

Inspector's Report ABP-304603-19

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

Athea Upper, Athea, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

Shanid Mantels Ltd.

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 Athea Upper, Athea, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. Athea is a village in west County Limerick, on the R523 which is c.14km to the east of Listowel, c.20km to the northwest of Newcastle West, and is c.12km to the north of Abbeyfeale on the R524. The village is situated at the junction of the R523 and the R524. It has a church, shops, and a good range of local services and amenities including a national school. There are a number of small housing developments within the village.
- 2.2. The application site is situated in the centre of the village, at the end of a cul-de-sac, Con Colbert Street, to the south of the main street, which has a pedestrian link leading to a small residential development of 6 houses (Rathronan estate). It is described in the notice as a large detached two-storey former Doctor's Surgery and Residence, known locally as Maighread McGrath's. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. The house is a substantial and imposing two-storey building with a rendered and partly painted finish, and a pitched slated roof. It is a Protected Structure RPS Ref. 959. There is a single-storey pitched-roof porch extension at the front, which is in a poor state of repair. It is located on a large open site to the west of the cul-de-sac laneway. There are several mature trees within the front and side gardens, with a dense mature hedge defining the western boundary. There was evidence of debris within the gardens including fallen slates and chopped wood.
- 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 several windows and there was a substantial number of slates missing from the roof. The windows were boarded up. Some of the hoardings had been removed/ fallen off and the roof of the porch appears to have collapsed. Paint was peeling off the render and there was

vegetation growing on the walls. A rear extension or annex appears to have been removed from the rear wall and exposed brickwork is evident. 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 13th October 2010, (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 12th November 2010, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites). A Section 11 notice was issued on 20th February 2012 and Section 22 Notices were served on 29th April 2012, on 1st March 2018 and on 28th February 2019

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 (Shanid Mantels Ltd.) in letters dated 20th 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 two-storey detached residential property situate at Athea Upper, Athea, 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-002-10 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 KPMG, on behalf of Shanid Mantel Ltd. in a letter dated 29th April 2019. The hard copy was received in the post on 2nd May 2019. It was advised that Shanid Mantel Ltd. is in receivership and that KPMG was appointed as Receiver on 8th December 2016. The objection can be summarised as follows:

- The Receiver objects to the Compulsory Purchase Order on the basis of the additional costs arising as a result of same and the impact on the outcome to the charge holder.

4.2.2. Correspondence in the form of a series of emails between the planning authority and the Board revealed that the Receiver, KPMG, had been discharged as Receiver on 14th June 2019, and that Ernst and Young had been appointed as Receiver. This was subsequently confirmed by Ernst and Young by means of an email to the Board dated 11th October 2019. It was further advised that the mortgage in question was taken out by Shanid Mantels Ltd. and that William Upton was a director. It was stated that the Receiver did not have any further comments to make.

4.2.3. The Board wrote to William Upton on 24th September 2019 seeking any comments regarding the proposed compulsory acquisition of the site by Limerick City and County Council by 21st October 2019. No response was received by the Board.

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 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 KPMG, dated 1st May 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 Main Street (c. 100 metres) and local amenities. The properties in the surrounding area are mainly in residential use. There is a pedestrian laneway linking the site with the Rathronan housing estate.
- The property is a Protected Structure Ref. RPS 959. The detached two-storey structure is a former doctor's surgery and residence and is currently unoccupied. It has been derelict for several years. It has an unsightly and very neglected appearance, which detracts to a material degree from the character and appearance of the land in the neighbourhood.
- There are slates missing, with evidence of fallen and broken slates on the ground. The ground floor windows and entrance door are boarded up although some of the hoardings have been removed on the entrance porch, leaving the property open to entry. The roof of the entrance porch is collapsing, and the guttering has come away from the fascia. Vegetation growth is evident on the roof and on all elevations of the structure.
- A total of 12 inspections of the property have been carried out by the local authority. The site was first inspected as a Derelict site on 25th May 2010.
- The Local Authority decided to issue a Section 8(2) notice in October 2010 of its intention to enter the property onto the Register of Derelict Sites and a Section 8(7) notice on 12th November 2010 to advise that it had entered it

onto the register. A Section 11 Notice (requiring certain works to be carried out) was served on 20th February 2012. However, a copy of this notice has not been forwarded to the Board.

- The market value was determined in November 2011 and a Section 22 Notice of valuation was issued in April 2012. The market value was again determined in December 2017. Section 22 Notices informing the owner of the valuation were issued on 29/04/2012, 01/03/2018 and on 28/02/2019. However, no response was received.
- In the absence of any responses to the enquiries and notices, 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 25th March 2019.
- An objection to this notice was submitted by KPMG (Receiver). The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

A submission was made to the Board by KPMG on 29th April 2019 (by email) and 2nd May 2019 (hard copy) in response to the Section 15 Notice. It was stated that the property had been put into receivership in June 2016. The objection stated that the compulsory purchase of the site would give rise to additional costs to the charge holder. Subsequently, Ernst and Young took over as Receivers. The Board sought comments from both Ernst and Young and William Upton, (Director of mortgage holder, Shanid Mantels Ltd.).

No further correspondence has been submitted.

5.0 Planning History

5.1. Application Site

- 5.1.1. **07/3724** – planning permission granted to William Upton in February 2008 for the construction of a two-storey extension to the rear of the existing dwelling house, domestic garage.

5.1.2. I am not aware of any further 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. Athea is designated as a **Tier 4 – Towns and Villages** 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 4 Settlements are described as settlements with a population of over 400 people that cater for the daily and weekly needs of their inhabitants and the needs of the surrounding wider catchment area. They provide a range of employment opportunities and services appropriate to their function, such as secondary and primary schools, childcare facilities, sports grounds and complexes, libraries, Garda Stations, medical centres and a good range of local services. Policy **SSO12** seeks to facilitate sustainable development within these settlements.

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 due to the fact that the render is cracked and/or falling off the façade, the roof is in a very poor state of repair with multiple slates missing or broken, with the rafters exposed. In addition, several ridge tiles and bits of the barge boards are missing and the fascia, soffits and downpipes are broken or missing. The front porch is in a very poor state of repair, with the roof in a state of collapse. The rear elevation is also in a particularly poor state of repair. A former ground floor annexe/extension appears to have been removed and what was the internal brickwork and plastered walls are now exposed, with parts of the flashing still in place. There is vegetation growing out of the walls, roof and guttering. The hoardings from the front porch have been removed and I was able to see that the staircase was in a state of extreme disrepair with parts of the first floor missing and exposed wires/cables hanging down through the stairwell. The lawns at the front, side and rear garden together with the front and side hedges, have been maintained to a certain extent. However, the remainder of the vegetation in the side and rear garden is growing out of control.
- 7.3. It is situated on Con Colbert Street, which is a laneway serving a number of individual private houses as well as a pedestrian accessway leading to a housing estate. The site has an open character with no firmly defined boundaries with the street and is an imposing building, which is visible from the Main Street. The dwelling houses in the surrounding residential area appear to be well maintained and occupied, and the town in general has an attractive appearance and the public realm is well cared for. 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 town.

- 7.4. Apart from the render coming away at the rear, the exposed brickwork and rafters, 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 structure appears to be generally intact. The window and door openings are boarded up apart from the front porch area. However, the considerable number of missing roof tiles, many of which are sitting loosely on the slope of the roof and the absence of secure hoardings at the entry point are matters of concern.
- 7.5. Having regard to the above, I would consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition. Having inspected the site, I consider that there is evidence that the structure is in a dangerous condition, and that it could be considered ruinous, as the roof rafters are exposed, loose slates are sitting on the roof slope, the interior of the structure is not secure with a dangerous stairwell accessible to the public and the external walls at the rear contain sections of exposed brickwork. 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 13th October 2010, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 12th November 2010, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 25th 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 owners on the 29th April 2019 to the proposed acquisition of the site, stating that the property is under the control of a Receiver, (KPMG), and subsequent correspondence advising that it is under the control of a further Receiver, (Ernst and Young). The objection relates to the additional costs that would arise for the charge-holder from the CPO. I also note that the property has been secured apart from the front porch 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-derelect and the house remains in a neglected and unsightly condition, and in a ruinous and dangerous state, 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 Athea Upper, Athea, 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

25th October 2019