



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304884-19

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<b>Development</b>	Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act, 1990, as amended
<b>Location</b>	No. 37 Thomas Court, Dublin 8
<b>Local Authority</b>	Dublin City Council
<b>Notice Party</b>	Ruairi & Kate O Ceallaigh
<b>Date of Site Inspection</b>	7 <sup>th</sup> October 2019.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Introduction

- 1.1 This file relates to a request by Dublin City Council for the consent of An Bord Pleanála for the compulsory acquisition of a site at No 37 Thomas Court, Dublin 8, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. The subject site located adjacent to Saint Catherine's Church of Ireland on the eastern side of Thomas Court in Dublin 6. The property consists of a three-storey building situated between St Catherine's Church, which is a protected structure, and a terrace of ten two storey dwellings. The building is currently vacant and windows and doors are partially boarded up.
- 2.2. The building dating from the late 18<sup>th</sup> century is included on the NIAH (Record appended). It is described within the NIAH as follows:

*“Attached three bay three storey house built c1770. Formerly in use as sexton's house. Flat roof with rendered chimneystack and clay chimney pots. Hidden behind rendered parapet having granite coping to front (west) and north elevations, having cast iron rainwater goods. Lined-and-ruled rendered walls, with red brick exposed to south of façade, having rendered plinth course with granite coping. Square-headed window openings having granite sills and timber sash windows, three-over-three pane to second floor to front, and six-over-six pane to first floor and to rear (east) elevation. Tripartite window to ground floor to front, having granite sills, timber mullions, six-over-six pane timber sash window flanked by four-over-four pane timber sash windows, and wrought-iron railings. Round-headed door opening to front with carved granite Gibbsian surround, timber panelled door, plain fanlight and granite step. Carriage arch to front having carved granite Gibbsian surround, plain fanlight and double-leaf timber battened door. Square-headed door opening to rear, with recent glazed door.*

*Appraisal. This house forms part of an interesting ecclesiastical group with the attached Saint Catherine's Church of Ireland Church and the associated graveyard to the rear. Although a church stood on St Catherine's site since the late twelfth*

*century, the current church was erected c. 1765 and this house may have been constructed at the same time. It is of historical interest due to its use as the office of the Meath Charitable Loan Society, founded in 1807 to lend small sums to local people of modest means. As the house of the sexton, who was responsible for the maintenance of the church buildings, it was of some social importance in the parish. Due to its form and imposing scale, it makes a formidable impression on the streetscape. Its façade is enhanced by carved granite Gibbsian surrounds, which provide artistic and technical interest, and attest to the artisanship employed in the construction of the building. Timber sash windows, which are retained throughout, lend a patina of age. Thom's Directory of 1850 lists William Singleton as the Secretary of the Meath Charitable Loan Society Office, and that of 1862 lists the sexton as Andrew Hamilton.*

### **3.0 Application for Consent for Aquisition**

3.1. Dublin City Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 pf the Derelict Sites Act. According to the documentation on file, the site was entered onto the Local Authority Derelict Sites Register on 18th day of February 2016.

### **4.0 Application & Objection**

#### **4.1. Notice of Intention to Acquire**

4.1.1 Notice of intention to acquire the site compulsorily is stated to have been served on the owner /occupier/lessee of the site on the 9<sup>th</sup> May 2019 and published in the Irish Times newspaper on the same date. I consider that the notice is generally in accordance with the requirements of Section 15 of the Derelict sites Act.

#### **4.2. Objection to Acquisition.**

4.2.1 An objection to the proposed acquisition was received in writing by the Local Authority on the 10<sup>th</sup> day of June 2019 , from Ruairi and Kate O Ceallaigh, the stated owners of the site , in which the following arguments are made:

- The property was originally sale agreed in May 2012 and contracts were eventually signed in July 2013. There was an accidental fire in the building in January 2014. Since that date solicitors Collins Crowley have been trying to get the sale transaction completed. This contract has now been rescinded and it is intended to refurbish the property with works to commence within a few weeks.
- Objection to the proposed compulsory acquisition as the owners are committed to getting this property refurbished and occupied over the next few months.
- Following further correspondence from Dublin City Council requesting specific details of the improvement works intended to be carried out to render the property non-derelict and also a timeline from commencement and completion of these works, the correspondence from the owner / occupier dated 21<sup>st</sup> June confirms that a builder has been engaged to carry out immediate works to the property which would render it non-derelict. These works would include works to the front of the property to include the installation of a new front door and new windows. The works will commence within 3 weeks and the builder estimates that it will take 8-10 weeks to complete the refurbishment of the property.

#### 4.3. Local Authority's Application for Consent

The Local Authority notes location within the Thomas Street & Environs ACA and also listed on the NIAH and case for consent is outlined as follows:

- Two of the upper floor windows and two of the middle floor windows are either partially or fully missing glass. The left-hand middle floor window has been boarded up with two sections of chipboard. There is some unsightly looking tin sheeting covering a section of the ground floor window. The paintwork on the left front door is in poor condition. Two sections of chipboard cover portions of the right front door.
- The overall condition of the site is neglected and unsightly.

- Thomas Court is considered derelict within the meaning of the Act as it detracts to a material degree from the amenity character and appearance of the land in the neighbourhood due to its unsightly and neglected condition (Section 3 of the Act) entered on the Derelict Sites Register on 18<sup>th</sup> February 2016.
- The eradication of dereliction in the city and the return of derelict sites to active use is a key priority for the City Council.
- The Council only uses its power to acquire properties compulsorily under the Act as a last resort, in circumstances where all efforts to secure the carrying out of improvement works by the owner, so as to render the site non-derelict have been exhausted.
- Despite Council demands since 2015 for the owners to carry out the necessary improvement works, so as to render the properties non-derelict, the property remains in a derelict state.
- The application includes copies of correspondence with the site owner to illustrate the background to the case.

#### 4.4. Owner's Submissions

4.4.1 In response to the application to the Board for consent to compulsorily acquire the site at No 37 Thomas Court, Dublin 8, the owner was afforded an opportunity by the Board to comment on the application. A submission was not received in this regard.

#### 5.0 Planning History

**0058/97** - I note from Dublin City Council website [www.dublincity.ie](http://www.dublincity.ie) that permission was granted on 5/3/1997 for permission for change of use of ground floor to residential and revisions.

## 6.0 Policy Context

### 6.1. Development Plan

6.1.1 The site has a zoning objective Z2 Residential Neighbourhoods (Conservation Areas). The stated objective is “to protect and/or improve the amenities of residential conservation areas.

6.1.2 The site is within the Thomas Street and Environs Architectural Conservation Area(ACA) and is listed in the National Inventory of Architectural Heritage (NIAH). (Record appended)

6.1.3 The Development Plan notes that the National Spatial Strategy, the predecessor to the National Planning Framework: Project Ireland 2040, placed particular emphasis on the physical consolidation of the metropolitan area, and necessitated the sustainable development of all vacant, derelict, and under-used lands. In aiming to make a more compact sustainable city, the Development Plan includes the following policy:

SC29 – ‘To discourage dereliction and to promote the appropriate sustainable re-development of vacant and brownfield lands, and to prioritise the re-development of sites identified in Dublin Inner City Vacant Land Study 2015’.

## 6.2. **Derelict Sites Act, 1990, (as amended)**

The Derelict Sites Act includes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to undertake measures to derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

Section 3 of the Act provides a definition of a 'derelict site' as follows:

'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 statute or by common law'.

Section 8 of the Derelict Sites Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on relevant occupiers/owners of their intention to do so. Under the terms of section 9, every owner and occupier of land are required to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 of the Act 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. Local Authorities may serve notice on an owner or occupier of land under section 11 of the Act, requiring them to take specified measures to prevent land becoming or continuing to

be a derelict site. Section 14 enables a Local Authority to 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 or occupier wish to object to the acquisition. Where an objection is made, section 16 of the Act states that a derelict site shall not be acquired compulsorily by the Local Authority without the consent of An Bord Pleanála.

## 7.0 Assessment

- 7.1 In considering the approach of the Local Authority, and the question of whether a reasonable and fair approach was adopted I note the main events and communications between the parties prior to the local authority applying for the acquisition of the site at 37 Thomas Court.
- 7.2 The Council by letter dated 23 April 2015 wrote to the solicitors acting on behalf of the owners requesting that in the context of obligations in the Derelict Sites Act, all broken glass should be removed or replaced, opes boarded up and the property secured against entry and maintained in a reasonable manner. Following inspection by Dublin City Council (reported on 11/6/2016) whereby no improvement in conditions since previous inspection 12/3/2015 was noted, a notice to make an entry on the Derelict Sites Register, S8(2) of the Act was served on the owners on 7<sup>th</sup> September 2015. Representations were received from the owners dated 30<sup>th</sup> September 2015 stating that they were selling the property and requesting deferral of entry onto the Register to facilitate the sale. The Council by letter dated 14<sup>th</sup> October 2015 agreed to defer the entry for a period of 2 months on the basis of the impending sale and on the condition that at the very least the existing window opes were secured by that date.
- 7.3 Following reinspection of the site, a notice under Section 8(7) of the Act was served on the owners and the site was entered into the Derelict Sites Register on 18<sup>th</sup> February 2016. DS911.
- 7.4 On the 7<sup>th</sup> April 2017 Dublin City Council wrote to the owners outlining intention to acquire the property under the Derelict Sites Act 1990 but also indicating that the



purchase would not proceed if the owners could demonstrate to the Council's satisfaction the intention to take immediate action to render the site non-derelict. The Council also outline that it attempted unsuccessfully to enter into discussions with the owners to acquire the site by agreement.

- 7.5 A notice of intention to acquire the site S(14) of the Act was served on the owners on 19<sup>th</sup> July 2017 and published in The Irish Times on 20<sup>th</sup> July 2017. Correspondence from Richard Black Solicitors 8<sup>th</sup> August 2017 (acting on behalf of intended purchaser of the site) and from the owner 22 August 2017 indicated that it was envisaged that sale of the property would close within a matter of months. On 1<sup>st</sup> September 2017 the Council wrote to the owner and agent for the intended purchaser indicating that in light of the expected sale of the property the Council would not proceed with the compulsory acquisition and requesting update in this regard. On 20<sup>th</sup> February 2018 the Council wrote to the owner and agent for purchasers seeking an update on the status of the sale. By letter dated 23<sup>rd</sup> February 2018, Richard Black Solicitors on behalf of the purchaser in letter to the Council indicated that the sale was expected to close within a matter of weeks. On 5<sup>th</sup> March 2019 Dublin City Council wrote to the owner seeking an update on the status of the site and requested that if the sale had closed details of the new owner be provided. No reply was received.
- 7.6 Notices of intention to acquire the site compulsorily was served on 9<sup>th</sup> May 2019. Correspondence from the owner 10<sup>th</sup> June 2019 outlined and intention to refurbish the property and that works will commence within weeks. Following request by Dublin City Council (11 June 2019) for specific details of improvement works and a timeline for same a response from the owner 21<sup>st</sup> June 2019 confirmed that a builder has been engaged to carry out immediate works which would render it non-derelict. These works would include works to the front of the property to include the installation of a new front door and new windows. The works will commence within 3 weeks and the builder estimates that it will take 8-10 weeks to complete the refurbishment of the property.
- 7.7 I note that from inspection of the site, 7<sup>th</sup> October 2019 (photo plates appended), it is apparent that no works have been carried out to the front of the property and I noted

no evidence of works. Based on the particulars of the case, I am satisfied that the Local Authority took reasonable steps to make the owner aware of the concerns in relation to the condition of the site, including the intention to include the site in the Derelict Sites Register, the entry of the site onto the register and the circumstances under which the site may be removed from the register. I am satisfied that the Local Authority has afforded the owner ample opportunity and time to remedy the situation.

7.8 Based on photographic images available from Local Authority inspections over the period from it is evident that the property has remained in a derelict state over this protracted period of time with no apparent maintenance works carried out to the structure. I note that the front doorway and window to the front of the house at ground floor level are boarded up. At first and second floor level windows are partially or fully missing or boarded up. The building which is of noted architectural and historic merit, appears neglected and unsightly. I am satisfied that the appearance is significant enough to detract to a material degree from the area within which the site is located. I note the lack of any specific evidence or firm proposals from the owner or occupier of the site of intended improvements to the property from its current neglected and unsightly condition.

## **8.0 Recommendation**

8.1 Having regard to the observed condition of 37 Thomas Court, Dublin 8, I consider that due to the neglected, unsightly and objectionable condition of the land and structure on the land in question, 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(b) of the Derelict Sites Act, 1990, as amended.

I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Derelict Sites Act. I recommend therefore, that the Board grant consent to Dublin City Council to compulsorily acquire the site.

## 9.0 **Reasons and Considerations**

9.1 Having regard to the observed condition of the site, and the documentation provided in relation to procedures and steps under the Derelict sites legislation regarding inclusion of the site on Dublin City Council's Derelict Sites Register and the serving of the notice on the owners or occupier of the lands, it is considered that the site detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, owing to the neglected unsightly and objectionable condition of the structure and therefore falls within the definition of a derelict site as defined in Section 3(b) of the Derelict Sites Act 1990 as amended. Therefore, the compulsory acquisition of the site by the local authority is warranted to render the site non-derelict and to prevent it from continuing to be a derelict site. The Board is satisfied that the procedures followed by the local authority were not unfair or unreasonable having regard to the provisions of the Derelict Sites Act, 1990, as amended.

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Bríd Maxwell

Planning Inspector

14 October 2019