



An
Bord
Pleanála

Inspector's Report

ABP-305428-19

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	7 Maudlin Street, Thomastown, County Kilkenny.
Local Authority	Kilkenny County Council
Notice Party	Phil Doyle.
Date of Site Inspection	5 th December 2019
Inspector	Susan McHugh

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1.0 Introduction

- 1.1. This case relates to a request by Kilkenny County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 7 Maudlin Street, Thomastown, Co. Kilkenny, in accordance with the provisions of the Derelict Sites Act, 1990, as amended (hereinafter referred to as the 'Derelict Sites Act').

2.0 Site Location and Description

- 2.1. Thomastown is one of County Kilkenny's largest district towns, located at the crossing of the R448 (former 9) and the R700 from Kilkenny to New Ross and the R703 from Thomastown to Graiguenamanagh.
- 2.2. The application site is situated fronting onto Maudlin Street, a 'one way' major arterial route R448 on the northern approach to the medieval town of Thomastown.
- 2.3. Maudlin Street is of an urban vernacular form and is located within 500m of Market Street in the town centre and the River Nore. The street is on an incline with no external parking, with the front of the terraced houses generally accessed by means of direct access from a relatively narrow pathway.
- 2.4. The subject house is a mid-terrace single-bay two-storey house c.1850, with a pitched slate roof, clay ridge tiles, unpainted rendered walls, one-over-one under timber sash windows, and square-headed door opening with tongue-and-groove timber panelled door. It extends to c. 70 sqm and is described in the notice as a derelict house.
- 2.5. On the date of my site inspection, the property was secure with the front ground floor window boarded up with timber sheeting. I was unable able to gain access to the interior or rear garden.

3.0 Application for Consent for Acquisition

- 3.1. Kilkenny 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. According to the documentation on file, it appears that the subject site has not been entered into the Derelict Sites Register.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Kilkenny County Council's intention to acquire the site compulsorily was published in the Kilkenny People newspaper and placed on the front door of the property on Fri 19th July 2019. Notice was also served on the 'reputed' owner (Phil Doyle) by registered post in letter dated 19th July 2019. The site was described as follows in the notices:

1. Derelict house at 7 Maudlin Street, Thomastown, Co. Kilkenny
2. Reputed Owner: Phil Doyle
3. Area of Site: 0.007

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 Kilkenny County Council by Phil Doyle in letters dated 22nd and 31st July 2019. The objection can be summarised as follows;

- Compulsory acquisition notice was served without any prior warning, refers to previous correspondence with the planning authority over the last two and a half years.
- Previous offer from the planning authority of €10,000 which was accepted in writing and was never formally withdrawn.
- Reference to 'reputed owner' insulting and should have been consulted before compulsory acquisition notice was served, put on the door of the property, and published in the newspaper.
- Contends that she is the successor to Michael Lonergan's (former owner) estate.

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 11th September 2019, and was accompanied by the following:

- Covering letter outlining documentation included with their referral to An Bord Pleanála for Confirmation of a Compulsory Purchase Order in respect of property at 7 Maudlin Street, Thomastown, Co. Kilkenny under the Derelict Sites Act 1990.
- Copy of objections made by Phil Doyle dated 22nd and 31st July 2019.
- Copy of the newspaper notice, dated 19th July 2019.
- Copy of Map of the site area.
- Copy of Notice of Intention to Acquire Derelict Site Compulsorily under the Derelict Sites Act 2000 dated 19th July 2019.
- Copy of Chief Executive's Order dated 12th July 2019 in connection with the Initiation of Compulsory Purchase Order Process in accordance with Section 14 of the Derelict Sites Act (as amended).
- Copy of internal memo dated 10th July 2019 to Director of Services Planning recommending approval to proceed with the Compulsory Acquisition.
- Copy of internal email dated 20th June 2019 from Project Liaison Architect outlining the background to and condition of the property to the Housing Section of the planning authority (P.A.).

4.3.2. Background Correspondence

Housing Section

- Copy of internal email dated 19th June 2019 from the Housing Section of the P.A. setting out the position of the P.A. in relation to the Objector's lack of title documentation or proof of entitlement to the property, and that there is nothing the Council can do to rectify that on her behalf.
- Copy of internal memo dated 18th June 2019 from the Housing Section of the P.A. following phone conversation with the Objector.

- Copy of letter dated 19th February 2019 from Harte Solicitors, acting on behalf of the P.A. (hereinafter referred to as the P.A. Solicitors) to the Housing Section noting that there are no title deeds in relation to the property, and that there could be long delays in trying to establish same. Advise that to 'purchase' the property would be extremely inadvisable in the circumstances and recommend the only way to proceed is to issue a CPO under the Derelict Sites Act 1990 due to the state of the property.
- Copy of letter dated 15th February 2019 from Poe Kiely Hogan Lanigan Solicitors, acting on behalf of the Objector, (hereinafter referred to as the Objectors Solicitors) to the Housing Section dated noting that a copy of a death certificate for Terence (Terry Lonergan) who died on the 5th February 2017 enclosed.
- Copy of letter dated 7th February 2019 from the Housing Section to the Objector confirming that the file has been sent to the Acquisitions Dept. of the P.A. to deal with the purchase.
- Copy of letter dated 5th February 2019 from Objectors Solicitors to the Housing Section with enclosed draft declaration requesting that the P.A. indicate whether they would be willing to take the property on the basis that the planning authority arrange the drawing of a map and carry out historical searches.
- Copy of letter dated 2nd February 2019 from Objector to the Housing Section stating that she would accept half of what was offered for the house and because of her age is unable to deal with a derelict house.
- Copy of letter dated 27th November 2018 from Objector to the Objectors Solicitors noting that copies of the relevant certificates had been given by her to them.
- Copy of letter dated 10th October 2018 from Objector to the Objectors Solicitors detailing that the property was originally owned by Clifford Estates, were acquired from London England, and that title deeds could be sought through them.
- Copy of letter dated 4th December 2018 from P.A. Solicitors to the Housing Section stating that they had no evidence of title, that the Council could consider serving a CPA, and that the compensation payable under the CPA may well be the price agreed.
- Copy of internal email dated 4th October 2018 from Housing Section querying whether the property could be acquired under the CPA procedure.

- Copy of letter dated 27th September 2018 from the Objector to the Housing Section confirming that the relevant certificates would be provided by her but had hoped that the planning authority would deal with the legal requirements concerning the legal title of the property.
- Copy of letter dated 26th September 2018 from the Objectors Solicitors to the Objector, stating that the Solicitors acting on behalf of the P.A. have requested documentation concerning Birth, Marriage and Death Certificates, a map, and details of the history of the property.
- Copy of letter dated 20th September 2018 from the P.A. Solicitors to the Housing Section, stating that the Vendors do not have any Title to the property. They have a receipt from 1951 for a sum of IR£35.00 from a Michael Sheehan of Maudlin Street for the purchase of his house through Poe Kiely Hogan Solicitors, and a receipt from 1952 in respect of the IR£35.00 paid by Michael Lonergan for the house. It appears however that a Deed was never signed.
- Copy of letter dated 7th September 2018 from the Objector to her Solicitors, stating that she had already sent on all documentation in her possession to them, and that she had asked the Housing Section to acquire the title deeds of the property. Letter states that Michael Lonergan purchased the property in 1952 and that it has been in her possession since. Copy of letter sent to same in September 2017.
- Copy of letter dated 6th September 2018 from the Objectors Solicitors to the Objector requesting title documentation in respect of the property.
- Copy of letter dated 28th August 2018 from the P.A. Solicitors to the Objectors Solicitors confirming their clients agreement to the sale of purchase of the property for the sum of €10,000.
- Copy of letter dated 22nd August 2018 from the Housing Section to the P.A. Solicitors, confirming the P.A. agreement to purchase the property at a purchase price of €10,000.
- Copy of internal email dated 22nd August 2018 from the P.A. Project Liaison Architect and Access Officer confirming process to proceed.

- Copy of letter dated 15th August 2018 from the Objector, confirming acceptance of the offer, details of her Solicitor Maguire McNiece, based in Bray, Co. Wicklow, but given her previous engagement with Poe Kiely Hogan Lanigan Solicitors, based in Kilkenny suggested it more conducive to use same.
- Copy of letter dated 14th August 2018 from the Housing Section, to the Objector, stating that the P.A. were interested in purchasing the property, and made an offer of €10,000, along with any reasonable expenses.
- Copy of letter dated 14th January 2018 from the Objector to, stating that she had been approached by neighbours in Thomastown expressing an interest in purchasing the property, and queried the time frame for finalising the purchase with the P.A., and wished to resolve as soon as possible, noting her age.
- Copy of Invoice dated 10th November 2017, issued to the McCreery Sherry Fitzgerald Auctioneers, acting on behalf of the P.A. (hereinafter referred to as the P.A. Auctioneers)
- Copy of valuation carried out on behalf of the P.A. by the P.A. Auctioneers dated 8th November 2017 confirming a valuation of €30,000.
- Copy of email dated 7th November 2017 from P.A. Auctioneers requesting valuation of the property.
- Copy of internal email dated 7th November 2017 from Senior Engineer, Housing Technical, to the Housing Section, and undated Google Street View Photograph. Advise that an approach had been made by the Objector stating that she was willing to sell the house, as she is not in a position to maintain it. Recommendation that an offer be made on the property on the basis of valuation.
- Copy of letter dated 1st November 2017 from the Tenant Liaison Officer, Housing Section to the Objector stating that her offer to sell the derelict property to Kilkenny County Council will be explored and communicated in due course.
- Copy of letter dated 20th October 2017 from the Objector to the Tenant Liaison Officer, Housing Section., in relation to official documents forwarded to the Housing Section, stating that a copy had also been sent to the Objectors Solicitors. Refers to the previous owner of the property Michael Lonergan, who died in the late 1980's, and former occupier of the property Terry Lonergan until 1991, who died in February

2017. Confirms that the house has been vacant since 1991, that the P.A. can take the house, and request only a small token of appreciation to cover the associated legal costs.

4.4. Objectors Submission

4.4.1. An objection by Phil Doyle dated 20th September 2019 in response to the Section 14 Notice was lodged with the Board. It included previous correspondence to the Housing Section of the Local Authority, and from her Solicitors Poe Kiely Hogan Lanigan including Michael Lonergans original papers. The objection can be summarised as follows;

- Queries following the decision of the Board whether she will be consulted.
- Refers to her Solicitor in the management of her affairs, ongoing correspondence and negotiations with the Council over two and a half years to purchase the property.
- Was not properly consulted by Kilkenny County Council or her Solicitor prior to the Compulsory Acquisition Order being served.
- Disputes that the Solicitors acting on behalf of the Council requested deeds for the property in her name, and that this should have been requested initially.
- No longer has legal representation.
- Had she been made aware at the outset of the need to evidence title deeds in her name, arrangements to obtain same would have been made.
- Refers to Michael Lonergan who purchased the house in Poe Kiely Hogan Solicitors in 1952 and witnessed by Patricia Dunne and Michael Sheehan which is a legal document.
- The objector is Michael Lonergan's adopted daughter his only successor to the property and holds all his original papers which were given to the Councils Solicitors on 2017.
- Asserts that she had been led to believe by the Council that the papers she had would be accepted by the Council, and that the process was dragged out unnecessarily.

5.0 Planning History

5.1. Application Site

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

5.2. Surrounding Area

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

6.0 Policy Context

6.1. Kilkenny County Development Plan 2014-2020.

6.1.1. The applicable Development Plan is the Kilkenny County Development Plan 2014-2020.

6.2. Thomastown Local Area Plan 2019

6.2.1. The Thomastown Local Area Plan 2019 was adopted on the 25th March 2019 and came into effect on the 6th May 2019. The site and surrounding area are zoned '**Existing Residential**', the objective for which is 'To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.(20-40 units per hectare/8-16 per acre)'.

6.2.2. **Chapter 6** contains the **Housing** policies for the area and **Chapter 5** sets out the **Economic Development** policies, including **section 5.4.1 Thomastown Regeneration Project**. There are 5 projects listed which includes the regeneration of Maudlin Street. In relation to the Vacant Sites it is noted that the Thomastown LAP promotes, encourages and facilitates the appropriate development of sites identified as 'regeneration land' and 'residential land' in order to prevent adverse effects on existing amenities in such areas, in particular as a result of :

- The ruinous or neglected condition of any land
- Urban blight or decay.

- 6.2.3. **Chapter 7 – Green Infrastructure and Recreation** includes policies and objectives for Open Space. **Section 7.2** notes that the opportunity arises to investigate the feasibility of a pocket park on lands to the rear of the Belfry on Maudlin Street, which could be developed in the context of public realm works to improve the approach to the town centre from the Dublin Road.
- 6.2.4. **Objective OPO2.2:** To investigate the feasibility of a potential public space/pocket park at Maudlin Street through the development of a joint proposal for stakeholders that takes into account the technical and management requirements of the site.
- 6.2.5. **Chapter 8 Built and Natural Heritage** includes policies and objectives for **Protected Structures**. The site in question is listed as a Protected Structure RPS Ref. C629, NIAH Ref. 1231704.
- 6.2.6. The immediately adjoining properties within the terrace to the north and south of the subject site are also listed as Protected Structures, RPS Ref. C602 and C603 to the north and C813 to the south, along with others in the terrace further to the north and south. The relevant details are set out in Table 1. below. (See also NIAH Map attached).
- 6.2.7. **Table 1. Protected Structures**

Description	Date	NIAH Ref.	RPS Ref.
Terraced three bay three storey gable fronted house	c-1775	12317038	C593
Terraced, single bay, two storey house – Adjoining to the South	c. 1850	12317039	C813
Terraced, single-bay, two storey house – No. 7 Maudlin St.	c. 1850	12317040	C629
Terraced three bay two storey house – Adjoining to the North	c 1850	12317041	C602
Terraced, three-bay, two storey house	c.1850	12317042	C603
End of terrace, three bay, two storey house	c.1850	12317043	C581
Attached, single-bay, single storey house with dormer attic	c. 1850	12317044	C605

- 6.2.8. **Objective PSO1.4:** To address dereliction and vacancy in the town centre and promote appropriate uses and the sensitive conservation and restoration of historic buildings and to request Architectural Heritage Impact statements as part of proposals.

6.3. Derelict Sites Act 1990 (as amended)

6.3.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent 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

6.3.2. 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.”

6.3.3. 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 and rear access to the house on the site was not possible on the date of my site inspection, and I instead carried out my site inspection from the public road.
- 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 entrance door is in poor repair, the ground floor window and opening is boarded up, the front façade is unpainted, the roof is in a very poor state of repair with slates missing, and bits of the barge boards are either broken or missing. Thus, the building is open to the elements and is likely to be in a continual state of decline.
- 7.3. The building is a Protected Structure RPS Ref. C629 NIAH Ref. 12317040 and is situated within a terrace of other Protected Structures. Thomastown LAP attached great significance to the historical importance and special character of the town, to which many buildings, including Protected Structures have contributed greatly.
- 7.4. Policy Objectives PSO1.4 seeks to address dereliction and vacancy in the town centre and promote appropriate uses and the sensitive conservation and restoration of historic buildings and to request Architectural Heritage Impact statements as part of proposals.
- 7.5. It is considered that the protected structure status of the building, and of the immediately adjoining properties either side within the terrace, the need to arrest the decline and any further deterioration in the condition of the building, which could lead to the loss of further historic fabric or features of architectural interest, or to the partial demolition of the structure. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the Protected Structure.
- 7.6. The surrounding residential area appears to have benefitted from refurbishment works in recent years, with repainting and new roofs. The other houses which form the remainder of the terrace to which the subject house is attached are well maintained and occupied. 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.

- 7.7. Externally the house appears to be in reasonable structural condition. There is no obvious evidence of significant cracking or damage to the external walls. The roof however, is completely open to the elements.
- 7.8. With regard to category (a), of section 3 of the Derelict Sites Act, 1990, which relates to structures which are in a ruinous, derelict or dangerous condition, having inspected the site, I consider that the structure is derelict and in a dangerous condition, and that it could be considered ruinous, as it appears to have a partially collapsed roof.
- 7.9. With regard to category (b), I would consider that on the basis of the foregoing, the site also 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.
- 7.10. I consider that the house materially detracts from the amenity or appearance of lands in the vicinity, and I 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.
- 7.11. I note the actions of the Local Authority and the statutory notices served on the property, and the reputed owner in respect of the building. I note that 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 measures be completed) were not served on the reputed owner and objector Phil Doyle.
- 7.12. Notwithstanding the Local Authority's failure to demonstrate that section 8(2) section 8(7) or section 11(2) notices were not served on the owners, the Board should note that it is not a requirement under the Derelict Sites Act 1990, as amended, for a site to be placed on the register of derelict sites prior to an application being made to acquire it compulsorily.

- 7.13. A section 15(1)(a) notice of intention to acquire the site compulsorily was served on the 19th July 2019 and published in the Kilkenny People newspaper on the 19th July 2019. With regard to the notices prepared by the Local Authority, it is clear that the reputed owner of the site were served notice, as demonstrated by the fact that an objection was made.
- 7.14. I note the objection made by Phil Doyle on the 22nd and 31st July 2019 to the proposed acquisition of the site, and to the Board on the 20th September stating that the notice was served without any consultation or any prior warning. While the Objector was aware of the Local Authority's concerns and was afforded ample opportunity to demonstrate to the Local Authority that they were in possession of title deeds to the property, it is clear that there would be significant impediments to the Objector in obtaining same. While I recognise that the owner is aggrieved at how the property arrived at its present condition and the potential limitations to addressing the issue of title to the property, the Objector has been unable to provide evidence of title deeds to the property.
- 7.15. I also note the objection to the reference/wording in the notice to 'reputed owner' however in light of the foregoing, I consider the wording in the notice as appropriate.
- 7.16. Having inspected the site, there is no evidence of any attempt to render the site non-derelect. There has been no attempt to carry out work to the roof timbers and slating or to replace the timber hoardings covering window openings that can be seen in some of the Local Authority photographs. The house remains in a neglected and unsightly condition, and the property has become more unkempt, when compared to the photographs submitted by both the objector and the Local Authority. I therefore, consider that the site remains in a derelict condition.
- 7.17. I also note the objection to the compulsory acquisition on the grounds that the property is in her ownership. However, no details of ownership by way of title deeds have been provided by the Objector. It is considered that this is a matter for the Local Authority and the Notice Party to resolve as part of any compulsory acquisition agreement.
- 7.18. 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 No. 7 Maudlin Street, Thomastown, Co. Kilkenny 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 Kilkenny 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.

Susan McHugh
Senior Planning Inspector

24th January 2020