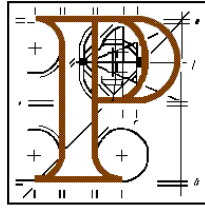


An Bord Pleanála



Inspector's Report

Board Reference: ABP-306190-19

Planning Authority Site ID: 1756

Local Authority: Cork City Council

Objector: Maria Colbert

Location of Lands: St. Anthony's, Ballyhooley Road,
Cork

Inspector: Kevin Moore

Re: Application for consent of An Bord Pleanála for compulsory acquisition of St. Anthony's, Ballyhooley Road, Cork

1.0 INTRODUCTION

1.1 I have read the contents of the file and I inspected the site on 24th March, 2020.

1.2 Notice of the intention to compulsorily acquire the site under section 14 of the Derelict Sites Act 1990 was published on 11th October, 2019. An objection to the acquisition was received by the local authority on 10th November, 2019.

1.3 In a letter from the local authority dated 6th December, 2019 requesting the consent of the Board to the compulsory acquisition of the property, it was noted:

- Notice of Cork City Council's intention to enter the property on the Derelict Sites Register under section 8(2) was issued on 13th January 2017.
- Confirmation of entry of the site on the Derelict Sites Register was issued on 23rd February 2017.
- Notification of Valuation, together with an explanation of the process of appeal to the Valuation Tribunal, was sent on 6th April 2017.
- In the absence of Cork City Council being notified of any progress in appointing legal representation for the property owner Maria Colbert and given ongoing complaints and the continuing deterioration of the property, Cork City Council issued Notice to Compulsory Purchase the property on 10th October 2019.
- An objection was received from Maria Colbert and in reference to that letter the following points are made by the City Council:
 - The property is not habitable in its current condition.
 - The actions required to address the dereliction at the site were outlined to Maria Colbert in 2015. However, the works did not

proceed and no works appear to have been carried out by the owner on the property.

- Cork City Council has received complaints from local elected representatives and neighbours concerned about the safety of the property.

- The Council was made aware that Maria Colbert may have lacked the legal capacity to deal with the issue and took steps to advise her next of kin and put on notice the Registrar of the Wards of Court.
- Cork City Council, being the Sanitary Authority and having formed the opinion that the property is a dangerous structure within the meaning of the Local Government (Sanitary Services) Act, 1964 and being of the opinion that it was necessary to do so in the interest of safety of persons using or in the vicinity of the property, entered onto the property and carried out necessary works.
- Given the poor and deteriorating condition of the property and its location within an established residential area, the property continues to remain in a derelict condition, is unsightly and has become a cause for concern and complaints from neighbours.

1.4 Cork City Council requests consent of the Board to compulsorily acquire the property.

2.0 OBJECTION

2.1 An objection from Maria Colbert, dated 10th November, 2019, was made to Cork City Council and it was submitted that:

1. St. Anthony's is the objector's only dwelling and, if she recovers from her medical condition, she will be left with nowhere to live and will be dependent on the state.
2. It is not clear what is needed to be done to remove the derelict site notice.
3. The objector is being held responsible for anti-social behaviour which is the responsibility of An Garda Síochána to police and prevent. Complaints were directed to the objector by the Council. This is the sole reason the notice was placed on the house.
4. There has been unfair interference in the process from elected representatives. The Council should treat all property owners equally and not act because of unfair lobbying.
5. Little account has been taken of the objector's medical condition and limited ability to engage with the Council. This places the objector at a serious disadvantage and not able to protect her property rights.

3.0 SITE LOCATION AND DESCRIPTION

- 3.1 St. Anthony's is a two-storey, semi-detached house on the west side of Ballyhooley Road, a short distance to the north-east of Dillon's Cross in north Cork City. It is flanked to the south-west by an occupied two-storey, semi-detached house and to the north-east by a detached, two-storey house. This section of Ballyhooley Road comprises residential properties on both sides of the road. The curtilage of St. Anthony's comprises a front garden and driveway bounded by a roadside block wall, with pedestrian and vehicular gateways. It is similar in area to the attached neighbouring property. There is a garden to the rear of the house.

4.0 ASSESSMENT

4.1 Section 3 of the Derelict Sites Act, 1990 defines a "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 statute or by common law.

4.2 Before offering my considerations on the property, I note for the Board that I undertook a site inspection which did not entail an internal examination of the building on this property. This property was blocked up and access onto the land was restricted. Therefore, I examined the property from the footpath to the front and from the streetscape generally. I did not gain access in and around the building itself.

4.3 I note the current position of the City Council set out in its various considerations over time. The Council considers the property is not habitable in its current condition, it is in a poor and deteriorating condition, is unsightly and it has become a concern for neighbours, The Notice in relation to a Dangerous Structure issued to the property owner on 5th November 2019 requested the demolition of the bay window to the front of the house, the clearance of debris, securing of the site against unauthorised entry, and any other works considered

necessary. The Derelict Sites Report for the City Council from July 2015 submitted that the property at that time detracted to a material degree from the amenity, character and appearance of property in the neighbourhood by reason of its neglected, unsightly and objectionable condition and, therefore, constituted a 'Derelict Site' in accordance with Section 3 of the Derelict Sites Act. It was noted that the front bay window was collapsing and it had been shored up. Recommendations included securing the property from public access, clearing rubbish and debris, and arranging for the removal of vermin and waste. It was recommended that the property be placed on the Derelict Sites Register. It was noted at that time that the property owner had intended to renovate the property.

4.4 Further to the City Council's considerations and to my inspection of this property, I make the following observations:

- It appears that the primary focus of the local authority has been on the structural condition of the bay window to the front of the house, on restricting public access to the property, and on the adverse visual appearance of the property in this residential area.

- The following is noted:
 - The bay window has been removed from the front of the existing house, all openings in the structure have been blocked, and access to the property has also been blocked from the public road.
 - The building itself appears from an external view to be structurally sound. There is no structural cracking evident, all windows and doors are blocked up, the roof appears intact, there is no evidence that the chimney is suffering from cracking or any other deterioration, and all guttering and downpipes appear intact. Measures appear to be in place to protect the structure from the elements.
 - The front curtilage of the property has been tidied and there is no evidence of any substantial litter, rubbish, debris or waste.

4.5 It is my submission to the Board that it is evident that the house on this site has been made structurally safe, has been secured from unauthorised entry and has been cleared of waste and other debris. I do not consider that there is any dispute about the structural integrity of the house. Further to this, I submit that it is not reasonable to determine:

- (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.

4.6 In its current form, the property does not present as a dangerous structure that is distinctly unsightly in this area, an area where there are many examples of residential and other structures in differing structural conditions, inclusive of buildings in poor structural and visual presentation.

4.7 Further to the above, I acknowledge the position of the property owner in this instance, whereby there are reasons provided as to why the house on this property fell into a state of disrepair, as well as the desire to have a place of residence when circumstances improve.

4.8 Finally, I accept that the existing building on this site was in a poor condition that posed a danger, presented as an unsightly property, and was a concern due to unrestricted access. I acknowledge, however, that circumstances have significantly changed in recent times. The potential remains for this property to be retained and refurbished for residential use. It does not constitute a 'Derelict Site'

in my opinion as the property does not detract, or at this time is unlikely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question.

5.0 CONCLUSION AND RECOMMENDATION

- 5.1 I conclude that St. Anthony's, Ballyhooley Road, Cork does not constitute a derelict site and I recommend that the Board refuses to grant consent to the compulsory acquisition of this site at this time in accordance with the following:

Decision

REFUSE consent to the compulsory acquisition of the said site based on the reasons and considerations set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Notwithstanding the current neglected condition of the house on the land, it is considered that the structural integrity of the building is intact, that the building is neither in a ruinous or dangerous condition, and that the property does not detract to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question. Furthermore, it is considered that the

existing house could reasonably be restored to residential use and does not constitute a derelict site for the purposes of the Derelict Sites Act 1990. The Board, therefore, has decided that it would be appropriate to refuse to consent to the compulsory acquisition of the site.

Kevin Moore
Senior Planning Inspector
1st April, 2020.