



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306458-20

#### 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

Upper Main Street, Ballyboreen, Co. Tipperary.

#### Local Authority

Tipperary County Council

#### Notice Party

Denis English.

#### Date of Site Inspection

16<sup>th</sup> March 2020

#### Inspector

A. Considine

## 1.0 Introduction

- 1.1. This case relates to a request by Tipperary County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Upper Main Street, Ballyboreen, Co. Tipperary, in accordance with the provisions of the Derelict Sites Act, 1990, as amended (hereinafter referred to as the 'Derelict Sites Act').
- 1.2. Notice of the intention to compulsorily acquire the site under Section 14 of the Derelict Sites Act 1990 was published on the 2<sup>nd</sup> of December 2019 and the notice was posted to Mr. Denis English and to Ms. Anne English. A copy of the notice was also erected on the site. An objection to the CPO was received by the local authority from Mr. Denis English by email on the 6<sup>th</sup> of January 2020, being the final date for submissions.
- 1.3. I have read the content of the file and inspected the site on the 16<sup>th</sup> March 2020.

## 2.0 Site Location and Description

- 2.1. Ballyporeen is identified as a service centre in the settlement hierarchy of County Tipperary and is located to the south west of the county, and in proximity to the Cork County Boundary. The R665 runs through the town and connects Mitchelstown, Co. Cork to the west of the site with Ardfinnan and Clonmel, Co. Tipperary to the north east. The M8 motorway lies approximately 7km to the west of the site.
- 2.2. The subject site lies to the south of Main Street, Ballyporeen and to the west of the crossroads in the town. The narrow site occupies a mid-terrace location in the streetscape and extends to the south with the site occupying an area of 0.0535ha (0.132 Acre). The building that occupied the site was demolished in 2014 and the site has been vacant since. The River Duag, which forms part of the Lower River Suir SAC, flows to the south of the site.
- 2.3. On the date of my site inspection, the property was secured with hoarding to the front of the property. I was unable able to gain access to the site and it appears that the site has become very overgrown. It appears that the properties on either side of the subject site are residential in use and the other properties on the street all appear to be in use and are well maintained.

### **3.0 Application for Consent for Acquisition**

3.1. On the 21st of January, An Bord Pleanála received an application for consent to the compulsory purchase of a derelict site at Main Street, Ballyboreen from Tipperary County Council. The application for consent is made under section 14/16 of the Derelict Sites Act, 1990, as amended. Having consulted the Tipperary Derelict Site Register, the Board should note that the subject site was entered into the Register, Site ID ENV-C-09-03 and the S8(7) Notice is dated 21st of September 2011.

### **4.0 Application and Objection**

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

4.1.1. Notice of Tipperary County Council's intention to acquire the site compulsorily was published in the Nationalist newspaper on the 5<sup>th</sup> of December 2019. Notice was also posted on the property and served on the owners by registered post in letter dated 2<sup>nd</sup> of December 2019. The site is described as follows in the notices:

Lands at Upper Main Street Ballyporeen comprising of a former demolished property and site of 0.0535ha (0.132 Acre) as delineated red on the map attached.

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 Tipperary County Council by Mr. Denis English by email on the 6<sup>th</sup> of January 2020. The objection can be summarised as follows;

- Planning permission has been sought for development of the site.
- It is objectors' intention to develop the site as soon as practical, after full planning permission is received and in accordance with the planning granted.
- The property has been in the objectors' maternal family for at least 4 generations and is of huge sentimental value.

- It is the objectors plan to live, at least part-time, in the property on retirement.
- The house is mortgaged with a financial institution.

#### **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 21<sup>st</sup> of January 2020, and was accompanied by the following:

- Covering letter outlining documentation included with their application to An Bord Pleanála for Confirmation of a Compulsory Purchase Order in respect of property at Main Street, Ballyporeen, Co. Tipperary, under the Derelict Sites Act 1990.
- Copy of Notice of Intention to Acquire Derelict Site Compulsorily under the Derelict Sites Act 2000 erected on site.
- Copy of Chief Executive's Order, No 20472, dated 22<sup>nd</sup> November 2019 in connection with the Initiation of Compulsory Purchase Order Process in accordance with Sections 14-16 of the Derelict Sites Act 1990 (as amended).
- Copy of the newspaper notice, dated 5<sup>th</sup> December 2019.
- Copy of Map of the site area.
- Copy of objections made by Denis English dated 6<sup>th</sup> January 2020.
- Tipperary County Councils comments on the objections received dated 17<sup>th</sup> January 2020.

4.3.2. In support of the application for consent to the compulsory acquisition of the derelict site, the local authority included a background and sequence of events in relation to the legal proceedings initiated against Mr. English for non-compliance with Section 11 notices of the Derelict Sites Act 1990. It is submitted that the local authority has demonstrated efforts to work with Mr. English over the past 10 years and his lack of engagement to resolve the issues with regard to the property. The LA is concerned that if the CPO is denied and objector is granted planning permission, he will not build given his past history.

4.3.3. It is further submitted that the properties on both sides of the demolished terraced house are insufficiently supported and weatherproofed which has given rise to numerous complaints being made to the council from the adjoining owner. The Council is prepared to build a council house on the site and there is a housing need for same in Ballyporeen.

4.3.4. Issues relating to the subject site date back to 2009 and I have indicated above that the subject site was entered into the Register, Site ID ENV-C-09-03 and the S8(7) Notice is dated 21st of September 2011. A number of derelict site notices were issued on the owner of the property to render it non-derelict in 2014, 2016 and 2017. None of these Section 11 Notices were complied with, despite commitments from Mr. English and his solicitor to do so. In April 2018 the council initiated legal proceedings against Mr. English for non-compliance with Section 11 Notice under the Derelict Sites Act 1990 as amended.

4.3.5. Following adjournment on a number of occasions in 2018 and 2019 as an application for planning permission was proposed to be lodged. An application was lodged in November 2019. On the 9<sup>th</sup> of January, the court convicted and fined Mr. English, who pleaded guilty to the offence, for non-compliance with the Section 11 Notice. During the legal process, the Council made a written offer without prejudice through Mr. English's solicitor to acquire the property for a nominal amount. This was rejected. A previous similar offer was made to Mr. English in 2017. Details of the court process and dates are provided in the Council's submission as are a number of photographs of the site.

#### **4.4. Objectors Submission**

4.4.1. Following receipt of a letter from the Board, dated 23<sup>rd</sup> January 2020, advising that the Local Authority had applied to the Board in accordance with Section 16 of the Derelict Sites Act 1990, as amended, the objector requested that a copy of the document 'The attached background and sequence of events....' be forwarded to him in order to fully respond. An objection by Mr. Denis English dated 13<sup>th</sup> February 2020 in response to the Section 16 Notice was lodged with the Board. It included the response to the further information request planning ref 19/601319.

4.4.2. The objection can be summarised as follows;

- The site was not derelict going back to 2009 as stated. It became derelict shortly before it was demolished in 2014.
- In relation to a reference to a commitment given by a solicitor in 2016-2017, it is advised that Mr. English did not engage a solicitor until April 2018, so no such commitment was given.
- The house was demolished on advice from his engineer.
- The adjoining houses have been supported and waterproofed in accordance with best practice. Mr. English has received no complaints from the owners of the adjacent properties.
- Due to the recession, Mr. English was unable to reconstruct the house in 2014 for financial reasons and health reasons. This was advised to the LA at a meeting in November 2019, but the LA continued with the Section 11 charge and the CPO.
- Two invalid planning applications were rejected on minor technicalities.
- Mr. English pleaded guilty to the Section 11 offence on 9<sup>th</sup> January 2020 and was fined €500. LA legal fees were also awarded against him, and he was not advised of the amount until the day before the court which did not give time to contest or negotiate them.
- Mr. English has no recollection of the offer made by the LA in 2017 as advised.
- The LA refused to give him a copy of the valuation. There is a mortgage on the property, and it is in negative equity based on the valuation.
- The CPO refers to a site area of 0.132 acres, while the overall site is 0.25 acres, extending towards the river. If the CPO is permitted, the remaining site would be landlocked.
- The site is not suitable for use as a council house as there is no front garden and no provision for EV charging point.
- A planning application has been lodged to develop the site<sup>1</sup>

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<sup>1</sup> The Board will note at the time of the objectors' submission, a response to a request for further information had been lodged to the Planning Authority. Planning permission was granted to Mr. English on the 9<sup>th</sup> March 2020 for the development of the site.

- With regard to the works requested under the Section 11 application, Mr. English is arranging to have these works carried out, to be completed before the Planning due date.
- Finally, Mr. English states he feels victimised by the actions of the LA. There are other derelict properties in the village which are not being actioned.

## 5.0 Planning History

### 5.1. Application Site

**PA ref 19/601319:** Permission granted on the 9<sup>th</sup> March 2020, to Mr. Denis English for the construction of a dwelling including office, rear sunroom, rear living accommodation and all associated site works at Main Street, Ballyporeen, subject to 11 conditions.

**PA ref 10/466:** Permission was granted to Ms. Anne English for the demolition of the existing premises and construction of dwelling, office rear sunroom, rear living room accommodation and all ancillary site works.

The Board will note that the existing premises was demolished in 2014 and no other development has occurred on foot of the 2010 grant of planning permission.

## 6.0 Policy Context

### 6.1. Development Plan

6.1.1. The applicable Development Plan is the South Tipperary County Development Plan 2009-2015 (as varied) (2017 Edition). Chapter 6 of the Plan deals with Retail & Town Centres, where Section 6.4.6 specifically deals with Dereliction and the Public Realm. The Plan states that it is an objective of the Council to improve the visual and functional amenity of all parts of the county and particularly to improve town and village centres as opportunities arise by the reduction in the number of properties registered as derelict or dangerous. In this regard, the following policy and objective are relevant:

- Policy RTC10: Derelict and Dangerous Structures - It is the policy of the Council to reduce the number of properties on the derelict sites and dangerous structures register throughout the county by invoking procedures under the Derelict Sites Act 1990 and the Local Government Sanitary Services Act 1964 (or any amendment thereof).
- Objective SO6-4- It is an objective of the Council to maintain a Register of Derelict Sites and a Register of Dangerous Structures for the county and to actively seek the redevelopment of such sites and structures and removal from the Registers.

6.1.2. The County Development Plan includes settlement plans, which includes a settlement plan for Ballyporeen. The site is located within the VC/TC zoning where it is the objective of the zoning 'to provide and enhance the service base of the town through the provision of mixed-use development including retail, office services and community services'. Residential use is open for consideration on such zoned land.

6.1.3. The subject site is not located within any designated ACA and there are no protected structures in the vicinity of the site.

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

6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land or buildings 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. Other relevant sections of the Act include as follows:

- 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. Introduction**

7.1.1. The original building on the site was demolished in 2014 by the owner and the site has been boarded up. Having regard to the nature of the site, the Board will note that I did not gain access to the site and I carried out my site inspection from the public footpath.

7.1.2. The Board will note the considerations of the local authority in relation to the subject site. In addition, it is noted that a number of derelict site notices have been issued in relation to the property dating back to 2009. At this point, there can be no argument that the site has a neglected, unsightly and objectionable appearance from the public road and in the surrounding streetscape. The Board will also note that the subject site was entered into the Tipperary Derelict Site Register, Site ID ENV-C-09-03 and the S8(7) Notice is dated 21st of September 2011.

### **7.2. Planning History**

7.2.1. The planning history of the site indicates that planning permission was granted in 2011 for the demolition of the building on the site and the construction of a new building in its place. The only part of this permission that was implemented on the site was the demolition of the building in 2014. No further works appear to have been undertaken on the site since this time. In 2018, the local authority initiated legal proceedings against the property owner, Mr. Denis English for non-compliance with Section 11 Notice under the Derelict Sites Act 1990, as amended. On the 9<sup>th</sup> January 2020, Mr. English pleaded guilty to the offence and was fined by the court. Since then, planning permission has been granted to Mr. English for the development of a house on the site.

7.2.2. Having inspected the site, there is no evidence of any attempt to render the site non-derelict other than the submission of the planning application to develop the site. I note the submission from the objector to the Board on the 13<sup>th</sup> February, where it is submitted that he was unable to reconstruct the house on the site in 2014 due to financial and health reasons. It is further indicated that he was arranging to have the works as detailed in the Section 11 Notice carried out irrespective of the

outcome of the planning application and hoped to have the works completed before the planning due date. In this regard, the Board will note that planning permission was granted on the 9<sup>th</sup> March 2020. I carried out my site inspection on the 16<sup>th</sup> March and no works had been undertaken. The site remains in a neglected and unsightly condition, and the property has continued to be unkempt. I therefore consider that the site remains in a derelict condition.

### **7.3. Statutory Process**

7.3.1. I note the actions of the Local Authority and the statutory notices served on the property, and the reputed owner in respect of the site. 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 served on the reputed owners and objector Mr. Denis English and Ms. Anne English.

7.3.2. As the site is included in the Register of Derelict Sites for Co. Tipperary, I am satisfied that the Local Authority adequately demonstrated that section 8(2), section 8(7) or section 11(2) notices were served on the owners. In any case, 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.

7.3.3. A Section 15(1)(a) Notice of intention to acquire the site compulsorily was served on the 2<sup>nd</sup> December 2019 and published in the Nationalist newspaper on the 5<sup>th</sup> December 2019. With regard to the notices prepared by the Local Authority, it is clear that the reputed owners of the site were served notice, as demonstrated by the fact that an objection was made.

### **7.4. Compliance with Section 3 of the Derelict Sites Act 1999, as amended**

7.4.1. 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. 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.”

7.4.2. 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 note that the building that previously occupied the site has been demolished. Therefore, there is technically no structure on the site which is derelict and in a dangerous condition. However, the Board will note the concerns raised in relation to the fact that the demolition of the building on the site has left the properties on both sides of the site insufficiently supported and weatherproofed. In this regard, I accept that the subject site presents a danger to the adjoining properties and it is reasonable to determine that the site is a derelict site in accordance with category 3(a) of the Derelict Sites Act 1990, as amended.

7.4.3. With regard to category (b), I would consider that the site falls within this category of section 3 of the Derelict Sites Act, 1990 due to the land being in a neglected, unsightly and objectionable condition and it is reasonable to determine that the site is a derelict site in accordance with category 3(b) of the Act.

7.4.4. I could not gain access to the site, and with the hoarding, could not get a view into the site. What is clear, is that the condition of the site is significantly overgrown and materially detracts from the amenity and appearance of properties within the streetscape of Main Street, Ballyporeen. I consider therefore, that the site falls within category (c) of section 3 of the Act and that in its current condition, which has been

in place for many years, renders it derelict in accordance with category 3(c) of the Act.

## **7.5. Other Issues**

7.5.1. Mr. English has included a number of other comments in his submission to the Board in relation to the legal process and the payment of legal fees associated with the LAs case. In addition, comments are made in relation to other derelict sites in Ballyporeen and complaints made in relation to his property. These are not a relevant consideration for the Board. I am satisfied that the site is a derelict site within the definition of the Act and has been included in the Register of Derelict Sites for Co. Tipperary since September 2011. The site has remained in a state of dereliction and the Section 11 Notice has not been complied with.

7.5.2. The Board will note however, that the area of the CPO relates a site with an area of 0.0535ha (0.132 Acre). The Objector has submitted that the actual site area is over 0.25 acres and that the site extends down to the river. Having assessed the planning history of the site, the planning application, PA ref. 19/601319 refers, indicates that the site area is 0.1143ha which equates to 0.28 acres. This area has not been included in the CPO and if the CPO is approved, this area of the site will be landlocked. The Board may wish to consider this matter in its determination of this Derelict Sites CPO application. I would consider it reasonable that the full site should be included in the acquisition if approved.

## **7.6. Conclusion**

Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the site, 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 Main Street, Ballyporeen, Co. Tipperary 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 site, I consider that the site materially detracts from the amenity, character and appearance of streetscape of Main Street, Ballyporeen and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 8.2. I am satisfied that the Local Authority has made efforts to rectify the situation over a number of years, without success and that notwithstanding the submission of the objector to the compulsory purchase of the land or the recent grant of planning permission for the development of the site, no effort to carry out the works detailed as being required in the Section 11 Notice has been made, nor a clear timeframe to do so has been presented.
- 8.3. 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 Tipperary County Council to compulsorily acquire the site.

## 9.0 Reasons and Considerations

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 the streetscape of Main Street, Ballyporeen, Co. Tipperary 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.

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A. Considine  
Planning Inspector  
28/04/2020