



An  
Bord  
Pleanála

# Inspector's Report

## ABP-307997-20

### Development

Derelict site comprising of an end of terrace two-storey house in accordance with Section 14 of the Derelict Sites Act, 1990, as amended

### Location

86 Lenihan Avenue, Prospect,  
Limerick

### Local Authority

Limerick City and County Council

### Notice Party

Mr Laurence McCarthy

### Date of Site Inspection

22<sup>nd</sup> October 2020.

### Inspector

Bríd Maxwell

## **1.0 Introduction**

1.1 This file relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of a site at No 86 Lenihan Avenue, Prospect, Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 Site Location and Description**

2.1 The site, No 86 Lenihan Avenue comprises a two-storey end of terrace residential property located on a corner site close to the junction of Lenihan Avenue and Hyde Road within a well-established residential area to the south of Limerick City Centre. The dwelling which is end of terrace within a row of four, is currently vacant with broken windows and front door, roof damage and the garden is heavily overgrown with significant dumping of refuse and electrical goods evident within the front and side garden. It is noted that two adjoining properties are also vacant and in a derelict condition and while there are a number of derelict properties within the local area there are also a number of residential properties which are occupied and well maintained. The overall condition of the house and site is neglected and unsightly.

## **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. According to the documentation on file, the site was entered onto the Local Authority Derelict Sites Register on 10th day of January 2012.

## **3.2 Application & Objection**

### **3.2.1 Notice of Intention to Acquire**

3.1.1.1 Notice of Limerick City and County Council's intention to acquire the site compulsorily is stated to have been served on the owner /occupier/lessee of the site

on the 12<sup>th</sup> June 2020 and published in the Limerick Leader newspaper on the 27<sup>th</sup> June 2020. The site was described as follows in the notices:

“A derelict site comprising of an end of terrace two storey house at 86 Lenihan Avenue, Prospect, Limerick. The said property and surrounding land is in a state of dereliction. The said development site is more particularly shown outlined in red on map bearing reference no DS-017-12 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.”

I consider that the notice is generally in accordance with the requirements of Section 15 of the Derelict Sites Act 1990, as amended.

### **3.2.2 Objection to Acquisition.**

3.2.2.1 An objection to the proposed acquisition was received in writing by the Local Authority on the 22<sup>nd</sup> day of July 2020, from Melvyn Hanley Solicitors on behalf of Mr Laurence McCarthy of Tower Lodge, Old Cork Road, Crossagalla, Limerick, the stated owner of the site, in which the following arguments are made:

- The property was previously offered to the local authority in discussions some eighteen months previous.
- Willing to consider the Council’s proposed purchase however objects to the proposed compulsory acquisition.
- Client was in the process of taking the legal title to the property but this was rendered difficult due to Covid 19 pandemic and subsequent closure of many offices for a significant period.
- Client will be perfecting the legal title to the property.

### **3.3 Local Authority’s Application for Consent**

3.3.1 The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 19<sup>th</sup> August 2020 and was accompanied by the following.

Compulsory Acquisition Report which sets out the Local Authority's strategic approach to derelict sites, a description of the site, the background to the case and details of the objection.

A map of the proposed site and photographs dating from 2012-2020

Copy of the notice served on the owner dated 12<sup>th</sup> June 2020

Copy of Newspaper Notice dated June 27<sup>th</sup> 2020

Copy of the objection received from Melvyn Hanley Solicitors on behalf of Mr Laurence McCarthy dated 6<sup>th</sup> July 2020.

### 3.3.2 The Local Authority outlines its case for consent as follows:

- In 2017 Limerick City and County Council established a new team to take an area based and collaborative approach to addressing vacancy and dereliction in Limerick City and County. The approach seeks to work proactively with property owners to seek timely actions and improvements of sites through positive engagement using powers under the Derelict Sites Act 1990 only when necessary.
- The property first came to the attention of the Local Authority in November 2011.
- Despite efforts to work with the owner to improve the condition of the property and an offer by Limerick City and Council to acquire the property by agreement no progress could be made.
- The reputed owner of the property is not the legal owner on the folio LK18132F.
- The property is in very poor repair and vacant and in a derelict condition since late 2011. There are slates missing from the roof and no windows upstairs. Front door is damaged. The garden is fully overgrown and there is ongoing issues with illegal dumping of rubbish.
- There has been a number of change of ownerships which have made it extremely difficult for Limerick City and County Council to engage with an owner.
- The derelict nature of the property has never been addressed by the previous or current owners.
- Limerick City and County Council have arranged on numerous occasions to clear rubbish from the property.

- There are derelict site levies due on the property in the amount of €5,000 as of 31<sup>st</sup> December 2019. Limerick City and County Council received a valuation in September 2018 for the property from Power and Associates in the amount of €17,500-€22,500.
- The property is a huge eyesore within the area and it is evident that the property is clearly a derelict site within the meaning of the Derelict Site Act 1990.

### **3.4 Owner's Submissions**

3.4.1 In response to the application to the Board for consent to compulsorily acquire the site at No 86 Lenihan Avenue, the owner was afforded an opportunity by the Board to comment on the application. A submission was received from PA Martin & Co Solicitors, on behalf of Mr Laurence McCarthy. Submission which outlines objection to the proposed compulsory acquisition is summarised as follows:

- Limerick City and County Council entirely fails to reference an issue of exceptional significance, that being the proximity of the subject site to the residence of a notorious family with an exceptional reputation for criminality of the most serious kind. Article attached from Independent.ie. to illustrate the unusual and exceptional circumstances pertaining. These exceptional and most unusual factors have prevented the owner and his predecessors in title from rectifying the subject site to habitable standards which they would ordinarily wish to do.
- The Council's vague submission regarding its valuation of the site €17,500-22,500. places client at a significant disadvantage in preparing objection. Fair procedure would require that the precise value be cited with supporting evidence by way of a certificate from an independent valuer.
- PA Martin & Co Solicitors have been furnished with draft contract documents by the registered owner's solicitors with a view to transferring the legal title to Mr Laurence McCarthy in a sale transaction, in satisfaction of a debt owed to Mr McCarthy. That

sale is impeded by the making of the compulsory acquisition application but is likely to proceed if stay is agreed.

- The Council has not shown per section 3 that the site “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.” The significance of this comparative part of the statutory definition is that land in the neighbourhood must be assessed and detraction to a material degree proved. This test in this case is not met – the subject site does not detract to a material degree from land in the neighbourhood, as an inspection will confirm.
- In its application the Council does not indicate with precision whether the subject site contains a structure in ruinous, derelict or dangerous condition. Fair procedure would require that the precise grounds for the course of action adopted be defined. The existence of “or” creates uncertainty as to which limb of the test is allegedly being met by the subject site.
- No evidence has been submitted of any relevant technical qualification held by any person involved in forming the opinion that the subject site meets the statutory definition. It is submitted that a professional certificate from a structural engineer, architect, chartered surveyor or similarly professionally qualified person is an essential prerequisite to any application grounded on the extract from Section 3 relied upon by the council.
- The Council does not indicate with precision whether the subject land is neglected, unsightly or objectionable condition. Fair procedure would require that the precise grounds for the course of action adopted be defined. The existence of “or” creates an uncertainty as to which limb of the test is allegedly being met by the subject site. Objectionable if relied upon should be supported by evidence of actual objections which should be assessed for reasonableness if upheld.
- The Council does not particularise its assertion that the lands meet the statutory definition expressed as “the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste.” These matters, which are not admitted, are

capable of rectification by other statutory processes available to the Council and enacted since the coming into force of the Derelict Sites Act 1990 including inter alia the Waste Management Act 1996 and the Litter Pollution Act 1997. Compulsory acquisition is an excessive, unfair and unreasonable remedy and the lesser remedies ought to be utilised in preference to a proposed extinguishment of Mr McCarty's property rights. It is asserted that the application is premature, lacks proportionality and represents a failure to extend fair procedure.

- Notwithstanding the foregoing, the presence of litter rubbish debris or waste on the land if any such lead to the Council forming its opinion, arises due to the actions of certain tenants of the Council who reside in the vicinity of the site, who have placed such articles on the lands. This has been reported to the Council on numerous occasions by Mr McCarthy. The presence of such materials arises not through any act of commission on the part of Mr McCarthy but through a failure of the Council to properly manage its estate and the appellant should not be penalised for matters not under his control when he has taken reasonable steps by way of complaints to have this matters resolved.
- No evidence has been tendered of any Service of any notice under Section 11 of the Derelict Sites Act 1990 which would indicate the nature of remedial works the Council would deem appropriate and which would give him an opportunity to appeal this notice and the benefit of exemption from the planning process. Fair procedures would require that Section 11 process has been exhausted initially and that compulsory acquisition be a last resort.
- No evidence has been submitted by the Council of any survey or assessment having been carried out to establish whether the subject lands are the habitat of any protected wild creature such as bats or owls. The relevant EU legislation including the Wildlife Acts place a positive obligation on a local authority to carry out such an assessment before deeming lands to be derelict and thus placing an obligation on the owner and occupier to carry out substantial works particularly given that works

on properties owned by local authorities have frequently been deferred indefinitely due to such habitats having been identified.

- No evidence by way of a certified copy of the entry claimed as having been made on the derelict sites register has been submitted to establish the validity of this application.
- No authority by way of a certified copy of the County Manager's Order, Chief Executive's Order, Delegation Order or Authorised Officer's Order for any of the steps purportedly taken in this matter up to and including the application for the Board's consent has been submitted. It is submitted that the application does not establish that it is properly grounded in law and it is unsafe to proceed in the absence of those proofs.
- Reserve the right to make a further ground of objection.

## **4.0 Planning History**

I am not advised of any planning history on the site or other relevant planning history in the surrounding area.

## **5.0 Policy Context**

### **5.1 Development Plan**

5.1.1 The applicable development plan is the Limerick City Development Plan 2010-2016 (as extended). The site has a zoning objective Zo-R2 Residential. The stated objective is "to provide for residential development and associated uses."

5.1.2 In respect of Derelict Sites (3.5) it is stated that these detract from the attractiveness of the city as a location for inward investment and that the Derelict Sites Act 1990 provides a legal mechanism to seek elimination of such dereliction that includes compulsory acquisition. Policy EDS 11 is the Policy of the Council "to maintain an up to date Derelict Sites Register and to implement the provisions of the Derelict Sites Act 1990 to remove these sites from dereliction."



## 5.2 Derelict Sites Act, 1990, (as amended)

5.2.1 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'.*

5.2.2 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.

## **6.0 Assessment**

- 6.1** I note that the PA Martin & Co Solicitors in the submission on behalf of the stated owner, Mr Laurence McCarthy, question the suggested valuation of the site referenced within the Council's Compulsory Acquisition Derelict Site's report. I note that the matter of compensation is not relevant to the Board's consideration of this case. In the event of the making of a vesting order any compensation in respect of the estate, legal interest or right shall be by agreement between the parties or in default may be referred to the Property Arbitrator to assess the adequacy of the compensation in dispute.
- 6.2** As regards potential for the site to house protected species I note the location within the urban built up area and having regard to the nature of the site I am satisfied that there is no real likelihood of the site providing habitat for any protected species. As regards allegations of exceptional circumstances pertaining to the site, I do not consider that the identity of neighbouring residents is of any relevance to the matters under consideration in this case. I further consider that allegations in respect of the origins of litter and waste materials arising on the site on the site are not relevant matters. As regards the technical qualifications of the Local Authority staff dealing with the case, I note that the Compulsory Acquisition Derelict Sites Report is compiled by the suitably qualified Grade 1 Technician and the Local Authority in its submissions stresses the team based, collaborative approach in terms of staff

resources involved in addressing vacancy and dereliction within Limerick City and County.

- 6.3 The matters to be addressed relate to the question of whether the site constitutes a derelict site under the meaning of Section 3 of the Derelict Sites Act 1990 as amended and whether the Local Authority adopted a fair and reasonable approach in its actions on the case.
- 6.4 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 prior to the local authority applying for the acquisition of the site at 86 Lenihan Avenue. The Compulsory Acquisition report submitted with the application outlines the actions of the Local Authority and the statutory notices served on the owners / occupiers in respect of the building. The Council stated that the property was first inspected in November 2011. As the owner was unknown a Section 29 Notice was served and the Council was notified that the property was subject to a repossession order and was in the ownership of the Irish Bank Resolution Corporation. A notice was served under Section 8(2) and the property was entered into the Derelict Site Register on 10<sup>th</sup> January 2012. Correspondence was received from a solicitor in relation to a new owner Mr Gabriel Mulally (Folio LK18132F). There were numerous correspondences with Mr Mulally in relation to the condition of the property. The Council engaged contractors to remove rubbish from the property on numerous occasions. Mr Mulally did not undertake any remedial measures. Limerick City and County Council received information that Mr Laurence McCarthy was the new owner of the property. There were discussions with Mr McCarthy about a buy and renew scheme and Limerick City and County Council made an application to the Department for funding of this scheme. This failed to materialise and it is asserted that Mr McCarthy has never addressed the dereliction element of the property.
- 6.5 A notice of intention to acquire the site compulsorily was served on 12<sup>th</sup> June 2020 and a response received by Melvyn Hanley Solicitors outlines that Mr McCarthy had previously offered the premises to the local authority in discussions some eighteen months previously and if the Council is interested in purchasing the property Mr McCarthy Would be willing to consider the matter however objects to serving of

notice of intention to acquire the site under the Derelict Site Act 1990 as amended. Further submission on behalf of Mr McCarthy by PA Martin and Co Solicitors reiterates objection on detailed grounds as outlined above.

- 6.6 Based on the particulars of the case, I am satisfied that the Local Authority took reasonable steps to make the owners aware of its concerns in relation to the condition of the site, including the intention to include the site in the Derelict Sites Register and to compulsorily purchase the site. I note that there is no evidence of a Section 11 notice directing the owner to undertake specified measures however I am satisfied that negotiations to resolve the matter have been exhausted.
- 6.7 I note that internal access to the house was not possible on the date of my site inspection, 22<sup>nd</sup> October 2020, however I carried out my site inspection from the public road. (photo plates appended). Regarding the main question of whether the site falls within the definition of a 'derelict site' within the meaning of the Act. It is apparent that the site has a neglected unsightly and objectionable appearance from the public road and surrounding residential area. This is due to the fact that the windows and doors are damaged and neglected and the garden has been left in an unruly state with refuse and waste strewn about the site. The roof is in a poor state of repair with damaged tiles and sections of the guttering fascia and soffit missing.
- 6.8 Based on photographic images available from Local Authority inspections over the period from 2011 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. The site is particularly overgrown and unkempt. Front doorway and window to the front of the house at ground floor level are boarded up and inaccessible due to vegetation. At first floor level windows are broken. The building 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.
- 6.9 Apart from the poor state of repair of the roof gutters, windows and doors, the house appears to be in reasonable structural condition on external examination. There is no obvious evidence of damage to the external walls and the roof is generally intact.

Having regard to the above, I consider that the site falls within the category (b) of Section 3 of the Derelict Sites Act 1990, as amended, due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a) this refers to structures which are in a ruinous or dangerous condition. Having inspected the site, I consider that there is evidence that the structure is in a derelict condition and poor state of repair but not in a ruinous state. Thus, it is considered that the site does not fall within category (a) of the Derelict Sites Act 1990.

6.10 On the date of site inspection there was ample evidence of litter and waste in the garden including electrical items. The presence of such litter and waste is sufficient to materially detract from the amenity or appearance of the lands in the vicinity and I consider therefore that the site also falls within category (c) of Section 3 of the Act.

6.11 Having regard to the above I consider that the site falls within category (b) and (c) of Section 3 of the Derelict Sites Act 1990 due to the land and structure being in a neglected, unsightly and objectionable condition and the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste.

6.12 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 and the entry of the site onto the register. I am satisfied that the Local Authority has afforded the owner ample opportunity and time to remedy the situation.

## **7.0 Recommendation**

7.1 Having regard to the observed condition of 86 Lenihan Avenue, Prospect, Limerick, 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) and 3(c) 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 Limerick City and County Council to compulsorily acquire the site.

## **8.0 Reasons and Considerations**

8.1 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 Limerick City and County 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) and 3(c) 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

27<sup>th</sup> October 2020