



An
Bord
Pleanála

Inspector's Report

ABP-308016-20

Development	Derelict Site comprising of a 3-storey former Royal Irish Constabulary Barracks
Location	Barnakyle, Patrickswell, Co. Limerick
Planning Authority	Limerick City and County Council
Notice Party	Christopher Fitzgerald
Date of Site Inspection	22 October 2020.
Inspector	Brid 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 Barnakyle, Patrickswell, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1 The site, comprises a three-bay three-storey property, formerly the Royal Irish Constabulary Barracks and adjacent land located on the Main Street in Patrickswell Co. Limerick. Patrickswell is located approximately 12km south west of Limerick City Centre. The property adjoins a two-storey building currently occupied by the Patrickswell Resource Centre. The building is set back from the road with a lawned area to the front enclosed within a rendered low boundary wall and pedestrian gateway entrance. The three-storey building on the site is boarded up with temporary security fencing preventing access to the rear of the building. The land to the west of the building is grassed with a vehicular sized entrance gateway.
- 2.2 The building is listed on the National Inventory of Architectural Heritage rated of Regional Importance NIAH Ref No 21901238 (recorded 26/09/2008) of architectural social interest. The description is as follows:

Attached three-bay three storey former Royal Irish Constabulary barracks, built c.1890, having single storey extension to rear (west) elevation¹. Pitched late roof with red brick chimneystacks/ Lined and ruled rendered walls. Squared-headed openings with one over one pane timber sliding sash windows and painted concrete sills. Square headed openings having timber panelled doors and flanging square headed openings with fixed windows and concrete sills. Pair of square profile piers to south-east having single-leaf cast-iron gate and rendered boundary walls.

Appraisal

¹ Former single storey extension to rear is no longer in place.

The substantial former barracks has retained much of its original character due on part to the retention of the timber sash windows, slate roof and brick chimneystacks. Its three-storey construction in a streetscape of predominantly two storey buildings makes it a striking building within Patrickswell.

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 9th day of December 2019.

3.2 Application & Objection

3.2.1 Notice of Intention to Acquire

3.2.1.1 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 12th June 2020 and published in the Limerick Leader newspaper on the 27th June 2020. The site was described as follows in the notices:

“A derelict site comprising of a three-storey former Royal Irish Constabulary Barracks at Barnakyle, Patrickswell, Co 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-009-19 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 22nd day of July 2020, from HRA Planning on behalf of the owner Mr Christopher Fitzgerald. The grounds of objection are outlined as follows: in which the following arguments are made:

- In issuing the CPO Notice no regard has been had to the development hindrances and obstructions imposed since the owner acquired the property in May 2016.
- Property had been vacant and neglected for a period of at least 15 years prior to the purchase of the property in May 2016.
- In July 2016 work was undertaken to the land and structure to make the property safe and free from trespass. Rubbish and overgrowth on the site was cleared.
- In September 2016 a notice of intention to place the property on the record of protected structures issued and the next year was spent by the owner trying to reverse the Council's intention. This was resolved in October 2017 when Members of the Council voted against its designation.
- The proposed protected structure status of the building meant that no improvement works could be carried out during this time.
- In early 2018 a number of architectural practices were approached to advance development proposals. The owner tried to acquire the adjoining site to pursue holistic redevelopment however this did not succeed.
- In 2019 / 2020 the owner developed a brief for the site and plans for the development as well as securing finance to implement the scheme.
- In February 2020 Section 8(7) Notices issued confirming that the site had been entered on the derelict sites register and this coincided with Covid Lockdown whereby all work on the property was stopped and financial commitments regarding redevelopment were reconsidered. Section 15 notice was served in June 2020.
- Application to change use of the building was lodged in early July 2020 (P20/63).

- The visual appearance of the property has been significantly enhanced since the owner acquired the property in 2016.
- Application for permission demonstrates the owners intention to refurbish and reuse the building.
- Notice of intent to CPO the property affect the owner's constitutional rights to own and redevelop the property.
- Significant time and money has been spent in undertaking cosmetic work to the building, maintaining the grass and ensuring that the lands remain free from rubbish.
- The property does not detract to a material degree from the amenity character or appearance of the land particularly having regard to the previous state of the building.
- Question whether a full assessment of the property was undertaken prior to issue of the notice of intent to CPO.
- The property is not neglected, not unsightly and not in an objectionable condition. The property is regularly maintained and cannot be categorised as derelict by reason of category 3b or 3c.
- Thee absence of windows is the only visual sign that the property is vacant and incapable of being occupied.
- Council has not made it clear why they wish to acquire the land or for what purpose it is intended. The Council owns a significant landbank in Patrickswell (3.75hectares) and no development has occurred on these lands.
- The owner is currently positioned to expedite development on the land a lot quicker than the public authority in the interest of common good.
- Section 11 Notice should have issued to afford adequate opportunity to address matters prior to the issuing of a notice of intent to CPO in the interest of fairness and justice.

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 21st 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
- Copy of the notice served on the owner dated 12th June 2020
- Copy of Newspaper Notice dated June 27th, 2020
- Copy of the objection received from HRA Planning on behalf of Mr Christopher Fitzgerald dated 22nd July 2020.
- Copy of Community Plan for Patrickswell

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.
- Following inspection of the property in February 2019 it was identified by the inspecting officer as a derelict site under Section 3 of the Act.
- Ownership of the site was established and a Section 8(2) issued to the owner. It came to the attention of Limerick City and County Council that the registered letter and notice was returned and the notice was not posted on site therefore Limerick City and County Council reissued the Section 8(2) notice on 9th December 2019.
- The building is in a derelict condition for a substantial period of time notwithstanding the change of ownership in 2016 and the Council has had concerns raised about its condition from community organisations and public representatives.

- The efforts to improve the appearance of the front of the building are acknowledged but the property is boarded up and the very poor condition of the rear of the property and the curtilage the Council still considers the property is derelict.
- The property meets the definition of a derelict site under Section 3(a) and 3(b) of the Derelict Sites Act. 1990.
- The Council note that a planning application was made to develop the property after the Section 15 notice was served and are concerned that the property owner intends to use the planning system as a shield from the Derelict Sites Legislation. The owner has had adequate time to take this property out of dereliction.
- Recently publicised community plan for Patrickswell highlights the issue of dereliction as a key concern and the Council is progressing 10 derelict site cases in the village. The resolution of the property is therefore part of an overall approach to dealing with dereliction in Patrickswell.
- This is the only three storey building in the village and occupies a strategic position in Patrickswell. The Council strongly contend that it is derelict under the definition of Section 3 of the Derelict Site Act 1990 and respectfully request that the Board give permission to Compulsorily acquire the property under the Derelict Site Act.

3.4 Owner's Submissions

3.4.1 In response to the application to the Board for consent to compulsorily acquire the site at Patrickswell, the owner was afforded an opportunity by the Board to comment on the application. A submission was received from the owner Mr Chris Fitzgerald on 14th September 2020. The submission also includes some recent pictures of the building. Objection to the proposed compulsory acquisition is outlined and summarised as follows:

- Owner intention is to refurbish the building which is in his home village of Patrickswell.
- Transfer of deeds for the property was signed on 9th June 2016 and when the keys were received rubbish was removed and overgrowth cut back. The property was insured and site secured.
- On September 3rd, 2016 the Conservation Officer called to the site and advised that works could not be carried out on the building or land on basis that the building was being designated as a protected structure. Proposal to including the building on the record of protected structures was ultimately rejected after two years.
- Dispute assertion that the actions of the local authority are positive and proactive. Dereliction notice and CPO issued back to back during Covid 19.
- Attempts were made to purchase the adjoining property however when this was unsuccessful and a plan to refurbish the building was prepared.
- Flower pots and window boxes to the front of the building are maintained on a weekly basis and lawn. The building was painted and is in good condition. Recent repairs were carried out to plaster work at the corner of the building.
- Refute allegation that planning application is being used as a shield.
- Respectfully request that the dereliction notice and compulsory order be rejected in light of the fact that the property is not in a derelict state. Application for planning permission clearly shows the intention to refurbish the property these efforts being hindered by the actions of the local authority.

4.0 Planning History

P20/623. Current application for material change of an existing former royal Irish Constabulary barracks to two number dwellinghouses, to include the upgrade, renewal and extension of the existing buildings, connection to the public infrastructure and all ancillary site works. Decision Due 19/11/2020.

5.0 Policy Context

5.1 Development Plan

5.1.1 The applicable development plan is the Limerick County Development Plan 2010-2016 (as extended) and The Patrickswell Local Area Plan 2015-2021. The site has a zoning objective Town Centre. The purpose of this zoning is to protect and enhance the character of Patrickswell town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the town centre while guiding the development of an expanded and consolidated town centre area. Any proposed retail development shall be in accordance with the provisions of the Retail Strategy for the Mid West Region, 2010-2016.

5.1.2 In respect of Derelict and Vacant Sites 10.2, the general approach is to seek timely actions and improvements of sites, through positive engagement with landowners, using powers under the Derelict Sites Act only where necessary, and taking into account:

- a) outstanding planning permissions,
- b) evidence of efforts to address vacancy and dereliction,
- c) security, safety to the public and condition of the site,
- d) the conservation value of the building and requirement for remedial restoration works, and
- e) the feasibility of various actions to make good the site, and find viable uses for the site.

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 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.

- 6.2 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 Barnakyle, Patrickswell. The Compulsory Acquisition report submitted with the application outlines the actions of the Local Authority and the statutory notices served on the owner in respect of the building. The Council stated that the property was first inspected in February 2019. A notice was served under Section 8(2) on 9th December 2019. A notice of entry into the register was served on the owner under 8(7) of the Derelict Sites Act on 28 February 2020. A notice of intention to acquire the site compulsorily was served on 12th June 2020 and a response received by HRA Planning on behalf of the owner Mr Christopher Fitzgerald outlining his strong objection to the Compulsory Purchase Order.
- 6.3 The objection outlines the main events since the owner acquired the property in May 2016 including the entry of the site onto the list of proposed protected structures in September 2016. The submission also notes that the property had been vacant and neglected for an approximate period of 15 years prior to the acquisition of the property and also includes site photographs dating from 2016. The owner outlines the difficulty and delays arising from the protected status of the structure between 2016 and October 2017 when the elected members of Limerick City and County Council ultimately decided not to designate the building as a protected structure. Based on the particulars of the case, I acknowledge the evident uncertainty with regard to the status of the building and the other particular difficulties arising with regard to works and travel restrictions as a result of the Covid 19 lockdown.
- 6.4 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 vacant appearance and is in a derelict state from the public road due to the fact that the windows and doors are boarded up. To the rear of the building there is rubble and building materials however this is not readily visible from the public road and I do not consider that the presence of this material is sufficient to materially detract from the

amenity or appearance of the lands in the vicinity and I consider therefore that the site does not fall within category (c) of Section 3 of the Act. I note that documents on file including photographic evidence demonstrates the efforts which have been made by the owner to improve the visual appearance of the building and maintain the property. I am satisfied however that the vacant state and derelict nature of the building is significant enough to detract to a material degree from the area within which the site is located.

6.5 Having regard to the above I consider that the site falls within category (a) of Section 3 of the Derelict Sites Act 1990 due to the existence on the land of a structure which is in a derelict condition. Thus, whilst the site remains in a derelict condition, which detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the current owners to restore the site and to render it no longer a derelict site, in terms of painting the provision of flower baskets and maintenance of lawn and grassed area, together with the pending planning application Planning Ref. P20623 due for decision on 19/11/2020 for material change of an existing three-storey former Royal Irish Constabulary barracks to two number dwelling houses, to include the upgrade, renewal and extension of the existing buildings, connection to the public infrastructure and all ancillary site works. These should be taken into account in this instance and on the basis of the circumstances of the case, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

6.6 Having regard to all of the information available on the file and the continued appearance and condition of the property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to bring the property back into use and to render it non-derelict, including cosmetic works to the exterior of the building and pending planning application ref 20/623 and that as such, sufficient time should be afforded to the notice parties to conclude these works. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Barnakyle, Patrickswell, Co. Limerick.

7.0 Recommendation

7.1 Having regard to the observed condition of the application site, in particular the derelict state of the structure thereon, I consider that the site detracts to a material degree 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.

7.2 However, having regard to the current application for planning permission under Reg. Ref. 20/623 for material change of an existing three-storey former Royal Irish Constabulary barracks to two number dwelling houses, to include the upgrade, renewal and extension of the existing buildings, connection to the public infrastructure and all ancillary site works and to the ongoing efforts being made by the Notice Parties to bring the property back into use and to address the dereliction of the site, I consider it unreasonable that the Local Authority seeks to compulsorily acquire the land, under section 14 of the Derelict Sites Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to compulsorily acquire the site.

8.0 Reasons and Considerations

8.1 Notwithstanding the current derelict and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account current planning application for material change of an existing three-storey former Royal Irish Constabulary barracks to two number dwelling houses, to include the upgrade, renewal and extension of the existing buildings, connection to the public infrastructure and all ancillary site works under P.A. Reg. Ref. 20/623, together with the evidence of the ongoing efforts by the Notice Parties to seek to address the issues of dereliction and to bring the property back into use, the Board decided that the acquisition of the site by the local authority is not necessary in order to render the site non-derelict and to prevent it continuing to

be a derelict site, and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

Bríd Maxwell
Planning Inspector

14th November 2020