



An
Bord
Pleanála

Inspector's Report ABP 309176-21

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

4 Colbert Terrace, Abbeyfeale, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

Murt McCarthy & Martin O'Donovan

Date of Site Inspection

10/05/21

Inspector

Pauline Fitzpatrick

1.0 Introduction

This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 4 Colbert Terrace, Abbeyfeale, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

The Board is advised that there is a concurrent request for consent for the compulsory acquisition of No.3 Colbert Terrace under ref. ABP 309171-21.

2.0 Site Location and Description

Colbert Terrace is in the centre of Abbeyfeale to the rear of Main Street and connects the Main Street (N21) with the R524. It comprises of a mix of single, dormer and two storey dwellings interspersed with commercial uses with rear accesses to properties that front onto Main Street.

Nos. 1, 2 and 5 Colbert Terrace are currently occupied. Nos. 3, 6, 7, 8, 9, 10 and 11 are in varying stages of dereliction, some of which have been acquired by the local authority or served with notices of intention to put the property on the derelict sites register. No. 12 is in use as a child care facility.

No. 4 comprises an end of terrace, two storey dwelling with side access to the rear. A wall stepping up in height delineates the boundary to No.5 to the south-east. There is no boundary delineation to No.3 to the north-west. The dwelling is served by a front garden with no boundary delineation to the footpath save for pillars delineating a vehicular entrance. Fencing has been erected along the front to prevent entry. The dwelling is vacant and in a poor visual state of repair. Wooden supports are in place to support the front wall with cracks evident. The window and door openings are boarded up. The 1st level openings to the rear are not secured. Whilst the roof is intact there is evidence of deterioration, notably to the rear. Several sections of guttering and soffits were either broken or missing. The rear garden was overgrown with rubbish evident. The area of ground to the front of the dwelling/front garden is in an unkept state although vegetation has been cut back.

3.0 Application for Consent for Acquisition

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. I note that this application is subsequent to the serving of notices under section 8(2) on the 5th March 2018 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7) on 13th November 2018 (advising of the Local Authority's decision to enter the site on the register of derelict sites).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

Notice of intention to acquire the site compulsorily was served on the owners of the property on 2nd November, 2020 and was published in the Limerick Post dated 7th November, 2020. The site is described as follows in the notices:

A derelict site comprising residential property at 4 Colbert Terrace, Abbeyfeale, Co. Limerick. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-044-18 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 notices are in accordance with the requirements of section 15(1)(a) of the Derelict Site Act, 1990, as amended.

4.2. Objection to Acquisition

The submission by O'Connor, O'Dea, Binchy Solicitors on behalf of the owner can be summarised as follows:

- There is a valid contract in place for the sale of the property (copy attached).
- It is the purchaser's intention to renovate the property as soon as possible after the closing of the sale.

- A stay on the compulsory acquisition is requested to allow for the sale to proceed to completion and time for the purchaser to apply for planning permission and carry out such works to bring the property out of dereliction.

4.3. **Local Authority's Application for Consent**

The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 8th January 2021 and is accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the planning authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection. The report includes photographs and a map of the site area.
- Copy of the section 15 Notice served on the owner of the site, dated 2nd November 2020.
- Copy of the newspaper notice, dated 7th November 2020.
- Copy of objection made by O'Connor, O'Dea, Binchy Solicitors, dated 4th February 2021.

The Compulsory Acquisition Report can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990, are used only where necessary, where all reasonable alternatives have been exhausted.
- There are no planning permissions for the property.

- Limerick City and County Council carried out an inspection on 31/01/18. The property was of a derelict nature and generally in a very poor condition with a large amount of vegetation to the front.
- Following a Section 8(2) notice the local authority received correspondence from the owners in March 2018 stating that the property was recently purchased and would be renovated in due course.
- The inspector for the area had ongoing discussions with the owners between March and November 2018. There was no progress made and the property was entered into the derelict site register.
- Numerous promises were made by the owners of the property that it was their intention to renovate it. There was no significant progress and no attempt to take the property out of dereliction between November 2018 and November 2020.
- The local authority has made significant progress in addressing dereliction in Colbert Terrace. Nos. 2, 6, 7 and 11 have been compulsorily acquired under the Derelict Sites Act, 1990.
- An objection to the notice was received from the owners.

4.4. Objectors' Submission

The submission made to the Board by O'Connor, O'Dea and Binchy Solicitors on behalf of the owners can be summarised as follows:

- The owners acquired the property on 31/10/17. A notice of intention to put the property on the derelict sites register was issued on 05/03/18.
- The owners have, at all times, cooperated with the local authority and explained that it was their intention to try renovate the property. They commenced this by clearing all rubbish, erecting supports in order to secure the building and securing the site. These works can be seen from the local authority's photos.

- The property went sale agreed on 04/11/20 which was prior to the owners receiving notice from the local authority as to its intention to compulsorily acquire the property. The purchaser is aware of the current position.
- The purchaser through his solicitor has expressed his intention of carrying out works and renovating the property to have it removed from the derelict sites register (copies attached). It is his intention to begin works at the end of June 2021, have the property up to roof level by end of December 2021 and completely habitable and out of dereliction by April 2022. It is his intention to apply for planning permission immediately once the sale is closed.
- The owners were not contacted prior to the issuing the notice.
- It is requested that the application to compulsorily acquire the property be declined to allow the owners to complete the sale and to allow the purchaser time to apply for planning permission and carry out the said works to bring the property out of dereliction.

5.0 Planning History

I am not aware of any planning applications on the site.

6.0 Policy Context

6.1. Limerick County Development Plan 2010-2016 (as extended)

Chapter 4 sets out the policies and objectives relating to housing. Section 4.8 relates to Regeneration of Vacant and Derelict Sites. The relevant objectives are as follows:

HOU O17 – to use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.

HOU O18 – to promote the re-utilisation of suitable redundant or obsolete structures in appropriate cases.

6.2. **Abbeyfeale Local Area Plan 2014-2020 (as extended)**

The site is within an area zoned Existing Residential

Section - 10.2 Derelict and Vacant sites

In relation to derelict and vacant sites, 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.

6.3. **Derelict Sites Act, 1990, as amended**

The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.4.2. 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.”

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

On the date of my site inspection internal access to the house was not possible. I carried out my site inspection from the public road and from the rear.

No. 4 Colbert Terrace comprises an end of terrace, two storey dwelling served by front and rear gardens. The dwelling is vacant and in a poor visual state of repair. Fencing has been erected along the front boundary and whilst with the windows and doors to the front elevation are boarded up the openings at 1st floor level are not secured. Timber supports are in place to secure the front elevation. Cracks in the front external wall are evident. The roof structure appears to be generally intact to the front but there is evidence of deterioration to the rear. Sections of the guttering and soffits are broken or missing. There is no delineation to the front boundary. The area of ground to the front of the dwelling/front garden is unkept although vegetation has been cut down/back. The rear garden is overgrown with rubbish evident.

As evidenced on day of inspection there is extensive dereliction in Colbert Terrace. I note that the local authority has initiated the provisions of the Derelict Sites Act on a number of properties with 4 no. compulsorily acquired to date.

I consider that the property falls within categories (a), (b) and (c) of section 3 of the Derelict Sites Act, 1990. In terms of (a) the structure is in a derelict condition with the timber supports to the front elevation suggesting issues in terms of structural stability and therefore safety. On this basis I submit that the property can be considered to be in a dangerous condition. I would not consider that the property can be considered ruinous. In terms of (b) the property is neglected and unsightly. With respect to (c) whilst the vegetation in the front garden has been cut back the rear is overgrown with dumping of rubbish evident.

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.

I note the actions of the Local Authority and the statutory notices served on the owners in respect of the dwelling. Section 8(2) notices were served on the owners on the 5th March 2018 advising of the Local Authority's intention to enter the site on the register of derelict sites. A notice under section 8(7) on 13th November 2018 was issued advising of the Local Authority's decision to enter the site on the register of derelict sites. A section 15(1)(a) notice was issued on 2nd November 2020 with a newspaper notice published 7th November, 2020.

The representation made on behalf of the owners indicate that they have taken steps to disposing of the property (in addition to No.3 Colbert Terrace) with sale agreed on 4th November, 2020. This was immediately after the serving of the notice. A deposit has been paid with signed contracts in place, copies of which have been provided. The purchaser has been advised of the serving of the notice and has expressed interest in proceeding with the sale. Correspondence on behalf of the purchaser confirms this interest. A timescale for the works to bring the property out of dereliction is also provided on his behalf. It is stated that he proposes to begin works at the end of June 2021, will be up to roof level by the end of December 2021 and will be completed by end of April 2022. He proposes to apply for planning permission for the refurbishment of the dwelling after the sale is closed.

In view of the evidence of the owners' efforts to sell the site and the purchaser's intentions in terms of refurbishment to bring the property out of dereliction, I consider that it would be appropriate to provide some further time for the site owners to complete the sale and thus enable the site to be redeveloped or repaired. I therefore recommend refusal of consent to the compulsory acquisition of the site in question.

8.0 Recommendation

Refuse consent to the compulsory acquisition for the following reasons and considerations.

9.0 Reasons and Considerations

Notwithstanding the current neglected, unsightly and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, having regard to the evidence provided by the site owners regarding their ongoing attempts to sell the property out of dereliction, the Board considered that it would be appropriate to provide some further time for the site owners to complete the sale and thus enable the site to be redeveloped or repaired. Therefore the Board decided to refuse consent to the compulsory acquisition of the site in question.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2021