



An
Bord
Pleanála

Inspector's Report ABP-309188-21

Nature of Application

Application for the compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act, 1990, as amended

Location

Neilan's Public House, Main Street, Bruff, Co. Limerick

Local Authority

Limerick City & County Council

Notice Party

Mary Burke

Date of Site Inspection

29th April 2021

Inspector

Hugh D. Morrison

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1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council (LCCC) for the consent of An Bord Pleanála to the compulsory acquisition of the site of Neilan's Public House, Main Street, Bruff, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.
- 1.2. Compulsory acquisition is sought as the site continues to be derelict within the meaning of the Act for the following reasons:
 - (a) The existence on the lands of structures which are in a ruinous, derelict or dangerous condition, and
 - (b) The neglected unsightly or objectionable condition of the land or any structures on the land in question.

2.0 Site Location and Description

- 2.1. The site is located on the western side and towards the southern end of the Main Street (R512) in the town centre of Bruff. This site is identical with the 0.013-hectare footprint of a street-fronted part three/part two-storey building with a single storey return. It is known as Neilan's Public House. The building is vacant and it appears to have last been used as a public house with accommodation above.
- 2.2. The front elevation of the part three-storey portion of the building has a "shop-front" at ground floor level, which comprises a five-light window with a door on the right-hand side. This "shop-front" is faced in brick and it is topped-off with a fascia sign underneath a shallow canopy. The first floor contains a pair of sliding sash windows and the second floor contains a squat boarded up window. On the right-hand side of the "shop-front" is an arched doorway with a panelled door and a fanlight above. Between first and second floor level and above this doorway is an arched sliding sash window.
- 2.3. The front elevation of the part two-storey portion of the building has a passageway through it at ground floor level. This passageway provides access to the rear of the building. It is entered via a large doorway, within which are hung a pair of timber doors. Above this doorway is a single sliding sash window, which aligns horizontally with the aforementioned arched sliding sash window.

- 2.4. Both portions of the building are enclosed by means of double pitched roofs, which are stepped in relation to one another. A large chimney straddles the ridge at the southern end of the main roof.
- 2.5. The single storey return projects from the rear elevation of the main building. It is enclosed by means of a double pitched roof, which is accompanied by a tall chimney in a position towards the said rear elevation. This chimney is propped by means of steel bars that are braced against this rear elevation, which contains four window openings.
- 2.6. The adjoining rear yard has not been edged red in the submitted indicative map.

3.0 Application for Consent for Acquisition

- 3.1. LCCC has applied to the Board for consent to compulsorily acquire the site under Sections 14 – 16 of the Derelict Sites Act, 1990, as amended. This application follows the service of notices:
 - Under Section 29, on 26th February 2018, seeking particulars of the estate and interest in the land,
 - Under Section 8(2), on 7th February 2019, advising of the Local Authority's intention to enter the site on the register of derelict sites, and
 - Under Section 8(7), on 23rd January 2020, 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

- 4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was issued on 2nd November 2020 and it was published in the Limerick Post newspaper on the 7th November 2020. This Notice described the site as follows:

A derelict site comprising of a former public house and over the shop accommodation at Neilan's Public House, Main Street, Bruff, Co. Limerick. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly

shown outlined in red on map bearing reference no. DS-057-18 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

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. Mary Burke is the Personal Representative of the deceased owner of the site, Irene Nolan. She objects to the compulsory acquisition of this site on the following grounds:

- The site forms part of the Estate of the deceased and, as such, it is required to be available for the discharge of the deceased's liabilities, bequests, and legacies.
- The perfection of the title to the site is pending with the Property Registration Authority.
- Subject to registration, there is an agreement in principle to the sale of the site.

4.3. Local Authority's Application for Consent

4.3.1. Following complaints concerning falling slates, vegetation, dumping, and vermin at the site, LCCC served a Section 29 notice in February 2018 to which the Objector responded. She stated that she is the executor of the will of the owner of the site, who died intestate in December 2014. LCCC advised her of the said complaints. However, no work has been carried out to address the same or the wider dereliction of the site.

4.3.2. The Objector advised LCCC in April 2020 that the Estate had been rectified and the site was to be placed on the market. However, this did not transpire.

4.3.3. LCCC served a Section 15 notice in November 2020, to which the Objector has responded as set out above. LCCC responds to her objection by drawing attention to the unsatisfactory situation that has persisted, unaddressed, on the site since

February 2018. In its opinion the site is derelict under Section 3 of the Derelict Sites Act 1990, as amended.

4.4. Objector's Submission

- 4.4.1. The Objector corrects LCCC's claim that the site has not been placed on the market. Subject to this site being registered in her name, an adjoining property owner has indicated her intention to acquire the site. Such acquisition would be acceptable.
- 4.4.2. The Objector responds to LCCC's charge of inaction by stating that the Estate of the deceased is of limited means and she, as the deceased's Personal Representative, has been acting in a voluntary capacity to resolve issues arising from her demise.
- 4.4.3. The Objector is intent upon the sale of the site to an adjoining property owner: This is evidenced by the fact that, whereas the deceased held an expired lease, she has acquired the freehold interest and it is this interest that awaits registration.

5.0 Planning History

5.1. Application Site

- 5.1.1. I am not aware of any relevant planning history on the site.

5.2. Surrounding Area

- 5.2.1. I am not aware of any recent relevant planning history in the surrounding area.

6.0 Policy Context

6.1. Derelict Sites Act 1990 (as amended)

- 6.1.1. The Derelict Sites Act 1990, as amended, makes provision 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.
- 6.1.2. 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.

6.1.3. Other relevant provisions of the Act are summarised below:

- 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 enter their sites on to this register.
- 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 functional area.
- Section 15 sets out arrangements for giving notice if the local authority intend to acquire a derelict site compulsorily.
- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it provides that, if an objection is made, then the derelict

site shall not be acquired compulsorily by the local authority without the consent of the Board.

6.2. Development Plan

- 6.2.1. Under Table 3.1 of the Limerick County Development Plan 2010 – 2016 (as extended) (CDP), Bruff appears in the settlement hierarchy as a Tier 4 town and village, and under Policy SS P9, the Planning Authority undertakes to support the sustainable development of Bruff.
- 6.2.2. Under Section 4.8 of the CDP, the regeneration of vacant and derelict sites is addressed: Objective HOU 017 states that LCCC will “use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.”

6.3. Local Area Plan

- 6.3.1. Under the Bruff Local Area Plan 2012 – 2018 (as extended) (LAP), the site is zoned town centre/mixed use and it lies within the town’s Architectural Conservation Area (ACA). The adjoining properties on either side are protected structures, i.e. RPS refs. 1017 & 1022. (The latter also appears in the NIAH under reg. no. 21803026).
- 6.3.2. Objective EH 1 states that LCCC will “protect, conserve and, where appropriate, enhance the ACA...Proposals for development within the ACA shall:
- (a) Reflect and respect the scale and form of existing structures within the ACA in proportioning, overall scale and use of materials and finishes, particularly with reference to the street frontages and seek to contribute to or enhance the character and streetscape of the ACA;
 - (b) Seek to retain/incorporate/replicate exterior features which contribute to enhance the character and streetscape of the ACA such as shop fronts, sash windows, gutters and down pipes, decorative plasterwork, etc.;
 - (c) Ensure priority is given to the pedestrian, to inclusive access, and to facilitating the improvement of the quality of the public realm...”
- 6.3.3. Objective EH 2 states that LCCC will “protect structures entered on to the RPS, or listed to be entered onto the RPS, and encourage their appropriate re-use and restoration. LCCC shall resist:

- (a) Demolition of protected structures in whole or in part,
- (b) Removal or modification of features of architectural importance,
- (c) Development that would adversely affect the setting of the protected structure.”

6.3.4. Under Section 3.5 of the LAP, a SWOT Analysis identifies one of the town’s strengths its “rich built fabric and traditional streetscape” and one of its weaknesses “high vacancy rate and associated neglect of buildings in the town centre.” Under Section 10.2, derelict and vacant sites are addressed. The presence of many buildings in the town which are vacant, neglected, and of poor appearance is acknowledged and so LCCC outlines the following general approach:

“...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 the condition of the site,
- (d) the conservation value of the building and the requirement for remedial restoration works, and
- (e) the feasibility of various actions to make good the site and find viable uses for the site.”

7.0 **Assessment**

7.1. I undertook a site visit on Thursday 29th April. While I was unable to view the mid-row subject building internally, I viewed it externally from public vantage points on the Main Street and from adjacent church grounds to the south-west. I was thus able to see the front and rear elevations of the building. Additionally, I was able to see into the covered passageway that runs from Main Street to the rear of the building.

7.2. I consider that this assessment should begin by addressing the substantial question as to whether the subject site is a derelict one within the meaning of “derelict site” in the Derelict Sites Act 1990, as amended. It should then address procedural matters and the objector’s case, along with my own commentary on the same.

(i) Is the site a “derelict site”?

7.3. LCCC seeks to compulsorily acquire Neilan’s Public House, as it considers this building to be a “derelict site” under Section 3(a) & (b) of the Derelict Sites Act 1990, as amended. This Section reads as follows:

“derelict site” means any land (in this section referred to as “the land in question”) which detracts, or is likely to detract, to a material degree from 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...

7.4. In relation to (a), during my site visit, I observed the following items of relevance:

- The rear roof planes to the part three-storey/part two-storey building are in a poor state of repair, due to either the loss of slates or their dislodgment. In this respect, the rear roof plane to the part two-storey portion of the building is in a particularly poor state of repair with perhaps a third of its slates missing, leaving its roof joinery exposed.
- The plasterwork ceiling to the covered passageway in the part two-storey portion of the building has partially collapsed leaving the timber joinery of the first floor above exposed.
- The tall chimney to the single storey rear return is propped by two steel bars that are braced against the rear elevation of the main building. These bars represent a structural intervention was made in the past to secure the stability of this chimney. Thus, it may well have been dangerous historically. In the absence of a structural report on the existing props, I am unable to comment upon their continuing efficacy.
- The end of a steel tie exists on the front elevation of the main building on the extreme left-hand side and at second floor level. This tie denotes that a structural intervention was made in the past to secure the stability of this building. Thus, it may well have been dangerous historically. In the absence of

a structural report on the existing tie, I am unable to comment upon its continuing efficacy.

7.5. I consider that the first and second of these items indicates that the building is in such a neglected/abandoned condition that it could reasonably be described as derelict and so Section 3(a) of the Derelict Sites Act 1990, as amended, is applicable.

7.6. In relation to (b), during my site visit, I observed the following items of relevance:

- With respect to the front elevation of the building:
 - Tiles to the cill of the five-light “shop window” are either missing, broken, or dislodged.
 - Paintwork to the “shop front” timber joinery comprised in the window, door, and door to the upper floors is weathered and faded.
 - The pair of doors to the passageway are in a severe state of disrepair: The bottom portion of either door has been broken and boarded over in an ad hoc manner and these doors have been secured in the closed position by the attachment of further boards, again, in an ad hoc manner.
 - Render to the jambs and the head of the doorway to the passageway is chipped and broken off. Render is also chipped and broken off below an adjacent downpipe, which does not extend to the adjoining pavement level.
 - Paintwork to the timber joinery of the upper floor windows is severely chipped and peeling.
 - The second-floor squat window opening is boarded up.
 - Grass hangs out of the rainwater gutter to the higher of the two roofs.
 - Several slates are either missing or have been dislodged from the front roof planes.
- With respect to the rear elevation (In addition to the items described under the first bullet point in my discussion of (a) above):
 - Render to the rear wall of the main building is in poor condition.

- The four window openings display either no window joinery, or window joinery with no glazing, which is open to the elements, or boarded up, or window joinery with glazing.
 - Grass hangs out of the rainwater gutter to the higher of the two roofs.
- 7.7. I consider that these items indicate that the building is in a “neglected, unsightly or objectionable condition” and so Section 3(b) of the Derelict Sites Act 1990, as amended, is applicable.
- 7.8. Under the Bruff Local Area Plan 2012 – 2018 (as extended) (LAP), the site is zoned town centre/mixed use and it lies within the town’s Architectural Conservation Area (ACA). The adjoining properties on either side are protected structures, i.e. RPS refs. 1017 & 1022. (The latter also appears in the NIAH under reg. no. 21803026).
- 7.9. Objective EH 1 states that LCCC will “protect, conserve and, where appropriate, enhance the ACA”. By contrast, the present condition of the subject building is detracting from the character and appearance of the ACA and the setting of the protected structures on either side of it.
- 7.10. In terms of Section 3 of the Derelict Sites Act, 1990 as extended, the building detracts to a material degree from the amenity, character and appearance of land in the neighbourhood of the site and so it is a “derelict site”.

(ii) Procedural matters, the objector’s case, and commentary

- 7.11. LCCC has identified the timeline for its actions to date. Thus, following receipt of complaints about the subject building, it proceeded as follows, under the Derelict Sites Act, 1990 as amended:
- Under Section 29, on 26th February 2018, to seek particulars of the estate and interest in the land.
 - Under Section 8(2), on 7th February 2019, to advise of the Local Authority’s intention to enter the site on the register of derelict sites.
 - Under Section 8(7), on 23rd January 2020, to advise of the Local Authority’s decision to enter the site on the register of derelict sites.
 - Under Section 15, on 2nd November 2020, to advise of the Local Authority’s intention to compulsorily acquire the site.

- 7.12. LCCC states that it was advised by the objector in April 2020 that the Estate of the deceased had been rectified and the site was to be placed on the market. However, this did not transpire.
- 7.13. The objector is the personal representative of the former owner of the subject building, who died intestate in December 2014. She objects to LCCC's compulsory acquisition of this building on the basis that it is required to be available for the discharge of the deceased's liabilities, bequests, and legacies.
- 7.14. The objector states that, whereas the deceased held an expired lease to the property, she has acquired the freehold interest and that, once registered, she intends to sell this property to an adjoining property owner who has indicated her intention to buy it. In this respect, first registration is pending with the Property Registry Authority (PRA) (Dealing Reference D2019LR018211P).
- 7.15. The objector counters LCCC's charge of inaction by explaining that she is acting in a voluntary capacity and that the Estate of the deceased is only of limited means.
- 7.16. By way of commentary, I note, on the one hand, the time that has elapsed since the deceased died and the absence of any remedial works to address the derelict state of the building. I note, on the other hand, the objector's acquisition of the freehold interest, its pending registration, and the in-principle agreement to purchase by an adjoining property owner. In this respect, I have accessed the Land Direct website of the PRA on 1st June 2021 to check on the registration of the property: Registration remains outstanding. Given the 2019 date of first registration, I consider that an inordinate period of time is elapsing in seeking to achieve this precondition for the anticipated sale.
- 7.17. I further note the absence of any information as to the use which the prospective owner of the property proposes for it and whether she would be in a position to remedy its dereliction.
- 7.18. On balance, I consider then that the compulsory acquisition of the subject building should be confirmed to ensure that the remedying of its derelict state can be expedited.

8.0 Recommendation

8.1. That the compulsory acquisition be confirmed.

9.0 Reasons and Considerations

Having regard to the derelict state of the site and to its neglected, unsightly and objectionable condition, the Board considers that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in Sections 3(a) and 3(b) of the Derelict Sites Act 1990, as amended, and that the compulsory acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it from continuing to be a derelict site. It is also considered that the objection made against such acquisition cannot be sustained, having regard to that said necessity.

Hugh D. Morrison
Planning Inspector

1st June 2021