



An
Bord
Pleanála

Inspector's Report ABP-309331-21

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

Main Street, Bruff, Co. Limerick

Local Authority

Limerick City & County Council

Notice Party

Patrick O'Donovan

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 for the consent of An Bord Pleanála to the compulsory acquisition of the site of a two-storey residential property, 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 reason:
 - (a) The existence on the lands of structures which are in a ruinous, derelict or dangerous condition.

2.0 Site Location and Description

- 2.1. The site is located on the western side and towards the northern end of the Main Street (R512) in the town centre of Bruff. This site extends over an area of 0.065 hectares and it accommodates a mid-row street-fronted two-storey building and a cleared area to the rear upon which a dance hall used to lie. This building is vacant, and it appears to have last been in use as a single dwelling house.
- 2.2. The main portion of the building is of rectangular form under a double pitched roof. Its front elevation has a door on the left-hand side and two sliding sash windows at ground floor level: A smaller one beside the door and a larger one further along the elevation. At first floor level there are three windows with top hung opening lights. Each of these windows is the same size and their head and cill levels align horizontally. They do not align vertically with the door and windows below. The roof is tiled, and a large chimney straddles the ridge in a central position.
- 2.3. The minor portion of the building is composed of a passageway with a first floor above under a double pitched roof, which is at a lower level than the roof to the main portion of the building and which is clad in corrugated sheets. A chimney is sited centrally on the exposed gable end to this roof. The entrance to the passageway is a large doorway with pillars on either side and a curved canopy above. The pillar on the right-hand side bears a plaque, which commemorates the fact that Sean O'Riada's debut concert was held in the dance hall to the rear in 1952. A timber door

encloses the doorway and a single window of horizontal rectangular form lies above it at the first-floor level under a parapet.

- 2.4. The rear elevation of the main portion of the building bears the imprint of a building with a mono-pitched roof, which was attached to it prior to its demolition. Within this imprint there is a door on the right-hand side and what appears to be a boarded-up door on its left-hand side. First floor windows are small, and they display a variety of shapes and informal positions in relation to one another.
- 2.5. The rear elevation of the minor portion of the building has an unenclosed doorway to the rear of the passageway and a first-floor window above. The rear roof plane has an eaves rather than a parapet detail.
- 2.6. The remainder of the site to the rear of the building has been cleared. The initial portion of this area maintains a hard surface under some debris, e.g. concrete, steel, timber, earth, etc. The subsequent portion has a concrete base on its left-hand side and vegetation on its central portion and right-hand side. The rear wall to this area includes the imprint of the building that was formerly on the site, too. Elsewhere, concrete blockwork walls or concrete fences denote the boundaries to this area. They separate it from the rear extension to a EuroSpar shop to the south and bungalow house plots to the north and west. The eastern portion of the northern boundary to this area is open “on the ground” and continuous with the area to the rear of the adjoining building to the north, which is the subject of ABP-309336-21.

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 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 3rd October 2018, advising of the Local Authority’s intention to enter the site on the register of derelict sites, and
- Under Section 8(7), on 9th June 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 16th November 2020 and it was published in the Limerick Post newspaper on the 21st November 2020. This Notice described the site as follows:

A derelict site comprising of a two-storey terrace residential property situate at 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-060-18 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. Patrick O'Donovan purchased the site from his brother in March 2017. Prior to this, it had been in the ownership of his family for two centuries. He intends to use the main building as a family home and remainder of the property as a community space in line with its historic use as a cinema/theatre/dance hall. A plaque commemorates Sean O'Riada's debut concert therein in 1952. In more recent years, the property was used as a residence and it was let out from time-to-time for business use.
- 4.2.2. Later in March 2017, the owner met with LCCC's Architectural Conservation Officer on-site and in May 2017 he appointed an architect to prepare survey drawings of the premises. In September 2020, the owner was advised of the need to appoint a conservation architect to take forward any works. As such architects are unavailable for at least a year, such progression has become protracted.
- 4.2.3. Shortly after purchase, the owner made an unsuccessful application to LCCC to include the property in its Repair and Leasing Scheme. A subsequent application, under the Painting Scheme, was successful.

- 4.2.4. In 2019, LCCC contacted the owner concerning clearing his site. A contractor was hired to secure some collapsed buildings to the rear of the site, which posed a safety threat to neighbours.
- 4.2.5. In September 2020, the owner discussed with LCCC what works would be necessary to remove the site from the Derelict Sites Register. Thereafter, a contractor was hired to undertake the works identified. These were completed within a month. Nevertheless, a Section 15 notice was still served upon the owner.
- 4.2.6. Attention is drawn to the emotional impact upon the owner and his family of LCCC's pursuit of compulsory acquisition. He questions the benefit of such acquisition to the local community. Instead, he requests that he be allowed to continue his family's involvement with the site into the future.
- 4.2.7. Attention is also drawn to the owner's place of residence in New York and yet his proactive approach to dealing with matters pertaining to the site.
- 4.2.8. Objection is raised to LCCC's Section 15 notice.

4.3. Local Authority's Application for Consent

- 4.3.1. Following complaints concerning the site, Limerick City and County Council (LCCC) served a Section 29 notice in February 2018 to which the Objector responded. LCCC was advised that Patrick O'Donovan had purchased the site in December 2017 and that he intended to apply for planning permission to have it redeveloped.
- 4.3.2. As no further contact from the owner was forthcoming, a Section 8(2) notice was served on 3rd October 2018 and the site was subsequently added to the Derelict Sites Register on 9th June 2020. The owner then contacted LCCC and a list of works were identified of which only a few were undertaken.
- 4.3.3. Particular attention is drawn to the rear of the site, which is full of rubble and which is the subject of complaints concerning vermin. The site has also been the subject of representations from the Bruff Tidy Towns. No planning application has been made for this site.
- 4.3.4. A Section 15 notice has been served on the owner. In his objection to it, he states that he has worked with LCCC to overcome the derelict state of his site. LCCC disputes that the works carried out have had this effect and it contends that no

serious effort has been made to overcome the dereliction. LCCC thus requests consent to compulsory acquire the site so that this can be done.

4.4. Objector's Submission

4.4.1. Background information:

- The chronology of events outlined in the owner's objection is summarised. Additionally, he states that one of the reasons for his purchase of the property was that he might repair it.

4.4.2. Purchase and redevelopment plans:

- Once Covid restrictions are lifted, a builder appointed by the owner will undertake works, which will meet conservation concerns and yet not require planning permission. Under Exhibit 2, these works are listed, as is a statement from the owner's deposit account, which illustrates the availability of funds. Additionally, in this respect, as the property is not the subject of a mortgage, funds could be raised, if needed, by way of a loan against it.

4.4.3. The application before the Board:

- While LCCC commenced the process of adding the site to the Register of Derelict Sites, the owner sought its advice on the works that were needed to overcome the dereliction. These works were undertaken. Nevertheless, as rubble remained to the rear of the site, the site was added to the Register.

4.4.4. Latest items identified by LCCC:

- LCCC's report dated 26th January 2021 refers to the rubble and vermin. The owner has thus engaged a contractor to remove the rubble and a pest control company to deal with any vermin. Exhibit 4 comprises invoice/dockets concerning the removal of the rubble and the findings of the pest control company. It also comprises a letter from the neighbouring EuroSpar, which indicates that vermin from the site have not been an issue for it, and a letter from Bruff Grange Meanus welcoming recent works to the site. Exhibit 5 comprises a similar letter of appreciation from Bruff Tidy Towns.

4.4.5. Further considerations:

- LCCC's Dereliction and Vacancy Team is committed to bringing properties back into use. The owner is actively involved in doing this for the subject site and so compulsory acquisition is unnecessary.
- LCCC's approach is to work proactively with owners and to use its compulsory acquisition powers only where necessary. Such necessity does not arise in this case.
- LCCC takes into account "evidence of efforts to address vacancy and dereliction" and "security, safety to the public and condition of the site". These factors have been attended to by the owner and so the site should be removed from the Register.
- LCCC's statement that "no serious effort has been undertaken to address the dereliction" is incorrect and fails to acknowledge works undertaken by the owner.

4.4.6. Fairness and equity:

- To compulsorily acquire the site is an extreme remedy that should be used as a last resort. Its use in this case is unnecessary, as the site has been cleaned up and it is no longer derelict. The application before the Board should thus be withdrawn.

4.4.7. Conclusion:

- The owner requests that the Board refuse LCCC's application to it.
- The owner questions why compulsory acquisitions are proceeding during the present pandemic, when many other procedures are in abeyance.

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 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 building on the site, known as O’Donovan House and Hall, and the adjoining building to the north, known as O’Donovan House, are both protected structures, i.e. RPS refs. 1003 & 1002. (The latter also appears in the NIAH under reg. no. 21803009).

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 LCC 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, which afforded to me the opportunity to see the inside as well as the outside of the building and the area to its rear.

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) 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...

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

- Externally:
 - Several tiles are either missing or have been dislodged from the top right-hand corner of the front roof plane.
 - Vegetation is growing around the top of the chimney on the main roof.
 - The roof to the minor portion of the building is clad in severely discoloured corrugated sheets. Some of these sheets are lifting from their positions at the lower end of the rear roof plane.

- Substantially ivy growth has taken hold of the rear elevation of both the main and minor portions of the building.
- No rainwater goods serve the rear elevations of the main and minor portions of the building.
- A timber soffit along the rear eaves line to the main portion of the building and first floor window joinery in the rear elevations of both the main and minor portions of the building is bare and unpainted.
- Stonework above and on either side of the imprint of the former attached building to the rear elevation of the main portion of the building is exposed. This imprint externalises what was an internal elevation. Plasterwork/paintwork has thereby been exposed and is stained/peeling. Timber lattice work is also exposed and what appears to be a doorway is boarded-up.
- Materials hang loose from the end of the roofline of the former attached building. This roofline forms a groove in the rear elevation of the main portion of the building.
- Internally
 - Paintwork and wallpaper are peeling and tearing/collapsing to varying degrees throughout ground and first floor rooms, which were formerly in habitable use. In places, plasterboard is left exposed and it is discoloured/stained.

- 7.5. In the light of these items, I consider 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. 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 subject building and the adjoining one to the north, which is the subject of ABP-309336-21, are protected structures, i.e. RPS refs. 1003 & 1002. (The latter also appears in the NIAH under reg. no. 21803009).
- 7.7. Objective EH 1 states that LCCC will "protect, conserve and, where appropriate, enhance the ACA". 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". By contrast, the present condition of the subject building is detracting from the character and appearance of the ACA and, as a protected structure, it is in pressing need of restoration.

- 7.8. 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

- 7.9. 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 3rd October 2018, to advise of the Local Authority's intention to enter the site on the register of derelict sites.
- Under Section 8(7), on 9th June 2020, to advise of the Local Authority's decision to enter the site on the register of derelict sites.
- Under Section 15, on 16th November 2020, to advise of the Local Authority's intention to compulsorily acquire the site.

- 7.10. LCCC states that, following service of the first of the above cited notices, it was advised by the owner that he had purchased the property in December 2017 and that he intended to make a planning application for its redevelopment. However, no application has been made. LCCC also states that, following service of the third of the above cited notices, the owner contacted it and a list of works was drawn up to remedy the dereliction. As only a few of these works were undertaken, LCCC proceeded to serve a notice of its intent to compulsorily acquire the site.

- 7.11. The owner objects to LCCC's proposal to compulsorily acquire his property. He outlines how he purchased this property from his brother in March 2017. It has been in his family for two centuries and he intends to use the main building as a dwelling house and the remainder of the site as a community space in line with its historic use as such. To this end, survey drawings of the premises were prepared, but, as

progression to the design stage is contingent on obtaining the services of a conservation architect, this has yet to happen.

7.12. The owner also outlines the following measures that he has undertaken:

- Following an approach from LCCC in 2019, he secured some collapsed buildings to the rear of the site, which posed a safety threat to neighbours.
- He successfully applied to LCCC, under its painting scheme, for funds to paint the front elevation of the building. Other works to this building were undertaken in accordance with a list contained in an email from LCCC dated 8th September 2020.
- In February 2021, he hired a contractor to clear the rear of the site of debris (cf. Invoice No. 0973 in Exhibit 4).
- Also, in February 2021, he commissioned a building contractor to prepare a proposal for renovations to the building and the adjoining one to the north (cf. Exhibit 2). The view is expressed that these renovations would not require planning permission and they would meet conservation objectives. Funding is available for them (cf. Exhibit 2).

7.13. The owner draws attention to his residence in New York and the difficulties of progressing matters from a distance and during a pandemic. He also draws attention to his family's ties with the property and he questions the need for LCCC to compulsorily acquire it when he is actively involved in seeking to remedy its dereliction.

7.14. By way of commentary, I note that, under Section 3 of the Derelict Sites Act 1990, as amended, three grounds are cited upon which a "derelict site" can be identified. The actions taken by the owner to date have entailed:

- Aesthetic improvements to the streetscape presence of the building, e.g. painting the front elevation, including window and door joinery, and the replacement of some windows and the repair of the front door.
- The demolition of buildings to the rear and the substantial clearance and removal of debris from the site.

These actions appear to fall under grounds (b) and (c) of Section 3. LCCC has served notice of its intend to compulsorily acquire the property under ground (b), which I have discussed under the first heading of my assessment.

- 7.15. I note, too, that the building not only lies within an ACA, but it is a protected structure. The owner has undertaken some works to the front elevation of this building, and he proposes to undertake further more extensive works to the entire building. The former works appear to have been the subject of email correspondence with LCCC, while the latter works appear to be at the initiative of the owner. In neither case is reference made to the provisions of the Planning and Development Act, 2000 – 2021, with respect to protected structures and, in particular, Section 57 and the need to obtain planning permission for any works that would materially affect the building or any element of it which is of conservation interest.
- 7.16. The owner reports that he met with LCCC's Architectural Conservation Officer in March 2017 and that he appointed an architect in May 2017 with a view to progressing his plans for the site. However, his architect advised him in September 2020 that he would need to obtain the services of a conservation architect. Such services can take up to a year to obtain. Nevertheless, I note from an email dated 26th May 2017 that the owner's architect undertook to obtain a quotation for the services of a suitably qualified conservation architect as an input to the proposal he anticipated preparing for the owner's review. Clearly, such services were indicated as being necessary at that point.
- 7.17. The owner also reports that he has commissioned a building contractor to prepare a proposal for renovations to the building and he expresses the view that these would not require planning permission and they would meet conservation objectives. In the light of Section 57 of the above cited Act, neither of these claims can be taken as self-evidently the case.
- 7.18. By way of review, the owner has undertaken the majority of items identified in LCCC's email correspondence dated 8th September 2020, he has yet to appoint a conservation architect, and he has had prepared a proposal for renovations to the building. Without prejudice to Section 57 of the Planning and Development Act 2000 - 2021, *prima facie* attendance to the remaining items on the list and this proposal would remove the remaining dereliction on the site.

7.19. The tension presented by the situation as reviewed relates to how the owner would “square the circle” of attending expeditiously to the removal of the remaining derelict and meet the requirements of Section 57 of the Planning and Development Act, 2000 – 2021. However, insofar as the Derelict Sites Act 1990, as amended, is concerned, I consider that the owner has shown some willingness to attend to the dereliction on site and, while the more substantive issue of the derelict state of the building remains outstanding, he has outlined a way forward and indicated that he has the means to deliver upon it. I, therefore, conclude that, on balance, he should be afforded the opportunity to do so.

8.0 Recommendation

8.1. That confirmation of the compulsory acquisition be refused.

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 Section 3(a) of the Derelict Sites Act 1990, as amended. However, the Board also considers that the owner has shown some willingness to attend to the dereliction on site and, while the more substantive issue of the derelict state of the building remains outstanding, he has outlined a way forward and indicated that he has the means to deliver upon it. Accordingly, the Board considers that it would be appropriate to afford him the opportunity to do so and so, in these circumstances, it would be premature to confirm the Local Authority’s compulsory acquisition of the site.

Hugh D. Morrison
Planning Inspector

2nd June 2021