



An
Bord
Pleanála

Inspector's Report ABP 309337-21

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

Ellen Street, Limerick

Local Authority

Limerick City and County Council

Notice Party

Gerard Madden & Seamus Madden,
Ellen Street Developments Ltd.

Date of Site Inspection

10/05/21

Inspector

Pauline Fitzpatrick

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 subject site at Ellen Street, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site which has an approx. area of 0.159 hectares, comprises an unfinished structure bounded by Ellen Street to the south, Carr Street to the east, Punch's Row (Mungret Street) to the north and an unnamed lane to the west in Limerick city centre. The area is characterised by a mix of uses with commercial to the east and south (including the Milk Market), and residential to the north and west. The site is to the south-east of the 'Opera Site' redevelopment project on which work has commenced.
- 2.2. The unfinished building of reinforced concrete and concrete block is 4/5 levels over basement. Netting covers the Ellen Street and Punch's Row elevations. Hoarding has been erected at street level with fencing to the vehicular and pedestrian accesses on Punch's Row preventing entry.

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. I note that this application is subsequent to the serving of notices under section 8(2) on the 7th May, 2013 advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7) on 13th February 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 owner of the property on 16th November, 2020 and published in the Limerick Post dated 21st November, 2020. The site is described as follows in the notices:

A derelict site comprising an unfinished multi-storey reinforced concrete structure situate at Ellen Street, 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-001-13 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 Sites Act, 1990, as amended.

4.2. Objection to Acquisition

The submission by Gerard Madden, Ellen Street Developments Ltd, can be summarised as follows:

- Permission was granted for development of the site under ref. 181077 on 18/07/19 with a subsequent fire safety certificate under ref. 20/FSC/D/1062 granted on 16/04/20. They were notified that the building had to comply with Part A (Structure) before they could commence full construction. They were granted a commencement notice to strengthen the building to comply with Part A and to clean up the facades of the building and make it safe.
- They are currently installing 18 tonnes of steel and 20,000 engineered concrete blocks for strengthening requirements. The work progress has been slow due to Covid-19 and the fact that the carpark has been continuously used by the apartments at Greengate House. It is hoped to complete the work before March/April 2021.

- The site cannot be classed as ruinous, derelict or in a dangerous condition as it is comparable to any construction site and is maintained daily. The rubbish in the adjacent lane is the property of the adjoining pub.
- The site cannot be classed as 'neglected, unsightly condition'. The facades of the building have been cleaned up and any dangerous hoarding/timbers removed as per permission (CN0053966LL) on 26/06/19.
- Currently Ellen Street is one large construction site. Once they are issued with the cert to comply with Part A they will have the construction completed before the Council has finished its development on the Opera site.
- As per Section 9 they have taken reasonable steps to ensure the land/site in question does not continue to be a derelict site and significant progress has been made in addressing the 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, received 29th January 2021, 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.
- Correspondence from the General Manager of Limerick Milk Market and CEO of Limerick Twenty Thirty in support.
- Correspondence from Josephine Madden, Director of IM Properties Ltd. stating that it is leasing the basement car park for 35 years.
- Copy of the section 15 Notice served on the owner of the site, dated 17th November, 2020.
- Copy of the newspaper notice, 21st November, 2020.
- Copy of objection made by Gerard Madden, Director of Ellen Street Developments Ltd.

The Compulsory Acquisition Report can be summarised as follows:

- Limerick City and County Council has 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.
- The site has been in a derelict condition for over 15 years.
- The site has had a negative impact on the Milk Market. It is adjacent to the Opera Site which is being developed by Limerick Twenty Thirty DAC. The adjacent Barrow House property has been leased by Limerick City and County Council to temporarily house the City Library with substantial funding spent on its refurbishment. The property will be returned to the market and an adjacent, unfinished multi-storey car parking will not be conducive to its future occupation.
- Permissions on the site date back to 2001. Permission was granted on appeal for a multi-storey car park with 4 no. residential units at roof top level and retail units at ground floor level. Retention permission was granted in 2004 for a 6 storey over basement mixed use development comprising underground car parking spaces, ground floor retail and 46 residential units on upper floors. The files show a dispute between Mr. Madden and the planning authority over various planning conditions. Planning Enforcement proceedings were heard in 2009/2010 in both District and Circuit Courts. The City and County Council received 6 incomplete planning applications for the site between 2010 and 2011. With no further planning application being made to complete the development and the site falling into dereliction, a derelict sites case was opened on the property in 2013

- Permission was granted in 2018 for a mixed used development of retail and residential with basement parking. A further permission was granted in 2019 for change of use of permitted retail units to a guest house.
- The site was entered on the Vacant Site Register in June 2018. This decision was appealed to An Bord Pleanála which upheld the decision.
- A section 29 notice under the Derelict Sites Act, 1990 was issued 03/05/13. The owner, Ger Madden, came forward and a section 8(2) was served on same on 07/05/13. Correspondence on foot of that notice cited planning permission issues as the reason the site should not be entered onto the Derelict Sites Register. Numerous meetings were held with the owner with a commitment given in 2013 that he intended to remove the site from dereliction. Detailed plans requested to address the dereliction were not provided.
- Numerous complaints were received about the site's derelict condition between 2013 and 2017.
- The site was added to the Derelict Sites Register on 13/02/18. Permission was granted to develop the site in 2018 with permission for amendments to the said permission granted in 2019
- An objection to the notice was received from the owner.
- The basis for the objection is that there is planning permission for the site. The construction of the site has been ongoing since 2001 with works on foot of multiple planning permissions over the past 20 years starting and stopping. The local authority afforded the owner time to carry out works on the foot of the permission granted in 2018. These are proceeding at an extremely slow pace and given the history of the site it has no confidence that the works will be completed. It is of the opinion that the owner is using the planning permissions on the site as a shield from the derelict sites process.
- The local authority received correspondence from Ms. Josephine Madden, Director of IM Properties, that it is leasing the basement of the building and using it as a car park. The said car parking was part of the planning

permission that was not completed. It is ancillary to the primary use of the planning permission granted and cannot be taken in isolation.

- The local authority continues to receive complaints.
- The local authority last met with the owner on 27/07/20. It did not receive adequate assurances that the development will be completed. The owner has been afforded adequate time to complete the development.
- Notwithstanding that planning permission exists on the site, owing to the history of non-completion of development over a 20 year period the local authority is not satisfied that this will result in the site being taken out of a derelict condition by the owner.

4.4. Objector's Submission/Observations

4.4.1. Ellen Street Developments Ltd. submission by Kieran O'Brien & Associates Solicitors on its behalf

The submission can be summarised as follows:

- It is unclear how the history of the site under previous ownership is relevant to the present situation. The site was sold in 2016 with 100% change in beneficial ownership.
- The Council's history omits any mention of its conduct and actions that have significantly contributed to the state of the site in 2016.
- A number of pre-planning meetings took place with the Council in 2016 and 2017.
- Permission was secured under ref. P18/168 for duplex apartments and retail units over basement car park. A Fire Cert was applied for this development on 17/09/18 and granted on 28/02/19.
- Change of use of the retail units to a guest house was granted under ref. P18/1077 on 18/08/19.
- Following meetings the Fire Department gave notice on 20/06/19 that the building needed to be certified to comply with Part A (Structure) before a Commencement Notice could issue.

- The Short Form Commencement Notice was submitted on 26/06/19 as advised.
- In July 2019 Building Control advised them not to commence works on the building until a fire cert was granted for the change of use from retail to guestrooms.
- In September 2019 draft plans were sent of the guestrooms to the Fire Authority. A further cert for the guest rooms was applied for and was granted 16/04/20.
- Covid 19 slowed work down with difficulty in obtaining skilled laborers and materials.
- €120,000 has been spent to make the building compliant such that a Structural Engineer would sign off on same. Approx. 80% of the work has been done.
- Once workers return to the site it is anticipated that the works will take 4 weeks to complete. Once the structural cert is in place the full commencement notice for planning permission P18/168 and P18/1077 can be submitted.
- It is expected that the project will take a year to complete which is well in advance of the permission expiration in July 2023.
- The letters of support from Limerick 2030 and the Milk Market are disingenuous in that they are, in essence, from the same body.
- The site is not in a ruinous, derelict or dangerous condition. Neither is the structure in an unsightly or objectionable condition.
- The site does not come within the criteria for Compulsory Acquisition and the local authority cannot invoke section 15. The local authority's decision making is inherently flawed and it is acting ultra vires.

Note: Photos submitted in support with reference made to a building in the vicinity.

4.4.2. **IM Properties Ltd.**

The submission can be summarised as follows:

- The local authority, in stating that the car parking element is ancillary to the primary use of the planning permission granted and cannot be taken in isolation, does not take into account condition 14 attached to planning permission ref. P00/44900 pertaining to the apartment block at Greengate House, Carr Street which requires 1 parking space per apartment in the adjacent car park be reserved to serve the development.
- The basement car park was completed in 2008 and used as a car park since. It was inspected by the Fire Department and the additional required work completed.
- The car park is covered by P04/600 retention and completion of mixed use development. The 'and' in the permission has clearly a legal conjunctive interpretation and not a conditional meaning as suggested by the Planning Department. In one of the many attempts to regularise the building the Council was looking for a planning fee of €80 per unit (apartment or shop). This proves that all the units are standalone and not ancillary as suggested by the local authority.
- The 2009 demolition order secured by the Council in the district court was thrown out in the Circuit Court. The judge found no basis in law for the lack of a commencement notice to invalidate a planning permission.
- The Council's misinterpretation of the law has hindered the completion of the development.
- The Derelict Sites Act does not apply to this site with the local authority using the wrong legal instrument to acquire this site.

5.0 **Planning History**

Ref. 18/168 - completion of the works comprising of a mixed development as follows:
(a) language school and seven retail shop units on ground floor; (b) five duplex 4 bedroom apartments and three duplex 6 bedroom apartments on first and second

floors; (c) basement with 24 private car spaces and (d) new connections to the mains public water and sewer. Permission was granted on 15 June 2018.

18/1077 – change of use of retail units 1-4 and 7 on the ground floor from that previously granted permission under 18/168 to a guest house. Permission was granted on 21st August 2019.

04/600 – retention and completion of mixed use development comprising of underground car park. 5 no. retail units and 46 apartments. Extension of duration of this permission was granted under ref. P.E. 10/1 until 31/12/11.

PL 30.129485 (PL01/261) – permission granted on appeal for multistorey car park with 4 residential units at roof level and 4 retail units at ground level.

Note: ABP-302168-18 - Section 9 appeal against Limerick City and County Council's intention to include the site on the vacant site register. The notice was confirmed on the 14/11/18.

6.0 Policy Context

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

The site is zoned city centre in the current plan.

Policy EDS.11 – to maintain an up to date Derelict Sites Register and to implement the provisions of the Derelict Sites Act 1990 to remove these sites from dereliction.

6.2. Derelict Sites Act, 1990, as amended

6.2.1. 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.

6.2.2. 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.”

6.2.3. 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**

7.1. Internal access to the structure was not possible and my inspection was conducted from the public roads bounding the site.

7.2. The structure to which the notice refers is 4/5 storeys over basement, largely of reinforced concrete construction. The design is reflective of the original multi-storey car park permitted on the site in 2001 under planning reference PL 30.129485

(PL01/261). The site is secured at ground level by metal hoarding along its frontage to Ellen Street and Carr Street and along part of Punch's Row. The vehicular and pedestrian entrances from Punch's Row are fenced off preventing access. Green netting is in place on the Ellen Street and Punch's Row elevations. The block work to Carr Street is unfinished. Railings along the roof edge were noted to be makeshift in places.

- 7.3. I note that correspondence from Josephine Madden of IM Properties Ltd. on file states that the building is being used as a private car park to serve apartments in the vicinity as required by a condition attached to the relevant permission. This was not evident on day of inspection and, as noted, no access was possible either by vehicles or pedestrians. I note that the Inspector in her assessment of the section 9 appeal against Limerick City and County Council's intention to include the site on the vacant sites register under ref. ABP 302168-18 observed that it was locked up on the day of her visit (4th October 2018). Notwithstanding, the purported use of the car park in terms providing parking spaces for an adjoining residential scheme as put forward in the IM Properties Ltd. submission cannot be considered for the purposes of dissuading dereliction.
- 7.4. The site is within an area characterised by a mix of commercial and residential uses including the residential schemes to the west and north, the Milk Market to the south, with the Limerick Twenty Thirty urban redevelopment project on what is referred to as the 'Opera Site' to the east.
- 7.5. I submit that the site does not present itself as a construction site and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area, which has been mitigated, to some extent, by the erection of the metal hoarding. My inspection was on 10/05/20. The construction industry had fully reopened (04/05/21) following lifting of Covid 19 restrictions. There was no building activity noted on the site.
- 7.6. Having regard to the above, I consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 in that it has a neglected, unsightly and objectionable condition. With regard to Section 3 (a) there is evidence that the structure is in a derelict condition and in a poor state of repair. Having inspected the site, I do not consider that there is any apparent evidence that the structure is in a

dangerous condition, or that it could be considered ruinous. There was no litter within the site or any evidence of waste being stored externally. Therefore it is considered that the site does not fall within category Section 3 (c).

- 7.7. In conclusion 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.
- 7.8. In considering whether a reasonable and fair approach has been undertaken by the local authority, it is necessary to document the main events and communications between the parties prior to it applying for the compulsory acquisition of the site.
- 7.9. Planning permission was granted in 2001 under ref. PL 30.129485 (PL01/261) for a multi-storey car park on 6 levels to accommodate parking for 167 cars with 4 no. retail units at ground floor level and 4 no. apartments on the top level. The applicant in that instance was Gerard Madden.
- 7.10. Construction commenced sometime after 2001 with Mr. Madden subsequently seeking and securing permission in 2004 for the retention and completion of a mixed use development on the site under ref. 04/770600 comprising basement parking, 5 retail units and 46 apartments. An extension of duration of the permission was granted under ref. P.E. 10/1 until 31/12/11.
- 7.11. There appears to have been issues arising from the development as permitted relative to that constructed with the Council issuing enforcement proceedings. Details on the said proceedings taken and heard in Court in 2009/2010 are not expanded upon on in the local authority's submissions. Correspondence from Josephine Madden of IM Holdings Ltd. refers to a demolition order granted by the District Court being struck out in the Circuit Court.
- 7.12. The local authority notes that the planning authority received 6 no. incomplete planning applications for the site between 2010 and 2011.
- 7.13. On foot of a Section 29 notice to ascertain the owner of the property in May 2013 and correspondence received in response to same, the local authority served a Section 8(2) notice on Mr. Madden on 07/05/13. The local authority states that it had a number of meetings with Mr. Madden regarding the site and consequent to same, was requested to submit a detailed plan on 2 occasions (August and October 2013) as to how he intended to address the dereliction. No submission was received.

- 7.14. In absence of detail to indicate otherwise it would appear that no further action occurred between 2013 and 2017 with no further work carried out on the site. Reference is made in the submission by Kieran O'Brien & Associates Solicitors to a number of pre-planning meetings in 2016 and 2017.
- 7.15. The site was added to the Derelict Sites Register on 13/02/18. Following engagement with Mr. Madden an application was made by Ellen Street Developments Ltd. for completion of a mixed use development on the site and was granted permission under ref. 18/168 on the 19/07/18 with amendments to the approved plans granted in 21/08/19 under a subsequent application ref.18/1077.
- 7.16. As per the objection made to the local authority Mr. Gerard Madden is the Director of Ellen Street Developments Ltd. I note that the site owner was stated to be IM Properties Ltd. in the Section 9 Appeal against section 7(3) against notice of intention to enter the site on the Vacant Sites Register under ref. ABP-302168-18.
- 7.17. The submission by Kieran O'Brien & Associates Solicitors on behalf of the owner (Ellen Street Developments Ltd.) received by the Board on 11/03/21 states that the client company purchased the site in 2016.
- 7.18. The submission set out the issues arising since the receipt of permission under ref. 18/168 notably that the applicant was advised not to submit a Commencement Notice until certification that the building complies with Part A (Structure) of the Building Regulations was attained. The applicant has spent €120,000 in making the building compliant with 80% of the works complete. This was undertaken during the Covid – 19 pandemic which has had a significant impact on progress of work. It is anticipated that once builders return to the site a period of 4 weeks would be required to complete the necessary works. Once the necessary structure certification is secured a Commencement Notice can be submitted. Fire certificates have been secured for the development. It is stated that the development will take in the region of a year to complete.
- 7.19. Whilst I would accept that the local authority engaged with the owner in an effort to bring the property out of dereliction, much of this effort appears to have been expended prior to the completion of the acquisition of the site in 2016. As per the correspondence from Kieran O'Brien & Associates Solicitors Ellen Street Developments Ltd. acquired the site in 2016 with a 100% change in beneficial

ownership. I note that this sale predates the insertion of the site on the Derelict Sites Register in 13/02/18.

7.20. Subsequent to same and as detailed above the site owner has secured permission to complete the mixed use development with communication with other sections of the local authority in terms of compliance with Building and Fire Safety Codes.

7.21. A comparison of the site as inspected on day of inspection and the historical photographs dating from 2016 and 2018 accompanying the local authority submission show that remedial works have been undertaken in the interim including:

- Replacement of hoarding along Ellen Street and Carr Street and new hoarding at the junction of Punch's Row and the lane bounding the site to the west.
- Elevational changes to the curved feature at the corner of Ellen Street and the lane.
- Alterations to the Ellen Street and Punch's Row elevations in terms of material changes to the upper level openings including removal of inserts.
- Remedial works including the removal of cladding to the concrete block work to the Carr Street elevation.
- Erection of green netting to the Ellen Street and Punch's Row elevations.

7.22. The local authority's concerns as to the length of time the site has been in a derelict condition and use of the planning process to circumvent the Derelict Sites Provisions are noted. I also note that a material period of time, in the region of 5 years, elapsed between the serving of the section 8(2) notice and the insertion of the site onto the Derelict Sites Register. The reason of the said time lapse is unclear.

7.23. Whilst the site remains in a neglected and unsightly condition which detracts materially from the amenity and character of the area to an unacceptable degree and constitutes a derelict site, I consider that having regard to

- a) the change of site ownership in 2016,
- b) the remedial works that have been undertaken on site since 2018 and the insertion of the site onto the Derelict Sites Register,

- c) the permission secured for the completion of the site in 2018 and the subsequent communications with the local authority in terms of building control and fire safety codes and,
- d) the works undertaken to date to meet the necessary structural requirements and to allow for a commencement notice to be submitted on the said development with due cognisance of the strictures imposed by the Covid-19 pandemic,

there is evidence that adequate efforts are being made to bring the property back into use and to render it non-derelict, and that as such, sufficient time should be afforded to the notice party to conclude these works. It is considered, therefore, that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and 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.
- 8.2. It is further considered that the acquisition of the site by the Local Authority is warranted in order to render the site non-derelict and to prevent it continuing to be a Derelict Site. However, having regard to the grant of planning permission by the Planning Authority under Reg. Refs 18/168 and 18/1077 for completion of the works comprising of a mixed development on the site and to the ongoing efforts being made by the Notice Party 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.

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, taking account of the grant of planning permission on the 15th day of June 2018 for completion of the works comprising of a mixed use development under planning authority register reference 18/168 as amended by the grant of planning permission on the 21st day of August 2019 under planning register reference 18/1077, with the evidence of the ongoing efforts by the Notice Party to seek to address the issues of dereliction and to bring the property back into use, the Board considered that it would be appropriate to provide further time for the site owner to carry out the development 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.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2021