



An
Bord
Pleanála

Inspector's Report ABP-310353-21

Development

A derelict site comprising two residential cottages and surrounding lands of approx. 0.332 hectares

Location

Convent Road, Abbeyfeale, Co. Limerick

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

DS-119-19

Notice Party

John Ward

Date of Site Inspection

16th September 2021.

Inspector

Bríd Maxwell

1.0 Introduction

- 1.1 This file relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of a site at Convent Road, Abbeyfeale 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 which extends to 0.348 hectares comprises the site of a pair of semi-detached single storey cottage type dwellings fronting onto Convent Road the N21 on the eastern approach to Abbeyfeale Town Centre in County Limerick.
- 2.2 The buildings are set back from the public road and are adjoined by residential properties to the east and west. The westernmost cottage has a porch protrusion to the front. To the rear of the dwellings flat roofed annex structures are overgrown with vegetation. Windows are largely in place some to the side elevation are boarded up and high-level glazing over the front porch is broken. A central chimney straddles the roof ridge. To the rear the site is grassed and somewhat overgrown. Levels fall to the north and the overall site extends along a laneway running north from the N21.

Access from the N21 is by way of a vehicular entrance towards the western end of the site frontage.

3.0 Application for Consent for Acquisition

- 3.1 Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act 1990, as amended. According to the documentation on file, the site was entered onto the Local Authority Derelict Sites Register on 23rd day of June 2020.

3.2 Application & Objection

3.2.1 Notice of Intention to Acquire

- 3.2.1.1 Notice of Limerick City and County Council's intention to acquire the site compulsorily is stated to have been served on the owner /occupier/lessee of the site on the 20th of April 2021 and published in the Limerick Post newspaper on the 10th of April 2021. The site was described as follows in the notices:

"A derelict site comprising two residential cottages and surrounding lands at Convent Road, Abbeyfeale Co Limerick, containing an area of 0.332 hectares. The said property and surrounding land is in a state of dereliction. The said development site is more particularly shown outlined in red on map bearing reference no DS-1199-19

in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.”

3.2.2 I consider that the notice is generally in accordance with the requirements of Section 15 of the Derelict Sites Act 1990, as amended.

3.2.2 Objection to Acquisition.

3.2.2.1 An objection to the proposed acquisition was received in writing by the Local Authority on the 6th day of May 2021 from the owner of the site, John Ward Convent Road Abbeyfeale. The grounds of objection are outlined as follows:

- Full planning permission has been granted to build on the site.
- Contractors have been awarded the contract to carry out construction on the site.
- Due to the Covid 19 lockdown the contractors are only recently back to work on the site.
- Work is ongoing on the site to improve the appearance.

3.3 Local Authority's Application for Consent

3.3.1 The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 26th May 2021 and was accompanied by the following.

- Compulsory acquisition report which sets out the Local Authority's strategic approach to derelict sites, a description of the site, the background to the case and details of the objection.
- A map of the proposed site and photographs

- Copy of the notice served on the owner dated 31st March 2021
- Copy of Newspaper Notice dated 10th April, 2021
- Copy of the objection received from Mr John Ward dated 6th May 2021
- Letter of acknowledgement of receipt of objection dated 12th May 2021

3.3.2 The Local Authority outlines its case for consent as follows:

- In 2017 Limerick City and County Council established a new team to take an area based and collaborative approach to addressing vacancy and dereliction in Limerick City and County. The approach seeks to work proactively with property owners to seek timely actions and improvements of sites through positive engagement using powers under the Derelict Sites Act 1990 only when necessary.
- Following inspection of the property on 19th August 2019 it was identified by the inspecting officer as a derelict site under Section 3 of the Act.
- Ownership of the site was established and a Section 8(2) letter of enquiry issued to the owner. There was no response to this letter.
- A Section 8 (7) Notice of entry of the particulars of the land in the derelict sites register was served in June 2020 and no response was received.
- There was correspondence with the owner in December 2020 and subsequently representations were made on his behalf by elected representatives.
- The site has a neglected look and is in an unsightly condition. There is an amount of vegetation / overgrowth of the land and structure. Attempts to screen the site with

metal fencing and plywood have further added to the objectionable nature of the site in question.

3.4 Owner's Submissions

3.4.1 In response to the application to the Board for consent to compulsorily acquire the site at Abbeyfeale, the owner was afforded an opportunity by the Board to comment on the application. A submission was received from the owner Mr John Ward on 21st June 2021. Objection to the proposed compulsory acquisition is outlined and summarised as follows:

- Owner's intention is to carry out major refurbishment on the cottages and surrounding grounds.
- It is intended to have work completed by next August and photographs will be forwarded to Limerick County Council and An Bord Pleanála on completion.

4.0 Planning History

P18/524. Permission granted 10th July 2018 to (a) combine two cottages into one dwelling house, (b) demolish existing front porch and rear extensions, (c) construct a rear extension, (d) Elevation changes and internal alterations and all associated site works.

5.0 Policy Context

5.1 Development Plan

5.1.1 The applicable development plan is the Limerick County Development Plan 2010-2016 (as extended) and The Abbeyfeale Local Area Plan 2015-2021. The site has a zoning Existing Residential R2. The purpose of this zoning is to ensure that new

development is compatible with adjoining uses and to protect the amenity of existing development areas.

5.1.2 In respect of Derelict and Vacant Sites at 10.2, the general approach is to seek timely actions and improvements of sites, through positive engagement with landowners, using powers under the Derelict Sites Act only where necessary, and taking into account: a) outstanding planning permissions, b) evidence of efforts to address vacancy and dereliction, c) security, safety to the public and condition of the site, d) the conservation value of the building and requirement for remedial restoration works, and e) the feasibility of various actions to make good the site, and find viable uses for the site.

5.2 Derelict Sites Act, 1990, (as amended)

5.2.1 The Derelict Sites Act includes provisions to prevent land from being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to undertake measures to derelict sites and, in certain circumstances, to acquire derelict sites compulsorily. Section 3 of the Act provides a definition of a 'derelict site' as follows: 'any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of - (a) the existence on the land in question of structures which are in a ruinous, derelict, or dangerous condition, or (b) the neglected, unsightly, or objectionable condition of the land or any structures on the land in question, or (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by statute or by common law'.

5.2.2 Section 8 of the Derelict Sites Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on relevant occupiers/owners of their intention to do so. Under the terms of section 9, every owner and occupier of land are required to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 of the Act places a similar duty on Local Authorities to take all reasonable steps, including

the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site. Local Authorities may serve notice on an owner or occupier of land under section 11 of the Act, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 enables a Local Authority to acquire by agreement or compulsorily any derelict site situated in their functional area. Section 15 sets out arrangements for giving notice, if the Local Authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner or occupier wish to object to the acquisition. Where an objection is made, section 16 of the Act states that a derelict site shall not be acquired compulsorily by the Local Authority without the consent of An Bord Pleanála.

6.0 Assessment

- 6.1 The matters to be addressed relate to the question of whether the site constitutes a derelict site under the meaning of Section 3 of the Derelict Sites Act 1990 as amended and whether the Local Authority adopted a fair and reasonable approach in its actions on the case.
- 6.2 In considering the approach of the Local Authority, and the question of whether a reasonable and fair approach was adopted, I note the main events and communications prior to the local authority applying for the acquisition of the site at Convent Road, Abbeyfeale. The Compulsory Acquisition report submitted with the application outlines the actions of the Local Authority and the statutory notices served on the owner in respect of the building. The Council stated that the property was first inspected on 19th August 2019. A notice was served under Section 8(2) on 22 November 2019. A notice of entry into the register was served on the owner under 8(7) of the Derelict Sites Act on 23 June 2020. A notice of intention to acquire the site compulsorily was served on 10th April 2021 and a response received from the owner Mr John Ward outlining his objection to the Compulsory Purchase Order. I note that the local authority submission outlines that there was further

correspondence with the owner in December 2020 and representations made by elected members on his behalf.

- 6.3 Based on the particulars of the case, I am satisfied that the Local Authority took reasonable steps to make the owners aware of its concerns in relation to the condition of the site, including the intention to include the site in the Derelict Sites Register and to compulsorily purchase the site. I note that there is no evidence of a Section 11 notice directing the owner to undertake specified measures however I am satisfied that negotiations to resolve the matter have been exhausted.
- 6.4 Regarding the question of whether the site falls within the definition of a 'derelict site' within the meaning of the Act, I submit based on photographic images available from Local Authority from inspections over the period from August 2019-March 2021 that it is evident that the property has remained in a derelict state over this protracted period of time. Following my site inspection on 16th September 2021 I consider that notwithstanding more recent works the building appears neglected and unsightly. I am satisfied that the appearance is significant enough to detract to a material degree from the area within which the site is located. Having regard to the above, I consider that the site falls within the category (b) of Section 3 of the Derelict Sites Act 1990, as amended, due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a) this refers to structures which are ruinous derelict or dangerous condition. Having inspected the site, I consider that while there is evidence that the structure is in a derelict condition and poor state of repair it is not in a ruinous state. Having regard to the above I consider that the site falls within category (a) and (b) of Section 3 of the Derelict Sites Act 1990 due to the land and structure being in a derelict, neglected, unsightly and objectionable condition. 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.
- 6.5 The objection outlines that it is the owner's intention to renovate the existing cottages. The owner outlines difficulties and delay in terms of the building work arising from the Covid 19 lockdown and that work is ingoing in improving the appearance of the site. I note that on the date of my site visit Thursday 16th

September 2021 there was no evidence of building works on that day on the site. A comparison of the site as inspected on that day and historical photographs dating from 2019-March 2021 accompanying the local authority submission show that a number of remedial renovation works have been undertaken in the interim including:

- Removal of hoarding and fencing to front roadside boundary.
- Construction of front roadside boundary wall closing up of second vehicular entrance
- Repair and renewal and painting of chimney
- Removal of boards to a number of windows and repair of some windows
- Installation of fascia and soffit, gutters and downpipes to front elevation
- Painting and repair of roof tiles

6.6 Having regard to all of the information available on the file and the continued appearance and condition of the property, it is concluded that while the property constitutes a derelict site it is considered that there is evidence that adequate efforts are being made to bring the property back into use and to render it non-derelict, including building and repair works to the exterior of the building and that as such, sufficient time should be afforded to the notice party to conclude these works. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Convent Road, Abbeyfeale, Co. Limerick.

7.0 Recommendation

7.1 Having regard to the observed condition of the application site, in particular the derelict state of the structure thereon, I consider that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood

and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.

7.2 However, having regard to the planning permission under Reg. Ref. 18/524 for permission to (a) combine two cottages into one dwelling house, (b) demolish existing front porch and rear extensions, (c) construct a rear extension, (d) Elevation changes and internal alterations and all associated site works, 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.

8.0 Reasons and Considerations

8.1 Notwithstanding the current derelict and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account permission to (a) combine two cottages into one dwelling house, (b) demolish existing front porch and rear extensions, (c) construct a rear extension, (d) Elevation changes and internal alterations and all associated site works under P.A. Reg. Ref. 18/524, together 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 decided that the acquisition of the site by the local authority is not necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site, and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

Bríd Maxwell
Planning Inspector

21 September 2021