



An
Bord
Pleanála

Inspector's Report ABP-310680-21

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

68b St. Brendan's Park, Coolock,
Dublin 5

Local Authority

Dublin City Council

Notice Parties

John McHale

Objector

John McHale

Date of Site Inspection

11th December 2021

Inspector

Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This case relates to a request by Dublin City Council for the consent of An Bord Pleanála to the compulsory acquisition of a site in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is the curtilage of a detached, two-storey house in a suburban part of Dublin c6km north of the city centre. The stated area of the site is 172m². It occupies a corner plot on a minor street in an area developed for low density housing in the mid-20th century. The street on which it lies runs parallel to the Malahide Road, a main arterial road that does not have frontage development in this part of the city.
- 2.2. Most of the houses in the area are semi-detached or in short terraces. They appear to have been built in the third quarter of the 20th century. The house on the site is one of two detached dwellings at the corner of St. Brendan's Park and St. Brendan's Avenue. They are similar in scale and design to the other houses in the vicinity. Their detachment and situation on corner plots indicate that they were recent additions to the streetscape, which is consistent with the planning history of the site.
- 2.3. At the time of inspection, demountable steel railings c2m high were attached to the inside of the lower front boundary wall between the site and the street. A wooden gate c2m high had been erected across the access to the site. It was boarded shut. The doors to the house on the site were boarded up. The open space on the site had not been seeded or planted as a garden. Nor had it been paved to provide pedestrian access or car parking for the house. However it did appear that vegetation on the site had been cut back.

3.0 Legislation

- 3.1. 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 land owners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.
- 3.2. 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.”

- 3.3. 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 wishes 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.

4.0 Development Plan

- 4.1. The Dublin City Development Plan 2016-2022 applies. The site is zoned residential under objective Z1.

5.0 Planning History

- 5.1. The planning register indicates that the council granted permission for a house to the side of 68a St. Brendan's Park in August 2004 under reg. Ref. 3053/04, and for alterations to a house there in August 2005 under Reg. Ref. 2980/05.

6.0 Entry onto Register

- 6.1. The council entered the site onto the Register of Derelict Sites on the 2nd June 2016.
- 6.2. The documents submitted by the council indicate that the site had previously been on the register between November 2013 and June 2015. They also say that the council had, since the re-entry of the site onto the register in 2016, attempted to acquire the site by agreement and given notice of its intention to acquire the site compulsorily prior to the issuing of the notice to which the current request relates.

7.0 Intention of the Council to Acquire the Site Compulsorily

- 7.1. The council decided by order on 31st March 2021 to acquire the site compulsorily.
- 7.2. On the 15th April 2021 the council published a newspaper notice under section 15 of the act of its intention to acquire the site. The details submitted by the council include a receipt from An Post indicating that registered post sent by the council could not be delivered and was returned to the council.
- 7.3. On 19th May 2021 the council received a letter from solicitors acting from Mr John McHale stating that he had sight of the council's letter of 15th April 2021 and that his son Ian McHale was residing at the property and would do so for the foreseeable future. The council considered this letter to be an objection to the proposed compulsory acquisition under section 16(1) of the act and so applied to the board for consent to so acquire the site under section 16(4) of the act.

8.0 Application for Consent to Acquisition

- 8.1. Dublin City Council applied to the Board on the 18th June 2021 for consent to compulsorily acquire the site under section 14 of the Derelict Sites Act, 1990, as amended. The letter accompanying the application stated that the door and

windows at ground floor level on the house on the site had been boarded up and the gardens were overgrown, so the property had a neglected and unsightly appearance that detracted to a material degree from the amenity, character and appearance of the land in the neighbourhood. It responded to the objection had been submitted by Mr McHale by stated that the site was inspected on 19th May, 10th June and 17th June 2021 and that the condition of the site remained unchanged and it did not appear that anyone was living in the house then. The covering letter and other documents submitted with the applicant gave an account of the council's dealings in relation to the site since 2008.

9.0 Submission

9.1. The board received a submission from Mr John McHale on 23rd July 2021. It stated that the house was being renovated and would be restored to habitable condition in the following few weeks. Works commenced on 21st July 2021 with the removal of boards from the windows. New doors are on order and a digger would clear the garden. An engineer had been appointed to address drainage issues

10.0 Assessment

10.1. The house on the site is not in a ruinous, derelict or dangerous condition. There was some rubbish on the site at the time of inspection. It consisted of a few pieces of litter and the remnants of cut vegetation. The presence of a such a small amount of that type of rubbish would not be exceptional in the garden of an occupied and maintained house. So the site would not be derelict under the criteria set out at sections 3a) or 3c) of the 1990 act.

10.2. Nevertheless, the condition of the land on the site is neglected, unsightly and objectionable so that it detracts to a material degree from the amenity, character and appearance of the neighbourhood. It is therefore a derelict site under section 3b) of the act. The appearance of the site at the time on inspection was not consistent with a conclusion that the house was occupied as someone's dwelling, notwithstanding the submissions from the objector. However the criterion for dereliction at section 3b) of the act is not whether a house on the site is occupied. The curtilage of a vacant house is not necessarily a derelict site. It is the physical condition of the

current site that renders it a derelict site under section 3b) of the act. The erection of high gates and railings between the site and the street; the boarding up of the gates and doors that would normally provide access to a house so that it could serve its residential function; and the failure to plant or otherwise treat the space around the house and along its boundary with the public street in the manner required for the curtilage of a house, all give the site a neglected, unsightly and objectionable appearance. The situation of the site at a prominent corner location within an established residential area exacerbates the injury arising from the condition of the site which detracts from the amenity, character and appearance of the neighbourhood to a material degree. I am therefore satisfied that the site is a derelict site under the 1990 act.

- 10.3. The question then arises as to whether the compulsory acquisition of the derelict site by the council is justified. In this regard it is noted that the site has been on the register continuously since June 2016. The person who owns the site has been afforded reasonable time to remedy its dereliction. Given the length of time that the site has been on the register, it is not considered that there a reasonable prospect that the dereliction of the site will be remedied without a change in its ownership, notwithstanding the submission made by the objector in this case. The dereliction of the site is causing an ongoing injury to the public good due to the damage that it causes to the character, appearance and amenity of this neighbourhood in the city. It frustrates the use of the land in accordance with its residential zoning under the city's development plan. It also injures the residential amenities of neighbouring properties. The infringement on property rights that would arise from the compulsory acquisition of the site is provided for in legislation, would serve a public good and would be proportional to the achievement of that good. The compulsory acquisition of the site by the council would therefore be justified by the exigencies of the common good.
- 10.4. Having regard, therefore, to all of the information available on the file, the exigencies of the common good and the continued appearance and condition of the site, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at 68b St. Brendan's Park, Coolock, Dublin 5 is granted.

11.0 Recommendation

11.1. I recommend, therefore, that the Board grant consent to Dublin City Council to compulsorily acquire the site.

12.0 Reasons and Considerations

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

Stephen J. O'Sullivan

Planning Inspector

19th December 2021