



An
Bord
Pleanála

Inspector's Report ABP-310714-21

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

End of terrace two storey and single storey building and surrounding land at Inglenook, Bruff, Co. Limerick

Local Authority

Limerick City & County Council

Notice Party

Thomas Murphy

Date of Site Inspection

11th August 2021

Inspector

Hugh D. Morrison

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1.0 Introduction

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

2.0 Site Location and Description

- 2.1. The site is located to the south of the town centre of Bruff and to south of the Morning Star River. It extends over an area of 0.016 hectares, and it encompasses the footprint of a two-storey building with a single storey extension on its western side and a narrow strip of land to the rear of this building and its extension. The building is one of three street-fronted buildings which form a terrace, and which are sited on the southern side of a local road (L1413) which extends eastwards from the regional road (R512) to the west of the site. This terrace is overlooked by a formally laid out community park on the opposite, northern side of the Morning Star River from it.
- 2.2. The front elevation of the two-storey building maintains two ground floor and two first floor windows, which align vertically and horizontally. The front elevation of the single storey extension maintains a solid timber panelled door and two windows which align horizontally with the ground floor windows in the two-storey building. While each window is boarded up, the ground floor ones retain their cast iron sill guards. Cast iron rainwater goods are also in-situ.
- 2.3. The front elevations and the exposed western side elevation are finished in smooth render, which appears to have been repainted recently. The boarded-up windows

have, likewise, had painted vertical and horizontal glazing bars added. The two-storey building has a slated, double-pitched roof with a straight gable end rising to a chimney stack. Several slates in the front roof plane are either missing, dislodged, or broken. The gable end and chimney stack are rendered. The single storey extension has a slated double pitched roof with a fully hipped gable end.

- 2.4. The rear elevation of the two-storey building is overgrown with vegetation, which largely obscures the openings within it from external view. The rear elevation of the single storey extension is finished in rough cast render. There are two window openings within this elevation: one maintains a window and one is open to the elements. Vegetation extends across this elevation at eaves level.
- 2.5. Internally, vegetation has invaded the two-storey building through the openings in its rear elevation. Dislodged or broken windows and doors in this elevation are evident. The resulting exposure to the weather has resulted in extensive peeling of wallpaper and paint from surfaces and the deterioration of floor coverings. Existing fixtures and fittings also display the effects of such exposure and neglect.

3.0 Application for Consent for Acquisition

- 3.1. LCCC has applied to the Board for consent to compulsorily acquire the site under Sections 14 – 16 of the Derelict Sites Act, 1990, as amended. This application follows the service of notices:
 - Under Section 29, on 22nd March 2018, a notice was affixed to the site seeking confirmation of ownership of the property. On 25th June 2018 Thomas Murphy contacted LCCC to confirm his ownership of the site,
 - Under Section 8(2), on 10th September 2020, advising of the Local Authority's intention to enter the site on the register of derelict sites, and
 - Under Section 8(7), on 12th November 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. Under Section 15(1), notice of LCCC's intention to acquire the site compulsorily was issued and it was published in the Limerick Post newspaper on the 7th November 2020. This Notice described the site as follows:

A derelict site comprising an end of terrace, two-storey and single storey premises and surrounding land situate at Inglenook, Bruff, Co. Limerick, containing an approximate area of 0.020 hectares. 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-065-18 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 notice was 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. In a letter dated 2nd June 2021, Thomas Murphy, the owner of the site, objects to its compulsory acquisition on the following grounds:

- Renovations are about to start, beginning with the cleaning/replacing of rainwater goods, the repainting of the exterior, and the cutting back of overgrown vegetation,
- The original derelict site notice was defective insofar as it included lands that lie outside his ownership, and
- The original derelict site notice was addressed to "owner unknown" notwithstanding his payment of Local Property Tax on the property.

4.3. Local Authority's Application for Consent

- 4.3.1. LCCC begins by outlining its philosophy and approach to tackling dereliction: only where all reasonable alternatives have been exhausted is recourse had to compulsory acquisition. Since 2017, 131 properties have been the subject of such acquisition and, in 2020, LCCC received funding from the Rural Regeneration

Development Fund to tackle dereliction in towns such as Bruff by means of housing demonstrator projects.

- 4.3.2. Historically, the building on the site formed part of the Cadbury Arms Hotel, although it is presently vacant having been last used as a dwelling house. When photographed in September and November 2020 and April 2021, this building exhibited multiple signs of neglect, e.g. slates in need of repair, blocked gutters, boarded-up windows, and the absence of external cleaning/repainting.
- 4.3.3. LCCC first identified the site as being derelict in December 2017. Unsuccessful enquiries were made as to ownership and so a Section 29 notice was affixed to the site on 22nd March 2018. Thomas Murphy confirmed his ownership of the site in a letter dated 25th June 2018. He also confirmed his commitment to improve the property, which was subsequently painted. As he had indicated his interest in selling, LCCC advised him of a potential purchaser in March 2019.
- 4.3.4. On 10th September 2020, LCCC served a Section 8(2) notice of its intention to enter the land on its Derelict Sites Register. On 22nd September 2020, the owner responded: he enquired about the remedial measures and indicated his willingness to sell. LCCC replied and invited him to make contact by phone.
- 4.3.5. The Bruff Tidy Towns Group made representations concerning the need to improve the property. No substantial works were undertaken.
- 4.3.6. On 12th November 2020, LCCC served a Section 8(7) notice of entry of land in its Derelict Sites Register. The owner did not respond. On 24th April 2021, LCCC served a Section 15(1) notice of its intention to acquire a derelict site compulsorily and advertised the same in the Limerick Post. On 29th April 2021 the owner responded by indicating his intention to complete works. Further information was requested on 6th May 2021 and the owner responded by raising objection to the compulsory acquisition in his letter of 2nd June 2021.
- 4.3.7. LCCC concludes that, while the owner has expressed his intention to engage an engineer and a builder, as the property has been left derelict over the last 4 years of contact with him, there is no realistic prospect of works materialising.

4.4. Objector's Submission

- 4.4.1. The Board invited the objector to make a submission by 23rd July 2021. None has been received.

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. The building on the site lies at the western end of a terrace. The building at the eastern end of this terrace is the subject of 20/1210, for the construction of two-storey and single storey extensions to the side and rear and alterations and reconstruction of parts of the existing dwelling, which was permitted.
- 5.2.2. Land to the south of the above cited row is the subject of 16/1184, for the construction of 8 detached, 38 semi-detached, and 9 terraced dwelling houses, which were permitted at appeal ABP-300385-17.

6.0 Policy Context

6.1. Derelict Sites Act 1990 (as amended)

- 6.1.1. The Derelict Sites Act 1990, as amended, makes provision to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.
- 6.1.2. Section 3 of the Act defines 'derelict site' as:

any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.

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

- Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to enter their sites on to this register.
- Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.
- Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.
- Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.
- Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in its 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 existing residential, and it lies within the town’s Architectural Conservation Area (ACA). The building on the site is one of three terraced buildings, which are identified in the NIAH under reg. nos. 21803031, 3030 & 3029. The latter building is a protected structure, too, RPS ref. 1031.

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

“...to seek timely actions and improvements of sites, through positive engagement with landowners, using powers under the Derelict Sites Act only where necessary, and taking into account:

- (a) outstanding planning permissions,
- (b) evidence of efforts to address vacancy and dereliction,
- (c) security, safety to the public, and the condition of the site,
- (d) the conservation value of the building and the requirement for remedial restoration works, and
- (e) the feasibility of various actions to make good the site and find viable uses for the site.”

7.0 Assessment

7.1. I undertook a site visit on 11th August 2021. I was able to view the front and side elevations of the building from public vantage points and the rear elevation by looking over the gate to the yard. I was also able to view the building internally.

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 submission, along with my own commentary on the same.

(i) Is the site a “derelict site”?

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

“derelict site” means any land (in this section referred to as “the land in question”) which detracts, or is likely to detract, to a material degree from amenity, character or appearance of land in the neighbourhood of the land in question because of –

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question...

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

- The front roof plane of the two-storey building has several slates that are either missing, dislodged, or broken.
- The windows in the front elevation of the two-storey building and the single storey extension to its side are boarded up.
- Insofar as I was able to see the rear elevation of the two-storey building externally, it was overgrown with vegetation, which from an internal inspection has invaded this building via dislodged or broken windows and doors. Likewise, the rear elevation of the single storey extension has vegetation attached to its gutter line and one of two window openings is without a window and so it is open to the elements.

I consider that the first of these items poses a potential danger to the public, the second exhibits an air of dereliction, and the third denotes a ruinous state. I, therefore, conclude that the building and its extension can reasonably be described as derelict, dangerous, and ruinous and so Section 3(a) of the Derelict Sites Act 1990, as amended, is applicable.

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

- In addition to the items identified in relation to (a), internally, fixtures and fittings within the rooms comprised in the building and its extension are in an advanced state of deterioration as a result of moisture and vegetation penetration and their prolonged disuse. Thus, for example, wallpaper and paint are peeling, and floor coverings are disintegrating.

I consider that these items indicate that the building is in a “neglected, unsightly or objectionable condition” and so Section 3(b) of the Derelict Sites Act 1990, as amended, is applicable.

7.6. Under the Bruff Local Area Plan 2012 – 2018 (as extended) (LAP), the site is zoned existing residential, and it lies within the town’s Architectural Conservation Area (ACA). The property at the far (eastern) end of the terrace is a protected structure, RPS ref. 1031, and all three properties in this terrace appear in the NIAH under reg. nos. 21803031, 3030 & 3029.

- 7.7. Objective EH 1 states that LCCC will “protect, conserve and, where appropriate, enhance the ACA”. By contrast, the present condition of the subject property is detracting from the character and appearance of the ACA and the setting of the protected structure at the far end of the terrace.
- 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, it proceeded as follows, under the Derelict Sites Act, 1990 as amended:
- Under Section 29, on 22nd March 2018, a notice was affixed to the site seeking confirmation of ownership of the property. On 25th June 2018 Thomas Murphy contacted LCCC to confirm his ownership of the site,
 - Under Section 8(2), on 10th September 2020, advising of the Local Authority’s intention to enter the site on the register of derelict sites,
 - Under Section 8(7), on 12th November 2020, advising of the Local Authority’s decision to enter the site on the register of derelict sites, and
 - Under Section 15(1), notice of LCCC’s intention to acquire the site compulsorily was issued and it was published in the Limerick Post newspaper on the 7th November 2020.
- 7.10. LCCC states that the objector responded to the first, second, and fourth of these notices. In response to the first he confirmed his ownership of the property, his commitment to its improvement, and his willingness to sell. He subsequently had the front and side elevations of the property repainted, but he did not follow through on being advised of a potential purchaser. In response to the second he reiterated his commitment to the property’s improvement and his willingness to sell. In response to the fourth he raised objection.
- 7.11. The owner objects to LCCC’s intended compulsory acquisition of his property on the following grounds:

- Renovations are about to start, beginning with the cleaning/replacing of rainwater goods, the repainting of the exterior, and the cutting back of overgrown vegetation,
- The original derelict site notice was defective insofar as it included lands that lie outside his ownership, and
- The original derelict site notice was addressed to “owner unknown” notwithstanding his payment of Local Property Tax (LPT) on the property.

7.12. I will comment upon these grounds in reverse order.

- The third ground refers to the action taken by LCCC, as it was unable to establish the ownership of the property from the Land Registry. LPT is administered by the Revenue Commissioners rather than LCCC and that appears to be the explanation as to why it was unable to ascertain the necessary ownership information from this source.
- The second ground refers to the original derelict site notice, which was presumably the one affixed to the site when LCCC was seeking to establish who owned the property. There is no suggestion that the site highlighted on the plan attached to the notice of intent to compulsorily acquire shows anything other than the land in the objector’s ownership.
- The third ground outlines the works that the objector seeks to start. These works relate to the exterior of the building only and they would largely affect its external appearance. They omit to refer to the measure of re-roofing needed in the front roof plane of the two-storey building. They do not extend to the reopening of boarded-up windows in the front elevation and their repair/replacement with new windows and the repair/replacement of doors and windows in the rear elevation. Furthermore, they do not refer at all to the extensive works that would be needed to be undertaken to the interior of the property to render it habitable again.

7.13. LCCC contends that, given the lapse in time that has occurred and the largely cosmetic works only that have been undertaken to the property, there is no realistic prospect of the needed more substantial and thorough going works materialising. From the information before me, I am unable to dissent from this contention.

7.14. I, therefore, conclude that the compulsory acquisition of the subject building should be confirmed to ensure that the remedying of its derelict state can be expedited.

8.0 Recommendation

That the compulsory acquisition be confirmed.

9.0 Reasons and Considerations

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

Hugh D. Morrison
Planning Inspector

9th November 2021