



An
Bord
Pleanála

Inspector's Report ABP 310715-21

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

9A and 9B Thomondgate, Limerick

Local Authority

Limerick City and County Council

Notice Party

Michael McInerney

Date of Site Inspection

17/08/21

Inspector

Pauline Fitzpatrick

1.0 Introduction

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 9A and 9B Thomondgate, Limerick City in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

The 3 storey mid terrace building is on Thomondgate. It is to the north-west of Thomond Bridge and Limerick city centre. The general area is characterised by a mix of commercial and residential development of varying ages, designs and heights.

The ground floor was previously used as a retail unit with residential on the upper floors. The site is served by a rear yard. The ground floor is boarded up with sheets of plywood. The windows at the upper levels are glazed and are secured. There is recent evidence of painting to the façade at ground floor level. The roof appears to be intact with vegetation growth noted to the side elevation. The units to either side are in residential use. The property has the same windows and render colour as the 3 storey property to the south to which it is attached.

Access to the rear of the property was not possible.

3.0 Application for Consent for Acquisition

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 a notice on site under section 8(2) on the 7th May 2019 advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7) on 16th 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

Notice of intention to acquire the site compulsorily dated 21st April 2021 was served on the owner of the property and was published in the Limerick Post dated 24th April 2021. The site is described as follows in the notices:

A derelict site comprising of a former grocery store on ground floor and residential unit on first floor and surrounding land situate at 9A and 9B Thomondgate, Limerick, containing an area of 0.010 hectares. The said property and surrounding land is in a state of dereliction. The derelict site is more particularly shown outlined in red on map bearing reference no. DS-042-19 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 submissions by Mr. Michael McInerney dated 21/05/21 and 03/06/21 can be summarised as follows:

- It is his understanding that AIB had taken charge of the property. Receivers had gone in and changed the locks. The bank holds all the documentation to the property.
- It was originally the family home. He bought the site around 1998/1999.
- There are issues to sort out with the Bank.
- He does not object to tidying up the property.

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 is dated 21st June, 2021 and 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.
- Copy of the section 15 Notice served on the owner of the site, dated 21st April 2021.
- Copy of the newspaper notice, dated 24th April 2021.
- Copy of objection made by Mr. McInerney (2 no. submissions make up the objection).

The Compulsory Acquisition Report can be summarised as follows:

- Limerick City and County 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.
- Limerick City and County Council carried out an inspection on 09/04/19. The inspector deemed that the property was of a derelict nature.
- The title to the property is not registered with the Property Registration Authority. Enquiry identified Michael and Noelle McInerney as the reputed owners and that a certain amount of Mr. McInerney's assets had gone into receivership.
- A notice of intention to enter the site onto the Derelict Sites Register was served on site on 07/05/19. No response or representation was made by the owner.
- The notice of entry onto the Derelict Sites Register was served on site on 16/11/20.

- The City and County Council's Inspector had a conversation with the reputed owner, Mr. McInerney in March 21. He advised that he thought that the bank had taken the site from him.
- The Receiver, Price Waterhouse Cooper confirmed by letter dated 01/04/21 that it did not have charge of the site.
- There was correspondence with the owner in December 2020. Subsequently elected representatives made submissions on his behalf.
- The land continued to be in a derelict state. It gave notice of its intention to acquire the site to the reputed owner and AIB. It was advertised in the Limerick Post newspaper.
- An objection was received 25/05/21. Further information was requested on ownership to which a response was received 03/06/21.
- The objection highlights uncertainty on ownership of the property. In the Local Authority's experience this can lead to vacancy and neglect and ultimately dereliction. The objection refers to remediation of the dereliction however it is not specific and the timeframe is vague.

4.4. Objector's Submission

- The property was originally a family home. He acquired it approx. 20 years ago. He acquired the rest of the building which the bank took over. The bank changed the locks in the premises and he assumed that it had taken the subject site also.
- The vegetation has been removed and the masonry painted.
- He does not object to tidying up the timber works.
- He requires some time to make it presentable.

5.0 Planning History

I am not aware of any planning applications on the site

6.0 Policy Context

6.1. Limerick City Development Plan 2010 (as extended)

The site is within an area zoned 5A – Mixed Use

Objective ZO.5 Mixed Use Development - To promote the development of mixed uses to ensure the creation of a vibrant urban area, working in tandem with the principles of sustainable development, transportation and self-sufficiency.

Objective ZO.1 seeks to support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the City Centre as defined in the 2030 Economic and Spatial Plan.

Chapter 3 - Economic Strategy.

Policy EDS.11 - 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

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.

6.4.2. 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.”

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**

Internal access to the building nor access to the rear was possible on the date of my site inspection. I carried out my site inspection from the public road.

The mid-terrace, three storey building on Thomondgate appears from an external view to be structurally sound, albeit with vegetation noted at upper levels on the side elevation. The ground floor which appears to have originally been used as a retail unit is boarded up with sheets of plywood. The upper floors were previously used for residential purposes. The windows are intact and secured. The roof also appears to be intact. As could be seen from public road the rear of the property was secure.

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) and 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. The front of the property is kept clear of rubbish. The rear yard area is not visible. On this basis I do not consider that the site falls within category Section 3 (c).

I note the actions of the Local Authority. A section 8(2) notice was served on the property on the 7th May 2019 of its intention to insert the site onto the Derelict Sites Register with a section 8(7) notice issued on 16th November 2020 advising of the Local Authority's decision to enter the site on the register of derelict sites. The notice of intention to acquire the property compulsorily under section 15 was issued on 22nd April 2021 and published in the Limerick Post on 24th April 2021.

The title to the property is not registered with the Property Registration Authority. From the correspondence on file the owner bought the property which was his family home approx. 20 years ago. He acquired the rest of the building thereafter. I note the uniformity in the windows and render colour to the front elevations. He was of the understanding that AIB was in control of the entire building as the receivers had changed the locks on the subject property. From the local authority's submission accompanying the compulsory acquisition a letter from the receiver Price Waterhouse Coopers dated 01/04/21 (copy not provided in support) stated that it does not have charge of the property subject of the acquisition application. In view of this apparent confusion the property owner considers that there are issues to be resolved with the bank. He has no objection to carrying out the necessary works to render the site non-derelict but requests further time to do so.

A comparison of the photographs of the property accompanying the local authority's application and that as evidenced on day of inspection shows that remedial works to the front of the property have been carried out including the removal of vegetation growing at 1st floor window cill level and the painting of the lower sections of the front elevation. The ground floor remains boarded up with plywood and continues to detract from the amenity of the property.

In view of the apparent lack of clarity as to whether the building formed part of the owner's property portfolio which was taken over by AIB and evidence of his efforts to improve the appearance of the front elevation in the period since the serving of the compulsory acquisition notice, I consider that it would be appropriate to provide

some further time for the site owner to resolve the issues arising with the financial institution and thus enable the site to be redeveloped or repaired. I therefore recommend refusal of consent to the compulsory acquisition of the site in question.

8.0 Recommendation

Refuse consent to the compulsory acquisition for the following reasons and considerations.

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 into account the confusion and lack of clarity as to the ownership relating to the site in question, with the evidence of the works completed to date and willingness of the notice party to address the issues of dereliction, the Board considered that it would be appropriate to provide further time for the site owner to complete the works and to prevent it continuing to be a derelict site. In these circumstances it would be premature to confirm the Local Authority's compulsory acquisition of the site.

Pauline Fitzpatrick
Senior Planning Inspector

October, 2021