



An
Bord
Pleanála

Inspector's Report ABP 310716-21

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

23 Catherine Street, Limerick

Local Authority

Limerick City and County Council

Notice Party

Ken Tyrell (receiver) PWC

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 23 Catherine Street, Limerick City in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

The 3 storey over basement red brick mid-terrace building is on Catherine Street which is situated in the Georgian area of Newtown Pery in Limerick City Centre. It is characterised by a mix of commercial and residential uses. A number of the properties in the terrace appear to be vacant.

The subject property is boarded up at basement level. A metal sheet has been used to board up the front door preventing access. The windows are glazed and appear to be secure with those at ground and 1st floor levels boarded up by metal sheeting fixed internally. The roof is intact, albeit with vegetation noted. 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 notices under section 8(2) on the 7th October 2020 advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7) on 16th February 2021 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 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 terraced. three-storey over basement, red brick residential building and surrounding land situate at 23 Catherine Street, Limerick, containing an area of 0.014 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-145-20 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 Mason, Hayes and Curran on behalf of the receiver PWC objects to the CPO. The submission can be summarised as follows:

- The site is not a derelict site and the Council has not produced any evidence that the property comes within the definition of section 2 of the Derelict Sites Act.
- The Council has not established how the property detracts or is likely to detract to a material degree from the amenity, character or appearance of land in the neighbourhood.
- The surrounding area has a mix of uses and the residential property does not materially affect the amenity of the locale.
- The property is architecturally in keeping with the other historical Georgian houses of the area with the façade remaining intact and integrated with those of the neighbouring properties.

- It is in a similar condition to the properties immediately adjoining.
- The façade is not in a ruinous, derelict or dangerous condition that would materially affect the character, amenity or appearance of the area.
- The property is secured by boarding for security purposes whilst it is assessed whether any internal upgrades are required. Simply because there is boarding on the inside of the windows for insurance purposes and it temporarily vacant does not mean the property is in a derelict condition.
- The structural integrity of the property is intact and does not pose a danger to the public.
- The property is generally kept clear of any litter, rubbish, debris or waste.
- The owner is willing to engage with the Council to seek a resolution to the issues of dereliction which the Council asserts. The action to compulsorily acquire the property is premature. The notice of 2nd October 2020 of intention to register the site was followed quickly by the notice confirming registration as a derelict site on 16th February 2021 and then by intention to acquire the property on 19th April 2021 (*sic*). The Council has not submitted any notices under section 11 of the Act requiring specific works. Even if the Council had done so this time period was one of lock down associated with the Covid pandemic. The Council has not sought to carry out works and recover expenses which, if the case were as serious as to require compulsory purchase, it may have done.
- A CPO extinguishes a private ownership of a property and accordingly the threshold to show it is in the public good is not a low one and has certainly not been achieved in this case.

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 was submitted on 18th 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 Mason, Hayes and Curran on behalf of Ken Tyrell, receiver PWC.

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 29/09/20. The inspector deemed that the property was of a derelict nature.
- A Section 8(2) notice was served on the property on 7th October, 2020. The property was unregistered.
- PWC made contact on 8th October 2020 confirming that Ken Tyrell of PWC was appointed receiver of the property by Deed of Appointment on 7th July 2015.
- A Section 8(7) notice was served on PWC on 16th February 2021.
- A section 15(1) (a) notice of intention to acquire the site compulsorily was served 22nd April, 2021.
- An objection to the notice was received from the receiver.

- The Local Authority is of the opinion that the building is in an area with strong historical and architectural features and, in its state, greatly detracts from the neighbourhood.

4.4. Objector's Submission

None

5.0 Planning History

I am not aware of any planning applications on the site

ABP-304581-19 – the Board granted consent to the compulsory acquisition of 34-41 Catherine Street under the Derelict Sites Act, 1990, as amended.

6.0 Policy Context

6.1. Limerick City Development Plan 2010 (as extended)

The site is zoned Retail Commercial – City Centre Area C1.1.

Zoning 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.

Chapter 10 Part IV - Architectural Conservation Areas.

It is stated that these areas have a special character which contributes to their surroundings and whose features it is an objective to protect from demolition or inappropriate alteration or interventions. There is a statement of character for Newtown Pery ACA (ACA 1A) at 10.13-14 which includes a schedule of threats to the ACA. These include the dereliction and abandonment of Georgian buildings, inappropriate and insensitive redevelopment or additions/extensions impacting the original form, fabric and appreciation of buildings or streetscape when viewed from a

public place. Newtown Pery is described as the core heart of Limerick's Georgian Heritage.

Policy BHA.18 - protect the special heritage values, unique characteristics and distinctive features of ACA 1A from inappropriate development affecting the external materials and features defined in the 'Statement of Character' and 'Key Threats to Character'.

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 over basement building on Catherine Street appears, from an external view, to be structurally sound. The basement is boarded up preventing access with a metal sheet to the front door also preventing access. The windows at ground, 1st and 2nd floor levels are in place with those at ground and 1st floor levels secured with metal sheeting fixed internally. The roof appears to be intact. Vegetation was noted.

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. Whilst a certain level of litter was evident at the bottom of the stairs to the basement the remainder of the front of the property is kept clear of rubbish. Therefore it is considered that the site does not fall within category Section 3 (c).

The property is situated within the Newtown Pery Architectural Conservation Area which is described in the City Development Plan as the heart of the Georgian core of Limerick City, and is an area of unique architectural character and of significant heritage value. The threats to the character of the Newtown Pery ACA set out in

Chapter 10 of the plan include dereliction and abandonment of Georgian buildings as well as inappropriate redevelopment. Catherine Street comprises of a mix of uses including residential with vacancy and dereliction evident. I note from the Limerick City and County Derelict Sites Register 2021 that the building immediately adjoining (No.22 Catherine Street) has been included in addition to 34-41 Catherine Street which are subject of compulsory acquisition (file ref. ABP 304581-19). The fact that the building may be in comparable condition to the properties immediately adjoining does not negate the fact that it 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.

I note the actions of the Local Authority. A section 8(2) notice was served on the property on the 7th October 2020 of its intention to insert the site onto the Derelict Sites Register with a section 8(7) notice issued on 16th February 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.

An objection was received on behalf of Ken Tryell, Receiver PWC, objecting to the notice stating that the site was not derelict as per the definition of same in section 2 of the Derelict Sites Act, 1990, as amended and that the local authority did not issue any notice under section 11 of the Act requiring specific works. The receiver did not make a further submission following the Board's notice under 16(5) of the Derelict Sites Act inviting observations in relation to the comments of the local authority. The property remains as originally documented with no evidence of any works carried out to improve the appearance and condition of the building or render it non-derelict

The property continues to be in a neglected, unsightly and objectionable condition and I consider that it detracts to a material degree from the amenity, character and appearance of the area. I therefore consider the property to be a derelict site, within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.

Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property which, as stated, constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire 23 Catherine Street, Limerick be granted.

8.0 Recommendation

Grant consent to Limerick City and County Council to compulsorily acquire the site.

9.0 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 within the definition of a derelict site as defined in section 3 of the Derelict Sites Act 1900, 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.

Pauline Fitzpatrick
Senior Planning Inspector

October, 2021