



An
Bord
Pleanála

Inspector's Report ABP-310718-21

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

Multi-storey former commercial warehouse and surrounding land at Wolfe Tone Street, Kilmallock, Co. Limerick

Local Authority

Limerick City & County Council

Notice Party

Bella Dunne

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 a multi-storey, former commercial warehouse and surrounding land at Wolfe Tone Street, Kilmallock, 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 Section 3 of the Act.

2.0 Site Location and Description

- 2.1. The site is located on the north-western side of Wolfe Tone Street, 20m to the north-east of the junction between this Street and Sarsfield Street/Lord Edward Street (R512), which form the main north/south route that passes through the town centre of Kilmallock. The town dates from Medieval times and it continues to exhibit the remains of walls, a priory, and a collegiate church, which date from these times. The collegiate church lies 90m to the north of the site.
- 2.2. The site comprises a stone-built three-storey warehouse, which dates from c. 1830, and an associated yard. This warehouse presents a gabled side elevation to the street-front and its principal elevation is onto the yard. The former elevation contains a pedestrian doorway with a window on either side at ground floor level and vertically aligning windows above to what would have been the upper floors. A circular window is centred within the gable. The latter elevation has a gabled feature above a column of doorways that would have served each of the floors. These doorways are accompanied by three columns of windows to the north-west and two columns of windows to the south-east. All the openings to these elevations have arched heads, stone sills, and brick surrounds, apart from those at ground floor level onto the street: These have square heads, and their accompanying elevation is finished in white render. The remaining elevations are blank.
- 2.3. The warehouse has a slated double-pitched roof supported by timber roof members that are visible from within the building. The first and second floors have been removed and so the internal volume of the warehouse forms one continuous space.

- 2.4. The yard is accessed directly from Wolfe Tone Street via a corrugated steel-clad gate. This gate is set within stone pillars and accompanying walling. Elsewhere, the yard is enclosed by stone walls, blockwork walls, and timber panelled fencing.
- 2.5. The openings to the warehouse are boarded-up at ground floor level. At the former upper floor levels, they typically display the remains of timber joinery and are largely open to the elements. The odd pane of glass remains in-situ, either intact or broken, and timber shutters are evident here and there, too.
- 2.6. The render to the ground floor elevation onto the street has broken off in places and vegetation has attached itself to the easternmost corner of the building. Likewise, vegetation outcrops on the guttering to the principal elevation and it is evident on this elevation below a missing downpipe. Internally, exposed stonework is evident at ground floor level and plasterwork predominates to what would have been the upper floors. The roof appears to be sound.
- 2.7. The vacant warehouse has some incidental items of discarded furniture and bags of rubbish within it and the surface of the yard is largely overgrown with vegetation.

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 15th July 2020, a notice was affixed to the site seeking confirmation of ownership of the property,
 - Under Section 8(2), on 26th January 2021, a notice was affixed to the site advising of the Local Authority's intention to enter the site on the register of derelict sites, and
 - Under Section 8(7), on 15th March 2021, a notice was affixed to the site 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), a notice of LCCC's intention to acquire the site compulsorily was affixed to the site and it was published in the Limerick Post newspaper on the 24th April 2021. This Notice described the site as follows:

A derelict site comprising a multi-storey, former commercial warehouse and surrounding land situate at Wolfe Tone Street, Kilmallock, Co. Limerick, containing an approximate area of 0.023 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-100-20 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 25th May 2021, Bella Dunne objects to the site's compulsory acquisition on the basis that she has a purchaser for the site, with whom she is currently in negotiation. Delays in this sale were experienced due to the pandemic. However, she now anticipates that it will be completed forthwith.
- 4.2.2. Subsequent correspondence with the Planning Authority established to its satisfaction that Bella Dunne is the owner of the site and so she is in a position to object to its compulsory acquisition.

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 Kilmallock by means of housing demonstrator projects.

- 4.3.2. The site extends to an area of 0.023 hectares. It accommodates a former warehouse, which was built in c. 1830. This building is composed of rubble stone under a slated, double pitched roof. It is derelict as evidenced by its broken and unglazed windows, which at ground level have been boarded-up, damaged render that exposes its brickwork, and vegetation growth up its south-east corner and along guttering. Elsewhere, within the adjoining yard rubbish has accumulated.
- 4.3.3. Concern over the site has been expressed by members of Cappamore-Kilmallock Municipal District and local community groups such as Kilmallock Partnership, Kilmallock Community Council, and Kilmallock Tidy Towns.
- 4.3.4. LCCC first identified the site as being derelict on 25th June 2020. Enquiries as to ownership ensued but proved fruitless. Only once a Section 15(1) notice was affixed to the site did the owner come forward. Prior to this notices under Sections 29, 8(2), and 8(7) were affixed to the site.
- 4.3.5. Through correspondence LCCC satisfied itself that Bella Dunne is the owner of the site. She has not addressed its derelict state. While she states that she has a purchaser, LCCC expresses the concern that its derelict state has persisted for long enough and so needs to be addressed by the owner.

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. **Site**

- 96/2106: Conversion of old mill to bar, toilets, new shop front, and living accommodation: Permitted.
- 98/2031: Conversion of old mill to 6 apartments: Permitted.

5.2. **Surrounding Area**

The planning register indicates that the surrounding area has been the subject of only a few applications in recent years. Of these the following one for a site to the north-west of the subject site is potentially the most significant:

- 18/7033: Extension of Permission for Planning Ref. No. 13/181 : (a) the demolition of the nightclub building at the rear of the Old Oak, (b) demolition of the former post office and barber shop facing onto Sarsfield Street, (c) construction of a new retail unit with an office on the first floor and an apartment on the second floor fronting onto Sarsfield Street, (d) construction of a pedestrian access archway and walkway from Sarsfield Street to the rear of the site, (e) construction of an enclosed deck area for the Old Oak Pub & Coffee Shop, (f) construction of a new retail unit with delivery loading bay on Sarsfield Street, store, toilets, staff room, office and service rooms and a screened recycling and bin storage area, (g) construction of 2 smaller retail units within the site, (h) new car park area, (i) construction of a new entrance to the car park, (j) modification of the existing stone wall to include piers and iron railing and all associated site works on or under land (there is a protected structure within the curtilage of this site): Permitted until 22nd April 2024.

6.0 Policy and 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), Kilmallock appears in the settlement hierarchy as a Tier 2 key town, and under Policy SS P7, the Planning Authority undertakes to promote the sustainable growth of Kilmallock to become a self-sufficient settlement and to act as a service centre to its rural hinterland.

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 Kilmallock Local Area Plan 2019 – 2025 (LAP), the site is zoned town centre, and it lies within the Kilmallock Architectural Conservation Area (ACA).

6.3.2. The LAP addresses the ACA under Objective H6:

It is the objective of the Council to protect, conserve and where appropriate, enhance the ACA as identified in Map 3. 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 or 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: the latter will include for consideration of the planting of trees in the wider public open spaces, benches for sitting and the articulation of uses through appropriate paving.

6.3.3. The building on the site is identified under reg. no. 21813028 of the NIAH. The yard to the building on the site adjoins a yard to the north-east, which serves a two-storey end-of-terrace dwelling house that is identified under reg. no. 1385 in the LAP’s Register of Protected Structures.

6.3.4. The LAP addresses the obsolescence under Objective H6:

It is the objective of the Council to:

- Identify and seek the re-purposing of obsolete property, and exercise powers under the Urban regeneration and Housing Act 2015, and the Derelict Sites Act 1990 if appropriate, subject to resources and due legislative process, and*
- Ensure redevelopment proposals are sensitive to the historic and built heritage of the town.*

6.3.5. Under Appendix 5 of the LAP the building on the site is identified as a key one and it is described as follows: “Former Mortello Brothers warehouse with substantial building fabric still intact. May support living accommodation, creative space, craft workshops opportunities to “meet the maker”.” The site itself is further identified as forming part of a key opportunity infill site, which extends over backlands to Orr Street and Wolfe Tone Street.

7.0 Assessment

7.1. I undertook a site visit on 11th August 2021. I was able to view all or most of three of the four elevations of the building from public vantage points on Wolfe Tone Street and Orr Street. I was able to view the entirety of the principal elevation from within the adjoining yard to the building and I was also able to view the interior of this building.

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 compulsory acquire the subject property at Wolfe Tone Street, as it considers this building to be a “derelict site”. Section 3 of the Derelict Sites Act 1990, as amended, states the following:

“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, 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.

7.4. During my site visit, I observed that the building appears, notwithstanding the removal of its first and second floors, to be structurally intact with the roof especially being in good condition. Nevertheless, this building has remained vacant and unused for many years and considerable evidence exists of its deteriorating condition. In this respect, I observed the following:

- At ground floor level, the window and door openings to the warehouse are boarded-up,
- At the former upper floor levels, the window and door openings typically display the remains of timber joinery and are largely open to the elements. The odd pane of glass remains in-situ, either intact or broken, and timber shutters are evident here and there, too,
- The render to the ground floor elevation onto the street has broken off in places,
- A considerable amount of vegetation has attached itself to the easternmost corner of the building,
- Vegetation outcrops on the guttering to the principal elevation and it is evident on this elevation below a missing downpipe, and
- The vacant warehouse has some incidental items of discarded furniture and bags of rubbish within it.

7.5. In the light of the above evidence, I consider 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 Kilmallock Local Area Plan 2019 – 2025 (as extended) (LAP), the site is zoned town centre, and it lies within the town’s Architectural Conservation Area (ACA). The adjacent property to the north-east is a protected structure, RPS ref. 1385, and the building on the site appears in the NIAH under reg. no. 21813028.

7.7. Objective H6 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 adjacent protected structure.

7.8. The Planning Register indicates that there have been no planning applications for the site since the 1990s. The recently adopted LAP seeks to address the inertia attendant upon this site by identifying it as a key site and one that forms part of a more extensive key opportunity infill site.

7.9. 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

7.10. 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 15th July 2020, a notice was affixed to the site seeking confirmation of ownership of the property,
- Under Section 8(2), on 26th January 2021, a notice was affixed to the site advising of the Local Authority’s intention to enter the site on the register of derelict sites, and
- Under Section 8(7), on 15th March 2021, a notice was affixed to the site advising of the Local Authority’s decision to enter the site on the register of derelict sites.
- Under Section 15(1), a notice of LCCC’s intention to acquire the site compulsorily was affixed to the site and it was published in the Limerick Post newspaper on the 24th April 2021.

7.11. LCCC states that the objector responded to the fourth of these notices. Bella Dunne identified herself as the owner of the property and, in subsequent correspondence, established the same to the satisfaction of LCCC. She raised objection to LCCC’s intention to acquire the property compulsorily on the basis that she is about to complete its sale, which was delayed due to the pandemic.

7.12. LCCC has responded to the above cited objection by stating that it is its experience that owners of derelict sites seek to sell them on rather than remedying their derelict

state. LCCC takes the view that the property in question has remained derelict for many years and that its compulsory acquisition is needed to remedy its derelict state.

7.13. I note that from the evidence before me the building on the site has been derelict for many years. I note, too, the absence of any planning activity with respect to this building since 1998. I, therefore, share the Planning Authority's concern that it has been derelict for an inordinate period of time and so recourse to compulsory acquisition would appear to be necessary if its derelict state is to be remedied.

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 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 Section 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

11th November 2021