



An  
Bord  
Pleanála

## Inspector's Report ABP-310719-21

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### Development

A derelict site comprising a residential dwelling house and surrounding land at Mill Road, Corbally, Limerick

### Location

Mill Road, Corbally, Limerick

### Planning Authority

Limerick City and County Council

### Planning Authority Reg. Ref.

DS-092-17

### Notice Party

Kieran Martin

### Date of Site Inspection

16<sup>th</sup> September 2021.

### Inspector

Bríd Maxwell

## 1.0 Introduction

- 1.1 This file relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of a site at *Hillside* Mill Road, Corbally, 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. (c) The presence, deposit or collection on the land in question of any litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.

## 2.0 Site Location and Description

- 2.1 The site which extends to 0.2 hectares comprises a disused residential dwelling site known as *Hillside* fronting onto Mill Road in Corbally which is circa 3km north of Limerick City Centre. The area is suburban in character with a variety of house styles and sizes in the vicinity. The site is occupied by the former residential dwelling *Hillside* located towards the northern end of the site frontage and which is enclosed within a low front boundary wall at road front. The dwelling has the appearance of a single storey cottage property from the front elevation but has upper-level accommodation with first floor windows to each gable and dormer windows to also to rear. There is a single storey return building to the rear.
- 2.2 The form and character of the dwelling suggests that it was constructed in the late 19th Century. The building's windows and doors are boarded up and it is heavily overgrown with vegetation. To the rear there is damage to guttering, fascia, soffit and roof slates. A gated vehicular entrance lies to the southern side of the dwelling. The rear of the site is heavily overgrown with vegetation and on the date of my site visit I noted evidence of refuse dumping on the site. There are two dilapidated and heavily overgrown shed structures to the side and rear of the dwelling. Mature trees along

the boundaries of the site give the site an attractive silvicultural character. The site is adjoined by residential properties to the north south and west. Bounding to the north and south of the site are two detached dwellings set in their own grounds and to the west two storey properties within the Hermitage estate. Opposite (staggered to the north) is a derelict single storey house which similar to the house on the subject CPO site sits at the road boundary thereby creating a pinch point on the public road.

### **3.0 Application for Consent for Acquisition**

- 3.1 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. According to the documentation on file, the site was entered onto the Local Authority Derelict Sites Register on 22<sup>nd</sup> day of June 2020.

### **3.2 Application & Objection**

#### **3.2.1 Notice of Intention to Acquire**

- 3.2.1.1 Notice of Limerick City and County Council's intention to acquire the site compulsorily is stated to have been served on the owner of the site on the 22<sup>nd</sup> of April 2021 and published in the Limerick Post newspaper on the 24th of April 2021. The site was described as follows in the notices:

*"A derelict site comprising a residential dwellinghouse and surrounding lands situate at Mill Road Corbally Limerick containing an area of 0.200 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-092-17 in*

*the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.”*

3.2.1.2I consider that the notice is generally in accordance with the requirements of Section 15 of the Derelict Sites Act 1990, as amended.

### **3.2.2 Objection to Acquisition.**

3.2.2.1An objection to the proposed acquisition was received in writing by the Local Authority on the 24<sup>th</sup> day of May 2021 from the owner of the site, Mr Kieran Martin , Liosloran Lodge, Mull Road Corbally. Grounds of objection are as follows:

- Dispute the assertion that the site is derelict, dangerous or ruinous.
- Object to the process and manner by which the site has been entered on the derelict sites register.
- Notable difficulties were encountered in attempts to engage with the local authority.
- Due to the Covid 19 lockdown and restrictions significant difficulties have arisen in terms of carrying out remedial works.
- The property has been painted and a contractor has been engaged to prune the undergrowth.
- CPO should not have been brought forward during level 5 lockdown. Owner is a vulnerable person to Covid.
- Architect has been engaged to prepare planning application in respect of the site as confirmed in letter appended from Declan Gilleece Architect.

### **3.3 Local Authority's Application for Consent**

3.3.1 The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 23<sup>rd</sup> June 2021 and was accompanied by the following.

- Compulsory acquisition report which sets out the Local Authority's strategic approach to derelict sites, a description of the site, the background to the case and details of the objection.
- A map of the proposed site and photographs dating from 2017-2021.
- Copy of the notice served on the owner dated 21<sup>st</sup> April 2021
- Copy of Newspaper Notice dated 24<sup>th</sup> April, 2021
- Copy of the objection received from Mr Kieran Martin dated 21<sup>st</sup> May 2021
- Letter of acknowledgement of receipt of objection dated 26<sup>th</sup> May 2021

3.3.2 The Local Authority outlines its case for consent as follows:

- In 2017 Limerick City and County Council established a new team to take an area based and collaborative approach to addressing vacancy and dereliction in Limerick City and County. The approach seeks to work proactively with property owners to

seek timely actions and improvements of sites through positive engagement using powers under the Derelict Sites Act 1990 only when necessary.

- Following inspection of the property on 31<sup>st</sup> July 2017 it was identified by the inspecting officer as a derelict site under Section 3 of the Act.
- Ownership of the site was established and a Section 8(2) letter of enquiry issued to the owner. A response from the owner Mr Martin objected to the notice and inspection report.
- A Section 8 (7) Notice of entry of the particulars of the land in the derelict sites register was served on 22 June 2020.
- There was correspondence with the owner in November 2020 that contractors were to be employed to deal with vegetation problem, installation of CCTV cameras and the painting of the main structure none of which were completed.
- As the land continued to be in a derelict state, Limerick City and County Council exercised its power of compulsory acquisition under Section 15 of the Derelict Sites Act and gave notice of the intention to acquire the site.
- The owner has failed to address the derelict nature of the property over the four years of this case and while there has been written invitation for engagement from the Council it has not been reciprocated in a constructive manner.
- The owner previously submitted a planning application for the site but failed to follow through. While now stating a new application is being prepared and painting has been carried out these appear to be only because of the section 15 Notice.

### **3.4 Owner's Submissions**

3.4.1 In response to the application to the Board for consent to compulsorily acquire the site at Mill Road, the owner was afforded an opportunity by the Board to comment on the application. A submission was received from the owner Mr Kieran Martin on 22nd July 2021. Objection to the proposed compulsory acquisition is outlined and summarised as follows:

- Contest Limerick City and County Council's assertions regarding positive engagement.
- No planning application was ever made by the current owner. Application made by the former owner Dineen and Co Ltd in 2005 was unsuccessful and 2010 planning application was made by Ger O Loughlin Holdings Ltd. Current owner had objected to that application.
- Since purchasing the site the owner has had a number of conversations with the Council to reach agreement vis a vis widening of Mill Road however this was ignored by the Council.
- Refute allegation that the planning application is being made to prevent action under the Derelict Sites Act. Owner has decided to sell his dwellinghouse adjoining and the current site subject of the CPO application as evidenced in enclosure from Rooney Auctioneers.
- Refute allegation that structure was painted after service of the Section 15 notice. Enclosures of the Council show photograph of notice taken on 22 April 2021 and

photograph dated and time stamped 6/4/2021 some 13 days prior to the section 15 notice with house painted and in pristine condition.

- Large number of properties in the near vicinity which are in poor condition and are not being pursued for CPO.
- Concern that the Council did not halt the CPO process and re-engage when they discovered that works to the property had been carried out.
- In November 2020 contractor AM Building Services were engaged to carry out various works on the property in line with a conversations held with the council. Works including clearing of vegetation overgrowth. CCTV cameras were purchased but not installed due to connection difficulties.
- Property opposite Hillside as shown in photograph has been in a derelict state for 15 years and is not referred to by Limerick City and County Council.
- It is a misrepresentation to assert that “the site detracts in a great way from the well-maintained land and properties in the vicinity and will draw the eye of anyone upon entering the area.” as outlined in the Council’s report.
- Consider that the Council did not act reasonably given the timeline during Covid 19 pandemic. Provisions of the Act are to be used only where all reasonable alternatives were exhausted by the Council. During this timeline the owner was cocooning as advised by HSE. Notice to acquire issued despite carrying out of painting works.
- Owner’s house next door has now been sold and Mr Declan Gileece, Architect has been engaged to prepare outline permission application for Hillside (Preplanning



11/850 refers). More recently a neighbour whose family home borders the property has come forward with a proposal to purchase and develop the property for housing.

- Request the Board to reject the CPO as the owner's proposal will have the speediest and most satisfactory outcome for neighbours and the community in general.
- It is intended to have work completed by next August and photographs will be forwarded to Limerick County Council and An Bord Pleanála on completion.

## 4.0 Planning History

Two previous applications on the site prior to the current owner's acquisition

**PL.30.219670 06770244** The Board Refused permission on 8<sup>th</sup> March 2007 to Comogue Developments for development involving the demolition of existing dwellinghouse and outbuilding and the construction of 12 no apartments in two blocks. Refused on grounds of excessive density, lack of open space and traffic hazard.

**10770033** Withdrawn. Application from Ger O Loughlin Holding Ltd. for Permission to demolish existing single storey dwelling and construct 4 no semi-detached dwellings with 3 no entrances off the public road including new connection to private sewers and all other associated site works. Following further information request application was withdrawn 7/12/2010. I note that the further information request

related to matters of servicing, traffic and access and questioned the justification for demolition of the structure in the context of the architectural merit of the building.

## **5.0 Policy Context**

### **5.1 Development Plan**

5.1.1 The applicable development plan is the Limerick City Development Plan 2010-2016 (as extended). The site has a zoning objective Zo-R2 Residential. The stated objective is “to provide for residential development and associated uses.”

5.1.2 In respect of Derelict Sites (3.5) it is stated that these detract from the attractiveness of the city as a location for inward investment and that the Derelict Sites Act 1990 provides a legal mechanism to seek elimination of such dereliction that includes compulsory acquisition. Policy EDS 11 is the Policy of the Council “to 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.”

### **5.2 Derelict Sites Act, 1990, (as amended)**

5.2.1 The Derelict Sites Act includes provisions to prevent land from being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to undertake measures to derelict sites and, in certain circumstances, to acquire derelict sites compulsorily. Section 3 of the Act provides a definition of a ‘derelict site’ as follows: ‘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 statute or by common law’.

5.2.2 Section 8 of the Derelict Sites Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on relevant occupiers/owners of their intention to do so. Under the terms of section 9, every owner and occupier of land are required to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 of the Act 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. Local Authorities may serve notice on an owner or occupier of land under section 11 of the Act, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 enables a Local Authority to 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 or occupier wish to object to the acquisition. Where an objection is made, section 16 of the Act states that a derelict site shall not be acquired compulsorily by the Local Authority without the consent of An Bord Pleanála.

## **6.0 Assessment**

6.1 The matters to be addressed in the assessment of this case relate to the question of whether the site constitutes a derelict site under the meaning of Section 3 of the Derelict Sites Act 1990 as amended and whether the Local Authority adopted a fair and reasonable approach in its actions on the case.

6.2 In considering the approach of the Local Authority, and the question of whether a reasonable and fair approach was adopted, I note the main events and communications prior to the local authority applying for the acquisition of the site at Hillside, Mill Road, Corbally. The Compulsory Acquisition report submitted with the

application outlines the actions of the Local Authority and the statutory notices served on the owner in respect of the site. The Council stated that the property was first inspected on 31<sup>st</sup> July 2017. A notice was served under Section 8(2) on 23<sup>rd</sup> October 2017. A notice of entry into the register was served on the owner under 8(7) of the Derelict Sites Act on 22 June 2020. A notice of intention to acquire the site compulsorily was served on 22<sup>nd</sup> April 2021 and a response received from the owner Mr Kieran Martin outlining his objection to the Compulsory Purchase Order.

- 6.3 Based on the particulars of the case, I am satisfied that the Local Authority took reasonable steps to make the owner aware of its concerns in relation to the condition of the site, including the intention to include the site in the Derelict Sites Register and to compulsorily purchase the site. I note that there is no evidence of a Section 11 notice directing the owner to undertake specified measures. I note that the owner indicates that discussions with officials from the Council with respect to painting of the structure, clearing of overgrowth and installation of CCTV. Based on the submitted evidence I am satisfied that negotiations to resolve the matter have been exhausted.
- 6.4 Regarding the question of whether the site falls within the definition of a 'derelict site' within the meaning of the Act, I submit based on photographic images available from Local Authority from inspections over the period from August 2017-April 2021 that it is evident that the property has been neglected and remained in a derelict state over this protracted period of time. Following my site inspection on 16<sup>th</sup> September 2021 I consider that notwithstanding recent painting works the building appears neglected and unsightly. I am satisfied that the appearance is significant enough to detract to a material degree from the area within which the site is located. Having regard to the above, I consider that the site falls within the category (b) of Section 3 of the Derelict Sites Act 1990, as amended, due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a) this refers to structures which are ruinous derelict or dangerous condition. Having inspected the site, I consider that while there is evidence that the structure is in a derelict condition and poor state of repair it is not in a ruinous or dangerous state. Having regard to the above I consider that the site falls within category (a) and (b) of Section 3 of the Derelict Sites Act 1990 due to the land and structure being in a derelict, neglected,

unsightly and objectionable condition. I consider that the property 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.

- 6.5 The submissions in objection to the CPO outline that it is the owner's intention to apply for permission to carry out development on the site and a letter from Declan Gilleece Architects dated 19<sup>th</sup> May 2021 indicates that a planning proposal is in preparation and a pre-planning meeting request has been submitted. Having interrogated the Limerick City and County Council website I note that no application has been made to date. The owner's submission outlines significant difficulties and delay in making progress in terms of arranging meetings and completing the works as a result of the Covid 19 lockdown and restrictions. However, he notes that contractors were engaged and works in terms of painting the structure and vegetation clearance had been carried out. I note that on the date of my site visit Thursday 16<sup>th</sup> September 2021, from comparing photographic evidence, the only apparent additional works I could identify was boarding up of first floor window to gable. I also noted there is for sale sign on display at the property however when I enquired with the advertised seller, GVM Auctioneers, I was advised that the property is "off the market".
- 6.6 I consider it reasonable to acknowledge the stated difficulties encountered by the owner in terms of the timeline during Covid 19 restrictions and uncertainties in relation to same. The owner has indicated and provided evidence that an architectural firm has been engaged to prepare a planning application for the site and also indicates that a neighbour has come forward with a proposal to purchase the site. I also note that the owner has recently sold his dwelling on the adjoining site.
- 6.7 Having regard to the above I consider that the site falls within category (a) and (b) of Section 3 of the Derelict Sites Act 1990 due to the existence on the land of a structure which is in a derelict condition, the neglected unsightly and objectionable condition of the land and structure in question. Thus, whilst the site remains in a

derelict condition, which detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the current owner to restore the site and to render it no longer a derelict site, in terms of painting, together with the evidence of intention to make a planning application in respect of the site. These should be taken into account in this instance and on the basis of the circumstances of the case, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

- 6.8 Having regard to all of the information available on the file and the continued appearance and condition of the property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to bring the property back into use and to render it non-derelict, including cosmetic works to the exterior of the building and stated intention to submit a planning application in respect of the site and that as such, sufficient time should be afforded to the notice party to conclude these proposals. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Mill Road, Corbally Limerick.

## **7.0 Recommendation**

- 7.1 Having regard to the observed condition of the application site, in particular the derelict state of the structure thereon, I consider that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 7.2 However, having regard to the proposal to make a planning application in respect of the site and to the ongoing efforts being made by the Notice Party to bring the property back into use and to address the dereliction of the site, I consider it unreasonable that the Local Authority seeks to compulsorily acquire the land, under

section 14 of the Derelict Sites Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to compulsorily acquire the site.

## **8.0 Reasons and Considerations**

- 8.1 Notwithstanding the current derelict and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account evidence of a proposed planning application in respect of the site together with the evidence of the ongoing efforts by the Notice Parties to seek to address the issues of dereliction and to bring the property back into use, the Board decided that the acquisition of the site by the local authority is not necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site, and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

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Bríd Maxwell  
Planning Inspector

27<sup>th</sup> October 2021