



An
Bord
Pleanála

Inspector's Report ABP 311047-21

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

118 Barrack Street, Cork

Local Authority

Cork City Council

Notice Party

David O'Connor

Date of Site Inspection

23/11/21

Inspector

Pauline Fitzpatrick

1.0 Introduction

This case relates to a request by Cork City Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 118 Barrack Street, Cork City in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

The 2 storey with attic accommodation end of terrace building is on Barrack Street in Cork south inner city. The area is characterised by a mix of two and three storey buildings in commercial and residential uses.

The accesses to the property both from Barrack Street and from Step Lane bounding it to the west are boarded up/secured, with a metal and mesh screen to the old shopfront. The windows at 1st floor and attic level are glazed and appear to be secure. The roof is intact albeit with vegetation growth noted in the gutter and the chimney. Access to the rear of the property was not possible. Graffiti was evident on the property.

3.0 Application for Consent for Acquisition

Cork City 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 under section 8(2) on the 6th day of November 2015 advising of the Local Authority's intention to enter the site on the register of derelict sites, and the site's entry onto the said register dated 10th December 2015.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

Notice of intention to acquire the site compulsorily was served on the owner of the property on 4th day of June 2021 and published in the Irish Examiner dated 11th June, 2021. The site is described as follows in the notices:

Derelict premises known as No.118 Barrack Street, Cork, bounded on the North West by an industrial building on Step Lane, on the North East by No.119 Barrack Street, on the South East by the Public Road at Barrack Street and on the South West by Step Lane, Barrack Street, Cork.

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. **Objections to Acquisition**

Declan Clancy, Status Corporate Advisory (Receiver) objects to the CPO. The submission can be summarised as follows:

- He has been appointed to act as Receiver in respect of certain properties of David O'Connor, Bryan O'Connor and Padraig O'Connor.
- He has accepted an offer for sale of the property and is in the process of completing a Contract for Sale of same.

Michael Dillon Director, Ceres Real Estate (Ireland) Limited objects to the CPO. The submission can be summarised as follows:

- The company holds the property as security in respect of a loan due by David O'Connor and Byran O'Connor. The above receiver was appointed by the company so as to realise the security and repay some of the debt.
- An offer has been accepted for the sale of the property and the receiver is in the process of completing a Contract for Sale of same.

Daly Derham Donnelly Solicitors on behalf of David O' Connor objects to the CPO. The submission can be summarised as follows:

- A Council Building Inspector wrote to Mr. O'Connor in April 2017 and indicated by way of notice dated 13/04/17 that 118/119 Barrack Street was a dangerous structure. On retention of the services of a company to inspect the property and to carry out works where necessary it was noted that due to works carried out on adjoining property that there had been an undermining of one of the gable walls and that this issue was remedied and works were carried out to the satisfaction of the Building Inspector. No further notice has been received.

- The property is not in a dangerous condition.
- The property is not a derelict site. It is occupied by Complete Upholstery Ltd. who are tenants and occupy the property on a daily basis.
- The local authority has no entitlement to proceed with such a notice.

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 4th day of August 2021 and is accompanied by the following:

- Details of the Section 8(2) notice issued under the Derelict Sites Act dated 6th November 2015, a copy of the Register Entry and preceding memo and reports dated July and August 2015.
- Copy of the section 15 Notice served on the owner of the site, dated 4th June 2021.
- Copy of the newspaper notice, dated 11th June 2021.
- Copy of objection made by Declan Clancy, Status Corporate Advisory dated 21st June 2021
- Copy of objection made by Michael Dillon, Ceres Real Estate (Ireland) Ltd. dated 12th July, 2021
- Copy of objection made by Daly Derham Donnelly Solicitors on behalf of David O'Connor dated 12th July 2021

The Compulsory Acquisition Report can be summarised as follows:

- The site is located in a city centre commercial zoned area. It is part of the South Parish Community which has a rich history and unique character. Despite some significant regeneration initiatives in the area in recent years and significant future development in the pipeline these derelict properties (Nos.118 and 119) continue to detract from the vibrancy of the area and the City Council has received complaints from adjoining owners and stakeholders.

- The property constitutes a derelict site and has been entered on the Derelict Sites Register since December 2015 along with No. 119 which is in the same ownership. This followed considerable efforts by the City Council to engage with the owners and to facilitate and assist the said owners (and subsequently receivers) to take reasonable steps to remove the dereliction. Despite this engagement it is clear that the condition of the property has continued to deteriorate. The City Council has been consistently assured by the receivers that a sale of these properties is imminent.
- Given the absence of any meaningful progress by the owners the City Council is of the view that the only remedy available to address the matter of dereliction is compulsory acquisition.

4.4. Objector's Submission

None

5.0 Planning History

I am not aware of any planning applications on the site.

ABP 311049 -21 - Compulsory acquisition consent being sought for No.119 Barrack Street.

6.0 Policy Context

6.1. Cork City Development Plan

The site is within an area zoned City Centre – Commercial Core Area.

Barrack Street is within the South Parish Architectural Conservation Area.

Objective 9.29 - To seek to preserve and enhance the designated Architectural Conservation Areas in the City.

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.

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 and from Step Lane bounding the property to the west.

The end of terrace two storey with attic accommodation building on Barrack Street appears from an external view to be structurally sound, albeit with vegetation noted in the gutter and in the chimney. The doors have been boarded up/secured preventing access with a metal and mesh frame erected over the old shopfront also preventing access. The windows at 1st floor level and serving the attic accommodation are in place and are secured. The roof appears to be intact. Graffiti is prevalent. 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. There was no evidence of litter within or in the vicinity of the property. Therefore it is considered that the site does not fall within category Section 3 (c).

Barrack Street is within the south inner city and the area is characterised by a tight urban grain along narrow streets, comprising a mix of commercial and residential uses. It forms part of the South Parish Architectural Conservation Area. I note that the immediately adjoining property (No.119) has been included in Cork City Council Derelict Sites register and is subject of a concurrent request for consent from the Board for compulsory acquisition (file ref. ABP 311049-21). I submit 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.

I note the actions of the Local Authority. Following an inspection of the property by a City Council representative correspondence was issued to the owner dated 15th

October 2014 stating that the property has shown to be in a dangerous condition and of the intention to serve a notice under the Local Government (Sanitary Services) Act, 1964. The issues to be addressed were detailed.

A section 8(2) notice was served on the property owner in 6th day of November 2015 of its intention to insert the site onto the Derelict Sites Register with its insertion into the Register on the 10th day of December 2015.

Correspondence accompanies the Compulsory Acquisition dating from 10th December 2018 advising *Ceres Real Estate (Ireland) Limited* of concerns as to the lack of progress in removing dereliction and of the provisions of section 14 of the Derelict Sites Act giving the City Council the power to compulsorily acquire the proposed property. A response to same dated January 2019 stated that the sale of the property was imminent. The Council has also furnished correspondence from an adjoining property owner detailing the impact Nos. 118 and 119 were having on her property.

The notice of intention to acquire the property compulsorily under section 15 was issued on 4th June 2021 and published in the Irish Examiner on the 11th June 2021.

Objections to the notice were received from Declan Clancy, Status Corporate Advisory (Receiver) and Michael Dillon Director, Ceres Real Estate (Ireland) Limited stating that an offer has been accepted for the sale of the property and that the receiver is in the process of completing a Contract for Sale of same. A 3rd objection was received from Daly Derham Donnelly Solicitors on behalf of David O' Connor on grounds that the property is not a dangerous structure, is not derelict, is rented and is used daily by an upholstery business.

The said parties did not make further submissions following the Board's notice under 16(5) of the Derelict Sites Act inviting observations in relation to the comments of the local authority on the objections.

The fact that correspondence was issued and a notice was served on the property under the Local Government (Sanitary Services) Act 1964 in terms of it being a dangerous structure is noted. Copies of such correspondence is provided with the City Council's application for consent to the Board. The dates of the correspondence and notice served differ from those referenced in the objection from Daly Derham Donnelly Solicitors on behalf of David O' Connor. The objection is not

accompanied by copies of the said correspondence. Notwithstanding, the acquisition of the property is being pursued under the Derelict Sites Act, 2000, as amended, and not the Local Government (Sanitary Services) Act 1964 and it is within that legislative framework that the case is being assessed.

It is also contended that the premises is not derelict and is occupied. I saw no evidence on day of inspection to suggest that the front section or the upper floors of the property were occupied. I cannot confirm that the rear of the property as accessed from Step Lane is or is not used for commercial/storage purposes. Notwithstanding, I submit that occupancy does not, of itself, render the property not derelict with no caveats to this effect provided in section 3 of the Act.

I would also submit that whilst the sale of the property has been mooted since 2019 no evidence to this effect or timeline for the completion of the sale have been provided at any juncture including in support of the objections to this compulsory acquisition consent request.

The condition and appearance of the property are at variance with the relatively well-maintained appearance of properties in the immediate vicinity. It 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.

Therefore, having regard 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 No.118 Barrack Street be granted.

8.0 Recommendation

Grant consent to Cork City 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

November, 2021