



An
Bord
Pleanála

Inspector's Report ABP-312292-21

Nature of Application

Application for consent for compulsory acquisition of a derelict site comprising a single storey dwelling and surrounding lands in accordance with Section 16 of the Derelict Sites Act 1990, as amended

Location

Corgrigg, Foynes, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

Ted O'Leary/Representatives

Date of Site Inspection

22nd March 2023

Inspector

Suzanne Kehely

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála for the compulsory acquisition of the subject site at Corgrigg, Foynes, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended. Since the lodgement of the request by the Council, Mr. Liam Judge, the agent of the notice party confirmed to the Board that the said party died on 4th March 2022.

2.0 Site Location and Description

- 2.1. Foynes is a town and major port on the Shannon Estuary in west County Limerick. The town centres around the N69, and development consists largely of an industrial development related to the port activities in addition to local residential and ancillary services and amenities. is close to Foynes National School, Limerick City and County Library, the Fire service building and opposite the entrance to the GAA Club.
- 2.2. The application site of 0.056 hectares is located on a corner site. The house fronts onto a short cul-de-de sac road that provides access to industrial land (Foynes Port) to the north and vehicular access to a detached dwelling also fronting the N69 on the opposite the side to the south. The site has frontage of c. 28m onto this access road off which it has separate vehicular and pedestrian accesses The side of the house site also has frontage of c. 19m a short laneway access to a terrace of two and three bay Arts and Crafts Cottages (Creveen Cottages) - Protected Structures, fronting the N69. There is a side door from the property onto this minor lane. The house is less than 5m from the rear boundary wall leaving the garden area to the side and front. This extends to a width of 7-9m between the gable wall and the side boundary.
- 2.3. The site is described in the notice as a derelict site comprising a detached single storey residential premises and surrounding land containing 0.056 hectares or thereabouts. The said property and surrounding land are stated to be in a state of dereliction.
- 2.4. On the day of my inspection I noted the house is a single storey structure with pitched roof and mostly boarded up windows, some of which are broken and some

obscured by out-of-control vegetation growth. The timber in the windows and the side door has faded and peeling paint/varnish and is rotting in places. The doorway opening in the side is unfinished with render missing in the surround/door reveal. Part of the rear wall has render gaps near the soffit. The downpipe is not connected to the gutter in the front elevation and the wall around the downpipe is extensively stained. The roof and gutter contain weeds and the overall site including the driveway and pathway are overgrown to the extent that the garden area is virtually inaccessible. The boundary walls and pillars are unkempt, and capping is missing on one of the pillars. The underside of the doorway porch appears damaged with dangling wires and a light fitting. The vacant property and its boundaries are in an overall poor state of repair. The garden areas, and curtilage are overgrown and in need of extensive clearance and maintenance.

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 as provided for under sections 14 and 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 2nd October 2007, under section 8(7) on 31st December 2007, under Section 11 on 22nd January 2008 and under section 15 on 21st October 2021.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. As the site continued to be a derelict state, Limerick City and County Council exercised its power of compulsory acquisition under section 14 of the Derelict Sites Act 1990 and gave its notice to the owner of its intention to acquire the derelict site compulsorily. Notice under section 15(1)(b) of intention to acquire derelict site compulsorily was served on the owner/occupier/lessee on 18th October 2021. Notice parties were Ted O'Leary c/o Thorpes Nursing Home. Liam Judge, Ballysheedy Accounting Services (agent for Ted O'Leary) and Maire Jackson (Mac Siacuis) 11 Boyne Park (understood to be deceased.) As required, Notice was published in the

Limerick Post on 23rd October 2021. The site was described as follows in the notices:

- A derelict site comprising of a single storey detached residential property situate at Corrigg, Foynes, Co. Limerick contained in 0.056 hectares or thereabouts. . 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-001-07 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 notices were 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. An objection to the proposed acquisition was submitted to Limerick City and County Council by Liam Judge , on behalf of Ted O'Leary in a letter dated 12th November 2021. (date stamped as received on 17th November 2021). The council was advised that the notice party became seriously ill in 2013 and has been hospitalised and nursed since that time. Accordingly he was not in a position to conduct his affairs. Mr. Judge has been his agent since 2018 and requested more time to sort out affairs. This is in tandem with another property also subject of a CPO in Adare.(ABP 31549-22)

4.2.2. The Board wrote to Liam Judge on 7th January 2022 advising of procedure and seeking any observations on comments by Limerick City and County Council by 28th January 2022. No response was received by the Board in respect of this matter however Mr. Judge subsequently advised the Board on 24th March of the death of Mr. Ted O'Leary on 4th March 2022. The Board in turn advised LCCC.

4.2.3. Mr. Patrick P. Geaney, Solicitor acting on behalf of the legal representative for Mr Ted O'Leary, confirms by letter of 6th April 2022 to LCCC his representation for representatives. This is attached to a letter to the Board dated 26th April 2022 and requests no order be made in view of the circumstances.

4.2.4. In further correspondence from Mr Geaney dated 8th March 2023, it is requested that the case be dealt with as a matter of urgency. A letter to LCCC is appended and this

conveys a willingness to discuss sale but the refusal of LCCC to enter into discussion and concern about the resultant penalties incurred by the estate representatives with respect to levies. The agent is considering pursuing legal action to advance the matter.

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 20th December 2021 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out planning authority's strategic approach to derelict sites in the city and county, a description of the site and location, the background to the case and the details of the objection.
- Photographs and a map of the site area.
- Copy of the section 15 Notice served on the owners/occupiers of the site, dated 18th October 2021 and letter to owner dated 20th October 2021 attaching said Notice,
- Copy of the newspaper notice, dated 23rd October 2021.
- Copy of objection made by Liam Judge, Ballysheedy Accounting Services dated 12th November 2021.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County Council 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 area of high housing demand, town and village centres and the historic core of the City. The general approach is 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.

- Consideration is given to evidence of efforts to address vacancy and dereliction, in addition to condition of site, planning permissions, conservation issues and feasibility of various actions to make good the site . Staff have been working through the Derelict Sites Register to support owners in removing these properties from the register,
- The property is described as being located in the centre of the village of Foynes and in context of surrounding lands and amenities.
- The bungalow is described as being in derelict condition for a considerable period and continuing to detract from a material degree from the amenity, character or appearance of land in the neighbourhood of the land because of the neglected unsightly or objectionable condition of the structures on the land. This is based on:
 - the window condition - smashed and/or boarded up, untreated timber
 - rainwater guttering being blocked with vegetation and disconnected
 - vegetation/growth over yard (briars and moss) and Japanese Knotweed to west
 - unsightly boundary wall and entrance
- The site was first inspected on 30th April 2007 and identified as a Derelict site where upon the enquires were made regarding ownership and planning history.
- The title comprises Folios LK3073F, LK2354F and LK3072F. One of the registered owners did not response to correspondence and is presumed deceased.
- There has been engagement by LCCC with Ted O’Leary and an auctioneer on his behalf. The property was listed for sale between 2017 and 2019 but offers were refused. Mr Liam Judge made representations in 2019 who was met by LCCC officials to discuss problems. LCCC met MR Judge on 29th January 2020 to confirm the is was not in a position to purchase the property under the Buy and Renew Scheme and would consider CPO.
- LCCC decided to issue a Section 8(2) notice on 2nd October 2007 (intention to enter the property onto the Register of Derelict Sites) and a Section 8(7) notice on 31st December 2007 (advising entry onto the register). A Section 11

Notice (requiring certain works to be carried out) was served on 24thh January 2008.

- The market value was determined in November 2011 and a Section 22 Notice of valuation was issued in April 2012. The market value was again determined in December 2017. Section 22 Notices informing the owner of the valuation were issued on 29/04/2012, 01/03/2018 and on 28/02/2019. However, no response was received.
- As the land continued to be in a derelict state LCCC decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 21st October 2021.
- An objection to the proposed acquisition was submitted to Limerick City and County Council by Liam Judge , on behalf of Ted O'Leary in a letter dated 12th November 2021. (date stamped as received on 17th November 2021). The council was advised that the notice party became seriously ill in 2013 and has been hospitalised and nursed since that time. Accordingly he was not in a position to conduct his affairs. Mr. Judge has been his agent since 2018 and requested more time to sort out affairs. This is in tandem with another property also subject of a CPO in Adare.
- LCCC contends that it is the inaction of the owners and failure of their duties under the Derelict Sites Act 1990, as amended that jeopardises the future use of properties in the area due to their continued neglect and derelict stat and that the local authority is best paled to solve the evident dereliction. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

A submission was made to LCCC by Liam Judge, on behalf of Ted O'Leary in a letter dated 12th November 2021. (date stamped as received on 17th November 2021). The council was advised that the notice party became seriously ill in 2013 and has been hospitalised and nursed since that time. An appended medical report details the situation and he was not in a position to conduct his affairs since that time and also in the years prior. Mr. Judge has been his agent since 2018 and requested

more time to pursue a potential sale through West Property Group Auctioneers, on the basis of there being a number of interested buyers.

In further correspondence submitted to Board on 27th April 2022 by Mr Patrick P. Geaney, solicitor for the executor of the estate of Mr. Ted O’Leary, explains that his client is anxious to dispose of the property, but that the CPO and refusal of LCCC to withdraw same prohibits proceeding with any sale or marketing of the subject property. A follow up letter was received on 9th March 2023 requesting the matter be dealt with as a matter of extreme urgency .

5.0 Planning History

5.1. Application Site

- 5.1.1. Planning authority references 7029 (OL) and 7738 are referred in the LCCC report. On review of the planning register online,(eplan) , file number 07738 refers to an application in Tomdeely North, Askeaton in 2007. There are no details on the planning register map of planning decisions on the subject site – only enforcement/Derelict Site references.

5.2. Surrounding Area

- 5.2.1. File number 082068 refers to a refusal of permission in 2008 for a dwelling on an adjacent site to the rear of the subject property.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The current Development Plan is the Limerick County Development Plan 2022-2028 (CPD) which was adopted in July 2022 after the commencement of the compulsory acquisition process. In this plan Foynes is classified as large village in level 4 of the settlement hierarchy and aims for this area are set out in Volume 2 of the CDP. The primary focus for Foynes is to support the proportionate growth and to strengthen and consolidate the town. The core strategy provides a housing allocation of 54 units. On page 41 it states that ‘Having regard to the quantity of underutilised back

land sites and the level of dereliction, it is considered that there are opportunities for the development of residential units within the village centre.

- 6.1.2. The site is zoned 'village centre' in the CDP and it is also located within Flood Zone A along with the village centre and corridor of development along the N69 and its hinterland. The site borders an Architectural Conservation Area on two sides.
- 6.1.3. The overall strategy in the CDP is to encourage development to locate within the development envelope of towns and villages. Relevant policies include:
- **CGR P1** which seeks to achieve sustainable intensification and consolidation, in accordance with the Core Strategy, through an emphasis on revitalisation and the delivery of more compact and consolidated growth, integrating land use and transport, with the use of higher densities and mixed-use developments at an appropriate scale on brownfield, infill, backland, state lands and underutilised sites within the existing built footprint of Limerick's City, Towns and Villages.
 - **CGR P4** Revitalisation of Towns and Villages: It is the policy of the Council to: a) Actively address issues of vacancy and dereliction in settlements across Limerick. b) Promote projects contributing to compact growth and the physical, social and economic revitalisation of the towns and villages throughout Limerick.
- 6.1.4. Utilising available statutory powers such as derelict site and compulsory purchase powers is one of the measures to achieve its stated intentions regarding supporting vibrant towns and villages. Chapter 3 sets out the policies and objectives relating to spatial strategy and notably includes:
- **Objective CGR O6 Derelict Sites:** It is an objective of the Council to utilise the provisions of the Derelict Sites Act 1990, including the maintenance of a Derelict Site Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.

6.2. Wider policy context

- 6.2.1. The Regional and Spatial Economic Strategy (RSES) for the Southern Region sets out a number of strategic outcomes that align to the NPF, including the sustainable growth of a compact city, towns and villages.

6.2.2. National Planning Framework: NPO 3c of the National Planning Framework sets an objective that at least 30% of all new homes that are targeted in settlements, other than the five cities and their suburbs, should occur within their existing built-up footprints.

6.3. Derelict Sites Act 1990 (as amended)

6.3.1. 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 land owners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.3.2. 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.”

6.3.3. 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

- 7.1. I inspected the site from both the public roadway and lane onto which the property fronts. This provides views of all sides of the property and its curtilage although parts of the house were obscured by considerable overgrowth. The house was not accessible for internal inspection.
- 7.2. The house is vacant and has a neglected, unsightly and objectionable appearance from both the public road and from the residential rear access onto which it has frontage and from which it is overlooked to the side by surrounding properties. This appearance is due to the combination of boarded up and broken windows, a rotting timber door and unfinished door surround, and broken guttering. The front porch was in a state of disrepair with exposed wires/cables and light fitting hanging down. The gardens and curtilage at the front, side and rear are completely overgrown to the extent that the driveway and footpath and parts of walls are covered with growth with no evidence of maintenance. This is consistent with the description by Limerick City and County Council which first identified the site as derelict in 2007 . While I note the difficult medical circumstances of the owner in 2013 and for some years prior it would appear that there have been no attempts to improve the appearance – and so it has been in this condition for many years and accordingly remains on the Derelict Sites register.
- 7.3. The dwelling houses in the surrounding residential area appear to be well maintained and occupied, and the public realm through the village core is attractive and well cared for. I do however note that the industrial land to the rear has a boarded up building but it is, I note, well set back from the N69 and residential development.

Having regard to the foregoing, I am of the opinion that the application site detracts to a material degree from the character and appearance of the surrounding residential area and the town.

- 7.4. With respect to the nature of dereliction, I am of the opinion that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. Apart from some staining around the downpipe and small bits render coming away at the rear, missing around the door, the house appears to be in reasonable structural condition externally. There is no obvious evidence of significant cracking or structural damage to the external walls, and the roof structure appears to be generally intact. As it is a single storey, there is no issue with stairs and collapsing floors. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition, having inspected the site, I do not consider that the structure is in a dangerous condition, nor in the absence of any visible evidence of structural damage and could be considered ruinous. However for other reasons, as stated, it is I consider derelict . As there was no litter within the application site or any evidence of waste being stored externally I do not consider that the site falls within category (c) of section 3 of the Act.
- 7.5. In conclusion, 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.
- 7.6. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building and that the Local Authority's maintains its position of intention to acquire the site compulsorily notwithstanding owners intention of selling.
- 7.7. I note the objections made on behalf of the owner/executors . Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the house remains in a neglected and unsightly condition, I therefore consider that the site remains in a derelict condition.
- 7.8. I note that the agents for the owner(now deceased) and his representatives both refer to an intention to sell and the basis for the objection lies in the restriction to sell on the open market. This is I consider a matter for valuation which in default of

agreement be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 as set out in section 19 of the Derelict Sites Act 1990 as amended.

7.9. 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 the site at Corgrigg, Foynes, Co. Limerick is granted.

8.0 Recommendation

8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts 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.

8.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

9.1. 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 (b) of the Derelict Sites Act, 1990, 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.

Suzanne Kehely

Senior Planning Inspector

19th April 2023