



An
Bord
Pleanála

Inspector's Report ABP-312365-22

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of Derelict Sites Act 1990, as amended.

Location

11 St. Mary's Terrace, Cappamore,
Co. Limerick.

Local Authority

Limerick City and County Council

Notice Party

Krzysztof Warcholek

Date of Site Inspection

30th of November 2023

Inspector

Siobhan Carroll

1.0 Introduction

- 1.1. 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 11 Mary's Terrace, Cappamore, Co. Limerick in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The subject property no. 11 St. Mary's Terrace is located within the village of Cappamore, Co. Limerick. Cappamore is situated circa 22km to the south-east of Limerick City.
- 2.2. The subject property is located to southern side of the village on Moore Street. Moore Street contains predominately residential properties. St. Mary's Terrace comprises six separate rows of terraced houses along the western side of the road.
- 2.3. The subject property comprises a two-storey, three bay end of terrace dwelling which dates from circa 1900-1920. The external finish of the property is rendered. The front boundary is formed by a low wall. There is pedestrian access from the public footpath with a central footpath with three steps to the front door and the remaining area of the front garden is grassed. On inspection of the site there was a skip in the front garden.

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. I note that this application is subsequent to the serving of notices under section 8(2), on 7th of November 2018, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on 29th of July 2020, (i.e. 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. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owner/occupier and was published in the Limerick Post on the 21st of October 2021. The site was described as follows in the notices:

- A derelict site comprising a two-storey, end of terrace, residential premises and surrounding land situate at 11 Saint Mary's Terrace, Cappamore, Co. Limerick, containing 0.042 hectares or thereabouts.
- The said property and surrounding lands is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-124-18 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 Gordon Daly at Limerick City and County Council Property and Community Facilities Department, Merchants Quay, Limerick, Co. Limerick. The correspondence from Michael Devlin Solicitors is dated 24th November 2021.

4.2.2. It is detailed in the correspondence that Krzysztof Warcholek the client of Michael Devlin Solicitor instructed them of the fact that he was carrying out works to his property. Mr. Warcholek hoped to have the works completed by the 10th of November 2021.

4.2.3. It is detailed in the correspondence that Mr. Warcholek instructed his solicitor that he was unable to complete the works to date due to his own ill health and due to delays during the Covid 19 restrictions.

- 4.2.4. Accordingly, Michael Devlin Solicitor requested on Mr. Warcholek's behalf that no action be taken on foot of the Dereliction Notice and that Mr. Warcholek be given the opportunity to complete his works by the 10th of December 2021.

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 the 20th of December 2021 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local 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 included photographs and a map of the site area.
- Copy of the notices served on the owner/occupier of the site.
- Copy of the newspaper notice, dated 23rd October 2021.
- Copy of the objection made by Michael Devlin Solicitor on behalf of their client Mr. Warcholek's submitted to the Local Authority on the 23rd November 2021.

- 4.3.2. The Derelict Site Report can be summarised as follows:

- The Dereliction and Vacancy Team focus on bringing derelict and vacant properties back into use with a particular emphasis on areas of high housing demand, town and village centres and the Historic core in Limerick City.
- The general approach is to work proactively with property owners, seek timely actions and improvements of sites through positive engagement, using powers under the Derelict Sites Act, 1990 only where necessary. Owners of derelict properties are provided with advice in relation to schemes such as Buy & Renew, Lease & Repair and the Council's Retail and Business Incentive Scheme.
- Referrals are made to other Council sections including pre-planning meetings, rates advice and the Local Enterprise Office. The following are taken into account - outstanding planning permissions, evidence of efforts to address

vacancy and dereliction, security, safety to the public and condition of the site, the conservation value of the building and the requirement for remedial restoration works, and the feasibility of various actions to make good the site and find valuable uses for the site.

- Area Inspectors carry out regular surveys of their designated district and respond to representations by elected representatives, community groups and the public. Staff have been working through entries on the Limerick City and County Council Derelict Sites Register supporting owners in order to remove these properties from the register. Where all reasonable alternatives have been exhausted the option of Compulsory acquire will be considered. To date Limerick City and County Council have published notices to acquire 166 properties under the Derelict Sites Act.
- The site at 11 Saint Mary's Terrace, Cappamore comprises a two-storey end of terrace dwelling and surrounding land containing approximately 0.047 hectares is vacant and in a derelict condition for a considerable period of time.
- It is stated that the property was inspected was inspected on 5th February 2018.
- It is detailed that the reason why this land and structure are determined to be derelict is because all windows and doors of the property are boarded up with steel and timber shutters making it look neglected and unsightly.
- The rainwater gutters are blocked up with dirt and vegetation. There is a significant amount of vegetation overgrowth on the land and structure within the front garden. This indicates that routine maintenance has not happened in a considerable time.
- The external walls of the dwelling and the front boundary wall are dirty and in need of new paintwork as they detract from the surrounding well maintained residential properties.
- It is stated that following significant fire damage in 2018 that the property has remained in the same derelict condition since.
- Attempts to screen the site with metal fencing and plywood have further added to the objectionable nature of the site in question.

- An Authorised Officer of Limerick City and County Council first inspected this property on 5th February 2018 and identified it as a Derelict Site. Site ownership enquiries were made through the Land Registry system and planning and development searches were subsequently carried out.
- The title to the property is comprised in Folio LK548F and the registered owner of the folio is Krzysztof Warcholek of 102 Glenside Lawns, Old Road, Limerick.
- A Section 8(2) Notice of Intention to enter the site on the Derelict Sites Register was served to the owner in November 2018.
- A Section 8(7) Notice of Entering the site into the Derelict Sites Register was served in July 2020.
- In March 2021, a phone call from the property owner outlined that he would renovate the property. He also confirmed his new address for all future correspondence, which was 50 Rosanna Close, Rosanna Road, Tipperary Town, Co. Tipperary. He sent through an email committing to completing works on the property within the following two months.
- There was no further engagement from the owner.
- It is highlighted that the property was previously proposed for the Buy and Renew scheme of Limerick City and County Council in 2018. An offer was made to the owner of €27,000.00, but he did not take up the offer at the time. It was estimated that remedial works would be well in excess of €60,000.00.
- The property was also proposed for the Repair & Lease Scheme in August 2020. Application forms were resent to the owner in July 2021 and no reply has been received. Housing Support Services pointed out that when a review was done at the time, there was no housing demand.
- The local Tidy Towns Group have made representations in relation to the derelict site. Local residents in the area have also made complaints during inspections by Limerick City and County Council staff.
- As the land continued to be in 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 of Intention to Acquire Derelict Site Compulsorily to the owner and advertised same in the Limerick Post newspaper on 21st October 2021.

- Limerick City and County Council, have served the following notices under the Derelict Site Act, 1990:
 - Section 8(2) Notice of intention to enter land in Derelict Sites Register: 7th November 2018.
 - Section 8(7) Notice of Entry of Land in Derelict Sites Register: 29th July 2020.
 - Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily: 21st October 2021.
- On the 24th November 2021, a letter was received from Michael Devlin Solicitor on behalf of his client Krzysztof Warcholek. It was duly acknowledged.
- It is the contention of Limerick City and County Council that it is the inaction of 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 neglected and derelict state. In this particular case, the owner's letter of objection stated that he was currently carrying out works on the property, which he hopes to have completed by 10th December 2021. A further inspection was carried out on the 1st December and the property still remained in a derelict condition.

4.4. Objector's Submission

- 4.4.1. A submission was made to the Board by Krzysztof Warcholek it was received on the 26th January 2022. A letter of acknowledgment dated 3rd February 2022 was issued from the Board to Mr. Warcholek.
- 4.4.2. Mr. Warcholek objects to the proposed compulsory acquisition of no. 11 St. Mary's Terrace, Cappamore, Co. Limerick.
- 4.4.3. The objection is made on the basis of the following;

- That all windows and doors have been replaced by new ones.
- That all the vegetation on the land, structure and in the garden has been removed and cleaned up.
- That the external walls of the dwelling and the front boundary have been cleaned from dirt and will be painted in the near future.

5.0 Planning History

5.1. None referring to the subject site.

5.2. Reg. Ref. 23/60110 - Permission was granted for the demolition of existing rear extension, construction of a new two-storey rear extension and all ancillary site works at no. 13 Mary's Terrace (Previously 12 St. Mary's Terrace), Cappamore, Co. Limerick.

6.0 Policy Context

6.1. Limerick City and County Development Plan 2022-2028

- 6.1.1. One of the strategic objectives for Limerick (Chapter 1) is to ensure the revitalisation and consolidation of urban areas through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4). The themes of revitalisation of towns and villages and the delivery of compact growth are central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3). **Policies CGR P1** and **CGR P4** set out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban areas and actively addressing dereliction and vacancy. One of the measures required to create compact, dense and sustainable urban centre is 'Active Land Management' (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban areas into beneficial use (Policy CGR O4). Key legislative measures to facilitate this included the powers under the Derelict Sites Act 1990.
- 6.1.2. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and Council is proactive

in identifying and seeking the improvement of such sites to address incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.

Objective CGR O6 – Derelict sites – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites 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.

- 6.1.3. Section 2 Spatial Strategy states that Cappamore is designated as a Level 4 Large Village in the Settlement hierarchy (Table 2.4)
- 6.1.4. Relevant objectives include **CGR O15: Requirements for Developments within Level 4 Settlements** – ensure development is in proportion to the pattern and grain of existing development. **Policy CGR P4 – Revitalisation of Towns and Villages** seeks to actively address issues of vacancy and dereliction and to promote compact growth and the physical, social and economic revitalisation of towns and villages.
- 6.1.5. **Chapter 4** sets out the policies and objectives relating to housing. Section 4.2.6 relates to Re-Use of buildings. Relevant objectives are as follows:
- 6.1.6. **HO O4** – to encourage redevelopment and reuse, including energy retrofitting of existing housing stock and conversion of other suitable buildings to sustainable accommodation.
- 6.1.7. **National Inventory of Architectural Heritage**
- 6.1.8. No. 11 Saint Mary's Terrace, Cappamore, Limerick is categorised as of special Architectural Interest and rated of Regional importance.
- 6.1.9. The property is described as an end-of-terrace three-bay two-storey house, built c. 1910, with lean-to extension to rear (west) elevation. Pitched slate roof with rendered chimneystacks, render coping to gable and timber eaves course. Roughcast rendered walls with render plinth course. Square-headed openings with render sills, those to first floor forming continuous sill course. Timber sash windows, two-over-two pane to first floor and south bay of ground floor and tripartite two-over-two flanked by one-over-one pane to north bay to ground floor. Square-headed door opening with render surround incorporating gable motif, rendered step and timber battened door

with integral oversight. Rendered boundary wall with wrought-iron railings and pedestrian entrance having wrought-iron gate.

6.2. Derelict Sites Act 1990 (as amended)

6.2.1. 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 required landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.2.2. 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 of 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.”

6.2.3. 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 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.

- 6.2.4. 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. Internal access to the property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road, the front, side and rear of the property.
- 7.2. In the Compulsory Acquisition report prepared by Limerick City and County Council it outlined that the Dereliction and Vacancy Team focus on bringing derelict and vacant properties back into use. They set out that the general approach is to work proactively with property owners and that owners of derelict properties are advised of scheme such as Buy and Renew and Lease and Repair.
- 7.3. In relation to the process of searching for derelict sites it is outlined in the report that Area Inspectors carry out regular surveys of designated districts and respond to submissions from elected representatives and the public. Where a property has been placed on the Derelict Sites Register, they state that staff work through the entries and support owners to remove them from the register.
- 7.4. In relation to the subject property No. 11 Saint Mary's Terrace, Cappamore, Co. Limerick, it is described in the Compulsory Acquisition report as vacant and in a derelict condition for a considerable period of time. It is stated in the report that the reason why this land and structure are derelict are because all windows and doors of the property are boarded up with steel and timber shutters, making it look neglected and unsightly. It is stated in the report that the rainwater gutters are blocked up with dirt and vegetation and that there is a significant amount of vegetation overgrowth on the land and structure with the front garden showing routine maintenance has not happened in a considerable time. In relation to the appearance of the property it is stated in the report that the external walls of the dwelling and the front boundary wall

are dirty and in need of new paintwork as they detract from the surrounding well maintained residential properties. It is highlighted in the report that following significant fire damage in 2018 that the property has remained in the same derelict condition since then. It was noted in the report that attempts to screen the site with metal fencing and plywood further added to the objectionable nature of the site.

- 7.5. The objector Mr. Krzysztof Warcholek has responded to the issues raised in the Compulsory Acquisition report in the submission to the Board. Mr. Warcholek objects to the compulsory acquisition of the property on the basis that he has addressed the matters raised in the Compulsory Acquisition report. It is set out in the submission that all the windows and doors of the dwelling have been replaced with the new ones, that the rainwater gutters have been cleaned, and that vegetation overgrowth on the land and structure and in the garden has been removed and the area has been cleared. It is also stated in the submission that the external walls of the dwelling and the front boundary wall have been cleaned and will be painted in the near future. I note that the objection was received by the Board on the 26th of January 2022.
- 7.6. Regarding the condition of the property, on inspection of the property on the 30th of November 2023 I observed that the external walls of the dwelling remained unpainted. The front boundary wall remained unpainted and there were no railings topping the low boundary wall as is the case with the adjoining and neighbouring properties within St. Mary's Terrace. In relation to the rear and side elevation of the dwelling these also remain unpainted.
- 7.7. The front door was replaced and the windows to the front and rear of the dwelling appear to have also been replaced. Regarding the condition of the rainwater gutters there did not appear to be directly visible growth of vegetation within them.
- 7.8. In relation to the condition of the front garden, on inspection of the property, I observed a skip located on the northern side of the garden. To either side of the path the garden is grassed. The grass did not appear unduly excessive in height although it was not cut. I note that the time of the inspection was not during the growing season. In relation to the condition of the rear garden, it contains some shrubs in an overgrown condition and some weed growth.
- 7.9. 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 of 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.”

7.10. In terms of the definition of a derelict site the subject dwelling is not in a ruinous condition and refurbishment works have been carried out by the owner including the replacement of the front door and the windows to the front and rear of the dwelling. Accordingly, the owner has directly addressed the former condition of the property as detailed in the Compulsory Acquisition report where it was stated that “all windows and doors of the property are boarded up with steel and timber shutters, making it look neglected and unsightly”. Regarding the condition of the rainwater gutters they have been cleared of vegetation growth. In relation to the appearance and condition of the gardens while there are some shrubs which are overgrown and weed growth in the rear garden, the front garden does not contain any significant presence of overgrown shrubs/weeds or other vegetation. While I observed that there was some growth to the two grassed sections in the front garden, it is evidence that it has been maintain by the very fact that there is not significant overgrowth of the area. Therefore, routine maintenance of the front garden has occurred.

7.11. In relation to the external wall of the dwelling it was detailed in the Compulsory Acquisition report that “the external walls of the dwelling and the front boundary wall are dirty and in need of new paintwork”. It is stated in the objection that “the external walls of the dwelling and the front boundary wall have been cleaned and will be painted in the near future.” In this regard I note that as indicated on the photograph on file dated December 1st 2021 that there appeared to be some rust staining to the lower section of the front external wall of the dwelling. On inspection of the site, I did

not observe this presence of rust. Accordingly, I would note that measures were taken to address this issue to the front wall of the dwelling. The external walls of the property do require to be painted along with the front boundary wall, however, I note that Mr. Warcholek has confirmed that this will be carried out.

- 7.12. Notwithstanding the fact that external walls of the property and front boundary wall have yet to be painted, I consider that the site does not materially detracts from the amenity, character and appearance of land in the neighbourhood and therefore does not constitute a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended. Furthermore, I did not observe the presence of any litter, rubbish, debris or waste.
- 7.13. Accordingly, having regard to the fact that the owner is in the process of bringing the property into use I consider that it would be appropriate that sufficient time should be afforded to the owner to enable the property to be fully restored for the future occupation of the dwellinghouse.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable. However, I do conclude that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 8.2. Having regard to the constitutional and Convention protection afforded to property rights, I do not consider that the acquisition of the Derelict Site comprising a two-storey, end of terrace, residential premises and surrounding land situated at 11 Saint Mary's Terrace, Cappamore, Co. Limerick, contain 0.042 area or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated the 21st day of October 2021 and on the deposited maps (DS-124-18) pursues, and is rationally connected to, a legitimate objective in the public interest, namely, to ensure that the lands do not continue to be a derelict condition.
- 8.3. I am not satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as

little as possible. In this respect, I considered alternative means of achieving the objective referred to in submissions to the Board, and I am not satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.

- 8.4. Accordingly, I am not satisfied that the confirmation of the CPO is clearly justified by the exigencies of the common good.

9.0 Recommendation

- 9.1. Having regard to the observed condition of the application site and subject property, specifically the structural condition of the property whereby the front door and windows to the front and rear of the dwelling have been replaced, the rainwater gutters have been cleared of vegetation growth, and notwithstanding the fact that external walls of the property and front boundary wall have yet to be painted, I do not consider that the site does materially detracts from the amenity, character and appearance of land in the neighbourhood and therefore does not constitute a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 9.2. Accordingly, I do not 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 that the Board refuse consent to Limerick City and County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1. Having regard to the current condition of the site, the structural condition of the building, whereby the front door and windows to the front and rear of the dwelling have been replaced and the rainwater gutters have been cleared of vegetation and notwithstanding the fact that external walls of the property and front boundary wall have yet to be painted, it is considered that the site does not detract to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, does not come within the definition of a derelict site as defined in

sections 3(a), 3(b) and 3(c) of the Derelict Sites Act, 1990, as amended. Accordingly, the Board considered that sufficient efforts were being made to bring the property into use and to render it non-derelict and that sufficient time should be afforded to the owner to enable the property to be fully restored for the future occupation of the dwellinghouse. Therefore, the Board decided to refuse consent to the compulsory acquisition of the site in question.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Siobhan Carroll
Planning Inspector

22nd April 2024