



An
Bord
Pleanála

Inspector's Report

ABP-312366-22

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 16 of the Derelict Sites Act 1990, as amended.

Location

12 Davin Gardens, Caherdavin
Limerick.

Local Authority

Limerick City & County Council

Notice Party

Mr. Kenneth Graham

Date of Site Inspection

01/10/2022

Inspector

A. Considine

1.0 Introduction

- 1.1. This case relates to a request by Limerick City & County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 12 Davin Gardens, Caherdavin Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended (hereinafter referred to as the 'Derelict Sites Act').
- 1.2. Notice of the intention to compulsorily acquire the site under Section 14 of the Derelict Sites Act 1990 was published on the 18th of October 2021 and the notice was posted to Turlough Herbert, Herbert & Co. Solicitors, being the Solicitors for the Reprs of the estate of Alfred Graham (Deceased). A copy of the notice was also erected on the site. An objection to the CPO was received by the local authority from Mr. Kenneth Graham by letter on the 19th of November 2021, prior to the final date for submissions.
- 1.3. I have read the content of the file and inspected the site on the 3rd October 2022.

2.0 Site Location and Description

- 2.1. The subject site comprises an end of terrace two-storey residential property and surrounding lands of approx. 0.041ha at 12 Davin Gardens, Caherdavin Limerick. The site lies to the west of the centre of Limerick City, in the Caherdavin suburban area of the City. The site lies in close proximity to the Gaelic Grounds to the south and the Limerick Institute of Technology to the east.
- 2.2. The area comprises a substantial residential area and fronts onto Redgate Road which runs between Brookville Avenue (R445) to the south and the Old Cratloe Road to the north. The Scoil Chríost Rí Boys NS lies across the public road from the site. The site occupies a prominent corner site at the entrance into Davin Gardens, with the front of the house facing Redgate Road to the west and the southern elevation facing onto the estate road of Davin Gardens.
- 2.3. On the date of my site inspection, the property was secured with hoarding to the majority window frames of the property. I did note that the ground floor front window and the front door appear to have been recently replaced and were securely locked. The grounds of the property appear to be unkempt and are becoming overgrown. I would note that the properties in the vicinity of the subject site are residential in use

and the other properties on the street all appear to be in use and are well maintained.

- 2.4. The Board will note that the Planning Authority has submitted that the residential property is vacant for over a year, and in a derelict condition for approximately 3 years. It is contended that the land detracts from a material degree from the land in the neighbourhood because of the neglected and unsightly condition of the structure and surrounding land. While I note that the PAs report indicates that a large volume of rubbish and waste was present on the site, I can advise that this was minimal on the date of my site inspection.

3.0 Application for Consent for Acquisition

- 3.1. On the 20th of December 2021, An Bord Pleanála received an application for consent to the compulsory purchase of a derelict site at 12 Davin Gardens, Caherdavin Limerick from Limerick City & County Council. The application for consent is made under section 14/16 of the Derelict Sites Act, 1990, as amended.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of Limerick City & County Council's intention to acquire the site compulsorily was published in the Limerick Post newspaper on the 23rd of October 2021. Notice was also posted on the property and served on the owners by registered post in letter dated 18th October 2021 (with photographic evidence of posting). The site is described as follows in the notices:

A derelict site comprising a two-storey, end of terrace, residential premises and surrounding land situate at 12 Davin Gardens, Caherdavin Limerick, containing 0.041 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-142-20 in the Derelict Sites Register established and maintained by Limerick & City 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 & County Council by Mr. Kenneth Graham, son and next of kin of the late Alfred Herbert Graham, and registered owner of the property, by letter on the 19th of November 2022. The objection can be summarised as follows:

- Mr. Kenneth Graham is the only person capable of complying with Section 9 of the Derelict Sites Act, 1990 and since January of 2021, Mr. Graham spent a considerable period in hospital, and subsequently spent 5 months in Limerick Prison, having been released on the 27th of October 2021.
- It is submitted that he is now determined to take steps to renovate the property and put it in order. The primary objection is that he was not in a position to do so before now. Any attempt to compulsorily acquire the property would be unjust and in breach of his rights as he has not been afforded the time to comply with the Act.
- The notice was incorrectly served as there is no provision in the Act to serve solicitor in the estate of a deceased owner.
- Permission was given by the owner to Limerick City & County Council to take measures to secure the property in August of 2021. The owner was not in a position to take any other action due to his incarceration at the time.
- It is submitted that the owner has exhibited his determination to take appropriate measures to the property in good order and as such, the property does not now meet with the definition of a derelict site for the purposes of Section 3 of the Act.

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 of December 2021, and was accompanied by the following:

- Compulsory Acquisition Report
- Derelict Site Location Map
- Section 15 Notice issued to owner
- Section 15 Newspaper advertisement
- Letter of Objection and acknowledged response.
- Photographs of the property dated from 2020-2021.

4.3.2. In support of the application for consent to the compulsory acquisition of the derelict site, the local authority included a history of the derelict site case which notes as follows:

- An officer of Limerick City & County Council first inspected the property on the 9th of December 2014, and a derelict site case was opened, Ref: DS-021-15. It is noted that a Section 8(2) Notice was served on the 18th of March 2015 and that remedial works were completed in 2015 and the case was closed.
- A further report on the property was received in May 2020 and an inspection of the site was carried out by Limerick & City Council on the 24th of June 2020, when the inspector met with Mr. Kenneth Graham and advised him of the reason for the visit.
- A second Section 8(2) Notice was issued by registered post in November 2020, but was returned by An Post. Attempts to hand deliver the notice were also unsuccessful so the notice was affixed on the land.
- In December 2020, the property was the subject of two arson attacks and as a result, the property became unoccupied again.
- On the 17th of May 2021, the site was entered in the register and on the 27th of May 2021, a Section 8(7) Notice was served on the land.
- On the 29th of June 2021, the Council was advised that Turlough Herbert Solicitor, was being instructed in the estate of the late Alfred Graham by his sons.

- On the 25th of August 2021, following a number of complaints, the Council arranged for the property to be secured with metal sheeting in the interest of public safety with the consent of Mr. Kenneth Graham.

4.3.3. As the land continued to be in a derelict state, LCCC, the Council gave Notice of Intention to Acquire Derelict Site Compulsorily to the owner and advertised same in the Limerick Post newspaper on the 23rd October 2021.

4.3.4. The Council has therefore served the following notices under the Derelict Site Act 1990:

- Section 8(2) Notice of intention to enter land in Derelict Site Register – 4th March 2021
- Section 8(7) Notice of Entry of Land in Derelict Sites Register – 27th May 2021
- Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily 21st October 2021

4.3.5. It is contented 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. The Councils Fire Services have also attended fires at the property and the Council has had to secure access to the structure in the interest of public safety where the owner had failed in their duties and responsibilities.

4.4. Objectors Submission

4.4.1. The objector to the compulsory acquisition of the site made a submission to the Board following the lodging of the application by Limerick City & County Council on the 20th of December 2021, via his solicitor on the 25th of January 2021. The submission is summarised as follows:

- LCCC has not made allowances whereby the person in charge of the property has been incarcerated. It offends against natural justice to bring the power of the State, in the form of Compulsory Acquisition of property, where the owner is not at liberty.
- The owner intends to reside at the property on their release from prison.

- The owner has taken steps to restore the property and are fortunate to have a support network of friends who are going to assist in the restoration of the property.
- An inspection of the property will be welcomed if an appropriate time is given for the property owners to bring the property up to an acceptable level in terms of its appearance and security in the coming weeks.

5.0 Planning History

The planning history of the site indicates that planning permission was granted in 1994 for the retention of unauthorised structure comprising conservatory, attic conversion to playroom and toilet, PA ref: 94/1134 refers.

6.0 Policy Context

6.1. Development Plan

6.1.1. The applicable Limerick City & County Council Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. This Plan was adopted by the Elected Members of Limerick City & County Council on the 17th of June 2022 and the Plan came into effect on the 29th of July 2022, six weeks after the date of adoption.

6.1.2. The subject site lies in an area which is zoned Existing Residential in the new CDP. One of the strategic objectives of the plan includes the addressing of vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest.

6.1.3. Chapter 3 of the Plan deals with Spatial Strategy and the following objective is considered relevant as it relates to derelict sites:

Objective CGR O4: Active Land Management:

It is an objective of the Council to:

- b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

6.1.4. Section 3.3.2.2 of the Plan specifically deals with Derelict Sites and notes that such sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. The following policy objective is relevant in this regard:

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 reuse.

6.2. Derelict Sites Act 1990 (as amended)

6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land or buildings 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.

6.2.2. 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 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.”

6.2.3. Other relevant sections of the Act include as follows:

- 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. Introduction

7.1.1. The subject site comprises a two-storey house at the end of a terrace of houses fronting onto Redgate Road, Caherdavin, Limerick. Having regard to the nature of the site, the Board will note that I did not gain access to the rear of the site, and I carried out my site inspection from the public footpath.

7.1.2. The Board will note the considerations of the local authority in relation to the subject site. In addition, it is noted that a number of derelict site notices have been issued in relation to the property dating back to 2015. While it is noted that the 2015 case was closed following the completion of the necessary remedial works, the house has again fallen into a state of disrepair and that the site has a neglected,

unsightly and objectionable appearance from the public road and in the surrounding streetscape. The Board will also note that the subject site was entered into the Limerick City & County Council Derelict Site Register, Site ID DS-142-20 and the S8(7) Notice is dated 27th of May 2021 and the S15(1)(b) Notice is dated 18th of October 2021.

7.2. Planning History

7.2.1. The planning history of the site indicates that planning permission was granted in 1994 for the retention of unauthorised structure comprising conservatory, attic conversion to playroom and toilet, PA ref: 94/1134 refers.

7.3. Statutory Process

7.3.1. I note the actions of the Local Authority and the statutory notices served on the property, and the reputed owner in respect of the site. I note that notices under section 8(2) (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites) in 2015 and 2020 were served on the reputed owners and objector, Mr. Kenneth Graham, but that the Notice in 2020 was returned by An Post. An attempt to hand-deliver the Notice was made without success and the Notice was affixed on the property. On the 27th of May 2021, a Section 8(7) (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites) were served on the land.

7.3.2. I would note also that while evidence of section 11(2) (i.e. directing that specified measures be completed) has not been provided to the Board, it is noted in the local authority's report, that the Council have had cause to attend at the site for a variety of reasons, including reports of vermin, arson attacks and to arrange for the property to be secured with metal sheeting in the interests of public safety over a period of 15 months (at the time of writing the report December 2021). I would note that the site continues to remain essentially, in a derelict state.

7.3.3. As the site is included in the Register of Derelict Sites for Limerick City & County, I am satisfied that the Local Authority adequately demonstrated that section 8(2), section 8(7) or section 11(2) notices were served on the owners. In any case, the Board should note that it is not a requirement under the Derelict Sites Act 1990,

as amended, for a site to be placed on the register of derelict sites prior to an application being made to acquire it compulsorily.

7.3.4. A Section 15(1)(a) Notice of intention to acquire the site compulsorily was signed on the 18th of October 2022, served on the 20th of October 2021 and published in the Limerick Post newspaper on the 23rd of October 2021. I acknowledge the submission of the objector Mr. Kenneth Graham, son of Mr. Alfred Graham (Deceased), that the Notice was incorrectly served upon solicitor Turlough Herbert and not the registered owner of the site.

7.3.5. I note that Mr. Kenneth Graham indicated in his objection that he spent time in hospital from January 2021 due to illness and that he subsequently spent almost 5 months in Limerick Prison being released on the 27th of October 2021. In this regard, the Board will note that attempts to serve A Section 8(2) Notice in November 2020 failed and so the notice was affixed on the property. In terms of the serving of the Section 15(1) Notice, the Board will note that on the 29th of June 2021, Solicitor Turlough Herbert contacted the Council confirming that he was being instructed in the estate of the late Alfred Graham by his sons Kenneth and Alan Graham.

7.3.6. With regard to the notices prepared by the Local Authority, I am satisfied that every effort was made to serve notice to the reputed owners of the site. Solicitor Turlough Herbert notified the Council that he was being instructed in the estate of the late Alfred Graham by his sons Kenneth and Alan Graham, and I am therefore satisfied that the reputed owners were adequately served notice, demonstrated by the fact that an objection was made.

7.4. Compliance with Section 3 of the Derelict Sites Act 1999, as amended

7.4.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent 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. 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.”

7.4.2. With regard to category (a), of section 3 of the Derelict Sites Act, 1990, which relates to structures which are in a ruinous, derelict or dangerous condition, having inspected the site, I note that the building occupying the site is in a derelict condition. I note that the ground floor front window and front door of the house have been replaced which better secures the house. However, this has done little to improve the derelict nature of the building. I would also note that since the original photographs were taken by the Planning Authority, and having undertaken a site inspection, hoarding to windows remain in all elevations and that the garden area is becoming overgrown and unkempt. In this regard, I accept that the subject site is in a derelict condition, and it is reasonable to determine that the site is a derelict site in accordance with category 3(a) of the Derelict Sites Act 1990, as amended.

7.4.3. With regard to category (b), the Board will note the location of the site in the context of the adjacent homes, all of which are well maintained. I would consider that the site falls within this category of section 3 of the Derelict Sites Act, 1990 due to the property being in a neglected, unsightly and objectionable condition and it is reasonable to determine that the site is a derelict site in accordance with category 3(b) of the Act.

7.4.4. While I could not gain access to the rear of the site, having regard to the photographs submitted with this application, I can attest that the rubbish and waste evident in same, appears to have been generally cleared. While I acknowledge the unkempt nature of the property detracts from the amenity and appearance of properties within the streetscape of this area of Caherdavin, Limerick, I would not consider that the site falls within category (c) of section 3 of the Act.

7.5. Other Issues

7.5.1. I note that the owner, Mr. Kenneth Graham, objected to the proposed acquisition of the property by Limerick City & County Council in November 2021 which instigated the application to the Board. On the 25th of January 2022, the Board received an email from Mr. Grahams solicitor, responding the comments made by Limerick City & County Council in relation to the objection.

7.5.2. It is submitted that the Council failed to make allowances where the persons in charge of the property were incarcerated and that the seeking to compulsorily purchase the property while the owner is not at liberty offends against natural justice. It is further noted that the owner intends to reside in the property when released, and that steps to restore the property have been taken.

7.6. Conclusion

- 7.6.1. Having regard to all of the information available to me, together with my site inspection which clearly indicated that no remedial works of any substance have been undertaken at the site other than the replacement of the broken front door and ground floor window, I am satisfied that the site is a derelict site within the definition of the Act and has been included in the Register of Derelict Sites for Limerick City & County Council since May 2021.
- 7.6.2. That said, I consider that the arguments made by the owner and his solicitor cannot be overlooked. I am unclear as to the current status of the property owner as his initial objection to the Council dated the 19th of November 2021 indicated that he had been released from Limerick Prison on the 27th of October 2021, while the email from his solicitor to the Board on the 25th of January 2022 indicates that he intends to reside in the property on his release from prison. Having regard to the circumstances of the property owner, as detailed in the submission from his solicitor, the Board might consider that he should be afforded a period of sufficient time to carry out the necessary works to the property in order to restore it to use and render it habitable.
- 7.6.3. While the site remains in a neglected and unsightly condition which detracts materially from the amenity and character of the wider area to an unacceptable degree, given the circumstances of the property owner, it might be reasonable to refuse to consent to the compulsory acquisition of the property at this time. However,

it would be remiss of me not to also raise concerns in terms of the potential ability of the owner in a reasonable timeframe to carry out the necessary works to the property to render it useful and habitable, given the length of time the property has been in its current state. I also note that the Council has shouldered much responsibility in securing the property in the interests of public health and safety in the past couple of years. The site has remained in a state of dereliction and no evidence has been submitted to persuade me that the situation will change in the near future.

- 7.6.4. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the site, 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 12 Davin Gardens, Caherdavin 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 site, I consider that the site materially detracts from the amenity, character and appearance of streetscape of both Redgate Road and Davin Gardens, Caherdavin Limerick and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 8.2. I am further satisfied that the Local Authority has made efforts to rectify the situation over a number of years, without success and that notwithstanding the submission of the objector to the compulsory purchase of the land, no significant effort to carry out remedial works to address the dereliction by the identified owners. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act.
- 8.3. I recommend, therefore, that the Board **grant** consent to Limerick City & County 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 the streetscape of 12 Davin Gardens, Caherdavin Limerick and, therefore, comes within the definition of a derelict site as defined in section 3(a) and 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.

A. Considine
Planning Inspector
28/04/2020