



An
Bord
Pleanála

Inspector's Report ABP-313527-22

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

Lower Main Street, Kilfinane, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Mr. Robert M. Lee, Lees Solicitors Ltd.

Date of Site Inspection

23rd June 2023

Inspector

Mary Kennelly

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 Lower Main Street, Kilfinane County Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located on Lower Main Street, which is situated in Kilfinane town, in south-east County Limerick. Kilfinane is a small town close to the scenic Ballyhoura Mountains and is c.40km to the southeast of Limerick City, c.9km southeast of Kilmallock and c.14km east of Charleville. The R517 runs west to east through the centre of the town linking Kilmallock with Mitchelstown. The site is located on Main Street Lower, between High Street (R517) and Laught Street in the centre of the town. Lower Main Street has a mixed-use character, with residential terraces mixed with public bars and some small-scale retail.
- 2.2. It comprises 2 no. mid-terraced two-storey dwellings which appear to be vacant. The site is situated within the Kilfinane Architectural Conservation Area. The building immediately to the east is a two-storey habitable house which appears to be occupied. The building immediately to the west is a three-storey dwelling which also appears to be occupied. The properties further to the east and west, respectively, and on the opposite side of the road are generally two-storey or three-storey buildings, mainly in residential use, which appear to be occupied and in reasonable condition. There is an attractive view of the Ballyhoura Mountains from outside the property to the east.
- 2.3. The subject site is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage. However, there are several Protected Structures in the vicinity including Fitzell's shop opposite to the northwest (RPS 1303), Mc Carthy's Bar to the west (RPS 1304), Morrissey's house (RPS 1305), O'Connell's (RPS 1307) and Fitzgerald's (RPS 1308) all opposite to the northwest. It is described as 2 no. mid-terraced, 2-storey dwellings on a site of approx. 0.025ha. It is stated that the said property and surrounding land is in a state of dereliction.

- 2.4. On the date of my site inspection, the property was secure with the front door of the easternmost property firmly shut and the front door of the westernmost property boarded up. The front façade is rendered and painted but the render is cracked and peeling, and the paint is also dirty and peeling. The window cills and reveals are chipped. There is wiring and piping protruding from the property and the rainwater goods are either damaged or missing at the front. The front door that is in situ is also in need of replacement.
- 2.5. The front windows were not boarded up but had vertical blinds on most of the windows, which were generally either closed or broken. The windows are of upvc and are old and in need of replacement. Builder's rubble was visible inside one of the ground floor windows. One of the windows on the upper floors appeared to have vegetation growing inside along the window cill and up the sides of the window. The roof is in a poor state of repair with loose and damaged slates and vegetation growing out of the gutter/eaves.
- 2.6. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front elevation from the street.

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 31st March 2021, (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 the 18th of November 2021, (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 owners/occupiers (Robert m. Lee) and was

published in the Limerick Post newspaper on the 12th of March 2022. The site was described as follows in the notices:

- A derelict site comprising two no. mid-terraced two-storey dwellings and surrounding land situate at Lower Main Street, Kilfinane, Co. Limerick, containing 0.025 hectares or thereabouts. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-020-21 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 Lees Solicitors in a letter dated 31st of March 2022 (date stamped the 1st of April 2022). It was stated that the owner of the property was Saltron Services Ltd. And that Lees Solicitors Ltd. Currently lease the buildings from them. This was followed by further correspondence regarding the ownership/title of the property on the 6th of April 2022 (date stamped the 8th of April 2022). The objection can be summarised as follows:

- The premises is owned by Saltron Services Ltd. It is leased to Lees Solicitors, Lord Edward Street, Kilmallock, Co. Limerick.
- Lees Solicitors have no objection to providing evidence of title, but this would not be possible within the timeframe required by the local authority, as the title documents are with the company's financial services provider and would take some time to retrieve. It is reiterated that Saltron Services Ltd. is the owner and that Lees solicitors is the Lessee.
- On the 31st of March 2022 it was stated that work is shortly to be commenced on the renovation of this property. Objection is being made by the owner of the property on this basis. In the meantime, it was requested that they be

advised of any matters that are required to be addressed as part of the reparation work planned.

- On the 6th of April 2022 it was stated that a consultation had been held with the building contractor and a scheme of work had been agreed to enhance the building. The works agreed were as follows:
 - Replacement of water shoots in the front.
 - Replacement of a broken pane of glass.
 - Painting the street side of the premises including the front door.

Confirmation was sought that these works would be sufficient to satisfy the local authority vis a vis restoration and reinstatement.

- It was submitted that the property is not vacant and that it is used by the firm of solicitors 'constantly and consistently'.

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 10th May 2022 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 owners/occupiers of the site.
- Copy of the newspaper notice, dated 12th of March 2022.
- Copy of objection made by Lees Solicitors submitted to the L.A. on 1st of April 2022 and 6th of April 2022.

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

- Limerick City and County have 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 areas of high housing demand, town and village centres and the historic core of the City. They seek 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.

- Matters that are taken into account include
 - 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 requirement for remedial restoration works, and
 - the feasibility of various actions to make good the site and find viable uses for the site.
- The property first came to the attention of the L.A. on the 3rd of February 2021 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2021, Ref. DS-020-21, when it was first inspected.
- Site ownership enquiries were made by affixing a notice on the property as the site was unregistered on the Land-direct system. There was no engagement from any owner until the section 15 notice was served. The particulars of the land were entered onto the register in November 2021.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated in February, March and October of 2021 and in January and March of 2022 are included with the application.
- The property is within the Kilfinane Architectural Conservation Area, in the centre of Kilfinane Town. There are several other derelict properties on the street and in the vicinity, including a property on the opposite side of the street.

- The site comprises two no. mid-terraced two-storey dwellings and surrounding land containing 0.025ha. The appearance was described as follows :-

The mid-terrace two-storey dwellings are vacant and in a derelict condition for a considerable time.

The front of the property is neglected and unsightly. One of the windows on the ground floor is broken.

Vegetation can be seen growing on the inside of one of the windows upstairs.

The gutters are in poor condition and full of debris.

The property should be painted as it is detracting from adjoining properties.

Access to the rear of the properties was not possible, but from a neighbouring property, it appears to be overgrown with vegetation.

- The derelict site is located on a street where other residential properties and commercial premises are well maintained. The site is located close to a secondary school, a church, shops, retail/commercial premises and residential properties.
- Notices were issued in March 2021 of the local authority's intention to enter the land onto the Derelict Sites Register.
- No response was received from the owner and the site was entered onto the register on 10th of November 2021. A section 8(7) Notice to this effect was served on the owner on the 18th of November 2021.
- Taking into consideration the continued derelict condition of the building, the decision was made to compulsorily acquire the site. The owner was notified of this under section 15 of the Derelict Sites Act on the 10th of March 2022 and it was publicised in the local newspaper on the 12th of March 2022.
- An objection to the section 15 notice was submitted by letter received by the local authority on the 1st of April 2022, by Lees Solicitors Ltd. stating that the owner was Saltron Services, but was being leased by Lees Solicitors Ltd., which was followed by correspondence, (received on the 6th of April 2022),

regarding the ownership/proof of title and a schedule of works that was intended to be undertaken.

- The Local Authority contends that it is the inaction of owners and the failure of their duties under the Derelict Sites Act 1990 (as amended) that jeopardises the future use of the property in the area due to their continued neglected and derelict state. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

- 4.4.1. A submission was made to the Board by Lees Solicitors on the 17th of May 2022 in response to the application for compulsory acquisition. It was confirmed that they (Lees Solicitors Ltd.) are in fact the owners of the buildings. However, it was not accepted that the property is a 'derelict site' within the meaning of the Derelict Sites Act 1990 or within the ordinary meaning of these words assigned to it in the English language.
- 4.4.2. It was stated that the premises are a secure lock-up former office space that is now being used by their firm for document storage. It was further described as follows -
- the property comprises a reception area, a utility area, a toilet and two rooms downstairs.
 - it is comprised of a landing and three rooms upstairs.
 - The downstairs rooms and upstairs rooms are shelved out with industrial shelving to accommodate Bankers' boxes of stored files.
 - The upstairs is accessed by two separate staircases.
 - The premises throughout is serviced with water, sewerage and electricity, all of which are functioning.
 - The premises are secured front and rear by locked doors. It is not possible to access the premises other than through either of the said locked doors.
 - The roof of the premises is secured front and rear.
- 4.4.3. The Board's attention was drawn to the letter to the Council dated 06/04/22 which had set out a proposed schedule of works as follows

- Replacement of the water shoots.
- Replacement of broken pane of glass.
- Painting of street façade and front door.

4.4.4. It was submitted that these works were 'presently underway' and were expected to be completed by the 31st of May 2022.

4.4.5. It was noted that the request for the local authority to identify any other works that were required to address the alleged dereliction did not result in any further response from the local authority. It was therefore assumed that no further works are required to address the matters raised and that once completed, the property can be removed from the Derelict Sites Register.

4.4.6. It was reiterated that the owners strenuously object to the application for compulsory acquisition.

5.0 Planning History

5.1. There are no records of any planning applications or permissions relating to the site.

6.0 Policy Context

6.1. Development Plan

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 centres 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 include 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 County 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 **Kilfinane** is designated as a **Level 4 Large Village** in the Settlement hierarchy (Table 2.7), with a population of 789 in 2016 and a forecasted population of 1,010 by 2028, representing an increase of 28%. Level 4 Large Villages are described (3.7) as catering for the daily and weekly needs of the surrounding wider catchment area. They provide for a range of employment opportunities and services appropriate to their size and function, such as secondary and primary schools, childcare facilities, sports grounds/complexes, libraries, Garda stations, medical centres, shops, pubs, post offices and banks/credit unions.

- 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:

HO O4 – to encourage redevelopment and reuse, including energy retrofitting of existing housing stock and conversion of other suitable buildings to sustainable accommodation.

6.2. **Kilfinane Local Area Plan 2012-2018 (extended to October 2022)**

6.2.1. It is stated in the recently adopted Limerick City and County Development Plan 2022-2028 that the Local Area Plan for Kilfinane will be revoked once the City and County Development Plan is adopted. This Plan was adopted on the 17th of June 2022 and came into effect on the 29th of July 2022. It incorporates the spatial extent of Kilfinane, and the LAP is now deemed to be revoked. It is noted, however, that the extended LAP was still in force at the time of the lodgement of the application for the compulsory acquisition (10/05/22) and when the observations were submitted to the Board (17/05/22).

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 landowners 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. 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 adjoining the site.
- 7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding residential area. This is due to the fact that the front façade is in a poor state of repair with cracked, peeling render and dirty/peeling paintwork, chipped window cills and reveals and that there is wiring and piping protruding from the façade. The rainwater goods are damaged and in poor condition, with vegetation growing out of them and the roof is in need of repair with loose or damaged slates. There is vegetation growing out of one of the chimneys.
- 7.3. One of the front doors has been boarded up and the remaining front door is in need of repair or replacement. The windows are in poor condition and have closed vertical blinds which are broken. One of the ground floor windows has a pile of builder's rubble inside the window pane and one of the upper floor windows has vegetation growing inside the window pane.
- 7.4. The combination of these factors detracts from the amenity of the street and the character of the area, and in particular, have a detrimental impact on the conservation value of the Architectural Conservation Area and of the nearby Protected Structures.

The property has been in a derelict state and has remained vacant for some time and its condition has deteriorated during this period of vacancy and dereliction. The longer the building is vacant and in a state of dereliction, the greater is the likelihood of significant damage to historic fabric and the need for remedial restoration works, with the potential for greater levels of intervention. Thus, the continued dereliction of the property threatens the conservation value of the historic structure within the Architectural Conservation Area and restricts the opportunities to find viable uses.

- 7.5. The property is situated in the middle of a street of historic properties which are generally occupied as residential units, which appear to be well maintained and in good condition. The lands in the general vicinity form part of the Kilfinane Architectural Conservation Area and contains many historic and protected structures, with some of the sites in the vicinity being listed on the NIAH register. The area has an attractive appearance, and the public realm is well cared for, with high quality public amenities. The City and County Development Plan seeks to conserve and enhance areas of heritage importance such as those within ACAs and also seeks to revitalise towns and villages throughout the county. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.
- 7.6. Although the front façade appears generally intact, the render on the external walls and window reveals are in a poor state of repair, as are the roof, the windows and front door. The poor condition of the external walls together with the damaged rainwater goods, with vegetation growing out of the gutters, is likely to contribute to dampness within the property. The growth of vegetation within the upper floor window at the front is indicative of issues with the internal walls and rooms which would raise concerns regarding the suitability of the property for habitable purposes. Although I did not gain access to the property, I was able to see through the ground floor windows that the building was in an untidy and unkempt condition. I note from the photographs provided with the Local Authority report, that the property seems to have deteriorated further since the first inspection in 2021.
- 7.7. Having regard to the above, I would consider 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. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition. Having

inspected the site, I consider that there is insufficient evidence to confirm that the structure is in a dangerous condition, and that it could be considered ruinous. Thus, it is considered that the site does not fall within category (a) of the Derelict Sites Act 1990.

- 7.8. There was no evidence of litter, debris, rubbish and waste within the application site, apart from the builder's rubble. I consider therefore that the site does not fall within category (c) of section 3 of the Act. 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.
- 7.9. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 31st of March 2021, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 18th November 2021, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(1)(a) notices were served on 10th March 2022 and published in the Limerick Post Newspaper on the 12th of March 2022 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.10. I note the objection made to the Local Authority by the owners on the 1st of April 2022 and on the 8th of April 2022 to the proposed acquisition of the site, stating that the property was not derelict, that the owners were Saltron Services Ltd., that the property was being leased by Lees Solicitors Ltd., and that they intended to restore the property and to carry out certain works.
- 7.11. It is noted that a further objection was made by Lees Solicitors Ltd. to the Board on the 17th of May 2022. This confirmed that Lees Solicitors were in fact the owners of the property and that they have been, and continue to, use it for document storage. It was stated that the premises are securely locked, serviced with water, sewerage and electricity and that the roof is secure at the front and the rear. Reference was made to the schedule of works that had been proposed in the letter to the local authority in April 2022. These related to replacement of the broken window pane, rainwater goods and repainting of the front façade and front door. It was further stated that these works were 'presently underway' and that it was expected that they would be completed by the 31st of May 2022.

- 7.12. I can confirm from my site inspection on the 23rd of June 2023 that none of these works had been undertaken apart from the replacement of the broken window pane.
- 7.13. Having inspected the site, there is no evidence of any attempt to render the site non-derelect and the property remains in a neglected and unsightly condition. The external walls, roof, guttering and downpipes are all in a poor state of repair, one of the doors is still boarded up and the façade had not been repainted. Vegetation is still growing out of the guttering and chimney and is visibly present inside one of the upper floor windows. No further information has been provided to the Board regarding any progress made on advancing the works to enable the property to be removed from the Derelict Sites Register. I therefore consider that the site remains in a derelict condition.
- 7.14. 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 Lower Main Street, Kilfinane, 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 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, the poor state of repair of the external walls, roof and rainwater goods and to the visible presence of vegetation growing within and outside the property 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 sections 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.

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.

Mary Kennelly
Senior Planning Inspector
4th October 2023