



An
Bord
Pleanála

Inspector's Report ABP-313545-22

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

Glenfield, Kilmallock, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Martin O'Reilly

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 Glenfield, Kilmallock, 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 in Glenfield, which is a rural area approx. 2.5 km from the centre of Kilmallock Town. It is located at the junction of Glenfield Road and Green Road. The area is characterised by agricultural lands with farmhouses/farmyards and a scattering of one-off houses.
- 2.2. It comprises a detached cottage which is in a ruined and derelict condition. The roof is in a very poor state of repair with slates missing and a large hole has been patched up with corrugated iron, which is rusting. The windows and doors are either missing or boarded up. The front elevation and side gables are overgrown with creepers. The subject site is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage. It is described as a 2-storey cottage on a site of approx. 0.532ha which is in a ruinous, derelict and dangerous condition, with no windows and that the roof needed to be repaired. It is stated that the said property and surrounding land is neglected and in a state of dereliction.
- 2.3. On the date of my site inspection, the property was in an overgrown state with creepers and vegetation obscuring the front façade and area to the front of the dwelling. It was not possible to view the external walls at the front, but it was evident from inside the property that the front door was hanging off its hinges and that the front window was boarded up. The rear windows were missing. The side gables were covered in creepers, but it appeared that the gable window at first floor level was boarded up. The cottage was open to the elements and the floor was covered in hay, debris, litter and waste. The roof was in a very poor state of repair with several slates missing and large holes which had been patched up with corrugated iron, which had started to rust. The rear façade is rendered but the render is cracked and damaged. There is vegetation growing on the walls, out of the chimney and at eaves level, and the rainwater goods are missing. The site is overgrown with vegetation.

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 28th March 2017, (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 19th March 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 owners/occupiers (Martin O'Reilly) on the 10th of March 2022 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 a cottage dwelling and surrounding land situate at Glenfield, Kilmallock, Co. Limerick, containing 0.532 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-063-17 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 Patrick A. Galvin Planning and Design Services on behalf of the owner, Mr. Martin O'Reilly, in a letter dated 5th of April 2022. The objection can be summarised as follows:

- Mr. O'Reilly first contacted Mr. Galvin on 17th of April 2017 in connection with notices being posted on the site by LCCC. Mr. Galvin wrote to LCCC on 26th of April 2017 advising that due to the amount of work he had on at the time and that he did all his own work. Time slipped by until early 2020, when he proposed to meet Mr. O'Reilly on site. At that time, he advised Mr. O'Reilly not to apply for permission to demolish the house only as it would be more difficult to get permission for a new house in the future.
- It took some time for him to get back to Mr. O'Reilly and unfortunately Covid restrictions were introduced in mid-2020. The matter was held up until June 2021 until Mr. Galvin was able to return to the site. He arranged the pre-planning meeting on the 1st of July 2021, followed by a telephone call on the 13/09/21. He was advised of the previous planning application (07/238) and given advice regarding a future application.
- In October 2021, Mr. Galvin made enquiries regarding a Structural Engineer's Report of the ruined dwelling on site. He eventually got a response from a structural engineer in February 2022 and in respect of percolation tests in early March 2022. Percolation tests were due to be carried out in April 2022, following which it was intended to submit a planning application for the demolition of a ruined dwelling and the construction of a new dwelling.
- Mr. O'Reilly (in a separate letter of the same date) advised that he is originally from Orr Street in Kilmallock and that his family still live there. He stated that he purchased the site with a view to building a house for himself so that he could return to the Kilmallock area.
- In respect of the illegal dumping on the site, Mr. O'Reilly stated that he has been aware of same, but as he resides in Cork City, he can only get to the site now and then and has done his best to keep it as clean as possible.
- Objection is being made by the owner of the property on this basis.

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 Mr. O'Reilly and by his agent Mr. Galvin, dated 5th 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 21st of March 2017 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2017, Ref. DS-063-17, when it was first inspected.
- Site ownership enquiries were made, and it was established that the registered owner is Martin O'Reilly, No. 1 The Commons, Fairhill, Cork City.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated March 2017, November 2019, February 2021, October 2021, January 2022 and March 2022 are included with the application.
- The property is in a rural area outside Kilmallock Town. There are no other derelict properties in the vicinity. There are several dwelling houses in the rural area surrounding the site which are well maintained and in good condition. There have been numerous complaints regarding the condition of the property from local residents.
- The site comprises a two-storey cottage and surrounding land. The appearance was described as follows :-

The two-storey dwelling and surrounding land containing 0.532ha is vacant and in a derelict condition for a considerable time. The site detracts in a great way from the well-maintained land and properties in the vicinity.

The structure is in a ruinous, derelict and dangerous condition. The roof needs to be fully repaired and there are no windows or doors in place. The property would need to be structurally assessed due to its poor condition.

The property and surrounding land is neglected and detracting from nearby residential properties in the area. The site is attracting anti-social behaviour and bonfires are being lit on the site. The site is unsecure and can easily be accessed by the public.

There is rubbish and waste scattered throughout the front and rear of the site. There is evidence of rubbish having been burned on the site and there is rubbish and waste stored inside the derelict property.

- Complaints regarding anti-social behaviour commenced in April 2015. The Derelict Sites Report noted the following complaints –

21st April 2015 – complaint regarding bonfires being lit and anti-social behaviour on the site.

8th November 2019 – complaint regarding a significant bonfire and anti-social behaviour on the site. This complaint was reported to the Gardai who went to the site and recorded the incident.

4th August 2021 – a further complaint regarding a bonfire and anti-social behaviour on the site.

6th August 2021 – L.A. wrote to Agent, Mr Patrick Galvin, regarding the anti-social incidents and requested a plan or remedial measures to be submitted.

11th August 2021 – Mr. Patrick Galvin wrote back to LCCC and advised that he had requested a pre-planning meeting on behalf of his client to develop the site.

- However, it was stated that no such planning applications had been received at the time of writing the Derelict Sites Report. and
- The particulars of the lands were entered in the Derelict Sites Register on the 15th of January 2020. A section 8(7) Notice was issued in March 2020 of the local authority's intention to enter the land onto the Derelict Sites Register.
- Taking into consideration the continued dereliction and dangerous 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 the owner, Mr. Martin O'Reilly, together with a further letter from his agent, Mr. Partick Galvin, to the

local authority on the 5th of April 2022. This set out the history of the case and stated that Mr. O'Reilly was unable to deal with the dumping on the site.

- 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. In this case the dangerous state of the derelict structure is also putting the health and safety of the public at risk. 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 Mr. Galvin on the 18th of May 2022 in response to the application for compulsory acquisition. It was advised that a planning application for the demolition of the house and the construction of a new dwelling on the site had been submitted by the owner to the planning authority.
- 4.4.2. A further submission was made by Patrick Galvin on the 25th of October 2022 stating that planning permission had been granted under Reg. Ref. 22/647. A copy of the planning permission was enclosed. It was further stated that Mr. Galvin had been engaged by the owner, Mr. O'Reilly to apply for planning permission. However, as planning permission had now been granted, he was no longer acting as agent for Mr. O'Reilly.

5.0 Planning History

- 5.1. **P.A. Ref. 22/647** – planning permission granted (18/10/22) to Mr. Martin O'Reilly for demolition of existing ruined dwelling house, to construct new single storey dwelling house and new splayed entrance, to install sewerage treatment system and all associated site works at Glenfield, Kilmallock, Co. Limerick. Permission was granted subject to 13 no. conditions. These were generally of a standard type apart from condition no. 13, which required the original house to remain in place until the new house was occupied, and for photographic evidence to be provided for the written agreement of the planning authority.

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 **Kilmallock** is designated as a **Level 3 Town** in the Settlement hierarchy, with a population of 1,668 in 2016 and a forecasted population of 2,135 by 2028 (Table 2.7), representing an increase of 28%. Level 3 Towns (>1,400 population) are described (3.6) as secondary development centres for future population growth. They provide for a wide range of services and their functions are complementary to the Limerick Shannon Metropolitan Area (in Limerick), Newcastle West and each other. They have an important regional

employment function as well as housing, retail and leisure functions for both the resident population and the wider catchment areas.

- 6.1.4. **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 04 – to encourage redevelopment and reuse, including energy retrofitting of existing housing stock and conversion of other suitable buildings to sustainable accommodation.

Section 4.4 addresses **Rural Housing**. The Rural Settlement Strategy divides the county into two broad categories, namely Areas Under Strong Urban Influence and Rural Areas Elsewhere. The relevant policies are **HO 020** and **HO 021**, respectively. In addition, the following policy is relevant to the current application.

HO 022 – Refurbishment/Replacement of Traditional Rural Dwellings – seeks the retention and sympathetic refurbishment of traditional buildings in the countryside. Permission is normally only granted where it can be demonstrated that the dwelling is not reasonably capable of being made structurally sound. Local rural housing need is not applicable in such instances.

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 require 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 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. 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. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding rural area. This is due to the fact that the external walls are in a poor state of repair with vegetation growing out of the walls, no windows are in place and the roof which is in a dangerous and derelict condition, with missing slates and gaping holes that have been poorly patched up, meaning that the entire structure is open to the elements. In addition, front door is hanging off the hinges and the window openings are not boarded up. There is vegetation growing out of the chimney, the walls and the eaves.

- 7.2. The front of the property is completely overgrown to such an extent that the front walls are no longer visible, and the side gables are covered in thick creepers. The render on the walls and window reveals and the window cills is in a poor state of repair and the rainwater goods are missing or broken. The agricultural entrance gate is rusted and broken, and the site has an untidy and neglected appearance.
- 7.3. The interior rooms appear to have been used for animal housing with hay on the floors. The internal walls are damp with peeling render and are damaged in places. There is no decorative joinery present. There was debris, waste and litter stored inside the house including large tyres, builder's rubble, timber and twine.
- 7.4. The combination of these factors detracts from the amenity and the character of the rural area. 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 the original fabric and the need for remedial restoration works, as well as its use for anti-social behaviour reasons.
- 7.5. The property is situated in a quiet, peaceful and established rural area where properties are generally occupied as farmhouses or residential units, and which appear to be well maintained and in good condition. The site has been subjected to anti-social behaviour resulting in complaints to the local authority and to the Gardai with incidents of bon-fires and other disturbances. It has also been used for illegal dumping or fly-tipping, which detracts further from the amenities of the area. 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 external walls remain standing, the cottage is open to the elements on both sides and the roof is in a very poor state of repair. The window openings and front door are currently not boarded up and the property is easily accessible to the public. The damage to the stonework which is clearly evident and the continuing exposure of the internal walls to the elements is both unsightly and is likely to further endanger the stability and longevity of the structure. I note from the photographs provided with the Local Authority report, however, that the property has deteriorated further since the first inspection in 2017, as the vegetation has grown out of control and the damaged roof has been left unrepaired and the openings unshuttered.

- 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 also evidence that the structure is in a dangerous condition, and that it could be considered ruinous. Thus, it is considered that the site falls within category (a) of the Derelict Sites Act 1990.
- 7.8. There was evidence of litter, debris, rubbish and waste within the application site. I consider therefore that the site also falls 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 28th of March 2017, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 19th of March 2020, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(1)(a) notices were served on 10th of 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 owner's agent on the 5th of April 2022 to the proposed acquisition of the site, setting out the history of the site and stating that it was the intention of the owner to apply for planning permission to demolish the house and replace it with a new house. It was further stated that the owner, Mr. O'Reilly is from Kilmallock but lives in Cork and wants to return to the area. As a result, he was finding it difficult to address the issue of dumping of waste on the site as he only visits the area periodically.
- 7.11. The Board should note however that in the Local Authority's report submitted with the application for compulsory acquisition of the site (10/05/22), the derelict condition of the site first came to the attention of the local authority in 2017 and that it had been inspected on five further occasions over the following five years before it was decided to compulsorily acquire it. In addition, the property had been the subject of

several complaints regarding anti-social behaviour as well as illegal dumping. The local authority had also notified the owner of its intention to enter the property onto the Derelict Sites Register in March 2020 and it was not until March 2022 that the notifications regarding the compulsory acquisition were served. It is noted that the ownership of the property has not changed since the derelict condition first came to the attention of the local authority.

- 7.12. It is noted that no further objection was made by the owner to the Board following the lodgement of the application to compulsorily acquire the property on the 10th of May 2022. However, the owner's agent advised the Board on the 18th of May 2022 that a planning application had been submitted to the planning authority dated 12th of May 2022 to demolish the house and to construct a new dwelling. Further correspondence was received by the Board on the 25th of October 2022 advising that planning permission had been granted (22/647) and a copy of the decision was attached. This letter also advised that the agent was no longer representing the owner, as he had been engaged solely to obtain planning permission.
- 7.13. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. The vegetation to the front of the house has grown out of control and now obscures most of the structure from the public road apart from the roof. The vegetation is growing up the walls and over the roof and both side gables are covered in thick creepers. There has been no attempt to remove any of the vegetation or to board up the openings. The roof is still in a very poor state of repair and no attempt has been made to make it secure. The interior of the dwelling has been used for the storage of animals and waste material and there have been ongoing complaints regarding anti-social behaviour, illegal dumping and bonfires at the site. The site is not secure with access by the public readily available.
- 7.14. 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. The only change in circumstances is the fact that planning permission has been granted for a replacement house on the site. However, given the reluctance of the owner to actively engage with the local authority, the length of time that it has taken to submit a planning application and the failure in the meantime to secure the site or to remedy any of the matters outlined above, it is difficult to have confidence

that works will commence on the site in a timely manner. The site continues to be in a derelict, dangerous and ruinous state and is likely to be a source of nuisance to the local community in the meantime. I therefore consider that the site remains in a derelict condition.

- 7.15. 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 Glenfield, Kilmallock, 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 roof and the external walls, the overgrown condition of the site and to the presence of litter, debris and waste materials on 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 sections 3(a), 3(b) and 3(c) 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