



An
Bord
Pleanála

Inspector's Report

ABP-314574-22

Development	Derelict Site comprising of two no. two-storey, terraced residential premises and surrounding land
Location	3 & 4 Creagh Lane. Limerick
Planning Authority	Limerick City & County Council
Type of Application	Compulsory Purchase Order
Objectors	Noel O'Donnell, Denis Leamy & Lorraine Gavin
Date of Site Inspection	16 th of February 2024
Inspector	Adrian Ormsby

1.0 Introduction

- 1.1. This report relates to a compulsory purchase order (CPO) sought by Limerick City & County Council (LCCC) to compulsorily acquire two buildings at No's 3 & 4 Creagh Lane in Limerick City Centre.

2.0 Site Location and Description

- 2.1. The site is located in Limerick City Centre on Creagh Lane just north of Georges Quay and East of the River Shannon. The two subject properties would appear to have been in most recent use as residential homes. They are located at the southern end of a short terrace of four houses with No's 1& 2 being singles storey and the subject buildings being two storey. A public footpath adjoins the two properties with all houses opening onto the path. The southern boundary of No. 4 is an exposed gable. A high wall and gate bound the path with no apparent use adjoining the site other than perhaps car parking.
- 2.2. The two buildings subject to this acquisition are in an evident state of disrepair. The following in particular is noted-
- Graffiti is present on each building,
 - doors and windows are hoarded up with a padlock securing No. 3
 - rendering is coming away from the front elevation of no. 3 where it adjoins No.2 and from the southern gable of no. 4 exposing red brick and probable stone quoins,
 - drain pipe gutters are clearly overgrown,
 - roof tiles are missing in a few places with a guard type rail front of the roof level gutter likely placed there to catch any material falling from the roof¹.
 - paint work peeling off the front elevations.

¹ A photograph dated 27/05/22 and submitted by the council appears to show a roof tile caught in this protective feature.

- 2.3. The general area of the site and Creagh Lane is residential and the two subject properties clearly detract from the residential and visual amenity of the immediate area.

3.0 Planning History

- 03770461- Grant of permission to construct a two-storey extension at 3 Creagh Lane- 16/01/04.
- No record of anything more recent

4.0 CPO application

- 4.1. The Compulsory Acquisition Report accompanying the application details a Notice of Intention to enter the land in the Derelict Site Register issued on the 29th of July 2020. It also details no response or representation was made by the owner. The particulars of the site were then entered on the register on the 24th of November 2020. I note the site is recorded on the register as DS-006-11².
- 4.2. This application for CPO follows the service of notices to the owners of the properties on the 06th day of July 2022. The actual notice is signed and dated 01st day of July 2022.
- 4.3. Limerick City and County Council have applied to the Board for consent to compulsorily acquire the site under Section 15 of the Derelict Sites Act, 1990, as amended. This application was received on the 06th of September 2022

5.0 Legislation and Planning Policy Context

5.1. Derelict Sites Act 1990 (as amended)

- 5.1.1. The Derelict Sites Act 1990, as amended, makes provision to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require

² <https://www.limerick.ie/sites/default/files/media/documents/2024-03/derelict-site-register-march-2024.pdf>
Accessed 21/03/24

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

5.1.2. 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.”

5.1.3. Other relevant provisions of the Act are summarised 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 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in its functional area.
- Section 15 sets out arrangements for giving notice if the local authority intends to acquire a derelict site compulsorily.
- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it 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.

5.2. Limerick City and County Development Plan 2022 – 2028 (CDP)

5.2.1. The site is zoned City Centre with an 'Objective'-

- *To protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities.*

And a 'Purpose'-

- *To consolidate Limerick City Centre through densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses and urban streets, while delivering a high-quality urban environment which will enhance the quality of life of residents, visitors and workers alike. The zone will strengthen retail provision in accordance with the Retail Strategy for the Limerick Shannon Metropolitan Area and County Limerick, emphasise urban conservation, ensure priority for public transport, pedestrians and cyclists, while minimising the impact of private car-based traffic and enhancing the existing urban fabric.*

5.2.2. Section 1.3 of the CDP outlines Strategic Objectives including-

- *4- Protect the unique character of Limerick.....Address vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest.....*

5.2.3. Section 3.3.2.2 of the Development Plan deals specifically with 'Derelict Sites' and states-

- *The Derelict Site Levy is a mechanism aimed at improving the character of an area, by addressing derelict buildings and sites. In accordance with the Derelict Sites Act 1990.*

It goes on to say-

- *Derelict Sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. The Act places a duty on every*

owner and occupier of land to take all reasonable steps to ensure that the land does not become or continue to be in a derelict state. The Local Authority maintains a Derelict Sites Register and actively takes all reasonable steps to ensure that any land situated in this administrative area does not become or continue to be a derelict site.

- *Under the Act, the Local Authority is entitled to:*
 - *Serve a Notice on the owner/occupier specifying works to be carried out to prevent or abate dereliction;*
 - *Acquire by agreement or compulsorily any derelict site situated within its administrative area;*
 - *Impose an annual levy on any derelict site, which is considered to be urban land, within its administrative area which stands entered on the Derelict Sites Register on the 1st of January of that year. The levy shall be 3% of the market value of the land or site.*
- *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 of our urban settlements and bring buildings back into active use.....*

5.2.4. The following Objectives are considered relevant-

- 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.....

- 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.

6.0 Objection

6.1. An Objection to the acquisition was received on the 12th of October 2022 from-

- Micheál Glynn and Co., Solicitors on behalf of their clients and the property owners-
 - Noel O'Donnell
 - Denis Leamy and
 - Lorraine Gavin

6.2. The stated grounds of objection can be summarised as follows-

- The owners purchased the properties in good faith with the primer motivator being that they would enhance the properties to a high standard and long lease them to assist with housing.
- A number of factors have gone against them including-
 - An inability to progress enhancement works by the Covid pandemic with the construction industry halted for a considerable period which precluded works from being carried out on the property.
 - It was not advisable to commence any major works until the owners were in a position to regularise the title. It has taken almost five years to satisfy the PRAI regarding title of the property for which no deeds were available. It is ironic that once the title was regularised compulsory acquisition has reared its head especially since the Council have commented that the property has been on their radar as far back as 2011.
 - It is opportunistic of the Local Authority to rely on the Derelict Sites Act to compulsorily acquire the site. At no time were the owners advised by the Council that a CPO could be the potential outcome of the issuing of various notices and they have in fact been blindsided by this course of action. They did engage with the Council and this is evident from the Council's commentary.

7.0 Assessment

7.1. Introduction

7.1.1. I intend to consider this application under the following headings -

- Background and the Council's Case
- Derelict Sites Act 1990 (as amended)
- Issues raised by the objectors
- Conclusion

7.2. Background and the Council's Case

7.2.1. Limerick's Compulsory Acquisition Report (CAR) provides a history of this derelict site case. The site was first inspected on 14/04/11 and identified as a derelict site. A section 29 notice under the Act was sent to the then reputed owner with ownership and contact details confirmed on the 11/05/11. The then owner carried out some remedial works to deal with dereliction.

7.2.2. In the years following the site began to deteriorate again. In July 2017 contact was made with the owner and their auctioneer regarding a potential sale of the site.

7.2.3. In November 2017 new owners Lorraine Gavin, Denis Leamy and Noel O'Donnell (the objectors) came forward confirming their ownership and that the properties would be refurbished and occupied.

7.2.4. In January 2018 a derelict sites inspection found no improvement to the site. In May 2019 a further inspection found no improvement. Following an inspection in July 2020 it was recommended to formally issue a Notice of Intention to enter the lands on to the Derelict Sites Register.

7.2.5. This notice was served on the 29/07/20 and no response or representation was made by the owner. Following the Notice correspondence was received from Mr. Michael Gavin a connected party to the owners giving a commitment that such works would begin on site in September 2020.

7.2.6. The particulars of this Site were formally entered on the Derelict Site Register on the 24/11/2020 and a section 8(7) Notice of Entry of Land in Derelict Site Register was

served on the owners. A letter was received from Mr. Gavin in December 2020 claiming that they had tried to repair the properties. A building contractor was starting work in January 2021 and there was an agreement with an AHB- Sofia Housing in association with the Council to give both units a 20-year lease. A letter was received from Sofia Housing detailing that they had entered into such an agreement with the owners.

- 7.2.7. A derelict site inspection in October 2021 found the site was still in a derelict condition and deteriorating badly. The property was also being advertised for sale. The owners were contacted in November 2021 and they confirmed the properties were at sale agreed and they agreed to inform the Council of the new owners.
- 7.2.8. In May 2022 the Council received a complaint that slates were falling from the roof of the property. Mr Gavin was informed and he assured the issue would be dealt with. He provided an update that the sale had not been completed due to title issues.
- 7.2.9. As the land continued to be in a derelict state LCCC exercised its CPO powers under section 14 of the Act and gave its Notice of Intention to Acquire Derelict Site Compulsorily to the owners and advertised it publicly on the 07/07/22.
- 7.2.10. Notices issued under the Derelict Site Act 1990 can be summarised as follows-
- Section 29- Notice 04/05/11
 - Section 8(2)- Notice of Intention to enter land in Derelict Sites Register 29/07/20
 - Section 8(7)- Notice of Entry of land in Derelict Site Register- 25/11/20
 - Section 15 (1) (a) Notice of Intention to Acquire Derelict Site Compulsorily 07/07/21.

7.3. Condition of Site

- 7.3.1. I inspected the site on the 16/02/24. I found the site in a poor condition with both houses boarded up and subject to graffiti. Rendering is coming away from the front elevation of no. 3 where it adjoins No.2 and from the southern gable of no. 4 exposing red brick and probable stone quoins. Drainpipe gutters to both properties are clearly overgrown, roof tiles are missing in places with holes appearing to expose the roof to water ingress and paint work peeling off the front elevations. There was a

guard type rail structure in front of the roof level gutters possibly placed there to catch any material falling from the roof. This did not cover the full width of the building and I am not convinced it is sufficiently robust to protect from falling material onto the public path or road such as roof slates and therefore is considered likely dangerous. It was also clear to me that neither building was in a habitable condition and both are likely to deteriorate further and very soon if action is not taken.

- 7.3.2. It was not possible to gain access to the rear of the two structures but I am satisfied that my external inspection from the public realm was sufficient to form an opinion on this case.
- 7.3.3. The two buildings to the north completing the terrace are in good condition and appear to be lived in. Houses in the general area are also well maintained and there is no doubting this site detracts significantly from the immediate residential nature and amenity of the area and the wider city centre given its location.
- 7.3.4. I have considered the provisions of section 3 of the Derelict Sites Act (see section 5.1 above). In my opinion the site comfortably falls into the description of a derelict site as it detracts to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of its derelict and dangerous condition (section 3a) as well as its neglected, unsightly and objectionable condition (section 3b).

7.4. Issues Raised by Objector

- 7.4.1. One objection to the acquisition has been received. The issues raised can be summarised as follows-
- An inability to carry out enhancement works because of the Covid pandemic.
 - Given the extent of time it took to regularise the title it is opportunistic of the Local Authority to rely on the Derelict Sites Act to compulsorily acquire the site.
 - The owners were not advised by the Council that a CPO could be the potential outcome of the issuing of various notices.
- 7.4.2. The Council's notice to acquire the site issued on the 06th of July 2022. The Council then wrote to the objectors on the 25th of July 2022 advising that as they had

objected the Council would make an application to An Bord Pleanála for consent to compulsorily acquire the said site. The objection to An Bord Pleanála was received on the 12th of October 2022.

7.4.3. I inspected the site on the 16th of February 2024, around 16 months after the objection to the Board was received. I found the sites condition generally consistent with that as described in the Councils Acquisition Report submitted on the 05th of September 2022 and the photographs date stamped 07/07/2022. In my opinion it is evident that the site remains derelict, dangerous, neglected, unsightly and is objectionable. 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 Sections 3(a) and 3(b) of the Derelict Sites Act, 1990, as amended.

7.4.4. Given the time that has passed since the acquisition for consent was submitted to the Board, I can only reject the grounds of objection made by the owners. It is clear to me they have had sufficient time to address the site's condition as well as its reason for being on the derelict sites register. The difficulties associated with Covid and title to the land can no longer be used to justify the sites current condition. In this context I also don't accept the objectors assertion the Council didn't advise them that CPO was a possible outcome. CPO is one of the clear and inevitable mechanisms to address the reasons why a site is entered on the derelict site register. In any event considerable time has passed since the site's entry as well as the Councils application for CPO and it is evident to me nothing has been done to remedy the situation.

7.5. Conclusion

7.5.1. Having regard to the observed condition of the application site, in particular the derelict, dangerous, neglected, unsightly and objectionable state of the land and the structures 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 (a) and (b) of the Derelict Sites Act, 1990, as amended.

7.5.2. The site has been on the Derelict Site Register since the 25/11/20. Section 3.3.2.2 of the Development Plan details derelict sites can have a negative impact on the social,

visual and commercial aspects of a neighbourhood and in this instance I am satisfied it does. The Act places a clear duty on every owner and occupier of land to take all reasonable steps to ensure that the land does not become or continue to be in a derelict state. Objective CGR 06 of the CDP details-

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.

- 7.5.3. It is clear to me from the information on file, that the objectors are the owners of the properties and they have acquired unhindered title to the properties for such period of time that they could by now, have sought to render the properties non-derelict in the context of the 1990 Act. Furthermore, considerable time has passed since the Council first sought to acquire the properties and there is no evidence to suggest any action has been taken by the owners other than the submission of their objection.
- 7.5.4. Having regard to the constitutional and convention protection afforded to property rights, I consider that the acquisition of the derelict site at 3 and 4 Creagh Lane, Limerick, pursues, and is rationally connected to, this legitimate objective in the public interest, primarily to address instances of dereliction and decay in this city centre environment and bring the properties back into active reuse.
- 7.5.5. I am satisfied that the Council has demonstrated that the means chosen to achieve that objective impair property rights as little as possible, in this respect. I have considered possible alternative means of achieving a non-derelict condition of the site. Given the time that has passed, I am satisfied that the compulsory acquisition of the site is not unreasonable or disproportionate. In this regard, the effects of the compulsory acquisition on property rights are proportionate to the objective being pursued.
- 7.5.6. Accordingly, I am satisfied that that the confirmation of the application to compulsorily acquire this derelict site is justified by the exigencies of the common good and would address this instance of dereliction and decay in this city centre location and would bring properties back into active reuse. It is therefore considered, to be in the public interest that the derelict site at 3 & 4 Creagh Lane should be acquired compulsorily by the Council.

8.0 Recommendation

- 8.1. 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 derelict, dangerous, neglected, unsightly and objectionable state of the land and the structures thereon, having considered the objection made to the compulsory acquisition, and also-

- the constitutional and Convention protection afforded to property rights,
- the public interest, and
- the provisions of the Limerick City and County Development Plan 2022-2028,

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) and (b) of the Derelict Sites Act 1990, as amended, and that the compulsory acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it from continuing to be a derelict site. It is also considered that the objection made cannot be sustained, having regard to that said necessity and that the compulsory acquisition and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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.

Adrian Ormsby
Planning Inspector

22nd of March 2024