



An
Bord
Pleanála

Inspector's Report

ABP-314584-22

Nature of Application

Application for consent for compulsory acquisition of a derelict site, comprising of a two-storey, mid terrace residential premises and surrounding land, in accordance with Section 14 of the Derelict Sites Act 1990, as amended.

Location

at 20 Johnsgate Village, Johnsgate, Limerick, V90 EHW0

Planning Authority

Limerick City and County Council

Notice Party

William Lyons & Geraldine Walters

Date of Site Inspection

26th February 2024

Inspector

Claire McVeigh

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for consent of An Bord Pleanála to the compulsory acquisition of the subject site at 20 Johnsgate Village, Limerick in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The subject site is a mid-terrace two storey residential property and surrounding land of a stated 0.009 hectares located in Johnsgate Village just north of New Road and to the east of Johns Street within Limerick City centre. The property fronts onto a common green amenity space with pedestrian pathways and some new tree planting evident. The property's rear yard backs onto a laneway running along the back of the terrace and providing access to the rear of the other properties within Johnsgate Village.

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 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 20th October 2021, (i.e., advising of the Local Authority's notice of intention to enter the site on the register of derelict sites), and also under section 8(7), served by registered post on 8th February 2022, (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. Limerick City and County Council advertised a "Notice of intention to acquire derelict site compulsory under the Derelict Site Acts 1990, (as amended by the Planning and Development Act, 2000)" in the Limerick Post newspaper on the 9th July 2022. The site was described as follows in the notices:

A derelict site comprising a two-storey, mid-terrace residential premises and surrounding land situate at 20 Johnsgate Village, Johnsgate, Limerick V94 EHW0, containing 0.009 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-109-21 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. A map of the derelict site was placed on public display at LCCC's Property and Community Facilities Departments and submissions were invited by an owner, lessee, or occupier on or before the 8th day of August 2022.

4.2. Objection to Acquisition

- 4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council from John McNamara & Associates Solicitors (on behalf of William Lyons and Geraldine Walters) in a letter dated 15th July 2022 and dated stamped as received by Limerick City and County Council on the 18th July 2022. It was advised that the property is legally owned by a minor and Mr. Lyons and Ms. Walters are Trustees on behalf of the minor and the compulsory purchase was being objected to as follows:

- The property had been rented out by them until relatively recently and they were unaware of any works that were required to be carried out.
- They will take action to remedy whatever remedial works are required.
- They do not accept that it is a derelict site.

- 4.2.2. The Board wrote to William Lyons and Geraldine Walters on the 19th September 2022 seeking any observations regarding the proposed compulsory acquisition of the site by Limerick City and County Council. No response has been received. In addition, the Board wrote to John McNamara & Associates Solicitors on the 4th March 2024. No response has been received.

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 received on 6th September 2022 and was accompanied by the following:

- Compulsory Acquisition Report.
- Derelict Site Location Map.
- Copy of the Section 15 Notice issued to the owner.
- Copy of the newspaper notice, dated 9th of July 2022.
- Copy of objection letter and acknowledged response.
- Site inspection photographs of the property from the case file.

4.3.2. The **Compulsory Acquisition 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 by the Dereliction and Vacancy Team 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 was first inspected on 19th October 2021. The derelict site is located in an estate of approx.. 30 no. houses. The site is near St. John's Hospital, St. Johns Church and St. John's Cathedral, St. John's National School as well as quite a few busy retail and business premises. The site is adjoining other residential properties in the area that are being currently maintained by either private owners or being upgraded by LCCC.
- Site ownership enquiries were made through the Land Registry system, and it was established that the derelict site comprises folio LK29190F and the registered owner of the folio is Mr. William Lyons and Ms Geraldine Walters of 5 Mount Singland, Garryowen, Limerick.
- On the 20th October 2021 Limerick City and County Council (LCCC) served by registered post a Notice of its intention to enter the land in the derelict sites register and also a notice was fixed to the site.
- The particulars of the land were entered in the derelict sites register on 4th February 2022 and the section 89&) Notice of Entry of Land in Derelict Sites Register was served by registered post on 8th February 2022.
- Johnsgate Residents Association has made representation on behalf of residents in relation to the derelict site and how it detracts from the area.
- The property was reinspected by LCCC. Photographs from the site inspections dated June and July of 2022 are included with the application.
- Taking into consideration the continued derelict condition of the property with rusting steel sheeting covering the windows and front door with vegetation growing from the gutters and rear of the property open to the elements and the public, the decision was made to compulsorily acquire the site. The owners were notified of intention to acquire derelict site compulsorily on the 6th July 2022 and it was published in the local newspaper on the 9th July 2022.
- An objection to the proposed acquisition was received on the 18th July 2022 from John McNamara & Associates Solicitors, representing William Lyons and Geraldine Walters, stating that they were unaware of any works that were required to be carried out and that they will take action to remedy whatever remedial works are required.

- 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 stated. It is stated that the property continues to deteriorate and attract negative attention in a key residential area of the city of Limerick.

4.4. Objector's Submission

None.

4.5. Local Authority Response to the Objection.

None.

5.0 Planning History

Reg. Ref. 89770110: Permission granted in June 1989 for change of use of proposed houses (for which planning permission has already been granted) for use as a holiday home development including the provision of a manager's office in dwelling no. 22. (Sites nos. 9-22 inclusive) at Johnsgate Village.

Reg Ref 00770340: Permission granted in 2000 to Tom Caulfield, on behalf of Johnsgate Holiday Homes, for a change of use to Houses 9-22 inclusive from that of a Holiday Home Scheme and Manager's Office to that of private dwellinghouses in respect of each of 9-22 Johnsgate Village.

6.0 Policy Context

6.1. Limerick City and County Development Plan 2022-2028

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 the city, 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.

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.

The site is zoned 'City Centre' in which the objective is "To protect, consolidate and facilitate the development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities".

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.”

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 site sits within a development fronting onto a common green amenity area. Refurbishment work was ongoing at a property on the southern terrace of houses. On site inspection it appeared that a few of the houses were occupied. The subject site contains a currently unoccupied and boarded up property with an enclosed rear

yard area. Internal access to the property was not possible on the date of my site inspection.

- 7.2. The site is located adjacent to two other boarded up derelict dwellings, not within the applicant's ownership. The subject property, therefore, is one of three derelict properties within the terrace row of four houses. These properties have boarded up windows and doors with metal sheeting and metal grills. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and amenity space of Johnsgate Village. The adjoining property (No. 19 Johnsgate Village) located in the north east corner of the terrace, appears to be occupied and maintained well with guttering intact for their section of roof.
- 7.3. To the rear the yard has been secured with a solid galvanised steel gateway. Windows to the rear elevation are boarded up with metal sheeting as per the front. I was unable to gain access to the property on the day of my site inspection. However, I could see through the gateway that the yard area has litter lying and the metal sheeting that had secured the rear door and windows has been removed and the building is open to the elements.
- 7.4. The combination of these factors detracts from the amenity of the street and the character of the area. The property has been in a derelict state and has remained vacant since 2021. The Compulsory Acquisition Report notes that no works have been carried out to the property to remove it from dereliction and the site continues to be in a derelict state. LCCC has received representations from Johnsgate Residents Association on behalf of the residents in relation to the derelict site and how it detracts from the area.
- 7.5. In February 2022 a notice under Section 8 (7) of the Act, was sent by registered post on the 8th February 2022. From the information available on the application there appears to have been no communication between the owners and the local authority between the section 8 (7) notice of entry of land into the derelict site register and the publication and issuing of the section 15 notice of intention to acquire the derelict site compulsorily on the 9th July 2022.
- 7.6. Subsequent to the receipt of the section 15 notice of intention to acquire compulsory the property an objection was submitted to the local authority, received on the 18th July 2022, by John McNamara & Associated Solicitors acting on behalf of William

Lyons & Geraldine Walters identified as registered owners. It is set out in the objection that William Lyons & Geraldine Walters are Trustees and that the property is legally owned by a minor. Surprise is expressed in the objection that any works were required to be carried out as the property had been rented out by them until relatively recently. The letter states that once given the opportunity they will take action to remedy the derelict status of the property.

7.7. The LCCC submission, to the Board, provides a rationale for the need to compulsorily acquire the derelict site. They contend that it is the inaction of property owners and failure of their duties under the Derelict Sites Act, 1990 (as amended) that jeopardises the future use of the property. In this case they state that the property continues to deteriorate and attract negative attention in a key residential area of the city of Limerick.

7.8. Whilst I note the objector states that once they are given an opportunity, they will take action to remedy the derelict status of the property. 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. No further information has been provided to the Board regarding any progress made on advancing works to enable the property to be removed from the derelict sites register.

7.9. This aside, I consider there is sufficient evidence from the documentation received and from site inspection to determine that the current state of the site detracts, to a material degree from the amenity, character, or appearance of land in the neighbourhood.

8.0 Conclusion

8.1.1. I am satisfied that: the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.

8.1.2. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the derelict site comprising a two storey mid-terrace residential premises and surrounding land at 20 Johnsgate Village, Johnsgate, Limerick, V90 EHW0 containing 0.009 hectares or thereabouts, as set

out in the Derelict Site Notice issued under Section 15 of the Derelict Sites Act 1990 (as amended) and dated 1st July 2022 and on the deposited maps (derelict site shown outlined in red bearing reference No. DS-109-21) pursues, and is rationally connected to, a legitimate objective in the public interest, namely to prevent deterioration of the built fabric and bring buildings back into active reuse.

- 8.1.3. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible; in this respect, I have considered alternative means of achieving the objective referred to in submissions to the Board, and am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 8.1.4. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be consistent with the policies and objectives of the Limerick City and County Development Plan 2022-2028, and specifically Objectives CGR 06 and CGR P1 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse and to revitalise the city, towns and villages. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.
- 8.1.5. I consider there is sufficient evidence from the documentation received and from site inspection to determine that the current state of the property detracts, to a material degree from the amenity, character, or appearance of land in the neighbourhood. To this end, I consider LCCC has taken all reasonable steps to prevent the neglected, unsightly, or objectionable condition of the property.
- 8.1.6. Having regard, therefore, to all 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 Derelict Site at 20 Johnsgate Village, Johnsgate, Limerick, V94 EHW0 is granted.

9.0 Recommendation

- 9.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land, 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.
- 9.2. I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site. 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, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

It is considered that the site detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, owing to the neglected, unsightly and objectionable condition and, therefore, falls within the definition of a derelict site as defined in Section 3(b) of the Derelict Sites Act 1990 (as amended). Having regard to the observed condition of the site and the documentation provided in relation to the procedures and steps taken under the Derelict Sites legislation to include the site on Limerick City and County Council's Derelict Sites Register and the serving of the notice on the lands, it is considered 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.

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.

Claire McVeigh
Planning Inspector

27th March 2024