



An
Bord
Pleanála

Inspector's Report

ABP-314737-22

Development

Application for the compulsory acquisition of a derelict site

Location

24, 24a, 24b, and 24c St. Maelruan's Park, Tallaght, Dublin 24

Planning Authority

South Dublin County Council

Notice Party

Michael McAteer

Date of Site Inspection

25th August 2023

Inspector

Ian Boyle

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1.0 Introduction

- 1.1. This case relates to a request by South Dublin County Council (SDCC) for consent from An Bord Pleanála for the compulsory acquisition of a property with an address at Nos. 24, 24a, 24b and 24c Saint Maelruan's Park, Tallaght, Dublin 24.
- 1.2. The application is made in accordance with Section 16(4) of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The subject site comprises four vacant semi-detached houses on the eastern side of Saint Maelruan's Park, which is a small residential street. There is a spacious parking area at the front of the property and each house has a rear garden. A pedestrian link at the southern end of the street links it to Mountain Park. The surrounding area is mainly suburban residential.
- 2.2. A narrow laneway runs along the rear of the property which provides access to each of the gardens. Saint Dominic's National School is to the northeast of the site and there is a small commercial centre (The Village Plaza) with shops and businesses to the west. Sean Walsh Memorial Park is further west and also within walking distance of the property. The park provides a good amenity for the area and has walking trails, paths, a playground and large areas of green open space. The Square Tallaght - Shopping Centre is roughly 1km to the northwest.
- 2.3. The four houses were vacant at the time of my site inspection. The doors and windows, front and back, were covered up with painted steel shutters. The driveway / parking area was in poor condition with clear evidence of deterioration, weeds taking hold, and minor surface damage. The parking area was blocked off by a makeshift fence post and wooden box arrangement to prevent vehicles parking on the property.
- 2.4. Tiles were missing from the roofs of some houses and guttering had come loose in places with minor damage incurred. Discoloration and weathering of the associated fascia and soffit underneath was also observed. The rear gardens of the properties were overgrown with thick weeds and unmanaged vegetation. No cutting or tidying of grass, hedges or trees had taken place for some time.

2.5. It was apparent that the property has not been occupied for a prolonged period and that it has not been maintained or managed properly.

3.0 Application for Consent for Application

3.1. Notice of Intention to Acquire

- 3.1.1. South Dublin County Council advertised a Notice of Intention to Acquire Derelict Site Compulsorily under the Derelict Sites Act 1990, (as amended by the Planning and Development Act, 2000)" on the 28th July 2022 in both The Irish Times (Page 7) and The Echo (Page 20) newspapers.
- 3.1.2. A map of the derelict site was placed on public display at the office of South Dublin County Council.
- 3.1.3. Submissions were invited by any owner, lessee, or occupier on or before the 4th of August 2022.

4.0 Application and Objection

4.1. Objection to Acquisition

- 4.1.1. An objection to the proposed acquisition was submitted to South Dublin County Council by Mr. Niall Hade (owner of the property) in a letter dated 26th August 2022.
- 4.1.2. The hard copy was received in the post by the Local Authority on 29th August 2022 (outside the specified statutory period).
- 4.1.3. The following main issues were raised:
 - The properties are part of a High Court Action which will proceed in the coming months.
 - There is as receiver appointed over the properties (Mr. Michael McAteer) and a copy of his purported appointment is attached.
 - There is a High Court injunction preventing anyone from interfering with the property.
 - The High Court Injunction is attached.

4.1.4. The Board wrote to Niall Hade on 10th October 2022 advising that the Local Authority had applied to the Board in accordance with Section 16 of the Derelict Sites Act, 1990 (as amended), for the Board's consent to the compulsory acquisition of the subject property. The letter also advised that the contents of the above-referenced submission to the Local Authority would be considered by the Board prior to its determination of the application and that further observations could be made to the Board no later than 1st November 2022.

4.2. Local Authority's Application for Consent

4.2.1. The Local Authority (SDCC) has requested that the Board consent to the compulsory acquisition of the derelict site. The application for consent was submitted on 27th September 2022.

4.2.2. The application is accompanied by the following:

- The Local Authority Compulsory Acquisition Report (CAR).
- Appendix of Documents (referred to in the CAR as nos. 1 to 51).
- Punched pocket marked 'Newspapers' which includes the Newspaper Notices referred to in the CAR.

4.2.3. The appendices are listed on Pages 1 to 7 of the Compulsory Acquisition Report.

4.2.4. The derelict site report can be summarised as follows:

- The Derelict Site was added to the Council's Derelict Sites Register on 12th July 2021.
- On the 15th July 2021, the Notice(s) of Intention to make an entry into the Derelict Sites Register was served by site notice and by sending the said notice via registered post.
- No representations were received within the timeframe allowed in the Site Notice(s).
- Notice of Intention to Acquire Derelict Site by way of compulsory acquisition was published in The Irish Times and The Echo on the 28th July 2022. Notice was also served on the registered owner and Receiver by way of registered post.

- The proposed compulsory acquisition is supported by policy outlined in the Housing for All document, South Dublin County Development Plan 2022-2028, and Corporate Plan of South Dublin County Council 2020-2024.
- The condition of the Derelict Site has had, and continues to have, a negative impact on the social and visual aspect of the neighbourhood and this is evidenced by a number of complaints received by the Council from local residents.
- Pages 9 to 17 of the CAR sets out a detailed ‘factual context to the proposed compulsory acquisition’. The Council first received a complaint in relation to the property in July 2016. After several property investigations, correspondence with the landowner, and other relevant parties, and Councillor motions regarding the deteriorating condition of the site, it was decided that the Council would proceed to enter the particulars of the site on the Derelict Sites Register. The decision was also due to no action being undertaken to maintain or prevent the property from falling into dereliction, relevant local policies requiring action regarding derelict and vacant sites, and complaints from residents and Councillors.
- Page 19 of the CAR sets out the Council’s response to the grounds of objection set out by Mr Hade.
- The Council has attempted to engage with the Receiver and Mr Hade to have the derelict site maintained to a standard that would have avoided it becoming or continuing to be a Derelict Site. Despite these efforts, the property is now in a neglectful, unsightly and objectionable condition – which it has been for quite some time.
- The compulsory acquisition of the Derelict Site is proportionate and justified.

4.3. **Objection to Acquisition to An Bord Pleanála**

4.3.1. Kane / Tuohy Solicitors, representing Mr. Michael McAteer (Receiver), confirmed via a letter to the Board (dated 28th October 2022) that Mr. McAteer is formally objecting to the proposed CPO of the subject property for the following main reasons:

- It is Mr. McAteer’s intention to sell the property at the best price attainable.

- Mr. McAteer has received expert property advice that the price realisable would be greater if sold with vacant possession. However, attempts to achieve vacant possession were hampered by certain tenants refusing to vacate.
- Mr. Hade has initiated proceedings against the Receiver in which he challenges the validity of the Receiver's appointment.
- Mr. McAteer has attempted to sell the property. However, this has been unsuccessful since his appointment. Various proposed sales have been postponed or made not possible due to damage to the property (incurred during a break-in), ongoing litigation proceedings, and several trial adjournments.
- Only for the said break-in, the property would not have been placed on the Derelict Sites Register.
- The 'Notice of Intention to make an entry on the Derelict Sites Register' was issued on the 15th June 2021. This was at a time when Government Guidelines required non-essential workers to work remotely. Whilst the letter was confirmed as being delivered to Mr McAteer's office, the Notice was not brought to his attention. SDCC should have issued an email in light of Covid-19 restrictions.
- There are no funds in the receivership to carry out remedial work at the property. However, in light of the CPO Notice, the Bank has acceded to providing funding for external works, which were requested by SDCC in prior notices, including:
 - Restoration of rear gardens, including cutting and tidying overgrown grass, hedges and trees.
 - Removal of rubbish in the gardens and surrounding the properties.
 - Repairs to the roof.
 - Front parking area secured and power-washed.
 - Front of properties cleaned.
 - Removal of broken wall capping.

- Painting and staining of front plinths, sills, side gates and steel security shutters.
- Two sets of photographs attached to the objection show the property 'before' and 'after' conditions.
- An Bord Pleanála are requested to reject the proposed CPO.

5.0 Planning History

Subject Site

Reg. Ref. SD06A/0242: The Planning Authority **granted permission** in June 2006 for the demolition of an existing single storey dwelling 50sqm extension and the construction of a new 13sqm extension and three new dwellings at the southeast of the site.

ABP Ref. PL06S.213515 (Reg. Ref. SD05A/0404)

The Board **refused permission** in January 2006 to demolish an existing extension and to convert an existing house into 1 no duplex apartment and to construct 5 no. apartments, 10 no. car parking spaces and associated site works.

The reasons for refusal were regarding (1) scale, mass orientation and limited open space and that the proposed development would constitute an unacceptable over-development of the site, and (2) inadequate private open space and would constitute a substandard development.

6.0 Policy Context

6.1. South Dublin County Development Plan 2022-2028

The South Dublin County Development Plan 2022-2028 ('Development Plan') was made on 22nd June 2022 and came into effect on 3rd August 2022.

Zoning

The subject property is zoned RES 'Existing Residential' under the Development Plan, which has the objective 'to protect and / or improve residential amenity'.

Residential is permitted in principle.

Section 2.6.7 Monitoring of Growth / Active Land Management

This section of the Development Plan includes several references to managing and bringing derelict sites and vacant land parcels back into active use.

The Plan states that vacant development sites are both a challenge and an opportunity for the County to provide additional housing, employment and other uses. Active land management, including the implementation of the vacant site levy, is key to realising the vision and objectives of the Core Strategy.

It also states that, in a similar manner, derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. The Council will investigate and prioritise reports of dereliction and take relevant and stringent action, in accordance with the Derelict Sites Act 1990 (the Act), in an effort to have the dereliction abated and ensure re-use of existing urban lands throughout the County.

The following policies and objectives are considered relevant in assessing this case:

Chapter 2 – Core Strategy and Settlement Strategy

- **Policy CS4** ‘Active Land Management Facilitate’ seeks the re-use and regeneration of vacant sites and landbanks through various measures to promote compact urban growth in line with the Core Strategy.
- **CS4 Objective 3** is to deliver development through the compulsory purchase of land as part of active land management where the context requires for compact growth and for the benefit of the common good.

Chapter 6 – Housing

- **H1 Objective 4** aims to recognise the urgent need for the increased provision of social and affordable housing to ensure that all residents in South Dublin County have access to a home. Such provision shall be made through working with approved housing bodies and co-operatives to provide for social and genuinely affordable housing accommodation to meet housing needs. This shall be carried out through a range of delivery mechanisms including new builds, acquisitions, renovations and acquisitions of vacant homes, cost rental leasing, and housing supports including RAS and HAP or any other mechanism promoted under Government Housing Policy, with priority given to new builds and renovations whenever available.

- **H1 Objective 8** seeks to promote the re-use of and reactivation of vacant units within our Urban Areas and pursue as soon as possible, through the application of the vacant site levy in accordance with the Urban Regeneration and Housing Act 2015, and through the implementation of the South Dublin Vacant Homes Strategy and Action Plan 2018-2021. The Council shall review and update this programme as deemed necessary and shall pursue the Compulsory Purchase of long-term vacant sites and units, where feasible.

6.2. **Corporate Plan of South Dublin County Council 2020-2024**

- 6.2.1. The Corporate Plan 2020 - 2024 provides the vision and strategic direction for the South Dublin County Council over the next five years.
- 6.2.2. Objective 1 of the Plan is in relation to strategic planning for resilient and compact growth. This can be achieved by proactively managing vacant land in the county to promote delivery of homes.
- 6.2.3. Objective 2 of the Plan is to improve the visual appearance of the county in the interest of economic and social development. One of the ways in which to achieve this is to maintain the Derelict Sites Register (list) and implement the provisions of the Derelict Sites Act and Sanitary Services Act in relation to derelict, dangerous and vacant buildings.

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.
- 6.3.4. 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.
- 6.3.5. 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.
- 6.3.6. 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.
- 6.3.7. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.3.8. 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.
- 6.3.9. 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 An Bord Pleanála.

7.0 Assessment

- 7.1. A full description of the site, including its location and physical condition, is provided in Section 2.0 above. In summary, however, it can be described as comprising four vacant semi-detached houses on the eastern side of Saint Maelruan's Park, which is a small residential street. The site address is 24, 24a, 24b and 24c Saint Maelruan's Park, Tallaght, Dublin 24.
- 7.2. The houses were vacant at the time of my site inspection. They appeared to be in reasonable structural condition externally with no obvious cracking or damage to external walls. The doors and windows, front and back, were covered up with steel shutters. The parking area at the front of the property was in poor condition, with weeds taking hold and minor surface damage incurred. The area was blocked off by a makeshift fence post and wooden box arrangement. I understand, from reading the file, that up until recently this space was being used to sell cars.
- 7.3. I also noticed during my inspection that tiles were missing from the roofs of some units and that gutters had come loose in certain places and in need of repair. Discoloration and weathering of the associated fascia and soffit underneath was also observed. The rear gardens of each house were heavily overgrown with thick weeds. There did not appear to any illegal dumping on the site. However, cutting or tidying of grass, hedges or trees had clearly not occurred for some time. The gardens were unusable, and some had vehicles parked in them – likely having accessed the property from the laneway to the rear. It was apparent that the property had been left unoccupied for a prolonged period and is not being maintained or managed properly.
- 7.4. The site is part of a mature, suburban residential area near the centre of Tallaght. Other residential houses in the surrounding vicinity are in good condition and well maintained. The area has a mature, settled feel to it and the public realm is well-kept and tidy. The site is within ready access of a range of services and amenities. The condition of the subject property relative to its surrounding area is squarely at odds in my opinion.
- 7.5. I consider that the property falls within category (b) of section 3 of the Derelict Sites Act, 1990, which states that a derelict site is any land which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in

the neighbourhood because of the neglected, unsightly or objectionable condition of the land in question or of any structures on it. I note that category (a) relates to structures which are in a ruinous, derelict or dangerous condition. However, having inspected the site, I do not consider that the structures are in a dangerous condition, or that they could be considered ruinous, noting that they did not appear structurally unsound or compromised in any way. Furthermore, there were no significant amounts of litter strewn around the site, nor any indications of waste or debris being deposited or collected on the property. Therefore, I do not consider that the site falls within category (c) of section 3 of the Act. However, and as noted above, I consider that the subject property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, including the surrounding neighbourhood, which in my view, renders it derelict under section 3 of the Act.

- 7.6. I note the legislative steps taken by Local Authority leading up to the making this application to acquire the derelict site compulsorily. The process has been lengthy and extensive and there is information on file confirming that SDCC first received a complaint in relation to the property in July 2016. After several property investigations, correspondence with the landowner (and other relevant parties), and Councillor motions regarding the deteriorating condition of the site, SDCC decided that it would proceed to enter the particulars of the site on the Derelict Sites Register.
- 7.7. The Derelict Site was added to the Council's Derelict Sites Register on 12th July 2021. On the 15th July 2021, the Notice(s) of Intention to make an entry into the Derelict Sites Register was served by site notice and by sending the said notice via registered post. I note that no representations were received within the timeframe specified in the Site Notice(s). A 'Notice of Intention to Acquire the Derelict Site Compulsorily under the Derelict Sites Act' was then published in The Irish Times and The Echo on the 28th July 2022, respectively. Notice was also served on the registered owner and Receiver by way of registered post. The application to compulsorily acquire the property was submitted to the Board on 27th September 2022.
- 7.8. Mr. Michael McAteer (Receiver) is formally objecting to the proposed CPO of the subject property. Kane / Tuohy Solicitors, who are representing Mr. Michael McAteer, request that the CPO be rejected by An Bord Pleanála. It is stated that Mr. McAteer intends to sell the property at the best possible price, which is not

unreasonable, in my opinion. Expert property advice suggests the price achievable would be greater if the property were sold with vacant possession. However, attempts to vacate the property were hindered by tenants who refused to vacate.

- 7.9. The Objector also states that to date several attempts have been made by the Receiver to sell the property. However, this has proven unsuccessful for various reasons, including damage incurred to the property during a break-in, ongoing litigation proceedings, and several trial adjournments. It is further stated that because of Covid-19 restrictions important correspondence (Notice of Intention to make an entry on the Derelict Sites Register) was not brought to the personal attention of Mr. McAteer. This is, I note, despite the registered letter being confirmed as being delivered to Mr McAteer's office.
- 7.10. The Objector goes on to state that there are no funds in the receivership to carry out remedial works at the property. However, in light of the CPO Notice, the Bank acceded to providing funding for certain external works – works that were requested by SDCC in prior notices. The works comprised mainly of tidying the gardens, removal of rubbish, painting of shutters and general washing and cleaning of the property. I acknowledge that this has improved the appearance of the property to a degree (see before and after photograph on file). However, during my site inspection it was clearly the case that no regular upkeep or maintenance of the property has since been established. The gardens and overall condition and appearance of the houses were poor, with significant weed growth evident, and with various outstanding repair works still not complete. In my opinion, it is apparent that the property is still not being properly maintained or managed and that it continues to have a serious, material detrimental effect on the amenity, character and appearance of the surrounding vicinity.
- 7.11. As to whether Mr. McAteer has been validly appointed as Receiver for the property, there are ongoing legal proceedings underway in relation to this issue. However, this is a matter for the Courts, in my view, and the Board need not concern itself with such matters for the purposes of this application.
- 7.12. In having regard to the above, I consider that the Objector has had sufficient opportunity throughout the process to address the concerns relayed to them regarding the condition of the property in the lead-up the application being submitted

to the Board. I acknowledge that a certain amount of superficial works or improvements to the property have been made. However, the property still falls within the description of a derelict site, in my opinion, and that remains in an neglected, unsightly and objectionable condition, as per category (b) of section 3 of the Derelict Sites Act, 1990 (as amended).

- 7.13. In summary, I consider there is sufficient evidence from the documentation on file, and from conducting my own inspection of the property, to determine that the current condition of the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood. I also consider that the Local Authority has taken all reasonable steps to address the neglected, unsightly and objectionable condition of the site, and that the Objector has had sufficient time and opportunity to address the concerns made clear to them by SDCC. The application is also in accordance with several policies and objectives contained in the County Development Plan, including CS4 Objective 3 and H1 Objective 8, and which seek to bring such derelict sites back into active use, including through the CPO process.
- 7.14. In conclusion, and in having regard to all the information available on the file and the continued condition and appearance of the site, which as stated constitutes a derelict site, I consider that it is appropriate for the Local Authority to compulsorily acquire Nos. 24, 24a, 24b and 24c Saint Maelruan's Park, Tallaght, Dublin 24.

8.0 Recommendation

- 8.1. I recommend that the Board confirm the Compulsory Purchase Order based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the neglected, unsightly and objectionable condition of the site, it is considered that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in section 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.]

Ian Boyle
Senior Planning Inspector

14th September 2023