



An
Bord
Pleanála

Inspector's Report

ABP-315676-23

Development

Derelict site at Mulcair Drive,
Annacotty, Co. Limerick

Location

Mulcair Drive, Annacotty, Co. Limerick

Planning Authority

Limerick City and County Council

Notice Party

Michael & Patricia Hayden

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 Mulcair Drive, Annacotty, 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 located the junction of Mulcair Drive and the Dublin Road just north of the R445 Dublin Road close to the local services in Annacotty. Bohemian R.F.C playing fields are located at the northern point of Mulcair Drive. The site itself is well screened by some matures trees and hedgerow along the boundary with the Dublin Road. The subject site, containing a stated 0.350 hectares or thereabouts, is a large triangular shaped site. Across the roadway from the subject site is another derelict cottage more prominent due to the site's elevation and lack of screening to the front.
- 2.2. The two-storey cottage has a large rear and side garden area with vehicular access gates and space for parking. The garden is overgrown but there is evidence that some clearing had taken place, mature vegetation along the boundaries and in front of the property. The adjoining properties to the north of the subject site are occupied and well maintained.

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 10th December 2020, (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), on 11th August 2021, (i.e., advising of the Local Authority's decision to enter the site on the register of derelict sites).

3.2. Application and Objection

3.3. Notice of Intention to Acquire

- 3.4. Limerick City and County Council (LCCC) 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 19th of November 2022. The site was described as follows in the notices:

A derelict site comprising a cottage dwelling and surrounding land situate at Mulcair Drive, Annacotty, Co. Limerick, containing 0.350 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-103-19 in the Derelict Sites Register established and maintained by Limerick City and County Council under section 8 of the Derelict Sites Act, 1990.

- 3.5. 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 16th of December 2022.

4.0 Objection to Acquisition

- 4.1. An objection to the proposed acquisition was submitted to LCCC from Michael and Patricia Hayden in a letter dated and sent by post on 13th December 2022 and sent by email on the 14th of December 2022. It is contended that prior to the notification to compulsorily acquire the site the objector has only been contacted twice, 10th December 2020 and 18th August 2021 in the past ten years.
- 4.2. The objector contacted LCCC by phone to outline the status of progress on the site and the delay to building. Corrective works to bring the site and dwelling into line were agreed and were undertaken. Having received no further correspondence the objector believed that the works undertaken were sufficient to keep the site and dwelling off the derelict register. However, on receipt of the section 8(7) notification the objectors engaged again with LCCC to outline the measures that has been taken and a request to meet despite Covid-19 restrictions.

- 4.3. It is stated that delay to completing the architectural plans and submitting these for approval was due to a change in employment status during the Covid period. However, it is still the objectors plans to build the family home on the site and are only a few weeks from commencing this planning task.
- 4.4. The receipt of the section 15 notification of compulsory acquisition has been a serious shock to their family, given the works undertaken to keep the site, its frontage and dwelling maintained. In addition, it was their understanding that a lack of response to their letters and requests to meet as necessary indicated that the actions undertaken were satisfactory to the local authority. They have liaised with neighbours and whenever asked to perform works, such as topping of tress have carried out these works.
- 4.5. A timeline of the communications between the objector and LCCC and actions taken are provided. These include the appointment of a gardener and painting of the dwelling prior to the issuing of the section 8(7) notice. In November 2021 clearance of old outhouses and unstable structures commenced. The site was cleared, and trees identified as dangerous or unhealthy felled.
- 4.6. In January 2022 a topographical survey of the site was undertaken, with a landscape designer appointed to assist with the planning application in February 2022. In August 2022 the first draft of the planned family home was produced. It is noted that they are only a few weeks away from submitting the planning application.
- 4.7. The Board wrote to Michael and Patricia Hayden on the 8th of February 2023 seeking any observations regarding the proposed compulsory acquisition of the site by LCCC.
- 4.8. **Local Authority's Application for Consent**
- 4.9. The local authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 25th January 2023 and was accompanied by the following:
- Compulsory Acquisition Report.
 - Derelict Site Location Map.
 - Copy of the Section 15 Notice issued to EBS d.a.c and Michael Hayden and Patricia Hayden.

- Copy of the newspaper notice, dated 19 November 2021.
- Copy of objection letter and acknowledged response.
- Site inspection photographs of the property from the case file.

4.10. The **Compulsory Acquisition Report** can be summarised as follows:

4.11. 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.

4.12. The property was first inspected on 11th November 2019. LCCC initially engaged with the owners Michael and Patricia Hayden in January 2020 and advised to prevent the site from being added to the derelict sites register planning permission for demolition and development would be required.

4.13. The section 8(2) notice of intention to enter the site on to derelict sites register was served on the 10th of December 2020 and, in response, the objector contacted LCCC to confirm that he was still intending to apply for planning permission and that he would carry out some 'stop gap' works to stem the dereliction. On the 23rd of February 2021 LCCC carried out an inspection of the site and found that some

clearing had commenced. Covid-19 restrictions were cited by the objector as a reason for delaying works. A further inspection carried out on 27th July 2021 confirmed the property to be still derelict and on 11th August 2021 the land was entered in the Derelict Sites register under section 8(7) of the Act.

- 4.14. On 12th September 2021 Michael Hayden advised that he was still intending to apply for planning permission and in the meantime had completed some painting and cutting back of vegetation. Two further inspections were carried out in October 2021 and again in October 2022 where it was found that the property continued to be in a state of dereliction. LCCC gave notice of intention to acquire the derelict site compulsorily to the owner and advertised same on the 19th November 2022.
- 4.15. An objection to the section 15 notice was submitted by email received on the 14th December 2022, by Michael and Patricia Hayden stating that the property owner has carried out works which had addressed the visual impact of the property and that the plans for the new house were at the final stages of agreement to be submitted in for planning approval.
- 4.16. Photographs from the site inspections dated October 2022 and November 2022 are included with the application.
- 4.17. The local authority sets out that the objection refers to some minor works completed on the site, some of which has been done at the request of the local community and neighbours to the site. It is a concern to the local authority that this site continues to remain in this condition despite commitments from the owner to lodge planning permission, and further, that previous permissions granted to enable such development have not been acted upon.
- 4.18. They contend 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.

4.19. Objector's Submission

- 4.20. An email from Michael Hayden was received 28th February 2023 adding to the objection already made. It is confirmed that the application for planning permission is to be made this week, notice already published in the local newspaper. It is proposed to demolish the old dwelling on site as soon as the application is approved.
- 4.21. I note from planning records on Limerick City and County Council's ePlan that a planning application was submitted on 6th March 2023, please see section 5.0 planning history for detail)

4.22. Local Authority Response to the Objection

- 4.23. None

5.0 Planning History

- 5.1. 23135 Planning permission granted (February 2024) to applicant Michael Hayden for the demolition of existing house, construction of a new dwelling house, domestic garage, entrance from public road, front boundary wall, landscaping and all associated site works.
- 5.2. 147048 Extension of Duration granted (September 2014) to applicant Michael Hayden of permission 09/294 for the demolition of existing house, the construction of a new dwelling house, domestic garage, entrance and front boundary wall, landscaping and all associated site works. Extension of duration of permission expired 18 August 2019.
- 5.3. 09294 Planning permission granted (August 2009) to applicant Michael Hayden for the demolition of existing house, the construction of a new dwelling house, domestic garage, entrances and front boundary wall, landscaping, and all associated site works.

6.0 Policy Context

Limerick City and County Development Plan 2022-2028

- 6.1. One of the strategic objectives for Limerick (Chapter 1) is to facilitate revitalisation and consolidation of the City 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).

- 6.2. 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).
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. The site is located within the city & suburbs boundary and zoned 'Existing Residential' in which the objective is "To provide for residential development, protect and improve existing residential amenity". A proposed cycleway/walkway is identified running along the front of the subject site linking to the existing cycleway/walkway along the Dublin Road through to the Mulkear River.

Derelict Sites Act 1990 (as amended)

- 6.7. 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.
- 6.8. 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."
- 6.9. 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.
- 6.10. 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.
- 6.11. 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.
- 6.12. 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.
- 6.13. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.14. 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. I draw the Board's attention to the date of application by Limerick City and County Council for consent for the compulsory acquisition of the derelict site at Mulcair Drive, Annacotty, Co. Limerick made on the 25th of January 2023. The Board should satisfy itself with respect to the validity of the application having regard to the applicable statutory period under the Derelict Sites Act, 1990 (as amended).
- 7.2. The site is located within the Annacotty area of Limerick city and suburbs, within easy access to all amenities of the city. In the development plan Annacotty is identified, along with Mungret, as playing an important role within Limerick city and suburbs with the National Planning Framework (NPF) supporting ambitious growth targets.
- 7.3. Mulcair Drive is an attractive established residential estate and the traditional cottage form with small projecting porch on large plots has a particular charm. However, I note from site inspection that a number of the existing cottages have been redeveloped and/ or demolished and a replacement dwelling built in more recent times. The site contains a two-storey detached cottage on the prominent corner of Mulcair Drive and the Dublin Road. There is a pedestrian and vehicular entrance to the site with front boundary delineated by a rendered wall and entrance piers. The front boundary does not appear to have been painted as recently as the cottage. The property is currently unoccupied, and the windows and doors are boarded up. The cottage has been painted and, in the gardens, there are signs of vegetation clearance having taken place.
- 7.4. Having regard to the above, I would consider that the site falls within category (a) of section 3 of the Derelict Sites Act, 1990 (as amended) due to the derelict nature of the structure on site and category (b) due to the land being in a neglected, unsightly and objectional condition. There was no evidence of significant presence of litter, rubbish, debris or waste and I consider, therefore, that the site does not fall within category (c) of section 3 of the Act. In conclusion, I consider that the property

detracts to a material degree from the amenity, character and appearance of Mulcair Drive and in my view renders it derelict under section 3 of the Act.

- 7.5. Limerick City and County Council (LCCC) have been in contact with the registered owners Michael and Patricia Hayden since 2020, with an initial letter of enquiry sent in January 2020. I note that the address in respect to the initial enquiry issued to as Prague Villas, Castletroy and that in April 2020 Michael Hayden (the objector) contacted LCCC to confirm that future correspondence should be issued to 27 Salmon Weir, Annacotty. The different address may explain the delay in response by the owner to the initial enquiry. The objector informed LCCC that he will be reapplying for planning permission to build a house on the site, and he asked what actions he should take to keep the site from being added to the Derelict Sites Register. According to the submitted Compulsory Acquisition Report LCCC advised him that planning permission for demolition and development would be required.
- 7.6. From the information on file there has been a significant delay in making a new planning application for the subject site from the initial engagement with LCCC inspectors in April 2020 to the lodgement of an application in March 2023, submitted more than three months after the section 15 notice issued. The objector has set out that a change in employment status as a result of consequences from Covid-19 has played a part in the delay in making the planning application and I note that a grant of permission has now issued in February 2024 for the demolition of the cottage and the construction of a new dwelling on the site.
- 7.7. The site ownership enquiry has established that Michael and Patricia Hayden are the full owners of the property since November 2008. From the planning history records, see section 5.0, Michael Hayden previously applied and was granted permission in August 2009 to demolish the existing cottage and building a new detached dwelling with garage. The duration of permission was extended by separate application up to 18 August 2018. No works under this permission were carried out and the permission expired.

8.0 Conclusion

- 8.1. Having regard to the past inaction on the previous planning permission and the delays evident in the making of a new application, whilst acknowledging the

understandable delays resulting from Covid-19 impacts, it is difficult to be confident that there will be any real progress under the new planning permission to bring the lands and property into active reuse. Notwithstanding, taking into account the recently granted planning permission to demolish the existing cottage and build a new residential dwelling with garage and planned landscaping thereby enabling the lands to be restored to residential use and to render it no longer a derelict site, as was advised to the owner as the action required by LCCC in April 2020, I consider it reasonable to allow for some further time for the owner to implement the permission.

- 8.2. 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.
- 8.3. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the derelict site comprising a cottage dwelling and surrounding land situate at Mulcair Drive, Annacotty, containing 0.350 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 19th November 2022 and on the deposited maps (derelict site shown outlined in red bearing reference No. DS-103-19) 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.
- 8.4. However, I am not 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 not 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.
- 8.5. Accordingly, having regard to all the information available on the file and taking into account the recently granted planning permission (Planning register reference 23135) to demolish the existing cottage and build a new residential dwelling with garage thereby enabling the lands to be restored to residential use and to render it

no longer a derelict site, as was advised to the owner as the required action by LCCC, I consider, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Mulcair Drive, Annacotty, Co. Limerick.

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. It is further considered that the acquisition of the site by the local authority is warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 9.2. However, having regard to the recent grant of planning permission by the planning authority under Reg. Ref. 23135 for the demolition of existing house, the construction of a new dwelling house, domestic garage, entrance from public road, front boundary wall, landscaping and all associated site works to bring the site back into use and to address the dereliction of the site, I recommend that the Board refuses consent to Limerick City and County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1. Notwithstanding the current neglected, unsightly and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account of the grant of planning permission on the 20th February 2024 for the demolition of existing house and construction of a new house under planning authority Reg. Ref. 23135, together with the evidence of the ongoing efforts by the owner to seek to address the issues of dereliction, I am of the opinion that the acquisition of the site by the local authority is not necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site, and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the 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

25th March 2024