



An
Bord
Pleanála

Inspector's Report ABP-315677-23

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended

Location

Main Street, Athea, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Ann Woods

Date of Site Inspection

25th June 2023

Inspector

Mary Kennelly

1.0 Introduction

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

2.0 Site Location and Description

- 2.1. The site is located on Main Street, which is situated in Athea village, in north-west County Limerick, close to the Kerry border. Athea village is located on the R523 between Rathkeale and Listowel and is c.60km to the southwest of Limerick City, c.14km east of Listowel and c.11km north of Abbeyfeale. The R523 runs east to west through the centre of the village linking Listowel with Ardagh and the R524 runs north-south through the settlement linking Abbeyfeale on the N21 with Glin on the N69. The site is located on Main Street (R523), approx. 100m west of the junction with Barrack Street (the Abbeyfeale Road - R524) and just to the east of the Y-junction with Con Colbert Street.
- 2.2. Main Street is primarily residential but has a mixed-use character with some commercial and community uses present including some shops, restaurants, take-aways, pubs and a credit union. St. Bartholomew's Church, which is a Protected Structure, is located immediately to the south-east of the site. The church itself is set well back from the road frontage with a car park and a lawn area to the front. The site is an end-of-terrace house which adjoins the church car park on its eastern and southern boundaries. It fronts directly onto the street and adjoins further terraced houses to the west.
- 2.3. It comprises a terraced two-storey dwelling which appears to be vacant. It incorporates a former shopfront comprising a window and a door, in addition to the domestic front door and window at ground floor level. The upper floor has three windows. The attached building to the west comprises a two-storey house which appears to be occupied and well maintained. The building immediately to the west of the occupied house is a single storey building which is in use as a credit union. The properties on the opposite side of the road and in the general vicinity are mainly in

residential use, which appear to be occupied and in reasonable condition and well maintained.

- 2.4. The subject site is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage. It is described as an end-of-terraced, 2-storey dwelling on a site of approx. 0.039ha. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.5. On the date of my site inspection, the property was secure, with both of the front doors firmly shut. The front façade is rendered and painted but the render is cracked and peeling, and the paint is also dirty and peeling. The window cills and reveals are chipped with peeling paint. There is wiring and piping protruding from the property and the rainwater goods are either damaged or missing at the front. The shopfront is in a shabby condition with peeling and dirty paintwork and parts of the render have broken off. The domestic front door is also in poor condition. The front windows are not boarded up but there are net curtains and blinds which are dirty and broken. The windows are of upvc and are old and in need of replacement.
- 2.6. The roof was in a poor state of repair with loose, damaged and missing slates and moss growing along the ridge tiles. The chimneys appeared to have vegetation growing out of them and were in a poor state of repair. The rainwater goods seemed to be missing. At the rear the windows were sliding sash timber framed windows which appeared to be damaged. There was a further chimney at first-floor level at the rear which appeared to be in poor condition and in need of a repaint.
- 2.7. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the property from the street and from the church car park.

3.0 Application for Consent for Acquisition

- 3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on 21st April 2021, (i.e., advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on the 6th of October 2021, (i.e., advising of the Local Authority's decision to enter the site on the register of derelict sites).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Ms. Ann Woods) and was published in the Limerick Post newspaper on the 10th of November 2022. The site was described as follows in the notices:

- A derelict site comprising a two-storey, end-of-terrace residential premises and surrounding land situate at Main Street, Athea, Co. Limerick, containing 0.039 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-012-19 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

4.2. Objection to Acquisition

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by the owner Ms. Ann Woods, in a letter on the 14th of December 2022. It was stated that the owner of the property was in the process of transferring the property to her son and that they were awaiting builder's quotes to carry out repairs to the house. This was followed by further correspondence regarding the ownership/title of the property on the 22nd of December 2022. The objection can be summarised as follows:

- The premises is owned by Ms. Ann Woods of Knockanure, Moyvane, Listowel, Co. Kerry.
- In response to a request from the local authority (subsequent to service of the notice) for further documentary evidence on the ownership title, a letter was submitted dated the 22nd of December 2022. This stated that Ms. Woods inherited the property from her cousin Michael McMahon on the 7th of January

2015, who in turn had inherited it from his father James McMahon on the 22nd of December 1977 and who in turn had inherited it from his father Michael McMahon on the 27th of December 1947. It was further stated that Ms. Woods had engaged her legal team to provide the relevant information to prove same.

- The letter from Ms. Woods dated 22/12/22 was co-signed by a Peace Commissioner (and local authority Councillor) who it was stated could verify the information given.

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 25th January 2022 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection.
- The report included photographs and a map of the site area.
- Copy of the notices served on the owners/occupiers of the site.
- Copy of the newspaper notice, dated 10th of November 2022.
- Copy of objection made by Ann Woods submitted to the L.A. on 14th of December 2022 and 22nd of December 2022.

4.3.2. The **Derelict Site Report** can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It

is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.

- Matters that are taken into account include -
 - outstanding planning permissions,
 - evidence of efforts to address vacancy and dereliction,
 - security, safety to the public and condition of the site,
 - the conservation value of the building and requirement for remedial restoration works, and
 - the feasibility of various actions to make good the site and find viable uses for the site.
- The property first came to the attention of the L.A. on the 27th of February 2019 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2021, Ref. DS-012-19, when it was first inspected.
- Site ownership enquiries were made by affixing a notice on the property as the site was unregistered on the Land-direct system. Ms. Ann Woods came forward as the reputed owner and asked what assistance could be provided to her in order to renovate the property. She was advised of the Buy and Renew Scheme, but it is stated that no further progress was made with this scheme.
- In April 2021, Section 8(2) Notices were served by registered post and affixed to the site of the local authority's intention to enter it onto the Derelict Sites Register. No response was received.
- In October 2021 Section 8(7) Notices were served advising that the site had been entered onto the register. Following this, the local authority noted that the overgrowth had been cleared at the rear, but it was stated that nothing was done to address the safety issues of concern at the front of the site.
- In May 2022 Ann Woods requested a site meeting with the local authority. At this meeting she was advised on the local authority's compulsory purchase powers if safety works were not carried out immediately. It is stated that Ms. Woods gave a commitment to commence works in the coming weeks and advised that it was her intention that her son would live in it when complete.

- On the 30th of September 2022, a local authority inspection established that slates had recently fallen on the footpath and that none of the promised works had been carried out.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated in February 2019, in February, September and October of 2021 and in May, September and November of 2022 are included with the application.
- The site comprises an end-of-terrace two-storey residential property and surrounding land containing 0.039ha. The appearance was described as follows :-

The end-of-terrace two-storey residence is vacant and in a derelict condition for a considerable time. The site detracts in a great way from the well-maintained land and properties in the vicinity and will draw the eye of anyone passing through the town.

The structure is to the front of the site and is in a derelict condition.

The chimney is overgrown and held together with wire mesh. There are some slates damaged and missing.

There is an absence of gutters and downpipes.

The windows and doors are damaged and broken.

An extension and sheds at the rear are also damaged and broken.

The property has a neglected look and is unsightly.

There have been several incidents where slates have fallen from the roof onto the public footpath in front of the property.

- The derelict site is located on a busy thoroughfare through the town on the approach from Newcastle West. The town performs an important civic and service function with a concentration of civic amenities including shops, schools and a church. These provide services not only for the resident population but also for a much wider rural based population and visitors to the town.

- Notices were issued in April 2021 of the local authority's intention to enter the land onto the Derelict Sites Register.
- No progress was made following an initial response from the owner and the site was entered onto the register in October 2021. A section 8(7) Notice to this effect was served on the owner on the 6th of October 2021. Following further engagement with the owner in May 2022, the property continued to deteriorate and remained in a dangerous condition.
- Taking into consideration the continued derelict condition of the building, the decision was made to compulsorily acquire the site. The owner was notified of this under section 15 of the Derelict Sites Act on the 19th of November 2022 and it was publicised in the local newspaper on the 19th of November 2022.
- An objection to the section 15 notice was submitted by letter received by the local authority on the 14th of December 2022 stating that the owner of the property was in the process of transferring it to her son and that they were awaiting builder's quotes to carry out repairs to the house. This was followed by further correspondence on the 22nd of December 2022 in response to a request for further information by the L.A. regarding the ownership/title of the property. The letter, which was co-signed by the owner and a Peace commissioner and Elected Member of the local authority, stating the case for the property ownership.
- The Local Authority contends that it is the inaction of owners and the failure of their duties under the Derelict Sites Act 1990 (as amended) that jeopardises the future use of the property in the area due to their continued neglected and derelict state. Concern was expressed that commitments have been given on several occasions to carry out remedial works to the property, but these have not been acted upon. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

- 4.4.1. A submission was made to the Board by email on the 27th of February 2023 in response to the application for compulsory acquisition. It was confirmed that the

owner, Ms. Ann Woods, was in the process of transferring the property to her son, Michael and that she was engaging with her solicitor at the moment.

4.4.2. It was stated that Michael Woods was applying for a Vacant Property Refurbishment Grant (Croi Cónaithe Towns Fund) and that in the meantime, he was 'hoping to do remedial works on the property'.

4.4.3. The Board responded to the email (27/02/23) asking if the owner's solicitor intended to make any further comments in relation to her initial objection. A further response was submitted by email (27/2/23) from Ms. Woods as follows -

"My Solicitor has forwarded the information that the Council were looking for to Limerick County Council. I don't think they will be submitting any further response at this time."

4.4.4. No further submissions have been made.

5.0 Planning History

5.1. There are no records of any planning applications or permissions relating to the site.

6.0 Policy Context

6.1. Development Plan

6.1.1. One of the strategic objectives for Limerick (Chapter 1) is to ensure the revitalisation and consolidation of urban areas through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4). The themes of revitalisation of towns and villages and the delivery of compact growth are central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3). **Policies CGR P1** and **CGR P4** set out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban areas and actively addressing dereliction and vacancy. One of the measures required to create compact, dense and sustainable urban centres is 'Active Land Management' (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban

areas into beneficial use (**Policy CGR O4**). Key legislative measures to facilitate this include the powers under the Derelict Sites Act 1990.

- 6.1.2. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and County Council is proactive in identifying and seeking the improvement of such sites to address incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.

Objective CGR O6 – Derelict sites – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.

- 6.1.3. **Section 2 Spatial Strategy** states that **Athea** is designated as a **Level 5 Small Village** in the Settlement hierarchy (Table 2.7). Level 5 Small Villages are described (3.8) as smaller settlements ranging in population from 150-500 people with a range of infrastructural, social and community facilities and provide for convenience and the daily needs of the local population and surrounding area. They also provide some small-scale employment opportunities and local level community facilities, such as primary schools, churches, local sporting facilities and a community hall.

- 6.1.4. Relevant objectives include **CGR O17: Development within Level 5 Settlements** – ensure development is in proportion to the pattern and grain of existing development and within the development boundary, with preference given to infill and brownfield sites. Any such development should enhance the existing village character and create or strengthen a sense of identity. **Policy CGR P4 – Revitalisation of Towns and Villages** seeks to actively address issues of vacancy and dereliction and to promote compact growth and the physical, social and economic revitalisation of towns and villages.

- 6.1.5. **Chapter 4** sets out the policies and objectives relating to housing. Section 4.2.6 relates to Re-Use of buildings. Relevant objectives are as follows:

HO O4 – to encourage redevelopment and reuse, including energy retrofitting of existing housing stock and conversion of other suitable buildings to sustainable accommodation.

6.2. Derelict Sites Act 1990 (as amended)

6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.2.2. Section 3 of the Act defines 'derelict site' as:

“Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.”

6.2.3. Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so. Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site. Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically,

section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

7.0 Assessment

- 7.1. Internal access to the property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road adjoining the site.
- 7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding residential area. This is due to the fact that the front façade is in a poor state of repair with cracked, peeling render and dirty/peeling paintwork, chipped window cills and reveals and that there is wiring and piping protruding from the façade. The rainwater goods at the front are missing, which means that surface water from the roof pours down the façade onto the street. The roof is in a very poor state of repair with loose and damaged slates. There is vegetation growing out of both of the chimneys. The local authority's report also stated that one of the chimneys is being held together by wire mesh.
- 7.3. The front door to the shopfront appears to be nailed shut and the blinds on the former shopfront window are shut and broken, giving an unsightly appearance. The domestic front door is in need of repair or replacement. The windows are in poor condition and need to be replaced. The rear windows are timber framed and in need of repair. There is vegetation growing out of what remains of the guttering and the downpipe looks old and damaged. There is a rear extension which appears to have a damaged wall and a chimney which is in need of repair and repainting. The rear elevation is clearly visible from the churchyard.
- 7.4. The combination of these factors detracts from the amenity of the street and the character of the area, and in particular, have a detrimental impact on the adjoining church and churchyard and on the attractively presented residential properties in the vicinity. The property has been in a derelict state and has remained vacant for some time and its condition has deteriorated during this period of vacancy and dereliction. The longer the building is vacant and in a state of dereliction, the greater is the likelihood of significant damage to historic fabric and the need for remedial restoration works, with the potential for greater levels of intervention.

- 7.5. The property is situated in the middle of a street of mainly residential properties which are generally occupied as residential units, which appear to be well maintained and in good condition. Most of the houses nearby had planter boxes on the window cills and hanging baskets and were freshly painted and in a neat and tidy condition. St. Bartholomew's Church is a Protected Structure (RPS 957). The church and associated grounds was also in a very neat and tidy condition an attractive building with well-maintained landscaping. The area has an attractive appearance, and the public realm is well cared for, with high quality public amenities. The City and County Development Plan seeks to enhance the character of Level 5 Villages and to strengthen a sense of identity and distinctiveness and also seeks to revitalise towns and villages throughout the county. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.
- 7.6. Although the front façade appears generally intact, the render on the external walls and window reveals are in a poor state of repair, as are the roof, the windows and front doors. The poor structural condition of the roof gives rise to safety concerns for the general public with past evidence of falling slates and also presents significant challenges for the continued maintenance of the property in a reasonable condition. The external walls are also in a poor condition, and this together with the damaged or absent rainwater goods, including vegetation growing out of the gutters, is likely to contribute to dampness within the property. The poor structural condition of the chimneys and the growth of vegetation there is indicative of issues with the maintenance of the property. Although I did not gain access to the property, I was able to see that the building was in an untidy and unkempt condition. I note from the photographs provided with the Local Authority report, that the property seems to have deteriorated further since the first inspection in 2019.
- 7.7. Having regard to the above, I would consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition. Having inspected the site, I consider that there is sufficient evidence to confirm that the structure is in a dangerous condition, and that it could be considered ruinous. Thus,

it is considered that the site does also falls within category (a) of the Derelict Sites Act 1990.

- 7.8. There was no evidence of litter, debris, rubbish and waste within the application site. 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 demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.
- 7.9. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 21st of April 2021, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 6th of October 2021, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(1)(a) notices were served on 19th November 2022 and published in the Limerick Post Newspaper on the 19th of November 2022 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.10. I note the objection made to the Local Authority by the owners on the 14th of December 2022 and on the 22nd of December 2022 to the proposed acquisition of the site, stating that the property was being transferred to the owner's son and that they were awaiting builder's quotations for the repair works needed to restore the property. It was further advised that the rear of the property had been cleared out. The further correspondence related to the ownership of the site.
- 7.11. It is noted that a further objection was made by the owner to the Board on the 27th of February 2023. This confirmed that the property was being transferred to the owner's son who intends to restore the property and to carry out remedial works. It was further advised that her son intended applying for a Vacant Property Refurbishment Grant (Croi Cónaithe) and that in the intervening period he hoped to carry out some remedial works.
- 7.12. I can confirm from my site inspection on the 25th of June 2023 that none of these works had been undertaken apart from the clearing of the rear garden. It would appear from the photos on file that the glazing on the domestic front door may have been replaced also during this period.

- 7.13. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. The external walls, roof, guttering and downpipes are all in a poor state of repair, one of the doors is still boarded up and the façade had not been repainted. Vegetation is still growing out of the guttering and chimneys. There are loose and damaged slates on the roof which pose a threat to public safety. No further information has been provided to the Board regarding any progress made on advancing the works to enable the property to be removed from the Derelict Sites Register. I therefore consider that the site remains in a derelict condition.
- 7.14. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at Main Street, Athea, Co. Limerick is granted.

8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 8.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

- 9.1. Having regard to the neglected, unsightly and objectionable condition of the site, the poor state of repair of the external walls, roof and rainwater goods and to the visible presence of vegetation growing on the property 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 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-derelect and to prevent it continuing to be a derelect site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Mary Kennelly
Senior Planning Inspector
12th October 2023