



An
Bord
Pleanála

Inspector's Report

ABP-317338-23

Development

Application for the compulsory acquisition of a derelict site comprising a property at Kennedy Street, Carlow, Co. Carlow

Location

Kennedy Street, Carlow, Co. Carlow
R93 AP68

Planning Authority

Carlow County Council

Notice Party

Thomas Foley

Date of Site Inspection

6th October 2023

Inspector

Peter Nelson

1.0 Introduction

- 1.1. This case relates to a request by Carlow County Council for the consent of An Bord Pleanála to the compulsory acquisition of the site at Kennedy Street, Carlow, Co. Carlow, 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 Kennedy Street in the centre of Carlow, Co. Carlow. Kennedy Street contains commercial and residential properties. The site comprises a boarded-up commercial property with no roof, a section of street frontage with an overgrown forecourt, and a building with part of the roof missing. The rear of the site shares a boundary with an open yard containing building materials. The yard is not included in the site for compulsory acquisition.

3.0 Application for Consent for Acquisition

- 3.1. Carlow County Council has applied to the Board for consent to compulsorily acquire the site under Sections 16(4) of the Derelict Sites Act, 1990, as amended. This application follows the service of notices:
- Carlow County Council served notice on 13th April 2023 under section 14 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the derelict site at Kennedy Street, Carlow, Co. Carlow.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Carlow County Council served notice on 18th April 2023 under section 14 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the derelict site at Kennedy Street, Carlow, Co. Carlow. I consider that the notice is in

accordance with the requirements of section 15(1)(a) of the Act with regard to the documentation on file.

4.2. Objections to Acquisition

4.2.1. Carlow County Council received one submission on foot of the notice of intention to compulsorily acquire the derelict site. Tom & Anna Foley made a submission to Carlow County Council on 24th April 2023. Tom & Anna Foley objected for the following reason:

- The site is not derelict but being used by their construction company, Martello Development Ltd, for the past 22 years as a yard to store building materials, JCBs and vans after planning permission for a proposed development was refused in 2003.

4.3. Submission of Carlow County Council

4.3.1. Carlow County Council has made a submission in support of the proposed acquisition, dated 14th June 2023, and signed by Nicola Lawler, Town Regeneration Officer. The following points of same are noted:

- The property has been vacant since at least 2009.
- There is a housing need in Carlow Town.
- The Housing Department is actively seeking lands, turnkey developments or regeneration opportunities within Carlow Town.
- The site is ideal for a multi-unit development for 1-bed/2-bed units, which accounts for 72% of the total housing need in Carlow Town.
- The area Mr Foley is stating is being used by his construction company is outside the red line of the site to be compulsorily acquired.
- Permission has not been refused for residential development in 2003, as claimed by the owner.
- Kennedy Street represents a key area currently being targeted for regeneration.

- The property has been vacant for more than 14 years, and the Council's primary objective is to bring the property back into use.

4.4. **Submission of Tom Foley**

4.4.1. The owner's son has made a submission to ABP dated 11th July 2023. The following points of same are noted:

- The site's owner has been in hospital on three separate occasions this year and did not fully understand what was happening to his property on Kennedy Street.
- In July, the owner's son took it upon himself to contact some property developers he knows have an interest in the site and now requests that An Bord Pleanála grant him an extension of time to put the property on the market for his father.

5.0 **Planning History**

P.A. Reg: 03/5236 Application for the demolition of an existing house, workshop, sheds and for and the erection of 44 No. apartments, 2 No. shop units, site entrance and associated site works. Further Information was requested and submitted after the statutory time; therefore, the application was deemed withdrawn.

P.A. Reg: 04/5357 Application for demolition of existing house, workshop, sheds and pub and the erection of 34 No. apartments, 2 No. shop units, site entrance and associated site works was deemed invalid.

P.A. Reg: 04/5372 Application for demolition of existing house, workshop, sheds and pub and the erection of 34 No. apartments, 2 No. shop units, site entrance and

associated site works. No response was received to a request for Further Information.

6.0 Legislation and Policy Context

6.1. Derelict Sites Act 1990 (as amended)

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

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

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

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

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

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

6.1.3. Other relevant provisions of the Act are summarised below:

- Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in the functional area.
- Section 15 sets out arrangements for giving notice if the local authority intend to acquire a derelict site compulsorily.
- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it provides that, if an objection is made, then the derelict site shall

not be acquired compulsorily by the local authority without the consent of the Board.

6.2. Carlow County Development Plan 2022-2028

6.2.1. The site is zoned Town Centre in the Carlow County Development Plan 2022-2028

The objective of this zoning is: *To protect, provide for and/or improve town and village centre facilities and uses.*

“The purpose of this zoning is to protect and enhance the character and vibrancy of existing town and village centres and to provide for and strengthen as appropriate retailing, residential, commercial, cultural, tourist and other appropriate uses. It will promote compact growth through the consolidation of development on town and village centre lands, allowing for a broad range of compatible and complementary uses, which will be encouraged to locate in this area in order to create an attractive environment to reside, shop, work, visit and in which to invest. The appropriate reuse, adaptation, and regeneration of buildings, infill sites, backlands, vacant, derelict and underutilised lands, including residential development, will be encouraged....”

Policy CS.06:

Actively promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including availing of statutory powers under the Derelict Sites Act, Housing Act, Vacant Site Levy and supporting implementation of the Residential Zoned Land Tax together with other statutory provisions to actively promote regeneration of urban and rural areas within the County.

Policy RA. 01: Encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:

- Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land
- Urban blight or decay

- Anti-social behaviour, or
- A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

Policy TV. P4:

Promote the consolidation of town and village centres with a focus on the regeneration of underused / vacant buildings and strategic sites and the establishment of a mix of uses to encourage greater vibrancy outside of business hours.

7.0 Assessment

- 7.1. The following assessment is based on a site inspection carried out on 6th October 2023. I inspected the site from both Kennedy Street, onto which the property fronts and from Mill Lane. At the time of site inspection, the buildings were not accessible for internal inspection.
- 7.2. The application may be assessed with regard to the relevant provisions of the Derelict Sites Act, 1990, as well as procedural consideration, as follows.
- 7.3. According to the documentation on file, it appears that the subject site has not been entered into the Derelict Sites Register. The Board should note that it is not a requirement under the Derelict Sites Act 1990, as amended, for a site to be placed on the register of derelict sites prior to an application being made to acquire it compulsorily.
- 7.4. The building is vacant and has a neglected, unsightly and objectionable appearance from the public road. The shop front and windows have been boarded up. The top section of the gable-fronted elevation and the original roof have been removed. Vegetation is growing from the upper walls. A section of the roof of the building to the rear of the site is missing and in a dangerous condition.
- 7.5. There is evidence of significant structural damage to the external walls and the roof structures. With regard to category (a) of section 3 of the Derelict Sites Act, 1990, which relates to structures which are in a ruinous, derelict or dangerous condition,

having inspected the site, I consider that the structure is in a dangerous condition, with visible evidence of structural damage and can be considered ruinous.

- 7.6. Given the hoarding, the boarded-up windows and shop front and the partly demolished front elevation, I am of the opinion 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. As no litter was visible within the application site or any evidence of waste being stored externally, I do not consider that the site falls within category (c) of section 3 of the Act. However, for the other reasons stated, I consider it derelict.
- 7.7. In their submission, the Town Regeneration Officer states that there is a considerable housing need in Carlow Town and that the Housing Department is actively seeking lands or regeneration opportunities within Carlow Town. The Town Regeneration officer considers this site ideal to develop a strong multi-unit development for 1 bed/2 bed units, which would comply with the Quality Housing for Sustainable Communities Guidelines, given its proximity to services and supports. I consider that the development of this site for residential use would comply with Carlow Development Plan Policy RA. 01 and TV. P4
- 7.8. I note that the objector requests additional time to put the site on the market. This site appears to have been derelict and in a similar condition since at least 2009. I considered that during this time, no significant works have been carried out to remedy its derelict state and that the site has remained unsightly and in an objectional condition for all this time. Therefore, I considered that there has been adequate opportunity to sell, develop, or improve the site.
- 7.9. I am satisfied that the process and procedures undertaken by Carlow County Council have been fair and reasonable, that the Carlow County Council has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to facilitate the proportionate response to ensure that the remedying of its derelict state can be expedited.
- 7.10. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the property on Kennedy Street as set out in the compulsory acquisition order and on the deposited maps is rationally connected

to a legitimate objective in the public interest, namely remedying of the sites derelict state and potential provision of housing.

- 7.11. Accordingly, I am satisfied that the confirmation of compulsory acquisition is clearly justified by the exigencies of the common good.
- 7.12. 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 Kennedy Street, Carlow, Co. Carlow R93 AP68.

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 detracts to a material degree 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. It is further considered that the local authority's acquisition of the site is warranted to render the site non-derelict. I therefore recommend that the compulsory acquisition be confirmed.

9.0 Reasons and Considerations

- 9.1. Having regard to the ruinous and derelict condition of the structures on the site and the derelict state of the site and to its neglected, unsightly and objectionable condition, having considered the objections made to the compulsory acquisition, and also:

- (i) the constitutional and Convention protection afforded to property rights,
- (ii) the provisions of Carlow County Development Plan 2022-2028,

it is consider that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in Sections 3 (a) and (b) of the Derelict Sites Act 1990, as amended, and that the compulsory acquisition of the site by the local

authority is necessary in order to render the site non-derelect and to prevent it from continuing to be a derelict site.

It is also considered that the objection made against such acquisition 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.

Peter Nelson
Planning Inspector

18th December 2023