



An
Bord
Pleanála

Inspector's Report

ABP-317494-23

Nature of Application

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

Location

Rathurd, Ballysheedy East, County Limerick

Planning Authority

Limerick City and County Council

Notice Party

Mary O'Donoghue

Date of Site Inspection

3rd April 2024

Inspector

Gary Farrelly

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 Rathurd, Ballysheedy East, County 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 within the townland of Rathurd, Ballysheedy East, which is located approximately 2km south of Limerick city centre. The site is located approximately 300 metres to the south of the M7 Motorway and approximately 500 metres to the east of the M20 Motorway.
- 2.2. The subject site comprises of a detached two storey property with ancillary buildings to the rear. The site is bounded by the regional road, R-511 to the east.
- 2.3. My observations of the site on the date of the inspection included the following:
 - New windows and doors have been installed throughout the property,
 - A new roof has been installed,
 - New rainwater goods in the form of guttering and downpipes have been installed.
 - The property comprises of boarded up windows on the porch.
 - The front of the property is in an untidy state and comprises of debris.
 - The front boundary wall is dirty and comprises of rusted gates.

3.0 Legislative Context

Derelict Sites Act 1990, as amended

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.

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

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

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

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

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

Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so.

Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.

Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.

Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.

Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.

Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

Planning and Development Act 2000, as amended

Planning and Development Regulations 2001, as amended

4.0 Application for Consent for Acquisition

4.1. 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 May 2021 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 9th June 2022 (advising of the Local Authority's decision to enter the site on the register of derelict sites).

5.0 Application and Objection

5.1. Notice of Intention to Acquire

Notice of Limerick City and County Council's intention to acquire the site was served on the owners Mary O'Donoghue of 33 Assumpta Park, Island Road, Limerick and on the owner's architect Brian O'Donoghue, in letters dated 3rd May 2023 and was published in the Limerick Post newspaper on 6th May 2023. The site was described as follows in the notices:

- A derelict site comprising a detached, two-storey residence and ancillary outbuildings and surrounding land situate at Ballyheedy East, Co. Limerick, containing 0.197 hectares or thereabouts. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-037-21 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

I am satisfied that the notices were in accordance with the requirements of Section 15(1)(a) and (b) of the Derelict Sites Act 1990, as amended.

5.2. **Objection to Acquisition**

An objection to the proposed compulsorily acquisition was submitted to Limerick City and County Council by the owner's architect Brian O'Donoghue and by the owner's solicitor John McNamara and Associates Solicitors. This objection was received by the Local Authority on 23rd May 2023. The objection can be summarised as follows:

- There is no intention to withdraw this objection and the owner has engaged the services of Brian O'Donoghue, Architect, who has prepared drawings for the renovation of the dwellings. The drawings are attached.
- The owner is in the process of sourcing a builder and agreeing a price for the works and has agreed a price. The builder is waiting to commence works.
- The owner has been waiting for an ESB connection at the property which has been applied for and is in the process of being reconnected.
- The owner had to organise her own finance for the project and is in the process of applying for the vacant property grant. The owner intends to expend considerable sums of money in renovating the property.

5.3. **Local Authority's Application for Consent**

The Local Authority requests the consent of the Board to the compulsorily acquisition of the derelict site. The application for consent was submitted on 30th June 2023 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (i.e. Derelict Site 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 section 15 Notice served on the owners/occupiers of the site, dated 28th April 2023.
- Copy of the newspaper notice, dated 6th May 2023.
- Copy of objection made by John McNamara and Associates Solicitors and Brian O'Donoghue Architect.

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. 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.
- The farmhouse and outbuildings and surrounding land have been vacant and in a derelict condition for a considerable period. The local authority first inspected the site on 5th February 2021. The land is considered derelict as it detracts from the amenity, character and appearance of the land in the neighbourhood of the land. The property has been neglected for a period and continues to fall further into dereliction and has a number of indicators of dereliction. The front of the property is visible derelict from the roadside with overgrown vegetation overflowing onto the road. The property has no doors or windows, broken boundary gates with unrestricted access to all the property from members of the public. Rubbish has been dumped inside the boundary walls of the property. The sheds to the rear of the site have also fallen further into dereliction. The slates of the roof have slipped from the roof and water continues to come from the inside of the property through burst water mains.
- The registered owner of the property is Mary O’Donoghue of Rathuard, Ballysheedy East, Co. Limerick, from May 2002. On 23rd April 2021 an initial letter of enquiry was sent to the owner but it was returned “uncalled for” on 29th April 2021.
- On 21st May 2021, a Section 8(2) notice was affixed to the site. The owner’s son, Daniel O’Donoghue, phoned the local authority and stated that her mother was owner of the house and that he would carry out remedial measures to address the dereliction.
- On 9th November 2021, a council official had a site meeting with the owner’s son where he committed to carry out works to the external of the property. A further site inspection on 24th November 2021 saw some limited works carried out to remove vegetation from the front house and garden.

- On 25th November 2021, a letter was received from the owner in which she planned on refurbishing the house in July/August 2022 and to have someone living in the house once completed. Further inspections in May 2022 and June 2022 saw that there was no further progress to the property. No windows or doors were installed and there was evidence of antisocial behaviour at the rear of the property. Neighbours informed the local authority that Gardai were called most weekends to the property.
- A Section 8(7) notice was served to the owner on 9th June 2022.
- On 8th September 2022, the owner and her architect, Brian O'Donoghue, met with the council and made commitments to carry out works and lodge a planning application for any additional works planned at the property. Details of the refurbishment grants were shared via email after the meeting. No further works were carried out and no planning application was lodged.
- On 11th March 2022, the architect wrote to the local authority stating that works were due to start in June 2023. Drawings with the proposed works was attached to the letter. A similar commitment was made previously where no works were progressed.
- On 4th May 2023, a Section 15 notice was affixed to the site and the property was an even worse condition with windows and doors to the front of the property open with badly damaged gates allowing free access inside and to the rear of the property. On 18th May 2023, a letter of objection was received by the owner's architect and solicitor and both objections were duly acknowledged.
- The local authority has offered the owner an extended period with numerous opportunities to remove this property from a state of dereliction. With ongoing complaints from the local community and public representatives, minimal work has been carried out by the owner, despite various commitments and timelines being given on.
- The adjoining neighbours to this derelict site and the local community have to live with and endure the ongoing neglect, decay, and unsightly nature of this property and the anti-social behaviour that it attracts. It detracts from their own well-kept residences and impacts on the enjoyment of their locality of which

they are most proud. With the claim in the objection letter that drawings are being prepared and finance is being sourced unfortunately does not give confidence to the local authority nor will it satisfy the community who have experienced and witnessed the reality of living beside such a derelict site for so long.

- It is the contention of the council that the inaction of the property owners and failures of their duties under the Derelict Sites Act that jeopardises the future use of properties in the area due to their continued neglected and derelict state. In this case, the property continues to deteriorate and attract negative attention in a key residential area close to Limerick city. The only option available to the council is to acquire this property compulsorily.

5.4. Objector's Submission

A submission was received by the Board on 21st July 2023 by the owner's architect, Brian O'Donoghue. This can be summarised as follows:

- The house should not be described as near to the golf course although it is on the way to the course.
- The property has windows and doors, the glazing on the front is still in place.
- There is not unrestricted access to the property, there are high walls and hedge boundaries, the front door has an outer metal door with a lock. The access to the rear has high metal gates with a chain and lock.
- No rubbish was observed.
- There is a leak in the water pipe outside the building which brings water to the rear of the site for animals and does not enter the house. This is easily turned off at the stopcock at the road and will be fixed by the builder.
- The reference to anti-social behaviour is not understood and states that there is no evidence. The owner's son lives 400m from the site and keeps an eye on the house. The architect spoke to a next door neighbour and there was no mention of this.

- The architect states that he did not have a meeting onsite on 8th September 2022 and he has never met with the local authority inspector. He states that he spoke on the phone with named officials and sent correspondence to a local authority official.
- The owner lives in the UK and she was trying to come back and organise money and renovate the property. She has not got confirmation whether she can get the derelict site grant and you have to pay the €70000 and get reimbursed.
- There is a shortage of labour and a shortage of builders. They have got a builder which will cost €227,000. The roof also costs €30,000. At present the roof has been started.

A further submission was received by the Board on 21st July 2023 by John McNamara & Associates Solicitors stating that the comments of the local authority were not enclosed and a request was made to forward same comments. The appendices were sent to the solicitor in a letter dated 21st July 2023 and was advised that any further comments should be received no later than 26th July 2023. The solicitor submitted a letter on 31st July 2023 and was informed that it could not be accepted.

In a letter dated 27th September 2023, the Board wrote to John McNamara & Associates solicitors advising that any submission must be received not later than 18th October 2023. A submission was received by the Board on 2nd October 2023 by the owner's solicitor. This can be summarised as follows:

- The property was first inspected on 5th February 2021 and this was during the height of the Covid pandemic. The owner is an elderly lady who does not reside at or near the property and accordingly the letter sent to the owner was never received.
- The owner's son immediately contacted the council once he became aware of the notice fixed to the property. Further site meetings and inspections were held in November 2021 and some works were carried out to the property. During that time the owner wrote to the council indicating her intention to refurbish the house in July/August 2022, yet despite this letter, inspections were carried out in May and June 2022 and no works had been carried out. The council proceeded to enter the property on the derelict sites register despite the owner's previous letter.

- The owner was not aware by neighbours or the gardai of any issues surrounding the property and it is requested that the council furnish all documentation in this regard.
- A further meeting was held in September 2022 where the owner and her architect attended, and she was reliant on her architect to prepare drawings and source a builder to carry out the works. The architect wrote to the council in March 2023 enclosing drawings of the proposed works. The preparation of drawings and sourcing of a builder is outside the control of the owner and difficulties have been encountered in sourcing a builder.
- On 4th May 2023 when the Section 15 notice was affixed to the property, the works had commenced on the property, hence the reason the windows and doors were removed as preliminary works had commenced.
- The owner and her architect had to engage with the ESB as a new ESB pole had to be erected at a cost of €3,000.
- Significant works including a new roof have commenced on the site and shown in attached photographs. The owner has engaged the services of a builder and significant progress is being made.
- It is not accepted that the owner has reneged on her commitments, and she has engaged and met with the council and updated them at regular intervals regarding the works. The timeline involved is not an excessive period of time within which for all that is required in such a refurbishment project to be put in place. The owner does not accept that she has been inactive in dealing with this matter to date. The owner is in the process of applying for a refurbishment grant from the council.

6.0 Relevant Planning History

No planning applications according to Limerick City and County Council's planning register.

7.0 Policy Context

Limerick Development Plan 2022-2028

Objective CGR 04 Active Land Management

It is an objective of the Council to:

b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

Objective CGR 06 Derelict Sites

It is an objective of the Council to utilise the provisions of the Derelict Sites Act 1990, including the maintenance of a Derelict Site Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse.

Policy CGR P4 Revitalisation of Towns and Villages

It is the policy of the Council to:

a) Actively address issues of vacancy and dereliction in settlements across Limerick.

8.0 Assessment

Site Inspection

8.1. Internal access to the property was not possible on the date of my site inspection on 3rd April 2024, however, I was able to view the site from the public road. The condition of the site at the time of my site inspection was a vast improvement to how the property looked from the photographs of May 2023 and before that February 2021, when the local authority first inspected the site.

8.2. I noted the following: new windows and doors have been installed throughout the property, a new roof has been installed and new rainwater goods have been installed. However, the property still comprised of boarded up windows on the porch. The front of the property was in an untidy state and comprised of debris and the front boundary wall was dirty and comprised of rusted gates. I did not see into the rear of the property,

however, I noted that it was secured by a gate. The property still appeared to be vacant.

- 8.3. I noted that the site is located in a prominent location being located off the R-511. There are a number of other residential properties in the area that I noted were well maintained and in good condition.

Category of Dereliction

- 8.4. I note that the local authority considered that the property and lands fell under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended.

- 8.5. Based on my site inspection, it is my view that the subject structure and lands still fall under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended (DSA):

(a) The structure is in a derelict condition.

(b) The lands and structure are in a neglected, unsightly and objectionable condition.

- 8.6. I noted that there appeared to be some debris within the grounds of the site, however, this was relatively minor in nature and extent. I consider therefore that the site does not fall under category (c) of Section 3 of the Derelict Sites Act 1990, as amended. Having regard to (a) and (b) above, it is my view that the structure and lands are detracting to a material degree from the amenity, character and appearance of land in the neighbourhood of the land in question.

Actions of Local Authority

- 8.7. I note that the local authority first inspected the site on 5th February 2021. Section 8(2) notices were affixed to the site on 21st May 2021 after an initial letter of enquiry sent on 23rd April 2021 sent to the owner was returned “uncalled for” on 29th April 2021.

- 8.8. A number of meetings and communication was facilitated by the local authority throughout November 2021. I note that the local authority was informed that there were plans by the owner to refurbish the house in July/August 2022. The local authority further inspected the site in May and June 2022 noting no progress being made.

- 8.9. A Section 8(7) notice was served on 9th June 2022 and a Section 15 notice was affixed to the site on 4th May 2023.

8.10. Having regard to the above, I am satisfied that the local authority complied with the requirements of Section 6, Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended. I am satisfied that the local authority gave sufficient time and opportunity for the dereliction to be addressed. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable in accordance with the legislation.

Compliance with development plan policy

8.11. I note that the Limerick Development Plan 2022-2028, specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06, seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.

8.12. Therefore, I consider that the subject property and a compulsorily purchase order (CPO) would be consistent with the policies and objectives of the Development Plan and will ensure that the lands do not continue to be in a derelict condition.

Actions of the Owner to address dereliction

8.13. On my site inspection I noted that new windows and doors have been installed throughout the property, a new roof has been installed and new rainwater goods in the form of guttering and downpipes have been installed. Therefore, the owner has made some progress in enabling the property to be removed from the Derelict Sites Register. Notwithstanding this, the property is still in a derelict condition comprising of boarded up windows on the porch, the front of the property being in an untidy state and comprising of debris and the front boundary wall being dirty and comprising of rusted gates.

8.14. Therefore, whilst I acknowledge that the subject site is still derelict as defined under Section 3 of the Derelict Sites Act 1990, as amended, it is my view that the owners of the land are taking reasonable steps to ensure that the land does not continue to be a derelict site. It is my view that it would be appropriate to give further time for the site owner to complete the redevelopment of the site.

9.0 Conclusion

- 9.1. I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 9.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a detached two storey residence and ancillary outbuildings and surrounding land situate at Ballysheedy East, Co. Limerick, containing 0.197 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict Sites Act 1990, as amended, and dated 28th day of April 2023 and on the deposited maps (DS-037-21), pursues, and was rationally connected to, a legitimate objective in the public interest, namely, to ensure that the lands do not continue to be in a derelict condition.
- 9.3. Although the acquiring authority, at the time of application, demonstrated that the means chosen to achieve that objective impairing the property rights of affected landowners as little as possible, having regard to the works undertaken onsite which include the installation of a new roof, the installation of new windows and doors and the installation of new rainwater goods, I am not satisfied that this is still the case. In this respect, I have considered alternative means of achieving the objective referred to in the submissions to the Board, and I am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 9.4. The effects of the CPO on the rights of affected landowners were therefore proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands was consistent with the policies and objectives of the Limerick Development Plan 2022-2028, and specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06 which seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.
- 9.5. Notwithstanding this, having regard to the efforts made to date by the owners to address the matters that gave rise to the derelict condition of the site, the progress

made on site, I am no longer satisfied that the confirmation of the CPO is justified by the exigencies of the common good at this point in time. I am of the opinion that, given the works carried out to date on site, it would be appropriate to allow further time to progress matters on site.

10.0 Recommendation

- 10.1. Having regard to the observed condition of the site, in particular the derelict condition of the structure and to the neglected, unsightly and objectionable state of the land and 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. It is further considered that the acquisition of the site by the local authority would be warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 10.2. However, as per my assessment and having regard to all the information available, the current appearance and the works undertaken to remedy the condition of the property with the installation of a new roof, the installation of new windows and doors, the installation of new rainwater goods, I do not consider it reasonable that the local authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act. I therefore consider it appropriate to refuse the local authority's application for consent to compulsorily acquire the site at Ballysheedy East, County Limerick.

11.0 Reasons and Considerations

Notwithstanding the current derelict condition of the structure and to the neglected, unsightly and objectionable condition of the land and structure, which detracts to a material degree from the amenity, character and appearance of the streetscape and surrounding land in the neighbourhood, taking account of the evidence of the ongoing efforts being made by the Notice Party to address the dereliction onsite, to bring the property back into use, I do not consider it reasonable that the local authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to 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.

Gary Farrelly
Planning Inspector

16th May 2024