



An
Bord
Pleanála

Inspector's Report

ABP-317496-23

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

Claughan Court, Garryowen, Limerick

Local Authority

Limerick City and County Council

Notice Party

Dermot & Martine Calvert

Date of Site Inspection

19th January 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 Claughan Court, Garryowen, 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 city of Limerick within the townland of Garryowen which is located east of the city centre. The site is located within the Claughan Court housing estate.
- 2.2. The surrounding area is characterised by predominantly residential dwelling which I noted were all in good condition and well maintained. Mags Foodstore previously occupied the site and the site appears to have been vacant since at least May 2009 (Google Street View). My observations of the subject site on the date of the inspection included the following:
 - A new roof was recently installed.
 - The façade was dirty with peeling paint.
 - Blockwork was exposed on the side gable of the structure.
 - There was missing fascia/soffit on part of the structure.

3.0 Legislative Context

Derelict Sites Act 1990, as amended

Section 3 Definition of derelict site

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

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 14th March 2019 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 26th October 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 owner Dermot Calvert in a letter 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 single storey commercial property and surrounding land situate at Claughan Court, Garryowen, Limerick, containing 0.012 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-006-19 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 David and Martine Calvert in a letter dated 7th June 2023. In their objection they state that they are in the process of renovating the building and have got a builder, electrician and plumber and provide contact information.

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 Dermot and Martine Calvert.

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 unfinished residential development and surrounding land is vacant and in a derelict condition for a considerable period. The site detracts from the amenity, character and appearance of the well-maintained property in the area. The property has been neglected for a period and continues to fall further into dereliction. The front of the property appears derelict as the façade is dirty and paint is peeling off. The side gable walls are dirty and remain with not fully plastered with blockwork exposed and some fascia and soffit missing. There is a partially demolished building to the rear missing windows and doors. The boundaries of the property are unsightly.
- The local authority first inspected the property on 16th January 2019 and was identified as a derelict site. Site ownership enquiries were made through the

land direct system which identified the owner as Dermot Calvert. On 31st January 2019 the owner met with a council official where he confirmed he was the owner of the site and committed to carrying out works to remove the property from dereliction. A Section 8(2) notice was served on 14th March 2019.

- On 12th March 2021 the local authority sent a letter to the owner enquiring about the progress of works. On 26th March 2021 the owner telephoned the council informing that he was granted planning permission (Ref. 19/479). The council informed him about the repair and lease scheme but did not take up on the scheme.
- On 20th July 2022, a council official telephoned the owner to enquire about progress and was told that the owner did not have enough money to complete the works to finish off the building. The owner enquired if the council were interested in buying the property.
- After an internal enquiry the council official contacted the owner later that day to tell him the council were not interested in buying the property and he was informed that the property will be recommended to be added to the derelict sites register if no further progress was made.
- A Section 8(7) notice was served on the owner and affixed to the site on 27th October 2022. On 28th October 2022, the owner telephoned the council again stating that he did not have the funding to complete the works and remove it from dereliction.
- On 15th February 2023, a meeting was held between the owner and the council to explore options to support the completion of works and the vacant property refurbishment grant was discussed with documentation provided to the owner. The owner stated that he was going to apply for the grant to finish the work.
- As the site continued to be in a derelict state, the local authority gave its notice of intention to acquire the site compulsorily to the owner and advertised same in the Limerick Post newspaper on 6th May 2023. On 7th June 2023 the owner submitted an objection.
- The local community have to live with and endure the ongoing neglect 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 of. The statement in the letter of objection claiming that works are proposed to finish the property does not give confidence to the local authority nor will it satisfy the local community who have experienced the reality of living beside such a dereliction 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 area of Glin. The only option available to the council is to acquire this property compulsorily.

Objector's Submission to the Board

The owner did not submit a further submission to the Board.

6.0 Relevant Planning History

PA Ref 19/479

Dermot Calvert was granted planning permission for a change of use from a former foodstore/grocery shop to a dwelling. Permission was granted 24/10/19 and will expire on 23/10/24.

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 19th January 2024, however, I was able to view the site from the public road. I noted that the property was vacant and had a dirty façade with peeling paint with blockwork exposed on the side gable of the structure. There was missing fascia/soffit on the structure. I also noted that a new roof was recently installed on the structure with sky lights.
- 8.2. I noted that the site is located in a residential area to the east of the city centre. There are a number of residential properties within close proximity to the site which are well maintained and are in good condition.

Category of Dereliction

- 8.3. I note that the local authority considered that the property and lands fell under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.4. Based on my site inspection and having regard to paragraph 8.1 above, it is my view that the subject structure and lands fall under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended:
 - (a) The lands and structure are in a neglected, unsightly, and objectionable condition.
- 8.5. I noted that there appeared to be some debris to the front of the property, however, this was relatively minor in nature. 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 (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

- 8.6. I note that the local authority state that they first inspected the site on 16th January 2019. They identified the owner of the site. A Section 8(2) notice was sent to the owner on 14th March 2019.
- 8.7. The local authority met with the owner at the council offices on 31st January 2019. A letter was sent to the owner on 12th March 2021 seeking an update on the progress of works. On 26th March 2021 in a telephone conversation the local authority informed the owner of the repair and lease scheme. On 20th July 2022, the local authority telephoned the owner seeking a further update on the progress of works. The owner enquired whether the local authority were interested in buying the property and the local authority informed him that they were not. A Section 8(7) notice was sent to the owner on 26th October 2022.
- 8.8. The owner met the local authority at their offices on 15th February 2023 to explore options to support the completion of works and the vacant property refurbishment grant was discussed.
- 8.9. However, as the site continued to be in a derelict state, the local authority has stated that the only option available in order to remove this property from dereliction is to acquire the site compulsorily and this was served on the owner and published in the Limerick Post newspaper on 6th 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 note the time and opportunity given by the local authority to address the dereliction. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable and 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. The owner was granted planning permission in 2019 for a change of use of the site from a grocery store to a dwelling (ref. 19/479). This permission is due to expire in on 23/10/2024 (as stated on the local authority's planning register). I noted on the date of my site inspection that the change of use has not been completed, however, a new roof and sky lights were installed.
- 8.14. I note that the Section 8(2) notice was served over 5 years ago, and I consider that the owner has been given sufficient time to address the dereliction. In previous correspondence with the local authority the owner has stated that he does not have sufficient funds to complete the works. However, he has been informed of various schemes such as the repair and renewal scheme and the vacant property refurbishment grant.
- 8.15. Notwithstanding this, it is my view that the measures required to take the property out of dereliction can be completed within a reasonable timeframe having regard to the nature of remaining works required (including the cleaning of the walls, the repainting of the areas of the property where paint is falling off, the plastering of the exposed blockwork on the side gable and the installation of fascia/soffit). Furthermore, I note that the owner has a permission for a change of use that does not expire until 23/10/2024 and I consider that the owner should be given some further time to complete the works.

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 single storey commercial property and surrounding land situate at Claughan Court, Garryowen, Limerick, containing 0.012 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-006-19), 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 nature of works required to remove the property from dereliction, 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 are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be 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 works undertaken onsite which include the installation of a new roof, the scope of remaining works that are required to remove the property from dereliction (including the cleaning of the walls, the repainting of the areas of the property where paint is falling off, the plastering of the exposed blockwork on the side gable and the installation of fascia/soffit), I consider that it would be appropriate to allow the owner some further time to progress matters on site. Furthermore, there is an existing planning permission for a change of use onsite that

does not expire until 23/10/2024. Therefore, 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.

10.0 Recommendation

10.1. Having regard to the observed condition of the application site, in particular to 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 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 condition of the property, to the works undertaken on the site, to the scope of remaining works that would be required to remove the property from dereliction and to the live planning permission that exists onsite, I do not consider it reasonable that the local authority seeks to compulsorily acquire the land at this moment in time, 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 Claughan Court, Garryowen, Limerick.

11.0 Reasons and Considerations

Having regard to the neglected, unsightly and objectionable state of the land and the structures thereon, having considered the objection made to the compulsory acquisition, and also:

- (a) the constitutional and Convention protection afforded to property rights,
- (b) the public interest, and
- (c) the provisions of the Limerick Development Plan 2022-2028,

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 section 3(b) of the Derelict Sites Act 1990, as amended. Notwithstanding this, having regard to the scope of remaining works that are required to remove the property from dereliction and to the existence of a live planning permission on the site which does not expire until 23/10/2024, it is not considered that it is 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. Therefore, 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

21st May 2024