



An
Bord
Pleanála

Inspector's Report

ABP-317497-23

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

St. Judes, Shanavaugha Avenue,
Ballysimon Road, Limerick

Local Authority

Limerick City and County Council

Notice Party

David Sheehan Solicitors (c/o
Geraldine Enright / Geraldine Ui
Chathasaigh)

Date of Site Inspection

30th May 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 St. Judes, Shanavaugha Avenue, Ballysimon Road, 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 off Ballysimon Road, within the urban townland of St. Judes, approximately 1km southeast of the city centre of Limerick. Access to the site is via a private cul-de-sac road that is accessed off Ballysimon Road. The subject site is not visible from the public road. It was noted on the date of the site inspection that the area is primarily characterised by residential dwellings, the majority of which are well maintained and in a good condition.
- 2.2. My observations of the property on the date of the site inspection included the following;
- The property was vacant.
 - Part of the property was missing a roof.
 - The doors and windows were missing/boarded up.
 - There was missing/damaged rainwater goods.
 - There was vegetation growing on the structure.
 - The front of the property was in an untidy state in terms of weeds/vegetation.
 - The external walls of the property were in a dirty state.

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 19th October 2017 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 30th November 2020 (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 Geraldine Enright of Mill Road, Ballyclough, County Limerick, 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 bungalow dwelling and surrounding land situate at St. Jude's, Shanavogha, Ballysimon Road, Limerick, containing 0.084 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-105-17 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 Sheehan Solicitors, on behalf of their client Geraldine Enright. Their objection can be summarised as follows:

- Their client has been attempting to dispose of her late brother's site for the last 18 months. It was necessary to extract a Grant of Probate to his estate and due to delays in the probate office took 12 months to issue. A copy of grant of letters of administration are provided.
- Last week their client agreed in principle for the sale of the property and it is understood the proposed purchaser is a builder who plans to redevelop the property.
- Their client is making every effort to deal with this matter since she was served with a derelict sites notice. She has gone to considerable expense to market and sell the property.
- It is stated that a contract for sale will be sent in due course.

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 Geraldine Enright, dated 28th April 2023.
- Copy of the newspaper notice, dated 6th May 2023.
- Copy of objection made by David Sheehan Solicitors.

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 former residential bungalow with surrounding land is vacant and in a derelict condition for a considerable period. The property continues to fall further into dereliction and this is clearly visible from the roadside. The bungalow is in a ruinous state with only a partial roof in place with the remainder collapsed. There are no working windows and doors to the front of the property and to the rear there are no doors either and the windows are broken. The rainwater goods are missing and broken in places. There are trees and vegetation growing from the inside of the bungalow and climbing on the outside walls and up onto the roof. The interior of the house is destroyed by either fire damage or overgrowth.
- The title of this property is comprised in Folio LK16488 and the registered owners of the folio is Liam Enright of St. Judes, Ballysimon Road.
- The local authority first inspected the property on 5th October 2017 and identified it as a derelict site. A section 8(2) notice was affixed to the site on 19th October 2017.
- On 13th November 2017, Geraldine Enright contacted the local authority and confirmed that the house belonged to her late brother who passed two years earlier and his estate was in process of extracting probate. The area inspector advised Ms. Enright to cut back and remove overgrown vegetation and put pest control measures in place to avoid the case from progressing further.
- On 24th November 2020 particulars of the land were entered into the derelict sites register and a Section 8(7) notice was affixed to the site on 30th November 2020.
- On 23rd December 2020, an email from Geraldine Enright stated that she was in the process of getting the house registered in her name, she was aware that the property was on the derelict sites register and she planned to bring the property out of dereliction.

- On 30th March 2021, the area inspector met with Ms. Enright onsite and followed up with an email advising her of the support schemes available to bring the property back into use.
- On 20th January 2022, the area inspector contacted Ms. Enright for an update on the progress with the site and she confirmed that there was interest in buying the property and she hoped to have a sale agreed by March 2022.
- On 16th December 2022, Ms. Enright contacted the local authority confirming that the grant of administration for the estate had come through.
- Re-inspections were carried out again in June 2022, December 2022, January 2023 and March 2023 that confirmed the site continues to remain in a derelict state.
- As the land continued to be a derelict state, the council exercised its power of compulsory acquisition and gave its notice of intention to acquire the site to the owner and advertised same in the Limerick Post newspaper on 6th May 2023.
- On 18th May 2023, a letter objecting to the proposed acquisition was received from David Sheehan Solicitors, on behalf of the estate of Liam Enright, and was duly acknowledged.
- The neighbours adjoining this derelict site and the rest of the local community live with and endure the ongoing neglect, decay and unsightly nature of this property. It detracts from their own well-kept residences and impacts on the enjoyment of their locality of which they are most proud. The statement in the letter of objection claiming that the objector has gone to considerable expense to rectify the matter unfortunately does not reflect the reality experienced and witnessed on the ground here for quite some while.
- 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 Limerick City. The only option available to the council is to acquire this property compulsorily.

Objector's Submission to the Board

5.4. An objection to the proposed compulsorily acquisition was lodged to the Board by David Sheehan Solicitors on 26th July 2023 and is summarised as follows:

- The property is situated at the end of a 100 metre long privately owned laneway and is not visible from the public road. Therefore, it cannot be said that the property detracts from the amenity, character or appearance of the land in the neighbourhood. The property should never have been entered into the register of derelict sites as it does not meet the Section 3 definition.
- Their client strongly objects to the account of the local authority in relation to her engagement with them. It has always been her intention to sell the property to a suitable builder, however, she was not legally in a position to sell the property until the Grant of Administration issued to her in September.
- A sale of the property has now been agreed with a named individual and it is understood signed contracts will issue shortly.
- Their client visits the site weekly to cut the grass and carry out maintenance works but is not in a financial position to redevelop the property.
- In recent days, engagement with the local authority was had to establish what works they would like her to carry out as this has not been established to date.
- The property cannot objectively be considered as being located in a key area of the city as claimed by the local authority given that it is not even visible from the public road.
- There is an outstanding capital acquisitions tax liability in respect of their client's inheritance. She seeks to sell the property in order to discharge the tax liability, however, this liability will remain outstanding regardless or not the property is compulsorily acquired by the local authority.

6.0 Relevant Planning History

PA ref. 24/60100

Lynda O'Neill sought permission for the demolition of existing derelict dwelling, construction of 3 new dwellings, boundary walls and driveway, connection to services

and all ancillary site works. She is outlined as the owner on the submitted application form.

After a further information request, the proposal was changed to only demolish the dwelling on site. On 29th May 2024, the planning authority issued a notification to grant permission for the demolition of the dwelling.

PA ref. 03/770049

Liam Enright was granted permission to demolish existing dwellinghouse and garage and erect two semi-detached dwellings and associated site works

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. I visited the site on 30th May 2024 and noted that the property was located at the end of a cul-de-sac private road. The property was vacant.
- 8.2. The property was in a ruinous and derelict state with a significant part of the roof missing. I noted that the front door and windows of the property were missing and boarded up. There was missing/damaged rainwater goods and there was vegetation growing on the structure. The front of the property was in an untidy state in terms of weeds/vegetation and the external walls of the property were in a dirty state. I noted that the property has been cleared of a significant amount of vegetation that was shown in the local authority's photograph of 4th May 2023.
- 8.3. I also noted that a planning application site notice was erected at the front of the property.

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 and having regard to paragraph 8.2 above, it is my view that the subject structure and lands fall under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended:
- (a) The structure is in a ruinous, derelict and dangerous condition.
 - (b) The lands and structure are in a neglected, unsightly and objectionable condition.
- 8.6. I noted no significant litter, rubbish, debris or waste within the front yard of the property. I consider therefore that the site does not fall under Category (c) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.7. I note the comments from the Notice Party stating that as the property is not visible from the public road then it cannot detract from the amenity, character or appearance of the land in the neighbourhood. However, in my view a site can be defined as a derelict site under Section 3 of the Act, whether or not it is visible from the public road, as it is visible from adjoining residential properties.

8.8. Having regard to (a) and (b) above, it is my view that the 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

8.9. I note that the local authority state that they first inspected the site on 5th October 2017 and affixed a Section 8(2) notice to the site on 19th October 2017. The local authority were in contact with the sister of the deceased owner after this time who confirmed that she was in the process of getting the property registered in her name.

8.10. A Section 8(7) notice was affixed to the site on 30th November 2020 and further site inspections were carried out by the local authority in June 2022, December 2022, January 2023 and March 2023 which confirmed to them that the site was still in a derelict condition.

8.11. 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 also satisfied that the local authority has given sufficient time and opportunity to address the dereliction as the Section 8(2) notice was first served over 6 years ago. Whilst I acknowledge the legal issues with the subject site, 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

8.12. 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.

8.13. 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

- 8.14. I note that the Notice Party states that there have been legal issues to register the property in their name and that an agreement in principle has been made to sell the property to a builder.
- 8.15. Having reviewed the subject site on the local authority's planning register I note that a planning application was lodged to demolish the dwelling and erect 3 new dwellings, under ref. 24/60100. I also note that the owner is outlined as Lynda O'Neill on question nos. 5 and 10 of the application form and therefore it appears that she has recently purchased the site from the Notice Party.
- 8.16. I note that after a further information request on said planning application, the applicant responded by stating that she was now not proposing to continue with the development of 3 houses, however, was still proposing to demolish the derelict dwelling. I note that the planning authority issued a notification to grant approval for the demolition of the dwelling on 29th May 2024.
- 8.17. Therefore, having regard to the recent transfer of ownership of the property, to the new owner's submission of a planning application onsite (ref. 24/60100) and to the planning authority's notification to grant permission for the demolition of the derelict dwelling, it is my view that the new owner of the site is taking material steps to address the dereliction. I am no longer satisfied that the confirmation of the proposed compulsory acquisition application is justified by the exigencies of the common good at this point in time. I am of the opinion that it would be appropriate to allow further time to progress matters on 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 compulsory acquisition application of the Derelict Site comprising a bungalow dwelling and surrounding land situate at St. Judes,

Shanavogha, Ballysimon Road, Limerick, containing 0.084 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-105-17), 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. 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.

- 9.3. It is further acknowledged that at the time of the lodgement of the application with the Board, the acquiring authority had adequately demonstrated that the means chosen to achieve that objective would have impaired the property rights of affected landowners as little as possible, and that the effects of the proposed compulsory acquisition on the rights of affected landowners were proportionate to the objective being pursued at the time.
- 9.4. However, having regard to the recent transfer of ownership of the property and to the planning authority's notification to grant approval for the demolition of the dwelling under application ref. 24/60100, I am no longer 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 am satisfied that the alternatives are such as to render the means chosen and the proposed compulsory acquisition made by the acquiring authority unreasonable or disproportionate.
- 9.5. Having regard to the efforts made to date by the new owner to address the matters that gave rise to the derelict condition of the site, in terms of their submission of a planning application to demolish the subject dwelling, and to the planning authority's notification to grant approval for said demolition, I am no longer satisfied that the confirmation of the proposed compulsory acquisition application is justified by the exigencies of the common good, at this point in time. I am of the opinion that given the recent notification to grant permission for the demolition of the dwelling, it would be appropriate to allow further time to progress matters on site.

10.0 Recommendation

Notwithstanding the current ruinous, derelict and dangerous condition of the structure and neglected, unsightly and objectionable condition of the site, 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 recent transfer of ownership of the property and to the planning authority's notification to grant approval for the demolition of the dwelling on 29th May 2024, under application ref. 24/60100, 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.

11.0 Reasons and Considerations

Having regard to the ruinous, derelict and dangerous condition of the structure and 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:

- the constitutional and Convention protection afforded to property rights,
- the public interest, and
- 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 sections 3 (a) and (b) of the Derelict Sites Act 1990, as amended. Notwithstanding this, taking account of the recent transfer of ownership of the property and to the planning authority's notification to grant approval for the demolition of the dwelling under application ref. 24/60100, the Board does 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 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

4th June 2024