



An
Bord
Pleanála

Inspector's Report ABP-317499-23

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

Smith's Lane, Cathedral Place,
Limerick

Local Authority

Limerick City and County Council

Notice Party

Holmes O'Malley Sexton LLP (c/o
Abdul Mumith)

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 Smith's Lane, Cathedral Place, 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 Smith's Lane which is located within Limerick city centre. Smith's Lane is connected to Cathedral Place to the south and Brennan's Row to the north. St. John's Cathedral is located approximately 80 metres to the northeast of the site. It was noted on the date of the site inspection that the street is primarily characterised by residential dwellings, the majority of which are well maintained and in a good condition. There was also a public house on the corner of the street which was also in good condition. I noted that properties adjoining the site to the south were also in a derelict condition and are active derelict site cases (ref. DS-027-18 and DS-024-18).
- 2.2. My observations of the property on the date of the site inspection included the following;
- The property was vacant and in a derelict condition.
 - The windows and door of the front elevation of the property were blocked up.
 - The structure had missing and broken rainwater goods.
 - The roof and side gable of the structure had vegetation.
 - There was missing/cracks to the render on the property.
 - The external walls of the property were in a dirty state.

I was unable to achieve access to the rear of the property to inspect its condition.

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 27th April 2022 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 12th July 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 Abdul Momith, 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 an end-of-terrace two storey, commercial property and surrounding land situate at Smith's Lane, Cathedral Place, Limerick, containing 0.003 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-071-22 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 on 7th June 2023 by Holmes O'Malley Sexton, on behalf of their client Abdul Mumith. Their objection can be summarised as follows:

- Their client became registered as the full owner of the property, known as no. 11 Cathedral Place, for an estate in fee simple on 3rd September 2021 and his family home is located upon this property.
- Their client has retained the services of an architect to prepare drawings regarding the proposed development of the property to include the area to the rear of the site. His property adjoins Smyth's Lane in which he has access in order to enjoy his full constitutional rights to his property which is recognised and enshrined in our Constitution.
- There is a discrepancy with the map furnished by the council which appears to be inaccurate.
- The objections as set out in the letter dated 31st Mar 2023 by Rob Shanahan to the local authority are repeated and form an integral part of their client's objections.
- As part of the development, the rear access forms a necessary escape route to comply with Part B of the Technical Guidance Document in relation to fire escape and without it there will not be able to be any safe exit from the units to the rear of the building. This would therefore limit the development potential of the site as a whole which represents a serious infringement of their client's constitutional rights to his property.
- The site adjoining the subject site was also acquired as a derelict site by the local authority and is now for sale on the open market. Therefore, it appears that the intention of the local authority is to increase the potential value of the corner site rather than the actual condition of the property.
- Their client has undertaken to make good his portion of the above building visible from Smith's Lane which will include repairs, paintwork and joinery as may be necessary. They are instructed that a planning application will be lodged within the next 5 to 6 week period.

- A letter is provided from the owner's engineer outlining the results of a site inspection and stating that the property was linked to the rear of 11 Cathedral place at some point in the past.

A letter is also provided by Rob Shanahan Architects, on behalf of the owner, dated 31st May 2023. Their objection is summarised as follows:

- They are in the process of preparing a planning application for a number of apartments to the rear of their client's property at 11 Cathedral Place. This development requires separate access and egress in terms of fire safety which is currently provided from an access on Smyth's Lane.
- It is requested that a report is issued by the local authority that specifically sets out the issues of concern in relation to the condition of the property including any health and safety concerns.
- The owner currently keeps poultry in the structure to supply fresh eggs for the family's use and such purchase would prevent same.
- There are serious concerns in terms of conservation for the local authority to include this property in their existing land holding for private sale for development by a third party.

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 owner and his architect, dated 28th April 2023.
- Copy of the newspaper notice, dated 6th May 2023.
- Copy of objection made by Holmes O'Malley Sexton LLP with enclosures.

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 mixed commercial and residential property with surrounding land is vacant and in a derelict condition for a considerable period. The derelict site is adjoining two other active derelict site cases (Ref. DS-027-18 and ref. DS-024-18) upon which the owners of both were similarly served with section 15 notices of intention to acquire compulsorily. Having not received objections to these notices for the properties, vesting orders have since been made.
- The council first inspected the property on 6th April 2022 and identified it as a derelict site. The property has been neglected and vacant for a period and continues to fall further into dereliction, clearly visible from the public footpath and road. The property has vegetation growing from the front and the gable end wall. There is cracked and loose masonry on this gable end. There are also holes in the roof, with loose and slipped slates visible. The structure is missing rainwater gutters and downpipes and has blocked up windows and doors. The façade is dirty and has peeling paint and graffiti on the wall.
- The registered owner of the property is Mr. Abdul Momith of 11 Cathedral Place.
- A section 8(2) notice was sent to the owner on 27th April 2022 and no response was received. A section 8(7) notice was sent to the owner on 12th July 2022 and no response was received.
- On 6th December 2022, Rob Shanahan Architects wrote to the local authority stating that their client, the owner, was preparing a planning application for a number of residential apartments on the derelict site and sought a stay on adding this property to the register.
- On 8th December 2022, the local authority rang Rob Shanahan Architects (RSA) seeking an update on the plans proposed for the site. RSA replied in an

email stating that his client has undertaken to make good his portion of the building visible from Smith's Lane to include repairs, paintwork and joinery as may be necessary, and to lodge a planning application within the next 5 to 6 weeks.

- The owner was reminded of their duties under the Derelict Sites Act, to take steps to ensure that the land does not continue to be a derelict site. No planning application has been lodged to date.
- 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 2nd June 2023, a letter, with enclosures, objecting to the proposed acquisition was received from William Donovan of Holmes O'Malley Sexton LLP, and this was duly acknowledged.
- The vesting orders on the adjoining properties shows the local authority's commitment to dealing with property that continues to remain in a derelict state and owners who fail in their duties and obligations under the Derelict Sites Act.
- The letter does not refer to the objector's lack of effort made to deal with the dereliction on site in the past number of years the site has been in his ownership. The neighbours and 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 will make good his portion of the building visible from Smith's Lane and the proposed remedial measures are far too little for the scale of dereliction involved.
- 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

None of the Notice Parties made a submission directly to the Board.

6.0 Relevant Planning History

There are no planning applications associated with the site, according to the local authority's planning register or from the information on file. Having inspected the site, I noted no planning application site notices erected on the property.

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 30th May 2024, however, I was able to view the site from the public road. The property was vacant and in a derelict state.
- 8.2. I noted that the windows and door of the front elevation of the property were blocked up. The structure had missing and broken rainwater goods. The roof and side gable of the structure had vegetation. There was missing/cracks to the render on the property. The external walls of the property were in a dirty state. I noted that no works have been carried out to the structure since the serving of the Section 15 Notice.

Category of Dereliction

- 8.3. 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.
- 8.4. 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 derelict condition.

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

I noted no litter, rubbish, debris or waste on 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. 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

- 8.5. I note that the local authority state that they first inspected the site on 6th April 2022 and sent a Section 8(2) notice to the owner on 27th April 2022. A Section 8(7) notice was sent to the owner on 12th July 2022. I note that no response was received from the owner to these notices.

- 8.6. I also note that derelict site notices were also served on two adjoining properties and vesting orders have been made for these properties as no objections were received.
- 8.7. The local authority has stated that the only option available in order to remove this property from dereliction is to acquire the site compulsorily.
- 8.8. 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 2 years ago. 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

- 8.9. 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.
- 8.10. Therefore, I consider that the subject property and proposed compulsory acquisition 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

- 8.11. I note the contents of the objection from the owner's solicitor and the contents of the enclosures in said objection.
- 8.12. The owner stated that a plans were being progressed and that a planning application would be lodged within 5-6 weeks. These statements were made in letters dated 31st May 2023 and 2nd June 2023 which I note was 12 months ago. Having reviewed the planning authority's planning register on 4th June 2024, I note that there has been no such planning application submitted. Furthermore, having inspected the site on 30th May 2024, I noted no planning application site notice erected. Therefore, I cannot conclude that the dereliction will be addressed in a timely manner.
- 8.13. Having regard to the above, it is my view that the owner has not taken material steps to address the dereliction. Having inspected the site, there is no evidence of any further

attempt to render the site non-derelict and the property remains in a neglected and unsightly condition.

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 an end-of-terrace, two-storey, commercial property and surrounding land situate at Smith's Lane, Cathedral Place, Limerick, containing 0.003 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 April 2023 and on the deposited maps DS-071-22, 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. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible. 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 acquiring authority has established that none of the alternatives are such as to render the means chosen and the proposed compulsory acquisition made by the acquiring authority unreasonable or disproportionate.
- 9.4. The effects of the proposed compulsory acquisition 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.. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.

10.0 Recommendation

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

11.0 Reasons and Considerations

Having regard to the derelict condition of the structure and to the neglected, unsightly and objectionable state of the land and structure, 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 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 3(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-derelict and to prevent it from continuing to be a derelict site. It is also considered that the objection made cannot be sustained, having regard to that said necessity and that the compulsory acquisition and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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