



An
Bord
Pleanála

Inspector's Report

ABP-317549-23

Development	Application for the compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended.
Location	Kyrl's Quay, Kyrl's Street and the Junction of Kyle Street with Cornmarket Street, Cork.
Local Authority	Cork City Council
Notice Parties	Tom Murray Paul Forde The Estate of Neil O'Sullivan NMS Co-Ownership Limited JC Deceaux Head Office
Objectors	Tom Murray Paul Forde
Date of Site Inspection	15 th November 2024.
Inspector	Terence McLellan

1.0 Introduction

- 1.1.1. This case relates to a request by Cork City Council for the consent of An Bord Pleanála to the compulsory acquisition of the lands at Kyril's Quay, Kyril's Street and the junction with Kyle Street and Cornmarket Street in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site comprises the central section of road carriageway and part of the northern pavement on Kyril's Street in Cork City Centre. There are no buildings or structures on the site. Adjacent sites to the north are shrouded in timber hoarding. The buildings lining the street to the south are single and two storey, in various states of disrepair. Kyril's Street runs between the Bridewell Garda Station on Cornmarket and Kyril's Quay on the River Lee. The street is currently used for access and car parking (on the north side adjacent to the pavement).

3.0 Application for Consent for Acquisition

- 3.1. Cork City Council has applied to the Board for consent to compulsorily acquire the site under Section 14 of the Derelict Sites Act, 1990, as amended. This application follows the service of site and newspaper notices on the 3rd May 2023 and the 5th May 2023 respectively, in accordance with Section 15 of the Derelict Sites Act 1990 (as amended), advising of the intention of Cork City Council to compulsorily acquire the subject lands.

4.0 Application and objection

4.1. Notice of Intention to Acquire

- 4.1.1. Cork City Council served notice on 4th May 2023 under section 15 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the lands at Kyril's Quay, Kyril's Street and the junction with Kyle Street and Cornmarket Street. The notice was served on:

- Tom Murray

- Paul Forde
- The Estate of Neil O’Sullivan
- NMS Co-Ownership Limited
- JC Deceaux Head Office

4.1.2. I note that the notice refers to all lands at Kyrl’s Quay, Kyrl’s Street and the junction with Kyle Street and Cornmarket Street, in accordance with the map available on the Council’s Derelict Sites Register. However, only a small portion of this wider site is being sought for compulsory acquisition with the remainder of the wider derelict site being outside of the notice party’s ownership. As such, the site description and map do not accurately reflect the particular lands that are the subject of the compulsory acquisition application and, therefore were not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

4.2. **Objections to Acquisition**

4.2.1. Two objections to the proposed acquisition were submitted to Cork City Council on the 31st May 2023 by Breen Walsh Solicitors, representing Paul Forde and Tom Murray (owners). The two objections can be summarised as follows:

- The notice issued is invalid, the property in ownership is comprised in Folio CK127820F and CK148390F (folio file plans provided).
- Other properties are shown on the map attached to the notice that are not in our clients’ ownership.
- The owner’s property comprises a private road, which they have allowed to be sued as a roadway and it cannot be identified as a derelict site as there are no buildings on it.

4.2.2. Copies of correspondence between An Garda Síochána and Cork County Council have also been provided. This relates to the fact that the Bridewell Garda Station lies on the eastern boundary of the wider site, with An Garda Síochána seeking clarity on what is being proposed and ultimately raises no objections.

4.3. **Local Authority’s Application for Consent**

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on the 6th July 2023 and was accompanied by the following:

- Copy of site maps (Appendix 1A and 1B).
- Copy of Derelict Sites Register Entries (Reg no. 249 and 251 – Appendix 2A and 2B).
- Copy of the Notice of Intention to Acquire Derelict Site Compulsorily under Section 15(1) of the Derelict Sites Act 1990, dated 3rd May 2023 with attached map (Appendix 3 and 3B).
- Copy of objection from Breen Walsh Solicitors LLP on behalf of Tom Murray dated 31st May 2023.
- Copy of objection from Breen Walsh Solicitors LLP on behalf of Paul Forde dated 31st May 2023.
- Copy of the newspaper notice in the Irish Examiner dated 5th May 2023.
- Confirmation of relevant Notice Parties.

4.3.2. The submission from Cork City Council confirms that the property was entered on the Derelict Sites Register with effect from 10th April 2017. The Council confirm that the objectors hold title to the roadway highlighted yellow on the plan submitted as Appendix 7 and it is stated this was sold to them by the Council ‘for a nominal sum’ in November 2010 to facilitate the development of the adjoining lands but that this development did not proceed.

4.3.3. The Council advise that they have reacquired title to all of the adjoining lands, including lands with deficient title, for redevelopment purposes. The Council’s objective is to remove the dereliction and redevelop the entire site, with a proposal for regeneration being in hand. The submission advises that the design for this regeneration is at an early stage but that, subject to planning, a substantial demolition of the existing buildings will be undertaken and a mixed use scheme with attendant public realm will be constructed.

4.4. **Submissions to An Bord Pleanála**

4.4.1. A submission was made to the Board by McCutcheon Halley planning Consultants for and on behalf of the owners, Tom Murray and Paul Forde, on the 31st July 2023 in response to the application for compulsory acquisition. This can be summarised as follows:

- The site does not fall within the definition of a derelict site as set out under Section 3 of the Derelict Sites Act 1990.
- The property is not ruinous, dangerous or unsightly and there is no litter, rubbish, debris or waste at or near the property.
- The road is in constant use for access and parking and is clearly a functioning road which cannot be classified as a derelict site.
- A larger site was entered onto the Derelict Sites Register in 2017 however this was in separate ownership at that time. Tom Murray and Paul Forde are the owners of the adjoining road which is not a derelict site.
- The Council's use of the 1990 Derelict Sites Act is inappropriate and not in accordance with the intent or provisions of that legislation.
- The property was sold by Cork City Council to our clients in 2006 for a significant sum. The value should be based either as a standalone strategic site or on a pro-rata basis of the site purchased in 2006, based on a current open market valuation.
- The Council state that they have reacquired title to all the adjoining lands for redevelopment purposes and that a proposal for regeneration is in hand. It is understood that the impending application is by a private developer, and this further undermines the Council's use of the Derelict Sites Act in order to facilitate an unnamed third-party developer.
- Removal of dereliction and redevelopment of the site is supported but this must be done in an open, fair, and transparent manner. Our client should not be precluded from the redevelopment process and should have an opportunity to be part of any procurement, tendering and design/redevelopment opportunity.

5.0 Planning History

- 5.1.1. No planning history of relevance has been brought to my attention. I note from the Council's submission that discussions are being undertaken regarding the future redevelopment of the wider site, but no details have been provided.

6.0 Legislation and Policy Context

6.1. Cork City Development Plan

- 6.1.1. The site is zoned ZO 5: City Centre, the stated objective of which is to consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural and residential growth.
- 6.1.2. Core Strategy Objective 2.24: Underutilised Sites - Cork City Council will seek to address issues of dereliction, vacancy and underutilisation of sites within Cork City by encouraging and facilitating their re-use and regeneration subject to good planning and the infrastructural carrying capacities of the area.
- 6.1.3. Core Strategy Objective 27: Derelict Sites Register - Progress, by way of the Derelict Sites Register, the development of derelict sites for housing and regeneration purposes through consultation with landowners and the application of powers under the Derelict Sites Act 1990 (as amended) and other means available to Cork City Council.

6.2. Derelict Sites Act 1990 (as amended)

- 6.2.1. 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.
- 6.2.2. Section 3 of the Act defines 'derelict site' as:

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

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

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

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

- 6.2.3. 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.
- 6.2.4. 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.
- 6.2.5. 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.
- 6.2.6. 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.
- 6.2.7. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.2.8. 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.

7.0 Assessment

7.1. Site Condition

- 7.1.1. At the outset I would note that the area proposed for compulsory acquisition relates solely to the central section of the roadway on Kyril's Street, including part of the pavement on the north side of the street, and does not include any of the adjoining buildings or structures. On this basis the site does not fall within category (a) of the Derelict Sites Act 1990 as there are no structures on the site.
- 7.1.2. I inspected the site on 15th November 2023, and given the nature of the site this inspection was undertaken entirely from the street. The surface of the carriageway is in good condition and the roadway is clearly in use by vehicles for parking and as a route between Cornmarket and Kyril's Quay. Whilst there are some minor cracks in the pavement surface on the north side of the street, these are not excessive, deep, or uncharacteristic of city streets. The buildings/structures lining the south west side of the street immediately bound the carriageway. Some sections of this threshold are starting to become slightly overgrown with tufts of grass, moss and some weeds/shrubbery protruding from the juncture of the buildings and the edge of the carriageway. However, in my opinion this is mainly a result of vegetation colonising the adjoining buildings, which are in separate ownership to the subject lands, as opposed to deficiencies in the condition of the roadway. Whilst there are some minor instances of grass/moss on the pavement edges and kerbside on other parts of the site, this is not significant and, in my view, would not be sufficient to render the site derelict in appearance. On that basis I do not consider that the site falls within category (b) of the Derelict Sites Act 1990 as the land is not in an unsightly, neglected, or objectionable condition.
- 7.1.3. There are some minor isolated incidences of littering but again, this is not significant and certainly not beyond that which is typical of inner-city streets. Therefore, I do not consider that the quantity of waste is sufficient to materially detract from the amenity or appearance of lands in the vicinity as set out in category (c) of the Act.

7.2. Notices

- 7.2.1. The notices served by the Council refer to all lands at Kyril's Quay, Kyril's Street and the junction with Kyle Street and Cornmarket Street, in accordance with the map available on the Council's Derelict Sites Register. However, only a small portion of this wider site is being sought for compulsory acquisition with the remainder of the wider derelict site being outside of the notice party's ownership. The Council have provided

(as appendix 7) a copy of a site map which shows the exact land that is to be acquired highlighted in yellow, within the wider red line boundary of the surrounding sites which have all been acquired by the Council. The plans attached to the notice and on the derelict sites register do not show the detail of the exact lands that are subject of the acquisition. Although I do not consider that any relevant parties will have been discommoded by this omission, the site description, address, and map do not accurately reflect the particular lands that are the subject of the compulsory acquisition application and, therefore were not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

7.3. Comprehensive Derelict Site

7.3.1. The Board may opt to consider the site within the context of the wider derelict site as a whole, as placed on the Derelict Sites Register. This would include the adjacent buildings and land that are outside of the Notice Parties' ownership and in a state of dereliction. In my opinion, when considered as a whole, the site would fall within Category (b) of Section 3 of the Act:

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

7.3.2. However, as set out previously, the only land within this wider constituent site that is the subject of compulsory acquisition is the central section of the roadway on Kyril's Street, including part of the pavement on the north side of the street, and does not include any of the adjoining buildings or structures. In my opinion, it would not be reasonable or appropriate to consider the Notice Parties' land derelict solely by virtue of being located adjacent to lands/structures that are in a derelict state, particularly as these lands are outside of their control.

8.0 Recommendation

8.1.1. Having regard to the observable condition of the land proposed for acquisition, including the absence of any buildings or structures on the land, that the land is neither in neglected, unsightly or objectionable condition, and that the land does not detract to a material degree from the amenity, character or appearance of land in the immediate vicinity, I recommend that the Board refuse consent to Cork City Council to compulsorily acquire the site.

8.1.2. The Notice of Intention to Acquire Derelict Site Compulsorily under Derelict Sites Act, 1990 as amended by the Planning & Development Act 2000 (as amended) refers to the incorrect site address and the description and maps attached to the notice do not accurately reflect the land proposed for acquisition and is therefore not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended. Therefore, in its current format, the acquisition should not proceed.

9.0 **Reasons and Considerations**

9.1.1. Having regard to categories (a), (b), and (c) of Section 3 of the Derelict Sites Act 1990 (as amended), the land in question does not constitute a derelict site and does not detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question. Additionally, the Notice of Intention to Acquire was not in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended. Therefore, the Board has decided that it would be appropriate to refuse to consent 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.

Terence McLellan
Senior Planning Inspector

28th March 2024