



An
Bord
Pleanála

Inspector's Report

ABP-317792-23

Development

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

Location

No. 5 Prosperous Place, Thomas Davis Street, Cork.

Local Authority

Cork City Council.

Notice Parties

Daniel Harrington.

Objector

Daniel Harrington.

Date of Site Inspection

15th November 2023.

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 5 Propserous Place, Thomas Davis Street, Cork City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site comprises a two storey end of terrace dwelling located at the end of the narrow dwelling lined close known as 5 Prosperous Place. Access to the close is from the secure gated entrance on Thomas Davis Street, Blackpool, Cork City. The site is surrounded by dwellings on the north, east and west sides. The south side of the site is bounded by the rear yard of 66 Thomas Davis Street which appears to be in residential use.
- 2.2. The site does not benefit from any front garden and the rear garden is insignificant, being in the form of a very small private courtyard space. The site is in a significant state of disrepair with no roof, first floor, internal walls or front door. A significant part of the rear wall is also missing and the building itself is full of debris. The front wall is in place to eaves level, a portion of the rear wall remains and both gables appear to be intact.

3.0 Application for Consent to Acquire

- 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 23rd June 2023, 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 22nd June 2023 (by registered post) and 16th June 2023 (by site notice and newspaper advert) under section 15 of the Derelict Sites Act

1990 (as amended) of an intention to compulsorily acquire the lands at 5 Prosperous Place, Thomas Davis Street, Cork City. The notice was served on Daniel Harrington. I consider that the notice is in accordance with the requirements of section 15(1)(a) of the Act with regard to the documentation on file.

4.2. Objections to Acquisition

4.2.1. One objection was submitted to Cork City Council on 11th July 2023 by CF O'Connell and Company (Solicitors) on behalf of the owner, Daniel Harrington. This submission confirms Mr Harrington's objection to the acquisition and advises of his intentions to redevelop the property for residential purposes. It is stated that substantial works are required, and that this will necessitate an application for planning permission, which is currently being prepared. The submission also confirms Mr Harrington's address.

4.2.2. Local Authority's Application for Consent

4.2.3. 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 14th August 2023 and was accompanied by the following:

- Copy of site map.
- Copy of Derelict Sites Register Entries (Reg no. 220).
- Copy of the Notice of Intention to Acquire Derelict Site Compulsorily under Section 15(1) of the Derelict Sites Act 1990, dated 16th June 2023.
- Copy of objection from CF O'Connell and Co. Solicitors on behalf of Mr Daniel Harrington dated 10th July 2023.
- Copy of photos showing the state of the property.
- Copy of the site notice and newspaper notice in the Irish Examiner dated 23rd June 2023.
- Confirmation of relevant Notice Party.

4.2.4. The submission from Cork City Council confirms that the property was entered on the Derelict Sites Register with effect from 20th June 2016 and that despite numerous correspondence, no progress has been made by the owner to remove the dereliction.

On that basis the Council seek the consent of the Board to compulsorily acquire the property.

4.3. Submissions to An Bord Pleanála

4.3.1. A submission was made to the Board by CF O'Connell and Company (Solicitors) on behalf of the owner, Daniel Harrington in response to the application for compulsory acquisition. This can be summarised as follows:

- The property was acquired a number of years ago with a view to renovating or rebuilding it and the property was in a poor state of repair when purchased.
- Mr Harrington is a retired builder and engaged a firm of consulting engineers and was advised the best course of action was to demolish and rebuild the house.
- In 2017 Mr Harrington's wife died as a result of an accident. Following this bereavement, plans for the renovation/rebuilding of the property had to be placed on hold.
- Engineers have since been reengaged (PHI Consulting) and a full planning application has been prepared. Subject to planning permission, it is Mr Harrington's intention to complete the works immediately. This will entail the demolition of the house and reconstruction.
- Given that there is a reasonable explanation for the delay, the fact that the property had fallen into dereliction prior to purchase by Mr Harrington, and the intention to apply for permission to redevelop the house, it is considered reasonable for the Board to allow sufficient opportunity to put those plans into effect.
- The nature and location of the property in a cul-de-sac with limited access would mean it is of limited value and a CPO followed by a sale would likely result in a very significant loss to Mr Harrington which would be unfair in the circumstances.
- Mr Harrington is willing to take whatever steps are necessary to have the property removed from the Derelict Sites Register.

5.0 Planning History

- 5.1.1. **Planning Authority Reference 2442723:** Permission is sought for the renovation of the dwelling and the modification of the existing window and door openings at the rear elevation of the property.
- 5.1.2. This application was submitted to Cork City Council on the 1st March 2024 and invalidated on the 11th March 2024.

6.0 Policy Context

6.1. Cork City Development Plan

- 6.1.1. The site is zoned ZO 8: Neighbourhood and Local Centres, the stated objective of which is to protect, provide for or improve local facilities.
- 6.1.2. The site is located in the Blackpool Architectural Conservation Area.
- 6.1.3. 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.
- 6.1.4. 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. On the day of my site inspection, internal access to the dwelling was not possible due to its current state of repair. I therefore carried out my inspection from outside the dwelling, on Prosperous Place.
- 7.2. No. 5 Prosperous Place is an end of terrace property located at the end of a dwelling lined close. The property is in a considerable state of disrepair. The dwelling currently has no roof, no first floor, no staircase, no internal walls, no front door, and a significant portion of the main rear wall is missing. The inside of the dwelling is full of rubble and debris. The front wall and both gables appear to be intact, but the dwelling is clearly in a ruinous and derelict state.
- 7.3. I consider that the property falls within categories (a), (b) and (c) of section 3 of the Derelict Sites Act, 1990. In terms of (a) the structure is in a derelict condition with the internal scaffold that has been erected suggesting issues in terms of structural stability and therefore safety. On this basis I submit that the property can be considered to be in a dangerous condition. In terms of (b) the property is neglected and unsightly. With respect to (c) whilst there is no front or rear garden of note and as such no litter collection/deposits, the site itself is full of debris. I consider that the property demonstrably detracts from the amenity, character, and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.
- 7.4. I note the actions of the Local Authority and the statutory notices served on the owners in respect of the dwelling. Section 8(2) notices were served on the 11th May 2016 advising of the Local Authority's intention to enter the site on the register of derelict sites. A notice under section 8(7) on 23rd May 2016 was issued advising of the Local Authority's decision to enter the site on the register of derelict sites and the property was entered on the register on the 20th of June 2016. A section 15(1)(a) notice was issued on 23rd June 2023 with a newspaper notice published on the same date.
- 7.4.1. The representation made on behalf of the owners indicate reasons for the delay in bringing the property out of dereliction and that steps have been taken to redevelop/repair the property. The owner has reengaged engineers (PHI Consulting) and the submission states that a full planning application has been prepared and that post planning, the remediation works would be undertaken as soon as possible.

- 7.5. A planning application for works to the dwelling was submitted by the applicant to Cork City Council on the 1st March 2024 and was declared invalid on the 11th March 2024. I note that the submission of this planning application was later than originally indicated in the submission to the Board (8 months). I also acknowledge that the application was ultimately declared invalid by Cork City Council (details of the reasons for being invalid are not currently available). In my opinion, the submission of the planning application clearly demonstrates an intent to undertake improvement works and to bring the property out of dereliction. Given that the planning application was made invalid very recently, insufficient time has likely passed at the time of report writing to allow a further application to be submitted.
- 7.6. I also note that at the time of my site inspection, which was unannounced, work was being undertaken to remove debris from inside the dwelling and scaffolding had been erected inside. In my opinion, this demonstrates efforts to proceed with building works on site to redevelop the dwelling. Whilst I acknowledge that the property is undoubtedly derelict and that it has been on the derelict sites register since 2016, it is clear that at the current time, efforts are being made to address the derelict nature of the property. In view of this, I consider that it would be appropriate to provide some further time for the site owner to re-submit a planning application and complete works to bring the property out of dereliction and back into beneficial use. I therefore recommend refusal of consent to the compulsory acquisition of the site in question.

8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structures thereon, I consider that the site detracts to a material degree 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 is warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 8.2. However, having regard to the intention to apply for planning permission and to the ongoing efforts being made to bring the property back into use and to address the dereliction of the site, I consider it unreasonable that the Local Authority seeks to

compulsorily acquire the land, under section 14 of the Derelict Sites Act. I recommend, therefore, that the Board refuses consent to Cork City Council to compulsorily acquire the site.

9.0 Reasons and Considerations

- 9.1. Notwithstanding the current neglected, unsightly, and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account of the owner's intention to apply for planning permission, evidenced by the submission to Cork City Council on the 1st March 2024, together with ongoing efforts by the owner to seek to address the issues of dereliction and to bring the property back into use, the Board decided that it would be appropriate and reasonable to provide some further time for the owner to bring the site out of dereliction and that it would, therefore, be appropriate to refuse consent for 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