



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317799-23

#### 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. 4 Gerald Griffin Avenue, Blackpool, Cork.

#### Local Authority

Cork City Council

#### Notice Party

Stephen and Margo McCarthy.

#### Objectors

Stephen and Margo McCarthy

#### Date of Site Inspection

15<sup>th</sup> 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 4 Gerald Griffin Avenue, Blackpool, Cork City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The two storey, terraced dwelling is located at 4 Gerald Griffin Avenue, Blackpool, Cork City. The street is predominantly residential but there is a commercial premises immediately next door to the subject property. The property appears to be structurally sound, there are some sections of detached harling, and the roof is intact. Internal access and access to the rear of the property was not possible. The site was free from litter and graffiti.

## **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 23<sup>rd</sup> 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 property.

## **4.0 Application and Objection**

### **4.1. Notice of Intention to Acquire**

- 4.1.1. Cork City Council served notice on 22<sup>nd</sup> June 2023 under section 15 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the lands at 4 Gerald Griffin Avenue, Blackpool, Cork City. The notice was served on Stephen and Margo McCarthy. 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. Several objections were submitted to Cork City Council as follows:

4.2.2. Stephen and Margo McCarthy (26<sup>th</sup> June 2023)

- There are third party (financial institution) interests in the site.
- This has been a family home for over 20 years.
- Legal issues regarding the servicing of the loan on the property.
- Financial hardship.
- Lack of consultation/negotiation
- Discussions for sale by private treaty are underway.
- There has been no financial gain from the property.
- Open to enter negotiations for the sale/purchase of the property with a view to acquiring/transferring ownership and the remaining outstanding mortgage to the McCarthy's in situ residence.

4.2.3. Margo McCarthy (26<sup>th</sup> and 29<sup>th</sup> June; 3<sup>rd</sup>, 5<sup>th</sup>, 14<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup>, 25<sup>th</sup> and 26<sup>th</sup> July; and 6<sup>th</sup> August)

- The property is a trust fund for Mrs McCarthy's 12 children and the objection is submitted on the ground of representing their interests as minors.
- The house is mortgaged and there is a loan to be serviced. The bank was sold this loan in recent times and have a financial interest in the property due to the debt on it, which has interest to be paid over the remaining term.
- The objection is also on the basis of historical reasons due to family ties over decades as well as being an architectural area of great importance and on the basis of conservation and heritage. The property needs to be protected, valued, and preserved, not developed.
- Reaching agreement is the simplest, fastest, and cheapest option. Mrs McCarthy is willing to enter into discussions with regards to selling the property.
- Request to keep communication open and to acknowledge that these matters can be complex to all parties, but that family comes first.
- Principle of equivalence would make this a worse financial situation for the family/children involved.

- Article 43 of the Constitution sets out the right to private property. Mrs McCarthy notes that she was on the homeless figures for four years while trying to hold onto the property for the benefit of her family. It is stated that the family are being treated unfairly and there is no faith in a fair process from the relevant authorities.
- Acquisition would be harsh, would impose hardship (financial, vulnerability and emotional), unfair, discriminatory, lacking empathy, unacceptable, not in the public good, unjustified, and would impact on the children's future who have a right to the property and should have the first right of refusal.
- The Local Authority have omitted essential information, there has been a lack of contact, there is a conflict of interest, insufficient notice has been provided, and the property is not being acquired for the reasons the Local Authority is proposing.
- Various questions are asked regarding the plans for the property, queries on the number of Council properties lying empty.
- Mrs McCarthy considers that the Council have acted unreasonably regarding the family's housing situation, that the current action is unreasonable, and that due process has not been followed. The matter should be put to the public.
- Personal circumstances should be taken into account, the owner's interests should be protected, and the CPO should be balanced against an individual's right to property.
- The McCarthy's are tenants in their current property and only own one house (the subject property) and may not get a chance to own another. The owner is entitled to transfer the property from one person to another, in this case the owner's children. The subject property could be put against buying the house the McCarthy's are currently tenants in.

#### 4.2.4. Ann Tait and Co. on behalf of Stephen and Margo McCarthy (14<sup>th</sup> July)

- The McCarthy's are the joint beneficial owners of the property which was bought by them 20 years ago and the mortgage is paid and up to date.

- The Council are familiar with the McCarthy's and their 12 children as they have never managed to put money together to refurbish the property and for this reason it has fallen into dereliction under the legislation.
- The McCarthy's have engaged with the Council and at all times the Council has been aware of their circumstances. They have been tenants of Cork City Council, have rented in the private sector and have been placed in emergency accommodation at times, even living in 4 Gerald Griffin Avenue despite their being no sanitation, heat, or light.
- It is extraordinary that the Council seek a CPO without prior discussion with the owners, particularly in full knowledge of their circumstances.
- The property does not need to be compulsorily purchased and the Council should engage in meaningful negotiation so that a price can be agreed and the McCarthy's equity in the property can be realised, at fair market value determined by suitably appointed valuers.
- Request that the Property Department and Legal Department take a commercial overview in the matter and consider private negotiation which would be more reasonable and equitably fairer.
- There is interest in the McCarthy's either purchasing the current house that they are tenants in, or using 4 Gerald Griffin Avenue for an exchange, subject to obtaining a loan from Cork City Council for paying any balance that may be owed to the Council.
- Information on title documentation from the loan source and further QED redemption figures on the mortgage have been requested.
- Information on valuations obtained by Cork City Council and the representative valuer have been requested.

#### **4.2.5. Local Authority's Application for Consent**

4.2.6. 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 14<sup>th</sup> August 2023 and was accompanied by the following:

- Copy of site map.

- Copy of Derelict Sites Register Entries (Reg no. 238).
- Copy of the Notice of Intention to Acquire Derelict Site Compulsorily under Section 15(1) of the Derelict Sites Act 1990, dated 16<sup>th</sup> June 2023.
- Copy of the Notice served on the owners dated 22<sup>nd</sup> June 2023.
- Copy of objection from Stephen and Margo McCarthy dated 26<sup>th</sup> June 2023.
- Copy of objections from Margo McCarthy (hand written) dated 26<sup>th</sup> and 29<sup>th</sup> June; 3<sup>rd</sup>, 5<sup>th</sup>, 14<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup>, 25<sup>th</sup> and 26<sup>th</sup> July; and 6<sup>th</sup> August 2023.
- Copy of objection from Ann Tait and Company on behalf of Stephen and Margo McCarthy dated 14<sup>th</sup> July 2023.
- Copy of the site notice and newspaper notice in the Irish Examiner dated 23<sup>rd</sup> June 2023.
- Confirmation of relevant Notice Party.

4.2.7. The submission from Cork City Council confirms that the property was entered on the Derelict Sites Register with effect from 27<sup>th</sup> October 2016 and that despite contacting the owner on several occasions, no progress has been made in removing 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 Ann Tait and Company on behalf of the owners, Stephen and Margo McCarthy, in response to the application for compulsory acquisition (dated 31<sup>st</sup> August 2023). This can be summarised as follows:

- An auctioneer has been requested to value the property and this will be submitted to the Board as soon as received.
- This matter should not be subject to CPO, but rather Mr and Mrs McCarthy should be entitled to negotiate, per this office with Cork City Council, to dispose of the property to Cork City Council on fair and equitable terms.

- The McCarthy's consider themselves entirely disadvantage and prejudiced by the bureaucracy of the system and particularly in relation to Cork City Council's letter to the Board.
- It cannot be confirmed that the McCarthy's have received the information set out in this letter. The Local Authority has been aware of the whereabouts of the McCarthy's at all times and are also aware of their financial circumstances over a long number of years.
- There has been no formal contact made by Cork City Council towards the McCarthy's since the 27<sup>th</sup> October 2016, which is unacceptable given that they are aware of their constitutional rights and have been available to the Local Authority.
- The property at 4 Gerald Griffin Avenue fell into dereliction and it was beyond the scope of the McCarthy's finances to take it out of dereliction.
- It is understood there may be dereliction fines, but these have never been received by the McCarthys.
- The McCarthy's do not feel that all documentation has been sent to them even though the City Council knew of their whereabouts.
- The mortgage on the property is paid and up to date.
- Dereliction grants are now available to homeowners to assist in taking a property out of dereliction and the McCarthy's should be afforded this credit on top of the market value of the property and then offered the opportunity to negotiate with the Council, per this office and the Legal Department of Cork City Council, by way of private treaty.
- It is their contention that they have been treated unfairly by the Council due to their financial situation and that they have been eroded by the system despite their equal rights and constitutional safeguards.
- It is their aspiration to negotiate by private treaty due to how they have been treated and by the fact that they have not received the documentation the city Council claims to have sent them, noting their housing situation during the years 2001 to date.

- The owners cannot be disadvantaged in this way, and it is appropriate that negotiation take place first to achieve a fair compromise for both parties.
- Copies of the documentation that the Council claim has been sent to the McCarthy's have been requested.
- It is accepted that the property has been on the Derelict Sites Register since 2016 and accepted that the dereliction cannot be removed due to the McCarthy's financial situation however, they should be afforded the opportunity to negotiate with the Council, to be privately represented and to have a private solicitor and valuer at the expense of the City Council in order to achieve a solution.

4.3.2. A letter to Cork City Council, copied to the Board dated 1st September 2023, makes a request for copies of the notices served on the McCarthy's and objections received and confirms that the McCarthy's have stated definitively that there has been no formal communication with the Council.

4.3.3. A submission was also made to the Board by Margo McCarthy in response to the application for compulsory acquisition (received 31<sup>st</sup> August 2023). This can be summarised as follows:

- The Council were aware of the family's whereabouts at all times and have not taken their proposals taken into account.
- Article 40 and 43 states protection of private property and Cork City are the biggest owner of derelict sites.
- The Council were aware of the facts and still issued fines. The Act allows these to be suspended if it causes more hardship, which is the case.
- There are family connections to the house and payments have been maintained. The proposal is wrong and there is a need to safeguard the family's future.
- Mrs McCarthy is willing to transfer ownership to the house she currently rents from the Council in order to keep homeowner title.
- There is a need for a fair hearing.

## 5.0 Planning History

- 5.1.1. No planning history of relevance has been brought to my attention.

## 6.0 Policy Context

### 6.1. Cork City Development Plan

- 6.1.1. The site is zoned ZO 01: Sustainable Residential Neighbourhoods, the stated objective of which is to protect and provide for residential uses and amenities, local services and community, institutional, educational, and civic uses.
- 6.1.2. The site is within 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. At the time of my site inspection no internal access or access to the rear garden was possible. My site inspection was therefore carried out on the public road.
- 7.2. The property appears to be structurally sound, there is some evidence of settling but this appears to be long standing and not recent. Large sections of the external harling

have detached around the lintel above the front door leaving the inner brickwork exposed and allowing water ingress, the pattern of detachment and the nature of the lintel indicates that it may be the result of a previous repair/replacement. There is further cracking in the harling on the front facade and there is a significant gap around the front door which has detached from its surround, with multiple cracks. Paintwork around the reveals and at the base of the house is dirty, stained, and generally in poor condition. The rainwater goods are broadly intact although overgrowing vegetation is evident, sections of the roof are covered in a dense carpet of moss, and there is evidence of staining on the front facade. Parts of the fascia appear to be crumbling. The site was free from litter and graffiti.

- 7.3. The site is located within the Blackpool Architectural Conservation Area and to the east of Gerald Griffin Street. The adjoining property to the east is in commercial use whilst the adjoining property to the west is in residential use. Both of these properties are well maintained. Gerald Griffin Avenue is largely characterised by two storey, terraced homes, all of which appear to be well maintained and in good condition. From my site inspection I do not consider that the condition of the property has deteriorated significantly since the application was made, nor have any obvious works been undertaken to address the dereliction.
- 7.4. Having regard to the above, I consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 in that it has a neglected, unsightly and objectionable condition. With regard to Section 3 (a) and having inspected the site, I do not consider that there is any apparent evidence that the structure is in a dangerous condition, or that it could be considered ruinous. As noted, there was no litter within the site or any evidence of waste being stored externally. Therefore, it is considered that the site does not fall within category Section 3 (c).
- 7.5. I note the actions of the Local Authority. It issued a section 8(2) notice of its intention to insert the site onto the Derelict Sites Register on the 2<sup>nd</sup> June 2016 and the property was entered on the register of derelict sites on the 27<sup>th</sup> October 2016. The notice of intention to acquire the property compulsorily under section 15 was served on the 16<sup>th</sup> June 2023, by registered post to the owners on the 22<sup>nd</sup> June 2023 and published in the Irish Examiner on the 23<sup>rd</sup> June 2023. In terms of the Compulsory Purchase Order, I note the various objections by the owners and their solicitor that the CPO notices served by Cork City Council were not received, but I am satisfied that the relevant

documentation/notice was sent and received, having been sent by registered post and signed for by the owner.

- 7.6. The Council's report states that the Council has contacted the owner on several occasions since the property was placed on the Derelict Sites Register, but that no progress has been made in relation to the removal of the dereliction. No details of this correspondence have been provided by Council and I note that the owners dispute this correspondence being received. In this respect it is not clear what measures the Council required to be undertaken in order to address the dereliction and it cannot be confirmed if the proposed measures were fair and reasonable.
- 7.7. Submissions made to the Board by the owners' solicitor acknowledge the derelict nature of the property, which occurred due to financial hardship. The property has been long term vacant and the submission by the owners' solicitor makes it clear that bringing the property out of dereliction is beyond the owners' financial means, with the property lacking sanitation, heat and light. The owners' main objection appears to be that they wish to negotiate the sale of the property by private treaty directly with Cork City Council, rather than be subject to compulsory purchase or to explore ways to address the dereliction. Whilst the submission raises the matter of dereliction grants, it is raised in the context of being credited to the market value of the property, rather than being applied for and used to address the matter of dereliction.
- 7.8. It is clear that matters regarding the derelict nature of the property are at an impasse. On the one hand, the Council have not provided details of the correspondence with the applicant following the placement of the property on the derelict sites register and, on that basis, it could be argued that the Compulsory Purchase has not been demonstrated as being a proportional response to the dereliction. On the other hand, given the ongoing long term vacancy of the property, the lack of any measures to rectify the dereliction having been undertaken or proposed, and the clear financial issues experienced by the owners that present a significant barrier to bringing the property out of dereliction, I am of the opinion that that there is no reasonable prospect of the property being brought out of dereliction in the short to medium term and that the Council's proposal is proportionate.
- 7.8.1. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a two-

storey, mid-terrace dwelling at 4 Gerald Griffin Avenue, Blackpool, Cork City, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 16<sup>th</sup> day of June 2023, 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.

- 7.8.2. Given the clear barriers to bringing the property out of dereliction, I am satisfied that the means chosen to address the dereliction 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 I am satisfied that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 7.8.3. 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 Cork City Development Plan 2022-2028, and specifically Objectives 2.24: Underutilised Sites and 27: Derelict Sites Register which seek to address the dereliction, vacancy and underutilisation of sites within Cork City 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. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.
- 7.9. The property continues to be in a neglected, unsightly, and objectionable condition and I consider that it detracts to a material degree from the amenity, character, and appearance of the area. I therefore consider the property to be a derelict site, within the meaning of Section 3 of the Derelict Sites Act, 1999, as amended.
- 7.10. Having regard, therefore, to the information available on the file and the continued appearance and condition of the property which, as stated, constitutes a derelict site, I consider that it is appropriate and proportionate that the Local Authority's application for consent to compulsorily acquire the site at 4 Gerald Griffin Avenue, Cork City, be granted.

## **8.0 Recommendation**

- 8.1.1. Having regard to the observed condition of the site, particularly 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.
- 8.1.2. 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 Cork City Council to compulsorily acquire the site.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the neglected, unsightly and objectionable condition of the structure, the poor condition and appearance of the façade including the detached and cracked harling, detachment and gap around the front door, poor condition of paintwork and cement fascia, overgrown gutters, and 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 Cork City Development Plan 2022-2028,
- 9.1.2. 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 (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 objections 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.

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Terence McLellan  
Senior Planning Inspector

30<sup>th</sup> May 2024