



An
Bord
Pleanála

Inspector's Report

ABP-317962-23

Development

Application for the compulsory acquisition of a derelict site comprising a property at Ballyvergal, Palatine, Co. Carlow. Folio CW538F

Location

Ballyvergal, Palatine, Co. Carlow

Planning Authority

Carlow County Council

Notice Party

Mr Peter O'Toole

Objector

Seamus Meally

Date of Site Inspection

6th October 2023

Inspector

Peter Nelson

1.0 Introduction

- 1.1. This case relates to a request by Carlow County Council for the consent of An Bord Pleanála to the compulsory acquisition of the site of a single-storey cottage at Ballyvergal, Palatine, Co. Carlow within the folio number CW538F, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located on Ballyvergal, Palatine, Co. Carlow, approximately 2km from Carlow Town. The site comprises a single storey dwelling and land to the sides and rear of the dwelling. The site area is 0.39 hectares.
- 2.2. On the day of the site inspection, the dwelling had no front door or windows, the roof was missing many tiles, and a section of the roof was falling in. There is significant vegetation growing on and from the dwelling. The land surrounding the dwelling is overgrown, with no evidence of an entrance to the site. The property has not been occupied for many years.

3.0 Application for Consent for Acquisition

- 3.1. Carlow County Council has applied to the Board for consent to compulsorily acquire the site under Sections 16(4) of the Derelict Sites Act, 1990, as amended. This application follows the service of notices:
 - Carlow County Council served notice on 19th July 2023 under section 14 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the derelict site at Ballyvergal, Palatine, County Carlow.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Carlow County Council served notice on 19th July 2023 under section 14 of the Derelict Sites Act 1990 (as amended) of an intention to compulsorily acquire the derelict site at Ballyvergal, Palatine, County Carlow. The notice was served on Peter

O'Toole. 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. Carlow County Council received one submission on foot of the notice of intention to compulsorily acquire the derelict site. Seamus Meally made a submission to Carlow County Council dated 25th July 2023. Seamus Meally objects for the following reasons:

- He made an adverse possession application to the Land Registry in June.
- He offered to buy the land in 2000, but the deeds were unavailable.
- He has made a Section 49 application claiming entitlement to a property based on adverse possession, making any legal claim from the owners or Carlow County Council barred after 12 years, considering that no claim exists from any third party.
- He is asserting an 'Animus Possidendi' against any owner due to neglect of the site since 2000 and the period of limitations since 2010(13-2), Statutes of Limitations section 126, Succession Act, 1957.
- The Council's claim to the building has no validity in law.
- He is a beekeeper and has made an ecological contribution to the site.

4.3. Submission of Carlow County Council

4.3.1. Carlow County Council has made a submission in support of the proposed acquisition, dated 5th September 2023 and signed by Nicola Lawler, Town Regeneration Officer. The following points of same are noted:

- The Housing Department has confirmed that they have a housing need in this area as the Ballyvergal/Palatine Area is very close to Carlow Town and there is demand for the area.
- The Housing Department is looking for rural units near Carlow to meet housing needs.

- The property would require substantial works but would be a useful housing solution.
- Carlow County Council's primary objective is to address vacancy and maximise the use of the existing housing stock.
- This property has been vacant for more than 20 years and it is an objective of the Council to bring the property back into use.
- The site is the subject of an Adverse Possession application by Mr Seamus Meally.
- Carlow County Council does not recognise Mr Meally as an owner, lessee, or occupier of the property/land.

4.4. Submission of Seamus Meally

4.4.1. The above-named party has made a submission to ABP, dated 13th September 2031. The following points of same are noted:

- He has been in sole and exclusive occupation of the property since 1998, when he offered to buy the site.
- The council has no historical interest in the site.
- He made the Adverse Possession application on the 2nd June 2023, and the Council first recorded interest in the site on 19th July, 2023.
- There is a statute of limitations, 1957 Act (6:02) Section -13, for a period of more than 12 years.
- During that period, the council have made no claim and have not met the statute of limitations requirements.
- The council only raised the matter after he filed his adverse possession of the site.
- Peter O'Toole is now deceased, and there has been no other claimant to this site.

5.0 Planning History

- 5.1.1. **P.A. Reg: 99/646** Permission granted on 17/11/1999 to demolish the existing structure and construct a new dwelling, garage, well and septic tanks and percolation area.

6.0 Legislation and Policy Context

6.1. Derelict Sites Act 1990 (as amended)

- 6.1.1. The Derelict Sites Act 1990, as amended, makes provision 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.

- 6.1.2. 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.

- 6.1.3. Other relevant provisions of the Act are summarised below:

- Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in its functional area.
- Section 15 sets out arrangements for giving notice if the local authority intends to acquire a derelict site compulsorily.

- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it provides that if an objection is made, then the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

6.2. Carlow County Development Plan 2022-2028

6.2.1. I note that the site is not included in the Carlow County Development Plan 2022-2028 Carlow Town Land Use Zoning Map.

6.2.2. I note the site was zoned Community-Educational-Institutional in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 (as extended). I also note that a statutory Carlow Graiguecullen Joint Urban Local Area Plan 2023-2029 is currently being prepared.

6.2.3. Development Plan Policies:

CS. 06: Actively promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including availing of statutory powers under the Derelict Sites Act, Housing Act, Vacant Site Levy and supporting implementation of the Residential Zoned Land Tax together with other statutory provisions to actively promote regeneration of urban and rural areas within the County.

RA. 01: Encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:

- Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land
- Urban blight or decay
- Anti-social behaviour, or
- A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

7.0 Assessment

- 7.1. I inspected the site from the road front. The majority of the site is overgrown. The area to the front of the house has been cleared of some vegetation, and the house is visible from the road.
- 7.2. According to the documentation on file, the subject site has not been entered into the Derelict Sites Register. The Board should note that it is not a requirement under the Derelict Sites Act 1990, as amended, for a site to be placed on the register of derelict sites prior to an application being made to acquire it compulsorily.
- 7.3. The site is overgrown except for the area in front of the house. The house is vacant and has not been lived in for many years. The house is in a poor state of repair, with part of the roof collapsed. The front door and the windows are missing. The house is uninhabitable. The current poor state of the house and the fact that it is open to the elements creates a likelihood of further decline. There appears to be no pedestrian or vehicular entrance to the site.
- 7.4. The house does not appear to be in a reasonable structural condition, with significant cracking, the roof falling in, and tiles missing. It appears that there has been water ingress for many years. Given the free access to the structure and the roof condition, I consider the building to be in a dangerous condition.
- With respect to the nature of dereliction, I am of the opinion that the site falls within category (a) of section 3 of the Derelict Sites Act, 1990, due to the structure on the site being in a ruinous, derelict and dangerous condition.
- 7.5. I am also of the opinion that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990, due to the land and structure being in a neglected, unsightly and objectionable condition.
- 7.6. While there may be some litter within the application site, it was not particularly apparent due to the overgrown nature of the site. 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. I do not consider that the site falls within category (c) of section 3 of the Act. However, as stated, I consider the site derelict for other reasons.

- 7.7. Having inspected the site, there is little evidence of any attempt to render the site non-derelict and the house remains neglected and unsightly. I note that Seamus Meally who has lodged an adverse possession application for the site, states that he has been in sole and exclusive occupation since 1998. Save for the clearing of an area to the front of the dwelling there is little evidence of any occupation on the site for many years. In that time, it appears that Seamus Meally has not carried out nor proposed any measures to render the site non-derelict.
- 7.8. Carlow County Council have confirmed that there is a social housing need in this area as it is very close to Carlow Town. The Housing Department state that they require rural units in close proximity to Carlow to meet housing needs and that the subject site would be a useful housing solution.
- 7.9. I am satisfied that the process and procedures undertaken by Carlow County Council have been fair and reasonable, that the Carlow County Council has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to facilitate the proportionate response to ensure that the remedying of its derelict state can be expedited.
- 7.10. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the property in Ballyvergal, Palatine, Co. Carlow as set out in the compulsory acquisition order and on the deposited maps, is rationally connected to a legitimate objective in the public interest, namely remedying of the sites derelict state.
- 7.11. Accordingly, I am satisfied that the confirmation of compulsory acquisition is clearly justified by the exigencies of the common good.
- 7.12. On balance, I consider that the compulsory acquisition of the subject building should be confirmed to ensure that the remedying of its derelict state can be expedited.
- 7.13. Having regard, therefore, to all 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 that the Local Authority's application for consent to compulsorily acquire the site at Ballyvergal, Palatine, Co Carlow folio no. CW538F be confirmed.

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 structure 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.
- 8.2. It is further considered that the local authority's acquisition of the site is warranted to render the site non-derelict and prevent it from continuing to be a Derelict Site. I therefore recommend that the compulsory acquisition be confirmed.

9.0 Reasons and Considerations

- 9.1. Having regard to the ruinous and derelict condition of the structures on the site and the derelict state of the site and to its neglected, unsightly and objectionable condition, having considered the objections made to the compulsory acquisition, and also:
- (i) the constitutional and Convention protection afforded to property rights,
 - (ii) the provisions of Carlow County 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, 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 against such acquisition cannot be sustained, having regard to that said necessity.

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.

Peter Nelson
Planning Inspector

12th December 2023