



An  
Bord  
Pleanála

## Inspector's Report ABP-318106-23

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### Nature of Application

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

### Location

No. 61 John Street, Waterford, Co. Waterford

### Local Authority

Waterford City & County Council

### Notice Party

Barry Kennedy

### Date of Site Inspection

3<sup>rd</sup> May 2024

### Inspector

Ian Campbell

## **1.0 Introduction**

- 1.1. This case relates to a request by Waterford City and County Council (WCCC) for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 61 John Street, Waterford, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The property which is the subject of this proposed compulsory acquisition (referred to hereafter as the 'subject property') is located on the eastern side of John Street in the centre of Waterford City.
- 2.2. The subject property is a three storey, mid-terrace, red brick building which previously accommodated a retail unit at ground level.
- 2.3. The subject property is listed as a Protected Structure (RPS Ref. WA730523) and is listed on the National Inventory of Architectural Heritage (NIAH Ref. 22501240).
- 2.4. Adjoining properties are occupied and are in reasonable condition.
- 2.5. On the date of my site inspection the property was secure. The front façade of the building is in a poor state of repair with bricks chipped/damaged. The shopfront is dirty and in need of repair/repainting. The windows on the ground floor have been fitted with metal grills and the upper floor windows have been boarded up. The guttering requires repair/painting and vegetation is growing out of the front façade of the building. The roof appears to be sagging.

## **3.0 Application for Consent for Acquisition**

- 3.1. Waterford City and County Council (WCCC) 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 11 (i.e. requiring the carrying out of specified measures to prevent land becoming or continuing to be a derelict site) on the 23<sup>rd</sup> January 2023, Section 8(2), (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites) on the 31<sup>st</sup> of March 2023, and under Section 8(7) (i.e. advising of the Local

Authority's decision to enter the site on the register of derelict sites) on the 20<sup>th</sup> of April 2023.

## **4.0 Application and Objection**

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

- 4.1.1. Notice of WCCC's intention to acquire the site compulsorily was served on the owner of the property on the 31<sup>st</sup> of July 2023, and was published in the Munster Express newspaper on the 1<sup>st</sup> August 2023. A site notice was also affixed to the subject property on the 31<sup>st</sup> of July 2023. The site was described as follows in the notices:

- 61 John Street, Waterford, covering an area of 0.0121 acres or thereabouts, in the District Electoral Division of Waterford City South.

The said derelict site is more particularly shown outlined in red on map bearing reference CPA 2023-07 in the Derelict Sites Register established and maintained by Waterford City /and County Council under Section 8 of the Derelict Sites Act 1990.

- 4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) and (b) of the Derelict Sites Act 1990, as amended.

### **4.2. Objection to Acquisition**

- 4.3. 1 no. objection from Mr. Barry Kennedy (dated 25<sup>th</sup> August 2023) was submitted to WCCC in respect of the proposed acquisition of the property. The objection notes that there is a tenant in the subject property, and that this tenant has resided in the property for a substantial period of time.

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

- 4.4.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 27<sup>th</sup> of September 2023 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (including photographs of subject property) which sets out the Local Authority's strategic approach to

derelict sites, a description of the site and relevant policy designations affecting the site.

- Copy of Chief Executive's Order.
- Derelict site location map.
- Copy of the notices served on the owner/occupier of the site (dated 31<sup>st</sup> of July 2023). Proof of postage included in respect of same.
- Copy of the newspaper notice (dated 1<sup>st</sup> of August 2023).
- Details of property ownership search.
- Copy of objection made by Barry Kennedy (dated 25<sup>th</sup> August 2023) and submitted to the Local Authority.
- Acknowledgement of objection to Section 15 Notice sent to Barry Kennedy.

4.4.2. The **Derelict Site Report** can be summarised as follows:

- On foot of the Urban Regeneration and Development Fund (URDF), which aims to deliver compact and sustainable development, and in line with the identified need to bring existing derelict and long-term vacant properties into use for residential and other purposes, Waterford City and County Council seek to use the Derelict Sites Act (1990) to undertake the compulsory acquisition of No. 61 John Street, Waterford.
- Following a visual inspection of the property it was considered to be derelict, as per the following definition;

*“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.”*

- The subject property comprises a vacant three storey, mid terrace red brick property facing onto The Apple Square. The ground floor previously operated as a retail unit. The use on the upper floor is unclear.
- The property is a Protected Structure (RPS Ref. WA730523).
- The property is on the National Inventory of Architectural Heritage (NIAH) (Ref. 22501240) and is described as follows:

*Terraced two-bay three-storey red brick house, built 1889, retaining original aspect and possibly incorporating fabric of earlier house with shopfront to ground floor. One of a terrace of four. Pitched (shared) slate roof with red clay ridge tiles, red brick (shared) chimney stack, rendered coping, and cast-iron rainwater goods on red brick eaves. Red brick Flemish bond wall to front (north-west) elevation with moulded red brick band to eaves. Exposed random rubble stone wall to rear (south-east) elevation. Square-headed window openings with stone sills, and 1/1 timber sash windows having margins. Timber shopfront to ground floor with pilasters, fixed pane timber display window, timber panelled and glazed timber panelled doors with overlights, and timber fascia over with dentilated moulded cornice. Road fronted with concrete brick cobbled footpath to front.*

- The appraisal carried out by the NIAH notes –

*‘this house, built as one of a terrace of four identical houses, is an attractive building of balanced proportions that has been very well maintained to present an original aspect. The exposed rubble stone construction to the rear (south-east) elevation suggests an older building that was refaced with brick in the late nineteenth century. The house incorporates an important early-surviving timber shopfront of artistic merit. The house, together with the remainder of the terrace (22501238 – 9, 41/WD-5632-21-248 – 9, 51), is an important component of the streetscape of John Street, and is distinguished by the red brick construction’.*

- The property is located in the town centre core and the surrounding area is characterised by retail, commercial, entertainment, civic and residential uses.
- Applicable designations in the Waterford City and County Development Plan 2022 – 2028 include;
  - Zone of Notification - Archaeology;
  - Waterford City Settlement Boundary;
  - Town Core Zone;
  - Waterford City - DeCarbonising Zone;
  - Waterford City Architectural Conservation Area; and
  - Waterford City General Conservation Area.
- Section 3.3.3 'City Centre Residential Neighbourhood' sets out the Council's policy in regard to the development and improvement of a City Centre Residential Neighbourhood. *Policy W City 13* supports this and provides 'the retention of residential accommodation on the upper floors of city centre properties will be encouraged'. Given the existence of residential accommodation on the upper floors of this property, it is considered that the continued provision of such on the upper floors is in line with policy<sup>1</sup>.
- Regeneration Policy Objective H06 states that dereliction and vacancy will be removed where appropriate through the use of the Derelict Sites Act (1990) (as amended).
- The re-activation of this property would align with Built Heritage Policy BH 02 in relation to the sustainable re-use of protected structures.
- The property is located within an Architectural Conservation Area and Policy BH 05 provides for the protection of the special heritage values and characteristics that make the area unique. Therefore, it is necessary to ensure this property does not fall further into dereliction where there is a risk of the loss of these attributes.

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<sup>1</sup> I note that elsewhere in WCCC's Derelict Site report it is noted that it is unclear whether the upper floors of the property were used for residential purposes.

- WCCC attempted to confirm ownership of the property using Land Direct, a Deeds search via Land Direct and also enquires the Planning Department of WCCC. The owner of the property was identified as Barry Kennedy.
- The timeline for the serving of notices under the Derelict Sites Act, 1990 by WCCC is set out as follows;
  - Section 11 Notice requiring the carrying out of specified measures to prevent land becoming or continuing to be a derelict site: 23<sup>rd</sup> of January 2023.
  - Section 8(2) Notice of intention to enter land in Derelict Sites Register: 31<sup>st</sup> of March 2023.
  - Section 8(7) Notice of Entry of Land in Derelict Sites Register: 20<sup>th</sup> of April 2023.
  - Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily: 31<sup>st</sup> of July 2023.
- WCCC contend having regard to the observed condition of the property, in particular its neglected and unsightly state, it is considered 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, and subsequently, it is considered reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act.

#### **4.5. Objector's Submission**

- 4.5.1. No objections were received by the Board.

### **5.0 Planning History**

#### **5.1. Subject Property**

There is no planning history relevant to the subject property.

## 6.0 Policy Context

### 6.1. Waterford City and County Development Plan 2022-2028

- 6.1.1. The subject property is zoned 'TC' (Town Core)' in the Waterford City and County Development Plan 2022-2028.
- 6.1.2. The subject property is located within the Waterford City Architectural Conservation Area and is also located within a General Conservation Area in the Waterford City and County Development Plan 2022-2028.
- 6.1.3. The property is a Protected Structure (RPS Ref. WA730523) and is listed on the National Inventory of Architectural Heritage (NIAH) (Ref. 22501240).
- 6.1.4. Relevant objectives/policy in the Waterford City and County Development Plan 2022 – 2028 include;
- Objective Place 01 (Chapter 8 – Placemaking): *'identify obsolete and potential opportunity sites within the City and County and encourage and facilitate the re-use and regeneration of derelict land and buildings in the urban centres; work with landowners and development interests to pursue the potential of suitable, available and viable land and buildings for appropriate development/renewal; support active land management; and use compulsory purchase orders and statutory powers under the Derelict Sites Act 1990 and the Urban Regeneration and Housing Act 2015, as amended, to address issues of dereliction, vacancy and underutilisation of lands in settlements across Waterford'.*
  - Objective H06 (Chapter 7 – Housing and Sustainable Communities): *'utilise legislative power under the Derelict Sites Act 1990, The Urban Regeneration and Housing Act 2015, as amended and general CPO powers to prevent anti-social behaviour and remove dereliction and vacancy where appropriate.'*
  - Objective Econ 07 (Chapter 4 – Economy, Tourism, Education and Retail): *'...assist in the proactive targeting of underutilised, vacant and derelict lands and*



*buildings, and general building stock,...in order to facilitate an Active Land Management approach to the sustainable growth and development of Waterford City and County....achieved by, measures to support the change of use from vacant commercial units to residential, using the Council's statutory powers, where appropriate, under the Derelict Sites Act 1990 (as amended) and the Urban Regeneration and Housing Act 2015 (as amended), and.... the acquisition by agreement or compulsory purchase, of vacant, derelict or underutilised sites or buildings, in order to address incidents of urban decay and vacancy, ensure revitalisation and conservation of our built heritage; regeneration of underutilised sites/ buildings, and bring about long-term economic and social/ community development and sustainability.'*

- Objective BH01 (Chapter 11 – Heritage): in summary, provides for the protection of the architectural heritage of the City and County by measures which include taking such steps as are necessary to ensure the protection of those structures, their maintenance, conservation, enhancement, and appropriate active use.
- Objective BH05 (Chapter 11 – Heritage): in summary, seeks to preserve the special character of Architectural Conservation Areas.

## **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 of the Act 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 of the Act 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 of the Act provides that a Local Authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.2.8. Section 15 of the Act sets out arrangements for giving notice, if the Local Authority intend to acquire a derelict site compulsorily.
- 6.2.9. Section 16 of the Act 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 Inspection**

- 7.1.1. Internal access to the property was not possible on the date of my site inspection and I carried out my site inspection from the public road (John Street and surrounding area). The subject property is located in the centre of Waterford City, just off a principle throughfare. Neighbouring properties appear to be well maintained and are in good condition. The area has an attractive appearance.
- 7.1.2. The property has a neglected, unsightly and objectionable appearance from the public road and surrounding area. The front façade of the building is in a poor state of repair with bricks chipped/damaged. The shopfront is dirty and in need of repair/repainting. The windows on the ground floor have been fitted with metal grills and the upper floor windows have been boarded up. The guttering requires repair/painting and there vegetation is growing out of the front façade of the building. The roof appears to be sagging. The subject property detracts significantly from the character and appearance of the street.

## 7.2. Category of Dereliction

- 7.2.1. Based on the condition of the subject property which I observed during my site inspection I do not consider that the site falls within category (a), of Section 3 of the Derelict Sites Act, 1990, which relates to structures which are in a ruinous, derelict or dangerous condition.
- 7.2.2. I consider 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. I particularly note that the subject property is located at a prominent location in the centre of Waterford City where there is a high footfall, that the property is a Protected Structure, is within an Architectural Conservation Area, a General Conservation Area and is located alongside buildings which are for the most part attractive and well maintained.
- 7.2.3. I did not observe the presence of litter, debris, rubbish or waste at the subject property and as such I do not consider that the site falls within category (c) of Section 3 of the Act.

- 7.2.4. In conclusion, 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.

7.3. Action of the Local Authority

- 7.3.1. Dereliction would appear to be an issue at the subject property for some time, and using the dated Streetview function on Google Maps I note that the subject property was in a similar condition in 2021. Having established the identity of the owner of the property WCCC served a Section 11 Notice on the owner of the property on the 23<sup>rd</sup> January 2023 requiring the carrying out of specified measures to prevent land becoming or continuing to be a derelict site. The measures contained in the Section 11 Notice are stated in the Derelict Site report as including, repairs to the roof; removal of vegetation from the chimney; repair/replacement of windows and rain goods; cleaning and repair of stone work; and repainting, cleaning and repair of the shop front. The works specified in the Section 11 Notices were not carried out and WCCC subsequently served a Section 8(2) Notice on the 31<sup>st</sup> of March 2023. The property was then added to the Derelict Sites Register on the 20<sup>th</sup> April 2023 with Section 8(7) Notices served on the owner of the property. Section 15 Notices were subsequently served by WCCC on the 31<sup>st</sup> of July 2023. I note that correspondence was not received from the property owner in respect of the Section 8(2) or 8(7) Notices. The property owner however submitted an objection to WCCC in respect of the Section 15 Notice.
- 7.3.2. I note that Local Authorities have a duty (under section 10) “to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any such land does not become/continue to be a derelict site.” Based on the information on the file I note that WCCC have attempted to have the site rendered non-derelict and have attempted to liaise with the owner of the property directly, by establishing the identity of the owner(s), and then by issuing a Section 11 Notice which comprehensively set out what measures were required to address the condition of the property. I note that the Section 11 Notice was not complied with. It is clear that WCCC have attempted to address the issue of dereliction at the property with the owner of the property. I note the objection submitted to WCCC refers to the fact the subject property is occupied. In my opinion the fact there is a tenant in the property would not impede the owner addressing the condition of the property. Having regard to the

forgoing I am satisfied that the Local Authority gave the property owner sufficient time and opportunity to address the dereliction and have explored other means of achieving the aim of rendering the property non-derelict. Therefore, I am satisfied that the efforts of the Local Authority have been fair and reasonable.

#### 7.4. Compliance with Development Plan

- 7.4.1. I note that the Waterford City and County Development Plan 2022-2028, and specifically Objective Place 01 which seeks to facilitate the re-use and regeneration of derelict land and buildings and, use statutory powers under the Derelict Sites Act 1990 to address issues of dereliction. I also note that the property is a Protected Structure and is within an Architectural Conservation Area, and that Objective BH01 seeks to protect the architectural heritage of the City and County by measures which include taking such steps as are necessary to ensure the protection of those structures, their maintenance, conservation, enhancement, and appropriate active use. The property would appear to be in a derelict state for approximately 3 years. Therefore, I consider that the proposed compulsory acquisition of the property 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.

#### 7.5. Action of the Owner to Address Dereliction

- 7.5.1. As addressed above, WCCC issued a Section 11 Notice on the owner of property setting out the measures required to address the derelict condition of the property. The specified measures were not complied with and I note that there was no record of engagement from the property owner with WCCC in relation to the Section 8(2) or 8(7) Notices, nor were attempts made to address the condition of the property.
- 7.5.2. Based on my observations of the property no substantive works have taken place to the subject property to render it non-derelict and it remains that the continuing dereliction of the property is having a significant adverse effect on the amenities and appearance of the area. The property is also a Protected Structure and is located within an Architectural Conservation Area. I also note the location of the subject property in a busy and heavily trafficked part of the city. I note that owner/occupiers have obligations (under section 9 of the Act) to “take all reasonable steps to ensure

that the land does not become or does not continue to be a derelict site". It is now approximately 18 months since Section 11 Notice was served, approximately 14 months since the serving of the Section 8 Notices were served. It has also been 11 months since the Local Authority served the Section 15 notice of intention to acquire the site compulsorily. 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. I therefore consider that the site remains in a derelict condition.

- 7.5.3. Having regard, therefore, to all of 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 No. 61 John Street, Waterford is granted.

## **8.0 Conclusion**

- 8.1. I am satisfied that the process and procedures undertaken by Waterford 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.
- 8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the acquisition of the Derelict Site, No. 61 John Street, Waterford as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 31<sup>st</sup> of July 2023 and on the deposit map (Ref. CPA 2023 - 07), pursues, and is 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.
- 8.3. 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 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 of the property made by the acquiring authority unreasonable or disproportionate.

8.4. The effects of the proposed compulsory acquisition on the rights of the affected landowner is 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 Waterford City and County Development Plan 2022-2028, and specifically Objective Place 01 which seeks to facilitate the re-use and regeneration of derelict land and buildings and, use statutory powers under the Derelict Sites Act 1990 to address issues of dereliction, and Objective BH01 which seeks to protect the architectural heritage of the City and County by measures which include taking such steps as are necessary to ensure the protection of those structures, their maintenance, conservation, enhancement, and appropriate active use. Accordingly, I am satisfied that the confirmation of the proposed compulsory acquisition is clearly justified by the exigencies of the common good.

## **9.0 Recommendation**

- 9.1. 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 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.
- 9.2. 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 Waterford City and County Council to compulsorily acquire the site.

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the neglected, unsightly and objectionable state of the land and structure thereon, evidenced by the condition of the front façade of the property, the condition of the windows and guttering, and the presence of weeds and overgrowth on the front façade, 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 Waterford City and 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 Section 3 (b) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the Local Authority is necessary in order to render the site non-derelict and to prevent it 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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Ian Campbell  
Planning Inspector

20<sup>th</sup> June 2024