



An
Bord
Pleanála

Inspector's Report ABP-318462-23

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

66 O' Connell Street, Dungarvan, Co. Waterford

Local Authority

Waterford City & County Council

Notice Party

Ben O' Neill (c/o McCullagh Higgins & Co. LLP Solicitors)

Date of Site Inspection

3rd 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. 66 O' Connell Street, Dungarvan, Co. 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 southern side of O' Connell Street in the centre of Dungarvan. Adjacent properties in the area are occupied and are in reasonable condition.
- 2.2. The subject property is a vernacular, single storey, two bay, terrace building with a pitched over. The subject property was previously used as a shop, art gallery and also as a residence.
- 2.3. On the date of my site inspection the property was secure. I observed evidence of improvement works being undertaken at the property during my site inspection. The plaster on the front façade of the subject property was in the process of being stripped, cracks in the façade had been recently filled, windows sanded and prepared for painting and the window lintels had been recently filled. A new metal screen had been placed over the door. The fascia and down pipes remained in a poor state of repair and there was an accumulation of moss on the slates of the roof.

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 8(2), (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites) on the 3rd of August 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 23rd of August 2023. Site notices were also affixed to the subject property

on the 3rd August 2023 in relation to the Section 8(2) Notice and on the 28th August 2023 in respect of the Section 8(7) Notice.

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 18th of September 2023, and was published in the Dungarvan Leader newspaper on the 22nd of September 2023. The site was described as follows in the notices:

- No. 66 O' Connell Street, Dungarvan, Co. Waterford, covering an area of 0.0352 acres or thereabouts, in the District Electoral Division of Dungarvan – Lismore.

The said derelict site is more particularly shown outlined in red on map bearing reference CPA 2023-09 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

- 4.2.1. An objection from Ben O' Neill (c/o McCullagh Higgins & Co. LLP Solicitors) and dated 12th of October 2023 was received by WCCC on the 13th of October 2023. The objection notes that the subject property has been in the ownership of the Mr. O'Neill's family since 1953; that Mr. O' Neill inherited the property on his mother's death in 1995; that Mr. O' Neill has recently sold his principle residence and intends on renovating the subject property, restoring it to a family home, and has employed an engineer to oversee same.

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 15th of November 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 18th of September 2023). Proof of postage included in respect of same.
- Copy of the newspaper notice (dated 22nd of September 2023).
- Copy of objection made by Mr. Ben O' Neill (dated 12th October 2023) and submitted to the Local Authority.
- Acknowledgement of objection to Section 15 Notice sent to Mr. Ben O' Neill.

4.3.2. 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. 66 O' Connell Street, Dungarvan, Co. Waterford.
- The definition of dereliction as per the Derelict Sites Act (1990) is set out as follows;

"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 site comprises a single storey commercial building located on the southern side of O'Connell Street, Dungarvan and is flanked by 3 storey properties.
- The property is in a very poor state of repair. The paint work on the front elevation is dirty and heavily stained and in some places the paint is flaking away. There is a visible crack in the masonry and the front door is broken at the bottom and unstable.
- The site is located within Dungarvan Town Centre and is characterised by residential, retail and associated town centre uses.
- Applicable designations in the Waterford City and County Development Plan 2022 – 2028 include;
 - Dungarvan and Ballinroad Settlement Boundary;
 - Town Core Zone; and
 - Scenic Route (LSCA).
- Regeneration Policy Objective H06 provides that dereliction and vacancy will be removed where appropriate through the use of the Derelict Sites Act (1990).
- Being within the Town Core Zone of Dungarvan the property is considered an appropriate location for development that will enhance the town core uses including retail, residential or commercial.
- The site lies just outside of the Core Retail Area and therefore there is no restriction on the loss of retail floorspace.
- Retail Policy 04 seeks to support the development of Dungarvan and Tramore Town Centres as multifunctional centres.
- Residential uses within multifunctional centres is supported.

- WCCC confirmed ownership of the property through engagement with other Council Departments and Local Representatives.
- The timeline for the serving of notices under the Derelict Sites Act, 1990 by WCCC is set out as follows;
 - Section 8(2) Notice of intention to enter land in Derelict Sites Register: 3rd of August 2023.
 - Section 8(7) Notice of Entry of Land in Derelict Sites Register: 23rd of August 2023.
 - Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily: 18th of September 2023.
- WCCC contend that 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.

4.4. Objector's Submission

- 4.4.1. No objections were received by the Board.

5.0 Planning History

5.1. Subject Property

There is no relevant or recent planning history associated with 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. There is a Protected Structure (described as a terraced two-storey dwelling – RPS Ref. DV740165 refers) located to the immediate west of the subject property.

6.1.3. 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.’*

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. During my site inspection I observed the interior of the shop which appeared to be used for storage, including the storage of materials which were being used in connection with repair works being carried out to the property, e.g. paint, timber etc. I carried out the remainder of my site inspection from the public road (O' Connell Street). The subject property is located in the centre of Dungarvan. Neighbouring properties are 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 fascia and down pipes are in a poor state of repair. There is an accumulation of moss on the slates of the roof. There is evidence of works being undertaken at the subject property. At the time of my site inspection I noted that plaster on the front façade of the subject property was in the process of being stripped, windows were being sanded and prepared for painting and the lintels above windows had been recently filled. Cracks in the front façade had been filled. A new metal screen had also been placed over the door, presumably to secure the timber beneath. It remains however that 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 in the centre of Dungarvan and is located alongside properties which are 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. Having reviewed the Street View function on Google Maps I note that dereliction would appear to be an issue at the subject property since c. 2019. Having established the identity of the owner of the property WCCC served a Section 8(2) Notice on the 3rd of August 2023. Based on the information contained in WCCC's Derelict Sites report the property owner contacted WCCC to confirm that he was the sole owner of the property. The property was then added to the Derelict Sites Register on the 23rd of August 2023 with Section 8(7) Notices served on the owner of the property. Section 15 Notices were subsequently served by WCCC on the 18th of September 2023. The property owner communicated with WCCC in October 2023, submitting an objection to the proposed compulsory acquisition of the property. I note that the objection from the property owner indicated that it was his intention to undertake works to the property to restore its condition and subsequently to reside in the property with his family.

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 by establishing the identity of the owner, and then by issuing a Section 8(2) and Section 8 (7) Notice. I note the objector’s intention to undertake works to the property, as set out in the correspondence/objection sent to WCCC dated 12th of October 2023. I however note there was no further engagement by WCCC with the property owner. I am generally satisfied that the efforts of the Local Authority have been fair and reasonable, however in my opinion further time could have been afforded to the property owner who had indicated his intention in relation to renovating the property.

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. Objective H06 and Objective ECON7 similarly seek to use the provisions of the Derelict Sites Act 1990 to remove dereliction and vacancy, and address incidents of urban decay and vacancy respectively. Having regard to the condition of the subject property 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, subsequent to WCCC issuing Section 8 Notices on the owner of property the objector sent correspondence to WCCC (dated 12th of October 2023) objecting to the proposed compulsory acquisition of the property and setting out his intention to undertake works to the property. From the evidence on file, including photographs appended to Local Authorities Compulsory Acquisition report, it is clear that the subject property was in a derelict state, and in an unsightly and neglected condition which detracted considerably from the character and amenity of the area at the time that the application to acquire the site was lodged. However, having inspected the property in May 2024, I observed that there is evidence that the owner has

attempted to actively address the issues of dereliction (see paragraph 7.1.2. above), and in my opinion it is likely that the owner will continue to address the indicators of dereliction of the property. Thus, whilst the property remains in a neglected and unsightly condition, and detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the owner to render the property non-derelict should be taken into account in this instance. For this reason, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time. It is further noted that the Local Authority has powers under Section 11 of the Derelict Sites Act 1990 (as amended) to require the owner to take specified measures to address any outstanding issues contributing to the dereliction of the property, should this be deemed necessary. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the subject property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to render it non-derelict, and that as such, sufficient time should be afforded to conclude these works. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at 66 O' Connell Street, Dungarvan, Co. Waterford.

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. 66 O' Connell Street, Dungarvan, Co. Waterford, covering an area of 0.0352 acres or thereabouts, in the District Electoral Division of Dungarvan – Lismore as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 18th of September 2023 and on the deposit map (Ref. CPA 2023 – 09), 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 further satisfied that the proposed acquisition of these lands was 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 H06 and Objective ECON7, which similarly seek to use the provisions of the Derelict Sites Act 1990 to remove dereliction and vacancy, and address incidents of urban decay and vacancy respectively.
- 8.4. It is further acknowledged that at the time of lodgement of the application with the Board, the acquiring authority had adequately demonstrated that the means chosen to achieve that objective would have impaired the property rights of affected landowners as little as possible, and that the effects of the compulsory acquisition on the rights of affected landowners were proportionate to the objective being perused at the time.
- 8.5. However, having regard to the works undertaken at the subject property, specifically the removal of plaster on the front façade of the subject property, the sanding/preparation of windows, the filling of window lintels, filling of cracks in the front façade and the placing of a metal screen over the door, I am no longer satisfied that this is still the case. In this respect, I have considered alternative means of achieving the objective referred to in the submissions to the Board, and am satisfied that the alternatives are such as to render the means chosen and the compulsory acquisition by the acquiring authority unreasonable and disproportionate.
- 8.6. Having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site, and the progress made on site, I am no longer satisfied that the grant of consent to the compulsory acquisition is justified by the exigencies of the common good at this point in time. I am of the opinion that, noting the works carried out to date, it would be appropriate to allow time to progress matters on site.

9.0 Recommendation

- 9.1. Notwithstanding the current unsightly and objectionable condition of the site which detracts to a material degree from the amenity, character and appearance of the

streetscape and surrounding land in the neighbourhood, taking account of the evidence of the ongoing efforts being made by the Notice Party to address the dereliction on the site and to bring the property back into use, in particular the removal of plaster on the front façade of the subject property, the sanding/preparation of windows, the filling of window lintels, filling of cracks in the front façade and the placing of a metal screen over the door, I do not consider it reasonable that the Local Authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act. I recommend, therefore, that the Board refuses consent to Waterford City and County Council to the compulsory acquisition of the site.

10.0 Reasons and Considerations

Having regard to the current unsightly and objectionable condition of the site, 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 Waterford City and County Development Plan 2022-2028,

it is considered that, having regard to the works undertaken at the subject property, that the compulsory acquisition of the site by the Local Authority is not necessary in order to render the site non-derelict. The Board is not satisfied, therefore, that the objection 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.

Ian Campbell
Planning Inspector

1st July 2024