



An
Bord
Pleanála

Inspector's Report ABP-318570-23

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

No. 24/25 Manor Street, Waterford, County Waterford

Local Authority

Waterford City & County Council

Notice Party

Tom Murphy

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. 24/25 Monor 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 Manor Street in the centre of Waterford City.
- 2.2. The subject property is a three storey, mid-terrace building which previously accommodated a public house/nightclub. Based on the information contained in the objection to the proposed compulsory acquisition the subject property also accommodates a residence. The subject property sits forward of the established building line along Manor Street.
- 2.3. Adjoining properties appear to be occupied and are in reasonable condition.
- 2.4. On the date of my site inspection the property was secure. The front façade of the building is in a poor state of repair and is in need of cleaning and painting. The windows are broken/boarded up and rubbish has accumulated behind a Perspex screen covering one of the ground floor windows. The pilaster on the front of subject property is damaged/flaking. Vegetation is growing out of the front façade of the building above the fascia and around the base of the property.

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 16th 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 5th of September 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 owners/occupiers of the property on the 2nd of October 2023, and was published in the Munster Express newspaper on the 3rd October 2023. The site was described as follows in the notices:

- 24/25 The Manor, Waterford, covering an area of 0.2772 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 2023-11 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. 1 no. objection was submitted to WCCC in respect of the proposed acquisition of the property and can be summarised as follows;

Tom Murphy dated the 27th of October 2023 (received by WCCC on the 30th November 2023) –

- Notes that the property was the subject of a legal dispute, that this has been resolved, and that this is partly why the property has remained vacant.
- The owner intends to seek planning permission for student accommodation and has had a pre-planning meeting with WCCC in this regard (correspondence from architect appointed by property owner referred to however this has not been included with objection). Should a planning application be unsuccessful the intention is to convert the property into apartments under exempted development provisions.
- The objector resides in the property.
- The property has been for rent for the previous number of years.

- When operating as a public house and night club the owner was subject to incidents of antisocial behaviour.
- The owner is open to working with WCCC, and also indicates a willingness to make the property available for refugees.

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 30th 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 owners/occupiers of the site (dated 2nd of October 2023). Proof of postage included in respect of same.
- Copy of the newspaper notice (dated 3rd of October 2023).
- Folio WD14648F.
- Copy of objection made by Tom Murphy (dated 27th of October 2023) and submitted to the Local Authority on the 30th November 2023.
- Acknowledgement of objection to Section 15 Notice sent to Tom Murphy.

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. 24/25 Manor Street.

- The reports sets out the definition of dereliction, as per Derelict Sites Act (1990) 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 subject property comprises a substantial three storey commercial property and is located in an area characterised by residential, commercial, entertainment and holiday/tourist accommodation.
- The property is in a poor state of repair with heavily stained, dirty and flaking paintwork.
- Applicable designations in the Waterford City and County Development Plan 2022 – 2028 include;
 - Waterford City Settlement Boundary;
 - Flood Zone B;
 - Town Core Zone;
 - Existing Residential Zone;
 - Waterford City - DeCarbonising Zone;
- Policy Objectives referred to as being relevant include, Objective ECON 4 (City and Town Centre First Approach); Objective ECON 7, which relates to Active Land Management; Objective H06 relating to the use of powers under the Derelict Sites Act 1990 to prevent dereliction; and Objective Place 01 which

similarly provides for the use of powers under the Derelict Sites Act 1990 to address vacancy and dereliction.

- WCCC attempted to confirm ownership of the property using Land Direct, a Deeds search via Land Direct and also enquires within the WCCC Planning Department. The reputed owner of the property is Murregan Limited/named individuals associated with same.
- 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: 16th of August 2023.
 - Section 8(7) Notice of Entry of Land in Derelict Sites Register: 5th of September 2023.
 - Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily: 2nd of October 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.

4.4. Objector's Submission

- 4.4.1. No objections were received by the Board.

5.0 Planning History

5.1. Subject Property (relevant/recent)

PA. Ref. 10/00056 – Permission GRANTED for (a) change of use of ground floor of No's 22-23 Manor Street to provide for an extension of the extension of the existing

Harvey's Bar; changes to the front elevations of the properties; (b) change of use of ground floor of No's 26-27 Manor Street to provide for a restaurant; changes to the front elevations of the properties; and permission for the construction of associated kitchen, stores, toilets and external yard to the rear of No's 26-27 Manor Street together with all associated site development works.

6.0 Policy Context

6.1. Waterford City and County Development Plan 2022-2028

6.1.1. The majority of the subject property is zoned 'TC' (Town Core)' in the Waterford City and County Development Plan 2022-2028. Part of the subject property is zoned 'RS' (Residential) in the Waterford City and County Development Plan 2022-2028.

6.1.2. 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. 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 (Manor Street and surrounding area). The subject property is located south of the centre of Waterford City. 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 and is in need of cleaning and painting. The windows are broken/boarded up and rubbish has accumulated behind a Perspex screen covering one of the ground floor windows. The pilaster on the front of subject property is damaged/flaking. Vegetation is growing out of the front façade of the building, above the fascia and around the base of the property. 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 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. Having inspected the site I consider that the structure is likely to be in a dangerous condition, in particular I observed that the glass in the upper floor windows were broken and that glass could potentially fall onto the public street.

7.2.2. In addition, based on the condition of the subject property which I observed during my site inspection 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 along a main route into the city centre and is located alongside buildings which are for the most part attractive and well maintained.

7.2.3. The subject property would in my opinion also fall within category (c) of Section 3 of the Act, noting the presence of debris and litter which has accumulated behind the Perspex screen to the front of the subject property.

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 since 2017. Having established the identity of the owners of the property WCCC served a Section 8(2) Notice on the 16th of August 2023. The property was then added to the Derelict Sites Register on the 5th of September 2023 with Section 8(7) Notices served on the owners of the property. Section 15 Notices were subsequently served by WCCC on the 2nd of October 2023. One of the property owners 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, issuing Section 8(2) and 8(7) Notices. I note that correspondence was not received from the property owners in respect of the Section 8(2) or 8(7) Notices. The objection submitted in respect of the Section 15 Notice issued by WCCC refers to the lodgement of a planning application which would address the condition of the subject property. This objection is dated 27th of October 2023 however from reviewing WCCC’s planning portal I note that to date no planning application has been lodged. Reference is also made in the objection to works being undertaken as exempted development however based on my observations at the time of my site inspection (3rd of May 2024) there was no evidence of works being undertaken.
- 7.3.3. It is clear that WCCC have attempted to address the issue of dereliction at the property with the owner 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, Objective H06 which similarly seeks to utilise the Derelict Sites Act 1990 to remove dereliction and vacancy, and Objective ECON 7 which seeks to address urban decay and vacancy. The property would appear to be in a derelict state for approximately 7 years, and from reviewing the Streetview function on Google Maps the condition of the property appears to have deteriorated in the intervening period. 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, the objection submitted in respect of the Section 15 Notice refers to the owner's intention to lodge a planning application which would address the condition of the subject property but to date no planning application has been submitted to WCCC. 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. I also note the potentially dangerous condition of the property and its location in a busy and heavily trafficked part of the city where the risk to members of the public is considerable should debris from the property fall onto the street. I note that owners 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 10 months since Section 8 Notices were served, and 8 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.

7.5.2. 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. 24/25 Manor 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. 24/25 Manor 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 2nd of October 2023 and on the deposit map (Ref. CPA 2023 -11), 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(s) 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 Waterford City and County Development Plan 2022-2028, and specifically Objective Place 01. Objective H06 and Objective ECON 7, 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. Accordingly, I am satisfied that 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 ruinous, derelict and dangerous condition of the structure, the neglected, unsightly and objectionable state of the land and the structure thereon, and to the presence of litter, rubbish, debris and waste on the land, 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 ruinous, derelict and dangerous condition of the structure, the neglected, unsightly and objectionable state of the land and structure thereon, and to the presence of litter, rubbish, debris and waste on the land, 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 (a), (b) and (c) 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.

Ian Campbell
Planning Inspector

20th June 2024