



An
Bord
Pleanála

Inspector's Report ABP-318579-23

Nature of Application

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

Location

Lower Knockane Road, Newcastle
West, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Alex Crumlish

Date of Site Inspection

3rd April 2024

Inspector

Gary Farrelly

1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Lower Knockane Road, Newcastle West, County Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

2.0 Site Location and Description

- 2.1. The town of Newcastle West is located approximately 45km southwest of Limerick City. The population of the town was 6,619 persons in 2016. The subject site has a stated area of 0.120 hectares and is located off the Lower Knockane Road, approximately 50 metres south of the junction with the N-21 National Road.
- 2.2. The subject site comprises of a single storey/dormer end-of-terrace property with lands to the rear. These lands are accessed of an existing access off the Lower Knockane Road. The site is bounded to the south and east by a number of residential properties on Lower Knockane Road, to the west by the residential estate 'Lilac Close' and to the north by a yard area.
- 2.3. My observations on the date of my site inspection included the following:
- The structure had missing, loose and broken roof slates.
 - The chimney comprised of loose masonry and peeling paint.
 - The walls of the structure appeared to have been recently painted and new windows and front door have been installed.

3.0 Legislative Context

Derelict Sites Act 1990, as amended

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.

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.”

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.

Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.

Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.

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.

Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.

Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

Planning and Development Act 2000, as amended

Planning and Development Regulations 2001, as amended

4.0 Application for Consent for Acquisition

Limerick City and County Council has applied to An Bord Pleanála for consent to compulsorily acquire the site under Sections 14 and 16 of the Derelict Sites Act 1990, as amended. This application is subsequent to the serving of notices under Section 8(2) on 31st January 2023 (advising of the Local Authority's intention to enter the site on the Register of derelict sites) and under Section 8(7) on 22nd March 2023 (advising of the Local Authority's decision to enter the site on the Register of derelict sites).

5.0 Application and Objection

5.1. Notice of Intention to Acquire

Notice of Limerick City and County Council's intention to acquire the site was served on the owner Alex Crumlish of 3 Knockane Road, Newcastle West, in a letter dated 4th October 2023 and was published in the Limerick Post newspaper on 7th October 2023. The site was described as follows in the notices:

- A derelict site comprising one storey and a half residence and surrounding land situate at Lower Knockane Road, Newcastle West, Co. Limerick, containing 0.120 hectares or thereabouts. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-192-22 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

I am satisfied that the notices were in accordance with the requirements of Section 15(1)(a) and (b) of the Derelict Sites Act 1990, as amended.

5.2. Objection to Acquisition

An objection to the proposed compulsorily acquisition was submitted to Limerick City and County Council by Alex Crumlish (C/o John Barrett Architectural Consultant) and

was received by the Local Authority on 14th November 2023. The objection can be summarised as follows:

- The work of painting the premises is completed and the new front door and windows order has been placed.
- The owner is continuing to refurbish the building and the grant application (vacant property refurbishment grant) is being processed.
- A receipt is provided from J.B. Window and Doors for works to 3 no. windows and 2 no. doors.

5.3. Local Authority's Application for Consent

The Local Authority requests the consent of the Board to the compulsorily 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 (i.e. Derelict Site report) which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection. The report included photographs and a map of the site area.
- Copy of the section 15 Notice served on the owners/occupiers of the site, dated 29th September 2023.
- Copy of the newspaper notice, dated 7th October 2023.
- Copy of objection made by Alex Crumlish (C/o John Barrett Architectural Consultant).

The derelict site report can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.

- The property and surrounding land is vacant and in a derelict condition for a considerable period. The site detracts from the amenity, character and appearance of the well-maintained properties in the area and is deemed derelict due to ruinous building, holes in roof, loose and slipped slates, missing/broken/leaking rainwater gutters or downpipes, loose masonry or falling plaster, broken/missing or boarded up windows, dirty façade/peeling paint, site at rear in neglected condition and unsightly boundaries.
- The property was previously subject to a 2018 derelict sites case (ref. DS-028-18) for which the owner completed sufficient remedial works to deal with the dereliction and the case was closed.
- The council first inspected the property on 6th December 2022 and identified it as a derelict site. A section 8(2) notice was served on the owner and affixed to the site on 31st January 2023. The owner contacted the Council on 2nd February 2023 asking what needed to be done and the owners consultant wrote to the Council on 22nd February 2023 applying for a pre-planning meeting for the site.
- A section 8(7) notice was affixed to the site and sent to the owner on 22nd March 2023. On 24th March 2023, the owner's consultant wrote to the Council stating that he was preparing drawings for the development of the site and there was no further communication from the owner or his agent and there is no evidence of a planning application being lodged with the Council in relation to the development of the site.
- As the land continued to be a derelict state, the Council gave its notice of intention to acquire derelict site compulsorily to the owner and advertised in the Limerick Post newspaper on 7th October 2023. An objection was received by the owner on 13th November 2023. The letter from the owner's consultant conceded that the objection was submitted outside the statutory period for same.
- The owner does not attempt to identify measures to address wider safety issues at the site (slates falling onto the public road) nor does he propose measures to address the derelict nature of the land at the rear of the site. Having already been the subject of an earlier derelict sites case, what is proposed again is a

superficial tidy up of a site that will continue in a non-productive cycle of vacancy and dereliction.

- The adjoining neighbours to this derelict site and the rest of the local community live with and endure the ongoing neglect, decay and unsightly nature of this property which detracts from their own well-kept residences and impacts on the enjoyment of their locality of which they are most proud.
- The property continues to deteriorate and attract negative attention in a key area of Newcastle West. This case demonstrates a failure of duty on behalf of the property owner to remove this property from dereliction leaving to the only option available to acquire this property compulsorily.

5.4. Objector's Submission

The objector did not make a submission to the Board.

6.0 Relevant Planning History

Subject Site: PA ref. 24/98

Outline Permission has been sought by Alex Crumlish for the construction of 2 no. detached two storey houses, screen wall behind existing house at 3 Knockane, entrance and all associated site works. The plans indicate a 40sqm extension to the rear of No. 3 – Decision is due on 14th May 2024.

Subject Site: PA ref. 05/3527

Permission was refused to Eamon MacAuliffe to demolish existing derelict two storey house and construct 8 no. apartments (Refused on 14/02/2006).

7.0 Relevant Property History

Derelict Site PA ref. DS-028—18

It is stated in the Local Authority's report that the property was subject of an earlier 2018 derelict sites case for which the owner completed sufficient remedial works to deal with the dereliction and the case was closed.

8.0 Policy Context

Limerick Development Plan 2022-2028

Objective CGR 04 Active Land Management

It is an objective of the Council to:

- b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

Objective CGR 06 Derelict Sites

It is an objective of the Council to utilise the provisions of the Derelict Sites Act 1990, including the maintenance of a Derelict Site Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse.

Policy CGR P4 Revitalisation of Towns and Villages

It is the policy of the Council to:

- a) Actively address issues of vacancy and dereliction in settlements across Limerick.

Newcastle West Local Area Plan 2023-2029

The subject site is zoned 'Existing Residential' where the objective is to provide for residential development, protect and improve existing residential amenity.

Policy TCFP3: Vacancy

It is policy of the Council to:

- (a) Promote and facilitate the re-use of under-utilised or vacant lands/buildings in Newcastle West through the active land management mechanisms, under the Derelict Sites Act, 1990 (as amended), Residential Zoned Land Tax and also guided by key Government policies, such as Town Centre First, Our Rural Future, and Housing for All and any replacements thereof. The Council will engage with property owners to advise on remedial measures and give guidance on schemes and supports available to bring vacant and derelict buildings back into productive use.

9.0 Assessment

Site Inspection

- 9.1. Internal access to the property was not possible on the date of my site inspection on 3rd April 2024, however, I was able to view the site from the public road. I noted that the structure had missing, loose and broken roof slates which could be considered dangerous as the property fronts the public footpath, there was peeling paint on the chimney and the lands to the rear have been cleared. I noted that new windows and doors were installed on the property and the external walls were repainted since the local authority's photographs in October 2023.
- 9.2. I also noted a number of residential properties within close proximity to the site which are well maintained and are in good condition.

Category of Dereliction

- 9.3. I note that the local authority considered that the property and lands fell under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended.
- 9.4. Based on my site inspection and having regard to paragraph 9.1 above, it is my view that the subject structure and lands fall under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended:
- (a) The structure on site is in a derelict and dangerous condition.
 - (b) The lands and structure are in a neglected, unsightly and objectionable condition.
- 9.5. Having regard to the above, it is my view that the structure and lands are detracting to a material degree from the amenity, character and appearance of land in the neighbourhood of the land in question.

Actions of Local Authority

- 9.6. I note that the local authority state that they first inspected the site on 6th December 2022. Site ownership enquiries were made through the Land Registry system and planning and development searches were carried out which noted that the property was subject to a previous 2018 derelict sites case (ref. DS-028-18) in which the owner completed sufficient remedial works to deal with the dereliction and the case was closed.

- 9.7. A Section 8(2) notice was served on the owner and affixed to the site on 31st January 2023. On 2nd February 2023, the owner contacted the local authority to seek guidance on what works were required and was invited to make written representation to set out his plans. On 22nd February 2023 the owner's architect contacted the local authority stating that he was applying for a pre planning meeting.
- 9.8. On 22nd March 2023, a Section 8(7) notice was served on the town and affixed to the site. On 24th March 2023, the owner's architect stated that he was preparing drawings for the development of the site.
- 9.9. The local authority stated that no further communication was received and there was no evidence of a planning application being lodged. As the land continued to be in a derelict state, the local authority has stated that the only option available in order to remove this property from dereliction is to acquire the site compulsorily and this was served on the owner and published in the Limerick Post newspaper on 7th October 2023.
- 9.10. Having regard to the above, I am satisfied that the local authority complied with the requirements of Section 6, Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended. I am also satisfied that the local authority gave the owner sufficient time and opportunity to address the dereliction. I also note the previous derelict site case from 2018 (ref. DS-028-18). Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable and in accordance with the legislation.

Compliance with development plan policy

- 9.11. I note that the Limerick Development Plan 2022-2028, specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06, seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse. Furthermore, Policy TCFP3 of the Newcastle West Local Area Plan 2023-2029 seeks to promote and facilitate the reuse of under-utilised or vacant lands/buildings in Newcastle West through the active land management mechanisms including under the Derelict Sites Act 1990, as amended.

- 9.12. Therefore, I consider that the subject property and a compulsorily purchase order (CPO) 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.

Actions of the Owner to address dereliction

- 9.13. This property was previously subject to a derelict site notice by the local authority under ref. DS-028-18. The owner completed sufficient remedial works to deal with the dereliction and the case was closed in 2018. I note the Section 8(2) notice was served approximately 15 months ago.
- 9.14. I noted on the date of my site inspection that the property has been repainted since the local authority's photographs on file taken in October 2023. The lands to the rear of the site have been cleared. Additionally, I noted that a new front door and windows were installed on the property. Furthermore, I note that an outline planning application has been lodged by the owner on the subject site (Ref. 24/98). This was lodged on 20th March 2024 and is due for a decision on 14th May 2024. The application is for outline permission to construct 2 houses to the rear of the site. The application includes a site location map and site layout plan and I note no plans or elevations of the proposed or existing dwelling were provided as part of the application. The site layout plan indicates a proposed 40sqm rear extension to the existing dwelling.
- 9.15. Having regard to the nature of the planning application, i.e. outline, it is my view that this does not sufficiently demonstrate a commitment to address the dereliction on site in a timely manner. Whilst I note that the owner has recently repainted the house and installed new windows and doors, I have significant concerns with regards to the condition of the roof in particular and the potential safety hazard for slates falling onto the public footpath.
- 9.16. Having regard to the fact that this property was previously on the derelict sites register, to the length of time that the property has been derelict and vacant and to the absence of any detailed plans regarding the existing property onsite, I cannot conclude that the dereliction will be addressed soon. If planning permission is granted for the outline permission, the property could still remain derelict for the following years.

10.0 Conclusion

- 10.1. I am satisfied that the process and procedures undertaken by Limerick 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.
- 10.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a one storey and a half residence and surrounding land situate at Lower Knockane Road, Newcastle West, Co. Limerick, containing 0.120 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict Sites Act 1990, as amended, and dated 29th day of September 2023 and on the deposited maps (DS-192-22), pursues, and was rationally connected to, a legitimate objective in the public interest, namely, to ensure that the lands do not continue to be in a derelict condition.
- 10.3. 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 the submissions to the Board, and I am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 10.4. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be consistent with the policies and objectives of the Limerick Development Plan 2022-2028, and specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06 which seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse. Furthermore, Policy TCFP3 of the Newcastle West Local Area Plan 2023-2029 seeks to promote and facilitate the reuse of under-utilised or vacant lands/buildings in Newcastle West through the active land management mechanisms including under the Derelict Sites Act 1990, as amended. Accordingly, I am satisfied that the confirmation of the CPO is clearly justified by the exigencies of the common good.

11.0 Recommendation

Having regard to the observed condition of the application site, in particular the derelict and dangerous condition of the structure onsite and to 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. I consider it reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act. I recommend, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

12.0 Reasons and Considerations

Having regard to the derelict and dangerous condition of the structure onsite and to the neglected, unsightly and objectionable condition of the lands and structure, to the missing, loose and broken roof slates, to the peeling paint on the chimney, 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 3(b) of the Derelict Sites Act, 1990, as amended. 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 objection made 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.

Gary Farrelly
Planning Inspector

7th May 2024