



An
Bord
Pleanála

Inspector's Report ABP-318581-23

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

South Mall, Glin, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Mary Morrissey & Ellen Bourke (c/o
Michael B O'Donnell Solicitors)

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 South Mall, Glin, County Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

2.0 Site Location and Description

- 2.1. The subject site is located within the village of Glin, County Limerick, which is located approximately 6km east of Tarbert, County Kerry, and approximately 14km west of Foynes, County Limerick. A single storey dwelling occupies the site and the site is bounded by the regional road R-524 to the west.
- 2.2. The site represents a prominent location being located directly off the regional road and public footpath. This area of the village is primarily characterised by residential dwellings which I noted were all in good condition and well maintained. St. Fergus National School is located opposite the site. My observations of the subject site on the date of the inspection included the following:
- The property was vacant.
 - The site was substantially overgrown with vegetation within the rear garden, with substantial vegetation on the gable, roof, chimney stacks and path to the front of the property.
 - There was an absence of fascia boards and rainwater goods on the structure.
 - There were broken and missing slates on the roof.
 - There was an unpainted and dirty façade to the structure.

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 the Board for consent to compulsorily acquire the property 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) on 21st October 2022 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 7th December 2022 (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 Michael B O'Donnell Solicitors (the legal representatives in the estate of Michael Meade, on behalf of Mary Morrissey and Ellen Bourke), 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 a detached single storey residence and surrounding land situate at South Mall, Glin, Co. Limerick, containing 0.053 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-139-22 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 Michael B O'Donnell Solicitors (on behalf of their client Mary Morrissey and Ellen Bourke) in a letter dated 3rd November 2023. The objection can be summarised as follows:

- They act on behalf of Mary Morrissey and Ellen Bourke, the legal personal representatives in the estate of Michael Meade who died on 11th June 2004.
- Ellen Bourke (sister of Michael Meade) instructed BM Cahill Solicitors to extract Grant of Letters of Administration Interstate in the estate of Michael Meade and thereafter sell the property.
- Many difficulties were encountered in both extracting the Grant and also regularising the title to the property. In relation to the estate there are several beneficiaries and difficulties arose in making contact with the beneficiaries to obtain the relevant information from them to extract the Grant.
- With regards to the title of the property, the property is a registry of deeds title and Michael Meade is not the registered owner. Over a period of 20 years BM Cahill worked on the various issues but to no avail.
- Given the lack of progress the file was transferred to Michael B O'Donnell Solicitors with a view to extracting the Grant and regularising the title. They confirm they have made progress in this regard and are almost in a position to lodge the paperwork with the Probate Office to extract the Grant. Once the Grant is in hand, they will be in a position to regularise the title.
- Upon receipt of the local authority's initial letter, their clients who are both quite elderly, appointed Stephen O'Leary (grandson of Mary Morrissey) to liaise with the local authority on their behalf. They requested that he try and establish a list of works required to bring the property off the derelict state.
- It is understood that meaningful discussions in terms of the works required have commenced, however, a difficulty arises as that access to the inside of the property is an issue. It is assumed that a full inspection of the property is required before the actual state of the whole property can be determined with a view to establishing the works required. It is considered that the Section 15

notice is premature and unnecessary as they are doing everything within their power to deal with this issue as quickly as possible.

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 Michael B O'Donnell Solicitors.

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 property in the area. Some indicators of the dereliction that applies to the site include; ruinous building elements at rear, 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 at rear, dirty façade, ivy growing out of and all over roof, accumulation of litter and on side and rear of the property, site overgrown with vegetation and

unsightly boundaries including damage to neighbouring property from vegetation growth.

- The title to this property is not registered on the land direct system.
- The local authority first inspected the property on 12th August 2022 and was identified as a derelict site. Site ownership enquiries were made through the land registry system and planning and development searches were subsequently carried out.
- Following a site inspection on 11th August 2022, a Section 8(2) notice was served and affixed to the site on 21st October 2022.
- Following a site inspection on 18th November 2022, a Section 8(7) notice was served and affixed to the site on 7th December 2022.
- The local authority received further correspondence on 9th January 2023 with some evidence of title relating to a Peter Meade, an earlier owner of the property. It was stated that Mary Morrissey's grandson was willing to carry out repairs to the property.
- On 30th June 2023, the local authority received an email from a concerned member of the public and neighbour highlighting several concerns with the property, namely the slanting walls, heavy plaster falling off the walls, falling slates and the excessive vegetation growth around the site.
- On 5th July 2023, the local authority wrote to the solicitor representing Mary Morrissey enquiring about the status of the property and invited a written plan of remedial works to be submitted. On 14th July 2023, a local authority official received a phone call from Stephen O'Leary (grandson of Mary Morrissey), about the non-productive use of the property and referenced the legal issues being a challenge to remedy the dereliction.
- On 21st July 2023, Mary Morrissey's solicitor wrote to the local authority stating that Stephen O'Leary was willing to carry out repairs on the property. The local authority sought an appropriate form of authority to appoint an agent/attorney so that the local authority could engage with on behalf of the owner.

- As the land continued to be in a derelict state, the local authority gave its notice of intention to acquire the site compulsorily to the owner and advertised same in the Limerick Post newspaper on 7th October 2023. On 3rd November 2023 the owner submitted an objection.
- 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. It detracts from their own well-kept residences and impacts on the enjoyment of their locality of which they are most proud. Visitors to the area for key amenities such as the Knight's Walk and Glin Castle Estate will witness the neglect and dereliction whilst trying to enjoy leisure and recreation pursuits. It is the contention of the council that the inaction of the property owners and failures of their duties under the Derelict Sites Act that jeopardises the future use of properties in the area due to their continued neglected and derelict state. In this case, the property continues to deteriorate and attract negative attention in a key area of Glin. The only option available to the council is to acquire this property compulsorily.

Objector's Submission to the Board

An objection to the proposed compulsorily acquisition was lodged to the Board by Michael B O'Donnell Solicitors on 20th December 2023 seeking an extension of time until the end of January to respond. The Board advised that this was not possible in accordance with legislation. Michael B O'Donnell submitted a further response on 3rd January 2024. The objection included a response from Chris Casey Engineer who stated that he was the engineer retained by Mary Morrissey and Ellen Bourke to complete a planning application on their behalf. He states that the development consists of the renovation of the existing dwelling to include a new roof, the construction of a rear extension and all ancillary site works, and states that the design is well underway with the aim to submit an application in the coming weeks.

6.0 Relevant Planning History

There are no planning applications associated with the site, according to the local authority's planning register.

7.0 Policy Context

Limerick Development Plan 2022-2028

Glin Settlement

The site is located within the Glin Architectural Conservation Area (ACA). The subject site is zoned 'Existing Residential'.

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.

Objective EH O53 Architectural Conservation Areas

It is an objective of the Council to:

- a) Protect the character and special interest of an area, which has been designated as an Architectural Conservation Area (ACA) as set out in Volume 3.

8.0 Assessment

Site Inspection

- 8.1. 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 property was vacant and had a substantial amount of vegetation on the gable, roof, chimney stacks and path to the front. There was an absence of fascia boards and rainwater goods on the property and there were broken and missing slates on the roof. The property was unpainted comprising of plaster, and the façade of the structure was in a dirty state. Furthermore, I noted from the side gate that the site was substantially overgrown with vegetation within the rear garden. I noted that no works have taken place since the local authority commenced this process.
- 8.2. I noted that the site is located in a prominent location being located off the regional road and within the Glin Architectural Conservation Area (ACA). I also noted that the site was located in an elevated part of the village with extensive views out to the River Shannon to the north. There are a number of residential properties within close proximity to the site which are well maintained and are in good condition and a national school is located opposite the site.

Category of Dereliction

- 8.3. I note that the local authority considered that the property and lands fell under Categories (b) and (c) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.4. Based on my site inspection and having regard to paragraph 8.1 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 is in a derelict condition.
 - (b) The lands and structure are in a neglected, unsightly, and objectionable condition.
- 8.5. I noted no litter, rubbish, debris or waste within the grounds of the site. I consider, therefore, that the site does not fall under Category (c) of Section 3 of the Derelict Sites Act 1990, as amended. Having regard to categories (a) and (b) above, it is my view that the condition of the structure and lands are adversely affecting the character

and special interest of the ACA and 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

- 8.6. I note that the local authority state that they first inspected the site on 11th/12th August 2022. A Section 8(2) notice was affixed to the site on 21st October 2022.
- 8.7. Following a further site inspection on 18th November 2022, a Section 8(7) notice was affixed to the site on 7th December 2022.
- 8.8. The local authority received correspondence from the notice party on 21st December 2022 outlining the issues with transfer of ownership. After receiving correspondence from a concerned member of the public, the local authority wrote to the Notice Party on 5th July 2023 seeking an update on a written plan for remedial works. A phone call between a council official and the grandson of the Notice Party on 14th July 2023 took place. On 21st July 2023, the Notice Party's solicitor wrote to the local authority stating that repairs were willing to be carried out.
- 8.9. However, 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 Notice Party's solicitor and published in the Limerick Post newspaper on 7th October 2023.
- 8.10. 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 note that the Section 8(2) notice was served approximately 18 months ago. I am satisfied that the local authority has given sufficient time and opportunity to address the dereliction. 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

- 8.11. 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, Objective EH O53 seeks to protect the character and special interest of the architectural conservation area (ACA), which in my view the current dereliction is undermining.

- 8.12. 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

- 8.13. I note the response from Michael B O'Donnell Solicitors which outlines the various difficulties regarding transfer of title from the previous owner, now deceased. I note that they acknowledge that there has been a lack of progress, however, they confirm that the file has been transferred to them and they are making progress to extract the Grant and regularise the title. Notwithstanding this, it is stated that the owner's grandson has been appointed to bring the property out of dereliction. Internal access to the property is outlined as a difficulty.
- 8.14. In their most recent submission to the Board, a letter from the notice party's engineer is attached outlining that he has been retained to complete a planning application for the subject property. It is stated that the design is well underway and an application will be submitted in the coming weeks. I note that this letter is dated 2nd January 2024.
- 8.15. Having searched the local authority's planning register as of 7th May 2024, I note that there is no planning application associated with the subject site.
- 8.16. Whilst I acknowledge the legal issues associated with the site, I note that the subject site has been in a derelict state since at least July 2009 (as viewed on Google Street view), following the owner's death in 2004. The Section 8(2) notice was first served approximately 18 months ago.
- 8.17. Having inspected the site, I note that no efforts have been made to address the dereliction, particularly in relation to the substantial vegetation that dominates the site, structure and roof. Having regard to this, to the length of time that the property has been vacant and derelict, to the absence of any substantive plan to address said dereliction and to the absence of any planning application to date, which the Notice Party's engineer committed to submitting 'in the coming weeks' on 2nd January 2024, I cannot conclude that the dereliction will be addressed soon.

9.0 Conclusion

- 9.1. 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.
- 9.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a detached single storey residence and surrounding land situate at South Mall, Glin, Co. Limerick, containing 0.053 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-139-22), 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.
- 9.3. 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.
- 9.4. 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, Objective EH O53 seeks to protect the character and special interest of the architectural conservation area (ACA), which in my view is undermined by the current derelict state of the site. Accordingly, I am satisfied that the confirmation of the CPO is clearly justified by the exigencies of the common good.

10.0 Recommendation

Having regard to the observed condition of the application site, in particular the derelict condition of the structure onsite and 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 that 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.

11.0 Reasons and Considerations

Having regard to the derelict condition of the structure onsite and to the neglected, unsightly and objectionable condition of the land and structure thereon, to the rear garden being substantially overgrown with vegetation, to the presence of substantial vegetation on the structure, roof and path to the front of the property, to the absence of rainwater goods and fascia boards on the structure, to the missing and broken slates on the roof and to the unpainted and dirty façade, 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) 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