



An
Bord
Pleanála

Inspector's Report ABP-318584-23

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

Ballyvogue, Askeaton, Co. Limerick

Local Authority

Limerick City and County Council

Notice Party

Claire Toomey

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 Ballyvogue, Askeaton, 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 a rural area, within the townland of Ballyvogue, County Limerick, which is located approximately 4km east of the town of Askeaton. A single storey vacant dwelling occupies the site and the site is bounded by the national road N-69 to the north. The site is located within the 100kph zone.
- 2.2. The site represents a prominent location being located directly off the national road. My observations of the site on the date of the inspection included the following:
- A damaged roof with broken and missing slates.
 - A site substantially overgrown with vegetation with vegetation on the structure.
 - A partially demolished and ruinous building to the side of the structure.
 - Rusted gates and unsightly boundaries dominated by vegetation.
 - A dirty façade.

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

- 4.1. Limerick City and County Council 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) on 20th 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 on 5th October 2023 (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 cottage and surrounding land situate at Ballyvogue, Askeaton, Co. Limerick, containing 0.465 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-027-17 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 Claire Toomey in a letter dated 8th November 2023. The objection can be summarised as follows:

- She has made arrangements with consulting engineers MK Surveying and Design to work out what can be done with the property, while maintaining the

original cottage. Once plans are finalised they will be forwarded to the council for consideration.

- She also states that due to a complication following her deceased husband's will, the property was finally transferred to her only 1 week before she was contacted by the local authority to rectify the situation. She was therefore unable to do anything with it until now.
- She also states that as a widow with MS, she finds the situation extremely stressful. The cottage has been in her husband's family for at least five generations and she states that it would break her heart if it was lost.

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 Claire Toomey dated 8th November 2023.

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 cottage 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 farm land in the area. Some indicators of the dereliction that applies to the site include; partially demolished/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 or doors, dirty façade, site overgrown with vegetation and unsightly boundaries.
- The title to this property is comprised in Folio LK5407F and the registered owner is Claire Toomey of Kilcornan, Pallaskenry, Co. Limerick.
- The local authority first inspected the property on 11th January 2017 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 7th December 2022, a Section 8(2) notice was served on 20th January 2023. Phone contact was made by the owner, Claire Toomey, in January 2023 and she followed up with written correspondence on 14th February 2023 to express her intentions to bring the property out of dereliction. The local authority acknowledged this letter and advised of grants available to renovate the property.
- Following a site inspection on 24th February 2023, a Section 8(7) notice was served on 22nd March 2023. Further correspondence with the owner was had, followed by a letter from her on 10th August 2023 where she expressed an interest in selling the property to the council at an agreed price, having tried on a number of occasions to restore the cottage herself.
- The local authority determined that there was not a social housing interest matching this property and they informed the owner on 12th September 2023 confirming the lack of need and demand. 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 8th November 2023 the owner submitted an objection by email.

- 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 and passersby on the busy N69 road will not be able to avoid the sight of this neglected, derelict site. 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 Kilcornan. The only option available to the council is to acquire this property compulsorily.

Objector's Submission to the Board

The objector submitted a response, stating that they would have hope to have renovation plans of the cottage by today (i.e. 3rd January 2024) but now not until the end of the month. A letter from their design consultant is provided stating that Claire Toomey has engaged their services to produce drawings.

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

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.

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. The condition of the site at the time of my site inspection was that the structure was vacant. I noted that the site was significantly overgrown with vegetation with vegetation on the structure, there was a damaged roof with broken and missing slates, a partially demolished and ruinous building to the side of the structure, rusted gates and unsightly boundaries dominated by vegetation and a dirty façade.
- 8.2. I noted that the site is located in a prominent location being located off the national road. There are a number of residential properties within close proximity to the site which are well maintained and are in good condition.

Category of Dereliction

- 8.3. 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.
- 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 ruinous and derelict condition,
 - (b) The lands and structure are in a neglected, unsightly and objectionable condition.
- 8.5. I noted no 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 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

- 8.6. I note that the local authority state that they first inspected the site on 11th January 2017. A Section 8(2) notice was served on 20th January 2023. I note that the notice party/owner wrote to the council on 14th February 2023.
- 8.7. Following a further site inspection on 24th February 2023, a Section 8(7) notice was served on 22nd March 2023. Further oral contact and written correspondence was received from the owner on 10th August 2023 where she expressed an interest in selling the property to the local authority.
- 8.8. The local authority responded to the owner on 12th September 2023 stating that there was a lack of need and demand for social housing matching this property.
- 8.9. 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 (notice party) on 5th October 2023 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 15 months ago. I am also satisfied that the local authority gave the owner 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 Objectives CGR 04(b) and CGR 06, seeks to address instances of dereliction and decay in the rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.
- 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 that within the owner's objection she states that she has engaged with consulting engineers MK Surveying and Design to prepare renovation plans of the cottage. I note that in her submission to the Board she was hoping for them to be completed by 3rd January 2024, however this was not the case. I note that the Section 8(2) notice was served approximately 15 months ago.
- 8.14. Having searched the local authority's GIS planning register, I note that there is no planning application for the subject site. In my view the owner has not sufficiently demonstrated that the dereliction will be addressed on site in a timely manner and, having inspected the site, I note that no further attempt to render the site non-derelict has been made and the property remains in a neglected and unsightly condition.

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 cottage and surrounding land situate at Ballyvogue, Askeaton, Co. Limerick, containing 0.465 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-027-17), 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 Objectives CGR 04(b) and CGR 06 which seeks to address instances of dereliction and decay in the rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse. 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 existence of structures which are in a derelict and ruinous condition 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.

11.0 Reasons and Considerations

Having regard to the existence of structures on the land which are in a derelict and ruinous condition and to the neglected, unsightly and objectionable condition of the site, to the damaged roof with broken and missing slates, to the site being substantially overgrown with vegetation with vegetation on the structure, to the rusted gates and unsightly boundaries dominated by vegetation 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 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