



An
Bord
Pleanála

Inspector's Report ABP-318587-23

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

Bramble Cottage, Water Street,
Bruree, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Margaret McNamara

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 Water Street, Bruree, 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 Bruree and fronts Water Street (the regional road R-518). Bruree is located in south county Limerick and approximately 34km south of Limerick city. The site comprises of a vacant single storey semi-detached dwelling with a rear garden. The site is located to the western side of the village which is primarily characterised by residential dwellings.
- 2.2. The site represents a prominent location being located directly off the regional road. My observations of the site on the date of the inspection included the following;
- The structure comprised of boarded up windows and front door.
 - The ridge of the roof was damaged and appears structurally unsound.
 - There were damaged rainwater goods on the structure.
 - There was vegetation on the roof and the rear garden was overgrown with vegetation.
 - The structure comprised of 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 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 30th November 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 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 single storey, semi-detached residence and surrounding land situate at Bramble Cottage, Water Street, Bruree, Co. Limerick, containing 0.012 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-149-22 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

I note from the photograph provided that the notice was affixed to the property on 5th October 2023 and served to Margaret McNamara of 1 Island View Terrace, Corbally, Co. Limerick in a letter dated 4th October 2023. 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 Margaret McNamara in a letter dated 16th October 2023, and was received by the Local Authority on 23rd October 2023. The objection can be summarised as follows:

- She states that she has been communicating with Limerick City and County Council over the past months.
- At the time of purchase an error occurred which resulted in her not being registered as the legal owner. All previous notices were named with John Sheehan as the owner. When she was made aware of the error she contacted her solicitor. On 5th October 2023 she received a letter from her solicitor informing her that the registration was resolved and she was now the registered owner of the property.
- She states that it is her intention to apply for the derelict house grant to renovate the cottage and rent it out. She has been unable to apply for the grant until now as she was not the registered owner of the cottage. In the last months she has cleared the cottage preparing for the engineer's report which she states she needs for the grant.
- She states that she would appreciate the council's help in releasing her from the proposed compulsory acquisition so she can work towards renovating the cottage and getting it removed from the derelict site register.

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 Margaret McNamara dated 16th October 2023 (received by the Council on 23rd October 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 single storey semi-detached residence with surrounding land is vacant and in a derelict condition for a considerable period. The site detracts from the amenity, character and appearance of other well-maintained property in the area. Some indicators of dereliction as applies to the site include; the roof structure looks structurally unsound with the roof ridge board sagging, missing/broken/leaking rainwater gutters or downpipes, broken/missing or boarded up windows or doors, dirty façade/peeling paint, plants growing out of masonry or roof, unsecured entrances, trespass or squatters, rotten timber, site is severely overgrown with vegetation at the rear of the property and unsightly boundaries with front door and windows consisting of timber panelling.
- The title of this property is comprised in Folio 47439F and the registered owner is Margaret McNamara who was registered on the folio on 3rd August 2023. Since 31 October 2003 the registered owner on the folio was John Sheehan. There is a judgement on the folio by the Governor and Company of the Bank of Ireland against John Sheehan on 15th April 2015. There is also a judgement registered on the folio in the name of Michael Gladney, Revenue Commissioners against John Sheehan on 4th April 2022.
- The council first inspected the property on 5th October 2022 and identified it as a derelict site. Site ownership enquiries were made through the land registry and planning and development searches were subsequently carried out. A

section 8(2) notice was sent to the registered owner and affixed on the building on 21st October 2022.

- On 24th October 2022 Margaret McNamara wrote to the council claiming that she was currently paying a mortgage on the said property and was not in a financial position to carry out remedial measures. She stated that she would be interested in selling the property to the council.
- On 14th November 2022, the council wrote to Margaret McNamara requesting her to forward proof of ownership.
- Following a further inspection on 23rd November 2022, a Section 8(7) notice was sent to the registered owner, charge holder, revenue commissioners and affixed to the face of the building on 30th November 2022.
- On 28th December 2022, Margaret McNamara wrote to the council seeking an update on the case and on 4th January 2023 the council replied again requesting her to forward proof of ownership.
- On 8th February 2023, a letter was received from Margaret McNamara asking the council to update the file with her address being the owner of the property. She stated that she did not know John Sheehan and again offered the property for sale to the council.
- On 28th February 2023, a council official had a phone call with Margaret McNamara to discuss the case. She stated that she had bought the property a number of years ago and is paying a mortgage on it. The council official stated that they required confirmation of ownership. She confirmed that she would contact her solicitor that dealt with the purchase.
- On 12th June 2023, the council received a phone call from Margaret McNamara stating that her solicitor had not registered the title for the property in her name and misplaced the relevant documents. A new folio for the property was downloaded by the council on 18th September 2023 and the registered owner was updated to Margaret McNamara of 1 Island View Terrace, Corbally, Co. Limerick, since 3rd August 2023.
- As the land continued to be a derelict state, the council exercised its power of compulsory acquisition and gave its notice of intention to acquire the site to the

owner and advertised same in the Limerick Post newspaper on 7th October 2023.

- On 11th October 2023 a letter objecting to the proposed acquisition was received from Margaret McNamara and was duly acknowledged.
- 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. 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 Bruree. 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 Margaret McNamara on 1st January 2024. The objection can be summarised as follows:

- On 18th October 2022 a notice was put on the property citing John Sheehan as the owner, who was the registered not the legal owner of the property due to an error at the time of purchase. On 24th October 2022 she states that she wrote to the council identifying herself as the owner and offered to sell the property to the council.
- She informed them of her intention to renovate the property, applying for grants, if they chose not to purchase the property and encouraged the council to engage with her to resolve the issue.
- On 14th November 2022, the council replied to her by registered mail but the letter was sent to the wrong address, and was returned unopened and unread to the council.

- On 26th November 2022, she again wrote to the council giving them all of her contact information and again urged them to engage with her and move forward in resolving the issue.
- On 5th December 2022, the council wrote to her and sent the registered letter to the wrong address. Her neighbour accepted the letter and placed it in her letterbox.
- On 28th December 2023, she again wrote to the council asking them to update her file with the correct information and again encouraged the council to engage with her. The council sent a registered letter to her correct address on 4th January 2023 and she states that the letter did not address the offer of sale or information on grants.
- She states that she again wrote to the council on 3rd February 2023 however the council was unable to take messages and unable to help her. In March David O'Grady reached out to her and they spoke regarding ownership. She states that she had no idea that she was not the registered owner of the site.
- She states that she contacted her solicitor who closed the sale and it turned out that an error was made and the property indeed was not registered in her name. She states that the solicitor agreed to sort this issue out but there were a number of holdups. The solicitor had moved law firms and had to apply under data protection for her documents to be released from the old law firm. There was found to be judgements and charges against the previous owner attached to the property which had to be resolved and removed. In October she received a letter from her solicitor stating the property was now in her name.
- She states that during this time she had the property cleaned out, all rubbish removed and all overgrowth removed. She had spoken to an engineer to obtain a report to apply for grants. However, she states that she could not move forward with the report until the property was registered in her name.
- She states that she was updating the council on her progress and feels totally blindsided for the decision to acquire the property. She states that she cannot move forward until this issue is resolved. She states that the council has not given all information to the Board and have omitted letters and details of phone

calls and also her plans for Bruree. She states that it is her intention to renovate the property with a view to living there with the help of the grants.

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.

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.

Bruree Settlement

Opportunities for the re-use and re-purpose of vacant and derelict buildings provides the context for a better and more vibrant business environment, additional housing opportunities and will improve the visual appearance of Bruree and consolidate the village core.

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 ridge of the roof was damaged and appeared structurally unsound, there were boarded up windows and door, vegetation on the roof, damaged rainwater goods, a dirty façade and the rear garden was overgrown with vegetation. The property was vacant.
- 8.2. The site is located in a prominent location being located off the regional road R-518. 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 Category (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 (DSA):

(a) The structure is in a derelict and dangerous condition.

(b) The lands and structure are in a neglected, unsightly and objectionable condition.

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 (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

- 8.5. I note that the local authority state that they first inspected the site on 5th October 2022. A Section 8(2) notice was affixed to the structure on site and was sent to the registered owner on 21st October 2022. I note that the Notice Party wrote to the council on 24th

October 2022 stating that she was the owner. The council replied to the Notice Party on 14th November 2022 requesting proof of ownership.

- 8.6. A Section 8(7) notice was affixed to the site on 30th November 2022 and sent to the registered owner, charge holder and revenue commissioners. I note that according to the local authority's derelict site report the Notice Party did not send proof of ownership during or after this time. It was not until 18th September 2023 where the Notice Party was confirmed as owner by the council. I note that the notice party has a different version of events, however, there does not appear to be any question that the Notice Party was aware of the notices served on the property.
- 8.7. 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.
- 8.8. 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. 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

- 8.9. 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.
- 8.10. 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

- 8.11. As stated above, the owner's version of events differs from what was described within the local authority's derelict site report. I note the owner states that she reached out to

the local authority on numerous occasions offering to sell the site to the council and requesting information on the grants available to restore the property. She places a lot of reasoning for the delay to address the dereliction due to the incorrect registered landowner.

- 8.12. Whilst she states that she has had the property cleaned out, rubbish removed and overgrowth removed, I noted on the date of my site inspection that the property was derelict with boarded up windows and door, there was a damaged roof ridge which appeared structurally unsound and in a dangerous condition, damaged rainwater goods and it appeared that the rear of the property was overgrown with vegetation.
- 8.13. Having regard to the condition of the site on the date of my site inspection, it is my view that the owner has not taken material steps to address the dereliction. Furthermore, I do not consider that the landowner registration issue should have prevented the Notice Party of addressing the said dereliction.
- 8.14. Therefore, there is no evidence or detailed plans provided by the notice party of any further attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. 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 single storey, semi-detached residence and surrounding land situate at Bramble Cottage, Water Street, Bruree, Co. Limerick, containing 0.012 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-149-22), 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. 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 and dangerous condition of the structure 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 derelict and dangerous condition of the structure and to the neglected, unsightly and objectionable condition of the land and structure, to the boarded up windows and front door, vegetation on the roof, to the damaged and structurally unsound roof ridge, damaged rainwater goods, a dirty façade and the rear garden being overgrown with vegetation, 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