



An
Bord
Pleanála

Inspector's Report ABP-318609-23

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

Main Street, Ballingarry, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Martin McCarthy & Lee Wilkins (c/o Martin Tynan O'Donovan 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 Main Street, Ballingarry, County Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

2.0 Site Location and Description

- 2.1. The village of Ballingarry is located approximately 30km southwest of Limerick City. The population of the village was 521 persons in 2016. The subject site has a stated area of 0.169 hectares and is located off the Main Street. The subject site comprises of 2 no. two-storey properties consisting of a mid-terrace and end-of-terrace property with lands to the rear. The site is bounded to the north by a laneway which leads to Ballingarry Castle which bounds the site to the west.
- 2.2. My observations of the site on the date of the inspection included the following:
- New windows and doors have been installed throughout the property,
 - A new roof has been installed,
 - New rainwater goods in the form of guttering and downpipes have been installed,
 - The rear walls of the properties have been freshly rendered and part of the rear garden has been cleaned up and gravel laid.
 - There appeared to be a ruinous structure with overgrown vegetation within the rear garden.
 - Construction fencing was erected separating the laneway from the rear garden and a JCB was parked up onsite, and
 - The external walls of the properties to the front and side elevation were dirty, freshly plastered in places and in need of a fresh painting.

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 An Bord Pleanála for consent to compulsorily acquire the site under Sections 14 and 16 of the Derelict Sites Act 1990, as amended.
- 4.2. This application is subsequent to the serving of notices under Section 8(2) on 2nd June 2017 (advising of the Local Authority's intention to enter the site on the Register of derelict sites) and under Section 8(7) on 9th February 2018 (advising of the Local Authority's decision to enter the site on the Register of derelict sites).
- 4.3. A Section 15 notice of intention to acquire the derelict site compulsorily was issued on 16th March 2020. The then former owner made an objection to the said notice and the acquisition was referred to An Bord Pleanála. On 30th October 2020, An Bord Pleanála refused consent for the compulsory acquisition in order to allow the site owner to complete the sale of the site to enable it to be redeveloped or repaired.
- 4.4. The Local Authority issued a further Section 15 notice to the new owners on 5th October 2023.

5.0 Application and Objection

5.1. Notice of Intention to Acquire

Following An Bord Pleanála's refusal to allow the compulsory acquisition of the site, notice of Limerick City and County Council's intention to acquire the site was served

on the new owners/occupiers (Martin McCarthy & Lee Wilkins c/o Tynan O'Donovan Solicitors) in letters 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 two no. two-storey residential premises and surrounding land situate at Main Street, Ballingarry, Co. Limerick, containing 0.169 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-078-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

5.2. Objection to Acquisition

An objection to the proposed compulsorily acquisition was submitted to Limerick City and County Council by Lee Wilkins and Martin McCarthy (C/o Martin Tynan O'Donovan Solicitors) and was received by the Local Authority on 26th October 2023. The objection can be summarised as follows:

- Works on the refurbishment of the properties started during Covid where damaged and unsafe roofing was removed and replaced with new roofing and new supporting structures.
- Dangerous extensions at the rear of the properties were removed. Collapsed ceilings were removed and replaced with new ceilings. First and second floor partition walls were cleared out. Decaying stairs were removed and replaced with new.
- A snagging list has been given to the contractor. Photographs and videos were submitted showing the works that were undertaken.
- It was stated that the owners were happy to enter into discussions with the Council in relation to renting the properties, and which has already been discussed with Council Officials.
- The owners inquired about the Croí Cónaithe scheme and stated that they were happy to pay the Derelict Sites fee.

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 Lee Wilkins and Martin McCarthy (C/o Martin Tynan O'Donovan 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 site detracts from the amenity, character and appearance of the well-maintained properties in the area and is deemed derelict due to partially demolished/ruinous buildings, missing/broken/leaking rainwater gutters or downpipes, loose masonry or falling plaster, dirty façade or peeling paint, accumulation of litter/waste or illegal dumping, site overgrown with vegetation and unsightly boundaries (damaged hoarding, broken fences, rusted railings etc.)
- The council first inspected the property on 23rd May 2017 and identified it as a derelict site. A section 8(2) notice was served on 2nd June 2017 and the owner

confirmed interest in the property. The council offered to purchase the property through the Buy and Renew Scheme but this was not accepted by the owner.

- A section 8(7) notice was affixed to the site and sent to the former owner on 9th February 2018. As there was no improvement to the condition of the site, a section 15 notice was affixed to the site and issued by registered post to the former owner on 16th March 2020. The former owner made an objection to the acquisition and the matter was referred to An Bord Pleanála for determination. The council were notified on 30th October 2020 that the Board refused consent to the compulsory acquisition.
- An inspection of the property on 14 January 2021 noted that there appeared to be works underway at the site and it was discovered that the property was purchased by Martin McCarthy and Lee Wilkins, c/o Tynan O'Donovan Solicitors, who became the registered owners on the folio on 13th January 2021. The owners claim in their email of 1st April 2022 to have become the owners in December 2019 and began work on site in January 2020.
- Contact was made by the new owners in March 2021 with the Council where they made commitment to have the properties available for rent in 2021. They claimed they were not aware of the property details being entered onto the Derelict Sites register and disputed any Derelict Site levy being charged. Martin McCarthy wrote to the council on 1st April 2022 objecting to the levy being owed on the property and stating that he was continuing work on the property and hoped to sell them by the middle of the year.
- While limited remedial works have been observed on site, no meaningful effort has been made to solve the dereliction. The council met with the contractor on site on 19th January 2023 where it was clearly outlined to him the works required to take the site out of dereliction and was invited to update the Council with a measured plan of works to deal with the dereliction, although this had not been received.
- Over various emails throughout the case, the owners have challenged the reason for the property being identified as derelict and have even disputed payment of the derelict sites levy as charged, however, they still have not solved the dereliction on site. This is despite various sections of the Council

advising on the supports available (repair and lease scheme, vacant property refurbishment grant) to do this.

- The works outlined by the owner on 26th October 2023 have not addressed the overall issue of the site detracting from the area. 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. With the claim in the objection letter that the works will remedy the dereliction unfortunately does not reflect the reality experienced and witnessed on the ground for some while. The only option is to acquire this property compulsorily.

5.4. Objector's Submission

A submission was made to the Board (via email) by Martin McCarthy on 3rd January 2024 in response to the Section 15 Notice. This can be summarised as follows:

- The application made to the Board bases a lot of information on the site being derelict since 2017 in which the Council had previous encounters with the previous owners which have nothing to do with us.
- The property was purchased in early 2020 and the world entered into Covid which pushed back the immediate works planned. However, it is stated that the site was made safe with full security fencing and the site was cleaned up to a good standard.
- Works began in 2021 and included a brand new roof across all of the properties as well as tidying up the whole area. A serious amount of monies have been spent (over €400,000) which have the properties in an almost complete state.
- They were not notified by the Council of the major hazards which have made them pursue their compulsory purchase, whilst they held several meetings advising on many things possible.
- All outstanding works will be completed by 24th January 2024 and the aim is to then sell or rent the properties as soon as possible.

- The council have only ever seen the outside of the properties and not the extensive works that have been delivered inside the properties as well as the extensive work outside.
- The builders have spoken to residents of adjoining properties who maintain that they have seen constant works being undertaken outside and inside of the properties that will increase the look of the properties and raise the look of the whole community which is the aim.

6.0 Relevant Planning History

No planning applications according to Limerick City and County Council's planning register.

7.0 Relevant Property History

Section 15 Notice – An Bord Pleanála ref. 307499-20

This was in relation to the subject property and was lodged on the 6th July 2020. The notice party was identified as Sheila O'Connell (former owner). The Board decided to refuse consent for the compulsorily acquisition of the property on 29th October 2020 for the following reasons and considerations:

- *Notwithstanding the ongoing engagement by the local authority with the owner of the site to remedy the site non-derelict, and the current state of the site in question which has a neglected, unsightly and objectionable appearance on the village main street, having regard to the evidence provided by the site owners regarding their ongoing attempts to sell the site so as to bring the property out of dereliction, the Board considered that it would be appropriate to provide some further time for the site owner to complete the sale and thus enable the site to be redeveloped or repaired. Therefore, the Board decided to refuse consent to the compulsory acquisition of the site in question. In not accepting the Inspector's recommendation, the Board considered that sufficient evidence had been provided in the objector's detailed submission to demonstrate that they are endeavouring to dispose of the site through a private sale, and that some time be granted to them to complete this process.*

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.

Ballingarry Settlement

The Plan recognises that there are opportunities for the redevelopment of residential units within the village centre having regard to the level of dereliction in the village. Some of these buildings have high visibility due to their scale and large street frontages and collectively they contribute to a neglected appearance to the village.

9.0 Assessment

Property History

9.1. I note that the current owners state that they purchased the property in early 2020, however, works were pushed back due to the Covid pandemic. I note that in October 2020, as part of ref. 307499-20, consent was refused by the Board for the compulsory acquisition of this same site. The reason given was in order to allow the owner to complete the sale and thus enable the site to be redeveloped. Notwithstanding this, if

the owner at this time was in fact the current owners as described in the Notice Party's letter, I consider that it would have been reasonable to allow the new owners some time to enable the site to be redeveloped or repaired.

Site Inspection

- 9.2. 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 and laneway to the side of the site. The condition of the site at the time of my site inspection was a vast improvement to how the property looked from the photographs of November 2021 and before that 2017, when the first notice was served on the former owner.
- 9.3. I noted the following: new windows and doors have been installed throughout the property, a new roof has been installed, new rainwater goods have been installed, the rear walls of the properties have been freshly rendered and part of the rear garden has been cleaned up and gravel laid. There appeared to be a ruinous structure with overgrown vegetation within the rear garden. Construction fencing was erected separating the laneway from the rear garden and a JCB was parked up onsite. The external walls of the properties to the front and side elevation were dirty, freshly plastered in places and in need of a fresh painting.
- 9.4. The site is located in a prominent location being located off the R-518 Main Street of Ballingarry. There are a number of other properties fronting Main Street that I noted were well maintained and in good condition.

Category of Dereliction

- 9.5. I note that the local authority considered that the property and lands fell under Categories (a), (b) and (c) of Section 3 of the Derelict Sites Act 1990, as amended.
- 9.6. Based on my site inspection, it is my view that the subject structure and lands may be considered to still fall under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended (DSA):
- (a) There is a ruinous structure located within the rear garden of the property.
 - (b) The lands and structure are still in a neglected, unsightly and objectionable condition.
- 9.7. I did not notice any litter or rubbish within the site or any evidence of waste being stored externally. Therefore, I am satisfied that the site does not fall under Category

(c) 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

- 9.8. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the site. Section 8(2) notices were served on the former owner on 2nd June 2017, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the former owner on 9th February 2019, advising the owner that the site had been entered on the Derelict Sites Register.
- 9.9. A Section 15(1) notice was served on the current owners on the 5th October 2023 and published in the Limerick Post newspaper on 7th October 2023 regarding the Local Authority's intention to acquire the site compulsorily.
- 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. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable 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.
- 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. On my site inspection I noted that the property has been reroofed, there is no vegetation on the roof like similar to what was illustrated on the photographs from 2017. New windows and doors have been installed and there is no longer boarded up

windows. Walls to the rear of the property have been replastered and new windows have been installed. New guttering and downpipes have been installed. Part of the rear garden has been cleaned up and has been laid with gravel.

- 9.14. Having regard to this, I disagree with the Local Authority's statement in their letter to the owner/occupier dated 4th October 2023, that "*no progress has been made in addressing the dereliction*". The owners have stated that they have invested a significant amount of money on the property. Although the works are not complete, as they stated that they would be by 24th January 2024, it is my view that the new owners have invested considerable expense on the property and are progressing matters.

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 two no. two-storey residential premises and surrounding land situate at Main Street, Ballingarry, Co. Limerick, containing 0.169 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-078-17), 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.
- 10.3. Although the acquiring authority, at the time of application, demonstrated that the means chosen to achieve that objective impairing the property rights of affected landowners as little as possible, having regard to the works undertaken onsite which include the installation of a new roof, the installation of new windows and doors, the installation of new rainwater goods and the rendering of the external walls, I am not satisfied that this is still the case. 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 was 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.
- 10.5. Notwithstanding this, having regard to the efforts made to date by the owners to address the matters that gave rise to the derelict condition of the site, the progress made on site, I am no longer satisfied that the confirmation of the CPO is justified by the exigencies of the common good at this point in time. I am of the opinion that, given the works carried out to date on site, it would be appropriate to allow further time to progress matters on site.

11.0 Recommendation

- 11.1. Having regard to the observed condition of the site, in particular the derelict condition of the structure, to the neglected, unsightly and objectionable state of the land, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act 1990, as amended. It is further considered that the acquisition of the site by the local authority would be warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 11.2. However, as per my assessment and having regard to all the information available, the current appearance and condition of the property with the installation of a new roof, the installation of new windows and doors, the installation of new rainwater goods and the rendering of the external walls, I do not consider it reasonable that the local authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act. I therefore consider it appropriate to refuse the local authority's application for consent to compulsorily acquire the site at Main Street, Ballingarry, County Limerick.

12.0 Reasons and Considerations

Notwithstanding the derelict condition of the structure and to the neglected, unsightly and objectionable condition of the land and structure, which detracts to a material degree from the amenity, character and appearance of the streetscape and surrounding land in the neighbourhood, taking account of the evidence of the ongoing efforts being made by the Notice Party to address the dereliction onsite, to bring the property back into use, I do not consider it reasonable that the local authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to the compulsory acquisition of the site.

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