



An
Bord
Pleanála

Inspector's Report ABP-318613-23

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

157 Hyde Road, Prospect, Limerick

Local Authority

Limerick City and County Council

Notice Party

Hilary Larkin of Mazars;
O'Callaghan Daly Solicitors (c/o Sheila
and Russell Hickey);

Date of Site Inspection

2nd 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 157 Hyde Road, Prospect, 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 off Hyde Road, within the urban townland of Prospect, approximately 400 metres south of Limerick Colbert train station. Access to the site is via a cul-de-sac road that runs parallel with Hyde Road. The subject site represents a prominent location being in close proximity to Hyde Road. It was noted on the date of the site inspection that the area is primarily characterised by residential dwellings, the majority of which are well maintained and in a good condition. I did note a small number of other properties along Hyde Road in a derelict condition.
- 2.2. My observations of the property on the date of the site inspection included the following;
- The property was vacant.
 - The front door and ground floor front window were boarded up.
 - The first-floor windows on the front elevation were broken and partially boarded up.
 - Part of the front porch was missing and there was broken glass on the side elevation of the porch.
 - The boundary walls were dirty with peeling paint.
 - The front garden comprised of weeds/vegetation.

I was unable to achieve access to the rear of the property to inspect its condition.

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 19th April 2021 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 22nd September 2021 (advising of the Local Authority's decision to enter the site on the register of derelict sites).
- 4.2. On 10th March 2022, a Section 15 notice of intention to acquire the derelict site compulsorily was served on Sheila and Russell Hickey, who were granted leave for judicial review and the case was subject to high court proceedings (2022/599JR). The proceedings were not contested by the local authority on the grounds that the applicants are the owners of the property given that the receiver did not obtain a court order for possession of the property. An Order of Certiorari by way of judicial review was made quashing the vesting order made for the property by the local authority on 10th June 2022. On 13th July 2022, the local authority rescinded the Section 15 notice.

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 O'Callaghan Daly Solicitors (representing Sheila and Russell Hickey), on Start Mortgages DAC, and on Hillary Larkin of Mazars, Receiver, 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 a two storey, mid-terrace dwelling and surrounding land situate at 157 Hyde Road, Prospect, Limerick, containing 0.022 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-029-21 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 O'Callaghan Daly Solicitors, on behalf of their client Sheila Hickey and Russell Hickey. Their objection can be summarised as follows:

- Their clients are registered owners of the subject property and since in or around 2014, the property has been subject of repossession proceedings in the circuit court. These proceedings are contested and are ongoing.
- Despite the proceedings being contested and notwithstanding that no Order for possession was ever made, Start Mortgages appointed a Receiver over the property sometime in 2019. In or around August 2019, the Receiver entered into possession of the property and changed the locks resulting in their clients having to rehome themselves in alternative temporary accommodation where they remain to date.
- Their clients are in the process of challenging the Receivers possession of the property.
- To date, the Receiver and Charge Holder have failed, refused and neglected to prove their entitlement to be in possession. As the Receiver is in possession of the property, their clients remain locked out and their ability to maintain the property is severely frustrated.

- The receiver has failed, neglected and refused to maintain the property resulting in it being listed in the Derelict Sites Register.
- Their clients have repeatedly undertaken works, despite being barred and dispossessed of their property, in an effort to comply with the Council's notices with a view to having the property removed from the Register. This includes, and not limited to, fixing the doors, discharging in excess of €300 in fees to remove rubbish, weeding the front garden and securing the windows.
- The compulsory purchase is clearly in the interest of the Receiver and Charge Holder given any proceeds will be used to discharge their interests in the first instance and their clients will be rendered homeless.
- The council did not notify their client to specify the measures considered necessary in order to prevent the land from continuing to be a derelict site, as provided for under Section 11 of the Derelict Sites Act 1990.

Additionally, an objection was also submitted to Limerick City and County Council by Mazars, the Receiver, in an email dated 9th November 2023. Their objection was due to the property being in receivership.

5.3. Local Authority's Application for Consent

The Local Authority requests the consent of the Board to the compulsory 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 Receiver, Start Mortgages DAC and O'Callaghan Daly Solicitors (on behalf of Russell and Shiela Hickey), dated 29th September 2023.
- Copy of the newspaper notice, dated 7th October 2023.
- Copy of objection made by O'Callaghan Daly Solicitors and Mazars.

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 residential dwelling with surrounding land is vacant and in a derelict condition for a considerable period. Some indicators of dereliction as applies to the site include; the front porch of the dwelling has been broken by vandals with broken glass and a door removed, there is significant vegetation in the front yard of the property, the gutters and downpipes at the back of the property are all blocked with vegetation, leaking or broken; the back of the property is completely overgrown with briars, weeds and vegetation which is encroaching into neighbouring properties; the front boundary wall is dirty and has a look of neglect; the front ground floor windows and door are boarded up with steel sheets; the property has been vacant for a number of years; dirty façade/peeling paint; plants growing all around and over shed at the rear of the site; no gate at front entrance which could lead to trespass or squatters; accumulation of litter/waste or illegal dumping both at the back and front of the site and unsightly boundaries – dirty walls, vegetation encroaching into neighbouring properties.
- The title of this property is comprised in Folio LK3463L and the registered owners of the folio are Russel Hickey and Sheila Hickey of 157 Hyde Road, Prospect, Limerick. START Mortgages have a charge registered on the folio since March 2007. In July 2020, Hilary Larkin of Mazars was appointed as Receiver by START Mortgages.
- The council first inspected the property on 6th April 2021 and identified it as a derelict site. Site ownership enquiries were made through the land registry and planning and development searches were carried out.
- A section 8(2) notice was affixed to the site on 19th April 2021. On 23rd April 2021, the local authority received a letter from Sheila Hickey stating that the

property was not derelict and should be removed and that they are in talks with Start Mortgages to try and resolve issues that have arisen. She also said to send any further correspondence to her solicitor, Alan O'Callaghan.

- On 28th May 2021, the local authority received an email from Lavelle Partners, on behalf of Start Mortgages, stating that their client has been attempting to engage with the borrowers with regard to their belongings before they instruct agents to clean out the property and put it on the market for sale. They attached a deed of appointment of appointment of Receiver being Hilary Larkin of Mazars.
- The local authority replied to Lavelle Partners to remind their client that it is the duty of every owner and occupier of land to take all reasonable steps to ensure that land does not become or remain to be a derelict site.
- On 22nd September 2021, a Section 8(7) notice was sent to the Receiver at Mazars, Start Mortgages and the solicitor Alan O'Callaghan for his clients Sheila and Russell Hickey.
- Mazars have been in contact with the local authority, however, no works to remediate the dereliction were done to the property.
- On 19th January 2022, a local councillor informed the local authority that there was further anti-social behaviour reported at the site. A site inspection was undertaken where it was noted that the property's windows were broken and the condition of the property was deteriorating.
- On 10th March 2022, a Section 15 notice was served to owners Russell and Shelia Hickey and to Hilary Larkin of Mazars. The local authority received correspondence from O'Callaghan Daly Solicitors, on behalf of Russell and Sheila Hickey, in relation to the Section 15 notice, however the local authority deemed the correspondence not an objection. On this basis, the local authority made a vesting order for the land on 10th June 2022.
- Russell Hickey and Shelia Hickey were granted leave for judicial review and the case was subject to high court proceedings (2022/599JR). The proceedings were not contested by the local authority on the grounds that the applicants are the owners of the property, given that the receiver did not obtain a court order

for possession of the property. An Order of Certiorari by way of judicial review was made quashing the vesting order made for the property by the local authority on 10th June 2022 and on 13th July 2022, the local authority rescinded the Section 15 notice.

- On 1st August 2023, O'Callaghan Daly Solicitors wrote to the local authority requesting the local authority to outline remedial works required to have the site removed from the derelict sites register. In response the local authority invited the owners to a site meeting with the area inspector.
- On 11th August 2023, in advance of a potential site meeting, the area inspector completed a site inspection to determine the remedial works required, however, the property had deteriorated further since the last inspection. The offer of a site meeting was not taken up by O'Callaghan Daly Solicitors or Sheila and Russell Hickey.
- On 18th September 2023, the area inspector carried out a further site inspection and noted no works have commenced and the site continued to deteriorate into a deeper state of dereliction.
- 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 3rd November 2023, a letter objecting to the proposed acquisition was received from O'Callaghan Daly Solicitors, on behalf of Sheila and Russell Hickey, and was duly acknowledged.
- On 9th November 2023, an email objecting to the proposed acquisition was received from Mazars for Hilary Larkin, Receiver, for their client Start Mortgages DAC.
- Despite these objections, the adjoining neighbours to this derelict site, some of which are elderly and vulnerable, 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. The neglected property is now

subject of regular incidents of anti-social behaviour and intimidation which is drawing in other services of the council and the local gardai to deal with.

- 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 Limerick City. The only option available to the council is to acquire this property compulsorily.

Objector's Submission to the Board

None of the Notice Parties made a submission to the Board.

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.

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 property was vacant.
- 8.2. I noted that the front door and ground floor front window of the property were boarded up. The first-floor windows on the front elevation were broken and partially boarded up. Part of the front porch was missing and there was broken glass on the side elevation of the porch. The boundary walls were in a dirty state with peeling paint. The front garden comprised of weeds/vegetation. I noted that the vegetation was not as substantial as shown on photographs on file from 5th October 2023. Therefore, it appeared that some works were carried out to the front yard of the property that removed the substantial vegetation. However, I noted that no works have been carried out to the structure since the serving of the Section 15 Notice.
- 8.3. I was unable to obtain access to the rear of the property, however, I am satisfied that my observations on the condition of the front of the property are sufficient in order to determine this application.

Category of Dereliction

- 8.4. 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.
- 8.5. Based on my site inspection and having regard to paragraph 8.2 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.

I noted no significant litter, rubbish, debris or waste within the front yard of the property. 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 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 6th April 2021 and affixed a Section 8(2) notice to the site on 19th April 2021 after enquiries were made regarding site ownership.
- 8.7. A Section 8(7) notice was sent to the receiver and O'Callaghan Daly Solicitors, on behalf of Sheila and Russell Hickey, on 22nd September 2021, due to the site continuing to be a derelict site. The Receiver kept in contact with the local authority, however, no works were done to address the dereliction.
- 8.8. The local authority offered Sheila and Russell Hickey a site meeting after their solicitor wrote to the council on 1st August 2023 requesting the local authority to outline remedial works required in order to have the site removed from the register. I also note that their solicitor, in their objection, suggests that the local authority did not notify their client to specify the measures considered necessary in order to prevent the land from continuing to be a derelict site, as provided for under Section 11 of the Derelict Sites Act 1990.
- 8.9. However, I note that Section 11 of the Derelict Sites Act 1990, as amended, states the local authority can notify the owner of such measures where "*in the opinion of the local authority it is necessary to do so*". The local authority did in fact offer the notice party a site meeting, which I note was not taken up by the solicitor or by Sheila and Russell Hickey.
- 8.10. After a further site inspection on 18th September 2023, it was noted no works had commenced. The local authority 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 parties in a letter dated 4th October 2023 and published in the Limerick Post newspaper on 7th October 2023.

8.11. 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 has given sufficient time and opportunity to address the dereliction as the Section 8(2) notice was first served over 3 years ago. Whilst I acknowledge the legal issues with the subject site, 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

8.12. 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.

8.13. 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

8.14. I note that O Callaghan Daly Solicitors (c/o Shelia and Hickey Russell) state that their clients have repeatedly undertaken works in order to comply with the local authority's various notices such as fixing the doors, discharging in excess of €300 in fees to remove rubbish, weeding the front garden and securing the windows. The locks have been changed barring their clients from their home. It is stated that the Receiver has failed, neglected and refused to maintain the property.

8.15. I note that the Receiver objects to the compulsory acquisition for the reason that the property is in receivership, however, offers no timeline or detailed plans to render the site non-derelict.

8.16. Having regard to the condition of the site on the date of my site inspection, it is my view that the owner/occupier has not taken material steps to address the dereliction. There is no evidence or detailed plans provided by the owner/occupier of any further attempt to render the site non-derelict within a reasonable timeframe and the property

remains in a derelict, 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 two-storey, mid-terrace dwelling and surrounding land situate at 157 Hyde Road, Prospect, Limerick, containing 0.022 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-029-21), 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 to the derelict condition of the structure and to the neglected, unsightly and objectionable state of the land and structure, 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 condition of the structure and to the neglected, unsightly and objectionable condition of the land and structure, to the boarded up front door and ground floor front window of the property, to the broken and partially boarded up first-floor windows on the front elevation, to the partially missing front porch with broken glass, to the presence of weeds/vegetation within the front garden and to the dirty condition of the boundary walls with peeling paint, 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

16th May 2024