



An
Bord
Pleanála

Inspector's Report ABP-318616-23

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

Lissard, Galbally, County Limerick

Local Authority

Limerick City and County Council

Notice Party

Anne Byrne and John Byrne

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 Lissard, Galbally, 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 rural townland of Lissard, County Limerick, which is located approximately 3km northwest of the village of Galbally. The site is located in southeast county Limerick in close proximity to the county boundary of Tipperary. Access to the site is off the public road, the regional road R-662 which connects the village of Galbally to the town of Tipperary approximately 11km east of the site. The site is directly bounded to the north by the county boundary of Tipperary.
- 2.2. The site comprises of a single storey dwelling and adjoining lands and is bounded by agricultural lands to the north, west and south. The public road bounds the site to the east. The character of the area is defined by predominantly one-off rural housing approximately 150-400 metres south of the site. An agricultural farmyard is also located approximately 150 metres south of the site. It was noted on the date of the site inspection that these properties are all well maintained.
- 2.3. 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 property was vacant.
 - There were boarded up windows and door on the front elevation of the single storey dwelling structure.
 - There was vegetation on the roof, gutters, downpipes and walls.
 - There were missing and broken roof slates, a damaged chimney stack, missing and broken rainwater goods and downpipes.
 - There were loose masonry and falling plaster, a dirty facade and boundary walls.

- There was a partially demolished and ruinous building to the side of the dwelling structure, a structure with overgrown vegetation to the rear of the dwelling structure and debris within the lands.
- It appeared that a portion of the site was cleared of overgrown vegetation (as previously shown in the local authority's photographs).

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 27th 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 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 cottage and surrounding land situate at Lissard, Galbally, Co. Limerick, containing 0.200 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-015-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

I note from the photographs provided that the notice was affixed to the property and served to Anne Byrne of Lissard, Galbally, Co. Limerick. 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 Lissard Consulting Limited, on behalf of their client, Anne Byrne and John Byrne, and was received by the Local Authority on 3rd November 2023. The objection can be summarised as follows:

- The site is part of a farm holding of 3 folios which are being transferred from Anne Byrne to her son John Byrne.
- Plans, elevations and sections of the proposed extension and renovation to the cottage, dated April 2022, are provided.
- A letter from Anne Byrne states that she only became aware of the CPO last week by a local councillor. No correspondence has been received to her home address in London, and suspects as the notice is not addressed to her by name, that reasonable enquiries to locate and contact her have not been made.
- Had she been made aware of and given fair opportunity to rectify any issues with the property, she would have happily complied.
- Anne Byrne gives a background of the history of the property being within the family ownership. Her son moved back into the house from 2003 to 2009 where he carried out substantial repairs including installing a new bathroom.
- The property has been boarded up in recent years to prevent break ins, a number of which had occurred.

- The land at the front of the house is rented out for agricultural use. The son visits the property regularly and has not seen any notices, including CPOs, attached to the property at any time.
- Anne Byrne is in the process of passing on the property to her son who will be renovating it shortly and quotes have already been obtained. John is happy to share further details of these if/as required and would welcome guidance around measures needed to be taken to ensure the property meets the required standards.

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 Lissard Consulting Limited on behalf of Anne Byrne and John Byrne.

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 former residential 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 other well-maintained property in the area. Some indicators of dereliction as applies to the site include; partially demolished/ruinous buildings, holes in roof, loose and slipped slates, missing/broken/leaking rainwater gutters or downpipes, loose masonry or falling plaster, broken/missing/boarded up windows or doors, dirty façade/peeling paint, plants growing out of masonry or roof, unsecured entrances/trespass or squatters, rotten timber, site overgrown with vegetation and unsightly boundaries (damaged hoarding, broken fences, rusted railings etc.).
- The title to this property is comprised in Folio LK21238 and the registered owner is Anne Byrne of Lissard, Galbally, County Limerick.
- The council first inspected the property on 4th January 2017 and identified it as a derelict site. Site ownership enquiries were made through the land registry system and planning and development searches were carried out. Following a site inspection on 4th January 2023, a section 29 notice to give information to the local authority was recommended to be served and this was done on 21st February 2017.
- Following a site inspection on 12th December 2022, a Section 8(2) notice was recommended to be served and was done so on 27th January 2023.
- Following a site inspection on 3rd March 2022, a Section 8(7) notice was served on 22nd March 2023.
- All statutory notices were affixed to the property and there was no response from anyone to these notices. As the land continued to be in a derelict state, the council exercised its power of compulsory acquisition under section 14 of the Derelict Sites Act 1990 and gave its notice of intention to acquire the site compulsorily to the owner and advertised same in the Limerick Post newspaper on 7th October 2023.
- On 3rd November 2023 an objection was received and acknowledged. It refers to the appointment of J.M Power Solicitors in 2021 to transfer 3 no. folios from

Anne Byrne to John Byrne. Plans are enclosed with the objection from an architectural company showing elevations of a proposed extension and renovation of the cottage. A letter from Anne Byrne is also enclosed which gives some background to the property and outlines reasons for boarding it up. Meanwhile the 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.

- The council's contention is that the inaction of the property owners and failure of their duties under the Derelict Sites Act 1990 jeopardises the future use of properties in the area due to their continued neglect and derelict state. The property continues to deteriorate and attract negative attention in a key area of Galbally. The case demonstrates a failure of duty on behalf of the property owner to remove this property from dereliction leaving the only option available to the Council to acquire this property compulsorily.

5.4. Objector's Submission to the Board

The owner did not make a submission to the Board.

6.0 Planning History

None according to Limerick City and County Council's Planning GIS Mapping.

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 condition of the site at the time of my site inspection was that the property was vacant and I noted the following; boarded up windows and door on the front elevation of the single storey dwelling structure, vegetation on the roof, gutters, downpipes and walls, missing and broken roof slates, a damaged chimney stack, missing and broken rainwater goods and downpipes, loose masonry and falling plaster, dirty facade and boundary walls, a partially demolished and ruinous building to the side of the dwelling structure, a structure with overgrown vegetation to the rear of the dwelling structure and debris within the lands.
- 8.2. The site is located in a prominent location being located off the regional road R-662 which connects Galbally to the town of Tipperary. There are a number of residential properties to the south of the site which are well maintained and are in good condition. The site was secured from the public road by a timber post fence, which appeared to have been recently erected, and an agricultural type gate. I noted that the lands surrounding the structure appeared to have been recently cleared of the overgrown vegetation, as shown in the local authority's photographs of January 2017, August 2022 and September 2023.

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) There are structures in a derelict and ruinous condition.

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

I noted that there appeared to be some debris within the grounds of the site, however, this was relatively minor in nature and extent and was clearly associated with the clearance works. 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 first inspected the site on 4th January 2017 and issued a Section 29 notice to give information of the interest in the subject lands on 21st February 2017.
- 8.6. Following a further site inspection on 12th December 2022, a Section 8(2) notice was served on the 27th January 2023. A photograph is provided on this date showing the notice affixed to the boarded-up front door of the property. Following another site inspection on 3rd March 2023, a Section 8(7) notice was served on 22nd March 2023. The local authority states that all statutory notices were affixed to the property and there was no response from anyone to these notices. The local authority gave its notice of intention to acquire the derelict site compulsorily to the owner and advertised same in the Limerick Post newspaper on 7th October 2023. A copy of the notice shows that it was addressed to Anne Byrne of Lissard, Galbally, Co. Limerick. A photograph is provided from 5th October 2023 showing the notice affixed to the boarded-up front door of the property.

- 8.7. I note that the owner in her objection states that she first became aware of the Compulsory Purchase Order (CPO) in the first week of October 2023, via a telephone conversation with a local councillor. She states that no correspondence was issued to her home address in London. She suggests that due to the correspondence not being addressed to her by name that reasonable enquiries to locate and contact her have not been made. She also states that her son regularly visits the site and has not seen any notices affixed to the property. I note that no further objection was made by the owner to the Board.
- 8.8. Having regard to the above, I note that there was no response to the local authorities Section 8(2) and Section 8(7) notices. I also note the Section 8(2) notice was served over 15 months ago. I am satisfied that the local authority served the notices under Section 6(1)(d) of the Act by affixing the notices in a conspicuous position on the land. The Section 15 notice was also addressed to Anne Byrne of Lissard, Galbally, Co. Limerick. The local authority has stated that the only option available in order to remove this property from dereliction is to acquire the site compulsorily. I am satisfied that the local authority gave sufficient time and opportunity for the dereliction to be addressed. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable.

Compliance with development plan policy

- 8.9. 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.
- 8.10. Therefore, I consider that the subject property and a 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. I noted on the date of my site inspection that the owner has cleared the lands of the vegetation that was previously shown in the various photographs provided by the local authority. The owner states that she will be passing the property on to her son who plans on renovating the property "*shortly*". It is stated that the son would welcome any guidance around measures needed to be taken to ensure the property meets the

required standards. A set of drawings have been provided from 'Q Architecture Design & Consultancy' illustrating 'proposed refurbishment works to the existing dwelling' and I note that the drawings are dated April 2022.

- 8.12. To date (7th May 2024), I note that no planning application has been submitted according to the planning register. Whilst the owner describes works undertaken by her son at the property between 2003 and 2009, I note that no works to the structure has taken place since the issuing of the notices. I note that the Section 8(2) notice was issued approximately 15 months ago. Having regard to the photographs provided, I note that the property has been vacant and derelict since 4th January 2017. Furthermore, I note from Google Street View, in October 2011 that the property had boarded up windows and doors and thus was vacant and derelict.
- 8.13. Therefore, I conclude that the subject property and lands have been in a derelict state for a considerable period of time. I am unable to conclude that the dereliction will be addressed in a timely manner. Having inspected the site there is no evidence of any further attempt to render the site non-derelict, and the property remains in a neglected and unsightly condition. No further information has been provided to the Board regarding any progress made on advancing the works to enable the property to be removed from the Derelict Sites Register.

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 cottage and surrounding land at Lissard, Galbally, County Limerick, containing 0.200 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-015-17), 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 derelict and ruinous condition of the structures onsite, to the neglected, unsightly and objectionable state of the land and the structures 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 ruinous condition of the structures onsite and to the neglected, unsightly and objectionable condition of the land and structures thereon, the existence of a ruinous building on the site, to the boarded up windows and door on the front elevation of the single storey dwelling structure, to the existence of

vegetation on the roof, gutters, downpipes and walls, to the missing and broken roof slates, to the damaged chimney stack, to the missing and broken rainwater goods and downpipes, loose masonry and falling plaster, dirty facade and boundary walls and structure with overgrown vegetation to the rear of the dwelling, 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