



An
Bord
Pleanála

Inspector's Report ABP-318618-23

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

7 Oakland Drive, Greystones,
Limerick, V94 5D81

Local Authority

Limerick City and County Council

Notice Party

Paul Kelly

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 7 Oakland Drive, Greystones, 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 at 7 Oakland Drive within the urban townland of Greystones, which is located approximately 1km west of the city centre of Limerick. The site represents a prominent location being located within an established residential estate. The Gaelic Grounds are located approximately 200 metres west of the site. A two-storey semi-detached residential property, with front and rear gardens, is located on the subject site.
- 2.2. My observations of the site on the date of inspection included the following:
- The property appeared vacant.
 - The side gable and rear walls of the dwelling comprised of substantial vegetation and previously treated ivy which was covering windows.
 - The rear garden of the site was substantially overgrown with vegetation, with a large tree close to the boundary fence.
 - The façade of the front elevation of the property was in a dirty condition with peeling paint.
 - The front boundary wall was in a dirty condition with rusted gates.

3.0 Legislative Context

Derelict Sites Act 1990, as amended

The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

Section 3 of the Act defines 'derelict site' as:

"Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict, or dangerous condition, or

(b) the neglected, unsightly, or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law."

Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so.

Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.

Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.

Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.

Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area.

Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

Planning and Development Act 2000, as amended

Planning and Development Regulations 2001, as amended

4.0 Application for Consent for Acquisition

- 4.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under Section 14/16 of the Derelict Sites Act 1990, as amended. I note that this application is subsequent to the serving of notices under Section 8(2) on 20th August 2021 (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 compulsorily 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 two-storey, semi-detached residence and surrounding land situate at 7 Oakland Drive, Greystones, Limerick, containing 0.034 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-057-21 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990, as amended.

I consider that the notices were in accordance with the requirements of Section 15(1)(a) and (1)(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 Paul Kelly in an email dated 6th November 2023. The objection can be summarised as follows:

- The house is his and he bought it in 1980. It has been his home for 43 years and is still his home.
- Since he retired he has split his time between his home in Limerick and the old family home in Clonmel.
- It is his intention to continue to split his time between both locations.
- He agrees that the back garden is a mess. A few years ago he was getting it into shape, however, due to long covid is not able to undertake long physical activity. He also states that he has had a second knee replacement.
- He states that he will tidy the front garden on his first visit to the property and then he will start on the back garden. He states that he will not be able to get up on a ladder for a while.

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 Paul Kelly.

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 property is vacant and in a derelict condition for a considerable period. The site detracts from the amenity, character and appearance of the well-maintained property in the area. Some indicators of dereliction as it applies to this site include; blocked or leaking rainwater gutters or downpipes at the back of the dwelling, peeling paint at the front of the dwelling, dirty façade and peeling paint at the back of the dwelling, ivy growing up the walls of the dwelling covering some windows, the back garden of the site is massively overgrown with vegetation and trees which is encroaching into the neighbouring properties and unsightly boundaries (dirty unpainted walls, rusty gates).
- The freehold title to this property is comprised in Folio LK15574 and the registered owner is The Mayor Alderman and Burgesses of the County Borough of Limerick. The leasehold title to this property is comprised in Folio LK11606L and the registered owner is David Murphy, c/o Corrigan & Corrigan Solicitors.
- The council first inspected the property on 14th September 2020 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. Two folios were known to be associated with the site.
- On 15th July 2021, a complaint from a member of the public about the condition of the site was received. They stated that the rear of the site is extremely overgrown with vegetation.
- Following this complaint and after further enquiries, Paul Kelly was identified as the person responsible for the site. On 23rd July 2021, the area inspector phoned Paul Kelly to confirm his interest in the site, to request a delivery address for postal correspondence and outlined concerns regarding the derelict site.

- On 20th August 2021, a Section 8(2) notice was served via registered post on David Murphy and on Paul Kelly. On 31st August 2021, the local authority received a letter from Corrigan & Corrigan Solicitors, on behalf of David Murphy, stating that he is the owner of the ground rent and not the owner of the property which was sub leased to James Fitzpatrick on 7th September 1960 and it is James Fitzpatrick or his successors who is responsible for the property.
- There was no response in writing from Paul Kelly to the Section 8(2) notice.
- On 6th October 2021, an inspection was carried out by the area inspector and it was noted that some limited remedial works had been carried out. On 13th October 2021, the area inspector phoned Paul Kelly and acknowledged the works completed. Mr Kelly confirmed his intention to remove the vegetation from the structure and asked for more time.
- On 20th May 2022, a further site inspection noted that it appeared that the ivy at the gable end of the property had been treated and it was decided to monitor progress and to see if further works continued.
- On 28th November 2022, a further inspection showed that the front of the property looked reasonable but nothing was done to the rear of the site where it continued to be extremely overgrown with trees and vegetation. During this inspection the area inspector received further complaints from local residents. It was claimed that Mr. Kelly would only visit the site occasionally.
- On 30th November 2022, a Section 8(7) notice was affixed to the site and sent to Paul Kelly via registered post. No correspondence was received from Mr. Kelly following the serving of this notice.
- On 14th September 2023, the local authority phoned Mr. Kelly to see if there was any update on the condition of the site or his future intentions. He acknowledged that the site was on the Register and that he was hoping to get work done at the back in a few weeks.
- 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 6th November 2023, an objection to the proposed acquisition was received via email from Paul Kelly which was duly acknowledged.
- 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 Limerick City. 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

The objector did not make a submission to the Board.

6.0 Relevant Planning History

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

7.0 Policy Context

Limerick Development Plan 2022-2028

The subject site is zoned 'Existing Residential'.

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 2nd April 2024, however, I was able to view the site from the public road and to the side of the property. The condition of the site at the time of my site inspection was that the property appeared vacant and I noted that the side gable and rear walls of the dwelling comprised of substantial vegetation and previously treated ivy which was covering windows. The rear garden of the site was substantially overgrown with vegetation, with a large tree close to the boundary fence. The façade of the front elevation of the property was in a dirty condition with peeling paint. The front boundary wall was in a dirty condition with rusted gates.
- 8.2. I noted that the site is located in a prominent location being located within a well-established residential estate where all adjoining residential properties were well maintained and 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, it is my view that the subject structure and lands fall under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended (DSA):

- (b) The lands and structure are in a neglected, unsightly and objectionable condition, particularly due to the overgrown nature of the rear garden and vegetation on the side gable and rear wall of the dwelling.

Whilst I consider that the walls of the dwelling, boundary walls and gate requires a repainting I do not consider that the structures were in a derelict condition and therefore the site does not fall under category (a) of Section 3 of the Derelict Sites Act 1990, as amended. I noted no litter, rubbish, debris or waste within the lands and therefore I consider that the site does not fall under category (c) of Section 3 of the Derelict Sites Act 1990, as amended. Having regard to (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 14th September 2020 and issued a Section 8(2) notice on 20th August 2021. A Section 8(7) notice was issued on 30th November 2022. I note that the local authority received no correspondence after serving these notices, however, were in contact with the owner via telephone throughout the process.
- 8.6. The local authority further inspected the site on a number of occasions and following further complaints from the local community, they issued a Section 15 notice on 7th October 2023.
- 8.7. Having regard to the above, I am satisfied that the local authority complied with the requirements of Section 6, Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended. I note the time and opportunity given by the local authority to address the dereliction as the Section 8(2) notice was first served over 32 months ago. 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

- 8.8. 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.

- 8.9. 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

- 8.10. I note that when the local authority inspected the site on 20th May 2022, they acknowledged that it appeared that the ivy on the gable end of the property had been treated.
- 8.11. I note the objection from Paul Kelly outlines a number of health issues that he is experiencing. In his email dated 6th November he states that he will tidy the front garden on his first visit back to the property and then he will start on the back garden. However, he does not offer a detailed schedule of when he expects to complete the works. My site inspection was undertaken approximately 6 months after this objection.
- 8.12. 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. Notwithstanding this, having regard to the nature of the works that would be required to remove the lands from dereliction, i.e. the removal of the substantial vegetation within the rear garden and walls and repainting of the property and boundary, it is my view that the owner should be given some further time to complete said works.

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 semi-detached residence and surrounding land situate at 7 Oakland Drive, Greystones, Limerick, containing 0.034 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-057-21), 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. 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 scope of works that are required to take the property out of dereliction, 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.
- 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.
- 9.5. Notwithstanding this, having regard to the scope of works that would be required to remove the site from dereliction, I consider that it would be appropriate to allow the owner some further time to progress matters on site. Therefore, 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.

10.0 Recommendation

- 10.1. Having regard to the observed condition of the site, in particular to the neglected, unsightly and objectionable state of the land and 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. 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.

- 10.2. However, as per my assessment and having regard to all the information available, to the scope of works that would be required to remove the property from dereliction, i.e. the removal of vegetation within the rear garden and walls of the property and repainting of the property and boundary walls, I do not consider it reasonable that the local authority seeks to compulsorily acquire the land at this moment in time, 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 7 Oakland Drive, Greystones.

11.0 Reasons and Considerations

Notwithstanding 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 scope of works that would be required to address the said dereliction, 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

17th May 2024