



An
Bord
Pleanála

Inspector's Report ABP-318654-23

Development	Proposed derelict site comprising of a property known as The Stagger Inn
Location	Main Street, Castlerea, Co. Roscommon
Planning Authority	Roscommon County Council
Notice Party	Brian McDonagh & Oliva McDonagh
Date of Site Inspection	13/06/24
Inspector	Darragh Ryan

1.0 Introduction

- 1.1. This case relates to a request by Roscommon County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at The Stagger Inn, Main Street, Castlerea, Co. Roscommon, 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 on main street Castlerea. Access to the site is via main street and the mart road to the rear of the property. The site is a prominent site on the main street. The prominent building type on main street is two storey dwelling houses, converted to office/shops or pubs on ground floor with potential living accommodation overhead. To the north of main street there is a 3 storey building with commercial on ground floor and apartments on 1st and 2nd floor.
- 2.2. My observations of the property on the date of the site inspection included the following;
- The property was vacant.
 - Part of the property was missing a roof slates to the rear and therefore open to the elements.
 - The doors and windows were missing/boarded up.
 - There was damaged rainwater goods loose cables on structure
 - Missing windows on eastern gable of structure .
 - There was vegetation growing on the structure.
 - The front of the property was in an untidy state in terms of weeds/vegetation.
 - The external walls of the eastern elevation of the property was losing some paintwork and plaster

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. Roscommon 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 24th of 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 the 8th of 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 Roscommon County Council's intention to acquire the site was served on Brian and Olivia McDonogh in a letter dated 9th of October 2023 and to occupier Pat McDonagh, in a letter dated 10th of October 2023, and was published in the Roscommon Herald newspaper on 10th of October 2023. The site was described as follows in the notices:

- **DESCRIPTION OF DERELICT SITE PROPOSES TO BE ACQUIRED**

ALL THAT AND THOSE the property known as The Stagger Inn, Main Street, Castlerea, Co Roscommon F45 V8D2 being all the property comprised in Folio RN21816 of the register County Roscommon and comprising an area of

approximately 0.1605 ha or thereabouts.... A map of the said derelict site has been deposited at the offices of the Housing Department County Roscommon.

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 compulsory acquisition was submitted to Roscommon County Council on 17th of October 2023 by Ac Forde and Co., Solicitors acting on behalf of their client AIB Mortgage Bank Unlimited. Their objection can be summarised as follows:

- AIB holds a charge over the property contained in Folio 21816
- Proceedings are currently before the High Court in which AIB seeks an order for possession over the property in question.
- Seek that no further steps are taken under the Derelict Sites Act.

5.3. Local Authorities Application or 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 8th of December 2023 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (i.e. Derelict Site report) which sets out 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 owner and occupier of the property, dated 9th of October 2023.
- Copy of the newspaper notice, dated 10th of October 2023.
- Copy of objection made by Ac Forde & Co LLP with enclosures.

The derelict site report can be summarised as follows:

- A Dangerous structure notice was issued previously to the owners of the property and there has been no engagement from the owners to date
- The property has been left closed and vacant for a number of years. Property is not maintained and is detracting from the area.

- There are a number of roof slates missing and more roof slates that are loose, this is considered a danger as the property fronts onto main street Castlereagh
- A number of cables are hanging from the façade of the structure.
- There is windows damaged and missing from the gable end. Downpipes also appear to be damaged.
- A number of slates are missing from the rear of the property.

The local authority considers the site meets the definition of Derelict Site under the Derelict Sites Act 1990 for the following reasons:

1. Site contains a structure that is derelict in nature due to lack of maintenance
2. The site appears neglected and unsightly and is detracting from the town.
3. There is a presence of rubbish and debris in the yard to the rear of the site.

Objector's Submission to the Board

A.C. Forde & Co. LLP Solicitors on behalf of their client AIB Mortgage Bank

- There are currently proceedings ongoing before the High Court which seek an order of possession to allow their client sell the property and realise sums due and owing to them.
- There has been an Affidavit from the Occupier of the property Mr Patrick McDonogh who claims to have an interest in the property inter alia,;
 - (a) A claim for adverse possession
 - (b) A claim under the Landlord and Tenant (Amendment) 1980 in relation to a business equity relief

These matters need to be addressed in the High Court which will ultimately make a decision on the merits, or otherwise of all claims

- Whereby the local authority proceeds to compulsorily acquire the property then this effectively renders moot the High Court proceedings which greatly and irredeemably prejudices their client.

- Furthermore their client has carried out their own valuation of the property in July 2023 which placed the value of the property & site of €200,000 which is significantly greater than the value placed on it by the local authority

6.0 Relevant Planning History

There are no planning applications associated with the site, according to the local authority's planning register or from the information on file. Having inspected the site, I noted no planning application site notices erected on the property.

7.0 Policy Context

Roscommon County Development Plan 2022-2028

Policy Objective TV 4.14 Introduce incentives to encourage the regeneration of vacant and underutilised town/village centre sites which detract from the amenity value of the area and undermine ambitions for consolidated, multifunctional settlements.

Policy Objective TV 4.15 Continue to engage with owners of sites and properties which are vacant and or in a derelict/ruinous condition to seek to redress this. Where necessary, apply the available statutory mechanisms (Derelict Sites Act 1990) to address the impact of a derelict site/ structure upon the amenity of an area.

7.1. Assessment

Site Inspection

- 7.1.1. Internal access to the property was not possible on the date of my site inspection on the 13th of June 2024, however, I was able to view the site from the public road. The property was vacant and in a derelict state.
- 7.1.2. I noted that the roof was missing a number of slates. The structure had missing and broken rainwater goods. The roof, chimney and side gable of the structure had vegetation. There was a number of cracks to the render on the property, with plaster coming off the walls. The external walls of the property were generally in a dirty

state. I noted that no works have been carried out to the structure since the serving of the Section 15 Notice.

7.2. Category of Dereliction

7.2.1. 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) , (b) & (c) 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.

(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.”

I noted litter, rubbish, debris or waste on the property to the rear. 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.

7.3. Actions of Local Authority

7.3.1. I note that the local authority state that they first inspected the site on 1st of November 2022 and sent a Section 8(2) notice to the owner and the occupier on the 24th of January 2023. A Section 8(7) notice was sent to the owner and occupier on 8th of March 2023. I note that no response was received from the owner to these notices.

7.3.2. The local authority has stated that the only option available in order to remove this property from dereliction is to acquire the site compulsorily.

7.3.3. 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 18 months ago. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable and in accordance with the legislation.

7.4. Compliance with development plan policy

- 7.4.1. I note that the Roscommon County Development Plan 2022-2028, specifically Policy TV4.14 and TV4.15, 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.
- 7.4.2. Therefore, I consider that the subject property and proposed compulsory acquisition 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.

7.5. Actions of the Owner to address dereliction

There has been no response on file or any effort on site to address the issues of dereliction as indicated by the planning authority.

Letter of Objection – AIB Bank Mortgage Holding

I note the contents of the objection from the owner's solicitor and the contents of the enclosures in said objection. Having reviewed the legislation and the submission of the planning authority, I do not see any provision which prohibits the compulsory acquisition at this time. The agent for the bank, owner or occupier of the property have not provided any detail that indicates the dereliction will be addressed in a timely manner.

- 7.6. Having regard to the above, it is my view that the owner has not taken material steps to address the dereliction. 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.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Roscommon 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.
- 8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising an end-of-terrace, two-storey, commercial property and surrounding land situate at Main

Street Castlerea, Co. Roscommon containing 0.1605 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 9th of October 2023 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.

- 8.3. 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 am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the proposed compulsory acquisition made by the acquiring authority unreasonable or disproportionate.
- 8.4. The effects of the proposed compulsory acquisition 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 Roscommon County Development Plan 2022-2028, and specifically Policy Objective TV4.14 and Polic Objective TV4.15 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 that the confirmation of the CPO is clearly justified by the exigencies of the common good.

9.0 Recommendation

- 9.1. Having regard to the observed condition of the application site, in particular the derelict condition of the structure and the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 9.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend that the Board grant consent to Roscommon County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

Having regard to the derelict condition of the structure and to the neglected, unsightly and objectionable state of the land and structure, having considered the objection made to the compulsory acquisition, and also:

- a) The constitutional and Convention protection afforded to property rights,
- b) The public interest, and
- c) The provisions of Roscommon County Development Plan 2022-2028,

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), 3(b) & 3 (c) of the Derelict Sites Act, 1990, as amended, and that the compulsory acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it from continuing to be a derelict site. It is also considered that the objection made cannot be sustained, having regard to that said necessity and that the compulsory acquisition and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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.

Darragh Ryan
Planning Inspector

14th June 2024