



An
Bord
Pleanála

Inspector's Report ABP-318901-24

Nature of Application

Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended

Location

Shangarry, Myshall, County Carlow

Local Authority

Carlow County Council

Notice Party

Angela and Martin Kavanagh

Date of Site Inspection

2nd May 2024

Inspector

Ian Campbell

1.0 Introduction

- 1.1. This case relates to a request by Carlow County Council (CCC) for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Shangarry, Myshall, Co. Carlow, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The property which is the subject of this proposed compulsory acquisition (referred to hereafter as the 'subject property') is located on the western side of the R724, c. 2 km north-west of the village of Myshall.
- 2.2. The subject property comprises a detached bungalow but is concealed with overgrowth with only the roof and side gable wall visible. Access to the site was not possible due to the extent of overgrowth. The curtilage of the subject property extends westwards from the roadside and also to the north. There appears to be an outbuilding to the rear of the dwelling.
- 2.3. The subject property is not a Protected Structure and is not listed on the National Inventory of Architectural Heritage.
- 2.4. Adjacent properties in the area are occupied and are in reasonable condition.

3.0 Application for Consent for Acquisition

- 3.1. Carlow County Council (CCC) has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of CCC's intention to acquire the site compulsorily was served on the owners of the property on the 21st of November 2023, and was published in the Nationalist newspaper on the 21st of November 2023. The site was described as follows in the notices:

- The site and premises situate at and known as property at Shangarry, Myshall, Co. Carlow, R21YX52 situate in the townland of Shangarry, in the barony of Forth being all of the property comprised in Folio CW8249F of the Register of Freehold Land in County Carlow.

The said derelict site is more particularly shown outlined in red on map bearing reference CPO-DS-VHO266.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) and (b) of the Derelict Sites Act 1990, as amended.

4.2. **Objection to Acquisition**

4.2.1. 3 no. objections were received by CCC in respect of the proposed compulsory acquisition of the subject property and are summarised as follows:

4.2.2. Crean & O' Flaherty Solicitors LLP, on behalf of Martin and Angela Kavanagh, dated 11th December 2023, (received by CCC on the 12th December 2023) –

- The property belongs to Martin Kavanagh's late father, Michael Kavanagh. Martin Kavanagh is in the process of gaining probate in respect of the property and once this has been completed the property will be sold.

4.2.3. Martin and Angela Kavanagh, dated 1st December 2023, (received by CCC on the 7th December 2023) –

- The property belongs to Martin Kavanagh's late father, Michael Kavanagh. Martin Kavanagh is in the process of gaining probate in respect of the property. This has taken considerable time. Once probate is granted the property will be sold.
- Patrick Blanche, Martin Kavanagh's cousin has permission to act on behalf of Martin Kavanagh.

4.2.4. Patrick Blanche, dated 30th November 2023, (received by CCC on the 30th November 2023) –

- The property is in the process of being transferred to the Kavanagh family, this process began in 2022 but is taken a long time to conclude. Prior to this, 15 years ago, a firm of solicitors were engaged to undertake this task but failed to do so.
- When the probate is finalised the property will be refurbished and resided in.
- CCC did not contact the Kavanaghs prior to the proposed compulsory acquisition of the property.

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 17th of January 2024 and was accompanied by the following:

- Cover letter stating that the property has been vacant and derelict for a considerable period of time; that on foot of the Government's Vacant Homes Action Plan 2023, which seeks to address long term vacancy and dereliction across the county and accelerate the provision of residential accommodation, that the site was deemed appropriate for compulsory acquisition; and that CCC's primary objective is to address vacancy and maximise the use of existing stock, while also being a catalyst to transform areas and communities.
- Local Authority Compulsory Acquisition Memorandum which sets out the Local Authority's strategic approach to derelict sites in the context of the Government's Vacant Homes Action Plan 2023, a description of the site and relevant policy designations affecting the site.
- Copy of Chief Executive's Order.
- Derelict site location map (Ref. CPO-DS-VHO266).
- Copy of the notices served on the owner/occupier of the site (dated 21st of November 2023). Proof of postage included in respect of same. Photographs of Section 15 Notice erected at subject property.
- Copy of the newspaper notice (dated 21st of November 2023).

- Copy of objections made by Crean & O' Flaherty Solicitors (on behalf of Martin and Angela Kavanagh), Martin and Angela Kavanagh and Patrick Blanche and submitted to the Local Authority.
- Acknowledgement of objections to Section 15 Notice sent to Crean & O' Flaherty Solicitors, Martin and Angela Kavanagh and Patrick Blanche.
- Report of Authorised Officer (CCC) noting that the property falls into categories (a), (b) and (c) of Section 3 of the Derelict Sites Act, 1990.
- Memorandum to Vacant Property Unit (CCC) noting that the subject property is inaccessible, overgrown and that it would be suitable for either compulsory or negotiated acquisition.
- Folio details of subject property.
- Correspondence sent from CCC to the registered owner of the property (Michael Kavanagh) dated 19th July 2023 stating that CCC are interested in returning the property to use and inviting the owner to discuss options with CCC.

4.3.2. The **Derelict Site Report/Memorandum** can be summarised as follows:

- The compulsory acquisition of the property is on foot of the Government's Vacant Homes Action Plan 2023, which seeks to address long term vacancy and dereliction across the county and accelerate the provision of residential accommodation, and the revised Housing for All and Town Centre First policy.
- The property has been vacant and derelict for a considerable period of time. A site inspection carried out on the 7th of November 2023 deemed the property to be derelict.
- CCC intend to use the property for social housing.
- The property is overgrown and is in neglect and detracting from the appearance of the area.
- The property is registered to Michael Kavanagh, c/o Kathleen Kavanagh however correspondence sent to Michael Kavanagh by registered post has been returned marked 'gone away'.
- The proposed compulsory acquisition of the property accords with the following relevant policy in the Carlow County Development Plan 2022 – 2028;

- CS06 (re. promote renewal through measures which include the Derelict Sites Act).
- CS012 (re. promote measures to reduce vacancy).
- RA01 (re. facilitate appropriate development of areas in need of renewal in order to prevent, the ruinous or neglected condition of land a shortage of houses, anti-social behavior... urban blight/decay).
- RA P1 (re. promote development of vacant sites).
- TV P1 (re. support the reuse of vacant/underutilised buildings).
- TVC P4 (re. promote consolidation with a focus on the regeneration of underused/vacant buildings).
- TVP 5 (re. promote the re-use of vacant and derelict buildings).
- TV 01 (re. target vacant premises and facilitate regeneration in towns and villages).
- LSV.P1 (re. address vacancy, infill/brownfield development).
- LSV.P2 (re. support the development of 'new homes in small towns and villages').
- MY P1 (re. consolidate the village form).
- MY P2 (re. seek the reuse where possible of brownfield lands, vacant, underutilized buildings within the village boundary).
- MY P4 (re. ensure development has regard to the character, form and scale of the existing village).
- MY P13 (re. support the retention of buildings of architectural merit).

4.4. Objector's Submission

4.4.1. No objections were received by the Board.

5.0 Planning History

5.1. Subject Property

There is no relevant or recent planning history associated with the subject property.

6.0 Policy Context

6.1. Carlow County Development Plan 2022-2028

- 6.1.1. The subject property is not subject to a specific land use zoning in the Carlow County Development Plan 2022-2028.
- 6.1.2. Relevant objectives/policy in the Carlow County Development Plan 2022 – 2028 include;

Chapter 2 (Core Strategy and Settlement Strategy)

Objective CS.06: Actively promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including availing of statutory powers under the Derelict Sites Act, Housing Act, Vacant Site Levy and supporting implementation of the Residential Zoned Land Tax together with other statutory provisions to actively promote regeneration of urban and rural areas within the County.

6.2. Derelict Sites Act 1990 (as amended)

- 6.2.1. 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.
- 6.2.2. 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.”

- 6.2.3. 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.
- 6.2.4. Section 9 of the Act 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.
- 6.2.5. Section 10 of the Act 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.
- 6.2.6. 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.
- 6.2.7. Section 14 of the Act provides that a Local Authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.2.8. Section 15 of the Act sets out arrangements for giving notice, if the Local Authority intend to acquire a derelict site compulsorily.
- 6.2.9. Section 16 of the Act 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.

7.0 Assessment

7.1. Site Inspection

- 7.1.1. Internal access to the property was not possible on the date of my site inspection and I carried out my site inspection from the public road. Neighbouring properties are well maintained and are in good condition. The area has an attractive appearance.

- 7.1.2. The property has a neglected, unsightly and objectionable appearance from the public road and surrounding area. The subject property, including the roadside boundary is heavily overgrown and only the roof and side gable wall is visible. The subject property detracts significantly from the character and appearance of the street.

7.2. Category of Dereliction

- 7.2.1. Based on the condition of the subject property which I observed during my site inspection I do not consider that the site falls within category (a), of Section 3 of the Derelict Sites Act, 1990, which relates to structures which are in a ruinous, derelict or dangerous condition.
- 7.2.2. I consider that the site falls within category (b) of Section 3 of the Derelict Sites Act, 1990, due to the land and structure being in a neglected, unsightly and objectionable condition. I particularly note that the subject property is located along a regional road in a rural area alongside properties which are attractive and well maintained.
- 7.2.3. I did not observe the presence of litter, debris, rubbish or waste at the subject property and as such I do not consider that the site falls within category (c) of Section 3 of the Act.
- 7.2.4. In conclusion, I consider that the property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under Section 3 of the Act.

7.3. Action of the Local Authority

- 7.3.1. Having reviewed the Street View function on Google Maps I note that dereliction would appear to be an issue at the subject property since c. 2019, or before, with imagery indicating the property in an un-derelict condition in 2011. I note that CCC sent correspondence in July 2023 to the registered owner of the property (Michael Kavanagh) stating that CCC were interested in returning the property to use and inviting the owner to discuss options with CCC. I note that this correspondence was subsequently returned by An Post and marked 'Gone Away'. Information in one of the objections submitted to CCC in respect of the proposed compulsory acquisition refers to Michael Kavanagh as deceased. I note that the issuing of the Section 15 Notices

by CCC was not preceded by Section 8 Notices which would typically allow for engagement between the property owner and the acquiring authority. I note that in this case the property owners appear to be deceased. I note however in this case that an objector, Martin and Angela Kavanagh in a submission from a solicitor, state that the property belongs to Martin Kavanagh's late father, Michael Kavanagh, that Martin Kavanagh is in the process of gaining probate in respect of the property, and that it is intended to refurbish the property.

- 7.3.2. I note that Local Authorities have a duty (under section 10) "to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any such land does not become/continue to be a derelict site." I note that CCC have not issued Section 8 Notices and that there has been no engagement between CCC and Martin and Angela Kavanagh in the lead up to issuing of the Section 15 Notice. Given the existence of a party who claim to have an interest in the property, and noting that there has been no opportunity for engagement between this party and CCC I am not satisfied that the efforts of the Local Authority have been fair and reasonable, or that suitable alternatives have been explored by the Local Authority, and in my opinion further time could have been afforded to this party to clearly demonstrate their interest in the property, and subject to doing so to address the condition of the property.

7.4. Compliance with Development Plan

- 7.4.1. I note that the Carlow County Development Plan 2022-2028, and specifically Objective CS.06 which seeks to promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including the use of statutory powers under the Derelict Sites Act. Having regard to the condition of the subject property I consider that the proposed compulsory acquisition of the property 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. Action of the Owner to Address Dereliction

- 7.5.1. As addressed above, the registered owner of the subject property appears to be deceased, and following correspondence sent by CCC being returned marked 'Gone Away' CCC proceeded to issue Section 15 Notices. Subsequent to the issuing of the

Section 15 Notices an objection was received from Martin and Angela Kavanagh claiming that the subject property is in the process of being transferred to them. I note that there has been no engagement between CCC and this party and for this reason, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the subject property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that noting the emergence of a party claiming to have an interest in the subject property that sufficient time should be afforded to allow for this party to demonstrate their interest in the property, and following this to address the condition of the property. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Shangarry, Myshall, Co. Carlow.

8.0 Conclusion

- 8.1. I am not satisfied that the process and procedures undertaken by Carlow 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 acquisition of the Derelict Site, at Shangarry, Myshall, Co. Carlow, R21YX52 situate in the townland of Shangarry, in the barony of Forth being all of the property comprised in Folio CW8249F of the Register of Freehold Land in County Carlow, and on the deposit map (Ref. CPO-DS-VHO266-2023), pursues, and is 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 further satisfied that the proposed acquisition of these lands was consistent with the policies and objectives of the Carlow County Development Plan 2022-2028, and specifically Objective CS.06 which seeks to promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including the use of statutory powers under the Derelict Sites Act.

- 8.4. I am not satisfied that at the time of lodgement of the application with the Board, the acquiring authority had adequately demonstrated that the means chosen to achieve that objective would have impaired the property rights of affected landowners as little as possible, and that the effects of the compulsory acquisition on the rights of affected landowners were proportionate to the objective being perused at the time.
- 8.5. Having regard to the existence of an objector (Martin and Angela Kavanagh) who claim that the subject property is in the process of being transferred to them through the probate process, and noting that there has been no engagement between CCC and this party, and considering alternative means of achieving the objective referred to in the submissions to the Board, I am satisfied that the alternatives are such as to render the means chosen and the compulsory acquisition by the acquiring authority unreasonable and disproportionate.
- 8.6. Having regard to the foregoing, I am no longer satisfied that the grant of consent to the compulsory acquisition is justified by the exigencies of the common good at this point in time. I am of the opinion that it would be appropriate to allow time to allow for engagement between CCC and the party claiming to have an interest in the subject property and to progress matters on site.

9.0 Recommendation

- 9.1. Notwithstanding the current unsightly and objectionable condition of the site 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 existence of an objector (Martin and Angela Kavanagh) who claim that the subject property is in the process of being transferred to them through the probate process, and noting that there has been no engagement between CCC and this party, 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 Carlow County Council to the compulsory acquisition of the site.

10.0 Reasons and Considerations

Having regard to the current unsightly and objectionable condition of the site, 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 Carlow County Development Plan 2022-2028,

it is considered that, having regard to the existence of an objector (Martin and Angela Kavanagh) who claim that the subject property is in the process of being transferred to them through the probate process, and noting that there has been no engagement between CCC and this party, that the compulsory acquisition of the site by the Local Authority is not necessary in order to render the site non-derelict. The Board is not satisfied, therefore, 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.

Ian Campbell
Planning Inspector

22nd July 2024

