



An
Bord
Pleanála

Inspector's Report ABP-318958-24

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

33 Árd na Greine Waterford, Co. Waterford

Local Authority

Waterford City & County Council

Notice Party

Paul Croke

Date of Site Inspection

3rd May 2024

Inspector

Ian Campbell

1.0 Introduction

- 1.1. This case relates to a request by Waterford City and County Council (WCCC) for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 33 Árd na Greine, Waterford, 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 within an established residential area west of the centre of Waterford City. The subject property, a single storey terrace dwelling is located directly opposite a large warehouse building.
- 2.2. Adjacent properties in the area are occupied and are in reasonable condition.
- 2.3. On the date of my site inspection the property was secure. The front façade of the subject property is dirty and requires cleaning. The window cills and reveals require repainting. A door located to the side of the subject property requires repainting. There are weeds growing out of the chimney. The front boundary wall of the subject property requires repainting. One of the gate pillars has collapsed and is lying in the front garden. The capping of the upstanding pillar and the boundary wall are missing. The front garden is overgrown and the grass requires cutting.

3.0 Application for Consent for Acquisition

- 3.1. Waterford City and County Council (WCCC) 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), (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites) on the 27th of July 2023, and under Section 8(7) (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites) on the 9th of November 2023.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of WCCC's intention to acquire the site compulsorily was served on the owners of the property on the 27th of November 2023, and was published in the Munster Express newspaper on the 28th of November 2023. The site was described as follows in the notices:

- No. 33 Árd na Greine, covering an area of 0.0912 acres or thereabouts, in the District Electoral Division of Tramore - Waterford City West.

The said derelict site is more particularly shown outlined in red on map bearing reference CPA 2023-15 in the Derelict Sites Register established and maintained by Waterford City and County Council under Section 8 of the Derelict Sites Act 1990.

- 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. An objection from Paul Croke (see email correspondence dated 4th December 2023 and 15th January 2024) was submitted to WCCC in respect of the proposed acquisition of the property. The objection notes that the subject property is not a derelict site, is the objector's residence, and that the objector will be rendered homeless if he is required to move out 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 31st of January 2024 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (including photographs of subject property) which sets out the Local Authority's strategic approach to derelict sites, a description of the site and relevant policy designations affecting the site.

- Copy of Chief Executive's Order.
- Derelict site location map.
- Copy of the notices served on the owner/occupier of the site (dated 27th of November 2023). Proof of postage included in respect of same.
- Copy of the newspaper notice (dated 28th of November 2023).
- Copy of objection made by Paul Croke (dated 4th December 2023 and 15th January 2024) and submitted to the Local Authority.
- Acknowledgement of objection to Section 15 Notice sent to Paul Croke (dated 4th December 2023 and response to e-mail from Paul Croke dated 16th January 2024).
- Extract from Rip.ie.

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

- On foot of Housing for All, which seeks to ensure that vacant homes are brought back into use, Waterford City and County Council seek to use the Derelict Sites Act (1990) to undertake the compulsory acquisition of No. 33 Árd na Greine, Waterford.
- The definition of dereliction as per the Derelict Sites Act (1990) is set out as follows;

“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.”

- The property is derelict and long-term vacant. The property is a single storey semi-detached¹ house with a front garden and parking area with side access to the back garden.
- The property is visibly in a state of poor repair and neglect, as demonstrated through the accompanying photographs from a visual inspection of the exterior of the property. No internal access was attained.
- The area surrounding the site is an established residential neighbourhood.
- The property is not a protected structure, is not referenced in the National Inventory of Architectural Heritage and is not within a conservation area.
- Applicable designations in the Waterford City and County Development Plan 2022 – 2028 include;
 - Waterford City Settlement Boundary;
 - Existing Residential Zone;
 - Waterford City - DeCarbonising Zone;
- Policy Objectives referred to as being relevant include; Objective ECON 4 (City and Town Centre First Approach); Objective ECON 7, which relates to Active Land Management; Objective H06 relating to the use of powers under the Derelict Sites Act 1990 to prevent dereliction; and Objective Place 01 which similarly provides for the use of powers under the Derelict Sites Act 1990 to address vacancy and dereliction.
- WCCC confirmed ownership of the property using Land Registry. The owners of the property were identified as Paul Croke and Sean Hartery. WCCC refer to a person with the same name of one of the landowners as possibly being deceased².

¹ The subject property is a terraced dwelling.

² I note that the entry for a person named Paul Croke on Rip.ie is dated 2014 however I note that Paul Croke objected to WCCC's proposed compulsory acquisition of the site in 2023/2024.

- The timeline for the serving of notices under the Derelict Sites Act, 1990 by WCCC is set out as follows;
 - Section 8(2) Notice of intention to enter land in Derelict Sites Register: 27th of July 2023.
 - Section 8(7) Notice of Entry of Land in Derelict Sites Register: 9th of November 2023.
 - Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily: 27th of November 2023.
- WCCC contend having regard to the observed condition of the property, in particular its neglected and unsightly state, it is considered 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, and subsequently, it is considered reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act.

4.4. Objector's Submission

- 4.4.1. No objections were received by the Board.

5.0 Planning History

5.1. Subject Property

PA. Ref. 02/500610 – Permission GRANTED for rear extension.

6.0 Policy Context

6.1. Waterford City and County Development Plan 2022-2028

- 6.1.1. The subject property is zoned 'RS' (Existing Residential) in the Waterford City and County Development Plan 2022-2028.

6.1.2. There is a Protected Structure (described as a free standing red brick chimney – RPS Ref. WA730639 refers) located opposite the subject property.

6.1.3. Relevant objectives/policy in the Waterford City and County Development Plan 2022 – 2028 include;

- Objective Place 01 (Chapter 8 – Placemaking): *‘identify obsolete and potential opportunity sites within the City and County and encourage and facilitate the re-use and regeneration of derelict land and buildings in the urban centres; work with landowners and development interests to pursue the potential of suitable, available and viable land and buildings for appropriate development/renewal; support active land management; and use compulsory purchase orders and statutory powers under the Derelict Sites Act 1990 and the Urban Regeneration and Housing Act 2015, as amended, to address issues of dereliction, vacancy and underutilisation of lands in settlements across Waterford’.*
- Objective H06 (Chapter 7 – Housing and Sustainable Communities): *‘utilise legislative power under the Derelict Sites Act 1990, The Urban Regeneration and Housing Act 2015, as amended and general CPO powers to prevent anti-social behaviour and remove dereliction and vacancy where appropriate.’*
- Objective Econ 07 (Chapter 4 – Economy, Tourism, Education and Retail): *‘...assist in the proactive targeting of underutilised, vacant and derelict lands and buildings, and general building stock,...in order to facilitate an Active Land Management approach to the sustainable growth and development of Waterford City and County....achieved by, measures to support the change of use from vacant commercial units to residential, using the Council’s statutory powers, where appropriate, under the Derelict Sites Act 1990 (as amended) and the Urban Regeneration and Housing Act 2015 (as amended), and.... the acquisition by agreement or compulsory purchase, of vacant, derelict or underutilised sites or buildings, in order to address incidents of urban decay and vacancy, ensure revitalisation and conservation of our built heritage; regeneration of underutilised sites/ buildings, and bring about long-term economic and social/ community development and sustainability.’*

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. The subject property is located in an established residential area west of the centre of Waterford City. Neighbouring properties appear to be well maintained and are in good condition.
- 7.1.2. The property has a neglected, unsightly and objectionable appearance from the public road and surrounding area. The front façade of the subject property is dirty and requires cleaning. The window cills and reveals require repainting. A door located to the side of the subject property requires repainting. There are weeds growing out of the chimney. The front boundary wall of the subject property requires repainting. One of the gate pillars has collapsed and is lying in the front garden and the capping of the upstanding pillar and the boundary wall are missing. The front garden is overgrown and the grass requires cutting. 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 in an established residential area and is located alongside dwellings which are for the most part 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. Based on WCCC's Derelict Sites report dereliction would appear to be an issue at the subject property for some time. Having established the identity of the owners of the property WCCC served a Section 8(2) Notice in July 2023. The property was then added to the Derelict Sites Register in November 2023 with Section 8(7) Notices served on the owner of the property. Section 15 Notices were subsequently served by WCCC on the 27th of November 2023. WCCC's Derelict Sites report notes no engagement with the landowner(s) following the issuing of the Section 8(2) Notice. The property owner communicated with WCCC in December 2023, submitting an objection to the proposed compulsory acquisition of the property. I note that in acknowledging the property owner's objection WCCC indicated that they were amenable to being contacted to discuss the matter. The property owner submitted correspondence to WCCC again in January 2024 and WCCC reiterated the invitation meet on the site or at the offices of WCCC to discuss the matter. The Derelict Sites report does not state that this offer was availed of and WCCC subsequently submitted an application for consent for the proposed compulsory acquisition of the property to the Board on the 31st of January 2024.
- 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.” Based on the information on the file I note that WCCC have attempted to have the site rendered non-derelict by establishing the identity of the owners, and then by issuing a Section 8(2) and Section 8 (7) Notice. It is clear that WCCC have attempted to address the issue of dereliction at the property with the owners of the property, and offered to meet/discuss the issue with the owners of the property on two separate occasions prior to submitting an application to the Board for the compulsory acquisition of the property. Having regard to the forgoing I am satisfied that the Local Authority gave the property owner sufficient time and opportunity to address the dereliction and have explored other means of achieving the aim of rendering the property non-derelict. Therefore, I am satisfied that the efforts of the Local Authority have been fair and reasonable.

7.4. Compliance with Development Plan

- 7.4.1. I note that the Waterford City and County Development Plan 2022-2028, and specifically Objective Place 01 which seeks to facilitate the re-use and regeneration of derelict land and buildings and, use statutory powers under the Derelict Sites Act 1990 to address issues of dereliction. Objective H06 and Objective ECON7 similarly seek to use the provisions of the Derelict Sites Act 1990 to remove dereliction and vacancy, and address incidents of urban decay and vacancy respectively. 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, upon issuing Section 15 Notices on the owners of property WCCC offered to meet to discuss matters relating to the property with the objector/owner of the property. Based on the information in WCCC’s Derelict Sites report it appears that the owner(s) of the property did not engage with WCCC in relation to the condition of the property, other than to object to WCCC’s proposal to compulsorily acquire the property. I note that the objection submitted to WCCC from the property owner notes that should WCCC compulsorily acquire the property it would render the property owner homeless. The objection however does not give any undertaking to address the condition of the property.

- 7.5.2. Based on my observations of the property no substantive works have taken place to the subject property to render it non-derelict and it remains that the continuing dereliction of the property is having a significant adverse effect on the amenities and appearance of the area. I note that owner/occupiers have obligations (under section 9 of the Act) to “take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site”. It is now approximately 12 months since the Section 8(2) Notice was served, c. 8 months since the issuing of the Section 8(7) Notice and approximately 8 months since the Local Authority served the Section 15 notice of intention to acquire the site compulsorily. 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. I therefore consider that the site remains in a derelict condition.
- 7.5.3. Notwithstanding this, I note that the works which would be required to address the condition of the property, specifically the indicators of dereliction set out at paragraph 7.1.2. (above), are not structural or significant in nature and could be carried out within a reasonably short period of time and as such, and I recommend that sufficient time should be afforded to undertake these works. It is considered, therefore, that it is appropriate to refuse the Local Authority’s application for consent to compulsorily acquire the site at No. 33 Árd na Greine, Waterford.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Waterford 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.
- 8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the acquisition of the Derelict Site, No. 33 Árd na Greine, Waterford as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 27th of November 2023 and on the deposit map (Ref. CPA 2023 – 15), 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 would be consistent with the policies and objectives of the Waterford City and County Development Plan 2022-2028, and specifically Objective Place 01 which seeks to facilitate the re-use and regeneration of derelict land and buildings and, use statutory powers under the Derelict Sites Act 1990 to address issues of dereliction, and Objective H06 and Objective ECON7, which similarly seek to use the provisions of the Derelict Sites Act 1990 to remove dereliction and vacancy, and address incidents of urban decay and vacancy respectively.
- 8.4. It is further acknowledged 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. However, having inspected the subject property and having regard the nature and extent of the works required to address the condition of the property, and noting that these measures are not structural or significant in nature and could be carried out within a reasonably short period of time, I am no longer 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 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 nature and extent of the works required to address the matters that gave rise to the derelict condition of the site, 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, noting the nature and extent of the works required to address the condition of the property, it would be appropriate to allow time 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 nature and extent of works which are required to address the dereliction on the site, 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 Waterford City and 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(s) 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 Waterford City and County Development Plan 2022-2028,

it is considered that, having regard to the nature and extent of works which are required to address the dereliction on the site, 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

1st July 2024