



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319045-24

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<b>Development</b>	Derelict Site at 2 Mocmoyne Heights, Boyle, Co. Roscommon
<b>Location</b>	2 Mocmoyne Heights, Boyle, Co. Roscommon, F52 H309
<b>Planning Authority</b>	Roscommon County Council
<b>Notice Party</b>	Thomas Flannery & Catherine Flannery
<b>Date of Site Inspection</b>	13/06/2024
<b>Inspector</b>	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 2 Mocmoyne Heights, Boyle, 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 within the Mocmoyne Housing estate, a group of single storey dwelling houses, overlooking the town of Boyle. Number 1 Mocmoyne Heights and Number 2 Mocmoyne Heights are both subject to an application for consent to compulsory acquire the dwellings. The site is a prominent site within the housing estate and is visible from the entry point to the estate.
- 2.2. My observations of the property on the date of the site inspection included the following;
- The property was vacant.
  - The property has never been finished and has never been resided in.
  - No part of the property was ever plastered.
  - There are no rainwater goods on the property
  - The area surrounding the property was overgrown and unkempt.
  - There was missing fencing to the front of the property.
  - The front and rear of the property was in an untidy state in terms of weeds/vegetation.

## **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 28<sup>th</sup> of July 2022 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on the 19<sup>th</sup> of December 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 Roscommon County Council's intention to acquire the site was served on Thomas Flannery & Catherine Flannery in a letter dated 18<sup>th</sup> of December 2023, and was published in the Roscommon Herald newspaper on 19<sup>th</sup> of December 2023. The site was described as follows in the notices:

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

House Number 2 Mocmoyne Hieghts, Boyle, Co. Roscommon F52 K263 comprising an area of approximately 0.0506ha or thereabouts – Drawing number: CPO- BE – 22-14.... 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 compulsorily acquisition was submitted to Roscommon County Council on 15<sup>th</sup> of January 2024 by Thomas J. Flannery. The objection can be summarised as follows:

- There is a court order on the property which is legally binding

- The owner does not have possession of the property and therefore cannot carry out works to the property
- The Council has no legal right to control of properties 1 & 2 Mocmoyne.

### 5.3. **Local Authorities Application or 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 the 12<sup>th</sup> of February 2024 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 18<sup>th</sup> of December 2023.
- Copy of the newspaper notice, dated 19<sup>th</sup> of December 2023.
- Copy of objection made by Thomas J. Flannery

The derelict site report can be summarised as follows:

- The property has never been finished and the walls have never been plastered.
- The site is completely overgrown
- A number of air vents are open.
- All other properties in the estate are in good condition

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

- The property is considered derelict as in its current state the property detracts from the amenity and character of the area to a material degree and has become neglected and unsightly in this residential estate.

## **Objector's Submission to the Board**

There are no further submissions to the Board

## **6.0 Relevant Planning History**

PA Reg: Ref: 96/255 – Permission granted on the 22<sup>nd</sup> of January 1997 for the erection of 11 houses at Mocmoyne, Boyle

There are no other recent 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 13<sup>th</sup> of June 2024, however, I was able to view the site from the public road and from the rear. The property was vacant and in a derelict state.
- 7.1.2. I noted that the property was never lived in and appears to be a shell. The property has never been plastered and there are no rainwater goods present. Although the property is generally sealed there are openings into the property in the form of cored holes in the walls, presumably for the future placement of vents.

- 7.1.3. To the front of the property there is a missing timber post and rail fence. The area is completely overgrown with weeds and vegetation. The rear of the property is also overgrown with weeds and vegetation. There is no boundary present between no 1 Mocmoyne and no 2 Mocmoyne.

## **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 (b) of Section 3 of the Derelict Sites Act 1990, as amended:

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

Having regard (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 20<sup>th</sup> of June 2022 and sent a Section 8(2) notice to the owner on the 28<sup>th</sup> of July 2022. A Section 8(7) notice was sent to the owner on 19<sup>th</sup> of December 2022. I note that two number responses were received from the owner of the properties to these notices, objecting to council placing the property onto the Derelict sites register.
- 7.3.2. I also note correspondence between the owners of the property and the local authority following the issuing of the Section 8(7) notice, which was received on the 20<sup>th</sup> of April 2023. Roscommon County Council agreed to acquire the properties at the appraised value carried out by the local authority. The council agreed to give the owners until the 30<sup>th</sup> of April to consider the offer. In the event of no agreement being reached the council would proceed to compulsorily acquire the properties under the Derelict Sites legislation.
- 7.3.3. A further meeting was held with the owners of the property and representatives of Roscommon County Council on the 2<sup>nd</sup> of May 2023. The owners advised Roscommon County Council the mortgages are with Pepper and they have no access to the property since 2014. In an email on the 26<sup>th</sup> of May 2023 the applicant states the mortgage has been sold on to Financial Link in Galway. They have not been able to get in contact with Financial Link. The owner also supplied the local

authority with a “Possession Order” dated March 2015 for Properties 1 & 2 Mocmoyne Heights.

- 7.3.4. The local authority issued another letter to the owners of the property advising them that the local authority would be obliged to proceed to compulsory acquire the properties. It is advised that the owners seek their own valuation and submit a copy to the valuations of Roscommon County Council no later than Friday 21<sup>st</sup> of July. The owners of the property submitted a valuation for their property at €140,000.
- 7.3.5. On the 4<sup>th</sup> of September a further letter was issued by Roscommon County Council stating that another independent valuation of the property was carried out, a subsequent offer for the property was made based on that valuation- €80,000. The offer was in place until the 18<sup>th</sup> of September 2023.
- 7.3.6. Having received further correspondence from the applicant, stating they would only accept the sum as set out in their own valuation, the local authority considered that the only option available to remove this property from dereliction is to acquire the site compulsorily.
- 7.3.7. 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 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 2 years 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**



The owner of the site has stated that they have no legal access to the site and therefore can not carry out works to remove the site from the derelict sites register.

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 a detached bungalow dwelling and surrounding land situate at 2 Mocmoyne Boyle, Co. Roscommon containing 0.0506 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 18<sup>th</sup> of December 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 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 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(b) 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.

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Darragh Ryan  
Planning Inspector

17<sup>th</sup> June 2024