



An
Bord
Pleanála

Inspector's Report

ABP-319675-24

Development

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

Location

Main Street, Ballingarry, Co. Limerick

Planning Authority

Limerick City and County Council

Notice Party

Lisa Hartnett

Date of Site Inspection

1st August 2024

Inspector

Ciara McGuinness

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 Main Street, Ballingarry, County Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

2.0 Site Location and Description

- 2.1. The village of Ballingarry is located approximately 30km to the southwest of Limerick City, 11km southwest of Croom and 8km southeast of Rathkeale. The site is centrally located in the village. There is a mix of commercial and residential developments in the vicinity of the subject property.
- 2.2. The site has an area of 0.009 hectares and is described in the notice as a mid-terrace, two storey residence. On the day of my site inspection, I was able to view the property from the public street.
- 2.3. My observations of the site on the date of the inspection include the following;
 - The façade was dirty.
 - The roof was in poor condition with loose/missing slates.
 - Vegetation was growing out of the rainwater gutters and roof.
 - There were loose hanging wires on the front façade.
 - The paint on the front door was chipped and peeling.

3.0 Application for Consent of Acquisition

- 3.1. 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 1st April 2021, advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7), on the 16th March 2022, advising of the Local Authority's decision to enter the site on the register of derelict sites.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owner/occupier (Lisa Hartnett) on the 7th March 2024 and was published in the Limerick Post newspaper dated 9th March 2024. The site was described as follows in the notices:

- A derelict site comprising a mid-terrace, two storey residence and surrounding land situate at Main Street, Ballingarry, Co. Limerick, containing 0.009 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-003-21 in the Derelict Sites Register established and maintained by Limerick City & 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 to the proposed compulsorily acquisition was submitted to Limerick City and County Council by the owner/occupier, Lisa Hartnett. The objection can be summarised as follows;

- The owner would like more time to deal with the situation. She is weighing up other options at the moment as she is having difficulty in acquiring paper work for the house. She will contact Limerick City and County Council as soon as she gets an answer from her solicitor.

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsorily acquisition of the derelict site. The application for consent was submitted on 9th May 2024 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 1st March 2024.
- Copy of the newspaper notice, dated 9th March 2024.
- Copy of objection made by Lisa Hartnett.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County Council (LCCC) 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 site detracts from the amenity, character and appearance of the well-maintained properties in the area and is deemed derelict due to holes in roof, loose and slipped slates, missing/broken/leaking rainwater gutters or downpipes, loose masonry or falling plaster, broken, missing or boarded up windows and doors, dirty façade/peeling paint, plants growing out of masonry or roof, rotten timber.
- The council first inspected the property on 14th January 2021 and identified it as a derelict site. A notice of enquiry was affixed to the property seeking information on ownership of the property.
- On 18th January 2021, the LCCC area inspector spoke with the reputed owner Lisa Harnett in relation to the site. She outlined that she was trying to source title for the property. The Repair and Lease Scheme was discussed as a potential support to bring the property back into use and information was sent to Ms Harnett by email.

- A section 8(2) notice was affixed to the property on 1st April 2021.
- A section 8(7) notice was affixed to the property on 16th March 2022.
- On 19th August 2022, LCCC received correspondence from Richard O'Donoghue TD stating that there had been works carried out to the property. LCCC subsequently inspected the site on 31st August and found that the site continued to be in a derelict state.
- On 2nd October 2022, the LCCC area inspector inspected the site again. The limited works carried out by the owner had no meaningful impact on solving the bigger issues causing the dereliction.
- On 17th May 2023, the LCCC area inspector contacted the owner to discuss a timeframe for the property coming out of dereliction. At the time the owner did not have a plan in place or a timeline to complete outstanding remedial works. The LCCC inspector discussed the Croi Conaithe Vacant Property Refurbishment grant which the owner could potentially avail of. Details of the scheme were sent to the owner, but no response was received.
- On 24th October 2023, the area inspector carried out an inspection on the property and found that its condition had not improved. The inspector followed up with a phonecall to the owner but got no response.
- On 7th November 2023, the area inspector sent an email to the owner seeking her intentions for the property and a measured plan to bring the property out of dereliction. No response was received to this email.
- It is the contention of the council that the inaction of the property owners and failures of their duties under the Derelict Sites Act that jeopardises the future use of properties in the area due to their continued neglected and derelict state. In this case, the property continues to deteriorate and attract negative attention in a key area of Ballingarry. The only option available to the council is to acquire this property compulsorily.

4.4. Objectors Submission

None.

5.0 Planning History

None.

6.0 Policy Context

6.1. Limerick Development Plan 2022-2028

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.

Ballingarry Settlement

Volume 2b of the Development Plan sets out the Settlement Plan for Ballingarry. The site is zoned 'Village Centre'. The Plan recognises that there are opportunities for the redevelopment of residential units within the village centre having regard to the level of dereliction in the village. Some of these buildings have high visibility due to their scale and large street frontages and collectively they contribute to a neglected appearance to the village.

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 of Issues

7.1. Site Inspection

- 7.1.1. Internal access and rear access to the property was not possible on the date of my site inspection on 1st August 2024, however I was able to view the site from the public road. The house is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area.
- 7.1.2. My observations of the site on the date of the inspection include the following;
- The façade was dirty.
 - The roof was in poor condition with loose/missing slates.
 - Vegetation was growing out of the rainwater gutters and roof.
 - There were loose hanging wires on the front façade.
 - The paint on the front door was chipped and peeling.
- 7.1.3. The site is located in a prominent location in on Main Street in Ballingarry. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the building and the character and streetscape of the area. The buildings and dwellings in the immediate surrounds appear to be reasonably well maintained and occupied.

7.2. Category of Dereliction

- 7.2.1. I note the local authority considered that the property and lands fell under Category (a) and (b) of Section 3 of the derelict Sites Act 1190, as amended.

- 7.2.2. Although I was not able to view to rear of the property on the date of my site inspection, I note the Local Authority photos of the rear, dated December 2022, which show that the building is in a ruinous and derelict condition. The photos show loose/falling masonry, broken/missing windows and vegetation growing through the roof. The notice party has not disputed the Local Authorities indicators of dereliction or suggested that any improvements have been made since those photos were taken. The roof at the front of the house is also in poor condition. I therefore consider that the site falls under category (a) of Section 3 of the Derelict Sites Act 1990, as amended.
- 7.2.3. Based on my site inspection, it is my view that the subject structure and lands are still in a neglected, unsightly and objectionable condition. I therefore consider that the site falls under Category (b) of Section 3 of the Derelict Site Act 1990, as amended.
- 7.2.4. I did not see any evidence of littering or waste being stored externally. Therefore, I am satisfied that the site does not fall under Category (c) of the Derelict Sites Act 1990, as amended.
- 7.2.5. Having regard to (a) and (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.

7.3. Action of Local Authority

- 7.3.1. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the site. Section 8(2) notices were served on the owner on 1st April 2021, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the owner on 16th March 2022, advising the owner that the site had been entered on the Derelict Sites Register. A Section 15(1) notice was served on the current owners on the 7th March 2024 and published in the Limerick Post newspaper dated 9th March 2024 regarding the Local Authority's intention to acquire the site compulsorily. Having regard to the above, I am satisfied that the local authority complied with the requirements of Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended.

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.” The policy of the Local Authority, as expressed in the Compulsory Acquisition report, is to positively engage with the owners of a derelict site and to avoid using the powers under the Derelict Sites Act, except where necessary. It is over 3 years since communications between the owner/representatives of the owner and the Local Authority commenced in relation to the derelict state 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. 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 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. I consider that the subject property detracts to a material degree from the character and appearance of the surrounding area. 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. Action of the Owner to address Dereliction

7.5.1. I note that an objection to the proposed acquisition of the site was made to the Local Authority by Lisa Hartnett on 12th April 2024. The basis of the objection to the compulsory acquisition of the property was that the owner required further time to deal with the situation and to acquire the paperwork for the house. I note that no further objection was made to the Board.

7.5.2. 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”. I note from my site inspection on the 1st August 2024 that it was not apparent that any further works had been undertaken to address the appearance of the subject property since the 12th April 2024 (when correspondence was last

received on behalf of the Notice Party). It is now over 3 years since the derelict condition of the property came to the Local Authority's attention and since the current owner was notified of the derelict state of the property. It has also been 6 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.

- 7.5.3. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at Main Street, Ballingarry, Co. Limerick is granted.

8.0 Conclusion

- 8.1. 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.
- 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 mid-terrace, two-storey residence and surrounding land situate at Man Street, Ballingarry, Co. Limerick, containing 0.009 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 1st March 2024 and on the deposited maps DS-003-21, 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.
- 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 compulsory acquisition by the acquiring authority unreasonable or disproportionate.

- 8.4. The effects of the 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 Limerick City and County Development Plan 2022-2028, and specifically Objective CGR 04, Objective CGR 06 and Policy CGR P4 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use and to revitalise towns and villages. Accordingly, I am satisfied that that the grant of consent to compulsorily acquire these lands 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 ruinous and 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 Limerick City and County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1. Having regard to the ruinous and derelict condition of the structure and the derelict, neglected, unsightly and objectionable state of the land, having considered the objections made to the compulsory acquisition, and also:
- The constitutional and convention protection afforded to property rights,
 - The public interest, and
 - The provisions of Limerick 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 section 3 (a) and (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.

Ciara McGuinness
Planning Inspector

13th September 2024