



An
Bord
Pleanála

Inspector's Report

ABP-319677-24

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

Banogue Cross, Banogue, Croom, Co. Limerick

Planning Authority

Limerick City and County Council

Notice Party

Denis & Kieran Linehan

Date of Site Inspection

1st August 2024

Inspector

Ciara McGuinness

1.0 Introduction

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 Banogue Cross, Banogue, Croom, Co. Limerick, 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 the N20 road between Croom and Charleville at Banogue Cross. The site is c.5km south of Croom and c.13km north of Charleville. There are a number of residential properties located in the vicinity of the crossroads. A service station and shop are located on the southern side of the crossroads opposite the subject property. Banogue GAA club, national school and church are located within the wider rural area.
- 2.2. The site has an area of 0.264 hectares and is described in the notice as a detached dormer cottage. On the day of my site inspection, I was able to view the property from the public street and I was able to walk around to the rear of the property.
- 2.3. My observations of the site on the date of the inspection include the following;
- Glass panes in the front door were broken or missing.
 - Guttering was loose and falling down or missing.
 - Loose, broken or missing slates on the roof.
 - Cracks in the chimney/vegetation growing out of the chimney.
 - Dirty façade/peeling paint to the rear and sides of the property.
 - Weeds and vegetation were growing in the garden.
 - The rear door was boarded up.
 - The roof of the rear annex is in poor condition with rotten timber evident.
 - The adjoining lands to the west of the house are unkept.
 - The boundary of the adjoining lands to the west, comprising post and mesh fencing, is unsightly.

3.0 Application for Consent for 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 13th of 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 6th of December 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 owners/occupiers (Denis & Kieran Linehan) 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 detached dormer cottage and surrounding land situate at Banogue Cross, Banogue, Croom, Co. Limerick, containing 0.264 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-021-21 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

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.

4.2. Objection to Acquisition

An objection to the proposed compulsory acquisition was submitted to Limerick City and County Council by Denis and Kieran Linehan on the 25th March 2024. The submission includes a letter from Mary Annes Jones & Co. Solicitors and DJS Consulting & Construction Ltd. The objection can be summarised as follows:

- The property was bought in 2007 (just before the financial crash in 2008) with permission to demolish the existing cottage and construct 3 dwelling houses (PA Reg Ref 06/1022).
- Extension of duration of planning PA Reg Ref 06/1022 refused in 2011.
- Irish Water were engaged in 2019 for a pre-connection enquiry to assess the viability of the site to handle houses.
- A pre-planning meeting was sought in 2020 but did not go ahead due to covid.
- An application for the demolition of the cottage and construction of 4 dwellings was refused in 2023.
- The site was used as a compound/parking area by Limerick City and County Council contractors during road upgrade works.
- The house has been maintained since initial engagement from the Property and Community Facilities Department. The owners are committed to restoring the property to its full potential.
- The property is overgrown, but the dwelling is in reasonable conditions. There are no broken windows or missing roof slates. There are properties in worse condition in the locality that are not the subject of a derelict site notice.
- There is currently a planning application being prepared for the refurbishment and extension to the existing cottage and for a separate dwelling towards the rear of the site which is due to be lodged in the next month to 6 weeks.

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 Denis and Kieran Linehan.

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 partially demolished/ruinous building, 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, accumulation of litter/waste or illegal dumping, site overgrown with vegetation and unsightly boundaries.
- On 29th March 2021, LCCC received a phone call from Denis Linehan to say he and his brother owned the property. Denis advised he would contact the planning department to organise a meeting about the application.
- On 14th April 2021, LCCC served the owner by registered post a Section 8(2) notice.
- On 13th July 2021, LCCC received an email from Denis Linehan showing improvements works to the property. However, extensive remedial works were still required to bring the property out of dereliction.
- On 11th August 2021, LCCC received an email from Mary Anne Jones & Co Solicitors stating remedial measures had been carried out to the property and

her clients are anxious to meet with the planning department to deal with the site.

- On 27th October 2021, LCCC spoke to Denis Linehan and acknowledged some work was carried out to the property, but it still remained in a derelict condition.
- On 6th December 2022, a Section 8(7) was served on the owners and affixed to the site.
- On 16th February 2023, Denis Linehan contacted LCCC to discuss the case. He noted remedial works had been carried out and a planning application for the demolition of the cottage and construction of 4 no. residential properties had been submitted.
- On 17th February 2023, LCCC emailed Denis Linehan to acknowledge his correspondence and to advise him to contact the area inspector to arrange a meeting.
- On 21st February 2021, LCCC emailed Denis Linehan to confirm his postal address for any correspondence relevant to the notices. No response to this request was received.
- On 28th November 2023, LCCC contacted Denis Linehan and discussed the Croi Conaithe grant and other house energy grants available. The relevant information was sent to Mr Linehan.
- No further communications have been received from the owner.
- 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 attract negative attention in a key area of Limerick City. The only option available to the council is to acquire this property compulsorily.

4.4. Objectors Submission

An objection to the proposed compulsorily acquisition, was lodged via email to the Board by Denis and Kieran Linehan on the 18th June 2024 and is summarised as follows;

- The site has been in a 'derelict state for a considerable period' can be explained with the timeline for planning applications to demolish the cottage. What would have replaced the cottage would have looked better had Limerick City and County Council agreed to proposals over the past 10 years.
- There are 3 properties within 500m-900m of the site that are in a worse state of dereliction and none of these properties have been placed on the derelict site register.
- It is contended that the following works have been completed;
 - Remedial works to chimney
 - Slates have been replaced and secured
 - Guttering and downpipes have been repaired
 - Windows and doors have been repaired and secured
 - The extension to the rear has been assessed and secured
 - Front garden has been cut back and is being maintained
 - Footpath has been cleared of vegetation
 - Window boxes and potted plants have been reinstalled
 - The wall, cottage and front door have been painted
 - The front of the site is now fenced
 - No dumping/no parking signs have been erected
 - Rubbish has been removed
 - CCTV cameras have been installed
- Vegetation will be cut back in September 2024

- It is contended that the site is not derelict. The owners have received enquiries about accommodation, the site is in a presentable state and all rubbish has been removed.
- The waste referred to by LCCC relates to building materials used by the LCCC appointed contractor for the Banogue Traffic calming works in 2021.
- The owners have experienced delays in developing the site due to refusals of planning permission on the site, the covid pandemic and restrictions on development arising from the M20 proposed route.
- A planning application has been submitted to renovate and extend the existing cottage.

5.0 Planning History

PA Reg Ref 24/329 – Live application for the proposed renovation and extension of existing dwelling, also construction of new dwelling house, entrances, boundary walls and fences, treatment units and polishing filters and associated site works

PA Reg Ref 23/33 - Permission refused in March 2023 for the demolition of existing cottage and construction of 4 no. dwelling houses, entrance, boundary walls and fences and associated site works

PA Reg Ref 06/1022 – Permission granted in March 2007 for the demolition of existing cottage and construction of 3 no. dwellings, entrances and all associated site works

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.

6.2. Derelict Sites At 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 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 and walk around the rear of the property. 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;
- Glass panes in the front door were broken or missing.
 - Guttering was loose and falling down or missing.
 - Loose, broken or missing slates on the roof.
 - Cracks in the chimney/vegetation growing out of the chimney.
 - Dirty façade/peeling paint to the rear and sides of the property.
 - Weeds and vegetation were growing in the garden.
 - The rear door was boarded up.
 - The roof of the rear annex is in poor condition with rotten timber evident.
 - The adjoining lands to the west of the house are unkept.

- The boundary of the adjoining lands to the west, comprising post and mesh fencing, is unsightly.

7.1.3. The site is located in a prominent location at Banogue Cross on the N20 road, opposite a service station. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the building and the character of the area. The buildings and dwellings in the immediate surrounds appear to be reasonably well maintained and occupied. The Limerick Development Plan has identified derelict and vacant sites as a matter of serious concern which has a negative impact on the social, visual and commercial aspects of a neighbourhood.

7.2. Category of Dereliction

- 7.2.1. I note the local authority considered that the property and lands fell under Category (a) (b) and (c) of Section 3 of the derelict Sites Act 1990, as amended.
- 7.2.2. While there is no obvious evidence of structural damage to the external walls, I note that the roof on the rear annex comprises of rotten timber and appears to be collapsing in. 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 noticed some minor littering within the site, however I did not see any evidence of 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 13th 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 6th December 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 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 Denis and Kieran Linehan on 12th April 2024. The basis of the objection to the compulsory acquisition of the property was that delays had been encountered

due to planning permission refusals and the N20 road upgrade works but a planning application was being prepared. I note a further objection was made to the Board by email on 18th June 2024 generally reiterating the issues raised in the initial objection to the Local Authority and noting that a new planning application has been lodged with the Local Authority (PA Reg Ref 24/239 refers).

- 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 18th June 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 Banogue Cross, 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 detached dormer cottage and surrounding land situate at Banogue Cross, Banogue, Croom, Co. Limerick, containing 0.264 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-021-21, 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 and Objective CGR 06 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use. 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

17th September 2024