



An
Bord
Pleanála

Inspector's Report ABP-319681-24

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

Pound Street, Ballingarry, Co.
Limerick

Planning Authority

Limerick City and County Council

Notice Party

Raymond O'Shea

Date of Site Inspection

1st August 2024

Inspector

Ciara McGuinness

1.0 Introduction

- 1.1.1. 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 Pound 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 to the southeast of Rathkeale. The site is located on Pound Street (R519), which connects Ballingarry to Adare. Pound Street runs perpendicular to Main Street and contains a number of well-maintained residential properties.
- 2.2. The site has an area of 0.016 hectares and is described in the notice as an end-of-terrace two storey residence. The adjoining mid-terrace residence is also the subject of a request by Limerick City and County Council for the consent of An Bord Pleanála to compulsorily acquire the site. On the day of my site inspection, I was able to view the front of the property from the public street and the rear of the property from the driveway of the adjoining property to the southwest of the site.
- 2.3. My observations of the site on the date of the inspection include the following;
- A new roof has been installed.
 - New rainwater goods in the form of guttering were in the process of being installed.
 - Scaffolding surrounds the property and contractors were on site.
 - Access to the rear of the property is being facilitated through the driveway of the adjoining property to the southwest.
 - The driveway of the adjoining property contained a skip and other equipment associated with the construction works.
 - The windows and doors are boarded up.
 - The external walls are dirty, with peeling paint.

- The rear garden was in an untidy state.

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 15th February 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 1st April 2021, 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

Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Raymond O'Shea) on the 7th March 2024 and was published in the Limerick Post newspaper, dated 9th of March 2024. The site was described as follows in the notices:

- A derelict site comprising an end-of-terrace, two storey residence and surrounding land situate at Pound Street, Ballingarry, Co. Limerick, containing 0.016 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-034-18 in the Derelict Sites Register established and maintained by Limerick City & County Council under section 8 of the Derelict Sites Act, 1990.

- 4.1.1. 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 compulsory acquisition was submitted to Limerick City and County Council by Raymond O'Shea in a letter dated 25th March 2024. The objection can be summarised as follows;

- Planning permission has been granted to demolish the houses and develop the site but the cost of doing so is prohibitive. The intention is to now renovate the houses as soon as possible.

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 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 Raymond O'Shea

The derelict site report can be summarised as follows:

- Limerick City and County 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 buildings, holes in roof, loose and slipped states, 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, site overgrown with vegetation and unsightly boundaries.
- The council first inspected the property on 12th December 2017 and identified it as a derelict site.
- On 9th February 2018, a Section 29 notice was affixed to the property seeking information on ownership of the property. On 19th February 2018 the Local Authority received a letter from Raymond O'Shea stating the property is a disused family home and he had secured an architect with the intention of renovating/rebuilding the property.
- A section 8(2) notice was served on 15th February 2021. The owner responded noting he had engaged the services of another Architectural firm with the intention of developing the site.
- A section 8(7) notice was affixed to the site and sent to the owner on 1th April 2021.
- The Local Authority contacted the owner for an update on 7th April 2021. The owner stated he was in the process of submitting a planning application.
- The Planning Authority received an application (PA Reg Ref 21/897) for the demolition and replacement of the dwelling on 25th June 2021, which was subsequently granted on 21st September 2021.
- On 2nd November 2022 the Local Authority inspected the property and noted the property was up for sale.
- On 24th November 2023 the Local Authority called the owner for an update on the property. The owner noted that the property was on sale with planning permission approved. He also mentioned there was an issue with title which he was trying to resolve.

- 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

A submission was made to the Board (via email) by Raymond O'Shea on 21st May 2024 in response to the Section 15 notice. This can be summarised as follows;

- It is acknowledged that the site needs to be improved on, however efforts to do this have been delayed due to the pandemic, a serious illness of a family member and the death of an employer.
- Planning permission was granted to develop the site, however the development of the site was not financially viable.
- Efforts were made to sell the site. A number of offers were received but fell through due to issues with the title deeds.
- A builder has now been secured to renovate the site. Work has already started on clearing the site and the roof will be replaced in the next three to four weeks. Windows and doors will then be replaced, and the house completely renovated inside and out.

5.0 Planning History

PA Reg Ref 21/897 – Permission granted in September 2021 for the demolition of 2 no. existing terraced dwelling houses and construction of 2 no. replacement terraced dwelling houses, boundary walls and all ancillary 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.

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 'Existing Residential'. 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 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 from the driveway of the adjoining property to the southwest of the site. The condition of the site at the time of my site inspection was a vast improvement to how the property looked from the most recent photographs taken by the Local Authority dated 7th March 202.

7.1.2. My observations of the site on the date of the inspection include the following;

- A new roof has been installed.
- New rainwater goods in the form of guttering were in the process of being installed.
- Scaffolding surrounds the property and contractors were on site.
- Access to the rear of the property is being facilitated through the driveway of the adjoining property to the southwest.
- The driveway of the adjoining property contained a skip and other equipment associated with the construction works.
- The windows and doors are boarded up.
- The external walls are dirty, with peeling paint.
- The rear garden was in an untidy state.

7.1.3. The site is located in a prominent location within the settlement of Ballingarry. There are number of residential properties along Pound Street which are well maintained and are in good condition. The works carried out since the application has been submitted have significantly addressed the state of dereliction, however further additional works would be required to take the property out of dereliction.

7.2. Category of Dereliction

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

7.2.2. Based on my site inspection, it is my view that the subject structure and lands may be considered to still fall under Category (b) of Section 3 of the Derelict Site Act 1990, as amended (DSA):

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

7.2.3. The house appears to be in reasonable structural condition externally. There is no obvious evidence of significant cracking or structural damage to the external walls. I consider therefore that the site does not fall under category (a) of Section 3 of the Derelict Sites Act 1990, as amended. I did not notice any litter or rubbish within the site, or 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. Having regard to (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 15th February 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 1st April 2021, advising the owner that the site had been entered on the Derelict Sites Register. A Section 15(1) notice was served on the owner 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 5 years since communications between

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

- 7.6. 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”. From the evidence on file, including photographs appended to Local Authorities Compulsory Acquisition report, it is clear that the subject property was in a derelict state, and in an unsightly and neglected condition which detracted considerably from the character and amenity of the area at the time that the application to acquire the site was lodged. However, having inspected the site in August 2024, I observed that there is evidence that the owner has attempted to actively address the issues of dereliction, and in my opinion it is likely that the owner will continue to address the indicators of dereliction of the property. I noted that the property has been reroofed, and new rainwater gutters were in the process of being installed. Contractors were on site on the day of my site inspection with works continuing on-site. Thus, whilst the site remains in a neglected and unsightly condition, and detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the owner to render the site non-derelict should be taken into account in this instance. It is my view that

the owner has invested considerable expense on the property and is progressing matters. For this reason, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

- 7.7. It is further noted that the Local Authority has powers under Section 11 of the Derelict Sites Act 1990 (as amended) to require the owner to take specified measures to address any outstanding issues contributing to the dereliction of the property, should this be deemed necessary. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the subject property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to render it non-derelict, and that as such, sufficient time should be afforded to conclude 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 Pound Street Ballingarry, Co. Limerick.

8.0 Conclusion

- 8.1.1. 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.
- 8.1.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising an end-of-terrace, two storey residence and surrounding land situate at Pound Street, Ballingarry, Co. Limerick, containing 0.016 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 day of March 2024 and on the deposited maps (DS034-18), 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.
- 8.1.3. I am further satisfied that the proposed acquisition of these lands was consistent with the policies and objectives of the Limerick Development Plan 2022-2028, and specifically Policy CGR P4 and Objectives CGR 04(b) and 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 and to revitalise towns and villages.

- 8.1.4. It is further acknowledged that at the time of the 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 pursued at the time.
- 8.1.5. However, having regard to the works undertaken to date which have addressed the dereliction, 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 or disproportionate.
- 8.1.6. Having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site and the progress made on site, I am no longer satisfied that 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, given the works carried out to date on site, it would be appropriate to allow time to progress matters on site.

9.0 Recommendation

- 9.1.1. Notwithstanding the derelict condition of the structure and to the neglected, unsightly and objectionable condition of the land and structure, 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 evidence of the ongoing efforts being made by the Notice Party to address the dereliction onsite, to bring the property back into use, including the installation of a new roof and rainwater guttering, 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 Limerick 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:

- 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, however having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site, 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.

Ciara McGuinness
Planning Inspector

16th August 2024