



An
Bord
Pleanála

Inspector's Report

ABP-319716-24

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

26 Clare Street, Limerick.

Planning Authority

Limerick City and County Council

Notice Party

Mary McNiece O'Regan

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 26 Clare Street, 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 Clare Street, to the east of Limerick City centre. The area in the immediate vicinity of the subject property is predominantly residential in character with commercial, educational and amenity uses in the wider vicinity. The subject site is located on the northern side of Clare Street, c.130m west of the entrance to O'Brien's Park. St. Patricks Church and the newly completed Gaelcholaiste Luimnigh are also located on the northern side of Clare Street, to the east of the site. The Limerick School of Art and Design Campus is located opposite the subject site on the southern side of Clare Street. The site is a single storey, mid-terrace house. Both adjoining properties appear to be occupied and are in reasonable condition.
- 2.2. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH), There are several Protected structures in the vicinity, including O'Brien's Park Arch Gateway (RPS Ref 3321), and several more within the Limerick College of Art and Design Campus (RPS 3322, 3323, 3349, 3350, 3351). The site is not within an Architectural Conservation Area (ACA), however it is in close proximity to Clare St. Limerick School of Art & Design ACA.
- 2.3. The site has an area of 0.015 hectares and is described in the notice as a mid-terrace residence. On the day of my site inspection, I was able to view the property from the public street and from St Lelia Place to the north of the site where the rear of the property backs onto.
- 2.4. My observations of the site on the date of the inspection include the following;
 - Security fencing and 'keep out' signage was placed at the front of the property.
 - Vegetation was growing out of the front façade.

- Weeds and vegetation were growing in the front garden.
- Untidy cables and wires were located on the front facade of the house.
- Loose, broken or missing slates on the roof (both front and rear slopes).
- Windows and doors to the rear of the house were missing or boarded up.
- The rear yard was neglected and overgrown.
- Vegetation was growing on the rear roof slope.
- Guttering was loose and falling down.
- The rear façade had loose masonry and falling/cracked plaster.

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 22nd September 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 27th October 2023, 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 (Mary McNiece O'Regan) 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 residence and surrounding land situate at 26 Clare Street, Limerick, containing 0.015 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-134-22 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 compulsory acquisition was submitted to Limerick City and County Council by the owner Mary McNiece O'Regan on the 7th March by email and by letters dated 26th March 2024. The objection can be summarised as follows;

- The owner objects to the compulsory acquisition of the property as she is in the process of having the property renovated.

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 the owner Mary McNiece O'Regan.

4.3.2. 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 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, plants growing out of masonry or roof, rotten timber, and, site overgrown with vegetation
- The council first inspected the property on 9th September 2022 and identified it as a derelict site.
- When inspected on 9th September, a view through the house windows showed plaster falling from the walls. The rear garden was completely neglected and overgrown. The rear of the site was without windows and doors had vegetation growing onto the roof and spilling into neighbouring properties.
- A section 8(2) notice was served on 4th October 2022. The Local Authority received a phone call from the owner on the same day who stated her annoyance that a notice was fixed to the front door.
- On 6th October 2022, the area inspector phoned the owner to explain why the site and building was deemed derelict. She explained her husband was ill but that she would call a builder to address the dereliction. The inspector offered to meet her on site, but she did not avail of the opportunity.
- On 6th March 2023, the area inspector phoned the owner to request an update as he had been there recently and no progress had been made. On 12th May 2023, the owner returned the call to say she had a builder lined up to carry out the works.
- On 31st May 2023, the owner phoned the area inspector to say the works at the site were complete and that the case could be closed. The area inspector said he would inspect the site and report back to her if the works were satisfactory.

- On 9th June 2023, the area inspector viewed the site and observed that the works to the site were minimal, consisting of flower pots placed in the front garden and gravel laid around to fill the front garden. It appeared that neither the inside of the house nor the rear of the house were not touched. The rear of the house had no functioning doors or windows. Waste was visible throughout the site. Vegetation was growing throughout and up onto the roof. The area inspector phoned the owner to explain that the works were not sufficient to close the derelict site case. A further offer to meet on site was made but not availed of.
- On 12th June 2023, the owner contacted the Local Authority to say she had sacked her builder and would get someone else to carry out the works.
- A further site visit on 14th September 2023, showed no progress to date and it was recommended to add the property detailed to the Derelict Sites Register.
- A section 8(7) notice was affixed to the site and served to the owner on 31st October 2023. On receipt of the notice, the owner phones the area inspector and again there was discussion on the issues causing dereliction. Again, the owner was offered a meeting on-site.
- On 6th November 2023, the area inspector sent the owner information on the Vacant Property Refurbishment Grant.
- On 16th January 2024 the owner emailed the area inspector to say she had appointed another builder, and they would be starting on site soon.
- A further site inspection on 26th February 2024 saw there was no progress to the site.
- On 26th February 2024, the owner rang the area inspector to say she had received her Section 22 Notice of Valuation and hoped to have the builders on site soon.
- 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 Limerick City. The only option available to the council is to acquire this property compulsorily.

4.4. Objectors Submission

4.4.1. A submission was made to the Board (via email) by William O'Donnell Solicitors on behalf of Mary McNiece O'Regan on 4th June 2024 in response to the Section 15 notice. This can be summarised as follows;

- The property is not the owner's primary residence and is termed as a 'second home'.
- The property was reroofed at a cost of €15,000. A front door and sash windows were installed at a cost of €6,000 in 2018. The front and rear gardens are maintained by the owners and by a gardener.
- It was intended to alter the interior of the property to provide consulting rooms in 2020, however this has not materialised due to Covid 19 and the ill health and prolonged hospitalisation of the owner's husband.
- The Local Authority is aware of the owner's intention to restore the property in full. The owner is in a financial situation to ensure that this occurs.
- Efforts have been made to employ workmen to clear the rear of the site. The owner has been let down by workmen who have failed to fulfil commitments.
- A builder has now been appointed to undertake the project and is due to commence work on 17th June 2024.
- Photographic evidence is enclosed of works completed to the front garden. Hedges, shrubs and flower beds have been removed and pebbles have been laid. Urns at a cost of €120 have been placed in the front garden. The original period gate was reconditioned and installed by relevant craftworkers.

5.0 Planning History

None.

6.0 Policy Context

6.1. Limerick Development Plan 2022-2028

- 6.1.1. The subject property is zoned 'Existing Residential' in the Limerick Development Plan 2022 – 2028, the objective of which is 'to provide for residential development, protect and improve existing residential amenity.'
- 6.1.2. The following objectives are considered relevant;

Strategic Objective 4

'...Support and facilitate revitalisation and consolidation of the City, towns and villages, through public realm and place-making initiatives. Address vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest. ...'

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 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 I was able to view the rear of the site from St Lelia Place to the north of the site where the rear of the property backs onto. 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;

- Security fencing and 'keep out' signage was placed at the front of the property.
- Vegetation was growing out of the front façade.
- Weeds and vegetation were growing in the front garden.
- Untidy cables and wires were located on the front façade of the house.
- Loose, broken or missing slates on the roof (both front and rear slopes).
- Windows and doors to the rear of the house were missing or boarded up.
- The rear yard was neglected and overgrown.
- Vegetation was growing on the rear roof slope.
- Guttering was loose and falling down.
- The rear façade had loose masonry and falling/cracked plaster

7.1.3. The site is located in a prominent location on Clare Street. 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. 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 fall under Category (a), (b) and (c) 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 (a) and (b) of Section 3 of the Derelict Site Act 1990, as amended (DSA):
- (a) The structure is in a ruinous, derelict or dangerous condition
 - (b) The lands and structure are still neglected, unsightly and objectionable condition.
- 7.2.3. 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 (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 in respect of the site. Section 8(2) notices were served on the owner on 22nd September 2022, 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 27th October 2023, advising the owner that the site had been entered on the Derelict Sites Register. A Section 15(1) notice was served on the 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 c.2 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 the owner Mary McNiece O'Regan on the 7th March 2024 by email and by letters dated 26th March 2024. The basis of the objection to the compulsory acquisition of the property was that the owner was in the process of renovating. I note that a further objection was made to the Board on the 4th June 2024 by William O'Donnell Solicitors on behalf of the owner stating that the owner previously been let down by workmen and that a builder has now been appointed to undertake the project and is due to commence work on the 17th June 2024.
- 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 4th June 2024 (when correspondence was last received on behalf of the Notice Party). It is c. 2 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 5 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 or to support a conclusion that any works would be completed in a timely manner. 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 26 Clare Street, Limerick is granted.

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 a a mid-terrace residence and surrounding land situate at 26 Clare Street, Limerick containing 0.015 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-134-22, 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 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.

8.1.4. 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 Development Plan 2022-2028, and specifically Objectives CGR 04 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 cities, 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

- 9.1.1. Having regard to the observed condition of the application site, in particular the existence of structures which are in a derelict and ruinous condition and to 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.
- 9.1.2. 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

10.1.1. 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

20th August 2024