



An
Bord
Pleanála

Inspector's Report

ABP-319914-24

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

Staplestown Road/ Brownshill Road, County Carlow. Compulsory Acquisition of Properties known as Unit 2 (R93ED90), Unit 3 (R93D363) and Unit 4 (R93VP48) comprised in Folio CW22849F.

Local Authority

Carlow County Council

Notice Party

Ernst & Young Chartered Accountants
c/o Eoin Kenrick

Date of Site Inspection

17th September 2024

Inspector

Frank O'Donnell

1.0 Introduction

- 1.1. This case relates to a request by Carlow County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Staplestown Road/ Brownshill Road, Carlow, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The property which is the subject of this application for consent for compulsory acquisition (referred to hereafter as the 'subject property') is located at Staplestown Road/ Brownshill Road, Carlow, within c. 1 km to the east of Carlow Town Centre.
- 2.2. The property comprises 3 no. ground floor retail units (Unit 2 (Eircode: R93ED90), Unit 3 (Eircode: R93D363) and Unit 4 (Eircode R93VP48). The 3 no. units form part of the ground floor of a 3-storey mixed use commercial/ residential block. The upper 2 no. floors of the subject block are in residential use. There are a total of 20 no. residential units to the rear which are accessed via a gated vehicular entrance to the east of the subject property.
- 2.3. The subject property has a stated site area of 0.0223 hectares (223 sqm).
- 2.4. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH).
- 2.5. On the day of my site inspection the front of each of the 3 no. units (Units 2, 3 & 4) was sealed by means of timber hoarding. The blockwork to the front ground floor of the building was exposed and un-plastered. There was some evidence of weed growth in the gutters above ground floor level and at the base of the front elevation. There was also evidence of loose electrical wiring above the ground floor level. I also noted graffiti on the timber hoardings of each of the units. There was also evidence of some minor water damage above the units.

3.0 Application for Consent for Acquisition

- 3.1. Carlow 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 Carlow County Council serving a notice under Section 14 of the Act on the Derelict Sites Act, 1990, as amended, (i.e. advising of the Local Authority's intention to acquire compulsorily under the said Act, the derelict site as described).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

4.1.1. Notice of Carlow County Council's intention to compulsorily acquire the site was served upon the owners/ occupiers (1. Everyday Finance Designated Activity Company, 2. Mr. Cosmo Flood. 3. AIB (Carlow) and 4. AIB (Dublin)) on the 16th April 2024 and was published in the Nationalist Newspaper dated 16th April 2024. The site was described in the notices, as follows:

- All that and those the site and buildings situate to the north of Brownhill road in the Town and Urban District of Carlow being part of the Townland of Carlow and Barony of Carlow and known as Unit 2 (R93ED90), Unit 3 (R93D363) and Unit 4 (R93VP48), Stapletown Road/ Brownhill Road, Carlow, being part of the Property comprised in folio CW22849F of the Register of Ownership of Freehold Land in County Carlow being lands delineated in red on the map attached hereto.

4.1.2. I consider 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. 1 no. submission (from Ernst & Young Chartered Accountants, c/o Eoin Kendrick/ Luke Charleton) expressing objection to the proposed acquisition was submitted to Carlow County Council.

4.2.2. The objection can be summarised as follows:

- *In their capacity as Receiver over the property (Properties known as Unit 2, Unit 3 & Unit 4, Stapletown road/ Brownhill road, Carlow comprised in CW22849F) a formal objection is made to the proposed compulsory acquisition under the Derelict Sites Act, 1990, as amended by the Planning & Development Act, 2000, as amended.*

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 received on 11th June 2024 and included the following:

- Copy of extract from the iPlan planning register for planning reg. ref. no. 03/183.
- 1 no. photo of the front of the site.
- Copy of extract from Land Direct Map for the subject folio ref. no. CW2289F.
- Copy of Instrument of Appointment of Receiver Cosmo Flood dated 3rd October 2019.
- Copy of a Local Authority internal memo from the Town Regeneration Officer to the Housing Officer dated 30th November 2022 seeking confirmation as to whether the Housing Department has a social housing need for the property/s.
- Copy of a Local Authority internal memo from the Housing Office to the Vacant Property Unit dated 10th January 2023 requesting that the Vacant Homes Unit pursue the property under CPO or negotiated acquisition at market value rates.
- Copy of a Registered Letter from the Local Authority (Town Regeneration Officer) to the Registered Owner dated 12th January 2023 stating the Local Authority is interested in facilitating the re-use of the property.
- Copy of An Post returned Registered Post confirmation received by the Local Authority on 19th January 2023.
- Copy of Derelict Sites Report prepared by an Executive Technician in the Planning Department and associated photographs (2 no.) dated 5th June 2023.
- Copy of Folio details for Folio Ref. No. 22849F.
- Copy of a Local Authority memo from the Town Regeneration Officer to the Chief Executive of the Local Authority dated 10th April 2024 recommending

that the CPO procedure proceeds. This memo is counter signed by a Director of Services and the Chief Executive.

- Copy of the Chief Executive's Order dated 11th April 2024 to proceed with Notice of Intention to Compulsorily Acquire the property, as per Sections 14 to 16 of the Derelict Sites Act, 1990, as amended.
- Copy of a Local Authority Registered letter to the Registered Owner/ Receivers and Banks, (1. Mr. Cosmo Flood, 2. Everyday Finance Deisgnted Activity Company, 3. Allied Irish Bank (Carlow) & Allied Irish Bank (Dublin)), dated 16th April 2024 informing them of their intention to Compulsory Acquire the property, in accordance with the Derelict Sites Act 1990, as amended and inviting submissions on or before 17th May 2024. The letter is accompanied by a copy of the notice dated 16th April 2024, 1 no. copy of a land registry compliant map and 1 no. copy of the Newspaper Notice dated 16th April 2024.
- Copy of an email from Ernst & Young dated 17th May 2024 to the Local Authority regarding a Letter of Objection to the proposed compulsory acquisition dated 17th May 2024.
- Copy of an email from Ernst & young dated 27th May 2024 to the Local Authority seeking confirmation of receipt of a previous email dated 17th May 2024 and stating that they are happy to discuss the matter further.
- Copy of a response email from the Local Authority Vacant Homes Officer to Ernst & Young dated 27th May 2024 acknowledging receipt of the letter of objection dated 17th May 2024. It is stated that, *'as required in accordance with Section 16 of the Derelict Sites Act, 1990, as amended, all documentation in relation to the Compulsory Acquisition will now be forwarded to An bord Pleanála for consideration.'*
- Copy of a letter from the Local Authority to An Bord Pleanála dated 7th June 2024 seeking the confirmation of the Compulsory Acquisition in respect of the subject property.

4.3.2. The **Derelict Site Report** can be summarised as follows:

- The Derelict Site Report is dated 5th May 2023, VHO Ref. VHOC42.

- The Report relates to the subject property, Units 2, 3 &4, Staplestown road Upper/ Brownshill road, Carlow Town, folio ref. no. CW22849F. The site has a stated site area of 0.0223 hectares (223 sqm). The property is stated to be 3 no. unfinished, vacant and derelict ground floor commercial units within a multi-storey mixed use commercial and residential development.
- The Report finds that having inspected the property, it is a Derelict Site under Section 3 of the Derelict Sites Act, 1990.
- The Report includes the following Recommendation:
 - *‘Given the long-term neglected and objectionable condition of this prominent property in the centre of the Staplestown Upper/ Brownshill Road Streetscape; I advise direct initiation of CPO proceedings against these properties.’*
- The Report is informed by a Case Summary dated 5th May 2024.
- The property is described as follows:
 - *3 no. Unfinished Vacant and Derelict Ground floor commercial units within a multi-storey mixed use commercial and residential development.*
- It is further stated that:
 - *The units are unfinished, vacant and derelict units in an unsightly and objectionable condition.*
 - *They are secured from Staplestown Road Upper/ Brownshill road street side by timber board ups.*
 - *The units have always been vacant as they were unfinished.*
 - *To raise the units from dereliction will require significant investment.*
 - *The existing condition of the property/ units is deemed derelict and uninhabitable and in their current condition, un-useable.*
 - *This property has been long term derelict and objectionable in terms of its environs.*

- *Engagement with registered owners has yielded no improvements. (as confirmed by VHO and TRO).*
- The Report includes 2 no. photographs of the front exterior of the property dated 5th May 2023.
- The following advice is provided in the Report:
 - *‘Advise that the property be put forward for direct CPO by the Local Authority as it is deemed in this instance that putting the property through a protracted dereliction process will only yield limited improvements (if any).’*

4.4. Objector’s Submission

- 4.4.1. No objector’s submission was received by An Bord Pleanála.

4.5. Oral Hearing

- 4.5.1. No request has been received for an Oral Hearing.

5.0 Planning History

5.1. Planning History

- **035183:** Permission for a mixed use residential/ commercial/ retail/ medical development. Permission was GRANTED on 1st September 2003 subject to 37 no. conditions.

6.0 Legislation and Policy Context

6.1. Derelict Sites Act 1990 (as amended)

- 6.1.1. The Derelict Sites Act 1990, as amended, makes provision 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.
- 6.1.2. 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.”

6.1.3. Other relevant provisions of the Act are summarised below:

- Section 8 of the Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/ owners of their intention to do so.
- Section 9 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.
- 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.
- Section 11 of the Act enables Local Authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.
- Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in its functional area.
- Section 15 sets out arrangements for giving notice if the local authority intends to acquire a derelict site compulsorily.

- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it provides that if an objection is made, then the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

6.2. Carlow County Development Plan 2022 to 2028

6.2.1. The subject property is zoned 'Neighbourhood Facilities/ Centre' on the Carlow Town Land Use Zoning Map.

6.2.2. The following policies and objectives are of relevance to the subject proposal:

Objectives

Active Land Management

It is an Objective of the Council to:

- **CS. 06:**
 - *Actively promote the redevelopment and renewal of areas in need of regeneration through appropriate active land management measures including availing of statutory powers under the Derelict Sites Act, Housing Act, Vacant Site Levy and supporting implementation of the Residential Zoned Land Tax together with other statutory provisions to actively promote regeneration of urban and rural areas within the County.*

Core Strategy – Objectives

It is an Objective of the Council to:

- **CS. 012:**
 - *Promote measures to reduce vacancy and the underuse of existing building stock and support initiatives that promote the reuse, refurbishment and retrofitting of existing buildings within urban centres and targeted settlements in the county.*

7.0 Assessment

7.1. Site Inspection

- 7.1.1. I carried out my site inspection on 17th September 2024. Internal access to the subject property was not available. I inspected the exterior of the property from both the immediate public footpath to the south and the footpath on the opposite southern side of the public road.

7.2. Category of Dereliction

- 7.2.1. Based on the condition of the subject property which I observed during my site inspection, I consider that the site falls within subsection (b), of Section 3 of the Derelict Sites Act, 1990, as amended, due to the land and structure being in a neglected, unsightly and objectionable condition.
- 7.2.2. With regards to subsection (a), which relates to the existence on the land of structures which are in a ruinous, derelict or dangerous condition, having inspected the site and reviewed the material on the file, I do not consider that the structures are likely to be in a dangerous condition, or that they could be considered ruinous. Thus, it is not considered that the site falls within subsection (a) of the Derelict Sites Act 1990, as amended.
- 7.2.3. I do not consider the property to fall within category (c) of Section 3 of the Act as there was no significant or noticeable litter, rubbish, debris or waste, evident at the time of my inspection.
- 7.2.4. In conclusion, I consider that the property detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, which in my view, renders it derelict under Section 3 of the Act.

7.3. Action of Local Authority

- 7.3.1. The Compulsory Acquisition Report of the Local Authority dated 10th April 2024 sets out the initial engagement between the Local Authority and the Registered Owner of the property in the form of a Registered letter issued to the owner on 12th January 2024. This letter is stated to have been returned marked '*Insufficient address*'.
- 7.3.2. The Report refers to the Derelict Site Report from an Executive Technician of the Local Authority dated 5th June 2023 which has deemed the property to be derelict.

The property/ associated site is stated in the Report to be in a state of neglect and objectionable in terms of its environs. The Report recommends that the property be Compulsorily Acquired under the Derelict Sites Act, 1990, as amended.

- 7.3.3. A Notice of the Local Authority's intention to Compulsorily Acquire the property under Section 15 of the Derelict Sites Act, as amended, was served on 16th April 2024 and published in the Nationalist Newspaper on 16th April 2024.
- 7.3.4. Under Section 10 of the Derelict Sites Act 1990, as amended, it is noted that the Local Authority has a duty *'to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any land situate in their functional area does not become or continue to become a derelict site.'*
- 7.3.5. I note that in using its powers to Compulsorily Acquire the property, as set out in the Compulsory Acquisition Report, the Local Authority consider the said Compulsory Acquisition accords with policies and objectives of the Carlow County Development Plan, 2022 to 2028.
- 7.3.6. I further note the Local Authority consider that the Compulsory Acquisition accords with general Government Policy as set out in the Action Plan for Housing and Homelessness and in particular the stated policy objective to acquire vacant homes for social housing. I accept that the Local Authority has taken steps in consultation with the owner of the subject property to bring the property out of dereliction. Having regard to the foregoing 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 the Carlow County Development Plan, 2022 to 2028, and specifically Objectives CS. O6 and CS. O12, which seek, inter alia, to address dereliction, reduce vacancy and encourage and facilitate appropriate redevelopment. The subject property is in a derelict state and is understood to have remained vacant since approximately 2009. 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 a compulsory purchase order (CPO) 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 the objection to the proposed compulsory acquisition lodged for and on behalf of the Registered Owners of the property/ Appropriated Receivers which was received by the Local Authority on 17th May 2024. The letter from the Appointed Receivers dated 17th May 2024 state they '*wish to formally object to the proposed compulsory acquisition under the Derelict sites Act, 1990, as amended by the Planning and Development Act, 2000, as amended.*' No further information is provided in the said letter which indicates any action having being take by the Owner/ Appointed Receiver to address dereliction.
- 7.5.2. At the time of my site inspection the property appeared to be vacant and as noted further above was in a derelict state. I am satisfied the proposed compulsory acquisition is proportionate given the circumstances of this particular case.

8.0 **Conclusion**

- 8.1. I am satisfied that the process and procedures undertaken by Carlow County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the land to be 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 the site and premises situate at and known as Unit 2 (R93ED90), Unit 3 (R93D363) and Unit 4 (R93VP48) comprised in Folio CW22849F, Staplestown Road/ Brownshill Road, County Carlow, containing 0.0223 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 12th March 2024 and on the deposited map CPODS-VHOC42, 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 Carlow County Development Plan 2022-2028, and specifically Objectives CS. O6 and CS. O12, which seek, inter alia, to address dereliction, reduce vacancy and encourage and facilitate appropriate redevelopment. Accordingly, I am satisfied 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 site, in particular the derelict condition, the unsightly and objectionable condition 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 b) of the Derelict Sites Act, 1990, as amended.
- 9.1.2. I consider it 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 Carlow County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1.1. Having regard to the neglected, unsightly and objectionable condition of the site, the ruinous, derelict or dangerous condition of the structures, the deposit or collection of debris within the site and also:
- (a) the constitutional and Convention protection afforded to property rights,
 - (b) the public interest, and,
 - (c) the provisions of Carlow County Development Plan, 2022-2028,
- 10.1.2. 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 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 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.

Frank O'Donnell
Planning Inspector

14th October 2024