



An
Bord
Pleanála

Inspector's Report

ABP-320092-24

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

38 Kennedy Street, Carlow. (Eircode: R93 Y060)

Local Authority

Carlow County Council

Notice Party

Mr. Edward Purcell

Mr. Joseph Murphy

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 38 Kennedy Street, 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 38 Kennedy Street, in Carlow Town Centre.
- 2.2. The subject property comprises a mid-terrace two storey dwelling with associated rear garden space and has a stated site area of 0.0153 hectares (c. 153 sqm). The site includes the dwelling itself and an attached garage. The subject property forms part of a terrace of 3 no. two storey dwellings of varying height and design theme. There are a number of derelict structures further along the street to the west. To the immediate east there is a modern mixed use retail/ apartment scheme.
- 2.3. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH).
- 2.4. On the day of my site inspection the subject property was closed and I was unable to gain entry to the dwelling itself or indeed the attached side garage. Based on a comparison of photographs attached to the Local Authority's Derelict Site Compulsory Acquisition Report (dated 17th April 2024) I note that no significant/ noticeable works have been carried out at the subject property. I specifically note the following:
- The roof of the structure shows moss growth and has not been recently cleaned or power washed.
 - A significant section of the rainwater gutter on the front elevation over the garage door was missing.
 - The rainwater downpipe on the left-hand side of the front elevation (east) was detached from the rainwater gutter above.

- There was evidence of water damage on the left hand side (east) of the front elevation adjacent to the rainwater downpipe.
- The front elevation had not been recently cleaned, power washed or painted. There was evidence of some algae growth/ water damage towards the bottom of the front elevation. There was also some evidence of peeling paintwork/ damaged render.
- The 2 no. timber sash windows on the upper floor of the front elevation had not been cleaned or painted recently and appeared to be in a poor state of repair.
- The 1 no. timber window on the ground floor of the front elevation had similarly not been cleaned or painted recently and appeared to be in a poor state of repair.
- The main entrance door on the front elevation had not been cleaned or painted recently and was in a poor state of repair as evidenced by peeling paintwork at the base.
- The garage door on the front elevation had similarly not been cleaned or painted recently and there was evidence of peeling paintwork and missing timber.
- I did not notice any evidence of graffiti on the front elevation.

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 (Edward Purcell, 36 John Sweeney Park, Tullow Road, Carlow) on the 7th May 2024 and was published in the Nationalist Newspaper dated 7th May 2024. The site was described in the notices, as follows:

- All that and those the site and property known as 38 Kennedy Street, Carlow, R93Y060 situate on the south side of Coalmarket being part of the Townland of Carlow and Barony of Carlow, being All of the Property comprised in Folio CW9354F of the Register of Freehold Land in County Carlow.

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 Mr. Joseph Murphy) expressing objection to the proposed acquisition was submitted to Carlow County Council.

4.2.2. The objection can be summarised as follows:

- The property is currently going through a legal ownership process. As soon as this process is completed it is Mr. Murphy's intention to immediately move the property on for redevelopment.
- Mr. Murphy states the name of a local Solicitor acting on his behalf if the Local Authority require any further information.

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 4th July 2024 and included the following:

- Copy of a Local Authority internal memo and email from the Vacant Homes Officer to the Housing Officer dated 28th June 2023 regarding the Acquisition/ CPO of the property.
- Copies of the Land Registry Folio Map.

- Copy of Land Registry Folio details.
- Copies of Photographs of the Subject Property.
- Copy of a Registered Letter from the Local Authority to the Registered Owner dated 19th September 2023 stating the Local Authority is interested in facilitating the re-use of the property.
- Copy of an internal memo from the Vacant Homes Officer dated 29th October 2023 requesting that the Vacant Homes Unit pursue the property under CPO or negotiated acquisition at market value rates.
- Copy of Derelict Sites Report prepared an Executive Technician in the Planning Department dated 17th April 2024 and associated photographs.
- Copy of a Local Authority memo from the Vacant Homes Officer to the Chief Executive of the Local Authority dated 1st May 2024 recommending that the CPO procedure proceeds. This memo is counter signed by a Director of Services and subsequently by the Chief Executive on 2nd May 2024.
- Copy of the Chief Executive's Order dated 2nd May 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 1 no. email from the Executive Technician in the Planning Department to the Vacant Homes Officer dated 7th May 2024 confirming the posting of notices on the subject property on 7th March 2024 with 2 no. accompanying photographs.
- Copy of a Local Authority Registered letter to the Registered Owner, Mr. Edward Purcell dated 7th May 2024 informing him of their intention to Compulsory Acquire the property, in accordance with the Derelict Sites Act 1990, as amended and inviting submissions on or before 7th June 2024. The letter was accompanied by a copy of the notice dated 7th May 2024, 1 no. copy of a land registry compliant map, 1 no. copy of the Newspaper Notice dated 7th May 2024 and 1 no. copy of the Chief Executive's Order dated 7th May 2024.

- Copy of an email from Mr. Joseph Murphy dated 6th June 2024 to the Vacant Homes Unit in respect of the subject property.
- Copy of an email from the Vacant Homes Officer dated 6th June 2024 to Mr. Joseph Murphy seeking confirmation that he is making an official objection to the Compulsory Acquisition of the property. It is further advised in the email that as the process to Compulsorily Acquire the property has commenced the Local Authority will be referring the matter to An Bord Pleanála for its determination. Section 16 of the Derelict Sites Act, 1990, as amended, is then quoted.
- Copy of a response email dated 6th June 2024 from Mr. Joe Murphy which states that he is officially objecting to the CPO.
- Copy of a letter from the Local Authority to An Bord Pleanála dated 3rd July 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 17th April 2024, VHO Ref. VHO089.
- The Report relates to the subject property, No. 38, Kennedy Street, Carlow, folio ref. no. CW9354F. The site has a stated site area of 0.0153 hectares (153 sqm). The property is stated to be unoccupied.
- 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 property and the absence of direct action by the owner(s), I advise direct initiation of CPO proceedings against this property.’*
- The Report is informed by a Case Summary dated 17th April 2024. The Case Summary indicates the Registered Owner as Mr. Edward Purcell.
- The property is described as a mid-terrace two storey property in the Kennedy Street Streetscape of Carlow town and it is stated that the property has been long-term vacant and that the site and exterior are in a state of neglect.

- Significant works are stated to be required to the building to raise it to the current building standards and best practice.
- The visible works required are stated to be as follows:
 - *‘Localised Roof repairs to fascia, soffit, guttering and rainwater downpipes. Repair and replace where necessary.*
 - *New External Windows and Doors are required throughout. Alternatively, restoration of the existing sash windows.*
 - *Removal and repair of rebounding plaster at localised locations is required.*
 - *Complete external power-washing and cleaning to the entire property is required.*
 - *Complete external painting is required.*
 - *Removal of graffiti adorning the building and associated boundaries.*
 - *Cut back all out-of-control overgrowth and remove off site. Spray for weed throughout.*
 - *Remove all builders waste, rubble, debris and general litter off site.*
 - *All waste to be removed by registered waste contractor or to a registered waste facility.’*
- The Report notes that attempts of engagement with the registered owners has yielded no results and that this is confirmed by the Vacant Homes Officer (VHO) and the Town Regeneration Officer (TRO).
- The Report includes a Photographic Survey (41 no. photos in total) and notes: *‘Photographic Survey taken on 17th April 2024.’*
- 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

- None on file for the application site.

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 'Town Centre' on the Carlow Town Land Use Zoning Map. The site is also shown to be located within Flood Zone A on the same said map. The site is located within the Core Retail Area as defined on the Carlow Town Objectives 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 dwelling was not available. I inspected the front exterior of the property first from the opposite side of the public road to the north and then immediately adjacent to the property from the public road and footpath.

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 1st May 2024 sets out the initial engagement between the Local Authority and the Registered Owner of the property in the form of a letter issued to the owner on 19th September 2023. This letter is stated to have been returned '*gone away*'.
- 7.3.2. The Report refers to the Derelict Site Report from an Executive Technician of the Local Authority dated 17th April 2024 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 is seriously detracting from the streetscape. 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 7th May 2024 and published in the Nationalist Newspaper on 7th May 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 has remained vacant for a considerable period of time. 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 received by the Local Authority on 6th June 2024 wherein there is no reference to any works having been taken to address dereliction. It is stated that *'the site is currently going through the legal ownership process and as soon as this is completed my intention is to immediately move it on for redevelopment.'*
- 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. Based on my observations of the property no substantive works have taken place to the subject property to render it non-derelict and it remains that the continuing dereliction of the property is having a significant adverse effect on the amenities and appearance of the area. 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". 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. I therefore consider that the site remains in a derelict condition.

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 38 Kennedy Street, Carlow, R93Y060, containing 0.0153 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 7th May 2024 and on the deposited map CPO-VHO89, 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 there 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,

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

26th September 2024