



An
Bord
Pleanála

Inspector's Report ABP-320202-24

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

Lavan's Shop, Ballinlough, County Roscommon

Local Authority

Roscommon County Council

Notice Party

Declan Lavin

Date of Site Inspection

3rd October 2024

Inspector

Ian Campbell

1.0 Introduction

- 1.1. This case relates to a request by Roscommon County Council (RCC) for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Lavan's Shop, Ballinlough, Co. Roscommon, 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 proposed compulsory acquisition (referred to hereafter as the 'subject property') is located on the eastern side of Station Road in the centre of Ballinlough.
- 2.2. The subject property comprises a two storey, four bay, pitched roof, end of terrace building. The ground floor of the subject property previously accommodated a shop and residence. The upper floor of the subject property appears to have comprised part of the residence.
- 2.3. The subject property is a Protected Structure (RPS Ref. 02500434) and is listed on the National Inventory of Architectural Heritage (Ref. 31813001).
- 2.4. Adjacent properties in the area are occupied and are for the most part in reasonable condition.
- 2.5. On the date of my site inspection, the property was secure. The front façade is chipped, dirty, stained and in need of repainting. Windows frames on the front façade are in a poor state and require repair/replacement. Downpipes on the front façade are missing and gutters are leaking and are in need of repair/replacement. Vegetation is growing from the gutters to the front of the property. Both doors (of the front of the property) are in a poor state of repair. The timber shop front/remnants of the fascia are in a poor state of repair. There is moss growing on the roof tiles on the front roof slope. The area to the rear of the property is overgrown.

3.0 Application for Consent for Acquisition

- 3.1. Roscommon County Council (RCC) 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 the 30th of August 2023, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on the 13th of October 2023 (i.e. 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 RCC's intention to acquire the site compulsorily was served on the owner/representative of the owner of the property on the 27th of May 2024, and was published in the Roscommon Herald newspaper on the 28th of May 2024. The site was described as follows in the notices:

- The property known as Lavan's Shop, Ballinlough, Co. Roscommon being all of the property comprised in Folio RN18563 of the Register County Roscommon and comprising an area of approximately 0.0371 Ha. or thereabouts.

The said derelict site is more particularly shown outlined in red on map bearing reference CPO-031-023.

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. 1 no. objection was received by RCC in respect of the proposed compulsory acquisition of the subject property. The objection was submitted by Declan Lavin, dated 24th June 2024, (received by RCC on the 1st July 2024) and can be summarised as follows -

- The objector's family are in the process of refurbishing the property.
- The property was previously offered to the Council but the offer was turned down as the Council had enough properties in the area.

Correspondence from an estate agent in relation to the subject property is attached to the objection.

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 18th of July 2024 and was accompanied by the following:

- Cover letter.
- Report of RCC (dated 13th of July 2023) and including photographs noting that the property falls into category (a) of Section 3 of the Derelict Sites Act, 1990.
- Memorandum setting out background to the site, including that –
 - the site was first identified as being derelict in 2021.
 - works were carried out to the front of the property to address the dangerous condition of the property in September 2022, but the property remained derelict.
 - Section 8(2) and Section 29 Notices were served on the 30th of August 2023.
 - following an inspection on the 26th of September 2023 no works were found to have been undertaken to address the derelict condition of the property.
 - the property is in a very poor condition and is detracting from the area. Local residents have contacted RCC in relation to same.
 - there has been little engagement with the representative of the late owner.
- Folio details of subject property.
- Copy of Chief Executive's Order and correspondence re. Section 8(2) Notice (i.e. notification of intention to enter property onto Derelict Site Register) and Section 29 Notice (i.e. seeking information regarding the ownership of the property) dated 30th of August 2023. Proof of postage also submitted re. same, and copy of postage marked 'returned'.

- Copy of Chief Executive's Order and correspondence re. Section 8(7) Notice (i.e. notification of entry of property onto Derelict Site Register) and Section 11¹ Notice (i.e. measures required to be taken in relation to derelict site) dated 13th of October 2023. Postage marked 'returned'.
- Certificate of Valuation (dated 5th of March 2024).
- Notice of Valuation/Section 22 Notice (dated 19th of March 2024).
- Correspondence from RCC and Demand Notice/Section 23 Notice to the owners of the subject property re. Derelict Site Levy (dated 19th of March 2024). Proof of postage also submitted re. same, and copy of postage marked 'returned'.
- Copy of the Section 15 Notices served on the owner/occupier of the site (dated 27th of May 2024).
- Derelict site location map (Ref. CPO-031-23).
- Copy of the newspaper notice (dated 28th of May 2024).
- Copy of objection made by Declan Lavin and submitted to the Local Authority.
- Acknowledgement of objection to Section 15 Notice sent to Declan Lavin by RCC.

4.3.2. The timeline for the serving of notices under the Derelict Sites Act, 1990 by RCC is set out as follows;

- Section 8(2) Notice of intention to enter land in Derelict Sites Register: 30th August 2023.
- Section 8(7) Notice of Entry of Land in Derelict Sites Register: 13th October 2023.
- Section 11 Notice (i.e. measures required to be taken in relation to derelict site): 13th October 2023.

¹ The Section 11 Notice referred to 'clean and paint the shop and residential building; repair/replace windows and doors; clean gutters, cut back and maintain rear garden; and maintain structures to rear of site.

- Section 15(1)a Notice of Intention to Acquire Derelict Site Compulsorily:
27th May 2024.

4.4. **Objector's Submission**

- 4.4.1. No objections were received by the Board.

5.0 **Planning History**

5.1. Subject Property

There is no relevant or recent planning history associated with the subject property.

6.0 **Policy Context**

6.1. **Roscommon County Development Plan 2022-2028**

- 6.1.1. The subject property is not subject to a specific land use zoning in the Roscommon County Development Plan 2022-2028.
- 6.1.2. Relevant objectives/policy in the Roscommon County Development Plan 2022 – 2028 include;

Policy Objective TV 4.15 Continue to engage with owners of sites and properties which are vacant and or in a derelict/ruinous condition to seek to redress this. Where necessary, apply the available statutory mechanisms (Derelict Sites Act 1990) to address the impact of a derelict site/ structure upon the amenity of an area.

Policy Objective BH9.2 Protect all structures included on the Record of Protected Structures and their settings, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.

- 6.1.3. The subject property is a Protected Structure (RPS Ref. 02500434).

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

7.1. Site Inspection

- 7.1.1. Internal access to the property was not possible on the date of my site inspection and I carried out my site inspection from the public road/adjoining area.
- 7.1.2. The subject property is located in the centre of the village. Neighbouring properties appear to be well maintained and are in good condition. The area has an attractive appearance. The property has a neglected, unsightly and objectionable appearance from the public road and surrounding area. The front façade is chipped, dirty, stained and in need of repainting. Windows frames on the front façade are in a poor state and require repair/replacement. Downpipes on the front façade are missing and gutters are leaking and are in need of repair/replacement. Vegetation is growing from the gutters to the front of the property. Both doors (of the front of the property) are in a poor state of repair. The timber shop front/remnants of fascia is in a poor state of repair. There is moss growth on the roof tiles on the front roof slope. The area to the rear of the property is overgrown. The subject property detracts significantly from the character and appearance of the street.

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 category (b) of Section 3 of the Derelict

Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition.

7.2.2. With regard to category (a), which relates to 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 structure is likely to be in a dangerous condition, or that it could be considered ruinous. Thus, it is not considered that the site falls within category (a) of the Derelict Sites Act 1990.

7.2.3. Whilst the rear of the property is overgrown there was no evidence of a significant presence of litter, debris, rubbish or waste within the areas which I observed during my site inspection. I consider therefore that the site does not fall within category (c) of Section 3 of the Act.

7.2.4. In conclusion, I consider that the property demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under Section 3 of the Act.

7.3. Action of the Local Authority

7.3.1. The Memorandum from RCC note that dereliction was first noted as an issue at the property in 2021, however having reviewed the Street View function on Google Maps I note that dereliction would appear to be an issue at the subject property since c. 2009, or before.

7.3.2. The Local Authority has set out in its report/memorandum that it has attempted to engage with the owner/representative of the owner in 2021 and placed Derelict Site notices at the property in December 2021. RCC note that works were completed in September 2022 to address the dangerous condition of the property however the condition of the property remained an issue. Section 8(2) notices were served in August 2023 advising of the Local Authority's intention to enter the site on the Derelict Site Register. I note that there is no evidence of engagement from the owner/representative of the owner at this juncture in the process. At the same time the Section 8 (2) notices were served RCC also issued Section 29 Notices seeking information in relation to the ownership of the property. Section 8(7) notices were

subsequently served in October 2023 advising that the site had been entered on the Derelict Sites Register. At the same time of the issuing of the Section 8(7) Notices RCC also issued Section 11 Notices specifying the works required to address the condition of the property. I similarly note that there is no evidence of engagement from the owner/representative of the owner at this stage in the process. Finally, Section 15(1)(a) notices were issued on the 27th of May 2024 and published in the Roscommon Herald Newspaper on the 28th of May 2024 regarding the Local Authority's intention to acquire the site compulsorily.

- 7.3.3. 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." It is over two and a half years since communications between the owner/representative of the owner and RCC commenced in relation to the derelict state of the property. I also note the RCC issued Section 11 Notices setting out specific measures required to address the condition of the property. Having regard to the forgoing I am satisfied that the Local Authority gave the property owner/representative of the 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 Roscommon County Development Plan 2022-2028, and specifically Policy Objective TV 4.15, which seeks to address dereliction through engagement with owners of sites/properties, and where necessary, applying the available statutory mechanisms (Derelict Sites Act 1990) to address the impact of a derelict site/ structure upon the amenity of an area. The property has been in a derelict state for some time and detracts to a material degree from the character and appearance of the surrounding area. Therefore, I consider that the compulsory acquisition of the subject property 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. I further note that the subject property is a Protected Structure and that Policy Objective BH9.2 seeks to protect structures included on the Record of Protected Structures. Having regard to the condition of the subject property I consider that the proposed compulsory acquisition of the property 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 Declan Lavin dated the 24th of June 2024. The basis of the objection to the compulsory acquisition of the property is that the objector's family are in the process of refurbishing the property. At the time of my inspection of the subject property (October 2024) I noted no evidence of measures to address the condition of the property.

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". It is noted that no substantive works have taken place to the subject property. It is now over two and a half years since the derelict condition of the property came to the Local Authority's attention and over two and a half years since the owner/representative of the owner was first notified of the derelict state of the property. It has also been 4 months since the Local Authority served the Section 15 notice of intention to acquire the site compulsorily. Having inspected the site, there is no evidence of any further attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. 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 Lavan's Shop, Ballinlough, County Roscommon, is granted.

8.0 **Conclusion**

8.1. I am satisfied that the process and procedures undertaken by Roscommon County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.

8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the acquisition of the Derelict Site, Lavan's Shop, Ballinlough,

County Roscommon, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 27th of May 2024 and on the deposit map (Ref. CPO-031-023), pursues, and is 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 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 CPO made by the acquiring authority unreasonable or disproportionate.
- 8.4. The effects of the CPO on the rights of the affected landowner 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 Roscommon County Development Plan 2022-2028, and specifically Policy Objective TV 4.15 which seeks to address dereliction through engagement with owners of sites/properties, and where necessary, applying the available statutory mechanisms (Derelict Sites Act 1990) to address the impact of a derelict site/ structure upon the amenity of an area, and Policy Objective BH9.2 which seeks to protect structures included on the Record of Protected Structures. Accordingly, I am satisfied that that the confirmation of the CPO is clearly justified by the exigencies of the common good.

9.0 Recommendation

- 9.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 9.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act. I recommend that the Board grant consent to Roscommon County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

10.1. Having regard to the neglected, unsightly and objectionable state of the land and structure thereon, evidenced by the condition of the front façade of the property, the condition of the windows, doors and shop front, guttering, and the presence of weeds and overgrowth in the gutters, and having considered the objection made to the compulsory acquisition, and also:

(a) the Constitutional and Convention protection afforded to property rights,

(b) the public interest, and,

(c) the provisions of the Roscommon 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 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.

Ian Campbell
Planning Inspector

24th October 2024