



An
Bord
Pleanála

Inspector's Report ABP-320223-24

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

Derelict Site at Fairgreen, Edenderry, Co. Offaly

Local Authority

Offaly County Council

Notice Party

James Moloney c/o Byrne & O'Sullivan, Solicitors

Date of Site Inspection

28th August 2024

Inspector

Dolores McCague

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1.0 Introduction

- 1.1.1. This case relates to a request by Offaly County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at The Green Cottage, Fairgreen, Edenderry, County Offaly in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1.1. The property is located close to the centre of the town of Edenderry, in an elevated location, close to the water tower.
- 2.1.2. On the opposite side of the road, to the east, there is semi-detached housing. To the west, surrounded by open space, is the grounds and cemetery of the Church of Ireland church. To the south is Blundell Park within which is the historic ruins of Blundell Castle.
- 2.1.3. To the north there is open ground, which is gated; further north are large disused buildings in poor repair, with the appearance of former warehouse buildings. A small community/sports building to the south is well secured.
- 2.1.4. On the date of inspection I chose not to access the property because of the amount of waste material deposited there. Although the site is overgrown, and therefore well screened, it is not fenced and was accessible.
- 2.1.5. From outside the site it was possible to view the derelict building and the deposit of domestic waste material, including bags of waste. Dumping has taken place throughout the site and is taking place outside the site around its perimeter; in the public space to the south and the open ground to the north.
- 2.1.6. The site is long and narrow. It is given as 0.21ha. (0.52ac).

3.0 Application for Consent for Acquisition

- 3.1.1. Offaly County Council has applied to the Board for consent to compulsorily acquire the site under section 15 of the Derelict Sites Act, 1990, as amended. I note that this

is subsequent to the serving of notices under Section 15 (b), publishing notice under Section 15 (a) and depositing a map for viewing at the Council's offices under Section 15 (a).

3.1.2. The sequence of the Council's interactions with parties in relation to this site, prior to issuing the Section 15 notice, is outlined by the Council, in a report accompanying their letter to the Board:

- 16th July 2010 inspection and identification as a derelict site under section 3 of the Derelict Sites Act, 1990, as amended. Identification of site ownership followed.
- 12th September 2011 entry of site on derelict sites register and notices served. The owners submitted a representation (November 25th 2011) proposing to block up window/door openings.
- November 2011 property valued under Section 23 and a levy was issued to the owners 5th December 2011.
- March 2012 notification from owners that window/door openings were being blocked.
- 20th December 2012, Section 23 levy for 2012 was suspended under Section 26 (hardship). Continuous engagement between owners and Area Engineer was ongoing.
- 2nd September 2023, a representation from the owners was made informing the council that the banks had taken ownership, a Section 29 notice was served requesting identity: Bank of Ireland had taken charge.
- 8th April 2014 inspection and report recommending all those with a legal interest in the property be identified.
- October 2014 correspondence received from Lucy Maloney, on behalf of her father James Maloney, stating that the property was in the process of being purchased by him. His intention was to demolish the building, make the site safe and apply for planning permission as soon as possible.
- 26th June 2015 property folio was updated.
- 26th July 2017, the Council issued the previous owners and their solicitor with levy demand letters.

- 17th December 2018 the Council issued correspondences to Mr Maloney demanding outstanding derelict sites levies. Levy demand for 2012 to 2018 were also issued to Mr Maloney. No response.
- 23rd October 2019 a demand levy for 2019 was served on Mr Maloney. Mr Maloney was requested to discuss possible redevelopment of the site. No response.
- 26th May 2021 a registered letter was issued to Mr Maloney highlighting the Council's concerns in relation to the property being derelict, neglected and regarding health and safety concerns. No response.
- 2022 the Council engaged an estate agent to value the property and contact the owner with the intention to acquire by agreement. There was no response to letters from the estate agent.
- Between 2021 and 2022 in telephone communication between the Derelict Sites Officer and Mr Maloney, Mr Maloney understood that the property was on the derelict sites register and liable for levies. His intention was to demolish the building and clear the site. There was no subsequent action.
- June 2023 a demand levy for 2023 was served on Mr Maloney. No response.
- 6th June and summer 2023, telephone communication between the Derelict sites Officer and Mr Maloney. Mr Maloney indicated his intention to build on the property and was encouraged to submit an application and to keep engaging. There was no subsequent engagement. The Council made an offer to acquire the property by agreement. Mr Maloney declined the offer and ceased contact. The phone number on their file is no longer in service.
- October 2023 the Council sought legal advice and were advised to consider compulsory acquisition.
- 16th January 2024 a levy for 2024 was served on Mr Maloney. No response.
- 25th January 2024 a warning letter regarding compulsory acquisition was issued to Mr Maloney. No response.

3.1.3. The site has been on the derelict site's register since 12th September 2011.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of intention to acquire the site compulsorily was served on the owners of the property on 24th June 2024 and published in the Offaly Independent dated May 25th 2024 and the Topic dated May 23rd 2024. The notice includes:

The Green Cottage, Fairgreen, Edenderry, County Offaly being all of the property comprised in Folio OY6128F of the Register County Offaly and comprising an area of approximately 0.21ha or thereabouts.

A map of the said derelict site has been deposited at Offaly County Council, Aras an Chontae, Charleville Road, Tullamore, Co Offaly.

- 4.1.2. I consider that the notices are in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act, 1990, as amended.

4.2. Objection to Acquisition

- 4.2.1. The submission by Byrne & O'Sullivan Solicitors LLP on the instructions of the owner James Moloney of Twin Oaks, Kerdiffstown, Naas, Co Kildare, objects on the grounds that:

- The property is not derelict within the meaning of the Act.
- It is his intention to apply for planning permission to erect a new house on the property and live in it with his family as his permanent place of residence. He is currently working in the United States and will be returning to Ireland where his family live.

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 22nd July 2024 and is accompanied by the following:

Compulsory acquisition report.

Copy of notices of intention to acquire under section 15 of the Derelict Sites Act 1990, as amended, and attachments, issued to Mr James Maloney, 15th May 2024; and proof of delivery.

Copy of objection from Byrne & O'Sullivan, Solicitors on behalf of James Moloney.

Copy of notice served on James Moloney. 25th January 2024, requesting him to contact the Council regarding this derelict site and informing him that the Council was considering exercising its powers in accordance with Section 14 of the Act.

Copy of notice served on 'the Owner', 25th January 2024.

Copy of notice served on James Moloney, 16th January 2024, requesting the payment of the derelict sites levy.

Copy of notice served on James Moloney, 1st June 2023, requesting the payment of the derelict sites levy.

Copy of notice served on James Moloney, 26th May 2021, listing works which need to be carried out to render the site non-derelict; to be completed within 1 month.

Copy of letter issued to James Moloney, 23rd October 2019 inviting him to contact the Planning Department to discuss possible redevelopment proposals in order to remove this property from the derelict sites register and to save the yearly levies.

Copy of notice served on James Moloney, 23rd October 2019, requesting the payment of the derelict sites levy.

Copy of notice served on James Moloney, 17th December 2018, requesting the payment of the derelict sites levies for 2018 and 2012 - 2017.

Photograph of notice dated 15th May 2024, posted on the site.

Copy of Land Registry Folio 6128F.

Copy of Site Location Map Derelict Sites Register.

Photographs from the case file.

4.4. Objector's Submission

4.4.1. No submission was received during the relevant period.

5.0 Planning History

Planning history as given in the planning authority report:

8166 extension of existing dwelling, granted 03/11/1988.

16307 demolition of existing dwelling and construction of a new residential development (16 units), granted 08/02/2008.

6.0 Policy Context

6.1. Derelict Sites Act, 1990, as amended

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.

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."

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 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 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 their functional area. Section 15 sets out arrangements for giving notice, if the local authority intends to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wishes 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.

6.2. Development Plan

6.2.1. Offaly County Development Plan 2021-2027 includes the town of Edenderry.

6.2.2. Relevant provisions include:

SSP-03 It is Council policy to strengthen the core of settlements and encourage the compact growth of settlements by way of the development of infill sites, brownfield lands, under-utilised land / buildings, vacant sites, and derelict sites within the existing built-up footprint of the settlements, and develop outwards from the centre in a sequential manner.

6.2.3. Edenderry Local Area Plan 2023-2029.

6.2.4. Relevant provisions include:

Zoned - existing residential.

The protection and enhancement of the historical core of Edenderry town is a priority of the Council. This will be facilitated by all available means including environmental improvements, the promotion and facilitation of the appropriate reuse/renewal of derelict, vacant and underutilised buildings in the town centre.

TCP-04 policy to - encourage and facilitate the appropriate reuse and regeneration of derelict, vacant, backland and underutilised lands and buildings, including large rear gardens, in the town centre for retail, residential and other mixed uses, through the co-operation of adjoining landowners and/ or through legislative measures and /

or by supporting the progression and delivery of projects funded by the Rural Regeneration and Development Fund and other appropriate funds. This may include for the creation of new streets and / or cohesive developments.

7.0 Assessment

- 7.1.1. The property is located in an area of residential and open space uses near the centre of the town of Edenderry. Access to the interior of the property, was made difficult by the deposit of refuse, on the date of my site inspection. I carried out my site inspection from adjoining lands.
- 7.1.2. I note the various attempts made by the Local Authority since the property was placed on the Derelict Sites Register on 12th September 2011 to have its condition improved.
- 7.1.3. The notice of intention to acquire the property compulsorily was served in accordance with section 15 of the Derelict Sites Act, 1990 on the owner of the property on 24th June 2024 and published in the Offaly Independent dated May 25th 2024 and the Topic dated May 23rd 2024.
- 7.1.4. An objection was received from Byrne & O'Sullivan, Solicitors LLP on behalf of the owner James Moloney, objecting on the grounds that:
- The property is not derelict within the meaning of the Act.
 - It is his intention to apply for planning permission to erect a new house on the property and live in it with his family as his permanent place of residence. He is currently working in the United States and will be returning to Ireland where his family live.
- 7.1.5. The service of notices and publication in the newspapers circulating in the area is documented on the file.
- 7.1.6. A derelict site is defined in Section 3 of the Derelict Sites Act, 1990 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.

7.1.7. Having regard to the above, I consider that the site falls within all of the categories of section 3 of the Derelict Sites Act, 1990, in that the structure is in a ruinous, derelict or dangerous condition; the land is of a neglected, unsightly and objectionable condition; and having regard to the deposit or collection of debris within the site.

7.1.8. I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at The Green Cottage, Fairgreen, Edenderry, County Offaly be granted.

8.0 Recommendation

8.1.1. I recommend that the Board grant consent to Offaly County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

Having regard to the neglected, unsightly and objectionable condition of the site, the ruinous, derelict or dangerous condition of the structures and the deposit or collection of debris within the site, 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 of the Derelict Sites Act 1900, 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. Taking account of the limited details and supporting evidence provided by the appellant in the objection made to the application and no

evidence of steps taken to render the site non-derelict, it is also considered that the objection made cannot be sustained, having regard to the said necessity.

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.

Planning Inspector

29th August 2024

Appendices

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027, extracts

Appendix 3 Edenderry Local Area Plan 2023-2029, extracts