



An
Bord
Pleanála

Inspector's Report

ABP-320307-24

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

617 Castlesize, Sallins, Co. Kildare

Local Authority

Kildare County Council

Notice Party

Promontoria (Aran) Limited

Date of Site Inspection

23rd August 2024

Inspector

Frank O'Donnell

1.0 Introduction

1.1. This case relates to a request by Kildare County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 617 Castlesize, Sallins, County Kildare, 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 CPO (referred to hereafter as the 'subject property') is located at 617 Castlesize, Sallins, Co. Kildare. The subject property comprises a vacant single storey dwelling structure and associated front and rear amenity and circulation space. The subject property has a stated area of 0.14 hectares (1,400 sqm). There are existing residential properties to the immediate north and south of the subject property.
- 2.2. The subject property is not listed as a Protected Structure and is not listed on the National Inventory of Architectural Heritage (NIAH). The site is not located within an Architectural Conservation Area (ACA).
- 2.3. On the day of my site inspection, I was unable to gain entry to the interior of the dwelling structure and the property was unoccupied. I specifically note the following:
- The front portion of the site, including the single storey dwelling structure itself was entirely overgrown by vegetation, trees and shrubs.
 - Parts of the subject property were impenetrable owing to the said overgrowth.
 - The dwelling structure was unoccupied and was not readily accessible owing to the extent of overgrowth on site.
 - The rear of the site was similarly overgrown.
 - The overall property is in a poor state of repair.

3.0 Application for Consent for Acquisition

3.1. Kildare 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 Kildare County Council serving a notice under Section 15 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 Kildare County Council's intention to compulsorily acquire the site was served upon the owners/ reputed owners (1. Promatoria Aran Limited and 2. Joseph Hayes) dated the 14th June 2024 and was published in the Leinster Leader dated 25th June 2024. The site was described in the notices, as follows:

- A derelict site comprising a detached residential premises and surrounding land at 617 Castlesize, Sallins, County Kildare containing 0.14 hectares or thereabouts. The said property and surrounding lands are in a state of dereliction. The said derelict site is more particularly shown outlined in RED on map bearing reference 24-079 and is entered on the Derelict Site Register established and maintained by Kildare County Council under Section 8 of the Derelict Site Act 1990 (as amended) being all the property comprised in the Register of Deeds Co. Kildare.

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 (by and on behalf of the owner/ reputed owner (Promontoria (Aran) Limited) expressing objection to the proposed acquisition was submitted to Kildare County Council.

4.2.2. The objection to the proposed acquisition was submitted by letter to Kildare County Council by O'Brien Lynam Solicitors for and on behalf of Promontoria (Aran) Limited and is dated 25th July 2024. The objection can be summarised as follows:

- Reference is made in the letter to a lien in favour of Promontoria (Aran) Limited and also a Well Charging Order which was issued from the High Court, a Copy of said High Court papers is attached to the objection.
- It is stated that *'we are in the process of enforcement of this Order and the Examiner's Office and the property is scheduled to be auctioned shortly.'*
- On this basis they object to any compulsory acquisition of the property comprised in Folio 12943 and it is requested that their client be entitled to proceed with the enforcement of the Well Charging Order with the Examiner's Office and proceed to sell the property by auction.

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 31st July 2024 and included the following:

- Copy of an undated Local Authority Derelict Site Report/ Memo signed by a Director of Services which confirms that the acquisition of the subject property, in order to address vacancy and dereliction, would accord with the objective of the Kildare County Development Plan, 2023 to 2029 and with the Sallins Local Area Plan.
- Copy of a Local Authority Certification/ Memo dated 06th June 2024 signed by a Director of Services which certifies that the acquisition of the subject property/s via compulsory acquisition would be in accordance with the policies and objectives of the Kildare County Development Plan, 2023 to 2029, including Objective RET A3 and the Sallins Local Area Plan including Objective DV1.
- Copy of the Local Authority Chief Executive Officer's Order that the property be acquired compulsorily in accordance with the Derelict Sites Act, as amended, dated 7th June 2024.

- Copy of a Compulsory Acquisition Deposit Map relating to the subject property dated 14th June 2024, Scale 1:2,500, file no. 24-079.
- Copy of
 - 1) Local Authority Compulsory Acquisition Order (no. 5, 2024) relating to the subject property.
 - 2) Attached Schedule dated 14th June 2024, signed by the Chief Executive and Cathaoirleach.
- Copies of 2 no. Registered Letters dated 17th June 2024 sent by the Local Authority to Promontoria (Aran) Limited notifying them of the intention to acquire the subject property compulsorily under the Derelict Sites Act, 1990. The letters advise where the order can be viewed and further advises that a submission can be made by any owner, lessee or occupier (except a tenant for a month or a period less than a month) on or before 31st July 2024.
- Copies of 2 no. Registered Letters dated 17th June 2024 sent by the Local Authority to Joseph Hayes notifying them of the intention to acquire the subject property compulsorily under the Derelict Sites Act, 1990. The letters advise where the order can be viewed and further advises that a submission can be made by any owner, lessee or occupier (except a tenant for a month or a period less than a month) on or before 31st July 2024.
- Copy of a Local Authority list of Registered Post, dated 18th June 2024 confirming Registered Post Receipt numbers for the following recipients:
 - Joseph Hayes,
 - Promontoria (Aran) Limited,
 - Pepper Finance Corporation (Ireland) DAC,
 - John McNamara,
 - Christine Cooney.
- Photograph of Notice erected on the subject property.
- Copy of Newspaper Notice from the Leinster Leader dated 25th June 2024.

- Copy of Objection to the proposed compulsory acquisition lodged for and on behalf of Promotora (Aran) Limited by their appointed Solicitors dated 25th July 2024. The Letter of Objection is accompanied by the following:
 - Copy of a stated High Court lien and Well Charging Order dated 23rd February 2021 in favour of Promotora (Aran) Limited (Plaintiff) against Joseph Hayes (Defendant).
 - Copy of Land Registry Folio details and associated folio map (folio ref. no. KE12943).
- Copy of Local Authority Cover Letter to An Bord Pleanála dated 30th July 2024.

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

- The Report/ Memo relates to the subject property, 617 Castlesize, Sallins, Co. Kildare. It is stated that a review has been carried out.
- Specific reference is made to Objective RET A3 of the Kildare County Development Plan, 2023 to 2029 and Objective DV 1 of the Sallins Local Area Plan.
- The site is stated to be zoned 'existing residential' in the Sallins Local Area Plan where, it is further stated that it is an objective of the Planning Authority *'to encourage and facilitate the re-use and regeneration of derelict land and buildings in the county's main towns, villages and smaller centres.'*
- On the above basis it is stated that the compulsory acquisition of the subject property, in order to address vacancy and dereliction, would accord with the objectives of the Kildare County Development Plan, 2023 to 2029 and with the Sallins Local Area Plan.

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

- 031442: Applicant: Joseph Hayes. Permission for demolition of existing cottage and replacement with 2 no. dwellings. Permission was GRANTED on 8th April 2004 subject to 20 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. Local Planning Policy Context

Kildare County Development Plan 2023 to 2029

6.2.1. The following Chapters, Sections, Actions, Policies and Objectives are of relevance to the subject proposal.

6.2.2. Chapter 8.0: Urban Centres and Retail

- Section 8.13: Re-Use and Regeneration of Derelict and Underutilised Land and Buildings
 - It is stated that
 - *Re-use and regeneration of derelict/obsolete/underutilised land and buildings in town and village centres is a sustainable and desirable objective in helping to preserve and restore the*

character and quality of centres, particularly when having regard to the vernacular/historical architecture, scale, height, density and massing.

Objectives

It is an objective of the Council to:

- ***RET 077*** *Work with applicants and development interests to explore the potential of suitable, available and viable land and buildings for retail and other town centre uses across all centres in the County Retail Hierarchy. The Council may facilitate and engage in active land management strategies so as to encourage regeneration and ensure viable land parcels for retail development in preference to edge of centre and out-of-town sites.*

Action

It is an action of the Council to:

- ***'RET A3:*** *Identify obsolete and potential renewal areas and, through active and positive engagement with landowners, to encourage and facilitate the re-use and regeneration of derelict land and buildings in the county's main towns, villages and smaller centres. The Council will use its statutory powers, including the Derelict Sites Act (as amended), the Vacant Site Levy 4 and/or Compulsory Purchase Order, where necessary.'*

Sallins Local Area Plan, 2016 to 2022

6.2.3. The Sallins Local Area Plan expired in 2022 and was not incorporated into the Kildare County Development Plan 2023 – 2029. Objective CSO 9 of the Kildare County Development Plan (Page 36) states the following:

'Objective CSO 9

Review and prepare on an ongoing basis a portfolio of Local Area Plans (LAPs) for the mandatory LAP settlements (and environs, where appropriate)

of Naas, Maynooth, Newbridge, Leixlip, Kildare, Athy, Celbridge, Kilcock, Monasterevin, Sallins, Clane and Kilcullen in accordance with the objectives of the County Development Plan and all relevant Section 28 Ministerial Guidelines.'

6.2.4. The subject property was zoned B - Existing Residential & Infill where the relevant zoning objective was *'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.'* The stated purpose of the zoning was *'....to preserve and improve residential amenity and to provide for infill residential development at a density that is considered appropriate to the area.'*

6.2.5. Section 14.0 of the Sallins Local Area Plan related to Derelict and Vacant Sites and includes the following text:

'There are a number of vacant and derelict sites in Sallins which continue to detract from the overall ambience of the town. The Council is committed to using its powers under the Derelict Sites Act 1990 to ensure that relevant landowners take the necessary steps to protect and enhance the streetscape in Sallins. The Council will continue to liaise with the owners of derelict properties in Sallins to have the required works carried out in order that a structure will cease to be considered derelict.'

6.2.6. The following Policies, were set out in Section 14.0 of the Local Area Plan:

'DV1: To continue to survey derelict or vacant sites and to encourage and facilitate the reuse and regeneration of derelict land/buildings in Sallins as a priority.

DV2: To use its powers, where appropriate, to consider sites for inclusion on the Register of Derelict Sites.'

7.0 Assessment

7.1. Site Inspection

7.1.1. I carried out my site inspection on 23rd August 2024. Internal access to the building was not available. The site and the subject building were for the most part overgrown with impenetrable bushes and trees. I inspected the front and side exterior of the subject dwelling structure and the front, side and rear of the overall subject property.

7.2. Category of Dereliction

7.2.1. Based on the condition of the subject property which I observed during my site inspection I do not consider that the site falls within subsection (a) of Section 3 of the Derelict Sites Act, 1990, as amended, 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(s) are likely to be in a dangerous condition, or that they could be considered ruinous.

7.2.2. In respect of subsection (b) of Section 3 of the Act I note that no works have been undertaken to address the indicators of dereliction. I further note the general appearance of the property having a neglected, unsightly and objectionable condition and I consider that the site falls within subsection (b) of Section 3 of the Derelict sites Act, 1990. I particularly note that the subject property is located alongside buildings which are for the most part attractive and well maintained.

7.2.3. I do not consider the property falls within subsection (c) of Section 3 of the Act as there was no rubbish 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. 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.'*

- 7.3.2. A Notice of the Local Authority's intention to Compulsorily Acquire the property under Section 15 1) a) of the Derelict Sites Act, 1990, as amended, dated 14th June 2024, was issued by registered post to the Owners/ Reputed Owners (1. Joseph Hayes and 2. Promontoria (Aran) Limited) on 18th June 2024 and published in the Leinster Leader Newspaper dated 25th June 2024. The Notice refers to the subject property/ site having been entered on the Derelict Site Register established and maintained by Kildare County Council under Section 8 of the Derelict Site Act, 1990 (as amended).
- 7.3.3. I have reviewed the Derelict Sites Register dated 13th August 2024 which is available from Kildare County Councils' website, and I note that the subject property is indicated to have been entered onto the Register on 08th May 2024, ref. no. DS-2023-10.
- 7.3.4. I note that in using its powers to Compulsorily Acquire the property, as set out in the Derelict Site Report/ Memo, the Local Authority quote a relevant objective/ action (RET A3) and state that they consider that the Compulsory Acquisition of the subject property would accord with the objectives of the Kildare County Development Plan, 2023 to 2029.
- 7.3.5. I accept that the Local Authority has taken steps in consultation with the Owner/ Reputed Owner of the subject property to bring the property out of dereliction.
- 7.3.6. 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 Kildare County Development Plan, 2023 to 2029, and specifically Objective/ Action RET A3, which seeks, 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 been vacant for a considerable length of time.
- 7.4.2. 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 Owner/ Reputed Owner (Promontoria (Aran) Limited) of the property which was received by the Local Authority by letter dated 25th July 2024.
- 7.5.2. The Owner/ Reputed Owner states that the property is scheduled to be auctioned shortly. No other definitive information is provided in this regard such as times, dates etc. The Owner/ Reputed Owner also refers to a Well charging Order in their favour and request that they be allowed to proceed with the sale of the property. The status of legal title to the subject property is, in my view, not the critical issue before the Board.
- 7.5.3. I note there is no evidence of any recent significant action having been taken by the Owner/ Reputed Owner (Promontoria (Aran) Limited) to address Dereliction.

8.0 **Conclusion**

- 8.1. I am satisfied that the process and procedures undertaken by Kildare 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 617 Castlesize, Sallins, County Kildare, containing 0.1342 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(a) of the Derelict sites Act 1990, (as amended) and dated 14th June 2024 and on the Compulsory Acquisition Deposited Map relating to the subject site dated 14th June 2024, File Ref. No. 24-079, 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 Kildare County Development Plan 2023-2029, and specifically Objective/ Action RET A3, which seeks, 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 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 Kildare County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1.1. Having regard to the derelict condition, unsightly and objectionable condition of the site and dwelling structure, 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.

Frank O'Donnell
Planning Inspector

30th August 2024