

Inspector's Report ABP-320573-24

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 Henry Street, Graiguecullen, Carlow,

R93 FK54

Local Authority Carlow County Council

Notice Party Ms. Helen Mayling c/o Corina Mayling.

Date of Site Inspection 18th October 2024

Inspector Jennifer McQuaid

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 Henry Street, Graiguecullen, Co. Carlow R93 FK54 (No registered folio) 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 Henry Street, Graiguecullen, Carlow R93 FK54 along the Henry Street, off Maryborough Street approximately 1km to the northwest of the centre of Carlow town.
- 2.2. The subject site consists of a two-storey dwelling and small side garden to the east with a larger garden to the west, the stated site area is 0.1051hectares (c.1051 sqm). The site includes the dwelling itself, and surrounding gardens. The two-storey dwelling is located directly on the footpath along Henry Street. There are 2 existing access points along the Henry Street, one for vehicular and 1 for pedestrian. The narrow garden to the eastern boundary of the dwelling extends to Maryborough Street and the larger garden along the western boundary extends to the west and south of the property. There is a high boundary wall along the northwestern boundary of the site.
- 2.3. The subject site is located in an area predominantly residential with semi-detached dwellings. The site is zoned as town centre.
- 2.4. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH).
- 2.5. On the day of my site inspection the front and eastern side of the property were open. I was unable to gain entry to the dwelling itself. Based on a comparison of photographs attached to the Local Authority's Compulsory Acquisition Report (dated 20th May 2024. I note that no works have been carried out at the subject property.

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 family of the reputed owners/ occupiers (Ms. Helen Mayling, c/o Corina Mayling & Legal Personal Representative(s) of Ellen & Jim Nolan, c/o Helen Mayling) on the 5th April 2024 and was published in the Nationalist Newspaper dated 18th June 2024. The site was described in the notices, as follows:
 - All that and those the site and premises situate in the townland of Graigue in the Barony of Slievemargy and known as property at Henry Street, Graiguecullen, Carlow, R93 FK54.
- 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 property owner) expressing objection to the proposed acquisition was submitted to Carlow County Council.
- 4.2.2. The objection to the proposed acquisition was submitted to Carlow County Council by Anna Nolan Gough, Dympna O'Shea, Ber Nolan Keating on behalf of Helen Mayling, Denis Nolan, Seamus Nolan, Margaret Cronin, Kathleen Doogue & Mary Fleming, dated 2nd July 2004 (presumable an admin error) and received by Carlow County Council on 8th July 2024. The objection can be summarised as follows:

- The Un-Registered Owners (family of the reputed owners) strongly object to the proposed compulsory acquisition of their property on the following grounds:
 - The dwelling was willed to Edward Nolan (son of original owner who passed in 2000), Edward Nolan passed away in 2008 and it appears that the appointed solicitor at the time passed away prior to completing all files. The remaining siblings were not aware of their solicitors passing and were just patiently waiting.
 - The siblings intend to sell the property once they receive final advice from their new solicitor and this process is currently being implemented.

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 15th August 2024 and included the following:
 - Copy of Local Authority URDF10 Notice dated 28th July 2023 erected at the property seeking the owner of the property to contact Vacant Homes Officer within two weeks of the date of this notice.
 - Copy of registered letter to Corina Mayling c/o Helen Mayling seeking contact within two weeks regarding the property located at Henry Street dated 5th January 2024.
 - Copy of further correspondence to Helen Mayling c/o Corina Mayling dated 5th April 2024 referring to telephone calls received on 28th July 2023 & 8th January 2024. It is noted that the call of 8th January 2024 states the property is going through the valuation office and that Ms. Mayling intended to speak to her uncle about the property. No further correspondence received.
 - Copy of the Land Registry Compliant Map.
 - Copies of Photographs of the Subject Property.
 - Copy of Local Authority email from Vacant Homes Officer to Executive
 Technician dated 10th May 2024 requesting that an inspection of the property

- and a report with recommendation shall be completed advising if the property is derelict in accordance with Section 3 of the Derelict Sites Act 1990.
- Copy of Derelict Sites Report prepared by the Executive Technician in the Planning Department and associated photographs dated 20th May 2024.
- Copy of a Local Authority memo from the Town Regeneration Officer to the Chief Executive of the Local Authority dated 12th June 2024 recommending that the CPO procedure proceeds. This memo is counter signed by a Director of Services and the Chief Executive on 13th June 2024.
- Copy of 1 no. email from the Executive Technician in the Planning
 Department to the Vacant Homes Officer dated 18th June 2024 confirming the
 posting of notices on the subject property on 18th June 2024 with 3 no.
 accompanying photographs.
- Copies of 2 no. Registered letter from the Local Authority to Corina Mayling c/o Helen Mayling and Legal Personal Representative(s) of Ellen & Jim Nolan dated 18th June 2024 advising that the Local Authority is now proceeding to Compulsorily Purchase/ acquire the subject property. The letters are accompanied by a copy of the notice dated 18th June 2024, 1 no. copy of a land registry compliant map, 1 no. copy of the Newspaper Notice dated 18th June 2024, and 1 no. copy of the Chief Executive's Order dated 13th June 2024.
- Copy of letter dated 1st July from Anna Nolan Gough, Dympna O'Shea, Ber Nolan Keating on behalf of Helen Mayling, Denis Nolan, Seamus Nolan, Margaret Cronin, Kathleen Doogue & Mary Fleming stating that their brother Seamus Nolan is no longer able to continue as executor of the Will that pertains to the residence that of their mother Mrs Ellen Nolan. And that the house would remain with her son Edward Nolan until his passing. He passed in 2008, and the Will was left with the solicitor to progress, but that solicitor since passed away and the files were not completed. The siblings intend to sell the house once the legal issues have been resolved.
- Copy of a letter of Objection to the proposed Compulsory Acquisition from Anna Nolan Gough, Dympna O'Shea, Ber Nolan Keating on behalf of Helen

Mayling, Denis Nolan, Seamus Nolan, Margaret Cronin, Kathleen Doogue & Mary Fleming to the Local Authority dated 2nd July 2004 (assumed admin error as Carlow County Council received letter on 8th July 2024. The letter objects to the Local Authority acquiring this property by Compulsory Purchase.

- Copy of a letter from the Local Authority to Anna Nolan Gough dated 14th
 August 2024. The letter acknowledges the earlier letters of 1st and 2nd July
 2024 and advises, as per Section 16 of the Derelict Sites Act 1990, as
 amended, that all documentation in relation to the Compulsory Acquisition will
 now be forwarded to An Bord Pleanála for consideration.
- Copy of a letter from the Local Authority to An Bord Pleanála dated 14th
 August 2024 seeking the confirmation of a 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 20th May 2024, Reference: URDF10.
- The Report relates to the subject property on Henry Street, Graiguecullen,
 Carlow, R93FK54. The site has a stated site area of 0.1051 hectares (1051 sqm). The property is stated to be unoccupied and unregistered.
- 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 20th May 2024. The Case Summary indicates the property is unregistered.
- The property is described as a two-storey property (floor area 108sqm) in the Herny Street Streetscape in Graiguecullen. The property is accessed to the front directly off the public footpath. It is stated that this is a long-term vacant property (in excess of 15 years).

- The existing condition of the property is stated to be in a state of neglect.
 Significant works will be required to the building to raise it to the current building standards and best practice.
- The Report notes that attempts of engagement with the owners have yielded no results or improvements and that this is confirmed by the Vacant Homes Officer (VHO) and the Town Regeneration Officer (TRO).
- The Report includes a Photographic Survey taken on 20th May 2024 (25 no. photos in total).
- 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).'
- The Report includes visual works required and includes the following recommendations to be carried out immediately:
 - Localised roof repairs to fascia, soffit, guttering and rainwater downpipes. Repair and replace where necessary.
 - 2. Removal and repair of de-bonding plaster from house and site boundary walls at localised locations is required.
 - 3. Complete external power washing and cleaning to the entire property is required.
 - Complete external painting required to house façade and all external boundary wall.
 - 5. Removal of all graffiti adorning the building and associated boundaries.
 - 6. Cut back all out-of-control overgrowth and remove off site. Spray for weed throughout.
 - 7. Remove all builders waste, rubble, debris and general litter off site.

8. All waste to be removed by registered waste contractor or to a registered waste facility.

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 within the defined CSO settlement boundary and inside the defined development plan boundary for Carlow Town, as shown on the Carlow Town Land Use Zoning Map.

- The site is zoned as Town Centre. The objective is to protect, provide for and/or improve town and village centre facilities and uses.
- The purpose of this zoning is to protect and enhance the character and vibrancy of existing town and village centres and to provide for and strengthen as appropriate retailing, residential, commercial, cultural, tourist and other appropriate uses. It will promote compact growth through the consolidation of development on town and village centre lands, allowing for a broad range of compatible and complementary uses, which will be encouraged to locate in this area in order to create an attractive environment to reside, shop, work, visit and in which to invest. The appropriate reuse, adoption, and regeneration of buildings, infill sites, backlands, vacant, derelict and underutilised lands including residential development will be encouraged. The full use of upper floors in retail and commercial premises in town and village centres for residential use will also be encouraged. Primacy of existing Core Retail Areas will be retained and prioritised for any new retail development to enhance its vitality and viability. Retail proposals shall have regard to relevant policies and objectives in the Retail Strategy (Appendix 5) and Chapter 4 of this Plan and the Retail Planning Guidelines 2012.
- Town centre development proposals will be required to be of high architectural quality, which contributes to a distinct sense of place and public realm, promotes sustainable modes of travel and be appropriate to its location. New commercial and retail uses will be accommodated in town and village centres. The size and scale of any such commercial or retail development shall be reflective of the role and function of the town or village in the settlement hierarchy.
- 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. O6:

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. O12:

 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.

Regeneration Areas – Objectives

It is an objective of the Council to:

RA 01:

- Encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:
 - Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land.
 - Urban blight or decay
 - Anti-social behaviour, or
 - A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

Town and Village in Rural Areas – Policies

It is the policy of the Council to:

TV P5:

- Promote the re-use and regeneration of vacant and derelict buildings and brownfield sites in towns and villages throughout the county which are recognised as essential catalysts to transforming the capacity and potential of these settlements.
- 6.3. Draft Carlow Graiguecullen Joint Urban Local Area Plan 2024-2030.
- 6.3.1. The site adjoins the administrative area for Laois County Council. The Draft Carlow Graiguecullen Joint Urban Local Area Plan 2024-2030 is noted but not considered as part of this application due to the "draft" status.

7.0 Assessment

7.1. <u>Site Inspection</u>

7.1.1. I carried out my site inspection on 18th October 2024. Internal access to the dwelling was not available. I walked around the front of the property and inspected the front and sides. I inspected the front (eastern boundary) garden, and I viewed the rear (western boundary) garden through the gate. The lawns were overgrown and unkept. There were weeds and moss growing on all boundary walls and on the roof and gutters of the dwelling. Parts of the gutters were missing and causing water damage to the front corner of the dwelling.

7.2. <u>Category of Dereliction</u>

- 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 category (a) of Section 3 of the Act, 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. Other than the dwelling missing parts of the gutters, the walls and roof were relatively intact. Therefore, on balance I do not consider that the condition of this structure results in the wider property being considered to fall under category (a) of Section 3 of the Act.
- 7.2.2. In respect of category (b) of Section 3 of the Act, I note the condition of the dwelling which has not been painted, gutters leaking, weeds growing in the gutters,

- overgrowth of weeds to the front and rear of the property and the general appearance of the property having a neglected, unsightly and objectionable condition and I consider that the site falls within category (b) of Section 3 of the Derelict sites Act, 1990. I particularly note that the subject property is located in an established residential area and is located alongside dwellings which are for the most part attractive and well maintained.
- 7.2.3. I do not consider the property to fall within category (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. The Compulsory Purchase Order of the Local Authority dated 12th June 2024 sets out the engagement between the Local Authority and the family of the Unregistered Owners of the property. An information Gathering Notice was erected on the property on 28th July 2023. Correspondence was made with the family. This included letters to the family of the Reputed Owners dated 5th January 2024 and 5th April 2024. The property is stated in the report to have been vacant for very long time. The Report refers to the Derelict site Report from an Executive Technician of the Local Authority dated 20th May 2024 which has deemed the property to be derelict. The Report recommends that the property be Compulsorily Acquired under the Derelict Sites Act, 1990, as amended.
- 7.3.2. 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 18th June 2024 and published in the Nationalist Newspaper on 18th June 2024.
- 7.3.3. 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.'
- 7.3.4. 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, including relevant policies and objectives. 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 family of the reputed owner of the subject property to bring the property out of dereliction. I note initial contacts were made with the family of the Reputed Owners of the Property on 5th January 2024 following a telephone call from the family on 28th July 2023 & 8th January 2024 stating the property was going through the valuation office and the family member intended to talk to their uncle. A follow up letter was sent on 5th April 2024 by Registered Letter to the family. The order was sent by Registered Letter to the family on 18th June 2024 (including the posting of notices at the property on same said date) and no further correspondence was received until the 8th July 2024 & 12th July 2024 stating they intend to sell the property but waiting on advice from their solicitor. 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 period in excess of 15 years. 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 family of the Reputed Owners of the property which was received by the Local

Authority on 8th & 12th July 2024. It is stated that the family of the Reputed Owners were patiently waiting on a response from their solicitor following the death of their brother. It is stated on behalf of the family of the Reputed Owners that when their solicitor has completed his work, they will sell the property. However, they have yet to talk to their solicitor. No documentation in support of these statements has been provided. And no objection received by the Board to the CPO.

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. There is no evidence of any significant action having been taken by the family of the Reputed Owner to Address Dereliction. I am satisfied the proposed compulsory acquisition is proportionate given the circumstances of this particular case.

8.0 **Conclusion**

- 8.1. I am satisfied that the process and procedures undertaken by Carlow County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the land to be acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising the site and premises situate at and known as Henry Street, Graiguecullen, Carlow, R93FK54, (0.1051 hectares), as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 18th June 2024 and on the deposited map CPO-DS-URDF10, 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 derelict, unsightly and objectionable condition of the subject property, the poor state of the unpainted external walls, overgrown weeds and grass in the garden, the missing gutters, weeds growing from the gutters and roofs and the visible water damage on the external walls, having considered the objection(s) made to the compulsory acquisition, and also:
 - A) the constitutional and convention protection afforded to property rights,
 - B) the public interest, and
 - C) the provision 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 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.

Jennifer McQuaid Planning Inspector

4th November 2024