



An
Bord
Pleanála

Inspector's Report

ABP-320927-24

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

Corner of Waterside & John's Street, Waterford City.

Local Authority

Waterford County Council

Notice Party

Edward Mulligan, Andrew Mulligan c/o Mark Walsh, Kenny Stephenson Chapman Solicitors, Park House, Canada Square, Waterford City.

June Lawlor, BCM Global ASI Limited, Block C, c/o Everyday Finance DAC, Maynooth Business Campus, Maynooth, Co. Kildare W23 F854.

Date of Site Inspection

19th November 2024

Inspector

Jennifer McQuaid

1.0 Introduction

- 1.1. This case relates to a request by Waterford County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at corner of Waterside and John's Street, Waterford City, Co. Waterford 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 corner of Waterside L90362 and John's Street R860, Waterford City, and fronts onto John's River, approximately 500 m to the southwest of the centre of Waterford City.
- 2.2. The subject site consists of a concrete floor plate with services exposed with a ruined front elevation wall and has a stated site area of 0.025 hectares. The ruin remains are part of John's Gate and adjoining part of the city walls, a national monument, which run along the western boundary site the site. There is considerable amount of vegetation growing from sections of the wall. The site is bounded by grey sheet hoarding in order to avoid access to the site. The site is directly onto the footpath along Waterside Street and St John's Street.
- 2.3. The subject site forms part of the Waterside Street, where residential are located along this route and forms part of John's Street where commercial are located.
- 2.4. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH) but the ruin is part of the SMR including Record of Monuments and Places (RMP) - St John's Gate was the principle route from the city to Gaultiere with references attesting its existence in the 15th and 16th centuries (Smith 1746, 188-9). St. John's Bridge was the only bridging point of the Pill, and although the present bridge has been expanded, two irregular arches with plain voussoirs on the W side are original. (Bradley et al. 1989, vol 2, 181-2; O'Keeffe and Simington 1991, 138-40).
- 2.5. The site is located in the Architectural Conservation Area for Waterford City.
- 2.6. On the day of my site inspection the site was enclosed with grey steel hoarding. I was unable to gain entry to the site itself, but I could see sufficiently over the

hoarding. Based on a comparison of photographs attached to the Local Authority's Compulsory Acquisition Report (dated 21st May 2024) I note that no works have been carried out at the subject property other than enclosed hoarding around the site. I noted the following on site:

- Overgrown vegetation on the ruined wall, and around the concrete plinth.
- Open fencing inside the enclosed hoarding.
- Exposed utilities on site.

3.0 Application for Consent for Acquisition

3.1. Waterford 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 Waterford 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 Waterford County Council's intention to compulsorily acquire the site was served upon the owners/ occupiers (Mark Walsh, Kenny Stephenson Chapman Solicitors/June Lawlor, BCM Global ASI Ltd, c/o Everyday Finance DAC) on the 22nd of July 2024 and was published in The Munster Express Newspaper dated 23rd July 2024. The site was described in the notices, as follows:

- All that and those the property known as Site at the corner of Waterside and John's Street, Waterford City covering an area of 0.0619 acres or thereabouts, in the District Electoral Division of Waterford City South and as more particularly delineated on Map Ref. CPA 2024-08.

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 Waterford County Council.
- 4.2.2. The objection to the proposed acquisition was submitted to Waterford County Council by Beauchamps LLP on behalf of Everyday Finance DAC, dated 15th August 2024 (Received by WCC on 19th August 2024). The objection can be summarised as follows:

- The Registered Owners (Everyday Finance DAC) strongly object to the proposed compulsory acquisition of their property on the following grounds:
 - The Registered Owner is in process of appointing a receiver over the property.
 - It is envisaged an enforced sale of the property will progress promptly thereafter a receiver is appointed.
 - Registered Owner was legally prohibited from taking charge of the property until recently.
 - Request a pause of three months in order to allow the Registered Owner to progress a sale of the property.

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 25th September 2024 and included the following:
- Copy of Newspaper Notice dated 23rd July 2024.
 - Email correspondence dated between 11th May 2022 to 22nd November 2023 in regard to litter issues and the query regarding ownership.
 - A derelict site CA report from Senior Executive Planner to Director of Services Corporate Services, Culture & Planning dated 4th July 2024.
 - Letter to OPW requesting confirmation that the said property is not subject to any annuity in lieu of rent or other annual sum apportioned thereof payable to the Commissioners of Public Works dated 16th July 2024.

- Letter to Department of Agriculture, Food and the Marine requesting confirmation that the said property is not subject to any annuity in lieu of rent or other annual sum apportioned thereof payable to the Land Commission dated 16th July 2024.
- Copies of the Land Registry Folio Map.
- Copy of Land Folio Number.
- Copy of Chief Executive's Order dated 19th July 2024 and signed by Interim Chief Executive confirming that procedures prescribed by Section 15 of the Derelict Sites Act 1990, (as amended by Planning and Development Act 2000) can be complied with.
- Copy of 1 no. Local Authority letter to Registered Owners (Mark Walsh, Kenny Stephenson Chapman Solicitors) dated 22nd July 2024 informing them of the intention of the Local Authority to acquire the property by Compulsory Purchase Order, in accordance with the Derelict Sites Act 1990, as amended and informing the owner to submit an objection on or before 27th August, 2024.
- Copy of 1 no. Local Authority letter to Registered Owners (June Lawlor, BCM Global ASI Ltd) dated 22nd July 2024 informing them of the intention of the Local Authority to acquire the property by Compulsory Purchase Order, in accordance with the Derelict Sites Act 1990, as amended and informing the owner to submit an objection on or before 27th August, 2024.
- Copy of letter from the Department of Agriculture, Food and the Marine confirming there is no purchase annuity, payment in lieu of rent or other annual sum payable to the Land Commission in respect of the premises dated 22nd July 2024.
- Copy of objection from Beauchamps LLP on behalf of their client dated 15th August 2024 (Received by Waterford County Council on 19th August 2024) objecting to the proposed compulsory acquisition as the Registered Owner is in process of appointing a receiver over the property. It is envisaged an enforced sale of the property will progress promptly thereafter a receiver is appointed. Registered Owner was legally prohibited from taking charge of the

property until recently. Request a pause of three months in order to allow the Registered Owner to progress a sale of the property.

- Copy of letter dated 20th August 2024 to Beauchamps LLP noting their client's objection and the matter shall be referred to An Bord Pleanála.
- Copy of a letter from the Local Authority to An Bord Pleanála dated 23rd September 2024 received on 25th September 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 4th July 2024, Derelict Sites Register: DS23070.
- The Report relates to the subject site at the corner of Waterside and John's Street, Waterford City, Co. Waterford. The site has a stated site area of 0.025 hectares (250 sqm). The site is vacant.
- 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:
 - *'it is considered 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.*

Subsequently, it is considered reasonable that the local authority seeks to compulsorily acquire the land as outlined in Figure 1, as provided by Section 14 of the Act.'
- The Report is informed by a section on the "History of Derelict Site Case" stating a section 8(2) Notice was served to the reputed owner on 25th September 2023 and a notice was affixed to the property. An email was received from the reputed owner who stated Everyday Finance Agent (BCM Global ASI Ltd) were taking over the site. No material change to the condition of the property was undertaken.

A Section 8(7) notice was served to the new reputed owners on 11th October 2023 and a notice affixed to the property, no material change to the condition of the property was undertaken.

On the 1st of November 2023 a letter was received from BCM Global stating that they were not in possession or control of the property and to address all concerns to the initial reputed owner.

To mask the derelict state of the site, Waterford City and County Council's Environment section liaised with the former owner to erect hoarding. In May 2024, the site was fenced off with more secure hoarding.

- The property is described as comprising of a concrete floor plate with services exposed. This element forms part of an unfinished development on the site. Until recently, the site was fenced off with Horace fencing, this facilitated illegal dumping and litter to collect on site. The remains of part of John's Gate and an adjoining part of city walls, a national monument, run along the western boundary of the site. There is considerable amount of vegetation growing from this section of the wall.
- The Report includes a Photographic Survey taken prior to May 2024 before secure hoarding was erected (4 no. photos in total). And a photographic survey taken in May 2024.
- The report confirms:
 - 'The site is considered to materially detract from the character and amenity of the surrounding area and such falls within the definition of a derelict site as set out by the Act'.
- The following advice is provided in the Report:
 - *'It is considered reasonable that the local authority seeks to compulsorily acquire the land'*.

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

08500261: Permission granted for the change of use of previously permitted (05476) proposed ground and mezzanine floor restaurant to a retail unit, to include increasing the area of previously permitted proposed ground floor retail unit by 27sqm and all associated site works (This development comprises a listed protected structure RPS No. 221 – Section of City Wall). Permission expired 28/10/2013.

05500476: Permission granted for removal of existing entrance piers and masonry walls, conservation work to city wall and construction of 4 storey building.

03500640: Permission for removal of existing advertising billboard, entrance piers, masonry walls and erection of part four storey, part three storey building.

00508886: Permission granted for three storey development comprising of retail unit and apartments.

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. Waterford County Development Plan 2022 to 2028

6.2.1. The subject property is within the defined development plan boundary for Waterford City, as shown on the Waterford City Land Use Zoning Map.

- The site zoned as Town Core. The objective is to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses.

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:

- **ECON 07:**
 - *To carry out the functions of the local authority in a co-ordinated manner in order to assist in the proactive targeting of underutilised, vacant and derelict lands and buildings, and general building stock, in pursuing the achievement of the policy objectives of this Development Plan, and in order to facilitate an Active Land Management approach to the sustainable growth and development of Waterford City and County. This will be achieved/assisted by:*

Measures to support the change of use from vacant commercial units to residential, using the Council's statutory powers, where appropriate, under the Derelict Sites Act 1990 (as amended) and the Urban Regeneration and Housing Act 2015 (as amended).

Regeneration – Objectives

It is an Objective of the Council to:

- **H 06:**
 - *We will utilise our legislative power under the Derelict Sites Act 1990, The Urban Regeneration and Housing Act 2015, as amended and general CPO powers to prevent anti-social behaviour and remove dereliction and vacancy where appropriate.*

Placemaking – Objectives

It is an Objective of the Council to:

- **Place 01:**
 - *Use specific powers, such as the compulsory purchase orders (CPO's) and statutory powers under the Derelict Sites Act, 1990 and the Urban Regeneration and Housing Act 2015, as amended, to address issues of derelictions, vacancy and underutilisation of lands in settlements across Waterford.*

Built Heritage – Objectives

It is an Objective of the Council to:

- **BH 13:**
 - *Is the policy of the Council to encourage the sensitive redevelopment of vacant or derelict sites within the ACA and historic cores of the city, towns and villages whilst promoting a high standard design which respect urban plots, roof lines vistas and streetscape.*

7.0 Assessment

7.1. Site Inspection

- 7.1.1. I carried out my site inspection on 19th November 2024. Internal access to the site was not available. I walked around the site and inspected the front and sides. I inspected the open exposed concrete plinth and stone wall over the hoarding, and I could clearly see the site has been unoccupied in a number of years and that no works have been carried out on site. There are exposed utilities on site.

7.2. Category of Dereliction

- 7.2.1. Based on the condition of the subject site which I observed during my site inspection I do 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 consider that the structure(s) are likely to be in a dangerous condition, and that they could be considered ruinous. The ruin wall is in poor condition and could fall, the site has

exposed utilities and pipework's which could be dangerous to the public. Therefore, I do consider that the condition of this structure results in the wider property being considered to fall under category (a).

7.2.2. In respect of category (b) of Section 3 of the Act, I note the condition of the site and the general appearance of the site and grounds 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 a prominent town centre location and zoned as town core.

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 apart from the galvanised fencing left on site which was replaced by grey metal sheet hoarding.

7.2.4. In conclusion, I consider that the site detracts to a material degree from the amenity, character and appearance of land in the town centre, which in my view, renders it derelict under Section 3 of the Act.

7.3. Action of Local Authority

7.3.1. The Compulsory Acquisition Report of the Local Authority dated 4th July 2024 states significant efforts of engagement with reputed registered owners were made which yielded no improvement. 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 22nd July 2024 and published in the Nationalist Newspaper on 23rd July 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. I further note the Local Authority consider that the Compulsory Acquisition accords with general Government Policy as set out in the Action Plan for

Housing and Homelessness and in particular the stated policy objective to acquire vacant homes for social housing. I accept that the Local Authority has taken steps in consultation with the owner of the subject property to bring the property out of dereliction. I note initial contacts were made with the Registered Owners of the Site on 25th September 2023 and then subsequently on 11th October 2023 (to the new reputed owner) (including the posting of notices at the property on same said date). The new reputed owner responded on 1st November 2023 to say they were not in possession or control of the site.

Further contact was made with the initial reputed owner and the new owner on 22nd July 2024 and that it was not until 19th August 2024 that a Letter (dated 15th August 2024) from Beaucamps LLP on behalf of the Registered Owners (Everyday Finance DAC) was received by the Local Authority. 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 Waterford County Development Plan, 2022 to 2028, and specifically Objectives ECON 07, H06 and Place 01 which seek, inter alia, to address dereliction, reduce vacancy and encourage and facilitate appropriate redevelopment. The site is located on lands zoned for town core where it is an objective to enhance the character and vibrancy of the town centre. The subject property is in a derelict state and has remained vacant for a period in excess of 10 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 Registered Owners of the property which was received by the Local Authority on 19th August 2024 (dated 15th August 2024). It is stated that the registered owner is in the process of appointing a receiver over the property and it is envisaged an

enforced sale will progress promptly and request a three month pause to allow the owner to progress the sale.

- 7.5.2. At the time of my site inspection the property was vacant and as noted further above was in a derelict state. There was no evidence of any further actions carried out by the owner to address dereliction other than the site was enclosed and secure with grey metal sheet hoarding. The measures taken to date are largely cosmetic. 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 Waterford 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 site at the corner of Waterside and John's Steet, Waterford City, (0.025 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 22nd July 2024 and on the deposited map (Derelict Sites DS23070), 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 I 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

Waterford County Development Plan 2022-2028, and specifically Objectives ECON 07, H06 and Place 01, 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 (a) & (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 Waterford 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 site including the ruinous wall, the exposed utilities and the visible presence of considerable weed growth on the concrete plinth and walls within the property, 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 Waterford 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 a) & 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

20th November 2024