



An
Bord
Pleanála

Inspector's Report ABP-320993-24

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

No. 1 Erin Street, Kilkee, Co. Clare

Planning Authority

Clare County Council

Notice Party

Mr. Patrick Halpin

Date of Site Inspection

31st January 2025

Inspector

Ciara McGuinness

1.0 Introduction

This case relates to a request by Clare County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 1 Erin Street, Kilkee, Co. Clare, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located on Erin Street, within the town centre of Kilkee. There is a mix of commercial and residential developments in the vicinity of the subject property, all of which appear to be occupied and well maintained. The property is an end of terrace two-storey building. The properties directly to the north and south comprises a well-maintained guest house and a hotel respectively. The site is c.50m east of the beachfront. The town is a popular tourist destination, and the subject property is located within a prominent location within the town centre.
- 2.2. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH), however, the site is within the town centre of Kilkee, the entire area of which is an Architectural Conservation Area.
- 2.3. The site has an area of 0.191 acres and is described in the notice as a two storey end of terrace building and surrounding site. On the day of my site inspection, I was able to view the property from the public street.
- 2.4. My observations of the site on the date of the inspection include the following;
 - Windows and doors were boarded up.
 - There are extensive holes in the roof, with a number of missing and loose slates.
 - Paint is peeling and chipping off all external walls.
 - There are large water marks on the external walls.
 - The single storey section of the building has been partially demolished with debris strewn across the site.
 - Loose/hanging cables and wires on the front façade.

- Weeds and vegetation were growing around the property.
- Guttering was loose with vegetation growing out of it.

3.0 Application for Consent of Acquisition

- 3.1. Clare 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 the serving of notices under section 8(2), on 1st March 2024, advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7), on the 16th May 2024, advising of the Local Authority's decision to enter the site on the register of derelict sites.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

Notice of Clare County Council's intention to acquire the site compulsorily was affixed to the site on 9th August 2024 and was published in the Clare Champion newspaper dated 9th August 2024 and the Irish Independent newspaper dated 8th August 2024. The site was described as follows in the notices:

“Two storey end of terrace building and surrounding site.”

- 4.1.1. I consider that the notices were in accordance with the requirements of section 15(1)(a) and (b) of the Derelict Sites Act 1990. As amended.

4.2. Objection to Acquisition

- 4.2.1. An objection to the proposed acquisition was submitted to Clare County Council by Conor O'Cléirigh & Company Chartered Valuation Surveyors on behalf of Mr Patrick Halpin in a letter dated 4th September 2024. The objection can be summarised as follows;

- The notice published by Clare County Council does not sufficiently identify the property as it does not state the street number of the property.

- The notice published by Clare County Council does not refer to Sections 15 to 17 of the Derelict Sites Act 1990.
- The property does not fall within the definition of Section 3 of the Derelict Sites Act 1990 as it does not detract to a material degree from the surroundings, nor is it likely to do so.
- There is potential for the property to be retained and refurbished in line with previously approved planning permission issued by Clare County Council under Planning Reference P97-1562.
- Clare County Council have not provided sufficient grounds to show that the compulsory purchase of our client's property is in the interest of the common good.
- Any effort by Clare County Council to continue with this compulsory purchase may well be Ultra Vires having regard to the decision of the Supreme Court in Reid versus Industrial Development Agency (2015 IESC 82).

4.3. Local Authority's Application for Consent

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 4th October 2024 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (i.e. Derelict Site report) which sets out a description of the site, the background to the case and the details of the objection. The report included photographs and a map of the site area.
- Copy of the Section 15 Notice affixed to the site, dated 9th August 2024.
- Copy of the newspaper notices, dated 8th and 9th August 2024.
- Copy of objection made by Mr Patrick Halpin.

4.3.2. The derelict site report can be summarised as follows:

- Buildings such as the subject property greatly detract from the character of the town and streetscape. There is an objective in the Clare County Development Plan to take measures to deal with dereliction in its towns, villages and rural areas under the Derelict Sites Act, 1990.

- A summary of the history of actions taken on the property as a Derelict Site between 2014 and 2018 is provided.
- A summary of the history of actions taken on the property as a Dangerous Structure between 2015 and 2020 is provided.
- A file review was undertaken in June 2020 as it was clear that while the property was no longer dangerous, it was boarded up and the garden area was overgrown making the entire site derelict.
- In January 2024, a further assessment was carried out which found the property was derelict within the definition of a derelict site under the Derelict Sites Act, 1990.
- Investigations were carried out regarding ownership. As efforts failed to locate an owner for the property, the Council served a notice under Section 8(2) of the Derelicts Sites Act on 1st March 20224, by erection of the notice and the map on the property.
- A report was completed on 4th April 2024, following a site inspection, which found that no works were undertaken since service of the Section 8(2) notice.
- On 16th May 2024, a notice under Section 8(7) accompanied by the map was served by erection on the site. While the property had been entered on the Derelict Sites register in 2016, this effectively renewed that entry.
- Further research on ownership was conducted in June 2024 prior to making a decision to CPO the property. Letters were issued to a number of people to ask that they make contact if they had any interest in the property.
- A report was prepared by the Property Management Unit of Clare County Council in July 2024 recommending CPO of the property.
- Notice of intention to acquire the site were published in the Clare Champion and Irish Independent (on the 8th and 9th of August respectively) and affixed to the property on 9th August 2024.

4.4. Objectors Submission

A submission was made to the Board (by hand) by North's Property on behalf of Patrick Halpin on 11th November 2024 in response to the Section 15 notice. This can be summarised as follows;

- Mr. Halpin was not the owner from 2012 to February 2024, as the property was in the hands of receivers, and he had no legal right of possession. The submission provided by Clare County Council have ignored the facts in relation to possession and ownership.
- Mr. Halpin did not come within the definition of 'owner' as outlined within the Derelicts Sites Act, 1990.
- In February 2024, Mr. Halpin once again became the 'owner' of the property as defined under the Derelict Sites Act.
- The loan and receivership information that he imparted to Clare County Council over the 12 years was not properly understood.
- Mr. Halpin requested the receiver in possession of the property to carry put works in an effort to keep it from being added to the derelict sites register.
- Mr Halpin only became aware in June 2024 that he had legal possession as 'owner'. Comments which portray Mr. Halpin as unwilling or unable are therefore unfair.
- Mr. Halpin is willing to engage with Clare County Council to agree a level of work to render the property 'non-derelict' and is also preparing to engage with the Planning Authority to conduct a pre-planning meeting in respect of a proposed scheme of redevelopment.
- Mr Halpin proposes to provide evidence of his title to the property by the end of February 2025, carry out repairs to the slates caused by the storms, repaint the exterior and tidy the garden by the end of March, with a pre-planning meeting also to be held in early 2025.

5.0 Planning History

PA Reg Ref 97/1562 – Permission granted for alterations and extension to include new bedrooms, reception and public areas.

6.0 Policy Context

6.1. Clare County Development Plan 2023-2029

6.1.1. The subject property is zoned 'Mixed Use' in the Clare County Development Plan 2023 – 2029 (Kilkee Settlement Plan - Volume 3d West Clare Municipal District Settlement Plans). The Plan notes that on lands that have been zoned 'mixed-use' in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted. The site is also within the 'Town Centre' of Kilkee. The centre of the town of Kilkee has been designated as an Architectural Conservation Area (ACA).

6.1.2. The following objectives from the County Development Plan are considered relevant;

Development Plan Objective: Urban Tourism CDP9.14 It is an objective of Clare County Council: To improve the visual appearance of towns and villages, protect their character and maximise their tourism potential by the continuation of environmental and public realm programmes, design management and improvement of identified derelict sites.

Development Plan Objective: Derelict Sites CDP17.10 It is an objective of Clare County Council:

- a) To use all mechanisms available to it as appropriate and to work with Derelict Site owners to identify opportunities to bring derelict sites back in to use;
- b) To use the Derelict Sites Act 1990 where appropriate to require owners of derelict property to carry out suitable improvements, and to implement the provisions of the Act to prevent or remove injury to amenity arising from derelict sites;
- c) To prepare improvement plans and design briefs for larger derelict areas incorporating an Invasive Alien Species Management Plan if deemed necessary; and

d) To seek to acquire properties which are appropriate to the Council's Capital Programme in order to carry out improvements to derelict sites and revitalise the surrounding areas in compliance with the objectives and requirements of the Habitats Directive and in a manner which protects other sites or habitats of national, regional or local importance

- 6.1.3. The Kilkee Settlement Plan makes reference to the non-statutory document "Towards a Better Kilkee - A Town Improvement and Economic Development Strategy 2014-2024" which contains guidance for improving the public realm of Kilkee with the aim of safeguarding the existing character of the town centre by permitting development that respects the existing built heritage of the town and Architectural Conservation Area, and making provision for appropriate redevelopment and renovation of derelict buildings.

6.2. Derelict Sites Act 1990 (as amended)

- 6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

- 6.2.2. Section 3 of the Act defines 'derelict site' as:

"Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of— (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law."

- 6.2.3. Section 8 of the Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so.

- 6.2.4. Section 9 of the Act places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.
- 6.2.5. Section 10 of the Act places a similar duty on Local Authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.
- 6.2.6. Section 11 of the Act enables Local Authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site.
- 6.2.7. Section 14 of the Act provides that a Local Authority may acquire by agreement or compulsorily any derelict site situated in their functional area.
- 6.2.8. Section 15 of the Act sets out arrangements for giving notice, if the Local Authority intend to acquire a derelict site compulsorily.
- 6.2.9. Section 16 of the Act sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the Local Authority without the consent of the Board.

7.0 Assessment of Issues

7.1. Site Inspection

- 7.1.1. Internal access to the property was not possible on the date of my site inspection on 31st January 2025, however I was able to view the site from the public road. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area.
- 7.1.2. My observations of the site on the date of the inspection include the following;
- Windows and doors were boarded up.
 - There are extensive holes in the roof, with a number of missing and loose slates.
 - Paint is peeling and chipping off all external walls.

- There are large water marks on the external walls.
- The single storey section of the building has been partially demolished with some debris remaining on the site.
- Loose/hanging cables and wires on the front façade.
- Weeds and vegetation were growing around the property.
- Guttering was loose with vegetation growing out of it.

7.1.3. The site is located in a prominent location in the town centre of Kilkee. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the building and the character and streetscape of the area. The buildings and dwellings in the immediate surrounds appear to be well maintained and occupied. The site is also within an Architectural Conservation Area. The Clare County Development Plan has identified derelict and vacant sites as a matter of serious concern which has a negative impact on the environment, visual quality and amenity values of the areas in which they are located.

7.2. Category of Dereliction

- 7.2.1. I note the Local Authority considered that the property and lands fall under Category (a), (b) and (c) of Section 3 of the derelict Sites Act 1190, as amended.
- 7.2.2. There is obvious evidence of structural damage which extensive holes in the roof. I therefore consider that the site falls under category (a) of Section 3 of the Derelict Sites Action 1990, as amended.
- 7.2.3. Based on my site inspection, it is my view that the subject structure and lands are still in a neglected, unsightly and objectionable condition. I therefore consider that the site falls under Category (b) of Section 3 of the Derelict Site Act 1990, as amended.
- 7.2.4. There was clear evidence of debris within the site from the partial demolition of the single storey side annex to the south. There was also evidence of some littering within the site. I therefore consider that the site falls under Category (c) of the Derelict Sites Act 1990, as amended.

- 7.2.5. Having regard to (a) (b) and (c) above, it is my view that the structure and lands are detracting to a material degree from the amenity, character, and appearance of land in the neighbourhood of the land in question.

7.3. Action of Local Authority

- 7.3.1. I note the actions of the Local Authority, and the statutory notices served by erection on the site. Section 8(2) notices were served on the 1st March 2024, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the 16th May 2024, advising the owner that the site had been entered on the Derelict Sites Register. A Section 15(1) notice was affixed to the property on the 9th of August 2024 and published in the Clare Champion newspaper dated 9th August 2024 and Irish Independent dated 8th August 2024, regarding the Local Authority's intention to acquire the site compulsorily. Having regard to the above, I am satisfied that the Local Authority complied with the requirements of Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended.
- 7.3.2. I note that Local Authorities have a duty (under section 10) "to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any such land does not become/continue to be a derelict site." As outlined in the Compulsory Acquisition report, Clare County Council has sought to positively engage with the owners of the derelict site and to avoid using the powers under the Derelict Sites Act, except where necessary. It is over 10 years since communications between the owner/representatives of the owner and the Local Authority commenced in relation to the derelict state of the property. Having regard to the forgoing 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 that the Clare County Development Plan 2023-2029, specifically Objectives CDP 17.10 and CDP 9.14, which seek to address instances of dereliction and decay, to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse. 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 proposed compulsory acquisition would be consistent with the policies and objectives of the Development Plan and will ensure that the lands do not continue to be in a derelict condition.

7.5. Action of the Owner to address Dereliction

- 7.5.1. I note that an objection to the proposed acquisition of the site was made to the Local Authority by the owner Mr Patrick Halpin by letters dated 4th September 2024. The basis of the objection to the compulsory acquisition of the property was that the property does not fall within the definition of Section 3 of the Derelict Sites Act 1990 and that the Council have not provided sufficient grounds to show that the compulsory purchase of our client's property is in the interest of the common good. A further objection was made to the Board by North's Property on behalf of Patrick Halpin on 11th November 2024 which noted that Mr. Halpin was not the owner from 2012 to February 2024, as the property was in the hands of receivers.
- 7.5.2. I note that owner/occupiers have obligations (under section 9 of the Act) to "take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site". I note from my site inspection on the 31st January 2025 that it was not apparent that any further works had been undertaken to address the appearance of the subject property since the 6th September 2024 (when correspondence was last received on behalf of the Notice Party). It is over 10 years since the derelict condition of the property came to the Local Authority's attention. It has also been c.6 months since the Local Authority served the Section 15 notice of intention to acquire the site compulsorily. Having inspected the site, there is no evidence of any further attempt to render the site non-derelict or to support a conclusion that any works would be completed in a timely manner. The property remains in a neglected and unsightly condition.
- 7.5.3. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at Erin Street, Kilkee, Clare is granted.

8.0 Conclusion

- 8.1.1. I am satisfied that the process and procedures undertaken by Clare County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 8.1.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a two storey end of terrace building and surrounding site at Erin Street, Kilkee, Clare, containing 0.191 acres or thereabouts., as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 9th August 2024 and on map reference number 2014-16-01, 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.
- 8.1.3. 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.
- 8.1.4. 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 Clare County Development Plan 2023-2029, and specifically Objectives CDP9.14 and CDP17.10 which seek to actively address instances of dereliction and decay and bring properties back into active re-use and to revitalise the urban environment and maximise tourism potential. Accordingly, I am satisfied that 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 application site, in particular the ruinous, derelict or dangerous condition of the structure, the neglected, unsightly and objectionable state of the land and the structures thereon, and the presence, of rubbish and debris on the lands, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.
- 9.1.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by Section 14 of the Act. I recommend that the Board grant consent to Clare County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1. Having regard to the ruinous and derelict condition of the structure and the derelict, neglected, unsightly and objectionable state of the land, having considered the objections made to the compulsory acquisition, and also:

- The constitutional and convention protection afforded to property rights,
- The public interest, and
- The provisions of Clare County Development Plan 2023-2029,

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) (b) and (c) of the Derelict Sites Act, 1990, as amended, and that the compulsory acquisition of the site by the Local Authority is necessary in order to render the site non-derelict and to prevent it from 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.

Ciara McGuinness
Planning Inspector

19th February 2025

