



An
Bord
Pleanála

Inspector's Report

ABP-321540-24

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

No. 5 Prosperous Place, Thomas Davis Steet, Cork

Local Authority

Cork City Council

Notice Party

Donal Harrington

Date of Site Inspection

16th January 2025

Inspector

Jennifer McQuaid

1.0 Introduction

- 1.1. This case relates to a request by Cork City Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at No. 5 Prosperous Place, Thomas Davis Street, Blackpool, Cork 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 No. 5 Prosperous Place, Thomas Davis Street, Blackpool, Cork, which is located through an archway off Thomas Davis Street, the site is located at the end of a row of terrace dwelling located along a narrow cul de sac. The site is approximately 1.5km to the north of the centre of Cork City.
- 2.2. The subject site consists of a two-storey dwelling end of terrace and has a stated site area of 0.00376 hectares (c.37.6 sqm). The site includes the dwelling itself, there is no front garden and only a very small private courtyard space to the rear. The site is confined in a narrow cul of sac of small two storey terrace dwellings. The site is in a significant state of disrepair with no roof, first floor, internal walls or front door and the first-floor windows are not secure with no lintel or surrounding on the top of the windows. A significant part of the rear wall is also missing. The front wall is in place to eaves level, a portion of the rear wall remains, and both gables appear to be intact.
- 2.3. Based on a comparison of photographs attached to the Local Authority's Compulsory Acquisition Report (dated 25th October 2024) I note that no works or improvements have been carried out at the subject property.

3.0 Application for Consent for Acquisition

- 3.1. Cork City Council has applied to the Board for consent to compulsorily acquire the site under Section 14 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to Cork City Council serving a notice on 25th October 2024 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 Cork City Council's intention to compulsorily acquire the site was served upon the owners/ occupiers (Daniel Harrington) on the 25th October 2024 and was published in the Irish Examiner dated 25th October 2024. The site was described in the notices, as follows:

- Derelict Site at No. 5 Prosperous Place, Thomas Davis Street, Cork, bounded on the North by the access laneway at Prosperous Place, on the East by No. 4, Prosperous Place, on the South by the rear of No. 66, Thomas Davis Street and on the West by No. 26, Orchard Court, Blackpool, Cork.

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. One no. submission (by the property owner) expressing objection to the proposed acquisition was submitted to Cork City Council by Daniel Harrington.

4.2.2. The objection to the proposed acquisition was submitted by email on 28th November 2024, the day before the deadline.

4.2.3. In addition, a handwritten, dated 26th November 2024 and received on the 2nd December 2024 by Cork City Council, outside the timeframe.

4.2.4. The objection can be summarised as follows:

- Two number planning applications have been submitted, and both were deemed invalid. It is the intention to submit another application.
- It is the owner's intention to rebuild No. 5 and live in the premises.

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 19th December 2024 and included the following:

- Copy of derelict site register dated 20th June 2016.
- Photographs of the subject site.
- Copy of Cork City Council letter to owner, Donal Harrington dated 20th June 2024 acknowledging that An Bord Pleanála (Planning reference: ABP-317792-23) have refused the acquisition and have requested the owner to outline in writing his plans for the site in the short to medium terms and to reply no later than Monday 29th July 2024.
- Copy of Cork City Council letter to owner, Donal Harrington dated 16th August 2024 stating that no response was received by the 29th July 2024 and in the absence of new evidence provided of efforts made to develop and remove the dereliction at the property, Cork City Council will proceed to acquire the property in accordance with Section 14 of the Derelict Sites Act 1990, as amended by 30th September 2024.
- Email from the Derelict Sites Officer to Property Department dated 7th October 2024 noting an inspection was carried out in October 2024 and recommendation by the Executive Technician is that the property should remain on the Derelict Sites Register as the property is still in dereliction condition.
- Copy of newspaper notice dated 25th October 2024.
- Copy of Notice of Intention to Acquire Derelict Site dated 23rd October 2024 and erected on 25th October 2024 stating the owner can make an objection on or before 28th November 2024 and photographs of notice erected on site dated 25th October 2024.
- Copy of Site location map.
- Copy of email of objection to the compulsory acquisition by the owner Donal Harrington dated 26th November 2024.

- Copy of letter of objection to the compulsory acquisition by the owner Donal Harrington dated 26th November 2024 and received on 2nd December 2024.
- Copy of a letter from the Local Authority to An Bord Pleanála received on 19th December 2024 seeking the confirmation of a Compulsory Acquisition in respect of the subject property.

The submission from Cork City Council confirms that the property was entered on the Derelict Sites Register with effect from 20th June 2016 and that despite numerous correspondence since the determination by An Bord Pleanála to refuse compulsory acquisition dated 7th May 2024, and the invalid planning application, no subsequent planning application has been submitted and no progress has been made by the owner to remove the dereliction and no attempt has been made to consult with Cork City Council. On that basis the Council seek the consent of the Board to compulsorily acquire the property.

4.4. Objector's Submission

4.4.1. A submission was made to the Board by CF O'Connell and Company (Solicitors) on behalf of the owner, Daniel Harrington in response to the application for compulsory acquisition. This can be summarised as follows:

- The owner recently called to Cork City Council to discuss the dereliction. (no date or evidence provided). It appears Cork City Council have lost patience following the lack of correspondence on the 20th June 2024 and the 16th August 2024.
- It is correct only one planning application was made in March 2024 and it was deemed incomplete.
- The owner had an operation, and this has delayed his plans. He is adamant he will redevelop the house and has all financial means and ability to do so.
- A planning agent has been instructed to lodge a new planning application, and this should be completed by 1st March 2025.
- The owner will commence building works immediately once the planning permission has been granted.

4.5. Oral Hearing

- 4.5.1. No request has been received for an Oral Hearing.

5.0 Planning History

5.1. Planning History

ABP-317792-23: Application for the compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended. The Board Refused Consent for the following reason on 7th May 2024.

Notwithstanding the current neglected, unsightly, and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking account of the owner's intention to apply for planning permission, evidenced by the submission of a planning application (Register Reference: 2442723) to Cork City Council on the 1st day of March 2024, together with ongoing efforts by the owner to seek to address the issues of dereliction and to bring the property back into use, the Board decided that it would be appropriate and reasonable to provide some further time for the owner to bring the site out of dereliction and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

PA Ref: 2442723: Permission is sought for the renovation of the dwelling and the modification of the existing window and door openings at the rear elevation of the property. Invalidated on 11th March 2024.

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. Cork City Development Plan 2022 to 2028

- 6.2.1. The subject site is zoned as ZO 8: Neighbourhood and Local Centres, the stated objective of which is to protect, provide for or improve local facilities.
- 6.2.2. The site is located in the Blackpool Architectural Conservation Area.
- 6.2.3. Core Strategy Objective 2.24: Underutilised Sites – Cork City Council will seek to address issues of dereliction, vacancy and underutilisation of sites within Cork City by encouraging and facilitating their re-use and regeneration subject to good planning and the infrastructural carrying capacity of the area.
- 6.2.4. Core Strategy Objective 27: Derelict Sites Register – Progress, by way of the Derelict Sites Register, the development of derelict sites for housing and regeneration purposes through consultation with landowners and the application of powers under the Derelict Sites Act 1990 (as amended) and other means available to Cork City Council.

7.0 Assessment

7.1. Site Inspection

- 7.1.1. On the day of my site inspection, internal access to the dwelling was not possible due to its current state of repair. I therefore carried out my inspection from the outside of the dwelling, on Prosperous Place.
- 7.1.2. No. 5 Prosperous Place is an end of terrace property located at the end of a narrow cul de sac. The property is in a considerable state of disrepair. The dwelling currently has no roof, no first floor, no staircase, no internal walls, no front door, and a significant portion of the main rear wall is missing. The front wall and both gables appear to be intact, but the dwelling is clearly in a ruinous and derelict state.

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 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 is likely to be in a dangerous condition, and that it is considered ruinous, given the internal scaffold erected which suggests issues in terms of structural stability. 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 property and the general appearance of the property 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.
- 7.2.3. In terms category (c) of Section 3 of the Act, there is no front or rear garden of note and as such no litter collection/deposits, within the site vegetation is growing from the internal walls and window cills. However, no rubbish or debris was noted, although I did not have access or visual inspection of the internal of the dwelling. However, given the evidence on my site inspection, I do not consider the site falls in category (c) of the section of the Derelict Sites Act, 1990.
- 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 town centre, which in my view, renders it derelict under Section 3 of the Act.

7.3. Action of Local Authority

- 7.3.1. I note the actions of the Local Authority, and the statutory notices served on the owners in respect of the dwelling. Section 8(2) notices were served on the 11th May 2016 advising of the Local Authority's intention to enter the site on the register of derelict sites. A notice under section 8(7) on the 23rd May 2016 was issued advising of the Local Authority's decision to enter the site on the register of derelict sites and the property was entered on the register on the 20th June 2016.
- 7.3.2. A section 15(1)(a) notice was issued on 23rd June 2023 with a newspaper notice published on the same date. This notice was the subject of an appeal to An Bord

Pleanála under planning reference ABP-317792-23 and the Board subsequently stated that the owner should be offered further time to bring the site out of dereliction and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

- 7.3.3. Following further correspondence from Cork City Council with the owner on the 20th June 2024 and on the 16th August 2024, the owner failed to respond or consult with Cork City Council to discuss further plans to bring the property out of dereliction. As a result, Cork City Council issued a further section 15(1)(a) notice on 25th October 2024 with a newspaper notice published on the same date.
- 7.3.4. The representation made on behalf of the owner indicates the reason for the delays and lack of communication with Cork City Council. It is also submitted that steps have been taken to redevelop/repair the property. The owner has outlined that a planning application was submitted and was deemed inadequate in March 2024, and it is his intention to submit a new planning application by 1st March 2025.
- 7.3.5. I acknowledge that the owner attempted to submit a planning application almost a year ago, which was ultimately declared invalid by Cork City Council (details of the reasons for being invalid are not currently available). And I note the applicant intends to submit a new planning application in the coming weeks. It is my opinion that although the applicant demonstrated an intent to undertake improvement works and to bring the site out of dereliction, a significant time has passed since the initial invalid planning application and it seems no attempt has been made to resubmit a valid planning application within the past year. I note the previous appeal to the Board under ABP-317792-23 stated the owner had insufficient time to submit a new application at that time, I consider the owner has had more than sufficient time in this instance since the initial invalid application.
- 7.3.6. I also acknowledge that Cork City Council made attempts to consult with the owner on two separate occasions following the decision of ABP-317792-23 and the owner failed to contact Cork City Council to discuss any future proposals for the site. It is my opinion that Cork City Council have given the owner a number of opportunities to progress the site, but the owner has not cooperated.
- 7.3.7. In my opinion, no demonstratable efforts have been made to redevelop the dwelling or to bring the site out of dereliction, given that the site has been on the derelict sites

register since 2016 and given the determination of An Bord Pleanála decision under planning reference ABP-317792-23, whereby the applicant was given additional time to submit a valid planning application and subsequently has failed to do so, I recommend a grant of consent to compulsory acquisition of the site in question.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Cork City 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 No. 5 Prosperous Place, Thomas Davis Street, Cork, (0.00376 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 25th October 2024, 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 Cork City Development Plan 2022-2028, and specifically Objectives 2.24 and 27, 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 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 Cork City 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, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, 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 Cork City 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
18th February 2025