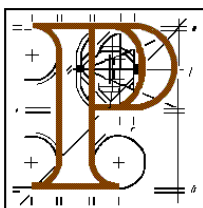


# An Bord Pleanála

## Inspector's Report



<b>Case Reference:</b>	PL03.CD3032
<b>Local Authority Reference:</b>	Derelict site, detached two storey burnt-out corner house and garage at 15 Cregaun, Tobartescain, Ennis, Co. Clare
<b>Nature of Application:</b>	Application for consent for compulsory acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990
<b>Objector:</b>	
<b>Location of Lands:</b>	15 Cregaun, Tobartescain, Ennis, Co. Clare
<b>Date of Site Visit:</b>	21/06/2016
<b>Inspector:</b>	Gillian Kane

## **1.0 INTRODUCTION**

- 1.1 The file relates to a request by Clare Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site (accommodating a two-storey burnt out corner house and garage and garage) in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 SITE LOCATION AND DESCRIPTION**

- 2.1 The subject site, comprising a two storey detached dwelling with garage, is located in the Cregaun housing estate in Toberteascain, Ennis, approx. 2 kilometers southeast of the town centre.
- 2.2 The site accommodates a two storey detached dwelling with garage.
- 2.3 At the time of the site inspection a wire fence surrounded the three front boundaries, preventing access to the front of the dwelling. The dwelling was visibly fire damaged with no roof and burnt and split roof trusses projecting upwards. The bay window and front door on the ground floor of front elevation of the dwelling were partially boarded or with damaged boarding. The upper floor windows were intact. No roof or ceiling was visible through the windows, only open sky.
- 2.4 The front and rear gardens were overgrown and contained a noticeable amount of litter / debris, including broken glass. There is no garage door and the partial boarding over the opening shows a significant amount of what appears to be fire damaged material behind.
- 2.5 The rear windows and doors were open and / or badly broken, giving access to the dwelling. A block wall of approx. 1.5m lies on the eastern boundary, separating the site from the adjoining residential estate. To the rear the southern boundary is a 1.5m block wall adjoining an area of open grassland at the end of a cul-de-sac within the estate. Access to the rear of the property would easily be achieved.
- 2.6 The site's front garden is bounded by a low wall. The front gate is missing. The rear garden is bounded by a blockwork wall of c.1.5 metre height on all sides. The three front boundary walls were blocked up by means of wire fencing.
- 2.7 The area in which the subject site is located is an established residential area. The dwelling to the west appears occupied.

### **3.0 PROPOSAL**

Clare Council has applied to the Board for consent to the compulsory acquisition of the site under Section 14 of the Derelict Sites Act 1990, as amended. The site was entered on the Council's Derelict Sites Register on 8<sup>th</sup> September 2014.

### **4.0 APPLICATION AND OBJECTION**

#### **4.1 Notice of Intention to Acquire**

Notice of intention to acquire this site was published in The Clare Champion on 12<sup>th</sup> February 2016. Notices were erected on site on the 10<sup>th</sup> of Feb. 2016.

#### **4.2 Objection to Acquisition**

An objection to the proposed acquisition was submitted to Clare Council by Stephen Mason on behalf of Ms Kathleen Glynn, the registered owner, on 14<sup>th</sup> March 2016. The basis for objecting to the acquisition is stated as the owner's pursuit of a claim with her insurance company and the lodgement of a planning application to re-build the damaged dwelling.

#### **4.3 Council's Application for Consent**

By way of letter and a report titled 'Derelict Site Report' submitted to the Board on the 13<sup>th</sup> of April 2016, the Council requests the consent of the Board to the compulsory acquisition of the subject derelict site. The Council's submission may be summarised as follows:

- A complaint was submitted to the Council in July 2014 from a resident in Cregaun.
- The site was inspected in the 24<sup>th</sup> July 2014 and a complaint was referred to Building Control for inspection as a dangerous structure. The site was deemed to be a derelict site and a list of works to render the site non-derelict was compiled (demolition of existing dwelling and removal of all loose and damaged materials).
- On the 26<sup>th</sup> of November 2014 a notice as per section 8(2) of the Derelict Sites Act was sent to each of the owners Sean O'Shaughnessy and Kathleen Glynn.
- A response from Sean O'Shaughnessy's solicitor was received on 10<sup>th</sup> December 2014. The response stated that both parties endeavoured to make the site safe. A reply issued on the 15<sup>th</sup> December 2014 stating that the works to date were not satisfactory and matters required address without further delay.

- A notice as per section 8(7) and section 11 of the Derelict Sites Act was sent to each of the owners on 8<sup>th</sup> September 2015. A response from Ms Kathleen Glynn was received on the 22<sup>nd</sup> Sept. 2015 stating that she did not have authority to comply with the notice. A response from Mr Sean O'Shaughnessy's solicitor (John Battles) on the 7<sup>th</sup> October 2015 stated that an update was requested from the assessor Stephen Mason. The Council responded to both on the 8<sup>th</sup> of October 2015 stating that failure to comply with the notice may result in the property being compulsorily acquired.
- The Council requested a valuation of the site on the 26<sup>th</sup> Jan 2016 and a report was submitted to the Council on the 10<sup>th</sup> March 2016.
- By Order dated the 9<sup>th</sup> of Feb. 2016 the Council commenced compulsory purchase of the property under the derelict sites legislation. Both owners of the site and the Ennis Municipal Councillors were advised of the commencement of the CPO procedure on the same date. Notice of the intention to acquire the site was placed on the site on the 10<sup>th</sup> Feb. 2016 and published in the Clare Champion on the 12<sup>th</sup> of Feb. 2016.
- On the 15<sup>th</sup> March 2016 an objection to the order was submitted by Stephen Mason, Architectural and Planning Services on behalf of Ms Kathleen Glynn. The objection notes that Mr Mason was appointed by Court Order as assessor, to liaise with the assessor of the Insurance company. He noted that three tenders has been sought for building work and that a planning application would be lodged in July / August 2016.
- Planning Authority reg. ref. 16/29 was lodged with the Council on the 22<sup>nd</sup> March 2016, in the names of both owners. Solicitor for Mr Sean O'Shaughnessy indicated that their client was not aware of the planning application. The Council were advised that the solicitor for Ms Kathleen Glynn had not responded to contact.
- The Council submit to the Board that the site is a derelict site in accordance with section 3 of the Derelict Sites Act 1990. They state that they have afforded both parties the opportunity to address the dereliction and that no efforts have been made to comply with the section 11 notice of 8<sup>th</sup> October 2015. The property has remained in a derelict state since March 2013.
- The Council consider that the recent planning application will not be acted upon as the parties are not in communication and there is no onus on either to implement the permission.
- The property is located on an attractive busy residential area close to the town centre and on a busy relief road. It is unsightly and in its

current state detracts from the amenity, character and appearance of the area.

#### **4.4 Objector's Submission**

On the 11<sup>th</sup> May 2016 an objection to the proposed acquisition has been received by the Board from Stephen Mason, Architectural and Planning Services, on behalf of one of the registered owners, Ms Kathleen Glynn. The submission may be summarised as follows:

- The property was badly damaged during a fire in March 2013
- A visual inspection was carried out by Stephen Mason on Monday 11<sup>th</sup> November 2013
- Stephen Mason was appointed as assessor for the parties and authorised to liaise with the insurance company's assessor.
- Negotiations regarding the extent of works required to make the property habitable began with the insurance company's assessor OSG Group. Negotiations were protracted due to the number of parties required to agree the full extent of works.
- A tender report has been issued to the insurance company's assessors following the issue of tenders for the demolition and rebuilding of the fire damaged house. A planning application for same will be lodged with Clare County Council. Works will commence before the end of 2016.

#### **4.5 Council's Response**

On the 13<sup>th</sup> of May 2016 the Board received a response from Clare County Council. The response does not refer to or make comment on the objection to proposed acquisition of the site, just provides copies of letters from the Building Control section as the property was subject to inspection under Dangerous Structures legislation. The letter from Building Control to Mr Sean O'Shaughnessy's solicitor (John Battles) refers to works carried out by Sean O'Shaughnessy to secure the site between the 14<sup>th</sup> August 2014 and the 11<sup>th</sup> Sept. 2014.

The response includes an 'note to file' referring to a telephone conversation between an SEO of the Council and Mr Sean O'Shaughnessy's solicitor (John Battles) wherein the solc. advised that some correspondence had been received regarding the insurance but that no correspondence had been received from Ms Glynn's solicitors.

## 5.0 PLANNING HISTORY

- 5.1 Planning Authority reg. ref. **16/229**: On the 22<sup>rd</sup> March 2016 planning permission was sought for the above ground demolition of the existing fire and water damaged two storey 4 bedroom detached house and garage, and the construction of a new two storey 4 bedroom detached house and garage of identical layout and design. The ground floor slab, foundations and rising walls and the below ground services and all external below ground drainage are as existing. On the 12<sup>th</sup> of May 2016 permission was granted subject to 7 no. conditions. Condition no. 3 required a demolition management plan. Condition no. 4 required re-building work to commence within one month of demolition.

## 6.0 ASSESSMENT

- 6.1 Section 3 of the Derelict Sites Act, 1990 defines a 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 lands 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 lands 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 statute or by common law.”*
- 6.2 The subject dwelling has been vacant since at least March 2013. There is evidence of some attempts to prevent access – erection of construction fencing on the front boundary and partial boarding of the garage door, front door and ground floor bay window. The subject dwelling remain easily accessible however through the side and rear boundaries. Indeed the open French door to the rear leads one to believe some unauthorised access has already taken place. The existence of significant amounts of fire damaged material plus the possibility of structural damage to floors and stair wells must lead one to the conclusion that the structure is in a dangerous condition. Should unauthorised access occur, the stability of the structure could not be assured.
- 6.3 The absence of a roof, the structural damage likely to be caused to internal and external walls both from the original fire and the

subsequent exposure to the elements results in the property being considered to be in a ruinous condition. It is considered that in its current state, it would not be possible to render the structure suitable for habitation. I note that permission has been sought and granted for demolition of the entire structure rather than repair.

- 6.4 The property in its current state, significantly detracts from the well maintained established residential estate in which it is located. Further, the property faces a busy road leading into the town centre of Ennis and so is visible to a wide range of passing traffic. The property can clearly be defined as neglected, unsightly and of objectionable condition. On the date of my site inspection, there was a significant amount of construction debris in both the front garden and the rear garden. The back garden was significantly overgrown and it appeared that some of the damaged fixtures and fittings from the house had been disposed of in the garden.
- 6.5 Having regard to the above, I would consider that the property falls within categories (a) (b) and (c) of Section 3 of the Derelict Sites Act. With regard to whether this renders it derelict, the Act requires that arising from same the property detracts materially from the amenity, character or appearance of land in the neighbourhood. I would consider that this is so in the instant case, given the visibility of the site on a residential street and from adjacent properties, and given that it detracts materially from the residential and visual amenities of this established residential neighbourhood.
- 6.6 The Objector's submission is noted, particularly his reference to submission of a planning application to re-build. I note that his letter of the 11<sup>th</sup> May 2016 refers to the future lodgement of a planning application. The board will note that a planning application was lodged on the 22<sup>nd</sup> March and permission was granted on the 12<sup>th</sup> of May 2016. Notwithstanding this, however, I can see no evidence on site that any significant attempt to secure or repair the property has been made in the time since the original damage has occurred. The planning application was sought in 2016, approx. three years after the damage first occurred, following no compliance with the Derelict Sites notices served on both owners and apparently without the knowledge or consent of one of the owners (Sean O'Shaughnessy) and without the knowledge of the objector (Stephen Mason). In the meantime, the property continues to be exposed to the elements, exacerbating the structural damage and dangerous condition of the dwelling and materially detracting from the amenity of the neighbourhood. It is clear

that the property is further deteriorating over time - e.g. damage to boardings, broken windows, access to the interior of the dwelling and accumulation of construction debris in the garage and front garden.

6.7 Arising from the above I conclude that the property is derelict insofar as it detracts materially from the amenity and appearance of land in the neighbourhood by reason of its ruinous and dangerous condition, its neglected, unsightly, and objectionable condition and by the presence of litter, rubbish, and debris on site.

## **7.0 RECOMMENDATION**

I conclude that the site at 15 Cregaun, Tobartescain, Ennis, Co. Clare is a derelict site within the definition of Section 3 of the Derelict Sites Act, 1990, as amended, and that it is therefore reasonable and within the powers of the Local Authority to seek to compulsorily acquire the lands. I therefore recommend that the Board grants consent to Clare County Council to compulsorily acquire the site.

## **REASONS AND CONSIDERATIONS**

Having regard to the ruinous and dangerous condition, the neglected and objectionable condition of the property, its unsightly appearance, and to the overgrown garden in which there is litter, rubbish, and debris, it is considered that the subject site detracts materially from the amenity, character and appearance of land in the neighbourhood, and therefore constitutes a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended, and that its acquisition by Clare County Council is necessary to prevent it continuing to be a derelict site.

**Gillian Kane**  
**Inspector**  
**22/06/2016**