



An
Bord
Pleanála

Inspector's Report PL18.CD3037.

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

Lands to the rear of Main Street, Ballybay, Co. Monaghan, (lands between properties known locally as 'Liam Smyth & Sons' and former 'Department of Agriculture' offices).

Local Authority

Monaghan County Council.

Notice Party

Dr. Jack Crummie, Dr. Deirdre Smyth – Moran, and Dr. Brian Norton.

Date of Site Inspection

25th August 2017.

Inspector

Karen Kenny.

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1.0 Introduction

- 1.1. This file relates to a request by Monaghan County Council for the consent of An Bord Pleanála for the compulsory acquisition of the subject site, Main Street, Ballybay, Co. Monaghan (lands between properties known locally as 'Liam Smyth & Sons' and former 'Department of Agriculture' offices), in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1.1. Ballybay Main Street is characterised by two and three storey, terraced buildings that front directly onto the street. Land uses are mostly commercial with some residential uses apparent, in particular, at first floor level.
- 2.1.2. The subject site forms part of a backland site to the rear of Main Street, located between Liam Smyth & Sons public house and the former Department of Agriculture offices. Permission was granted for a mixed use commercial, retail and residential development in this area in 2004 and amended in 2008. This development commenced and was not completed.
- 2.1.3. The subject application relates to two land parcels owned by NSC Property Holdings that formed part of the redevelopment proposal. The larger parcel of land, is located to the south of Liam Smyth & Sons public house and to the north of the former Department of Agriculture offices and comprises an area of open ground. The smaller parcel of land is located directly to the rear (east) of Liam Smyth's & Sons public house and comprises a sub-floor concrete base.

3.0 Application for Consent for Acquisition

- 3.1. Monaghan 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. A section 8(2) notice, advising of the local authority's intention to enter the site on the register of derelict sites, was served on the owners of the site on the 11th October 2016 (see attachments). A section 8 (7) notice, advising of the local authority's decision to enter the site on the register of derelict sites was served on the owners of the site on 25th January 2017 (see attachments).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of intention to acquire the site compulsorily was served on the owners of the site on the 26th April 2017 and published in the Northern Standard Newspaper on the 27th April 2017.

4.2. Objection to Acquisition

- 4.2.1. An objection to the proposed acquisition was submitted to Monaghan County Council on 21st May 2017 by Dr. Jack Crummie, Dr. Brian Norton and Dr. Deirdre Smyth – Moran, the stated owners of the property, making the following arguments:

- We plan to develop a primary health care centre. Acquisition would result in loss of proposed business premises.
- The site is an ideal location for a health care building as it is centrally located yet off the main street.
- Obstacle to developing the site due to the absence of a legal right to access services when the owner of adjacent lands went into receivership.
- In meetings with the Council we have stated that we would develop the site and work in conjunction with the Council if the Council acquires the adjoining site and allows us to access services.
- We would have concerns regarding the Council's intentions for the site and whether they have a development plan that would benefit the local community.
- It is not necessary for the Council to acquire the portion of the site owned by us or part of it by CPO. The Council could develop on the land adjacent to our site.
- There is a significant amount owed in respect of the site. If the Council acquire this through CPO we as individuals would be immediately responsible for the balance of the payment. This would cause us and our families a lot of distress and upset.

4.3. **Local Authority's Application for Consent**

4.3.1. The Council requests the consent of the Board for the compulsory acquisition of the derelict site on the following grounds:

- The local authority would welcome a primary health centre in the town centre as it would contribute greatly to the activity in the town centre. However, there are currently no proposals for such a facility.
- Monaghan County Council has prepared a site resolution plan for the lands.
- Monaghan County Council has formed the opinion that these proportions of lands are derelict and is acting within its duties and powers to address the dereliction of these lands.
- Monaghan County Council in the exercise of its duties under the Derelict Sites Act 1990 (as amended) is not obliged to take consideration of the owner's personal circumstances into account.
- Local Authority through its urban regeneration unit is actively pursuing derelict properties in all towns in Monaghan and promoting urban regeneration. The acquisition would present an opportunity to the local authority to regenerate this area of the town centre.

4.4. **Objector's Submission**

4.4.1. In response to the application to the Board for consent for compulsory acquisition of lands to the rear of Main Street, Ballybay, Co. Monaghan (lands between properties known locally as 'Liam Smyth & Sons' and former 'Department of Agriculture' offices), the owner of the property makes the following arguments:

- We have always planned to develop a primary health care centre.
- The obstacle to us developing the site prior to this is that we had no legal right to access services (water, sewerage, telephone and electricity) to serve the sites when the owner of the adjacent site went into receivership.
- The Council are positive towards the advancement of medical services within the town centre and we can now fulfil this.

- On 26th June 2017 we have ‘sale agreed’ the adjacent site hatched blue on attached map¹. The adjacent site has the services we require to proceed with the development of a doctor’s surgery and primary healthcare unit. Contracts of sale are to issue shortly.
- The acquisition of this adjacent site involves a substantial investment on our behalf. It allows access to the services that we could not access for the past ten years and we hope to be starting works as soon as the contracts of sale are completed. The overall development will require both the newly acquired site and the sites Monaghan County Council are proposing to acquire via a compulsory purchase order.
- It is a priority for us to be able to expand our GP services as we have outgrown our current premises.
- The development of the state of the art health care building in the Town centre would not only serve the medical needs of the local community but also provide much needed sustainable employment in the Town.

5.0 Planning History

5.1. Two planning applications have been made in respect of the site as follows:

04/1447: Mixed use commercial, retail and residential development including the demolition and replacement of a structure fronting onto Ballybay Main Street.
Permission granted.

08/855: Alterations to development granted under PA Ref. 04/1447 to include the replacement of a residential and retail building with a health care building.
Permission granted.

6.0 Policy Context

6.1. Development Plan

6.1.1. The application site falls within the administrative area of the Monaghan County Development Plan 2013 – 2019. The Ballybay Town Development Plan is provided

¹ Lands to the south of larger land parcel with frontage onto the Main Street.

in Chapter 13 of the County Development Plan. The site lies on land zoned for Town Centre uses. Specific policy objectives for town centre development include the following:

- BBO2: Protect and conserve the streetscape character, and heritage of the town with particular emphasis on the Square and Main Street.
- BBO6: Regenerate the town centre as a residential, retail and services centre and encourage the refurbishment, renewal and re-use of existing buildings and derelict sites.

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 land owners 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 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. Section 9 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 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 their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 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

- 7.1.1. The subject application relates to two land parcels located to the rear (east) of Main Street, between the properties known locally as Liam Smyth & Sons and the former Department of Agriculture offices. The site forms part of a larger commercial, retail and residential development that commenced in c. 2006 and remains incomplete. The larger land parcel comprises open ground that is overgrown. It is fenced along its northern edge with a post and wire fence and is bounded to the south by a propped masonry wall. The other parcel is located directly to the rear (east) of Liam Smyth's & Sons public house and comprises a sub-floor concrete base over its full extent. The concrete base is overgrown with trees and vegetation, and vegetation has established on the concrete surface. Access to both land parcels is over third party lands. The lands appear neglected and unsightly and are in contrast with the generally well-kept nature of buildings along the Main Street.
- 7.2. I would consider that the property falls within category (b) of section 3 of the Derelict Sites Act, 1990, due to the neglected and unsightly condition of both land parcels. The property (both land parcels) demonstrably detracts from the amenity, character and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.

- 7.3. I note the actions of the planning authority and the statutory notices served on the owners in respect of the site. A section 8(2) notice, advising of the local authority's intention to enter the site on the register of derelict sites, was served on the owners on the 11th October 2016. A section 8 (7) notice, advising of the local authority's decision to enter the site on the register of derelict sites, was served on the owners on 25th January 2017. At each instance, the owners had the opportunity to carry out works to improve or remedy the situation. A section 15 (1) (a) notice of intention to acquire the site compulsorily was served on the owners on the 26th April 2017 and published in the Northern Standard Newspaper on the 27th April 2017. I note that there is a report on the file dated 12th September 2016, setting out the measures that are considered necessary in order to prevent the land from becoming or continuing to be derelict. A section 11 notice, directing the owners to undertake the measures would not appear to have been issued.
- 7.4. I note the arguments made in the objector's submissions to the planning authority and to An Board Pleanála. I am cognisant of the difficulties that the owners have encountered in accessing services and in developing the lands. I am also cognisant of the stated intention to purchase an adjacent property to the south (former Department of Agricultural Officers) and to develop a health care unit.
- 7.5. Notwithstanding this, there was no evidence of any attempt to make the lands non-derelict at the time of inspection. It is evident that basic maintenance works have not been carried out and that no works have been undertaken to improve the condition of the lands on foot of the notices served by Monaghan County Council. Furthermore, the owners have not put forward any substantial reason why no remediation works were undertaken or could not be carried out. While the applicants indicate that they intend to develop the lands in the future, the property in its current state, detracts from the amenity, character and appearance of land in the vicinity, which in my view, renders it derelict under section 3 of the Act.
- 7.6. Having regard, therefore, to the all of the information available of 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 lands to the rear of Main Street, Ballybay, Co. Monaghan, (lands between properties known locally as 'Liam Smyth & Sons' and former 'Department of Agriculture' offices) is granted.

8.0 Recommendation

- 8.1. Having regard to the observed condition of lands to the rear of Main Street, Ballybay, Co. Monaghan, (lands between properties known locally as 'Liam Smyth & Sons' and former 'Department of Agriculture' offices), in particular its neglected and unsightly state, 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.
- 8.2. 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, therefore, that the Board grant consent to Monaghan County Council to compulsorily acquire the site.

9.0 Reasons and Considerations

Having regard to:

- (a) The neglected, unsightly and objectionable condition of the site,

It is considered that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in section 3 (b) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

Karen Kenny
Senior Planning Inspector
13th October 2017