



An  
Bord  
Pleanála

## Inspector's Report 25.CD3040

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### 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

154 Dalton Park, Mullingar, Co. Westmeath.

### Local Authority

Westmeath County Council

### Notice Party

Brian Donlon, David Malone, John Walshe

### Date of Site Inspection

3<sup>rd</sup> October 2017

### Inspector

Niall Haverty

## **1.0 Introduction**

- 1.1. This file relates to a request by Westmeath County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 154 Dalton Park, Mullingar, Co. Westmeath, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The site, which has a stated area of 0.038 ha, is situated in a residential estate known as Dalton Park in Mullingar, Co. Westmeath. The site is occupied by a mid-terrace two storey house and associated front and rear garden areas. The front elevation of the house faces south, and the adjoining houses to east and west are inhabited and are in reasonably good condition. A laneway runs to the north, to the rear of the terraces of houses.
- 2.2. The house on the site has a pebbledashed front elevation with concrete tile roof, a small area of stone cladding at the entrance door and a projecting concrete canopy. On the date of my site inspection the door and windows of the house were boarded up and there was no readily apparent evidence of any significant structural issues with the house. The roof appeared to be in reasonable condition, gutters were in place and there were no obvious cracks in the front elevation. The front garden was unkempt, with a quantity of litter present.

## **3.0 Application for Consent for Acquisition**

- 3.1. Westmeath 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. There is no evidence on file regarding whether the site was placed on the register of derelict sites prior to this application for consent for compulsory acquisition.

## 4.0 Application and Objection

### 4.1. Notice of Intention to Acquire

4.1.1. Notice of Westmeath County Council's intention to acquire the site compulsorily was served on Brian Donlon, David Malone and John Walshe in letters dated 6<sup>th</sup> June 2017 and was published in the Westmeath Examiner newspaper dated 10<sup>th</sup> June 2017.

4.1.2. I consider that the notices were generally in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended, although I note the following:

- The newspaper notice and map do not state the address of the site.
- The Order, map and newspaper notice include a Schedule stating that the 'Owner/Reputed Owner' is Westmeath County Council, and that the 'Lessee/Reputed Lessee' is Brian Donlon, David Malone and John Walshe.

### 4.2. Objection to Acquisition

4.2.1. An objection to the proposed acquisition was submitted to Westmeath County Council by David Malone, John Walshe and Brian Donlon in a letter dated 28<sup>th</sup> June 2017. The objection can be summarised as follows:

- CPO is not necessary as the situation can be resolved by other means, specifically by entering into a repair and lease scheme previously agreed with Westmeath County Council.
- Objectors were unable to enter into the agreement thus far due to the refusal of their mortgage provider to provide a letter of comfort to WCC.
- Objectors have spent a number of years trying to convince their mortgage provider to allow them to enter into a long-term lease with WCC or to advance the funds to renovate the property. So far they have refused.
- Objectors believe the threat of CPO will force the mortgage provider to allow a repair and lease agreement to go ahead and are hopeful of receiving formal correspondence shortly.

- Objectors are determined to resolve the derelict nature of the property as soon as possible and appeal to WCC to postpone the CPO for a short number of weeks while they liaise with their bank.

4.2.2. Copies of the following two letters were also submitted with the objection:

- Letter from the Housing Department of Westmeath County Council to the objectors, dated 31<sup>st</sup> July 2012, regarding a possible repair and long-term leasing arrangement
- Letter from Ulster Bank to the objectors, dated 19<sup>th</sup> December 2016, referring to their request for the Bank to agree to a change of lease agreement and refusing to provide a letter for Westmeath County Council.

### 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 and the application for consent was accompanied by copies of the following documents:

- Chief Executive Order No. 121/2017, dated 23<sup>rd</sup> May 2017.
- Westmeath County Council Compulsory Purchase (No. 2) Order 2017, dated 24<sup>th</sup> May 2017.
- Notices served on David Malone, John Walshe and Brian Donlon, respectively, dated 6<sup>th</sup> June 2017. All three notices were addressed to 3 Ben Madigan Road, Drimnagh, Dublin 12.
- Map of the site area.
- Newspaper notice.
- Objection made by David Malone, John Walshe and Brian Donlon, dated 28<sup>th</sup> June 2017.

4.3.2. The Local Authority subsequently submitted its comments on the objection, which can be summarised as follows:

- The Council acknowledges the previous efforts to enter into an arrangement for rendering the property non-derelict and to bring it back into usefulness as a housing unit, but the mortgage provider would not consent.

- The Council carried out a Remedial Works Scheme in Dalton Park in 2012/2013 for the street containing house numbers 138 to 161 and 164 to 175.
- The cost of the works was €450,000 and included the following:
  - 3 Local Authority derelict houses refurbished.
  - 2 private houses acquired by agreement and refurbished.
  - 1 private house refurbished by its owner and leased to the Council.
  - 1 other private house upgraded by its owner.
  - Estate improvement works, including lighting, new blacktop on road, upgrade of footpaths, upgrade of green areas and erection of gates to close off back lanes.
- 154 Dalton Park was considered to be derelict in March 2011, March 2013 and is still considered to be derelict.
- The site continues to detract from the visual amenity of the Dalton Park estate and particularly the terrace of houses from 138 – 161 Dalton Park.
- It is considered appropriate that the Council now acquire the property utilising the powers outlined in the Derelict Sites Act 1990 so as to effectively complete the remedial works scheme commenced in 2012.

#### 4.4. Objectors' Submission

- 4.4.1. An Bord Pleanála received a submission from the objectors on 24<sup>th</sup> August 2017, but it was returned to them in error. The objectors were invited to return their submission by way of a letter dated 25<sup>th</sup> September 2017 and, when this was not received, a second letter was issued on the 17<sup>th</sup> October 2017 giving the objectors a period of twenty-one days to submit their original comments or to make a fresh response as they saw fit. No submission was received within the specified time period.

## 5.0 Planning History

### 5.1. Application Site

5.1.1. I am not aware of any relevant planning history on the site.

### 5.2. Surrounding Area

5.2.1. I am not aware of any relevant planning history in the surrounding area.

## 6.0 Policy Context

### 6.1. Development Plan

6.1.1. The application site is zoned as 'existing residential' in the Mullingar Local Area Plan 2014-2020. Section 2.6.4 of the LAP relates to social housing and states, *inter alia*:

"The Council seeks to provide social housing to meet the needs identified in the Westmeath Housing Strategy 2014-2020. Westmeath County Council currently owns 510 housing units in the town and leases 104 units. The Council recently received funding to the sum of €512,000 to complete the Remedial Works in the Dalton Park area. Works funded under this programme included roads, footpaths public lighting, landscaping works, community gardens and works to the fabric of the dwellings in the area. The funding also allowed for the taking into stock by Westmeath County Council of five number houses which were in a derelict state and the refurbishment and reletting of same."

6.1.2. Section 3.11.1 relates to tourism, and states, *inter alia*:

"It is the policy of the Council to seek to improve the overall appearance and level of facilities and services of the town and its environs through the Derelict Sites Acts, Community Employment Schemes and through effective development management and enforcement."

6.1.3. Section 5.2.1 states that Dalton Park is one of a number of estates in Mullingar which have been included in a programme known as Revitalising Areas by Planning, Investment and Development (RAPID).

6.1.4. The following Policies are noted:

- **P-TRM11:** To improve the visual appearance of the town and its environs, protect its inherent character and maximise its tourism potential, by the continuance of environmental schemes, design control and the removal or encouragement of reuse of derelict properties, subject to the protection of the architectural heritage of the town.
- **P-DU9:** To seek the renewal of derelict, underutilised and vacant properties within the Town Centre.
- **P-IR3:** To utilise the provisions of the Derelict Sites Act 1990 or where applicable, the provisions set out in Section IV of the Planning and Development Act 2000 as amended, where the structure is protected or located within an ACA, to encourage the refurbishment of derelict properties.

## 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 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. 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. Internal access to the house on the site was not possible on the date of my site inspection and I instead carried out my site inspection from the public road.
- 7.2. Externally, the house appears to be in reasonable condition with no obvious evidence of structural issues or significant cracking. The external walls, roof, gutters and boundary walls all appear intact, while the front door and windows are boarded up. There is a small amount of graffiti on the front elevation of the property and the front garden is unkempt, overgrown with weeds and has been used for littering, including drink cans, food wrappers etc.
- 7.3. From the public roadway on Dalton Park the building appears neglected and unsightly, due to the boarded up windows and litter-strewn overgrown front garden. Dalton Park has recently been subject to significant improvement works including the refurbishment and re-letting of both Local Authority owned and privately owned houses, as well as public realm improvements. These improvements appear to be on



foot of the designation of Dalton Park as part of the RAPID programme, as referenced in the Mullingar Local Area Plan 2014-2020. I consider that the property in its current condition significantly detracts from the residential estate in which it is located, particularly with regard to its mid-terrace location and the otherwise well-kept condition of the adjoining houses. The street on which the property is located appears to be relatively heavily utilised by pedestrians due to the link it provides onto Robinstown Road, and having regard to the boarded up nature of the property and the presence of litter within the site, I consider that the property can clearly be defined as being in a neglected, unsightly or objectionable condition. I therefore consider that the property falls within category (b) of section 3 of the Derelict Sites Act, 1990.

- 7.4. While I consider that the property falls within category (b), I also consider it appropriate to address the applicability of the other two categories set out in section 3 of the Act. With regard to category (a), having inspected the site I do not consider that there is sufficient evidence that the structure is in a ruinous or dangerous condition, as it appears to have an intact roof and there is no obvious evidence of significant structural defects. With regard to category (c), while there is some litter and other waste in the front garden of the property which detracts from the character and appearance of the site, I do not consider that the quantity is such as to render the site derelict under this category.
- 7.5. In conclusion, I consider that the property demonstrably detracts to a material degree from the amenity, character and appearance of the surrounding residential estate because of the neglected, unsightly and objectionable condition of the property, which, in my view, renders it derelict under section 3 of the Act.
- 7.6. I note the actions of the Local Authority and the statutory notices served in respect of the property in connection with this application. Having reviewed the information on file, I also note that no evidence has been provided by the Local Authority to indicate if the site has been placed on the register of derelict sites, or whether a section 11 notice was ever served, specifying measures to be taken to prevent the land from continuing to be derelict.
- 7.7. Notwithstanding the Local Authority's failure to demonstrate that the site has been placed on the register of derelict sites, the Board should note that it is not a

requirement under the Derelict Sites Act 1990, as amended, for a site to be placed on the register prior to an application being made to acquire it compulsorily.

- 7.8. As I have noted above, the newspaper notice placed by Westmeath County Council in the Westmeath Examiner on the 10<sup>th</sup> June 2017, and the associated site map do not state the address of the site. Notwithstanding this, since the owners have made an objection to the application, and since there are no occupiers of the site, I do not consider that any relevant parties will have been discommoded by this omission.
- 7.9. As I have also noted above, the Order, map and newspaper notice include a Schedule stating that the 'Owner/Reputed Owner' is Westmeath County Council, and that the 'Lessee/Reputed Lessee' is Brian Donlon, David Malone and John Walshe. I note that 'owner' is defined in section 15 of the Derelict Sites Act 1990, as amended, as follows:
- ““owner” means in relation to land, a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person who holds or is entitled to the rents and profits of the land under a lease or agreement, the unexpired term whereof exceeds three years.”
- 7.10. It is not clear whether this is an error, or if the objectors have a leasehold or other interest in the site rather than owning the freehold interest. In either event, it is clear from the documentation on file that the objectors have a mortgage on the property and that they have had discussions with the Local Authority regarding the Authority potentially leasing the property on a long-term basis. Therefore, regardless of the exact legal nature of their interest, I consider that the provisions of section 15 of the Derelict Sites Act 1990 can apply in this instance.
- 7.11. I note the objection to the proposed acquisition of the site made to the Local Authority by the objectors on the 28<sup>th</sup> June 2017, contending that compulsory acquisition is not necessary as the situation can be resolved by entering into a repair and lease scheme as previously agreed with the Local Authority. The objectors express their belief that the threat of CPO will force their mortgage provider to allow a repair and lease agreement to go ahead and they appeal to the Local Authority to postpone the CPO for a short number of weeks while they liaise with their bank.

- 7.12. The Local Authority, in their comments on the objection, draw the Board's attention to the significant investment they have made since 2012 in undertaking a remedial works scheme in Dalton Park and state that 154 Dalton Park was considered to be derelict in March 2011, March 2013 and that they still consider it to be derelict.
- 7.13. Notwithstanding the absence of any documentary evidence regarding the Local Authority's assertion that the property is derelict since at least March 2011, I note from my site inspection that the condition of the boarding on the windows, and the front garden is such that it is reasonable to assume that the property has been vacant and boarded up for a number of years. In support of this position, I note the letter dated 31<sup>st</sup> July 2012 which was submitted by the objectors, and which outlines costs of €40,000 to refurbish the property. Having regard to the small size of the property, this would indicate that substantial refurbishment works were required in 2012.
- 7.14. Having reviewed the information submitted by the objectors and Local Authority, it appears that a repair and lease agreement has been under discussion for at least 5 years, but no agreement has been reached due to the apparent refusal of the objectors' bank to provide a necessary letter of consent/comfort. Having regard to the length of time that has elapsed, the lack of progress in resolving the matter, and the ongoing derelict condition of the property which materially detracts from the character and appearance of the otherwise remediated Dalton Park estate, I consider that the objectors have been afforded ample time and opportunity to render the property non-derelict but they have not done so. I therefore consider that their objection cannot be sustained.
- 7.15. 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 No. 154 Dalton Park is granted.

## **8.0 Recommendation**

- 8.1. Having regard to the observed condition of No. 154 Dalton Park, 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 Westmeath County Council to compulsorily acquire the site.

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to 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.

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Niall Haverty  
Planning Inspector

23<sup>rd</sup> November 2017