



An  
Bord  
Pleanála

## Inspector's Report 28.CD.3043

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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**

Derelict Site at Glasheen House, No. 1 Dorgan's Road, Cork

**Local Authority**

Cork City Council

**Notice Party**

Mr. Timothy O'Sullivan  
Bank of Ireland Group Head Office

**Date of Site Inspection**

21<sup>st</sup> September 2017

**Inspector**

Fiona Fair

# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Application for Consent for Acquisition .....	4
4.0 Application and Objection .....	4
4.1. Notice of Intention to Acquire .....	4
4.2. Objection to Acquisition.....	5
4.3. Local Authority's Application for Consent.....	5
4.4. Objector's Submission .....	6
5.0 Planning History.....	9
6.0 Policy Context.....	9
6.1. Development Plan.....	9
6.2. Derelict Sites Act 1990 (as amended).....	10
7.0 Assessment.....	11
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	14

## 1.0 Introduction

- 1.1. This file relates to a request by Cork City Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site Glasheen House, No. 1 Dorgan's Road, Cork, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. The application site is situated at Glasheen House, No. 1 Dorgan's Road, an inner suburban area to the south west of Cork City. The site is a corner site, situated at the signalised junction of Dorgan's Road and Glasheen Road, north of Hartlands Avenue.
- 2.2. Dorgan's Road is narrow with a footpath running along its western side and double yellow lines running to the front of the subject site. The road is characterised along its eastern frontage with a terrace of two storey houses with small walled front gardens. The grounds of Dunleary House, an early twentieth century, Tudor style, detached, two storey house is located on the western / north-western portion of Dorgan's Road. The western side of Dorgan's Road comprises a block wall with timber panelling mounted on top. A single storey bungalow is located on the opposite side of Dorgan's Road (south western corner of the road) accessed from Glasheen Road.
- 2.3. No. 1 Dorgan's Road comprises an end of terrace two storey dwelling, with a hipped roof profile. The site is accessed from Dorgan's Road to the west by way of a narrow pedestrian gated entrance. Being a corner site on rising ground it is visually prominent. It is currently vacant and in a poor visual state of repair with boarded up windows and doors. On the day of my site visit I witnessed rubbish and debris within its grounds, the rear and side garden was extensively overgrown and the property is generally in a dilapidated and visually poor state. The dwelling is bounded by a low boundary wall and mature high hedges and bushes, which, somewhat screen views into the site from the adjoining public roads, but in themselves overhang the site boundaries and are unkempt.

2.4. Land use is predominantly residential; however, some office use is evident. Dargan Window Systems Commercial premises is located directly to the east on Mount Prospect and an Irish Nurses and midwives Organisation (INMO) Southern Office is located on the opposite side of Glasheen Road.

### **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 14/16 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 owner/occupier on the 15<sup>th</sup> May 2015. The site was subsequently entered onto the derelict sites register on the 28<sup>th</sup> September 2015.

3.2. Derelict Sites Report on file dated 28<sup>th</sup> April 2015 indicates that the planning authority has been in communication with the owner of the property over the years. However, negotiations to resolve the matter informally with the owner have been exhausted. It states: 'The building was severely damaged by a fire over six years ago (February 2009) and has been in an uninhabitable state since that time...complaints received from neighbours over the years have related to squatters, vermin, overgrown hedges encroaching on the footpath, rubbish in the garden and general unsightliness.... The property owner has taken some steps to cooperate with the planning authority, e.g. removing waste in the garden and boarding up windows'. The report states that the property is currently for sale (28<sup>th</sup> April 2015).

### **4.0 Application and Objection**

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

4.1.1. Notice of intention to acquire the site compulsorily was published in the Irish Examiner on the 23<sup>rd</sup> June 2017.

4.1.2. Notice of Intention to Acquire Derelict Site Compulsorily, dated 22<sup>nd</sup> June 2017, was served to Bank of Ireland Group Head Office and Mr. Timothy O'Sullivan.

## 4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Cork City Council on 26<sup>th</sup> July 2017 by Swaine Solicitors, making the following arguments:

- The Bank of Ireland have a charge over the said property.
- Bank of Ireland have appointed a Receiver to a number of our client's properties to include this property.
- This is the subject of High Court Litigation
- For the reasons stated it would be inappropriate for the Council to attempt to compulsorily purchase the subject property.

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

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

- The property (Glasheen House, No. 1 Dorgan's Road) constitutes a derelict site and has been entered on the derelict sites register with effect from 28<sup>th</sup> Sept 2015.
- As per Section 10 of the Derelict Sites Act 1990 'it shall be the duty of a local authority to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any land situate in their functional area does not become or continue to be a derelict site.'
- The property is the subject of continual anti-social behaviour and complaint from residents in the area.
- Since efforts to resolve the matter with the owner have been exhausted, Cork City Council requires the consent of An Bord Pleanala to compulsorily acquire the property at Glasheen House, No. 1 Dorgan's Road in accordance with section 14 of the Derelict Site Act.
- The Derelict Sites Report, carried out by an Executive Planner (EP), dated 28<sup>th</sup> April 2015, sets out the following:

- Glasheen House constitutes a derelict site, as per the definition set out in Section 3 of the Act
- Negotiations to resolve the matter informally with the owner have been exhausted.
- In particular, the building is in a derelict, neglected, unsightly and objectionable condition that detracts to a material degree from the character and appearance of the neighbourhood.
- The building was severely damaged by a fire over six years ago (in February 2009) and has been in an uninhabitable state since that time.
- Photos from site inspection dated 30<sup>th</sup> March 2015 are attached.
- Complaints received from neighbours over the years have related to squatters, vermin, overgrown hedges encroaching on the footpath, rubbish in the garden and general unsightliness.
- The planning authority has been in communication with the owner of the property over the years.
- The property owner has taken some steps to cooperate with the planning authority e.g. removing waste in the garden and boarding up windows.
- The property is currently for sale.
- Details on file indicate that the property was first listed in August 2013. EP confirms that it has been for sale since April 2014 when her involvement in the file began.
- Per EP discussion with the estate agent on 22 April 2015, there is active interest in the property.

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

##### 4.4.1. None submitted:

#### 4.5. **Cork City Council Submission**

4.5.1. On the 25<sup>th</sup> August 2017 in a response to the application to the Board for consent for compulsory acquisition of 1 Dorgan's Road, Cork City Council's Property Section Corporate and External Affairs makes the following submission

- The property is a derelict site under the terms of the Derelict Sites Act and as confirmed by placement on the Derelict Sites Register on the 28<sup>th</sup> September 2015.
- The Council has attempted to engage with the owner to resolve the issue of dereliction but to no avail.
- Given the poor condition of the property and its location within an established residential neighbourhood the property continues to be a source of anti-social behaviour, is unsightly and a cause of continued concern and complaint from neighbours.
- Every effort has been made to encourage the current owner to remove the dereliction but interactions to date have given the Council no confidence that the problem of dereliction will be resolved in the short to medium term.
- Request the consent of the Board to the compulsory purchase of the subject site.

4.5.2. On the 5<sup>th</sup> October 2017 in response to a request by An Bord Pleanala for (i) A copy of Derelict Sites Register and (ii) Copy of letters and correspondence between the respective parties illustrating negotiations which have taken place in respect of Number 1 Dorgan's Road, Cork City Council makes the following submission:

- Copy of Derelicts Sites Register – confirms date of register as 28<sup>th</sup> September 2015
- Copy of letters and correspondence to the respective Party Mr. Timothy O'Sullivan, his solicitors (Shirley Fogarty, McNulty Boylan & Partners Solicitors) dating back to 2011
- Details of Interaction are stated as follows:
  - 27<sup>th</sup> July 2009 First Complaint received
  - 4<sup>th</sup> Nov 2010 Owner identified and contacted by property section

- 7<sup>th</sup> March 2011 Telephone call with the owner in which it was made clear that official action would take place if no works are undertaken to remove dereliction on site.
- 11<sup>th</sup> April 2011 Letter to owners Solicitor's advising prior to formalising an official action the owner / occupier was being afforded an opportunity to respond to concerns and indicate action he proposed to take to deal with the issue of dereliction on the subject site. Response received from the solicitor indicating that there were financial difficulties.
- 5<sup>th</sup> May 2011 Letter to owners solicitor requesting short term works and a proposal for phased removal of dereliction.
- 3<sup>rd</sup> August 2011 Letter from Waste Enforcement requesting removal of waste from the Property.
- 10<sup>th</sup> October 2011 Meetign with the owner.
- 20<sup>th</sup> October 2011 Telephone Call requesting specific works
- 8<sup>th</sup> November 2011 Letter from owner's solicitor outlining short term works taken to date and proposed future intentions.
- 19<sup>th</sup> April 2012 Acknowledgement letter to owner's solicitor
- 1<sup>st</sup> June 2012 Letter to owner stating that further official action under the Derelicts Sites Act will be suspended at this time on foot of works undertaken to date. However, the site would be kept under review until such a time as the threat of dereliction is removed and the property brought back into use.
- 5<sup>th</sup> June 2013 Letter to owner's solicitor requesting that the property be secured and updated status provided.
- 4<sup>th</sup> June 2014 Letter to owner's solicitor acknowledging that the house is for sale and requesting temporary visual improvements to the property in the interim.
- 20<sup>th</sup> June 2014 Owner advised Erin O'Brien, Executive Planner / Derelicts Sites Planner with CCC, via telephone that the sale is almost complete.



- 4<sup>th</sup> March 2015 Estate agent advised Erin O' Brien via telephone that there were interested parties but no offer had been accepted to date.
- 6<sup>th</sup> May 2015 No progress; recommended for placement on the Derelicts Sites Register
- 28<sup>th</sup> September 2015 Placement on the Derelicts Sites Register.
- 11<sup>th</sup> April 2017 Erin O Brien spoke with the owner via telephone, he provided details of his new solicitor.
- 3<sup>rd</sup> May 2017 Telephone call and email to solicitor advising intent to recommend property for compulsory purchase if immediate action is not taken. No response was received.
- New Solicitors – Swaine Solicitors

## 5.0 Planning History

5.1. No relevant planning history has been brought to my attention.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The operative development plan is the Cork City Development Plan, 2015-2021 according to which the site is subject to the zoning objective: *ZO 4: Residential, Local Services and Institutional Uses*". It is the objective of which 'to protect and provide for residential uses, local services, institutional use and civic uses, having regard to employment policies outlined in Chapter 3.
- 6.1.2. Provision for and protection of residential development is a central objective according to para 15.20. Strategic objectives for existing and future residential development are set out in Chapter 6.
- 6.1.3. The property is not located within the designated ACA

## 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. The subject application relates to 'Glasheen House' No. 1 Dorgan's Road an inner suburban area to the south west of Cork City. No. 1 Dorgan's Road comprises an end of terrace two storey dwelling, with a hipped roof profile. The site is a corner site, situated at the signalised junction of Dorgan's Road and Glasheen Road, north of Hartlands Avenue.
- 7.2. The building is currently vacant and in a condition of disrepair and neglect. Being a corner site on rising ground it is visually prominent. Viewed from both Dorgan's Road and Glasheen Road the building appears neglected and unsightly with broken and boarded up windows and doors. On the day of my site visit I witnessed rubbish and debris within its grounds, the rear and side garden was extensively overgrown and the property is generally in a dilapidated and visually poor state. The dwelling is bounded by a low boundary wall and mature high hedges and bushes, which are unmaintained, overgrown and overhang the site boundaries.
- 7.3. The condition of the building and its gardens appear neglected and unsightly and are in contrast with the generally well-kept nature of buildings in the vicinity of Dorgan's Road and Glasheen Road (see attachments).
- 7.4. I would consider that the property falls within categories (b) and (c) of section 3 of the Derelict Sites Act, 1990. Notably (b) the property is neglected and unsightly and (c) litter, rubbish and debris are present on the site. Collectively, the property 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.
- 7.5. 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 15<sup>th</sup> May 2015. 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 28<sup>th</sup> September 2015. 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 22<sup>nd</sup> June 2017.

- 7.6. Details of complaints and negotiations to resolve the dereliction at the property between the owner / occupier and the City Council, date back to 2009. While a recent section 11 notice, directing the owners to undertake measures would not appear to have been formally issued, the City Council submits that negotiations to resolve the matter with the owner have been exhausted, copies of letters and negotiations between the parties, attached to the file, are noted.
- 7.7. No response has been forthcoming by the owner occupier or his solicitor. I note the arguments made in the objector's submissions to the planning authority which states: 'It should be noted that Bank of Ireland have a charge over the said property. Further, BOI have appointed a Receiver to a number of our clients properties to include this property. This is the subject of High Court Litigation. For the reasons stated it would be inappropriate for the Council to Compulsorily purchase the subject property.'
- 7.8. There was no evidence of any substantive attempts 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 recent works have been undertaken to improve the condition of the lands on foot of the notices served by Cork City Council. The house is in a derelict, neglected, unsightly and objectionable condition. Furthermore, the owners have not put forward any substantial reason why no remediation works were undertaken or could not be carried out. While cognisance is had that the property is subject to litigation and also subject to a charge by BOI, 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.
- 7.9. From the site inspection, it is evident that basic repair/maintenance works at the property have not been carried out.
- 7.10. 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 lands known as Glasheen House No. 1 Dorgan's Road, Cork is granted.

### Legal Proceedings / BOI Receiver

7.11. I have cognisance to the objector's solicitor's submission, to the planning authority, that BOI have appointed a Receiver to a number of the owner / occupier's properties to include this property. Also, that the property is the subject of High Court Litigation. In this regard, I note a letter on file, dated 11 April 2012, which sets out that the owner / occupier was perusing a High Court Case against insurers of the property who have refused to indemnify him in respect of two fires which have occurred at the property. Both matters lie outside the scope of this assessment. I am otherwise satisfied that the property in question sought for acquisition constitutes a derelict site.

## **8.0 Recommendation**

- 8.1. Having regard to the observed condition of Glasheen House No. 1 Dorgan's Road in particular its neglected and unsightly state, overgrown character and the presence of litter and rubbish on the site, 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 Cork City Council to compulsorily acquire the site.

## 9.0 Reasons and Considerations

Having regard to:

- (a) The neglected, unsightly and objectionable condition of the site,
- (b) The overgrown character of the site and presence of litter and rubbish on it,

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) and (c) 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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Fiona Fair  
Planning Inspector  
27/11/2017