



An
Bord
Pleanála

Inspector's Report 28.CD.3044

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 No. 2 Ard na Ri Avenue, Pouladuff Road

Local Authority

Cork City Council

Notice Party

Mr Jonathan Horgan

Date of Site Inspection

21st September 2017

Inspector

Fiona Fair

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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 at No. 2 Ard na Ri Avenue, Pouladuff Road, Cork, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The property, No. 2 Ard na Ri Avenue, is located in a cul de sac, west off Pouladuff Road and to the east of the Lough area of Cork City. The Lough, which comprises a large body of water surrounded by open space, playgrounds and walks is situated in the central suburbs area to the south west of Cork City. Pouladuff Road forms an arterial road extending northwards from the N25 Outer Relief Road through to Barrack Street and onto the city centre.
- 2.2. The property is bounded to the north by lands adjacent to Sli na Heala, No 21 Ard na Ri Avenue, to the east by Ard na Ri Avenue access roadway, to the south by No. 4 Ard na Ri Avenue and to the west, partly, by the rear gardens of No.'s 1 and 2 St. Finbarr's Place, Lough Road and No. 12 Lough Park, The Lough, Cork.
- 2.3. The property comprises a two storey red brick(façade), detached dwelling, with hipped roof design. The dwelling, located at the end of a row of similar style, but semidetached dwellings, has a flat roofed, single storey garage attached to its northern side and a single storey glass conservatory to its rear.
- 2.4. The dwelling has a front and rear garden, the area to the front is paved with vehicular access off Ard na Ri Avenue to the east, a low block wall runs along the eastern / front boundary with the public footpath and the adjoining dwelling to the south. Overgrown hedging and bushes run along the northern boundary. On the date of my site visit, I noted, the rear garden was extensively overgrown and the property is generally in a dilapidated and visually poor state. The front ground floor windows of both the dwelling and garage are boarded up, an upper floor front window was broken and a rear first floor window and rear garage windows were also boarded up.
- 2.5. Adjoining land use is predominantly residential; with semidetached and detached two storey dwellings prevalent, although the area is also interspersed with a number of

commercial premises with a local service / neighbourhood centre located to the east at the entrance to Ard na Ri Avenue.

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 28th September 2015. The site was subsequently entered into the derelict sites register (10th December 2015).
- 3.2. Derelict Sites Report on file dated 30th April 2015, sets out, that the planning authority consider 2 Ard na Ri Avenue constitutes a Derelict Site as per the definition set out in Section 3 of the Act. In particular, that the house is in a derelict, neglected, unsightly and objectionable condition that detracts to a material degree from the character and appearance of land in the neighbourhood. The building has been in disuse for approximately 10 years and boarded up for approximately four years. Complaints from neighbours with regard to attracting anti-social behaviour, rubbish dumped in the front garden, a fire having occurred, teenagers congregating on the site, resulting in late night noise and broken glass. It is stated that negotiations to resolve the matter informally with the owner have been exhausted.

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 23rd June 2017.
- 4.1.2. Notice of Intention to Acquire Derelict Site Compulsorily, dated 22nd June 2017, was served to Mr Jonathan Horgan at No. 2 Ard na Ri Avenue, Pouladuff Road and to Mr Jonathan Horgan at 333 Harold's Cross Road Dublin 6W.

4.2. Objection to Acquisition

4.2.1. An objection to the proposed acquisition was submitted to Cork City Council on 31st July 2017 by Mr Jonathan Horgan, making the following arguments:

- Request copies of the file relating to notice of intention to acquire Compulsorily Derelict site at No. 2 Ard na Ri Avenue
- Jonathan Horgan purchased the property No. 2 Ard na Ri Avenue, which had not been lived in for some time, after moving back to Cork from Dublin, in August 2004, as ‘a property in need of refurbishment, with site attached’ and he has been on and off residing there since.
- He has used the house primarily for his home office works and for storage in the last couple of years.
- When he first purchased the property, he carried out cleaning and clearing works.
- It was let out to students for two years, until Summer 2006.
- He applied for planning permission to renovate and upgrade the existing property. It was his intention to do up the existing house and to sell the other site with the benefit of planning permission and services to it.
- Proposals received a lot of negative ‘observations’, which even if he had disagreed with the planning points therein – some contained a number of very personal comments which himself and his wife found objectionable.
- Mr Horgan’s wife then made the decision she did not wish to live in Ard na Ri Avenue permanently.
- He decided to sell the site. Unfortunately, in 2006 Cork City Council refused planning permission and with the economic depression Mr Horgan found that he was not in a position to invest in the property and so he continued to use it for his own purposes.
- The property was subject to an extensive leak and a number of break-ins and vandalism.

- Although the property is in poor repair in some areas, Mr Horgan continues to use the property – mostly to the rear and has an up to date Electricity and Gas connection.
- Surprised by the action taken
- It is his intention within the foreseeable future (say by the end of September) to lodge another planning application on the site.
- In the in-term, he submits, that he is going to invest in cleaning up and securing the property.
- Copy of Electricity Bill, dated 10 May 2017, to Jonathan Horgan No. 2 Ard na Ri Avenue, for billing period March to May 2017, attached.

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 (No. 2 Ard na Ri Avenue) has been entered on the derelict sites register with effect from 10th December 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 at No. 2 Ard na Ri Avenue, Pouladuff Road, Cork constitutes a derelict site and has been entered on the Derelict Sites Register
- 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 No. 2 Ard na Ri Avenue, Pouladuff Road, Cork, in accordance with section 14 of the Derelict Site Act.
- The Derelict Sites Report, carried out by an Executive Planner (EP), dated 30th April 2015, sets out the following:

- No. 2 Ard na Ri Avenue constitutes a Derelict Site as per the definition set out in Section 3 of the Act. In particular, that the house is in a derelict, neglected, unsightly and objectionable condition that detracts to a material degree from the character and appearance of land in the neighbourhood.
- The building has been in disuse for approximately 10 years and boarded up for approximately four years.
- The planning enquiry system indicates that in 2006 Jonathan Horgan applied for planning permission for 'Conversion of 2 Ard na Ri Avenue, Pouladuff Road, Cork to 2 number semi-detached two storey dwellings with dormer roofs, with all associated design and site modifications' (Ref. 06/31133). The application was refused.
- Ground floor windows and doors are boarded. An upper floor window is broken, photos attached from site inspection on 30th April 2015.
- Attracting anti-social behaviour: Complaints from neighbours, rubbish dumped in the front garden, a fire having occurred, teenagers congregating on the site, resulting in late night noise and broken glass.
- Detracts to a material degree: The house is located in a well maintained residential estate. The position of the house is a focal point for anyone entering the estate. There are 10 number third party complaints on file stating that the respective residents' amenity is negatively impacted due to the issues outlined above.
- Informal negotiations to resolve the matter have been exhausted:
 - The planning Directorate wrote to Jonathan Horgan in 2013 but received no response. A section 29 notice issued in March 2015 but no response was received.
- Jonathan Horgan was contacted on the 29th April 2015 he confirmed that:
 - He considers No. 2 Ard na Ri Avenue, Pouladuff Road to be his legal address and the address to which post should be sent.

- He intends to lodge another planning application sometime this summer.
- He does not consider the house derelict.
- As far as he is concerned he has resolved the matter on the telephone. He did not wish to engage further at this stage.
- He still owns the house.
- Correspondence should be sent to the subject address, No. 2 Ard na Ri Avenue, Pouladuff Road.
 - o Mr Horgan does not live at the house. He stated to the EP that he 'does not spend the night there' and that he goes 'in and out'.
 - o Neighbours stated that they observed Mr. Horgan regularly collecting his post.

4.4. Objector's Submission

4.4.1. In response (27th September 2017) to the application to the Board for consent for compulsory acquisition of No. 2 Ard na Ri Avenue, Pouladuff Road, the owner of the property makes the following arguments:

- He is distressed and horrified to discover, only, as a result of ABP letter that the property is 'on the Derelict Sites Register'.
- Mr Horgan claims he was not notified, of the intention or register, of his house at No. 2 Ard na Ri Avenue on the Derelicts Site Register
- Intend to have his house removed off the list immediately.
- Requests copies of all documentation in relation to any file on the property.
- To date he is aware of only one notice of intention to acquire on July 6th 2017.
- Requests copies of evidence of other interaction which took place.
- Work has been carried out to clean up and secure the property between 8th August and 11th August.
- A planning application is being prepared for the property.

4.4.2. On the 24th October 2017 in response to the application to the Board for consent for compulsory acquisition of No. 2 Ard na Ri Avenue, Pouladuff Road, the owner of the property makes the following arguments:

- Disputes that he was made aware, by the City Council, of notice of intention to place No. 2 Ard Na Ri Avenue on the Derelicts Sites Register.
- Insists that he received only one phone call from the Council and did not receive any notification / copy of derelict site register / letters by post.
- There have been no suggestions from the City Council about how to rectify the matter in their view. Dispute the submission by the Council that every effort has been made to encourage the current owner to remove the dereliction.
- Is suspicious of the process
- Mr Horgan finds it sinister that now after asking for all documents to be issued that the document – a memo written after his only interaction with the city council - is not contained in the information he received.
- Mr Horgan wrote to the City Council on the 31st July 2017 requesting copies of documents and no reply was issued. Only after it was realised that ABP would be issuing copies of documents, did Cork City Council respond to his second letter.
- He requested information on how to get his house removed from the Derelicts Sites Register and he has not received this information either.
- He is in the process of lodging a planning application for the modification and extensive refurbishment of the house.
- Submission accompanied with:
 - Photographs
 - Letters and communications between Mr Horgan and the City Council re; Derelict Property: 2 Ard Na Ri Avenue, Pouladuff Road, Cork, incl:
 - Notice of Intention to Acquire Derelict Site Compulsorily under the Derelict Sites Act 1990 dated 19th June 2017

- Letters dated 10th December 2015 to Jonathan Horgan at No. 2 Ard na Ri Avenue, Pouladuff Road and at 333 Harolds Cross Road Dublin 6W advising that a valuation of €150,000 has been placed on the property at No. 2 Ard na Ri Avenue, Pouladuff Road which had been entered on the City Councils Derelict Sites Register.
- Letters dated 29th September 2015 and 21st October 2015 both registered and unregistered to Mr Jonathan Horgan at No. 2 Ard na Ri Avenue, Pouladuff Road and at 333 Harolds Cross Road Dublin 6W advising of the City Councils intention to place No. 2 Ard Na Ri Avenue, Pouladuff Road on the Derelict Sites Register.

4.5. Cork City Council Submission

4.5.1. On the 25th August 2017 in a response to the application to the Board for consent to compulsory acquisition of No. 2 Ard na Ri Avenue, Pouladuff 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 10th December 2015.
- Prior to and since placement 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 in an established residential neighbourhood the property continues to be a source of anti-social behaviour, is unsightly and a cause of concern and complaint from neighbours in the area.
- Mr Horgan was refused planning permission in 2006 and has not submitted any further applications for permission in respect of the property to date.
- His proposal to now submit a planning application while welcome does not guarantee that the dereliction will be removed.
- It is the view of the council that every effort has been made to encourage the current owner to remove the dereliction but interactions to date and the

submission proffered give the Council no confidence that the problem of dereliction will be resolved in the short to medium term.

- As provided for under Section 10 of the Act the Council is using its statutory powers in an appropriate manner to allow this long-standing matter of dereliction on site to be addressed and resolved.
- Request the consent of An Bord Pleanala to the compulsory acquisition of the subject site.

4.5.2. On the 5th 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 2 Ard na Ri Avenue, Pouladuff Road, Cork City Council's makes the following submission:

- Copy of Derelicts Sites Register – confirms date of register as 10th December 2015
- Copy of letters and correspondence to the respective Party Mr Horgan
 - Letter dated 25th March 2015 Re: Derelict Sites Act
 - Letter dated 30th September 2013 Re: concerns regarding the condition of No.2 Ard na Ri Avenue
- File Note dated 29th April 2015 by Executive Planner (Erin O'Brien) of conversation, on the same date, with Jonathan Horgan
- Details of Interaction are stated as follows:
 - 28th June 2013 First complaint received, initial letter issued to owner returned as 'insufficient address'
 - 30th September 2013 Letter issued to owner requesting short – term remedial action. No response received.
 - 06th December 2013 Per inspection, most of the rubbish had been removed as requested in the letter but the house remained derelict / unsightly.

- March 2015 Per inspection rubbish had accumulated on site again and house remained in a derelict condition. Section 29 Notice served, no response received.
- 29th April 2015 Erin O'Brien, Executive Planner, spoke to the owner via telephone. The owner advised inter alia that he considered the matter resolved and did not plan to engage further. Notes of the phone call dated 29th April 2015 are included.
- No submission or contact from owner in response to service of Section 8 notice.

5.0 Planning History

- 5.1. **Reg. Ref. 06/31133** Permission Refused on the 30/04/2007, to Jonathan Horgan, for conversion of 2 Ard na Ri Avenue, Pouladuff Road, Cork to 2 No. semi-detached 2 storey dwellings with dormer roofs, with all associated design and site modifications.
- 5.2. **Reg. Ref. 06/31007** Invalid Application by Jonathan Horgan for conversion to 2 no. semi-detached 2 storey dwellings with dormer roofs, with all associated design and site modifications.

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. Number 2 Ard na Ri Avenue, Pouladuff Road, Cork City comprises a contemporary two storey red brick, detached dwelling, with attached side garage and hipped roof design. The dwelling, located at the entrance to a small cul de sac, is at the end of a row of similar style, but semidetached dwellings. It is currently vacant and in a condition of disrepair and neglect. Viewed from the entrance to and within Ard na Ri Avenue the building appears neglected and unsightly with broken and boarded up windows.
- 7.2. The front ground floor windows of both the dwelling and garage are boarded up, an upper floor front window was broken and a rear first floor window and rear garage windows were also boarded up. The rear garden was extensively overgrown and unkempt. The property is generally in a visually poor state. The condition of the building contrasts with the well-kept nature of buildings in the vicinity of Ard na Ri Estate (see attachments).
- 7.3. Having regard to the above, I would consider that the property falls within category (b) the property is neglected and unsightly. 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.
- 7.4. I note the actions of the planning authority and the statutory notices served, by way of registered post and unregistered post to the owner/occupier/Jonathan Horgan addresses at No. 2 Ard na Ri Avenue and 333 Harold's Cross Road, Dublin 6W in respect of the building. The statutory notices served date back to September / October 2015, for instance, notifying the owner/occupier of the local authority's intention (under Section 8(2) of the Derelicts Site Act) to place the site on the register of derelict sites, and letters dated 10th December 2015 notifying the owner / occupier that the property has been entered on the Derelicts Site Register effective from the 10th December 2015.

7.5. Details of complaints and negotiations to resolve the dereliction at the property between the owner / occupier and the City Council, date back to 2013. While a section 11 notice, directing the owners to undertake measures would not appear to have been issued, the City Council submits that negotiations to resolve the matter informally with the owner have been exhausted, copies of letters between the parties, in particular, letter dated 30th September 2013 setting out that the Council would require the following works to be undertaken as a matter of priority within the next 8 weeks:

- Remove all rubbish and debris from the front garden of the property and clean and make good
- Reinstall the glass to the front door frame and to the ground floor window on the front façade of the dwelling

and also record of interaction and memo of phone conversation dated 29th April 2015 in which the owner / occupier considered the matter resolved and did not plan to engage further, attached to the file are noted.

7.6. I am cognisant that the objector disputes that he was made aware, by the City Council, of notice of the intention to place No. 2 Ard Na Ri Avenue on the Derelicts Sites Register. His insistence that he received only one phone call from the Council and did not receive any notification / copy of derelict site register / letters by post. Further argument that there have been no suggestions from the City Council about how to rectify the matter in their view. I am further cognisant of the owner / occupier's submission he intends to seek planning permission to modify the existing house and once the planning application is approved he will be in a position to start a comprehensive refurbishment.

7.7. I have checked the Cork City Councils planning enquiry system, for planning applications associated with No. 2 Ard Na Ri Avenue and as of the 16/11/2017, the only planning applications pertinent to the site date to 2006. The planning enquiry system indicates that in 2006 Jonathan Horgan applied for planning permission for 'Conversion of 2 Ard na Ri Avenue, Pouladuff Road, Cork to 2 number semi-detached two storey dwellings with dormer roofs, with all associated design and site modifications' (Ref. 06/31133). The application was refused.

- 7.8. The owner/occupier has had the opportunity to carry out repair works and remedy the situation. Notwithstanding this, while rubbish and debris were not present at the property at the time of my inspection, the glass to the front door frame and to the front façade windows remain absent. There was no evidence of any attempt to make the lands non-derelect at the time of inspection. The owner submits that he has been attempting to interact with the council since he became aware of the Councils intention to compulsorily acquire his property. However, he has not put forward any substantial reason why repair works, such as replacement of glass to the front façade windows and door frame could not be carried out. Under section 8(3) of the Derelect Sites Act, the planning authority may remove an entry from the register if they no longer consider it appropriate.
- 7.9. From the site inspection, it is evident that basic repair/maintenance works at the property have not been carried out. The house is in a derelect, neglected, unsightly and objectionable condition and disputedly has been in disuse for approximately 10 years and boarded up for approximately four years. Regard is had to the owner/occupier's submission that he has used the house primarily for his home office works and for storage in the last couple of years and that he regularly visits the property, albeit, he does not overnight there.
- 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 derelect site, I consider that it is appropriate, that the local authority's application for consent to compulsorily acquire No. 2 Ard Na Ri Avenue is granted.

8.0 Recommendation

- 8.1. Having regard to the observed condition of No. 2 Ard Na Ri Avenue, 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 derelect site within the meaning of Section 3 of the Derelect 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,

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.

Fiona Fair
Planning Inspector
27/11/2017