



An  
Bord  
Pleanála

## Inspector's Report 18.CP3001

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<b>Development</b>	Proposed Compulsory Acquisition of a Protected Structure
<b>Location</b>	4-5 Mill Street, Monaghan, Co Monaghan
<b>Planning Authority</b>	Monaghan County Council
<b>Notice Party</b>	Darra McNamara & John McElvaney
<b>Date of Site Inspection</b>	21 <sup>st</sup> June 2017
<b>Inspector</b>	Mary Crowley

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## 1.0 Introduction

- 1.1. This file relates to an application by Monaghan County Council for the Boards consent to the compulsory acquisition of a protected structure, namely, 4-5 Mill Street, Monaghan, Co Monaghan, in accordance with the provisions of Section 73(4) of the Planning and Development Act 2000, as amended.

## 2.0 Site Location and Description

- 2.1. The Protected Structure at 4 – 5 Mill Street, Monaghan, located on the corner of Mill street and North Road, is a five bay end of terrace two storey house with integral carriage-arch at the west end of structure and east facing gable end wall. The building fronts directly onto Mill Street with vacant yard to the rear that fronts onto North Road. The site is bounded to the north by a stone out building and to the west by a party wall.
- 2.2. A set of photographs of the site and its environs taken during the course of my site inspections is attached. I would also refer the Board to the photos available to view on the file.

## 3.0 Application for Consent for Acquisition

- 3.1. Monaghan County Council served a Section 59(1) Endangerment Notice with a schedule of works on 9<sup>th</sup> September 2016 to the owners of No 4-5 Mill Street, in order to prevent a protected structure from becoming or continuing to be endangered. The following schedule of works were required to be carried out:

1. *Appoint a suitable contractor with specialist conservation skills to carry out the work.*
2. *Provide safe access to carry out works to the protected structure site*
3. *Undertake remedial works to secure the damaged roof*
4. *Strip roof slates, tiles and ridge stones. Check slate and ridge condition and store for re-use if appropriate. Source matching slate from a salvaged source so that historical dimensions and characteristics can be replaced.*
5. *Carry out assessment of roof timbers to determine the extent of timber decay.*

6. *Repair and replace damaged sections of roof timbers. Where possible repair roof timbers by coupling or splicing in new timber pieces. Where timber members require replacement ensure a matching timber is used and pre-treat with fungicidal or insecticidal as required. New timbers should be isolated from damp masonry by use of a damp-proof layer or sitting timbers into brackets fixed to wall. Breathable membrane shall be fitted to roof.*
7. *Remove roof lights from rear pitch.*
8. *Repair red brick chimneystack, flaunching and coping and provide new lead flashings.*
9. *Provide all necessary lead flashing to weatherproof the roof against the neighbouring taller building.*
10. *Remove and replace surviving rainwater goods with cast iron type drive on brackets appropriate to the character of the structure, consolidate the eave stone and copings. Ensure adequate drainage route away from base of building.*
11. *Re-bed all stone ridge tiles in lime mortar. Allow for the installation of a proprietary ventilation system at ridge level.*
12. *Clear interior of debris. Retain all interior joinery elements.*
13. *Assess interior joinery elements, including stairs, skirting boards, doors, window and door architraves. Identify early/original joinery elements and retain for repair.*
14. *Assess windows on rear elevation to identify early / original windows and retain and repair. Replacement windows on rear, side and front elevations can be removed if required. Replacement windows should aim to compliment the character and age of the structure. Original windows on the rear elevation can be used as a template for new windows. Original window type might be seen in historic photographs of Monaghan Town.*
15. *Remove cement mortar from front elevation walls. Rake-out joints. Remove cement plinth course and door surround.*
16. *Re-point masonry joints on front elevation using a suitable lime based mortar.*

- 3.2. In the absence of the works being carried out, Monaghan County Council issued a Section 59(4) Notice to the owners on 10<sup>th</sup> November 2016 advising that the works shall be completed within the period specified in the Section 59(1) Notice.
- 3.3. Having regard to the information available on the file together with my site inspection it is evident that the works specified in the schedule have not been carried out to date.

## 4.0 **Application & Objection**

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

- 4.1.1. An Endangerment Notice was served to both owners on 9<sup>th</sup> September 2016 pursuant to Section 59(1) of the Planning and Development Act (as amended) requiring works to be carried out in relation to the endangerment of this protected structure within a specified time period
- 4.1.2. Notice was also served to both owners on 10<sup>th</sup> November 2016 pursuant to Section 59(4) of the Planning and Development Act (as amended) to confirm the section 59(1) notice requiring works to be carried out in relation to the endangerment of the protected structure and advising that the works shall be completed within the period specified in the Section 59(1) Notice.
- 4.1.3. No works were carried out to comply with the Section 59(1) notice and therefore a notice of intention to acquire the protected structure compulsorily, under Section 72(1)(b) of the Planning and Development Act 2000, as amended, was issued to the owners on 29<sup>th</sup> March 2017.

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

- 4.2.1. Two letters from Gaffney & Cullivan Architects on behalf of the owners and dated 28<sup>th</sup> May 2017 were submitted to Mongahan County Council in accordance with Section 73(1) of the Planning and Development Act 2000, as amended. The contents of both letters may be summarised as follows:
- The premises in question have been vacant for a considerable time and it is acknowledged that it has fallen into disrepair. The owners have tried to sell the property for many years without success.

- Neither owner has the means to re-develop the site, however in the past two years they have invested money in carrying out certain works to comply with an order from Mongahan County Council.
- The owners have offered the premises to the Local Authority for sale but this was declined.
- In “recent weeks” a purchaser has come forward, an offer has been accepted and this has progressed to the point that contracts have been exchanged and therefore a completed sale is imminent.
- Requested that the Local Authority defer or cancel the CPO process as this could jeopardise the sale.

4.2.2. This objection has not been withdrawn and therefore pursuant to Section 73 (3) of the Planning and Development Act 2000, as amended, *the planning authority shall not acquire the protected structure compulsorily without the consent of the Board.*

#### 4.3. **Planning Authority’s Application for Consent**

4.3.1. The Council requests the consent of the Board to the compulsory acquisition of this protected structure. The request was accompanied by the Executive Planners report dated 3<sup>rd</sup> May 2017 and the Architectural Character Report prepared by Bronagh Lanigan, Architectural Heritage Consultant (discussed further in the assessment below) and upon which the schedule of works to be carried out was based. The report of the Executive Planner dated 3<sup>rd</sup> May 2017 sets out the following grounds as summarised:

- The protected structure is located in a prime location in Monaghan town Centre and has fallen into serious disrepair. The site area, including the curtilage, comprises of approximately 260 sqm.
- A report was commissioned to assess the protected structures architectural character with a view to serving a Section 59 endangerment notice and contains recommendations for works to prevent the structure from continuing to be endangered.
- During the Section 59(1) Endangerment Notice period for representations, the owners advised that they did not have the means to pay for the required works

and the extent of works would take a great deal longer than 8 weeks and also that they were very close to agreeing to sell the site to a third party. The owners sought a deferment of any further action for a period of time to allow the transaction to take place.

- The owners were afforded the opportunity to provide a reasonable time period for the completion of works to which they did not respond. A Section 59(4) Notice was served on the owners on 10<sup>th</sup> November 2016 advising that the works shall be completed within the period specified in the Section 59(1) Notice.
- No works have been carried out to comply with the Section 59(1) notice and hence notices of intention to compulsorily acquire the protected structure were served on the owners, under Section 72 of the Planning and Development Act 2000.
- In the 2016 Census Monahan Urban Area had a 20.6% vacant dwelling rate. A land use survey performed in November 2016 as part of a Town Centre Health Check revealed a 23% vacant retail occupancy rate in the town centre. These vacancy figures are high, and derelict properties contributes strongly to these figures. The Local Authority is actively pursuing derelict properties in the town. The acquisition would present an opportunity to bring this property into a suitable town centre use.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Monaghan County Development Plan 2013 – 2019**. A full list of protected structures and monuments in the county are laid out in Appendices of this Plan. No 4-5 Mill Street, a two storey house is listed in the Record of the **Protected Structures** (Appendix MN 1 refers) and is described as a “structure of national importance” (Ref No 41000129 refers).
- 5.1.2. The **National Inventory of Architectural Heritage** (NIAH) describes the building as of regional architectural importance (Reg Ref 41303105 refers).

## 6.0 Further Responses / Submissions

### 6.1. Owners Response

6.2. Gaffney & Cullivan Architects acting on behalf of the owners submitted a letter reiterating the contents of a previous submission to Mongahan County Council on 28<sup>th</sup> May 2017. Additional comments may be summarised as follows:

- A purchaser has made an offer on the premises and the contracts have been exchanged.
- The purchaser in question has reportedly made contact with the Local Authority with a view to developing the site.
- Requested that the CPO be suspended.

6.3. The submission was accompanied by a copy of one of the letters prepared by Gaffney & Cullivan Architects on behalf of the owners dated 28<sup>th</sup> May 2017 and submitted to Mongahan County Council. Section 4.2.1 of this report provides a summary of same.

### 6.4. Planning Authority Response

6.4.1. There is no further response from Monaghan County Council recorded on file

## 7.0 Assessment

7.1. Access to No 4-5 Mill Street was not permissible on day of site inspection for reasons of health and safety. Further, the Architectural Heritage Report that informed the Section 72 Notice issued by Monaghan County Council to the owners on 29<sup>th</sup> March 2017 was based on a visual inspection of the building as there was no access to the building during the authors site inspection. My site inspection was carried out from the public road, adjoining taller properties to the east that overlooked the site and the rear of the adjoining property to the west (site photos refer).

7.2. Section 71(1) of the Planning and Development Act (as amended) makes provision that a planning authority may acquire by agreement or compulsorily any protected structure situated within its functional area if:

*(a) it appears to the planning authority that it is **necessary to do so for the protection of the structure**, and (emphasis added)*



*(b) in the case of a compulsory acquisition, the structure is not lawfully occupied as a dwelling house by any person other than a person employed as a caretaker.*

7.2.1. This is substantiated in the Architectural Heritage Protection Guidelines for Planning Authorities where it states that *indirect endangerment could include allowing a building to fall into disrepair, leaving structures open to the elements and possible vandalism.* The guidelines states that *immediate action should be taken to require the owner to stabilise or secure the structure, using either Section 59 (which may be a quicker option if the owner is amenable to carrying out the works) or the regular enforcement procedures in Part VIII of the Act.*

7.3. Section 73(6) states that *on application under subsection (4), the Board may, as it thinks fit, grant or refuse to grant consent to the compulsory acquisition of all or part of a protected structure referred to in a notice published under Section 72 (Notice of intention to acquire protected structure compulsorily).*

7.4. With regard to the use of the protected structure acquired by planning authority Section 78 states that a planning authority may:

*(a) use a protected structure acquired by it under this Act or any other enactment for any purpose connected with its functions, or*

*(b) sell, let, transfer or exchange all or any part of that protected structure, and in so doing shall have regard to its protected status.*

7.4.1. To determine whether it is *necessary* to compulsorily acquire this protected structure for the *protection of the structure* I consider it appropriate to consider the case under the following headings:

#### **7.5. Planning Authority's Application for Consent**

7.6. In order to consider Monaghan County Councils application for consent to the compulsory acquisition of this protected structure it is my view that consideration should be given to whether or not the Planning Authority has adhered to the requirements of Section 72(1).

7.7. Section 72(1) states that a planning authority intending to acquire any protected structure compulsorily under this Part shall:

- (a) publish in one or more newspapers circulating in its functional area a notice*
  - (i) stating its intention to acquire the protected structure compulsorily under this Part,*
  - (ii) describing the structure to which the notice relates,*
  - (iii) naming the place where a map showing the location of the protected structure is deposited and the times during which it may be inspected, and*
  - (iv) specifying the time within which (not being less than 4 weeks), and the manner in which, objections to the acquisition of the structure may be made to the planning authority, and*
- (b) serve on every owner, lessee and occupier (except tenants for one month or a period less than one month) of the structure a notice which complies with paragraph (a).*

7.7.1. I refer to Section 4.1 of my report above together with the information available on the file. I am satisfied that Monaghan County Council has published the relevant notice in the Northern Standard on 30<sup>th</sup> March 2017 (copy on file) in accordance with Section 72(1) of the Act and that relevant notice has been served on both owners of the property namely Darra McNamara and John McElvaney. Accordingly, I am satisfied that assessment of the compulsory acquisition can progress.

## **7.8. Protected Structure Status**

7.8.1. While no party is querying the status of the building it is important in my view to set out the reasons why this building is of regional architectural importance and the stringent legislative process in effect both to establish Protected Structure status and the legislative responsibilities that apply to such status.

7.8.2. The principle mechanism for the statutory protection of Ireland's architectural heritage is through inclusion of buildings on the Record of Protected Structures. Section 51(1) of the Planning and Development Act (as amended) states that *for the purpose of protecting structures, or parts of structures, which form part of the architectural heritage and which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, every development plan shall include a*

*record of protected structures, and shall include in that record every structure which is, in the opinion of the planning authority, of such interest within its functional area.*

7.8.3. The conservation principles of care and protection of Irelands architectural heritage were first introduced under earlier planning legislation which facilitated the listing of significant buildings and the formulation of policies and objectives relating to such structures. These legislative provisions were superseded by the introduction of the Local Government (Planning and Development) Act 1999 and then by “Part IV Architectural Heritage” of the Planning and Development Act 2000. The main features of the 2000 Act (as amended) relevant to this case are:

- a) New responsibilities are given to the owners and occupiers of protected structures to maintain them and planning authorities have additional powers to ensure that buildings are not endangered either directly or through neglect.
  - Section 58(1) states that *each owner and each occupier shall, to the extent consistent with the rights and obligations arising out of their respective interests in a protected structure or a proposed protected structure, ensure that the structure, or any element of it which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, is not endangered.*
  - Section 59(1) states that *where, in the opinion of the planning authority, it is necessary to do so in order to prevent a protected structure situated within its functional area from becoming or continuing to be endangered, the authority shall serve on each person who is the owner or occupier of the protected structure a notice to require works to be carried out in relation to endangerment of protected structures.*
  - Section 60(1) states that *“works”, in relation to a structure or any element of a structure, includes the removal, alteration or replacement of any specified part of the structure or element, and the removal or alteration of any advertisement structure.*
- b) Where a structure is protected, the protection includes the structure, its interior and the land within its curtilage and other structures within that curtilage (including their interiors) and all fixtures and features which form part of the interior or exterior of all these structures.

- Section 2 of the Act states that a Protected Structure means:
  - (a) a structure, or*
  - (b) a specified part of a structure,*

*which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;*
- However, for the purposes of the compulsory acquisition of a Protected Structure Section 71(2) states that in Sections 72 to 77, a reference to a protected structure shall be construed to include a reference to any land which:
  - (a) forms part of the attendant ground of that structure, and*
  - (b) is, in the planning authority's opinion, necessary to secure the protection of that structure, whether or not the land lies within the curtilage of the structure or is specified as a feature in the record of protected structures*

In this regard I refer the Board to the map submitted with the application for the Board's consent to the compulsory acquisition of this Protected Structure. The red line pertaining to the Protected Structure in this case comprises the principle structure and attendant grounds to the rear. Accordingly reference to the Protected Structure in this assessment and recommendation includes the principle structure and attendant grounds as denoted by the red line boundary on the map received on the 24<sup>th</sup> May 2017.

7.8.4. As stated previously a full list of protected structures and monuments in the county are laid out in Appendices of the current County Development Plan. No 4-5 Mill Street, is described as a "structure of national importance" in the Record of the Protected Structures (Appendix MN 1 refers) (Ref No 41000129 refers). The National Inventory of Architectural Heritage (NIAH) describes the building as of regional importance (Reg Ref 41303105). The NIAH states that this is an end of row, corner-sited five-bay two-storey house with attic, built in c.1840, with an integral carriage arch to west end. The NIAH set out the following description:

- pitched slate roof with stone eaves course and red brick chimneystack, one shared with house to west
- coursed dressed limestone walling to front, ruled and lined rendered to east gable, with render plinth
- square-headed window openings with replacement timber windows and render reveals, and stone sills
- square-headed doorway with moulded render surround having decorative keystone, dressed limestone plinth blocks, and replacement timber door
- carriage entrance has segmental arch with dressed stone voussoirs and recent metal closure
- twentieth-century openings to ground floor of east gable
- attic windows to east gable missing frames.

7.8.5. The NIAH confirms that this house is one of the most elegant on Mill Street with its fine rendered door case being its decorative focus. It is submitted that the dressed limestone is well executed and that the inclusion of an integral carriage arch to the west adds interest and as a type is familiar in Irish provincial towns. Further the slight asymmetry of the facade adds interest to a building that stands at an important corner at the centre of Monaghan Town, at the edge of Church Square.

7.8.6. The foregoing details confirm the architectural importance of this building at both a local and regional level as a structure which is an exemplar of the style of that period. As set out the owners in this case have a legal duty to ensure that this Protected Structure is not “endangered”, which is defined in Section 2 of the Planning and Development Act (as amended) as “*exposed to harm, decay or damage, whether immediately or over a period of time, through neglect or through direct or indirect means*”. The legal requirement to maintain this Protected Structure is paramount and cannot be set aside. Notwithstanding the reasoning why, the owners in this case have failed to maintain the building, thus allowing it to deteriorate to its current condition.

## **7.9. Is the acquisition necessary for the protection of the structure?**

- 7.9.1. I refer to the Architectural Character Report prepared by Bronagh Lanigan, Architectural Heritage Consultant for Monaghan County Council. The building is in a derelict condition and in particular the roof is in a dangerous condition. A large section of the rear pitch is lost and the fabric of the building is open to the elements. The exposed roof timbers on the rear pitch are at an advanced stage of decay and the roof sagging suggests timber decay. There is some area of damage and scarring visible on the walls. The windows and door on the front elevation are all replacement and there are no windows in the two small square headed window openings at attic level. The front door surround has several cracks and a large section at the base of the surround has broken off. As noted there was no access to the interior on the day of my site inspection however it was possible to see through the windows at ground floor where it was observed that the interior has suffered damage due to the failure of the roof. Further there was much debris in the interior apparent.
- 7.9.2. As pointed out by the owners and the Planning Authority the building has been vacant for a considerable time and as noted on the day of site inspection has fallen into disrepair. While the owners state that they have tried to sell the property for many years without success they also state that in the past two years they have invested in carrying out certain works to comply with the order of Monaghan County Council. It was not evident on the day of site inspection that any of the works listed in the Section 59 Schedule had been carried out to ensure satisfactory remediation of the state of the structure. Further this assertion has not been supported or substantiated in any correspondence from Monaghan County Council available on the file.
- 7.9.3. The conservation recommendations for the repair of defects identified in the Architectural Character Report prepared by Bronagh Lanigan, Architectural Heritage Consultant for Monaghan County Council are guided by conservation principles that derive from a number of international charters that advocate repair rather than replace, promote minimum intervention, the use of appropriate materials and methods, reversibility of alteration, record work, keeping the building in use and respecting earlier interventions. This approach to “conservation best practise” is wholly appropriate and is to be encouraged.

7.9.4. It is my view that without immediate and appropriate intervention, particularly to the roof this building is at risk of becoming derelict and endangered.

#### 7.10. Future Risk

7.10.1. It is clear from the Executive Planners Report that Monaghan County Council is actively pursuing the renewal and revitalisation of the town centre by addressing the high rate of vacant and derelict properties through compulsory acquisition. This approach is supported in the current Development Plan through the following objectives and policies:

- Objective PSO 4 of the Monaghan County Development Plan 2013-2019 states that it is an objective for the Protection of Protected Structures *to encourage the sympathetic and appropriate reuse, rehabilitation and retention of Protected Structures ensuring that they are conserved to a high standard, and the special interest, character and setting of the structures are preserved.*
- Policy PSP 3 of the Monaghan County Development Plan 2013-2019 states that it is policy for the Protection of Protected Structures *to prevent loss of architectural heritage, by requiring an owner of a protected structure to carry out works if the planning authority considers that the structure is, or may become, endangered.*

7.10.2. These policies and objectives are considered reasonable. As set out above it is my view that without urgent attention this building is likely to become further endangered. It is also my view that Monaghan County Council have afforded the owners adequate opportunity to carry out works to try and provide a minimum level of restoration for the building. I agree with Monaghan County Council that these measures are necessary in order to prevent the protected structure from continuing to be endangered. However, these works have not been carried out to date. According to the file the owners did not have the means to pay for the required works. It is further noted that the owner has stated that the building has been recently sold however no satisfactory documentary evidence has been provided or even a written commitment from the new owner that the works set out in the Section 59(1) Endangerment Notice will be carried out as a matter of priority.

7.10.3. As the owners have failed to address the situation and in the present circumstances it is reasonable in my opinion for the Planning Authority to seek to compulsorily acquire this property.

### 7.11. Lawful Occupation

7.11.1. With regard to Section 71 (b) as to whether the structure is lawfully occupied as a dwelling house by any person other than a person employed as a caretaker I am satisfied based on my site inspection together with the comments of the owners that the building is unoccupied.

### 7.12. Conclusion

7.12.1. I agree with the Executive Planner that *the protected structure is located in a prime location in Monaghan Town Centre and has fallen into serious disrepair*. I also agree that the owners have been afforded a satisfactory opportunity and reasonable time period for the completion of schedule of works set out in the Section 59(1) notice; works which I consider reasonable and in line with best practise principles. Regrettably no substantive works would appear to have been carried out in compliance with the notice. While I also note the owners' submission that the site has been sold it remains that there is no substantive evidence of same on the file or indeed in the current general appearance of the building as I found it on day of my site inspection.

7.12.2. Therefore, having regard, to the information available on the file and the continued appearance and condition of the property, I consider that the Planning Authority's application for consent to compulsory purchase the Protected Structure as defined in Section 72(2) of the Act (as amended) and as outlined in red on map received by the Board on 24<sup>th</sup> May 2017 is necessary for the purposes of the protection of the structure and to protect it from further endangerment. Therefore, it is recommended that the local authority's application for consent to compulsorily acquire No 4-5 Mill Street is granted.



## 8.0 Recommendation

- 8.1. Having regard to the observed and documented condition of No 4-5 Mill Street, Monaghan, Co Monaghan, a protected structure of local and regional architectural importance, urgent measures are considered necessary for the protection of the structure and in order to prevent this protected structure from continuing to be endangered.
- 8.2. It is considered necessary for the protection of the protected structure that the planning authority compulsorily acquire the protected structure. It is recommended, therefore, that the Board grant consent to Monaghan County Council to compulsorily acquire the protected structure subject of the compulsory acquisition notice.

## 9.0 Reasons and Considerations

- 9.1. Having regard to:
- (a) The submissions on file
  - (b) the observed and documented endangered condition of No 4-5 Mill Street, Monaghan, Co Monaghan, a protected structure of local and regional architectural importance and
  - (c) non-compliance with the schedule of works set out in the Section 59(4) Notice issued by Monaghan County Council to the owners on 10<sup>th</sup> November 2016
  - (d) the prominent central location of the protected structure within Monaghan town centre
  - (e) The Monaghan County Development Plan 2013-2019
  - (f) The Architectural Heritage Protection Guidelines for Planning Authorities (2011) and the
  - (g) The National Inventory of Architectural Heritage
  - (h) The report and recommendation of the person appointed by the Board to consider the matter

It is considered that urgent measures are necessary in order to prevent this protected structure from continuing to be endangered and therefore the acquisition of the protected structure, as defined in Section 72(2) of the Act (as amended) and as outlined in red on map received by the Board on 24th May 2017, by the planning authority is necessary for the purposes of the protection of the structure. It is also considered that the objections made cannot be sustained having regard to the said necessity.

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**Mary Crowley**  
**Senior Planning Inspector**  
**24<sup>th</sup> August 2017**