



An
Bord
Pleanála

Inspector's Report ABP-302091-18

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

No.8 Ferguson Road, Drumcondra, Dublin 9

Local Authority

Dublin City Council

Notice Party

Martin & Margaret O'Malley

Dates of Site Inspections

5th & 17th September 2018

Inspector

Colm McLoughlin

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1.0 Introduction

- 1.1. This file relates to a request by Dublin City Council for the consent of An Bord Pleanála for the compulsory acquisition of a site at No.8 Ferguson Road, Drumcondra, Dublin 9, in accordance with the provisions of the Derelict Sites Act, 1990, as amended (hereinafter referred to as 'the Derelict Sites Act').

2.0 Site Location and Description

- 2.1. The subject property is located on the southwest end of Ferguson Road, which is located within a residential neighbourhood, accessed by vehicle from the north off Home Farm Road. It is approximately 2.4km north of Dublin city centre. The property contains a two-storey end-of-terrace dwellinghouse with steel structural support beams along the front elevation. Attached to the northeast is No.10 Ferguson Road, which is also the subject of a similar compulsory acquisition request by the Local Authority. The site is located 150m to the north of the river Tolka, 70m to the north of a National Monument Service (Ref. DU018-011) ritual site or holy well, which includes a natural spring known as St. Catherine's Well, and 55m to the north of a former mill-run, known as Millbourne.

3.0 Application for Consent for Acquisition

- 3.1. Dublin City Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act. According to the documentation on file, the site was entered into the Local Authority Derelict Sites Register on the 28th day of September 2017.

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of intention to acquire the site compulsorily is stated to have been served on the owners / occupiers of the site on the 9th day of May 2018 and published in the Irish Times newspaper on the 10th day of May 2018. I consider that the notices were in accordance with the requirements of section 15 of the Derelict Sites Act.

4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was received via emails by the Local Authority on the 12th day of June 2018 from Martin & Margaret O'Malley, in which the following arguments are made:

- 1) the Local Authority has not treated the owner fairly, as they refused to meet with the owner and as they were not offered the same level of assistance as that afforded to the owner of No.10 Ferguson Road;
- 2) the Local Authority carried out work involving trial holes on the owner's property at No.8, without their consent and severe cracking became evident and continued following this;
- 3) the owner of No.8 could not carry out remedial works to their property without interfering with the shared boundary wall with No.10;
- 4) because the Local Authority could not carry out remedial works to No.10 without impacting on No.8, this resulted in the Local Authority erecting steel structural beams across the front of No.8;
- 5) the actions of the Local Authority have resulted in significant financial and personal strain for the owner of No.8.

4.2.2. The owner attached extracts regarding trial hole excavation details at the subject property.

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

4.3.1. The Local Authority outline that the Derelict Sites Section of the Local Authority became involved with the site in February 2016 following a complaint and in April 2016 they requested the owner to carry out certain improvement works. The Local Authority consider the site to be derelict, as it detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, due to its unsightly and neglected condition. It is stated by the Local Authority that despite repeated demands regarding the necessary improvement works to render the site 'non-derelict', these works have not been carried out.

4.3.2. The Local Authority state that prior to deciding to proceed with the compulsory acquisition, they were unsuccessful in entering into discussions with the owner. The Local Authority response to the objection addresses the five items raised above (see Section 4.2.1) in the owner's objection and can be summarised as follows:

- 1) the eradication of dereliction in the City and the return of derelict sites to active use are desirable from both planning and environmental perspectives.
- 2) the compulsory acquisition of the site represents the last resort for the Local Authority, as all efforts to secure the carrying out of improvement works have been exhausted;
- 3) the Local Authority has correctly followed the statutory process required and afforded the owner every opportunity to carry out the necessary works to render the site non-derelict;
- 4) the site is a derelict site within the definition of the Derelict Sites Act, with the property comprising steel beams across the front wall, as well as being overgrown with vegetation to the rear façade and within the front and rear gardens;
- 5) extensive matters raised within the objection to the acquisition do not specifically relate to the compulsory acquisition proposal;
- 6) comments within the objection to the acquisition relating to No.10 Ferguson Road are factually incorrect.

4.3.3. The application includes a copy of a letter dated 5th January 2018 from the Local Authority Law Department addressed to the owner. This states that certain communications referenced by the owner were strictly for court proceedings and notes that the property is subject of a Circuit Court Order (2014/000085) relating to Dangerous Buildings. It is also stated that consent relating to the boreholes on the property are not relevant to the Derelict Sites case and the owner should not look to introduce historical matters into the net issue of whether or not the property constitutes a derelict site.

4.4. Owner's Submissions

4.4.1. In response to the application to the Board for consent to compulsorily acquire the site at No.8 Ferguson Road, Drumcondra, Dublin 9, a submission has been received from the owner of the property, Martin O'Malley, dated the 29th day of August 2018, making the following arguments:

- the Local Authority is the cause of the situation on site and they did not have consent from the owner of No.8 to undertake the digging of trial holes (c.4.6m in depth), which resulted in stability issues for No.8 and subsequent water ingress;
- the subject site was in good state prior to the actions of the Local Authority on the site and these actions have compromised the structural integrity of the subject property;
- the owner asserts that they have expert advice stating that the Local Authority caused the damage to No.8 by disturbing the ground with trial boreholes;
- it is asserted that the Local Authority stated that works to secure the structural integrity along the shared boundary wall with No.10, should have been previously undertaken by the Local Authority during rebuilding of No.10;
- it was not possible for the Local Authority to address structural problems to No.10 without impacting on the subject adjoining property at No.8;
- the previous owner of No.10 rejected an offer of €450,000 from the Local Authority to purchase No.10 and would not give consent to the Local Authority to carry out work to No.10. As a result, the Local Authority could not undertake works to No.8;
- No.8 should not have been included as a Dangerous Building at the same time that No.10 was included as a Dangerous Building. Nevertheless, the owner of No.8 and the Local Authority could not gain consent from the owner of No.10 to carry out remedial works to the shared wall. Once the structural supports were erected to the front of No.10 and the property stabilised, the owner of No.8 sought permission from the Local Authority to carry out the necessary works to the shared boundary. The Local Authority did not permit this and stretched the structural supports across the front of No.8;

- in 2015, the Local Authority had entered into talks with the owner of No.8 to separate the structure from No.10, but this did not proceed;
- the Local Authority are aware that the owner and workers were unable to carry out work to the property, as they were threatened by persons occupying No.8. Upon request from the owner, the Local Authority moved these persons and subsequently locked and chained the gate to No.8, but not the gate to No.10. Workmen would not enter the premises upon viewing that the gate was locked and chained and as a result vegetation overgrowth could not be cut back and removed;
- the owner requested meetings with various Local Authority staff and considered a meeting would be of benefit to the owner in expressing themselves in this situation;
- during mediation discussions between December 2015 and April 2016, Local Authority staff advised the owner not to deal with gardens and trees until mediation was complete. Mediation did not progress after April 2016, as the Local Authority called this off and under a freedom of information request, the owner acquired written information, which they considered showed that Local Authority would not have engaged in mediation in a fair manner;
- the owner requested the Local Authority to swap No.8 for an alternative house, but the Local Authority did not agree to same.

4.4.2. The submission was supported by various other correspondence, some of which the owner states were not provided to the Board by the Local Authority including:

- an email to the Minister for Housing, Planning and Local Government dated 13th July 2018;
- a petition containing signatures of local residents along Ferguson Road stating that the cracks to No.8 had got much worse following the digging of trial holes on behalf of the Local Authority in 2008 (photographs included);
- internal email correspondence between Local Authority staff, addressing matters relating to mediation regarding the property;

- various correspondence relating to the need to undertake exploration holes at Nos. 8 & 10 and questions from the owner of No.8 as to who gave authority for same to be dug in No.8, despite written consent not being given for same;
- Consulting Engineer's letter (9th February 2012) referring to movement of Nos. 8 & 10 and the impact of the trial holes to No.8 on both Nos.8 & 10;
- various correspondence regarding the remedial works that were to take place to No.8 Ferguson Road, but subsequently suspended by the Local Authority, including correspondence from the Local Authority claiming that trial holes and investigations did not impact on No.8;
- correspondence stating to be from an individual who initially carried out some landscaping works at No.8 in October 2016, but in April 2017 the works to trees and gardens could not be carried out as a number of individuals occupying the property threatened them, the owner and others.

5.0 Oral Hearing

5.1. An Oral Hearing was held on the 30th day of October 2018, in the offices of An Bord Pleanála, Dublin. This Hearing was recorded and a complete record of the hearing is available. A list of attendees is also available. The following parties made submissions to the Oral Hearing:

Dublin City Council

- Gráinne Larkin – Counsel;
- Aisling Mahon – Solicitor;
- Nial Dully – Derelict Sites Section.

Owner

- Martin O'Malley;
- Margaret O'Malley.

5.1.1. Below is a summary of the main areas covered during the Hearing and issues arising.

5.2. Submission of the Local Authority

- steel beams were erected by the Local Authority to the front façade in 2012, as emergency works to render the site non-dangerous. Since then no remedial works to No.8 have taken place;
- the property is within a residential area, and has been the subject of ongoing complaints. The Local Authority consider the site to be derelict within the meaning of the Derelict Sites Act and in an informal letter to the owner dated April 2016, a request was made to carry out improvement works. The owner initially carried out some improvement works, however, the works to render the site non-derelict were never completed and the site was entered into the Derelict Sites register in September 2017. The Local Authority submitted copies of photographs dating from September 2017 to support their position;
- since 2017, the Derelict Sites Section of the Local Authority has to date acquired 17 derelict sites, 16 of which have been retained for social housing purposes. Many other sites subject of derelict site notices, have been rendered non-derelict due to the actions of their owners. The Derelict Sites section only acquires sites in this manner, as a last resort. The Local Authority consider that the owner was afforded ample opportunity and time to render the site non-derelict, which would have halted formal action under the Derelict Sites Act. The Local Authority attempted to enter into discussions with the owner in November 2017, but the correspondence received from the owner raised other matters and discussions did not proceed;
- the Local Authority refer to the inspections of the site undertaken by the Derelict Sites Section and the various communications between the parties dating from between February 2016 and June 2018. The Local Authority also submitted further copies of photographs dating from October 2018 as part of their submission;

5.2.1. In relation to the submissions received: -

- the matters being raised in the objection are not directly related to the proposed compulsory acquisition of the site and the Local Authority Law

Department has previously responded to the owner on these matters (as per letter dated 5th January 2018);

- it is incorrect to state that notice was not served on the adjoining site at No.10.

5.2.2. In response to questions posed to the Local Authority:

- the Local Authority is of the opinion that much of the correspondence submitted in the objection relates to the emergency works required to address the Dangerous Building on site;
- post-April 2016 and the initiation of the Derelict Sites case, at a very basic level the owner has not undertaken steps to remedy the situation on site. Furthermore, the owner has failed to adequately engage with the Local Authority as steps outlining how they intend to address the situation have not been provided;
- the necessary improvement works at this point considered by the Local Authority to be required to render the site non-derelict, would include addressing broken windows and the overgrowth of vegetation on site and over the side access lane. Without the benefit of a current full (external and internal) site investigation, it is not possible to identify the precise nature of the works required to enable the removal of the structural beams on the front of the house, as the situation may or may not have changed since the beams were put in place in 2012. It is for the property owner to investigate what would be required in this regard and to tend to the property, including the undertaken of necessary improvement works to render the site non-derelict;
- while the property is subject of a Dangerous Buildings Order, without a thorough engineering investigation it is not possible to identify whether or not the building is dangerous as it currently stands or if the structural beams were to be removed.

5.3. **Submission of Martin & Margaret O'Malley**

- it is not a simple case that led to the present situation on site and this situation becoming notifiable to the Local Authority. Measures instrumental to the situation are as a direct result of actions taken by the Local Authority. The

owner is restricted from addressing improvement works considered by the Local Authority to be required to address the situation;

- the owner has not been fairly treated by the Local Authority, particularly when compared with the adjoining property owner at No.10 and as the trial holes undertaken on the owner's site to test ground conditions in 2008 were undertaken without the owner's consent and this resulted in damage to their property and ultimately the present situation on site;
- contractors engaged to address works on site, would not undertake the works to address the structural supports, in isolation of No.10, particularly given the fact that both properties share a party wall;
- to address the stability issues and undertake works to allow for the removal of the steel structural beams to the front, the owner would require the consent of the owner of No.10, but this was not achievable.

5.3.1. In response to questions posed, the owner stated the following:

- the owner could not address the overgrowth in the gardens, as workers would not work on the site due to the existence of broken needles which are associated with the occupation of the building on site by squatters. Homeless people occupy the property at present and the owners request the Local Authority help to remove these persons as they are not in a position to remove them;
- the owner would require the Local Authority to engage contractors to undertake clearing out work to enable some improvement works to commence and if given an appropriate opportunity they could ensure the overgrown nature of the garden could be addressed;
- the owner denies that the building on site is dangerous in its current form. The steel structures were stretched across No.8 to address instability concerns relating to No.10. The steel structures to No.8 are in fact free standing structures that are not physically bolted onto the building's front walls;
- the owner would simply like to get their property back and would like to get a list of works required to be undertaken to enable this.

6.0 Planning History

6.1. Subject Site

6.1.1. I am not aware of any recent planning history associated with the subject site.

6.2. Surrounding Area

6.2.1. Planning applications for permission in the immediate vicinity primarily relate to minor domestic-scale alterations including:

- Dublin City Council (DCC) Ref. 3395/15 – retention permission granted in November 2015 for the provision of a front vehicular access to off-street parking at No.12 Ferguson Road, c.5m to the north of the subject site;
- DCC Ref. 5354/08 – permission granted in March 2009 for the provision of a front vehicular access to off-street parking at No.11 Ferguson Road on the opposite side of the street to the subject site.

7.0 Policy Context

7.1. Development Plan

7.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'.

7.1.2. The Development Plan notes that the National Spatial Strategy, the predecessor to the National Planning Framework: Project Ireland 2040, placed particular emphasis on the physical consolidation of the metropolitan area, and necessitated the sustainable development of all vacant, derelict, and under-used lands. In aiming to make a more compact sustainable city, the Development Plan includes the following policy:

- SC29 – 'To discourage dereliction and to promote the appropriate sustainable re-development of vacant and brownfield lands, and to prioritise the re-development of sites identified in Dublin Inner City Vacant Land Study 2015'.

7.2. Derelict Sites Act, 1990, (as amended)

7.2.1. The Derelict Sites Act makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables Local Authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

7.2.2. Section 3 of the Act defines a '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'.

7.2.3. Section 8 of the Derelict Sites 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, 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.

8.0 Assessment

- 8.1. The subject application relates to a site on Ferguson Road in Drumcondra, Dublin 9. I have inspected the site and the lands in the vicinity.
- 8.2. The site is located on the southwest end of Ferguson Road, and is visible from the immediate streetscape. The streetscape at this location is characterised by well-established rows of terraced and semi-detached dwellings of similar styles in a uniform and symmetrical layout. The site or adjoining properties are not within an Architectural Conservation Area. Trees within the front garden largely screen views of the front façade of the building on site from the Griffith Park area to the south.
- 8.3. The property contains a two-storey end-of-terrace dwellinghouse with steel structural support beams across the front elevation. The house features a slate roof over walls which include a dash-finish to the front, side and rear. At least one window to the front at first-floor and one window to the rear at ground floor are boarded up. The other visible remaining doors and windows are in reasonable condition. A large crack is visible along the front façade of the building, extending from the shared boundary with No.10 to the nearest first-floor window. Trees and shrubs to the front garden area are overgrown, spilling out over the front and side boundaries of the property. To the front of the site is a small garden that is overgrown with vegetation.
- 8.4. A pedestrian access laneway serving the rear of houses along Ferguson Road and Comyn Place runs along the rear and side boundaries of the site. The rear garden area is overgrown, with vegetation extending up the rear walls of the house, onto the roof, up to chimney level and over the roof ridge.
- 8.5. Ground levels in the vicinity drop steadily to the south towards the Tolka River and Griffith Park. No.10 Ferguson Road, adjoining to the north, is set on a similar level to the house on the subject site.
- 8.6. Externally, the house appears to be in poor condition with significant cracks to the front wall, while there are steel structural beams extending across the front elevation,

one below the eaves and one at first-floor plate level. These beams appear to be held in situ by two further beams angled at approximately 45 degrees onto a concrete plinth in the front garden. Steel beams also extend across the front of the adjoining house at No.10. While the front door, most of the windows, roof and guttering are in reasonable state, the front wall to the house is clearly damaged. The front garden is unkempt and overgrown with trees and shrubs. The rear garden area is also unkempt and overgrown with a range of vegetation that largely restricts views of the rear wall and yard to the house. At least two windows need to be replaced.

- 8.7. From the public roadway along Ferguson Road the building appears neglected and unsightly, due to the extent of overgrowth, the boarded up first-floor window and the structural beams extending across the front elevation. Housing within the immediate area features a range of treatments to the front garden areas, and with the exception of the adjoining property No.10, which is also the subject of a similar application to the Board (ABP Ref. 302098-18), no other properties feature steel structural support beams to the front. The street on which the property is located appears to be relatively well-used by pedestrians due to the access it provides towards schools, Griffith Park, Drumcondra Road Upper and the city centre.
- 8.8. I consider that the property in its current condition significantly detracts from the residential area in which it is located, particularly with regard to the extent of overgrown vegetation to the rear and front and the structural support beams extending across the front, in contrast to the otherwise well-kept condition of the vast majority of neighbouring houses and the absence of steel support beams from all but one neighbouring property. 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.
- 8.9. 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 Derelict Sites 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, the majority of windows and doors are in reasonable condition and while there is obvious evidence of significant structural defects, the building appears to no longer be dangerous, consequent to the steel structural support measures stated to have been undertaken

by the Local Authority in 2012 to render the building non-dangerous. While the owner contests that the building is dangerous with or without the structural supports, evidence such as a recent engineer's report as to whether the building is dangerous have not been provided as part of the documentation and the Local Authority state that it would not be possible to reasonably clarify this without current access to the site. With regard to category (c), while I note the owner's reference to needles strewn across the site, I do not consider that sufficient presence, deposit or collection of litter, rubbish, debris or waste exists on the site, such as to render the site derelict under this category.

- 8.10. In conclusion, I consider that the property demonstrably detracts to a material degree from the amenity, character and appearance of the surrounding residential area because of the neglected, unsightly and objectionable condition of the property, which, in my view, renders it derelict under section 3 of the Derelict Sites Act.
- 8.11. Under section 10 of the Derelict Sites Act, it is the duty of the 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. I note that the Dublin City Development Plan 2016-2022 includes policy SC29, which aims, inter alia, 'to discourage dereliction', and such a policy is clearly in the interests of the common good. At the Oral Hearing the Local Authority outlined measures being undertaken to address dereliction in the city and the success of same to date.
- 8.12. I note the actions of the Local Authority and the various statutory notices served on the owners / occupiers in respect of the site. A section 8(2) notice dated the 4th day of August 2017, was served on the owners / occupiers of the site, advising of the intention to enter the site on the Register of Derelict Sites. A section 8(7) notice dated the 28th day of September 2017, was served on the owners / occupiers of the site, advising of the decision to enter the site on the Register of Derelict Sites. A Section 15(1)(a) notice of intention to acquire the site compulsorily was published in the Irish Times Newspaper on the 10th day of May 2018. A Section 15(1)(b) notice of intention to acquire the site compulsorily was served on the owner of the site on the 9th day of May 2018.

- 8.13. I note the objection to the proposed acquisition of the site made to the Local Authority dated the 12th day of June 2018, which asserts that the Local Authority were to blame for the situation on site and that the owner has experienced significant personal and financial strain due to the situation. The objection also asserts that the owner was unable to carry out remedial works to the site for a variety of reasons, including the potential impact of necessary works on the adjoining property.
- 8.14. In response to the objection, the Local Authority assert that the Derelict Sites Section became involved with the site in February 2016 and that they consider the site to be derelict, as it detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood due to its unsightly and neglected condition. It is stated by the Local Authority that despite repeated demands, with regards to the necessary improvement works to render the site 'non-derelict', these works have not been carried out. The Local Authority state that compulsory acquisition represents the last resort, as all efforts to secure the carrying out of improvement works have been exhausted and that prior to deciding to proceed with the compulsory acquisition, they were unsuccessful in entering into discussions with the owner and that the owner failed to engage regarding the improvement works to address the situation.
- 8.15. In response to the Local Authority application for consent, the owner states that the Local Authority is the cause of the situation on site and that the owner has expert advice and confirmation by others that the trial holes and investigations undertaken by the Local Authority, without the consent of the owner, resulted in damage to their house. The owner asserts that it was not possible for the structural problems to No.10 to be addressed, as consent to undertake same or purchase the house was not forthcoming from the owners of No.10. As a result this meant that to address structural concerns the properties were listed as Dangerous Buildings and steel structural support beams were extended across the front of both buildings. The owner contests that there was a necessity for the structural beams to be extended across their building. Following this the property was occupied by persons who threatened those attempting to undertake remedial works to the gardens and trees, and the Local Authority restricted access by placing a lock and chain on the gates. The owner requested meetings with Local Authority staff and during mediation discussions between December 2015 and April 2016, Local Authority staff advised

the owner not to deal with gardens and trees until mediation was complete.

Previously the Local Authority made an offer to purchase the property at No.8, but this was not accepted by the owner and the owner's request for No.8 to be swapped for an alternative house was not agreeable to the Local Authority. The owner elaborates extensively within the documentation submitted and at the Oral Hearing regarding the events that led to the current situation on site.

- 8.16. How the site became derelict or what the intentions of the Local Authority might be, should they be granted consent to acquire the property, are not material matters in the assessment of whether the site in its current state can be considered 'derelict' under the terms of the Derelict Sites Act. Whether the owner was unreasonably impeded or restricted in addressing matters that the Local Authority considered to confirm the 'derelict' status of the site is a material consideration, as the owner should be afforded fair and reasonable opportunity to address the Local Authority's concerns.
- 8.17. In considering whether a reasonable and fair approach has been undertaken, it is necessary to document the main events and communications between the parties prior to the Local Authority applying for the acquisition of No.8. In this regard I note that the first inspection by the Derelict Sites section of the Local Authority of Nos. 6, 8 and 10 Ferguson Road took place in February 2016 and that during this inspection it was noted that the roof to No.8 had no visible damage and that the walls were cracked and supported with steel beams. Following this the Local Authority served notice on the owner of No.8 in April 2016 advising that the cutting back and removal of the overgrowth in the front and rear gardens would prevent the possibility of formal action under the Derelict Sites Act. Further inspections of the site were undertaken in May 2016 when it was noted that the garden was completely overgrown. Photographs submitted with the application stated to be from November 2016 reveal that cutting back and removal of overgrown vegetation had taken place on site. Following a subsequent inspection in March 2017, the Local Authority considered that the site could be defined as being 'derelict' and noted that steel beams support the house, the side walkway is strewn with litter, rubbish, rubble and debris, while the rear of the building was covered in vegetation and the rear garden was overgrown. Additional photographs of the site were submitted by the Local Authority with the application and these are stated to be from May 2017 and July 2017. Over the

course of proceedings, I note that photographs were taken and included with the application by the Local Authority during seven different inspections of the site between February 2016 and July 2017, while I am only aware of the owner of the site being advised of the remedial action required to be undertaken by them on one occasion in April 2016. As stated above, a section 8(2) notice dated the 4th day of August 2017, was served on the owners / occupiers of the site, advising of the intention to enter the site on the Register of Derelict Sites.

- 8.18. A response to the notice, including numerous emails and attachments, was submitted by the owner on the 29th day of August 2017, and this requests that the site is not placed on the Register and asserts that the Local Authority are to blame for the condition of the property having attempted to undertake remedial works to Nos. 8 and 10 Ferguson Road, without the consent of the respective owners. Many of the points raised in the owner's submission (see Section 4.4 above) are raised in their responses to the Local Authority. In a response dated the 31st day of August 2017, the Local Authority advised that the Housing & Residential Services Department of the Local Authority would be consulted regarding the owner's claims that the house was damaged as a result of interventions by the Council's Dangerous Buildings Section. The response notes that following the first derelict sites notice issued by the Local Authority in April 2016, some improvements had initially been undertaken, but that the appearance of the property had since deteriorated further. In outlining that the property was considered to be 'derelict', the Local Authority noted that the front garden is covered with vegetation and the rear garden is completely overgrown with vegetation. The Local Authority offered the owner 14 days to submit details of improvement works and timescales for same, in order to render the site non-derelict. The owner contacted the Local Authority on the same date advising that the house was damaged as a result of interventions by contractors engaged by an individual from the Local Authority and not by the Council's Dangerous Buildings Section. Amongst other documentation, the owner has forwarded email correspondence dated the 4th day of September 2017, outlining the difficulties encountered by the owner when trying to remove the overgrowth from the front and rear of the house, including being threatened by persons occupying the house. An additional handwritten letter dated the 4th day of September 2017 is forwarded from the owner and this is stated to be from a workman who had intended

to enter the site to carry out gardening works and refers to the threatening behaviour of persons occupying the site. The owner contends that the house should not be deemed a Dangerous Building when compared with the adjoining house, No.10, which includes additional internal propping. These matters were substantiated further by the owner during the Oral Hearing, in particular the various impediments to the owner undertaking improvement works.

- 8.19. Photographs of the site inspection stated to have been taken in September 2017 are included by the Local Authority with the application. Following this inspection, a section 8(7) notice was served on the owner of the site on the 28th day of September 2017, advising of the Local Authority's decision to enter the site on the register of derelict sites.
- 8.20. In October 2017, the Local Authority wrote to the owner of the site regarding the decision to enter the site on the register of derelict sites. Within this the Local Authority advised that the compulsory acquisition of derelict sites is a last resort in attempting to eradicate dereliction in the city. The Local Authority offered the owner a further 14 days to submit proposals of the work that would be undertaken to render the property non-derelict. An email was submitted to the Local Authority by the owner the same month questioning the actions of the Local Authority with respect to the property.
- 8.21. Local Authority correspondence from the Derelict Sites Section to the Chief Valuer in the Local Authority dated the 2nd day of November 2017, requests that the Chief Valuer make the necessary arrangements to commence negotiations to acquire the property, and that where efforts to acquire the site by agreement are unsuccessful, the Local Authority will exercise its compulsory acquisition powers. Email dated 5th December from the Local Authority to the owner, states that a letter was sent to the owner, dated the 19th November 2017, instructing the Local Authority to enter into discussions with the owner of No.8 with a view to acquiring the property by agreement or compulsorily under the Derelict Sites Act. The owner's email on the 22nd day of November 2017 states that they would be interested in meeting with the Local Authority staff, while outlining concerns regarding claims that a key for the property had previously been withheld by the Local Authority.

- 8.22. The owner responded to the Local Authority in an email dated the 5th day of December referring to their letter dated the 19th November 2017, offering to meet the Local Authority valuation officer regarding the site and requesting a number of other individuals and contractors stated to have been engaged by the Local Authority in relation to the site, to also be present. Other emails from the owner to various Local Authority staff dated the 6th and 27th days of November relating to the site are also included with the owner's submission and these largely set out the background relating to stated works on the site and the resultant impact on the site and the owner's personal circumstances. A further email submission by the owner to the Local Authority valuation office dated the 28th day of December 2017 stated to be in response to a Local Authority letter dated the 7th day of December 2017, contests that contrary to the Local Authority's opinion, the various recent emails forwarded to the Local Authority are relevant to the derelict sites notice served on the site. Letter dated 22nd March 2018 from O'Connell & Clarke Solicitors refers to a Local Authority letter dated the 5th day of February, the derelict sites levy and advises that they require an opportunity to review the matter. The owner sent an email dated the 21st day of February 2018 to staff of the Local Authority outlining in further detail the background to the situation on site and their opinion regarding certain stated actions of the Local Authority and contractors engaged by the Local Authority.
- 8.23. The Board should note that it is not a requirement under the Derelict Sites Act, for a site to be placed on the register prior to an application being made to acquire it compulsorily. Prior to and during placement of the site on the Derelict Sites Register, the works required by the Local Authority to render the site non-derelict involved relatively small steps, involving the cutting back and removal of overgrown vegetation. In contrast to the concurrent application on the adjoining property, No.10 (ABP Ref. 302098-18) works to allow for the removal of the steel supports to the front of the house are not initially stated by the Local Authority as being necessary to render the site non-derelict. During the course of the Oral Hearing, the Local Authority did clarify that such enabling works would be necessary, as in their opinion the structural beams are considered unsightly.
- 8.24. Based on the extent of correspondence submitted, it is clear that the owner was aware of the concerns of the Local Authority in relation to the site. The owner was given opportunities to respond and outline how and when they intended to render the

site non-derelect. It appears that the reason why the owner did not undertake the required action to remedy the site non-derelect, was based on their opinion that the actions of the Local Authority had led to the situation on site and that they were inhibited by matters outside of their control from carrying out the tasks required by the Local Authority to render the site non-derelect. While the Local Authority file would suggest that remedial work involving the removal of overgrown vegetation to the front and rear of the house took place at some stage between May and November 2016, further meaningful effort to fully resolve and maintain the situation did not occur following this, with the front and rear areas overgrown with vegetation at the time of my site visits and a number of windows boarded up. The owner claims that work could not be done to address the overgrowth on site due to persons occupying the site threatening violence to those entering the site.

8.25. The owner asserts that the steel supports extending across the front of the house, arose out of circumstances beyond their control and that they are not in a position to make the necessary improvements to enable their removal, as to do so would have potential to impact further on the structural integrity of the adjoining property, No.10. The owner states that they cannot undertake enabling works to provide for the removal of the structural supports without the consent of the owner of No.10 and that such a consent is not forthcoming. In the absence of a current detailed site investigation, both external and internal, the Local Authority are themselves not sure what would be required and what the implications for both Nos.8 & 10 would be, if the structural supports were to be removed. The Local Authority state that they don't have access to the site to carry out such investigations and that the responsibility is with the private owner to tend to the property.

8.26. While, I would accept that the owner may require the consent of others to carry out the more invasive aspects of the improvement works, I do not have a detailed engineering report outlining in detail what would or would not be required at this point as a starting point to the enabling works. I also note the owner's assertion that they are impeded from undertaking the other less invasive works required to the gardens and windows. Nevertheless, there is a duty on the private property owner to take all reasonable steps to ensure that the land does not continue to be a derelict site and I am not satisfied that the owner exhaustively attempted to resolve the situation, as emphasised in the failure to fully engage with the Local Authority Derelict Sites

Section, as to how and when they intend to resolve the situation. Furthermore, I am satisfied that the Local Authority have afforded the owner ample opportunity and time to at least remedy the less invasive works required, and this has not occurred. Accordingly, having regard to the circumstances of this case, I consider that the Local Authority was not unfair or unreasonable in arriving at the necessity to serve notice under section 15.

- 8.27. Based on the particulars of the subject case, I consider that the Local Authority took reasonable steps to make the owner aware of its concerns in relation to the condition of the property, of the intention to place the site onto the Derelict Sites Register, of the entry of the site onto the Register and of the circumstances under which the site may be removed from the Register. The acquiring of the property is further justified by the exigencies of the common good, particularly when considering the asserted interconnectivity of the both Nos.8 and 10 and the potential inability to render one site non-derelict without impacting on the other.
- 8.28. Having regard, to the all of the information available of the file and the continued appearance and condition of the site, which as stated above, I consider constitutes a derelict site, it is appropriate that the Local Authority's application for consent to compulsorily acquire lands in full at No.8 Ferguson Road be granted.

9.0 Recommendation

- 9.1. Having regard to the observed condition of lands at No.8 Ferguson Road, Drumcondra, Dublin 9, due to the neglected, unsightly and objectionable condition of the land and structures on the land in question, 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(b) of the Derelict Sites Act, 1990, as amended.
- 9.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Derelict Sites Act. I recommend, therefore, that the Board grant consent to the Local Authority to compulsorily acquire the site in full.

10.0 Reasons and Considerations

10.1. 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. The Board was satisfied that the procedures followed by the Local Authority were not unfair or unreasonable having regard to the provisions of the Derelict Sites Act, 1990, as amended.

Colm McLoughlin
Planning Inspector
5th November 2018