



An
Bord
Pleanála

Inspector's Report ABP-302098-18

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.10 Ferguson Road, Drumcondra, Dublin 9

Local Authority

Dublin City Council

Notice Party

Frank Ralph (c/o Avoca Bed & Breakfast and Maguire McErlean Solicitors).

Dates of Site Inspections

5th & 17th September 2018

Inspector

Colm McLoughlin

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Application for Consent for Acquisition	3
4.0 Application and Objection	3
4.1. Notice of Intention to Acquire	3
4.2. Objection to Acquisition.....	4
4.3. Local Authority's Application for Consent.....	4
4.4. Objector's Submission	5
5.0 Oral Hearing	5
6.0 Planning History.....	8
6.1. Subject Site.....	8
6.2. Surrounding Area	8
7.0 Policy Context.....	9
7.1. Development Plan.....	9
7.2. Derelict Sites Act, 1990, (as amended).....	9
8.0 Assessment.....	10
9.0 Recommendation.....	18
10.0 Reasons and Considerations	18

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 the subject site at No.10 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 site is located on the southwest end of Ferguson Road, which is accessed by vehicle from the north off Home Farm Road and is located within a residential neighbourhood. It is approximately 2.4km north of Dublin city centre. The property contains a two-storey mid-terrace dwellinghouse with steel structural support beams appended to the front elevation. Attached to the southwest is No.8 Ferguson Road, which is also the subject of a similar compulsory acquisition request by the Local Authority (ABP Ref. 302091-18). The site is located 155m to the north of the river Tolka, 75m 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, 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 26th 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 owner 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. One objection dated the 11th day of June 2018 to the proposed acquisition was received by the Local Authority on the 12th day of June 2018 from Frank Ralph c/o Avoca Bed & Breakfast, 110 Hollybank Road, Drumcondra, Dublin 9, in which the following arguments are made:

- 1) the property is not being acquired for the required purpose;
- 2) steps required under the Derelict Sites Act have not been complied with;
- 3) the acquisition would represent a disproportionate interference with property rights;
- 4) the Local Authority is disengaging and / or reneging on negotiations and / or dealings with Frank Ralph that had been ongoing since 2007, by seeking to acquire the property for a reduced fee under the Derelicts Sites Act;
- 5) the acquisition offends planning and environmental considerations.

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 the receipt of a complaint. 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 acquiring the site by agreement with the owner. The Local Authority response to the owner's submission addresses the five items raised in the objection and can be summarised as follows:

- 1) the site is a derelict site within the definition of the Derelict Sites Act;
- 2) 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;

- 3) 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;
- 4) for over a decade the Housing & Community Services Department of the Local Authority have been in contact with the owner of the site and offered to purchase the property on more than one occasion;
- 5) the eradication of dereliction in the City and the return of derelict sites to active use are desirable from both planning and environmental perspectives.

4.4. Objector's Submission

4.4.1. In response to the application to the Board for consent to compulsorily acquire the site at No.10 Ferguson Road, Drumcondra, Dublin 9, a submission has been received from Maguire McErlean Solicitors, dated the 10th day of August 2018, on behalf of Frank Ralph, making the following arguments:

- the Board is referred to the contents of the objection submitted to the Local Authority on this matter dated the 11th day of June 2018;
- the reference of the Local Authority to an attempt to resolve the matter by agreement in November 2017 is entirely incorrect, as no attempt to re-engage occurred.

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;
- Nial Dully – Derelict Sites Section.

Owner

- Frank Ralph.

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.10 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. The Local Authority 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 did attempt to enter into discussions with the owner in November 2017, but following an initial response from the owner's solicitors no further contact was made with the Local Authority valuation office;
- 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 Local Authority are satisfied that the site is derelict and is being acquired for the required purpose, as a last resort and that all appropriate legislative steps have been followed, with the owner well-informed of the situation and the process.

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

- the debris and vegetation to the front and the vegetation to the rear are part of the issue. The structural beams on the front façade were erected in 2012 as a temporary measure. These beams are unsightly, but in the absence of a current structural report it is not clear what works would be required to enable the removal of the beams;
- the structural beams are understood to be bolted onto the front of No.10 and that No.8 is leaning into No.10. Given the extent of vegetation on the rear elevation and roof, it is not clear if this has resulted in damage to the roof structure.

5.3. **Submission of Frank Ralph**

- a detailed overview of the property was provided by the owner, including reference to his family purchasing the house from the Local Authority in the 1970s. Dealings with the Local Authority were outlined, including reference to a €450k offer for the property from the Local Authority being turned down in 2008 and the personal circumstances surrounding this situation, including having to move out of the property, when finding out that the roof was in imminent danger of collapse;
- since vacating the property, the owner has resided in a neighbouring B&B. The owner outlined that they offered to withdraw their objection to the Local Authority acquiring the property, but the Local Authority had not agreed to same;
- the property was initially constructed in 1929, collapsed in the 1940s and was left vacant for 20 years, after which it was rebuilt in the 1960s. The property to the south, No.8, is constructed of poured concrete, while No.10 is constructed of a brick front and rear wall with the roof span sitting on this. In

effect the owner of house No.10 does not have ownership of the side walls to the house. The owner believes that the side wall with No.8 should have at least been underpinned when the house was being reconstructed.

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

- the Local Authority require both properties in order to address the structural defects, but the owner of No.10 states that the owner of No.8 would not accept the offers from the Local Authority and that this has tied the hands of the Local Authority;
- the owner outlined that works to remove the vegetation and litter from the front of the house would be readily achievable, however, the removal of vegetation to the rear would be impeded as this vegetation is all coming from the neighbouring property, No.8. The owner believes that if the beams were to be removed from the front, the whole building would collapse, as would No.8. Therefore, as the works could potentially result in damage to No.8 he would not be insured to remove the beams;
- the owner accepts that the site is a derelict site and that there is nothing more that he can do with it, but considers that the Local Authority did not treat the owner in a fair manner during the process, as it was the actions of the Local Authority that resulted in the property becoming derelict.

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, adjoining 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 directly opposite 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 to the adjoining

property to the south, No.8, 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 mid-terrace dwellinghouse with steel structural support beams appended to the front elevation. The house features a slate roof over walls which include a dash-finish to the front. Doors and windows are in reasonable condition. Several large structural cracks are visible along the front façade of the building, extending from the shared boundary with No.12, across the two first-floor windows, to the shared boundary with No.8. Paint to the window cills and surrounds, as well as the front boundary wall and plinth level is flaking. To the front of the site is a small garden that is overgrown with vegetation. A discarded mattress is strewn across the front corner of the garden, adjoining No.8.
- 8.4. A pedestrian access laneway serving the rear of houses along Ferguson Road and Comyn Place runs along the rear boundary of the site. The rear garden area is taken over by 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.12 Ferguson Road adjoining to the north is set approximately 0.5m higher than the house on the subject site.
- 8.6. Externally, the house appears to be in poor condition with obvious evidence of structural problems and significant cracking and given the presence of steel structural beams appended across the front elevation, one below the eaves and one at first-floor plate level. These beams appear to be held in place by two further beams angled at approximately 45 degrees onto a concrete plinth in the front garden. A similar situation with regards to steel beams exists on the adjoining site, No.8. While the front door, windows, roof and guttering are in reasonable state, the front house wall is clearly damaged. The front garden is unkempt, overgrown with weeds and there is some littering, in the form of a discarded mattress. The rear garden area is also unkempt and overgrown with a range of vegetation, stated by the owner to be growing from No.8, and which restrict views of the rear elevation to the house.
- 8.7. From the public roadway along Ferguson Road the building appears neglected and unsightly, due to the structural beams appended to 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.8, no other properties feature structural support beams to the front.

- 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, the structural support beams to the front and the otherwise well-kept condition of the vast majority of neighbouring houses. The street on which the property is located appears to be relatively well-used by pedestrians due to the pedestrian access it provides towards schools, Griffith Park, Drumcondra Road Upper and the city centre. Having regard to the extent of overgrown vegetation taking over the rear of the site and the appending of structural steel support beams to the front elevation of the building, I consider that the property can clearly be defined as being in a neglected, unsightly or objectionable condition. I therefore consider that the property falls within category (b) of section 3 of the Derelict Sites Act, 1990.
- 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 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 intact roof, windows and doors and while there is obvious evidence of significant structural defects and the house is vacant, the building appears to no longer be dangerous, as a result of the structural support works, which I understand to have been undertaken by the Local Authority in 2012 to render the building non-dangerous. Evidence such as an engineer's report as to whether the building is dangerous have not been provided as part of the documentation. With regard to category (c), while there is some litter waste and low-level overgrown vegetation in the front garden of the property, which detracts from the character and appearance of the site, I do not consider that the quantity is such as to render the site derelict under this category.
- 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 Act.

- 8.11. I note the actions of the Local Authority and the various statutory notices served on the owner in respect of the site. A section 8(2) notice dated the 4th day of August 2017, was served on the owner of the site, advising of the intention to enter the site on the Register of Derelict Sites. A section 8(7) notice dated the 26th day of September 2017, was served on the owner 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. Details of a Section 15(1)(b) notice of intention to acquire the site compulsorily dated the 9th day of May 2018 are also included with the application.
- 8.12. I note the objection to the proposed acquisition of the site made to the Local Authority dated the 11th day of June 2018, which asserts that the property is not being acquired for the required purposes, that the appropriate steps have not been followed, that the acquisition would represent a disproportionate interference with property rights, that the Local Authority is disengaging on negotiations and that the acquisition offends planning and environmental considerations.
- 8.13. 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 for over a decade the Local Authority had been in contact with the owner of the site and offered to purchase the property on more than one occasion.
- 8.14. In response to the Local Authority submission, the objector states that the Local Authority is incorrect in claiming that they attempted to resolve the matter by agreement in November 2017.
- 8.15. 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, 1990, as amended. Furthermore, during the Oral Hearing the owner agreed that the site can be considered 'derelict', but that they could not undertake all necessary improvement works to render the site non-derelict.

- 8.16. I note that under the 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 as policy is clearly in the interests of the common good.
- 8.17. The owner's submission via their solicitor claims appropriate steps were not followed in this case. To understand this aspect of the objection to the proposed acquisition it is necessary to outline the documented events and the communications between the parties. Following three stated inspections of the site in February, May and June of 2016, the Local Authority served notice on the owner in July 2016, stating their intention to enter the site on the Derelict Sites Register. A letter was also sent to the owner's solicitors advising that the removal of litter from the front garden and the cutting back and removal of the overgrowth in the rear garden would prevent the possibility of formal action under the Derelict Sites Act.
- 8.18. A response submitted in August 2016 on behalf of the owner 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. The owner's solicitor states that the recent offer from the Local Authority to purchase the property was unacceptable and that the owner would be amenable to entering into mediation regarding same. In a subsequent response dated the same month, the Local Authority advised that in order to prevent formal action, removal of litter from the front garden and the cutting back of overgrowth would again be needed. The response also stated that the Housing & Residential Services Department of the Local Authority had previously engaged with the owner regarding the property, but that no conclusion could be reached and dealings had now concluded.

- 8.19. Following three further stated inspections of the site in March, May and July 2017, the Local Authority again served notice on the owner of the site on the 4th day of August 2017, stating their intention to enter the site on the Derelict Sites Register. A response was not received to the notice and in September 2017, a section 8(7) notice was served on the owner of the site and their representatives, 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 legal representatives of the site owner 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.
- 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.
- 8.22. In response to the Local Authority letter dating from October 2017, correspondence from the owner's solicitors dated the 9th and 15th days of November 2017 was sent to the Local Authority, which requested details of the necessary steps required to remove the site from the Derelict Sites Register. A response from the Local Authority in January 2018, advised the owner's solicitors of the legal definition pertaining to a 'derelict site', as well as outlining the background with respect to the previous investigations on site, previous legal proceedings and the previous works undertaken on site pursuant to the Local Government Sanitary Services Act 1964. It is stated in this letter that an Order was secured in the District Court to direct works to be carried out to the property, that it remain vacant and that it not be used for any other purpose prior to making the building safe. Due to non-compliance with the Court Order, it is stated that the Local Authority carried out emergency works to make the property safe and render it non-dangerous between the 15th and 30th days of March 2012. The letter concludes by affording the owner four weeks to submit detailed proposals setting out how to address the issues with the property including the removal of litter, waste and extensive overgrowth to the rear and front of the

property, and the timeframe for same. The Local Authority advised that they would not proceed with the compulsory acquisition subject to being satisfied with the proposals to be submitted.

- 8.23. In a response dated the 31st day of January 2018, the owner's solicitors requested further guidance regarding the necessary works required to remove the site from the Derelict Sites Register. Within this response, they outline that they understand that the removal of overgrowth from the front and rear and the removal of litter and waste from the site would be sufficient to remove the site from the Derelict Sites Register.
- 8.24. The Local Authority responded on the 26th day of February 2018 to the owner's request for guidance on the actions required to remove the site from the Derelict Sites Register, by stating that to render the site non-derelict it would be necessary for litter, waste and overgrowth to be removed from the front and rear of the property and to carry out all necessary works to enable the removal of the steel supports. The letter affords the owner four weeks to submit detailed proposals setting out how to address the above issues and the timeframe for same. The Local Authority state that the owner did not respond to this letter.
- 8.25. 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 appear to have altered over the course of their reviews and inspections of the property. Prior to February 2018 relatively small steps required to render the property non-derelict were set out by the Local Authority, involving the removal of litter and overgrown vegetation, but these measures were subsequently supplemented by what would be considered more invasive works to enable the removal of the steel supports to the front of the house.
- 8.26. While the Local Authority file would suggest that remedial work involving the removal of overgrown vegetation to the front of the house took place at some stage between July 2016 and March 2017, further meaningful effort to fully resolve and maintain the situation did not occur, with the front and rear of the site once again overgrown with vegetation at the time of my visits.
- 8.27. While the extent of works required to render the site non-derelict have altered based on the communications from the Local Authority, there was an onus on the owner to bring the proceedings to a halt by remedying the site non-derelict. During the course

of the Hearing, the owner advised that the removal of litter and vegetation from the front garden could be readily achieved, but that the vegetation to the rear is originating from the neighbouring property, No.8. While the Local authority could not be sure if the removal of the vegetation to the rear or the removal of the steel beam structural supports could be undertaken without damage to the subject property or neighbouring property at No.8, the owner was of the opinion that removal of the beams would result in the house collapsing and likely damage to No.8 also. In summary, the owner asserts that they are impeded from undertaking all necessary improvement works to render the site non-derelict.

- 8.28. 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. Nevertheless, the Local Authority appear to have taken this approach to afford the owner ample opportunity to remedy the situation.
- 8.29. While the owner was aware of the Local Authority's concerns and was afforded ample opportunity to indicate to the Local Authority how they would remedy the situation, it is clear that there would be significant impediments to the owner actually addressing all aspects of the derelict status, particularly the removal of the steel structural beams. While I recognise that the owner is aggrieved at how the property arrived at its present condition and the potential limitations to addressing the improvement works, there has been no significant progress made to address the condition and the owner outlined during the Hearing that there is nothing more that he can do with the property to fully render it non-derelict.
- 8.30. 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 from the owner outlining in detail what would or would not be required at this point as a starting point to enable the removal of the beams. 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.

- 8.31. 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 degree of interconnectivity with the adjoining property, No.8, subject of a similar application from the Local Authority to acquire the property compulsorily (ABP Ref. 302091-18).
- 8.32. 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 at No.10 Ferguson Road be granted.

9.0 Recommendation

- 9.1. Having regard to the observed condition of lands at No.10 Ferguson Road, Drumcondra, Dublin 9, due to (b) 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 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 Dublin City Council to compulsorily acquire the site.

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