



An  
Bord  
Pleanála

## Inspector's Report ABP-307451-20

### **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**

Wolfe Tone Street, Kilmallock, Co. Limerick

### **Local Authority**

Limerick City and County Council

### **Notice Party**

John O'Reilly

### **Date of Site Inspection**

16th September 2020

### **Inspector**

Fergal O'Bric

## 1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Wolfe Tone Street, Kilmallock, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. Kilmallock is located circa nine kilometres north-east of Charleville, circa seven kilometres south-east of Bruree and circa thirty kilometres north-west of Mitchelstown. The town is on the regional route, the R518, that connects the M8 at Mitchelstown with the N20, near Bruree. The town is located north-west of the scenic Ballyhoura area, which is popular for its walking trails. It is a market town, has a school, a church, a number of local shops and offices, a business park, and a number of local amenities, including a GAA pavilion and pitch.
- 2.2. The site is centrally located within the town, on the western side of Wolfe Tone Street. The site is part of a row of eight residential cottages, with six to its north which are in a good state of repair and well maintained and the current site and one other structure to its south having their roofs missing and in a poor state of repair. There is a row of detached houses on the opposite (eastern) side of the street with a number of older vacant stone commercial buildings directly opposite the current site. The site in question comprises the remains of a single storey dwelling house, north of the junction of Wolfe Tone Street and Sarsfield Street (Main street) within the town. The site has a stated area of one hundred square metres. It is described in the Section 15 notice as: A former cottage and that the said property and surrounding land is in a state of dereliction.
- 2.3. The remains of the structure are single storey with a smooth render painted finish, no roof remains, the timbers and slates are no longer in place. The structure fronts directly onto the street, with a 1.5 metre footpath along its frontage. The rear garden space is long and narrow, with a two-metre wall on each side (north and south) and open to the rear.

2.4. On the date of my site inspection, the property was secure with the two windows and front door facing onto the street boarded up. There are no internal walls remaining, and the rear wall is no longer in situ. Some of the render has fallen from the front façade. The fascia, soffits and downpipes were also missing.

### **3.0 Application for Consent for Acquisition**

3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under Sections 14-16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under Section 29 on the 3<sup>rd</sup> day of October 2018, under Section 8(2), on 17<sup>th</sup> day of July 2019, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on 17<sup>th</sup> day of October 2019, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites) and under Section 15(10)) (a), a notice of intention to acquire derelict site compulsorily under the Derelict Site Act, 1990 on the 12<sup>th</sup> day of March 2020.

### **4.0 Application and Objection**

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

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owner (John O'Reilly) in letters dated 12<sup>th</sup> day of March 2020 and was published in the Limerick Leader newspaper on the 14<sup>th</sup> day of March 2020. The site was described as follows in the notices:

- A derelict site comprising of a former cottage at Wolfe Tone Street, Kilmallock, Co. Limerick. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-122-18 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

4.1.2. I consider that the notices were in accordance with the requirements of section 15(1)(a) of the Derelict Sites Act 1990, as amended.

## 4.2. **Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by Mr Eamon Cronin, Building Surveyor, on behalf of John O'Reilly in a letter dated 14<sup>th</sup> day of April 2020. The objection can be summarised as follows:

- Mr Cronin outlined that Mr O'Reilly wished to object to the compulsory acquisition of his property, that the property had been in the O'Reilly family for three generations. It is stated that John O'Reilly is the current owner, having been given the property by his late father, Mr. Paddy O'Reilly.
- It is stated that it is John O'Reilly's intention to renovate the property in the coming months to make a home for one of his children. A representative of Limerick City and County Council met with John O'Reilly at the property in July 2019 where Mr O'Reilly outlined his intentions at that meeting.
- The property owner is seeking that Limerick City and County Council abort their intention to acquire this family owned property.

4.2.2. No further correspondence was received from Mr O'Reilly nor his agent, and neither has the Local Authority received confirmation of ownership from Mr O'Reilly's legal representatives.

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

4.3.1. The Local Authority requests the consent of the Board for the compulsory acquisition of the derelict site. The application for consent was submitted on the 1<sup>st</sup> day of July 2020 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the Planning Authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection. The report included photographs and a map of the site and area.
- Copy of the notice served on the owner of the site, dated 12<sup>th</sup> day of March 2020.
- Copy of the newspaper notice, dated 14<sup>th</sup> day of March 2020.

- Copy of objection made by Eamon Cronin, Building Surveyor, on behalf of Mr. O'Reilly, dated 14<sup>th</sup> day of April 2020.
- Letter of confirmation issued by the Local Authority, dated 17<sup>th</sup> day of April 2020, acknowledging receipt of objection to the proposed compulsory acquisition of the derelict site on Wolfe Tone Street. The letter advises the property owner of the Local Authority's intention to make an application to An Bord Pleanála for the compulsory acquisition of the said site.

4.3.2. The derelict site report prepared by the Local Authority can be summarised as follows:

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.
- The property is centrally located within the town and within walking distance of local services and amenities.
- The house is currently in a poor and derelict condition. The roof has been removed, there are no windows in the property, no doors nor internal walls. It is clear from the photographic evidence that the property is in a ruinous and derelict condition. The property is detracting from the surrounding areas.
- It is stated that the adjoining property to the left (south) is sale agreed to an adjoining property owner on Orr Street.
- The Local Authority issued a Section 29 notice on the 3<sup>rd</sup> day of October 2018 to establish ownership of the property. The Local Authority issued a Section 8(2) notice on the 17<sup>th</sup> day of July 2019 of its intention to enter the property onto the Register of Derelict Sites and a Section 8(7) notice on the

17<sup>th</sup> day of October 2019 to advise that the property had been entered onto the register.

- In the absence of any response to the enquiries and notice to establish ownership, the Local Authority considered the property to be a derelict site. It was decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990, on the 12<sup>th</sup> day of March 2020.
- An objection to this notice was submitted by Eamon Cronin, Architectural Design and Planning, on behalf of John O'Reilly. This correspondence stated that it is Mr O'Reilly's intention to renovate the property in the coming months to make a home for one of his children.
- The Local Authority intends to pursue the compulsory acquisition of the derelict site.

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

None received.

### **5.0 Planning History**

#### **5.1. Application Site**

5.1.1. I am not aware of any relevant planning history on the site.

#### **5.2. Surrounding Area**

5.2.1. I am not aware of any recent relevant planning history in the surrounding area.

### **6.0 Policy Context**

#### **6.1. Development Plan**

6.1.1. The applicable Development Plan is the Limerick County Development Plan 2010 – 2016 (as extended). Chapter 3 of the Plan sets out the Settlement Strategy. Kilmallock is identified as a Tier 2 – Key Town in the Settlement Hierarchy (Section 3.1). Tier 2 settlements are identified as key service centres. The overall strategy for

the town is to strengthen the settlement pattern and act as a driver of development and significant providers of services within its sub-region,

6.1.2. The Development Plan also seeks to encourage development to locate within the development envelope of towns and villages. Relevant policies include SSP2 which seeks to support sustainable development of the settlements in Tier 2-6 settlements and SSP3 which states that it is the policy of the Council to be pro-active in acquiring land and providing services and sites within small towns and villages as a means of stimulating a shift towards development within these areas.

6.1.3. Chapter 4 sets out the policies and objectives relating to housing. Section 4.8 relates to Regeneration of Vacant and Derelict Sites. Relevant objectives are as follows:

**HOU O17** – to use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.

**HOU O18** – to promote the re-utilisation of suitable redundant or obsolete structures in appropriate cases.

6.2. The Regional Spatial and Economic Strategy (RSES) for the Southern Region does not specifically identify Kilmallock within its settlement hierarchy structure, however it would fall within the Rural town and villages category where the following is set out :

Decline and dereliction are key issues facing towns

The RSES aims to strengthen the Region's urban and rural fabric by supporting vibrant towns and villages. Investment will be sought for infrastructure and refurbishment initiatives to support the economic, administrative and social functions of these settlements.

### 6.3. **Derelict Sites Act 1990 (as amended)**

6.3.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

6.3.2. Section 3 of the Act defines 'derelict site' as:

“any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict, or dangerous condition, or

(b) the neglected, unsightly, or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.”

6.3.3. Section 8 of the Act requires local authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so. Section 9 places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site. Section 10 places a similar duty on local authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site. Section 11 of the Act enables local authorities to serve a notice on an owner or occupier of land, requiring them to take specified measures to prevent land becoming or continuing to be a derelict site. Section 14 provides that a local authority may acquire by agreement or compulsorily any derelict site situated in their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.



## 7.0 Assessment

- 7.1. Internal access to the house was not possible on the date of my site inspection. However, I carried out my site inspection from the public street which the house fronts onto.
- 7.2. The house is vacant and has a ruinous and derelict appearance from the public street and the surrounding area, largely a residential one. This is because the render is falling off the front façade, the roof is no longer in place, internal walls are gone. as is the rear rising wall, and the fascia, soffits and downpipes are missing.
- 7.3. The appeal site is located within a terrace of dwelling houses. The dwelling houses in the surrounding area, particularly to the north of the site are well maintained and occupied, and the street in general has an attractive appearance. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding residential area and the town.
- 7.4. Apart from the render coming away at the front and the missing roof, the house is in poor repair and structural condition, given that it has been fully exposed to the elements since the roof has been removed.
- 7.5. Having regard to the above, I would consider that the site falls within category (a) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a ruinous, derelict, or dangerous condition. Having inspected the site, and from the photographic evidence, I consider that the structure is in a ruinous and derelict condition, given its roof has been removed, as have the windows and doors (now boarded up). With regard to category (b), this relates to structures which are in a neglected, unsightly, or objectionable condition. I do not consider that the structure would fall within this category, given the windows, doors internal walls, rear wall and roof have been removed and therefore it is considered that the structure is now beyond the neglected, unsightly and objectionable condition, therefore, would not be considered to fall within category (b) of the Act. There was no evidence of litter, rubbish, debris, or waste having been deposited within the application site. It is therefore, not considered, that the site would fall within category (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the

amenity, character, and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.

- 7.6. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on the 17<sup>th</sup> day of July 2019, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the 17<sup>th</sup> day of October 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 12<sup>th</sup> day of March 2020 and published in the Limerick Leader Newspaper on the 14<sup>th</sup> day of March 2020 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.7. I note the objection made on behalf of Mr John O 'Reilly on the 14<sup>th</sup> day of April 2020 to the proposed acquisition of the site, stating his intention to renovate the property to make a home for one of his children. I also note that the property has been secured by the boarding up of the two windows and door to the street frontage. No renovation or maintenance works have been carried out to the structure or within the site. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the house remains in a ruinous and derelict state. I therefore consider that the site remains in a derelict and ruinous condition.
- 7.8. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, which as stated constitutes a derelict site, I consider that it is appropriate that the Local Authority's application for consent to compulsorily acquire the site at Wolfe Tone Street, Kilmallock, Co. Limerick is granted.

## 8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the ruinous and derelict state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is, therefore, a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.

8.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board grant consent to Limerick City and County Council to compulsorily acquire the site.

## 9.0 **Reasons and Considerations**

9.1. Having regard to the ruinous and derelict 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 (a) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

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Fergal Ó Bric

Planning Inspectorate

2nd October 2020