



An  
Bord  
Pleanála

## Inspector's Report ABP-307499-20

### **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**

Main Street, Ballingarry, Co. Limerick

### **Local Authority**

Limerick City and County Council

### **Notice Party**

Sheila O'Connell

### **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 Main Street, Ballingarry, Co. Limerick, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. Ballingarry is a village on the R518, which links the N21 at Adare with the N20, west of Bruree. The village has a church, a school, a Country House Hotel, a supermarket and a number of local amenities. Ballingarry is located circa thirteen kilometres to the south of Adare, circa nine kilometres to the south-east of Rathkeale and circa seventeen kilometres east of Newcastlewest.
- 2.2. The site is centrally located in the village, to the north of the Main Street, part of the R518. There is a laneway immediately north of the structures from which it is possible to access the rear garden space of the site. There are a couple of residential dwellings, a health centre and cemetery on the opposite side of the street. The site in question is a corner site, at a junction of the Main Street and a local cul-de-sac laneway which accesses the rear of a number of properties that front onto the Main Street and the ruins of De Lacy Castle. The site has a stated area of 0.087 hectares, and it is described in the notice as two, two storey residential properties. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. The houses are two-storey with a smooth render and painted finish, and a double-gable, pitched, slated roof. To the rear of the properties are a two-storey pitched roof return and a single-storey return. The properties front directly onto the street, there is a two-metre footpath fronting the properties onto the street. The rear garden area is overgrown with several mature trees and shrubs within this space. There is an outbuilding in the rear garden which is adjacent to the northern boundary.
- 2.4. On the date of my site inspection, the properties were secure with some of the windows facing onto the street, and on the side elevation onto the local laneway boarded up and some windows still intact. There were a number of sale agreed/for sale auctioneer signs on the property. There was significant growth of weeds and

moss on the front roof slope of the property second from the end of terrace and a number of slates missing from the rear roof slope of both structures. The roof was sagging within the property second from the end of the terrace. Several sections of the fascia, soffits and downpipes were broken or missing. The rear garden area, boundaries and the existing hedges and trees were overgrown and in need of maintenance.

### **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 Section 14-16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the preparation and serving of notices under section 8(2), on 2<sup>nd</sup> day of June 2017, (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 9<sup>th</sup> day of February 2018, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites) and 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 (Sheila O'Connell) in letters dated 12th 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 two, two-storey residential properties at Ballingarry, Co. Limerick. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-078-17 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 Sheila O'Connell (using the e-mail address of her daughter Ann-Marie) in an e-mail dated 15<sup>th</sup> April 2020. The objection can be summarised as follows:

- That the objector has worked hard to ally herself with the Local Authority to secure the future of the property. She has applied for loans, grants and attended pre-planning consultations and offered her own money in an effort to develop the property in accordance with the Re-building Ireland schemes.
- The Local Authority have not shown much interest in acknowledging the objector's efforts.
- She is of the opinion that her property is being targeted by the Local Authority, even though the property not being in the worst state on its street.
- The Objector has been working with a number of officials within the Local Authority where she states that she received assurances that the property would not be placed on the Derelict Sites Register, especially given the property was for sale on the open market.
- The Local Authority did not work with any of the potential purchasers. The potential purchasers walked away citing unreasonable planning restrictions being set out by the Local Authority.
- The property was then placed on the Derelict Sites Register, even though the Local Authority stated that this would not happen,
- The objectors have reached another sale agreed with another potential purchaser and have the back-up plan of a property auction slot, if the sale falls through.
- Being placed on the register, means the potential purchaser cannot access development funds.

- The potential purchaser is seeking to renovate the properties and therefore should not fall foul of planning restrictions.
- The Local Authority did not make contact with the owners of the property in advance of issuing the notices.
- The Local Authority know who the owners of the properties are and have their contact details.
- As the owner of the properties, they have a right to seek a fair price on the open market and have been making genuine attempts to do so.

4.2.2. Further correspondence was submitted, in the form of a series of emails between the Planning Authority and Anne-Marie O'Connell, on behalf of Sheila O'Connell (dated June 2020), seeking a delay on the proceedings, on the basis of claims that the property owners had secured purchasers for the property and objecting to the compulsory purchase of the property.

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

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 6<sup>th</sup> day 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 area.
- Copy of the notices served on the owners/occupiers 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 e-mailed objections (three e-mails) submitted by Ann-Marie & Sheila O'Connell, dated 15<sup>th</sup> day of April 2020 and two e-mails of the 26<sup>th</sup> day of June 2020.
- Copy of Valuation Proforma Report prepared by Power & Associates, Property Consultants on behalf of Limerick City and County Council.

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 area 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 village, to the north of the Main Street and within walking distance of local businesses and amenities.
- The houses are currently unoccupied and have been derelict for a number of years. There are slates missing from the rear roof slope, there is sagging on the front roof slope, as well a growth of weeds and moss on the property second from the end of the terrace, the render is falling off, the fascia, soffits and downpipes are broken/missing. The rear extensions are in need of repair.
- The rear garden area is overgrown and makes access to the rear of the property difficult.
- Efforts were made by the Local Authority to establish who was responsible for the property, as the original owner was deceased, but subsequently ownership of the property was confirmed as being that of Sheila O'Connell.
- The Local Authority issued a Section 8(2) notice on the 2<sup>nd</sup> day of June 2017 of its intention to enter the property onto the Register of Derelict Sites and a Section 8(7) notice on the 9<sup>th</sup> day of February 2018, to advise that that the property had been entered onto the register.
- In May 2017, a Section 29 Notice was served to Anne Marie O'Connell's contact address in the UK and another notice affixed on the property in an effort to establish ownership. Following this, it was confirmed that Sheila O'Connell was the owner of the property.

- Ann-Marie O’Connell, acting on behalf of her mother, Sheila, was advised of the remedial measures required to take the property out of dereliction.
- An Official from the Local Authority’s Buy and Renew Team inspected the property and a financial offer to purchase the property was made to Ms. O’Connell, which was rejected, as she was expecting a higher offer. The property was valued by an independent valuer on behalf of the Local Authority. A copy of the valuation report is included on the file.
- In the absence of any progress in terms of renovation of the property, 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, in March 2020.
- An objection to this notice was submitted by Sheila O’Connell. The contents of the objection are set out within Section 4.2.1 above.
- The Local Authority intends to pursue the compulsory acquisition of the derelict site.

#### **4.4. Objector’s Submission**

- 4.4.1. A detailed submission was made to the Board by Sheila & Ann-Marie O’Connell on 27<sup>th</sup> day of August 2020 in response to the Section 15 Notice. The objectors state that a number of procedural short comings were evident in the approach adopted by the Local Authority, in that the Valuation report was prepared in advance of the property being placed onto the Derelict Sites Register which is contrary to the provisions of Part 111, Section 22(1) of the Derelict Site Act 1990, and also contrary to the provisions of Part 11, Section 8 (1) (e) in relation to including particulars of the market value of the property on the Derelict Site Register, maintained at the offices of the Local Authority. Under Part 111, Section 22 (e) owners of properties should be formally notified of valuations through the application of the Derelict Sites Act.
- 4.4.2. That the valuation of the property should be presented as a single whole figure, rather than a range The Local Authority have been dismissive towards the objector and acted in a coercive manner and that the procedures set out in the Derelict Sites Act have not been respected..

- 4.4.3. The objector's daughter, who acts on the objector's behalf, has been working with the Local Authority in attempting to improve the property. It is stated that the Local Authority sent a number of the Derelict Sites notices to an address in the UK, in spite of being informed that her address is in Ballingarry. The Local Authority were aware that Sheila O'Connell became the full and rightful owner of the property in May 2019, following the completion of the probate process.
- 4.4.4. On the notice to enter the site onto the Derelict Sites Register, (Appendix 4) the wrong address and owner details were included, even though the Local Authority knew otherwise.
- 4.4.5. The Local Authority were aware that Ann-Marie O'Connell was not the rightful owner of the property, yet they addressed correspondence to her as if she was the rightful owner.
- 4.4.6. That the Local Authority have used different maps associated with the Notice of Entry from the maps associated with the notice of intention to enter the site onto the derelict sites register.
- 4.4.7. The O'Connell's had been in constant communication with the Local Authority with regard to getting some works completed within the properties under the Rebuilding Ireland programme. Under that programme, there were options for Repair and Lease scheme and Buy and Renew schemes, but the Local Authority did not actively pursue these avenues and always had the intention of pursuing the Derelict Sites route to acquire the property at a low value.
- 4.4.8. The Local Authority decided of their own accord to pursue the buy and renew option rather than the lease and repair scheme, followed by a rushed issuing of notices under the Derelict sites legislation, not a prolonged discrete interaction, seeking solutions.
- 4.4.9. The objectors were denied the right of viewing the buy and renew report. Information has been withheld by the Local Authority and used against the objectors where possible.
- 4.4.10. The objectors sought a copy of the Valuation Report, prepared by Powers, under a Freedom of Information (FOI) request.



- 4.4.11. The Powers Valuation Report was issued to the objectors with the valuation figure redacted, and the objector is of the opinion that the valuation figure at that time was higher than the valuation range set out within the Powers Report dated May 2017, but had been lowered at the behest of the Local Authority. The Local Authority's submission to the Board is the first time that the objectors have had access to the Valuation Report in full.
- 4.4.12. The objectors had been assured that while the property was on the open market that it would not be entered onto the Derelict Sites Register, as that would have frustrated any sale, which it has.
- 4.4.13. The Local Authority were far from forthright with the objectors and instead of engaging with the Local Authority, the objectors should have proceeded with a sale of the property. The Local Authority stated that it was the objectors who rejected the financial offer from them, yet the Local Authority state that the Compulsory Purchase tool is one of last resort, their actions would not support this claim.
- 4.4.14. The offer (verbal) from the Local Authority to purchase the property was well below the estimated market value placed on it by two local auctioneers and therefore the objectors chose not to accept their offer to put the property for sale on the open market.
- 4.4.15. There is nothing set out within the Derelict sites legislation that denies property owners the right to sell their property on the open market.
- 4.4.16. The objectors have not been afforded sufficient time (eighteen months) to dispose of their property.
- 4.4.17. Their property moved from the entry on the derelict sites register stage to compulsory purchase stage quicker than a lot of properties on the Local Authority's register (see Appendix 12).
- 4.4.18. The Local Authority have interfered in potential sales of the property citing the Derelict Sites legislation as a legal pretext.
- 4.4.19. The objectors had interest from a potential buyer in March 2020, and their auctioneer was informed by a Local Authority official that the property was subject to the Derelict sites process and could not be sold on the open market, however the

objector understands that only a completed Compulsory Purchase Order (CPO) and vesting order could prevent a sale on the open market.

4.4.20. The Local Authority can pause the CPO process pending a sale on the open market if they choose to do so, however the Local Authority have chosen to impede a sale on the open market.

4.4.21. The Local Authority seem to apply the derelict sites legislation in a biased and unsatisfactory manner,

4.4.22. Another offer for the property was received in May 2020, which was accepted by the property owner, a copy of the deposit is included within Appendix 15 and it is hoped to close the deal by late August. The Local Authority have also been informed of the impending sale.

4.4.23. The Local Authority have resisted all calls from the objectors.

## **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. Chapter 3 of the Plan sets out the settlement strategy. Ballingarry is designated as a Tier 4 – Town and Village in the Settlement Hierarchy (3.1). the overall strategy is 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 Tiers 2-6 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.

Tier 4 Settlements are described as smaller settlements with limited essential infrastructure and services. Policy SSP09 seeks to facilitate sustainable development of tier 4 settlements and to ensure that they retain their rural character.

6.1.2. 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. **Derelict Sites Act 1990 (as amended)**

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

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

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

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

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

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

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

## 7.0 **Assessment**

- 7.1. 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 road, from the adjoining laneway to the north and from within the rear garden space of the house.
- 7.2. The houses are vacant and have a neglected, unsightly and objectionable appearance from the public road and the surrounding residential area. This is because the render is falling off the front façade, the roof on the property second from the end of the terrace is sagging. There is growth of weeds and moss on the roof and in the vicinity of the chimney and rainwater goods areas, is in a very poor state of repair with slates and ridge tiles missing, and the fascia, soffits and downpipes are broken or missing. The rear extensions are also in need of repair. The rear garden space is heavily overgrown, is growing out of control, and makes access a difficulty.
- 7.3. The properties are situated at the end of a row of terraced dwelling houses on the Main Street, Ballingarry , opposite a health centre, cemetery and a number of

dwelling houses, The dwelling houses in the surrounding residential area appear to be well maintained and occupied, and the village in general has an attractive appearance and the public realm is well cared for. 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 village.

- 7.4. Apart from the missing roof slates, the growth of weeds on the roof and the sagging of one of the roofs, the houses appear to be in reasonable structural condition externally. There is no obvious evidence of significant cracking or additional damage to the external walls, and the roof appears to be generally intact. Some of the window and door openings are fitted with Upvc windows and doors generally appear to be intact, a number of the windows in the property are boarded up.
- 7.5. Having regard to the above, I would consider that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. With regard to category (a), this relates to structures which are in a ruinous, derelict or dangerous condition. Having inspected the site, I do not consider that there is any apparent evidence that the property is in a dangerous condition, or that it could be considered ruinous, as it appears to have a reasonably intact roof and external walls. There was no litter within the site, or any evidence of waste being stored externally. It is not considered, therefore, that the site falls 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 2<sup>nd</sup> day of June 2017, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 9<sup>th</sup> day of February 2018, 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 detailed submission made by Ann-Marie & Sheila O'Connell to the Board on the 27<sup>th</sup> day of August 2020, in addition to copies of correspondence between the land owner and the Local Authority to the proposed acquisition of the site, stating that the property forms part of the family holding and that they are seeking a fair price for the property on the open market. It is acknowledged that the landowners do appear to have taken some steps in terms of disposing of the property, however these efforts appear to have been in vain. There also appears to be number of short comings in the processes adopted by the Local Authority in terms of the requirements set out under the Derelict sites legislation, in terms of a placing a valuation on the property once the property has been entered onto the Derelict sites Register and that the owners of the property should have been notified of that valuation, in accordance with Sections 8 and 22 of the Derelict Sites Act, 1990
- 7.8. However, these matters are an aside from the fact that the property is considered to be in a neglected, unsightly and objectionable condition that detracts from the character and appearance of the Main Street. There is no evidence that the property owners have taken any steps to improve the neglected condition of the property. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the house remains in a neglected and unsightly condition and the gardens are still overgrown. I therefore consider that the site remains in a derelict condition.
- 7.9. 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 Main Street, Ballingarry, Co. Limerick is granted.

## 8.0 Recommendation

- 8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable 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 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.

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Fergal Ó Bric

Planning Inspectorate

5<sup>th</sup> October 2020