



An  
Bord  
Pleanála

## Inspector's Report ABP-309031-20

---

### 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

Lower Main Street, Rathkeale, Co. Limerick

### Local Authority

Limerick City and County Council

### Notice Party

Patrick Sheridan

### Date of Site Inspections

19<sup>th</sup> March 2021

### Inspector

Mary Kennelly

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

## 2.0 Site Location and Description

- 2.1. Rathkeale is a small town with a population of c.1,500, which is situated approx. 30km to the southwest of Limerick City. The town is located off the N21, which is the main road to Tralee/Killarney. The town includes a range of shopping and commercial facilities as well as several schools, churches, a cinema and a number of housing estates. The site is located at the western end of Main Street, to the west of the junction with the Ballingarry road (R518). This part of Main Street is at the edge of the commercial section with mainly residential properties and a few commercial ones such as office, a hotel and a medical practice.
- 2.2. The site is an attached two-storey house with a pitched tile roof. There is a single storey building to the east of the site which is in community use and to the east of that is a three-storey building in use as a solicitor's office. It is attached on its western side to an attractive rendered building which dates from 1820, which is listed on the NIAH Register, and is also in a derelict state. This adjoining terraced house is also the subject of a CPO which is before the Board (ABP.309028-20 P.A. Ref. DS065-16). Further to the west are two residential properties, one of which is a Protected Structure, which appears to be in a poor state of repair. The RPS Ref 1575 states that the render was not intended to be removed and that the windows have been enlarged. Beyond the PS is an entrance to the backland site and a further terrace of three houses. On the opposite side of the street, there is a row of 5 attached 2-storey buildings, most of which appear to be occupied as houses but one of which had been partly demolished and is a construction site.
- 2.3. On the date of my site inspection, (19/03/21), the property was secure with the front door and ground floor windows screwed shut. I was unable to gain access to the interior of the house or to the rear garden. However, I was able to view part of the

interior through the ground floor front windows and the garden and rear walls through the rear windows of the adjoining property to the west.

- 2.4. The front façade is rendered and painted on the ground floor and tiled on the first floor. The rear of the property is exposed with building rubble stored behind the dwelling. The front facade appears to be in reasonably good condition apart from the tile cladding which is showing signs of weathering. The paint on the front door and walls is flaking off and one window was broken or covered with a material that was peeling off. There was moss growing on the roof tiles and vegetation growing out of the gutters. Vegetation was growing out of the chimney. The downpipes were either broken or missing. The rear of the property is in a very neglected and exposed state with broken doors and windows and part of the rear wall is missing. The rear annexe appears to have been demolished and the building is exposed to the elements. Much of the rear yard was covered in rubble and debris with a large mound of rubble behind the house. This was evident from both the front (through the front window) and the rear (through the rear windows of the adjoining property).

### **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 serving of notices under section 8(2), on 15<sup>th</sup> 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 15<sup>th</sup> September 2019, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites).

### **4.0 Application and Objection**

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

- 4.2. Notice of Limerick City and County Council's intention to acquire the site compulsorily was issued on 20<sup>th</sup> October 2020 and was published in the Limerick Post newspaper on the 31<sup>st</sup> of October 2020.

- 4.2.1. The site was described as follows in the notices:

- A derelict site comprising of a Derelict Residential property at Lower Main Street, Rathkeale, 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-068-19 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

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

#### 4.3. **Objection to Acquisition**

4.3.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by William O'Donnell solicitors on behalf of the owner on 30<sup>th</sup> November 2020. The objection can be summarised as follows:

- The owner, Patrick Sheridan, acquired an interest in this property in 2012 and it was his intention at the time to renovate it for the purpose of occupation as a family home. To this end, he constructed an extension and carried out alterations to the rear in the belief that these works were exempt from planning permission. However, as the property is situated in Rathkeale ACA, they are not exempt and were discontinued at the request of LCCC.
- A planning application was submitted (Reg. Ref.12/1016) for retention and completion of works but was subsequently deemed withdrawn due to overly onerous requirements arising from a further information request. The property remained exposed due to the cessation of works and was vandalised as it could not be made secure without completion of at least some of the works.
- Since then, the owner has been employed abroad and currently lives in France. This has made it difficult for him to deal with his affairs in Rathkeale.
- The owner is fully intent on bringing the property back into use to the satisfaction of Limerick City & County Council. He had applied to the L.A. for funding under the Built Heritage Investment Scheme 2020, following a meeting with the Conservation Officer to assess the works required to reinstate the house, but funding was not approved for the works. However, he

has arranged for works to be carried out on foot of Notices from LCCC including the replacement of windows and painting the property.

- Due to the Covid-19 restrictions the owner has not been in a position to return home to renovate the property. He fully intends to reinstate the property as soon as it is practical to do so having regard to the current restrictions and economic climate.

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

4.4.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 21<sup>st</sup> December 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, dated 20<sup>th</sup> October 2020.
- Copy of the newspaper notice, dated 31<sup>st</sup> October 2020.
- Copy of objection made by William O'Donnell Solicitors on behalf of Patrick Sheridan, dated 27<sup>th</sup> November 2020 (received by local authority on 30<sup>th</sup> November 2020).

4.4.2. The derelict site report 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.

- Owners of sites are provided with advice in relation to schemes such as Buy & Renew, Lease & Repair and the Council's own Retail and Business Incentive Scheme. The P.A. takes relevant matters into account when making its decision to compulsorily acquire a particular site such as any outstanding planning permissions, evidence of efforts to address vacancy and dereliction, and the security and safety to the public and the condition of the site. In addition, matters such as the conservation value of the site and requirements for remedial restoration works are considered as well as the feasibility of various actions to make good the site, and to find viable uses for it. Staff seek to support owners in order to remove the properties from the Derelict Sites Register, but where all reasonable alternatives have been exhausted, it is stated that the option to compulsorily acquire the site will be considered.
- The property is located in the centre of the town on the main street, with terraced properties on either side of the street. It is an attached, two-storey residential property with a pitched tile roof. The rear of the property is exposed with building rubble on the ground. This residential two storey mid-terraced property is vacant and has been in a derelict condition for a considerable period of time.
- The property has an unsightly appearance, which detracts from the local area. The front door requires maintenance and paint is flaking off from the lower floor of the building. The upper storey has a cladding material showing signs of weathering. The windows have been broken at different periods. It detracts from the adjoining community building which is well used by the public and is across the way from the busy GP surgery of the local doctor. The rear of the property is unsecured. It is in an exposed state and shows the evidence of attempted alterations. The land has a large amount of rubble and debris piled on disturbed ground.
- It was first brought to the attention of the Local Authority in July 2019, at which point a Derelict Site case was opened, DS-068-19. Land Registry and planning searches were carried out in an attempt to establish ownership.

- The Local Authority decided to issue a Section 8(2) notice on 15<sup>th</sup> July 2019 of its intention to enter the property onto the Register of Derelict Sites. There was no engagement from this.
- Following a further inspection in September 2019, it was the opinion of the inspecting officer that the property was still in a derelict condition. A Section 8(7) Notice was issued on 15<sup>th</sup> September 2019 stating that the particulars of the land had been entered into the Derelict Site Register.
- In early 2020, the owner made an application to the Built Heritage Investment Scheme from the Dept. of Culture, Heritage and the Gaeltacht in respect of the front door and windows in the property. This application was not successful.
- Following a further inspection in October 2020, it was deemed that no effort had been made to address the dereliction since the case opened in 2019. It was decided to issue a Section 15 Notice of intention to acquire the property compulsorily under the Derelict Sites Act 1990 on the 20<sup>th</sup> of October 2020.
- An objection to the Section 15 notice was submitted by William O'Donnell Solicitors on behalf of the owner on 30<sup>th</sup> November 2020.
- The Local Authority intends to pursue the compulsory acquisition of the derelict site. It is considered that the property has been in a derelict condition for a considerable length of time and that the L.A has received numerous complaints in respect of its derelict state from the local community, local councillors and Rathkeale Community Council. The property is in a very poor condition with the rear of it exposed and a large amount of rubble present. It is considered that substantial works are required to take it out of dereliction. Historical photographic evidence has been included which shows the nature of the dereliction between 2016 and 2020. The dereliction is evident from the street and from the rear.

#### 4.5. Objector's Submission

4.5.1. A submission was made to the Board by William O'Donnell Solicitors on 28<sup>th</sup> January 2021 in response to the Section 15 Notice. The main points may be summarised as follows:

- In the original submission pursuant to Section 16 of the Act it had been advised that the owner fully intends to reinstate the property, which remains the case. Mr. Sheridan still resides in France and is unable to return at this time due to travel restrictions and health precautions and is unable to commence reconstruction work due to Government restrictions.
- Mr. Sheridan is happy to commence reconstruction works as soon as is allowed under Government restrictions. To this end he has engaged the services of Eco Construction Ltd. as outlined in the quote attached to the submission, confirming the cost of the reinstatement of the property.
- The owner has also engaged with the planning authority and has sought confirmation that the proposed reinstatement of the rear extension does not require any further planning permission, having regard to its location in an Architectural Conservation Area. A copy of correspondence regarding the unsuccessful application for grant funding is attached.
- Due to the covid-19 restrictions, many facets of life have been put on hold. For example, there is presently a restriction on evictions on Residential Tenancies even where there are arrears of rent causing substantial financial hardship to Landlords. In a similar vein, there should be a restriction on Compulsory Purchase Orders where it is not possible for property owners to carry out works due to travel restrictions and government restrictions.

4.5.2. Enclosures include letters from LCCC Conservation Officer regarding application for grant funding for windows, Quotation from Eco Construction for cost of renovation works to property dated November 2020.

4.5.3. No further correspondence has been submitted.



## 5.0 Planning History

### 5.1. Application Site

- 5.1.1. I am not aware of any relevant planning history on the site. However, an application for retention of development was submitted in 2012 and was withdrawn prior to determination. The planning authority has advised that there are two enforcement cases relating to unauthorised works within 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. Limerick County Development Plan 2010-2016 (as extended)

- 6.1.1. The applicable Chapter 3 of the County Development Plan sets out the settlement strategy. Rathkeale is designated as a **Tier 3 – Centres on Transport Corridors** 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.
- 6.1.2. Tier 3 Settlements are described as centres on transport corridors which will be promoted as secondary settlement centres for significant future development. Policy **SSP8** seeks to encourage and facilitate sustainable balanced development within these settlements and to ensure that they act as the primary focus for investment in infrastructure, housing, transport, employment, education, shopping, health facilities and community.
- 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 017** – to use its powers under the Derelict Sites Act to acquire and secure the redevelopment of derelict sites.

**HOU 018** – to promote the re-utilisation of suitable redundant or obsolete structures in appropriate cases.

## 6.2. Rathkeale Local Area Plan 2012-2018 (as extended)

6.2.1. The site is zoned **Existing Residential**, the objective for which is “To ensure that new development is compatible with adjacent uses and protect the amenity of existing residential areas.” It is also located within the Architectural Conservation Area.

6.2.2. Relevant policies –

**Section 10.2 – Derelict and Vacant Sites** – it is stated that there are 11 buildings/sites in Rathkeale Town on the Derelicts Sites Register. It is stated that the Council will fully enact its powers under the Derelict Sites Act and process all derelict sites expeditiously.

**Objective EH1: Architectural Conservation Area** – to protect, conserve and enhance the ACA as identified in Map 3. Proposals must respect the scale and form of the existing structures within the ACA and seek to contribute to or enhance the character and streetscape of the ACA. It is also required that proposals seek to retain/incorporate/replicate exterior features which enhance the character and streetscape of the ACA such as sash windows, gutters, downpipes, decorative plasterwork etc.

## 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.

6.3.4. 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 in March 2021. However, there are photographs on the file which indicate the condition of the rear of the building, and I was able to view part of the back garden from the rear rooms of the house next door.
- 7.2. The house is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area. This is due to the fact that the windows are damaged or covered up and the front door is in need of maintenance. The paint is peeling off the walls and front door. The roof is in a poor condition with moss growing on it. Vegetation is growing out of the gutters and bits of the downpipes are either broken or missing. The interior of the building is in a poor state of repair which can be seen from the street, through the front window.
- 7.3. The rear garden is in an unkempt state with debris, waste materials and a mound of rubble stored there. A substantial part of the rear wall is missing and is exposed to the elements. The property is not secured from the rear. Thus, the building is open to the elements, particularly at the rear and is likely to be in a continual state of decline.
- 7.4. The building is located within the Architectural Conservation Area for Rathkeale. It is also attached to a National Inventory of Architectural Heritage (Reg No. 21831009) listed property, which is described in the NIAH appraisal as a building which makes a significant impact on the streetscape of Rathkeale. There is a Protected Structure at the western end of the terrace, three properties to the west.
- 7.5. Rathkeale LAP attaches great significance to the historical importance and special character of the town, to which its many buildings, including Protected Structures and proposed Protected Structures, have contributed greatly. Policy Objectives EH1 and EH2 seek to protect and conserve such structures, to encourage their re-use and restoration and where appropriate, to enhance the character of the ACA. Reference is made in EH1 to the importance of the use of materials and finishes, features such as sash windows, gutters, downpipes and decorative plasterwork. Reference is made in EH2 to the need to avoid demolition, in whole or in part, and to removal or modification of features of architectural importance.

- 7.6. It is considered that the siting of the building within an ACA underlines the need to arrest the decline and any further deterioration in the condition of the building, which could lead to the loss of further historic fabric or features of architectural interest, or to the partial demolition of the structure. The unsightly condition and poor maintenance of the site and surroundings detracts from the character of the building and of the character and streetscape of the Architectural Conservation Area.
- 7.7. The site is situated in the middle of a row of buildings, opposite a further row of dwelling houses, on the main street of the town. The buildings and dwelling houses in the immediate surroundings appear to be reasonably well maintained and occupied, although there are some further derelict or unoccupied sites in the general vicinity. The property immediately to the east is a parish centre and a well-maintained and frequently used centre by the local community. The derelict condition of the site detracts from the amenity of the buildings in the vicinity. Rathkeale LAP has identified derelict and vacant sites as a matter of serious concern which has a very negative effect on the amenity of the town. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the main street and the surrounding residential area.
- 7.8. Although the roof and external walls generally seem to be intact, the damage to the windows and in particular, to the rear elevation, has exposed the interior of the property to the elements, and these factors are likely to result in the continual decline of the building. The combination of these factors would contribute to the ruinous and derelict state of the building. Having regard to the above, it is considered that the building falls within the category of being in a ruinous, derelict and dangerous condition, i.e., category (a) of section 3 of the Derelict Sites Act 1990.
- 7.9. With regard to category (b), I would consider that on the basis of the foregoing, the site also 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. There was evidence of items of waste material stored and deposited on the site, particularly in the rear garden area, which included debris and rubble. It is considered, therefore, that the site also 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.

- 7.10. 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 issued on the 15<sup>th</sup> 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 issued on 15<sup>th</sup> September 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 20<sup>th</sup> October 2020 and published in the Limerick Post Newspaper on the 31<sup>st</sup> of October 2020 regarding the Local Authority's intention to acquire the site compulsorily.
- 7.11. I note the objection made on behalf of the owners on the 30<sup>th</sup> of November 2020 and to the Board on the 28<sup>th</sup> of January 2021 to the proposed acquisition of the site, stating that it was the intention of the owner to address the issues of deterioration of the condition of the building. It is noted that the owner had commenced alterations and an extension in 2012 in the mistaken belief that the works were exempt from the need for planning permission, and as a result had to cease works. Although it is stated that the applicant intends to pursue this matter and has sought funding and a quotation from a builder, it should be noted that the works in question were commenced almost ten years ago, and the building has remained open to the elements ever since. Furthermore, the application for funding to assist with the renovations was refused by the Local Authority under the Built Heritage Investment Scheme 2020.
- 7.12. I also note that the owner has obtained a quote from Eco Construction for the repair of the property, which amounts to €47,861.81 dated November 2020. This quote is not itemised and does not relate to a fully comprehensive scheme to bring the building back into use.
- 7.13. The property is not secured at the rear and there is no evidence of any works of maintenance having been carried out to the interior or exterior of the building. The photographs provided by the Local Authority which track the changes in the condition of the building between the 8<sup>th</sup> of July 2019 and the 28<sup>th</sup> of October 2020 show the significant level of decline and deterioration during that period. 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 untidy and unkempt. I therefore consider that the site remains in a derelict condition.

- 7.14. I also note the objection to the compulsory acquisition on the grounds that many facets of life have been put on hold due to the Covid-19 pandemic and that there should be a restriction on compulsory purchase orders where it is not possible for property owners to carry out works due to travel and Government restrictions. However, as stated above, the decline of the property has been progressing over several years and began before the pandemic. It is considered that the delay and problems with the extension and alterations to the property and the restrictions relating to the pandemic are not sufficient justification for the continued derelict state of the property.
- 7.15. 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 Lower Main Street, Rathkeale, 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, which is in a ruinous and derelict state, 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 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-derelect and to prevent it continuing to be a derelect site. It is also considered that the objection made cannot be sustained having regard to that said necessity.

---

Mary Kennelly

Senior Planning Inspector

12<sup>th</sup> July 2021