



An
Bord
Pleanála

Inspector's Report ABP-313540-22

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

10 Lower Hartstonge Street, Limerick City

Local Authority

Limerick City and County Council

Notice Party

Geraldine Walsh

Date of Site Inspection

10th May 2023

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 10 Lower Hartstonge Street, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site is located on Lower Hartstonge Street which is situated in the Georgian area of Newtown Pery in Limerick City Centre. It comprises a mid-terrace four-storey over basement property on the southern side of Lower Hartstonge Street. It is situated between Henry Street and O'Connell Street, at the western end of the street. It is close to the O'Connell Monument on The Crescent and to the People's Park. The application site is situated within the Newtown Pery Architectural Conservation Area.
- 2.2. No. 10 Lower Hartstonge Street is a Protected Structure (RPS123) and listed on the National Inventory of Architectural Heritage (NIAH 21517100). It is described as a 2-bey four storey terraced redbrick dating from 1840 and is distinguished by a camber-arched Wyatt window opening on each level, with a front railed basement area. The front door opens onto a limestone platform with three steps bridging the basement area, which is flanked by original wrought-iron railings and cast-iron rail posts with pineapple finials on a limestone plinth wall, returning to enclose the basement area. It is stated that the said property and surrounding land is in a state of dereliction.
- 2.3. On the date of my site inspection, the property was secure with the front door and doorcase intact and the front windows on the ground floor and basement boarded up. There was a steel hoarding affixed to the front ground floor window. The upper floor windows have been replaced in the past with upvc windows. The brickwork is generally intact but in need of cleaning and/or repointing, apart from the top floor where the area around the parapet appeared to be unstable. The front door and windows appear to be in need of repair or replacement. There is wiring and piping protruding from the property. The railings are in a poor state of repair, with some rails missing and are unpainted and rusting.

- 2.4. There is vegetation growing on the property, with vegetation evident at parapet and roof level and weeds on the platform in front of the door. The staircase leading to the lightwell was covered with moss and litter. There was rubbish and debris stored in the basement area, including furniture, plastic bags containing clothing etc. There was a safety screen located along the footpath to the front of the property, with a sign advising that the footpath had been closed. Debris and litter had gathered on the footpath inside the security screen and weeds were growing along the plinth wall.
- 2.5. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front elevation and basement area from the street.

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 27th May 2021, (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 23rd August 2021, (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

- 4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Geraldine Walsh) in a letter dated 7th March 2022 and was published in the Limerick Leader newspaper on the 12th March 2022. The site was described as follows in the notices:

- A derelict site comprising a terraced, four-storey over basement, red brick dwelling and surrounding land situate at 10 Lower Hartstonge Street, Limerick, containing 0.006 hectares or thereabouts. 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-045-21 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 Geraldine Walsh in an email dated 19th April 2022. The objection can be summarised as follows:

- Objection is being made by the owner of this property who states that the site is not derelict.
- The property is to be purchased by a builder with the intention of renovating it and putting it on the market for rent.
- The property has been surveyed and the survey was sent to the Council by the owner's auctioneer, John de Courcy.

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 11th May 2022 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local 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 7th March 2022.
- Copy of the newspaper notice, dated 12th March 2022.
- Copy of objection made by Geraldine Walsh, dated 19th April 2022.

4.3.2. 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.
- Matters that are taken into account include
 - outstanding planning permissions,
 - evidence of efforts to address vacancy and dereliction,
 - security, safety to the public and condition of the site,
 - the conservation value of the building and requirement for remedial restoration works, and
 - the feasibility of various actions to make good the site and find viable uses for the site.
- The property first came to the attention of the L.A. in May 2021 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2021, Ref. DS-045-21, when it was first inspected.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated May 2021, October 2021 and March 2022 are included with the application.
- The property is within the Newtown Pery Architectural Conservation Area, between O'Connell Street and Henry Street, the centre of Georgian Limerick. No. 10 is recorded on the National Inventory of Architectural Heritage as NIAH 21517100 and is on the Council's Record of Protected Structures RPS 123. It was noted that the building is

“...distinguished by a camber-arched Wyatt window opening on each level, with a front railed basement area. [The] door opens onto a limestone platform with three steps bridging the basement area, flanked by original wrought iron railings and cast-iron rail posts with pineapple finials on a limestone plinth wall, returning to enclose the basement area. A slender terraced house of pronounced vertical massing. Wyatt windows to the single bay have been inappropriately replaced with upvc windows, but an intact doorcase, railing and interior make this an important part of this intact streetscape.”

- The site comprises a terraced, two bay, four-storey over basement Georgian property. The appearance was described as follows :-

The land detracts to a material degree from the land in the neighbourhood of the land because of the neglected and unsightly condition of the structure on the land due to the lack of property maintenance.

The ground floor and basement windows are boarded with steel shuttering. The window reveals and cills have not been painted in a long time.

The wrought iron railings have not been painted in a long time resulting in significant visible rust spots.

There is a significant amount of litter and rubbish in the basement area as well as moss and vegetation.

- Following the notice and inspections in May 2021, site ownership enquiries were made, as the lands were ‘unregistered’ under the PRAI Land Registry, and the reputed owner was established as Mrs. Geraldine Walsh of Suaineas, 101 High Meadows, Gouldavoher, Limerick. There were no planning applications on the site.
- A Notice was issued on 27th May 2021 of the local authority’s intention to enter the land onto the Derelict Sites Register. No response was received from the owner and the site was entered onto the register on 16th August 2021. A section 8(7) Notice to this effect was served on the owner on the 23rd

August 2021. No response or representation was made to this notice. The site has remained on the register since.

- On the 22nd October 2021 on inspection, it was noticed that the parapet wall was leaning back in towards the roof, which in turn appeared to be pushing the brickwork above the third-floor window outwards. It was confirmed that the structure is in a dangerous condition, and it was requested that ownership details be provided to the Dangerous Structures section of the local authority in order to commence enforcement action under the Sanitary Services Act.
- Taking into consideration the continued dereliction and dangerous condition of the building, the decision was made to compulsorily acquire the site. The owner was notified of this under section 15 of the Derelict Sites Act on the 10th of March 2022 and it was publicised in the local newspaper on the 12th of March 2022.
- An objection to the section 15 notice was submitted by the owner, Mrs Geraldine Walsh, by email on the 12th April 2022.
- The Local Authority contends that it is the inaction of owners and the failure of their duties under the Derelict Sites Act 1990 (as amended) that jeopardises the future use of the property in the area due to their continued neglected and derelict state. In this case the dangerous state of the derelict structure is also putting the health and safety of the public at risk. The Local Authority intends to pursue the compulsory acquisition of the derelict site.

4.4. Objector's Submission

- 4.4.1. A submission was made to the Board by Alex O'Neill Solicitors on the 1st June 2022 in response to the application for compulsory acquisition. It was confirmed that they act for the owner of the property, Geraldine Walsh.
- 4.4.2. The sale of the property has been agreed. A letter from the estate agent, John DeCourcy dated 26th May 2022, confirming this is enclosed. The 'closing date for the sale to the potential purchaser is stated as four weeks.
- 4.4.3. A letter dated 30/05/22 has been submitted from the Potential Purchaser's solicitors stating that their client is aware of the state and condition of the property, having

carried out a survey of same. It is confirmed that their client wishes to proceed with the proposed purchase. It is stated that it is the intention of their client to renovate the property and that the client has reached agreement to lease it to Limerick City and County Council for social housing following completion of the said works.

- 4.4.4. The Local Authority has not worked proactively with the property owners and no such proactive engagement has taken place.
- 4.4.5. The property was previously owned by the late husband of the owner, who passed away on the 3rd of March 2014. The owner is the Executrix of that Estate and Probate was granted to her on the 11th day of July 2016. They had previously lived in the property as their family home but had also leased it to various tenants over the years. It is submitted that the owner and her late husband had discharged substantial amounts of money in renovation of the property.
- 4.4.6. It is denied that the property is
 - a. Ruinous, derelict or dangerous.
 - b. Neglected, unsightly or in an objectionable condition.
 - c. There is litter, rubbish, debris or waste of any kind or to a degree suggested by the local authority.
- 4.4.7. It is denied that a Section 8(2) Notice or a Section 8(7) Notice were served on the owner, her servants or agents, and no such notice was included in the documents forwarded to An Bord Pleanála.
- 4.4.8. The owner has been attempting to deal with the estate of her late husband in circumstances where Covid 19 and the current supply crisis have hampered her ability to deal with the property in the manner she would have hoped for. The local authority has moved with undue haste, as the Section 8 Notices have allegedly been served (which is denied) only some twelve months previously. No account has been taken of the fact that it was not permissible to have works carried out at the property.
- 4.4.9. It is requested that the Board does not allow the compulsory acquisition in the interests of natural justice, protection of property rights and fair procedures, and in light of the goal of increasing that availability of habitable property. Alternatively, it is requested that the Board proceed to an oral hearing, or to postpone any decision

until such time so as to allow the local authority to engage in a proper manner with the owner and potential purchaser to put the property into use.

- 4.4.10. Further submissions were made by the agent for the owner, Alex O'Neill Solicitors on the 6th December 2022 and on the 27th April 2023, seeking information on progress with the case and expressing concern regarding the effects of the delay on the value of the property.

5.0 Planning History

- 5.1. No record of any planning applications or permissions relating to the site.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The applicable Development Plan is the Limerick City and County Development Plan 2022 – 2028. This plan became effective on the 29th of July 2022, which was after the site was entered on the Derelict Sites Register and after the owner of the property was notified of the local authority's intention to acquire it by CPO.
- 6.1.2. One of the strategic objectives for Limerick (Chapter 1) is to ensure the revitalisation and consolidation of urban areas through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4). The theme of revitalisation and delivery of compact growth is central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3). **Policy CGR P1** sets out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban areas. One of the measures required to create compact, dense and sustainable urban centres is 'Active Land Management' (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban areas into beneficial use (**Policy CGR O4**). Key legislative measures to facilitate this include the powers under the Derelict Sites Act 1990.
- 6.1.3. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and County Council is proactive in identifying and seeking the improvement of such sites to address

incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.

Objective CGR O6 – Derelict sites – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.

- 6.1.4. The Living Limerick City Centre Initiative (3.4.3.2) is a 7-year programme which was awarded funding in 2021 under the Urban regeneration Development Fund. It seeks to make positive, innovative and transformational change to revitalise the centre of Limerick City and is seen as a growth enabler. The LLCC Initiative seeks, inter alia, to renew vacant, underutilised and derelict buildings in the city centre. Chapter 5 ‘Strong Economy’ sets out the Economic Strategy. The success of economic growth is said to be intertwined with maintaining and enhancing its attractiveness. The City Centre is seen as a key driver of economic activity in the region. Policy ECON P1 seeks to support the implementation of Limerick 2030 – An Economic and Spatial Plan to guide the economic, social and physical renaissance of Limerick City Centre and the wider county/Mid-West Region.
- 6.1.5. The site is zoned **City Centre Area**, the Zoning Objective for which is to protect, consolidate and facilitate development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities.

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 property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road adjoining the site.

7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding city centre area. This is due to the fact that the brickwork, joinery and paintwork are in a poor state of repair and that the windows

on the ground floor and basement are boarded up with industrial steel shuttering. The brickwork at parapet level also appears to be in a poor state of repair with vegetation growing within the gutters, on the brickwork and out of the chimney. Downpipes are broken or missing, the render and flashing around the windows and front door are in need of repair and wiring and piping is protruding.

- 7.3. The wrought iron decorative balcony at first floor level is rusting, as are the railings along the front boundary, which are also in need of repair and repainting. The vegetation and weeds around the front door and limestone platform detract considerably from the appearance of the building. There is a significant amount of rubbish, debris and litter within the lightwell area and is spilling onto the public footpath, which detracts significantly from the amenity of the area. The security railing, which has been erected due to the potentially dangerous condition of the building and blocks part of the footpath, is visually obtrusive and detracts from the amenity of the street and the character of the area.
- 7.4. The combination of these factors detracts from the amenity of the street and the character of the area, and in particular, have a detrimental impact on the conservation value of the Protected Structure and the Architectural Conservation Area. The property has been in a derelict state and has remained vacant for some time and its condition has deteriorated during this period of vacancy and dereliction. The longer the building is vacant and in a state of dereliction, the greater is the likelihood of significant damage to historic fabric and the need for remedial restoration works, with the potential for greater levels of intervention. Thus, the continued dereliction of the property threatens the conservation value of the Protected Structure and restricts the opportunities to find viable uses.
- 7.5. The property is situated in the middle of a row of similar terraced properties which are generally occupied and in use as commercial premises, which appear to be well maintained and in good condition. The lands in the general vicinity form part of the Georgian area of Limerick City, known as Newtown Pery, and contains many historic sites. This area is designated as an Architectural Conservation Area and contains many historic and protected structures, with some of the adjoining sites being listed on the NIAH register. The area has an attractive appearance, and the public realm is well cared for, with high quality public amenities such as the People's Park and the Art Gallery in the vicinity. The site also forms part of the City Centre for which there are

Development Plan policies to promote the attractiveness of the city centre. 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 area.

- 7.6. Although much of the brickwork on the front façade appears to be in reasonable condition, with no obvious evidence of significant cracking or additional damage to the external walls, the brickwork at the parapet area appears to be unstable and in a poor state of repair. The window openings are either fitted with non-traditional upvc windows or are boarded up. I note from the photographs provided with the Local Authority report, however, that the property has deteriorated further since the first inspection in 2021, as the parapet area has since become more unstable.
- 7.7. 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 consider that there is also evidence that the structure is in a dangerous condition, and that it could be considered ruinous. Thus, it is considered that the site falls within category (a) of the Derelict Sites Act 1990.
- 7.8. There was considerable evidence of litter, debris, rubbish, including waste in the form of old bits of furniture, plastic bags filled with material stored externally and general litter within the application site. I consider 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.
- 7.9. 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 27th May 2021, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on 23rd August 2021, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(1)(a) notices were served on 10th March 2022 and published in the Limerick Post Newspaper on the 12th March 2022 regarding the Local Authority's intention to acquire the site compulsorily.

- 7.10. I note the objection made to the Local Authority by the owner, Mrs. Geraldine Walsh, on the 12th April 2022 to the proposed acquisition of the site, stating that the property was not derelict, that a potential purchaser had agreed to buy the site and to renovate it and that a survey had been carried out.
- 7.11. It is noted that a further objection was made by Alex O'Neill Solicitors on behalf of the owner to the Board on the 1st June 2022. This stated that the owners had expended a considerable sum of money on the refurbishment of the property to date and had been attempting to resolve matters relating to her late husband's estate, but that her efforts had been hampered by Covid 19 and supply of materials which delayed resolution of the matters. It was denied that the Council had engaged with the owners or that the relevant notices had been served under Section 8 of the Derelict Sites Act. It is considered that the CPO would represent a disproportionate interference with their property rights. It was further indicated that the proposed purchasers had been progressing discussions with the Council to undertake a comprehensive renovation of the property and to lease it as social housing once works are completed.
- 7.12. This letter also focussed on what are considered to be irregularities in the service of the notices. These relate to a claim that the notices advising of the intention to enter the site on the register of derelict sites (Section 8(2)) and the entry onto the said register (Section 8(7)) had not been served on the owner or her servants/agents. The Board sought proof of service of these notices from the local authority on the 22nd of May 2023. The response received by the Board on the 26th May 2023 provides evidence of the service of these notices as follows:
- Section 8(2) Notice Proof of Delivery An Post 27th May 2021 at 08.45 hours.
- Section 8(7) Notice Proof of Delivery An Post 23rd August 2021 at 08.03 hours.
- In light of this evidence, it is clear that the local authority had served the said notices on the owner, Ms Geraldine Walsh, on the dates specified in the Derelict Sites Report, submitted to the Board on the 11th of May 2022.
- 7.13. Having inspected the site, there is no evidence of any attempt to render the site non-derelict and the property remains in a neglected and unsightly condition. No further information has been provided to the Board regarding any progress made on

advancing the works to enable the property to be removed from the Derelict Sites Register. I therefore consider that the site remains in a derelict condition.

- 7.14. 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 No. 10 Lower Hartstonge Street, 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 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, the poor state of repair of the external wall at parapet and top floor levels and to the presence of litter, debris and waste materials on 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 sections 3(a), 3(b) and 3(c) 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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Mary Kennelly

Senior Planning Inspector

26th May 2023