



An  
Bord  
Pleanála

## Inspector's Report ABP-318589-23

### Nature of Application

Application for consent for compulsorily acquisition of a derelict site in accordance with Section 14 of the Derelict Sites Act 1990, as amended

### Location

4 Saint Bridgets Terrace, Farranshone Road, Limerick

### Local Authority

Limerick City and County Council

### Notice Party

John O'Sullivan  
Eugene O'Sullivan

### Date of Site Inspection

2<sup>nd</sup> April 2024

### Inspector

Gary Farrelly

## **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 4 Saint Bridget's Terrace, Farranshone Road, Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The subject site is located at 4 Saint Bridget's Terrace on Farranshone Road which is located approximately 1km northwest of the city centre of Limerick. The site comprises of a two-storey terraced residential dwelling with front and rear gardens. The wider area is characterised by primarily residential dwellings and it was noted on the date of the site inspection that these properties are all well maintained and in a good condition.
- 2.2. The site represents a prominent location being located directly off the Farranshone Road. My observations of the site on the date of the inspection included the following:
- The rear garden, rear boundaries and rear wall of the dwelling comprised of ivy which was intruding into neighbouring properties.
  - The rear garden was in an untidy state.
  - There was peeling paint on the rear windows of the dwelling.
  - The front of the dwelling appeared to be in a good condition.

## **3.0 Legislative Context**

### **Derelict Sites Act 1990, as amended**

#### Section 3 Definition of derelict site

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.

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.”

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.

## **Planning and Development Act 2000, as amended**

#### **4.0 Application for Consent for Acquisition**

- 4.1. 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 3<sup>rd</sup> December 2021 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 1<sup>st</sup> June 2022 (advising of the Local Authority's decision to enter the site on the register of derelict sites).

#### **5.0 Application and Objection**

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

Notice of Limerick City and County Council's intention to acquire the site was served on the owner in a letter dated 4<sup>th</sup> October 2023 and was published in the Limerick Post newspaper on 7<sup>th</sup> October 2023. The site was described as follows in the notices:

- A derelict site comprising a mid-terrace, two-storey dwelling and surrounding land situate at 4 Saint Bridget's Terrace, Farranshone Road, Limerick, containing 0.019 hectares or thereabouts. 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-128-21 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

I am satisfied that the notices were in accordance with the requirements of Section 15(1)(a) and (b) of the Derelict Sites Act 1990, as amended.

##### **5.2. Objection to Acquisition**

An objection to the proposed compulsorily acquisition was submitted to Limerick City and County Council by John O'Sullivan and Eugene O'Sullivan, and was received by the Local Authority on 2<sup>nd</sup> November 2023. The objection can be summarised as follows:

- John O’Sullivan apologies for his failure to attend to this matter sooner, however, due to work commitments and ill-health he was unable to focus his attention on the property. He has handed over the property to his brother and works have begun consisting of the front being cleared of vegetation, tree removal to the rear of the house will commence mid-November. He states that his brother will renovate the property and ensure its ongoing maintenance.
- Eugene O’Sullivan states that he will be taking over the property and has already begun work with the aim of renovating the property.

### **5.3. Local Authority’s Application for Consent**

The Local Authority requests the consent of the Board to the compulsorily acquisition of the derelict site. The application for consent was submitted on 30<sup>th</sup> November 2023 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (i.e. Derelict Site 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 section 15 Notice served on the owners/occupiers of the site, dated 29<sup>th</sup> September 2023.
- Copy of the newspaper notice, dated 7<sup>th</sup> October 2023.
- Copy of objection made by John O’Sullivan and Eugene O’Sullivan

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. 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 two storey mid-terrace residential property and surrounding land is vacant and in a derelict condition for a considerable period. The site detracts from the

amenity, character and appearance of other well-maintained property in the area. Some indicators of dereliction as applies to the site include; partially built ruinous extension at the back of the property, blocked and/or leaking rainwater gutters or downpipes at the rear of the property, broken, missing or boarded up windows or doors both at the front and back of the property, dirty façade at the back and peeling paint on some windows at the back of the site, rotten timber on some of the windows, site overgrown with vegetation at the front and especially at the back with a large tree affecting the back boundary wall and unsightly boundaries (vegetation intruding into neighbouring properties).

- The registered owner of the freehold title to the property is Mary O'Connor of 48 Home Farm Park, Drumcondra, Dublin 9. The leasehold title to this property is comprised in Folio LK75L and the registered owner is Michael Kirby of 9 Bellvue, North Circular Road, Limerick. The reputed owner of the property is Mr. John G O'Sullivan of No. 8 Bank Place, Limerick although documentary evidence of ownership has not been supplied.
- The local authority first inspected the property on 17<sup>th</sup> November 2021 and identified it as a derelict site. Site ownership enquiries were made through the land registry system and planning and development searches were carried out. Information was also gathered from a previous Derelict Sites Case on the site (DS-004-18) where John O'Sullivan said he was the owner and carried out remedial works. This case was closed in 2019, however, the condition of the property has since reverted to a derelict state.
- On 3<sup>rd</sup> December 2021, a Section 8(2) notice was affixed at the site and sent to the reputed owner. On 7<sup>th</sup> January 2022, John O'Sullivan phoned the local authority, and he was invited to make written representation confirming ownership and remediation plans.
- On 20<sup>th</sup> May 2022, a further site inspection was carried out and it was found that there was no change to the site. A Section 8(7) was recommended to be served and the notice was served on 1<sup>st</sup> June 2022.
- On 27<sup>th</sup> September 2022, the local authority received a phone call from a neighbour complaining that nothing was being done to improve the condition of the site and that it has been vacant for a number of years.

- On 27<sup>th</sup> September 2022, the local authority received a letter from John O'Sullivan stating that he was living in the property until 2003 when it was subject to an arson attack. He stated that it was his objective to offer the property for sale in the next four weeks.
- A section 22 notice of valuation was sent to John O'Sullivan on 14<sup>th</sup> February 2023. On 10<sup>th</sup> March 2023, he appealed to the valuation tribunal claiming the market value was excessive and disproportionate.
- On 5<sup>th</sup> September 2023, the local authority received a complaint regarding a large overhanging tree and that they are cracking the boundary walls and threat of overhanging limbs to their extension.
- As the land continued to be in a derelict state, the council exercised its power of compulsory acquisition under section 14 of the Derelict Sites Act 1990 and gave its notice of intention to acquire the site compulsorily to the owner and advertised same in the Limerick Post newspaper on 7<sup>th</sup> October 2023.
- On 2<sup>nd</sup> November 2023 an objection was received and acknowledged. Meanwhile the neighbours to this derelict site and the rest of the local community live with and endure the ongoing neglect, decay and unsightly nature of this property. It detracts from their own well-kept residences and impacts on the enjoyment of their locality of which they are most proud.
- The council's contention is that the inaction of the property owners and failure of their duties under the Derelict Sites Act 1990 jeopardises the future use of properties in the area due to their continued neglect and derelict state. The property continues to deteriorate and attract negative attention in a key area of residential Limerick City. The case demonstrates a failure of duty on behalf of the property owner to remove this property from dereliction leaving the only option available to the Council to acquire this property compulsorily.

#### **5.4. Objector's Submission to the Board**

The owner did not make a submission to the Board.

## 6.0 Planning History

None according to Limerick City and County Council's Planning Register or none reference within file correspondence.

## 7.0 Property History

### Derelict Site Case DS-004-18

This case was closed in 2019 after remedial works were completed.

## 8.0 Policy Context

### **Limerick Development Plan 2022-2028**

#### Objective CGR 04 Active Land Management

It is an objective of the Council to:

b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

#### Objective CGR 06 Derelict Sites

It is an objective of the Council to utilise the provisions of the Derelict Sites Act 1990, including the maintenance of a Derelict Site Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse.

#### Policy CGR P4 Revitalisation of Towns and Villages

It is the policy of the Council to:

a) Actively address issues of vacancy and dereliction in settlements across Limerick.



## 9.0 Assessment

### Site Inspection

- 9.1. Internal access to the property was not possible on the date of my site inspection on 2<sup>nd</sup> April 2024, however, I was able to view the site from the public road to the front and rear of the property. The property appeared to be vacant.
- 9.2. I noted that the rear garden, rear boundaries and rear wall of the dwelling comprised of ivy that was intruding into neighbouring properties. The rear garden was in an untidy state and there was peeling paint on the rear windows of the dwelling. The front of the property appeared to be in a good condition. I noted that the large tree within the rear garden, as shown on photographs on file, has been removed, the front door of the property is no longer boarded up and there has been partial removal of overgrown vegetation in the front garden.
- 9.3. The site is located in a prominent location being located off Farranshone Road. There are a number of residential properties to the south of the site which are well maintained and are in good condition.

### Category of Dereliction

- 9.4. I note that the local authority considered that the property and lands fell under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended.
- 9.5. Based on my site inspection and having regard to paragraph 9.2 above, it is my view that the subject structure and lands fall under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended (DSA):

(b) The lands and structure are in a neglected, unsightly and objectionable condition.

Whilst there was peeling paint on the rear windows of the dwelling, I consider that the dwelling is in a good condition externally and therefore is not in a derelict condition. I consider therefore that the site does not fall under category (a) of Section 3 of the Derelict Sites Act 1990, as amended. I noted no significant rubbish, litter, debris or waste within the lands. I consider therefore that the site does not fall under category (c) of Section 3 of the Derelict Sites Act 1990, as amended. Having regard to (b) above, it is my view that the structure and lands are detracting to a material degree from the

amenity, character and appearance of land in the neighbourhood of the land in question.

### **Actions of Local Authority**

- 9.6. I note that the local authority first inspected the site on 17<sup>th</sup> November 2021 and issued a Section 8(2) notice on 3<sup>rd</sup> December 2021. The notice was affixed to the site and sent to the reputed owner John O'Sullivan as it was in the previous derelict sites case.
- 9.7. On 7<sup>th</sup> January 2022, the owner was advised in a telephone call to make a written representation with regards to the notice confirming ownership and remediation plans. It appears from the file that no such representation was made.
- 9.8. On 20<sup>th</sup> May 2022, the local authority carried out a further inspection where they found no change in site conditions. A Section 8(7) notice was issued to the owner and affixed to the site on 1<sup>st</sup> June 2022.
- 9.9. The local authority had received two complaints from the public regarding the condition of the site and the large overhanging tree in the rear garden.
- 9.10. Having regard to the above, I am satisfied that the local authority complied with the requirements of Section 6, Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended. I note the time and opportunity given by the local authority to address the dereliction. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable and in accordance with the legislation.

### **Compliance with development plan policy**

- 9.11. I note that the Limerick Development Plan 2022-2028, specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06, seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.
- 9.12. Therefore, I consider that the subject property and a Compulsorily Purchase Order (CPO) would be consistent with the policies and objectives of the Development Plan and will ensure that the lands do not continue to be in a derelict condition.

### **Actions of the Owner to address dereliction**

- 9.13. I noted on the date of my site inspection that the owner has cleared the large tree in the rear garden that was previously shown in the various photographs provided by the local authority. The front door is no longer boarded up and some overgrown vegetation has been removed from the front garden. I consider that the front of the property is now in a good condition.
- 9.14. In the objection the owner states that he has handed over the property to his brother who will renovate the property and ensure its ongoing maintenance. A letter from the brother confirms this intention. I note that this property has been subject to a previous derelict site case from the local authority (ref. DS-004-18) which was closed in 2019.
- 9.15. Having regard to the works undertaken on site, to the nature of the remaining works that would be required to remove the property from dereliction and to the content of the owner's objection, it is my view that the owner should be given some further time to complete the works.

## **10.0 Conclusion**

- 10.1. I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the local authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 10.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a mid-terrace two storey dwelling and surrounding land at Saint Bridget's Terrace, Farranshone Road, Limerick, containing 0.019 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict Sites Act 1990, as amended, and dated 29<sup>th</sup> day of September 2023 and on the deposited maps (DS-128-21), pursues, and was rationally connected to, a legitimate objective in the public interest, namely, to ensure that the lands do not continue to be in a derelict condition.
- 10.3. Although the acquiring authority, at the time of application, demonstrated that the means chosen to achieve that objective impairing the property rights of affected landowners as little as possible, having regard to the works undertaken onsite which includes the removal of the boarded up front door, the removal of the overgrown vegetation at the front of the property and the removal of the tree within the rear

garden, I am not satisfied that this is still the case. In this respect, I have considered alternative means of achieving the objective referred to in the submissions to the Board, and I am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.

- 10.4. The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be consistent with the policies and objectives of the Limerick Development Plan 2022-2028, and specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06 which seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.
- 10.5. Notwithstanding this, having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site and to the remaining scope of works that would be required to remove the property from dereliction, I consider that it would be appropriate to allow the owner some further time to progress matters on site. Therefore, I am no longer satisfied that the confirmation of the CPO is justified by the exigencies of the common good at this point in time.

## **11.0 Recommendation**

- 11.1. 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. It is further considered that the acquisition of the site by the local authority would be warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.
- 11.2. However, as per my assessment and having regard to all the information available, the current appearance and condition of the property and to the remaining scope of works that would be required to remove the property from dereliction, I do not consider it reasonable that the local authority seeks to compulsorily acquire the land at this moment in time, as provided by Section 14 of the Act. I therefore consider it

appropriate to refuse the local authority's application for consent to compulsorily acquire the site at 4 Saint Bridget's Terrace, Farranshone Road.

## **12.0 Reasons and Considerations**

Notwithstanding the neglected, unsightly and objectionable condition of the land and structure to the rear, which detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood, taking account of the evidence of the efforts being made by the owner to address the dereliction onsite, and to the remaining scope of works that would be required to address the dereliction, I do not consider it reasonable that the local authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to the compulsory acquisition of the site.

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.

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Gary Farrelly  
Planning Inspector

17<sup>th</sup> May 2024