



An  
Bord  
Pleanála

## Inspector's Report ABP-318619-23

### 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

Pikes Row, William Street, Limerick

### Local Authority

Limerick City and County Council

### Notice Parties

1. Donal Mulcahy
2. Sweeney McGann Solicitors
3. Richard R. O'Hanrahan Solicitors,  
c/o John Keays and Sarah Bell

### 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 Pikes Row, William Street, 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 within the city centre of Limerick and bounds Pikes Row, which connects to William Street. The site is bounded by an ESB substation and yard to the northwest which fronts High Street, an alley to the southwest, Pikes Row to the southeast and residential properties to the northeast that front Little Gerald Griffin Street.
- 2.2. The site is occupied by a two-storey stone faced building. The boundaries of the site are defined by a stone wall along the southeast and southwest boundaries. The yard to the northwest of the site is defined by palisade fencing along the street. The stated site area is 0.013 hectares.
- 2.3. My observations of the site on the date of my inspection included the following;
- The property was vacant.
  - The property was in a derelict condition with boarded up windows and doors.
  - There were holes within the corrugated roof of the structure and substantial vegetation on the gable and roof.
  - The lands to the southwest of the property were substantially overgrown with vegetation.
  - There was a deposition of litter and rubbish within the southwest corner of the site.
  - There was graffiti on the property and along the boundary walls.

### 3.0 Legislative Context

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

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**

### **Planning and Development Regulations 2001, 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 25<sup>th</sup> February 2021 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 12<sup>th</sup> April 2021 (advising of the Local Authority's decision to enter the site on the register of derelict sites).
- 4.2. On 7<sup>th</sup> July 2022, a Section 15 notice of intention to acquire the derelict site compulsorily was served and an objection was made by Donal Mulcahy. As he could not prove ownership, the local authority informed him that he would receive a copy of a vesting order for the property. However, Donal Mulcahy was granted leave for judicial review and the case was subject to high court proceedings (2022/995JR). The proceedings were not contested by the local authority on the grounds that the applicant subsequently displayed ownership documentation for the property. An Order of Certiorari by way of judicial review was made quashing the vesting order made for the property by the local authority on 18<sup>th</sup> April 2023. On 21<sup>st</sup> June 2023, the local authority rescinded the Section 15 notice.

## **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 Donal Mulcahy and his solicitor, Sweeney McGann Solicitors, in letters dated 4<sup>th</sup> October 2023, was affixed to the property 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 store building and surrounding land situate at Pikes Row, William Street Upper, Limerick, containing 0.013 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-022-18 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 Sweeney McGann Solicitors, on behalf of their client Donal Mulcahy. Their objection can be summarised as follows:

- The site forms an integral part of the lands owned by their client and the CPO will make the development of adjoining lands almost impossible and fundamentally change the viability of the completion of the proper planning and sustainable development of these lands.
- Their client has been delayed in submitting a planning application to develop all of his lands due to an ESB station. Negotiations to remove this ESB substation were unsuccessful and just recently their client has reached agreement with ESB to build overhead it. The planning application will shortly be submitted.
- Their client will address the Council's concerns regarding the condition of the site and has attended to the remaining lands that he owns but this site was subject to a previous application by the Council leaving great uncertainty concerning its availability for redevelopment.

Additionally, an objection was submitted directly by Donal Mulcahy of Nancy Blakes Bar and Beer Garden. He states that he is currently in the process of developing the site and the site has recently been surveyed. He states that he is finalising plans with his architects over the coming weeks. He is aware of the current condition of the site and will work towards removal of any debris or waste to improve its appearance over the coming weeks.

Furthermore, another objection was submitted by Richard R. O'Hanrahan Solicitors, on behalf of their clients John Keays and Sarah Bell. Their objection can be summarised as follows:

- A portion of the property outlined on the site notice includes their client's property in error. A copy Indenture of Conveyance dated 8<sup>th</sup> August 2019 together with a colour copy map showing the property acquired by their client marked 'X' is provided, as well as a copy of stamp duty certificate and copy indenture of conveyance dated 30<sup>th</sup> June 2000 and copy Certificate of Identity of John Shaw Engineer dated 3<sup>rd</sup> July 2000.
- Their clients are the legal owners of the property marked 'x'.
- A copy of an email from the local authority is provided stating that as their clients have provided a land registry map of the site, the map will be amended before it is entered into the derelict sites register. A copy of an email from a council official stating that he will do a GPS survey and amend the map is also provided.
- A photograph of the site notice is provided which they state their clients became aware of on 1<sup>st</sup> November 2023, which in error includes a strip of their client's property.
- The back wall is not in a ruinous, derelict or dangerous condition.
- The area facing High Street is clear on the ground and is free of any structures and is not neglected, unsightly or in an objectionable condition.
- There is no litter, waste, rubbish or debris on the property.
- The property does not detract to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question.

- A portion of their client's property referenced in the derelict sites notice is not a derelict site.

### 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 Donal Mulcahy and his solicitor, dated 29<sup>th</sup> September 2023.
- Copy of the newspaper notice, dated 7<sup>th</sup> October 2023.
- Copy of objection made by Donal Mulcahy, Sweeney McGann Solicitors, and Richard R. O'Hanrahan Solicitors, on behalf of John Keays and Sarah Bell.

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 former commercial building with surrounding land is vacant and in a derelict condition for a considerable period. The site detracts from the amenity, character and appearance of the well-maintained property in the area. Some indicators of dereliction as applies to the site include: partially demolished/ruinous buildings; holes in roof, loose and slipped slates; missing/broken/leaking rainwater gutters or downpipes; loose masonry and falling plaster; broken, missing or boarded up windows or doors; dirty façade/peeling paint; graffiti; plants growing out of masonry or roof; unsecured

entrances, trespass or squatters; rotten timber; site overgrown with vegetation and unsightly boundaries (damaged hoarding, broken fences, rusted railings etc.)

- The title of this property is not registered on the land direct system. The reputed owner of the property is Donal Mulcahy. A portion of the land contained in the derelict site, known as 'the passage' to the east of the site, is reputed to be in the ownership of John Keays and Sarah Bell.
- The council first inspected the property on 22<sup>nd</sup> January 2018 and identified it as a derelict site. Site ownership enquiries were made through the land registry and planning and development searches were carried out.
- An area inspector met with Donal Mulcahy on the site on 2<sup>nd</sup> February 2021 where he claimed ownership of the site and that he was planning on developing it. He also stated he would submit documents to prove his ownership. A list of remedial works was agreed and provided to Donal Mulcahy.
- However, no works were carried out on site and neither a planning application nor ownership documents were submitted to the Council at Section 8(2) or Section 8(7) notice stages of the case.
- A Section 8(2) notice was served on 25<sup>th</sup> February 2021 and a Section 8(7) notice was served on 12<sup>th</sup> April 2021.
- On 7<sup>th</sup> July 2022, a Section 15 notice was served. The local authority received an objection from Donal Mulcahy, in relation to the Section 15 notice, on 2<sup>nd</sup> August 2022. The local authority invited Donal Mulcahy to submit proof of ownership by 12<sup>th</sup> August 2022 to support his objection. As no documents were submitted, the local authority wrote to him again on 19<sup>th</sup> August 2022 stating that he would receive copy of the Vesting Order in due course.
- The local authority made a Vesting Order for the property on 19<sup>th</sup> September 2022 and Donal Mulcahy was served with a Section 17 notice of same.
- However, Donal Mulcahy was subsequently granted leave for judicial review and the case was subject to high court proceedings (2022/995JR). The proceedings were not contested by the local authority on the grounds that the applicant subsequently displayed ownership documentation for the property to



the court. An Order of Certiorari by way of judicial review was made quashing the vesting order made for the property by the local authority on 18<sup>th</sup> April 2023 and on 21<sup>st</sup> June 2023, the local authority rescinded the Section 15 notice.

- The local authority has continued to monitor the derelict site and it has fallen further into dereliction and it appears that no physical effort has been made by the owner to address the ongoing issue on this site.
- As the land continued to be a derelict state, the council exercised its power of compulsory acquisition and gave its notice of intention to acquire the site to the owner and advertised same in the Limerick Post newspaper on 7<sup>th</sup> October 2023.
- On 1<sup>st</sup> November 2023, a letter objecting to the proposed acquisition was received from Sweeney McGann Solicitors, on behalf of Donal Mulcahy. On 6<sup>th</sup> November 2023 an objection from Donal Mulcahy was received and a letter from Richard R. O'Hanrahan Solicitors, on behalf of John Keays and Sarah Bell, was received, claiming that part of their property is comprised in the derelict site mapped in the map accompanying the Section 15 notice. All objections were duly acknowledged.
- Meanwhile, the adjoining neighbours to this derelict site and the rest of the local community must live with and endure the ongoing neglect, decay and unsightly nature of this property. It detracts from their own well-kept residences and places of business and impacts on the enjoyment of their locality of which they are most proud.
- It is the contention of the council that the inaction of the property owners and failures of their duties under the Derelict Sites Act that jeopardises the future use of properties in the area due to their continued neglected and derelict state. In this case, the property continues to deteriorate and attract negative attention in a key area of Limerick City. The only option available to the council is to acquire this property compulsorily.

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

A submission was received by the Board on 13<sup>th</sup> December 2023 by Richard R. O'Hanrahan Solicitors, on behalf of their clients John Keays and Sarah Bell, requesting

a copy of the local authority's original letter and enclosures by email as a number of site maps and enclosures are faded and not eligible. I note that they did not expand on the grounds of their original objections to the local authority. In response, they were provided a copy of the hard copy received by the Board and made aware that the maps were faded when submitted.

## **6.0 Relevant Planning History**

There are no planning applications associated with the site, according to the local authority's planning register or from the information on file.

## **7.0 Policy Context**

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

The subject site is zoned 'City Centre'.

#### **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.

## 8.0 Assessment

I note that there is a dispute over the ownership of a portion of the site within the eastern section within the red line boundary provided on the Section 15 Notice. I note a map provided by Sweeney McGann Solicitors, on behalf of their client Donal Mulcahy, shows the section within the ownership of Donal Mulcahy. However, as part of the objection by Richard R. O'Hanrahan solicitors, on behalf of their clients John Keays and Sarah Bell, they provide legal documentation showing this portion of the site within their ownership. Notwithstanding this, I note that all parties were notified of the issuing of the section 15 notice.

### Site Inspection

- 8.1. 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. The property was vacant.
- 8.2. I noted that the property was in a derelict condition with boarded up windows and doors. There were holes within the corrugated roof of the structure and substantial vegetation on the gable and roof. The lands to the southeast of the property were substantially overgrown with vegetation. There was a deposition of litter, waste and rubbish within the southern corner of the site. There was graffiti on the property and along the boundary walls. I noted that no works have been carried out to the structure since the serving of the Section 15 Notice.

### Category of Dereliction

- 8.3. I note that the local authority considered that the property and lands fell under Categories (a), (b) and (c) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.4. Based on my site inspection and having regard to paragraph 8.2 above, it is my view that the subject structure and lands fall under Categories (a), (b) and (c) of Section 3 of the Derelict Sites Act 1990, as amended:
  - (a) The structure is in a derelict condition.
  - (b) The lands and structure are in a neglected, unsightly and objectionable condition.

- (c) There is a presence, deposition or collection of litter, waste, debris and rubbish within the southern corner of the site.

Having regard to the above, it is my view that the 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**

- 8.5. I note that the local authority state that they first inspected the site on 22<sup>nd</sup> January 2018. It is stated that a Section 8(2) notice was served on 25<sup>th</sup> February 2021 and a Section 8(7) notice was served on 12<sup>th</sup> April 2021. The derelict sites report states that the local authority was liaising with Donal Mulcahy who eventually provided ownership documentation to the high court via judicial review 2022/995JR.
- 8.6. After serving of the Section 15 notice an objection was received from Richard R. O'Hanrahan Solicitors stating that a portion of John Keays and Sarah Bell's property is included in error. Legal documentation is provided showing the extents of their property marked 'x'. Furthermore, a number of emails are provided where it appears that they raised this issue with the local authority.
- 8.7. I note that the property in question is not registered on the land registry system and there is no planning history on the subject site. I note that there have been clear ownership identification challenges for the local authority, however, all notice parties were made aware of the proposed compulsory acquisition application. I am satisfied that the local authority has given sufficient time and opportunity to address the dereliction as the Section 8(2) notice was first served over 3 years ago. Therefore, I am satisfied that the efforts of the local authority have been fair and reasonable.

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

- 8.8. 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.

- 8.9. Therefore, I consider that the subject property and a proposed compulsory acquisition 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**

- 8.10. The objection by Donal Mulcahy states that there have been issues with the ESB substation in developing the whole site and if the local authority requires this section of the lands, development on the remainder of the lands will not be viable. The objection states that the local authority's concerns will be addressed, and plans are being finalised with an architect. He also states that he will work towards the removal of debris and waste within the coming weeks.
- 8.11. I note the objection from Richard O'Hanrahan Solicitors, on behalf of John Keays and Sarah Bell, who states that the inclusion of their property is in error. They consider that their site is not a derelict site within the meaning of the Act.
- 8.12. I have already determined that the property and lands do come within the definition of a derelict site under Section 3 of the Derelict Sites Act 1990, as amended. Having inspected the site, I note that no efforts have been made to address the dereliction. Having regard to this, to the length of time that the property has been vacant and derelict, to the absence of any substantive plan to address said dereliction and to the absence of any planning application to date, which the owner's solicitor stated would be submitted 'shortly' on 31<sup>st</sup> October 2023, I cannot conclude that the dereliction will be addressed soon.

## **9.0 Conclusion**

- 9.1. 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.
- 9.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a store building and surrounding land situate at Pikes Row, William Street Upper, Limerick, containing 0.013 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-022-18), 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.

- 9.3. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible. 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 proposed compulsory acquisition application made by the acquiring authority unreasonable or disproportionate.
- 9.4. The effects of the proposed compulsory acquisition 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. Accordingly, I am satisfied that the confirmation of the proposed compulsory acquisition is clearly justified by the exigencies of the common good.

## **10.0 Recommendation**

Having regard to the observed condition of the application site, in particular to the derelict condition of the structure, to the neglected, unsightly and objectionable state of the land and structure and to the presence, deposition and collection of litter, rubbish, debris and waste within the lands, 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. I consider it 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.

## 11.0 Reasons and Considerations

Having regard to the derelict condition of the structure, to the unsightly and objectionable state of the land and the structures thereon and to the presence, deposition and collection of litter, rubbish, debris and waste on the land, having considered the objection made to the compulsory acquisition, and also:

- (a) the constitutional and Convention protection afforded to property rights,
- (b) the public interest, and
- (c) the provisions of the Limerick Development Plan 2022-2028,

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), (b) and (c) of the Derelict Sites Act 1990, as amended, and that the compulsory acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it from continuing to be a derelict site. It is also considered that the objections made cannot be sustained, having regard to that said necessity and that the compulsory acquisition and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

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

24<sup>th</sup> May 2024