



An
Bord
Pleanála

Inspector's Report

ABP-320061-24

Development

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

Location

Father Hayden Road, Kilkenny.

Local Authority

Kilkenny County Council

Notice Party

John & Margaret McGrath

Date of Site Inspection

1st August 2024

Inspector

Frank O'Donnell

1.0 Introduction

- 1.1. This case relates to a request by Kilkenny County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at Father Hayden Road, Kilkenny, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The property which is the subject of this CPO (referred to hereafter as the 'subject property') is located at Father Hayden Road, in a residential area within c. 235 metres to the south of Kilkenny Castle.
- 2.2. The property is orientated on a general east to west axis and measures a maximum of c. 112 metres in length and c. 11.5 metres in width. The property includes 2 no. partially complete two storey detached dwellings, located towards the western end, associated front and rear amenity spaces and access and circulation space. The remainder of the site, towards the eastern end, comprises an open area. The overall subject property has a stated area of 0.11 hectares (1,100 sqm).
- 2.3. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH). The subject property is however immediately adjacent and to the south of Kilkenny City Architectural Conservation Area (ACA) (Kilkenny Castle).
- 2.4. On the day of my site inspection the western half of the subject property was closed and secured behind temporary steel mesh security fencing and 2 no. high roadside boundary walls to the side of the 2 no. partially complete dwellings. The eastern half of the subject property was open to the front with no security fencing in place. Although I was able to enter the subject property, I was unable to gain entry to the 2 no. partially complete dwellings themselves.
- 2.5. Based on my site inspection, I note the following:
- I was able to gain entry to the fenced off western side of the subject property containing the 2 no. partially complete dwellings.

- The rear amenity spaces of both buildings and the shared central space/ parking area between the buildings were overgrown with weeds and were in a general unkempt condition.
- At the western partially complete dwelling, at the front bay windows, there was scaffolding in place to a height of two storeys. The front lower ground floor bay window and the front first floor bay window were fully boarded up and no windows were installed. The front ground floor door opening was fully boarded up and no door was installed. The external wall to the front bay at ground floor level comprised of exposed blockwork and was not plastered. Above ground floor level the external wall of the front bay window was unfinished and exposed. A window was in place at the front first floor box room. The rear ground and first floor windows and a ground floor patio door were all in place. The rear ground floor kitchen window was open. I was able to view into the building and I noted the ground floor was an unfinished open shell, which was in use for the storage of building materials.
- At the eastern partially complete dwelling there was similar scaffolding in place at the front bay window, to a height of two storeys. The front lower ground floor bay window, the first-floor bay window and the first-floor box room window, were all installed. A timber front door and associated side and upper timber glass frame door panelling were installed. There was no glass installed to the glass frames and these were instead, for the most part, boarded up. The external wall to the front bay at ground floor level comprised of exposed blockwork and was not plastered. Above ground floor level and above first floor level respectively, the external wall of the front bay window was unfinished and exposed. The rear ground floor kitchen window and the first-floor rear bedroom windows were all installed and were not boarded up. The rear patio door was not installed with the associated door opening boarded up. I was able to view into the building and I noted the ground floor was an unfinished open shell, which was in use for the storage of some building materials.
- The eastern half of the site was open and unsecured. Part of this area of the site was overgrown with weeds. Part of the remainder appears to have been

in recent use for the storage of gravel with some remnants of said gravel remaining.

- The subject property, including the 2 no. buildings, have an unsightly appearance.

3.0 Application for Consent for Acquisition

- 3.1. Kilkenny 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 Kilkenny County Council serving a notice under Section 15 of the Act on the Derelict Sites Act, 1990, as amended, (i.e. advising of the Local Authority's intention to acquire compulsorily under the said Act, the derelict site as described).

4.0 Application and Objection

4.1. Notice of Intention to Acquire

- 4.1.1. Notice of Kilkenny County Council's intention to compulsorily acquire the site was served upon the owners/ occupiers (John and Margaret McGrath) on the 24th May 2024 and was published in the Kilkenny People Newspaper dated 24th May 2024. The site was described in the notices, as follows:

- Description of derelict site proposed to be acquired:

1. Derelict Buildings at Father Hayden Road, Kilkenny

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

4.2. Objection to Acquisition

- 4.2.1. 1 no. submission (by and on behalf of the property owners' expressing objection to the proposed acquisition was submitted to Kilkenny County Council.
- 4.2.2. The objection to the proposed compulsory acquisition was submitted to Kilkenny County Council by Smithwick Solicitors, dated 21st June 2024. The objection can be summarised as follows:

- The Property Owners (John & Margaret McGrath) object to the proposed compulsory acquisition on the following grounds:
 - It is stated that:
 - *‘The lands and buildings are not derelict under the Act as:*
 - *They are not in a ruinous, derelict or dangerous state,*
 - *They are not in a neglected, unsightly or objectionable condition,*
 - *There is no presence, deposit or collection on the land of any litter, rubbish, debris or waste,*
 - *The lands and dwellings are within the curtilage of our dwelling and the development is part of the long-term family estate management strategy.’*
 - Mr. McGrath is stated to be an experienced contractor who carries out small works projects in Kilkenny including an established maintenance service. The construction of the 2 houses has taken place in his spare time. It is acknowledged that progress has been slow at times but that it is reasonable to consider the effects of:
 - The impact of financial crises on the viability of the development. For a number of years, the availability of finance impacted the Property Owners’ cashflow.
 - The impacts of the Covid 19 pandemic.
 - The limited availability of the Owners’ free time to complete the project as his focus was on rebuilding his business following the above issues.
 - The Owners’ commitment to the completion of a quality development including:
 - The complete replacement of the fire damaged roof, to place beyond doubt, the integrity of the building.

- The replacing of the windows with more modern and higher quality units for reasons of aesthetics and quality.
- The final phase of the development can proceed as a settlement reached late last year will place Mr. McGrath in funds to progress the completion of the houses.
- It is intended that one of the houses will be used by the Owners as a step-down dwelling to retirement and that the other will be used by their daughter.
- There is a work and storage area on site to facilitate the construction works. Kilkenny County Council contract teams have been allowed to use this area on a short-term basis.

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 received on 2nd July 2024 and included the following:

- A copy of a submission to the Local Authority on behalf of neighbouring residents dated 6th March 2020. The submission seeks that the entire site be designated under the Derelict Sites Act, 1990, as amended and that the Local Authority considers action appropriate to the circumstances. The submission is counter signed by a significant number of local residents. The submission includes the following:
 - 6 no. undated site photographs (3 no. black and white and 3 no. colour),
 - 14 no. site photographs (9 no. dated March 2020 and 5 no. dated May 2017),
 - A copy of a summary of the site Planning History (2 Derelict Houses and Adjacent Site at Fr. Hayden Road, Kilkenny (EOE)) and referring to planning reg. ref. no's P74/97, P77/00, P05/028, P13/18, P14/990018,

- A copy of a letter to the Local Authority dated 28th August 2014, planning reg. ref. no. 14/18, lodged on behalf of the applicant in respect of proposed boundary treatments,
- A copy of the Notification of Decision to Grant Planning Permission issued by the Local Authority on 21st October 2014, planning reg. ref. no. 14/990018.
- A copy of an internal memo/ report from a Technician in the Planning Department to an Administrative Officer in the Planning Department dated 3rd December 2000. The memo/ report includes a recommendation to serve a Section 8 2) Notice (Section 8 2) of the Derelict Sites Act, 1990, as amended) on the stated registered owner of the properties. It is further recommended that a Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended) be issued to the register owners, requiring the following works be carried out:
 - *‘Secure the windows and doors by covering with timber boards where necessary,*
 - *Install more secure fencing at entrances to the houses,*
 - *Clear rubbish and debris from around the properties.*
 - *Level the open space and keep clean.’*
- Copy of a Registered Letter to the Owners of the Property from the Local Authority dated 8th December 2020 referring to a Section 8 2) Notice (Section 8 2) of the Derelict Sites Act, 1990, as amended) and stating the Intention of the Local Authority to make an entry in the Register of Derelict Sites.
 - The Letter was accompanied by the following:
 - Copy of a Section 8 2) Notice (Section 8 2) of the Derelict Sites Act, 1990, as amended) dated 10th December 2020, ref. DS2007.
 - Copy of a Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended), ref. DS2007, stipulating that the following works be carried out:

- *'Secure the windows and doors by covering with timber boards where necessary.*
 - *Install more secure fencing at entrances to the houses.*
 - *Clear rubbish and debris from around the properties.*
 - *Level the open space and keep clean.'*
- Copy of Chief Executive's/ Designated Officers' Order regarding the service of the Section 8 2) Notice dated 10th December 2020, Order No. 646.
- Copy of Chief Executive's/ Designated Officers' Order regarding the service of the Section 11 Notice dated 10th December 2020, Order no. 645.
- Copy of the Local Authority Vacant Site Valuation Report including 1 no. photo dated 1st June 2021, Register No. VSR 21-7. The site is stated to have a current valuation of €465,000. The Valuation is stated in a handwritten note to be dated 4th August 2021.
- Copy of an internal memo/ report from a Technician in the Planning Department to an Administrative Officer in the Planning Department dated 7th March 2022. The memo/ report includes a recommendation to serve a new Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended) be issued to the register owners, requiring the following works be carried out:
 - *'Secure the windows and doors by covering with timber boards where necessary.*
 - *Install more secure fencing at entrances to the houses.*
 - *Clear rubbish and debris from around the properties.*
 - *Level the open space and keep clean.'*
- Copy of a Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended), ref. no. DS 2007, dated 8th March 2022, stipulating that the following works be carried out:

- *'Secure the windows and doors by covering with timber boards where necessary.*
 - *Install more secure fencing at entrances to the houses.*
 - *Clear rubbish and debris from around the properties.*
 - *Level the open space and keep clean.'*
- Copy of an email from a Local Resident to the Local Authority dated 22nd July 2022 which includes reference to ongoing works at the subject site.
- Copy of an email from a Local Resident to the Local Authority dated 26th July 2022 which includes reference to ongoing works at the subject site.
- Copy of a Report from an Executive Planner to an Acting Director of Services dated 27th July 2022, ref. no. DS 20-07. The Report recommends that the *'site be added to the Derelict Sites Register, and that notice of same be served on the above owner of the property in accordance with Section 8 7) of the Derelict Sites Act 1990.'*
- Copy of a Registered Letter from the Local Authority to the Owners' of the subject property dated 27th July 2022 referring to a Section 8 7) Notice (Section 8 7) of the Derelict Sites Act, 1990, as amended). Reference is also made in the letter that a vacant site levy remains due on the site, ref.. VSR21-7 and that the Local Authority is actively pursuing collection of all outstanding levies due. The Letter is accompanied by the following:
 - Copy of a Registered Letter from the Local Authority to the Owners' of the subject property also dated 27th July 2022. The letter gives notice that the Local Authority, in accordance with Section 8 7) of the Derelict Sites Act 1990, as amended, an entry has been made in the Derelict Sites Register in respect of the subject property/ lands.
 - Copy of a Section 8 7) Notice (Section 8 7) of the Derelict Sites Act, 1990, as amended) issued to the Owners', ref. no. DS 20-07, dated 27th July 2022.
 - Copy of a Local Authority Derelict Sites Map, Ref. DS 20-07, with the subject property outlined in red.

- Copy of a Letter from the Local Authority to the Owners' marked 'Private & Confidential' dated 4th March 2024. The letter refers to the subject site and that the property has been entered to the Local Authority Derelict Sites Register and that it (the subject property) has been vacant for some time and that this is a concern for the Council. The Letter refers to the Local Authority's interest in acquiring the property, either by agreement or by compulsory purchase order and invites the Owners' to make contact confirming their immediate plans for the property or if they are interested in selling the property. The Letter is accompanied by the following:
 - Copy of a Local Authority Derelict Sites Map, Ref. DS 20-07, with the subject property outlined in red.
- Copy of File Notes relating to the subject property prepared by a Local Authority Staff Officer dated 9th April 2024. The File Memo provides a summary of the File Correspondence up to 8th April 2024.
- Copies of 3 no. internal emails dated 25th April 2024, as follows:
 - The first email (@ 11.08 am) refers to the subject property and to an ongoing Circuit Court Case against the Owners' for non-payment of the vacant site levy (site ref VSR21-7). It is stated that as of the same date (25th April 2024) the Local Authority has requested their Solicitors to pause the action, in light of the imminent CPO proceedings.
 - The second email (@12.02 pm) refers to the CPO process being progressed, that it is hoped to publish notices the following week and requesting why the invoice for 2023 has not issued.
 - The third email refers to the timing of the issuing of invoices and that the demand should issue the following day (26th April 2024).
- Copy of an internal Local Authority Memo from the Town Regeneration Officer to the Chief Executive regarding the subject Derelict Site. The following is stated in the Memo:
 - *'The above site has been vacant and in a derelict condition for a number of years and has been placed on the Council's Derelict Sites Register. It consists of a plot of ground with 2 no. partially completed*

dwelling houses. There are no live planning permissions on the site. I recommend that the Council proceed with the compulsory acquisition of this site under Section 14 of the Derelict Sites Act 1990.

...

- *I would be grateful if you would let me have approval to proceed with the CPO in respect of the above derelict site.'*

The Memo is accompanied by a Copy of the Chief Executives Order of the Local Authority's intention to compulsorily purchase the site dated 20th May 2024. The Notice is signed by the Chief Executive.

- Copy of an email dated 16th May 2024 from the Local Authority to the relevant person regarding the placing of an advert in the Kilkenny People.
- Copy of the Local Authority Notice to compulsorily purchase the subject property dated 20th May 2024.
- Copy of a Local Authority Derelict Sites Map, Ref. DS 20-07, with the subject property outlined in red.
- Copy of a Register Letter sent by the Local Authority to the Owners' of the subject property on 20th May 2024 providing them notice of intention to acquire the Derelict Site Compulsorily under the Derelict Sites Act, 1990, as amended. Any objections are invited by writing on or before 25th June 2024.
- Copy of the Local Authority Compulsory Purchase Order dated 24th May 2024.
- 5 no. undated photographs of the site and the site notices affixed thereon. The notice in the first photograph is dated 24th May 2024.
- Copy of a full page extract from the Kilkenny People Newspaper dated 24th May 2024 which includes the Compulsory Purchase Order.
- Copy of a cover letter from the Owners' Solicitors (Smithwick Solicitors) dated 20th June 2024 referring to the Owners' Letter of Objection.
- Copy of the Owners' Letter of Objection dated 20th June 2024.

- Copy of a Letter of Acknowledgement of the letter of objection from the Local Authority (Town Regeneration Officer) to the Owner's Solicitors dated 28th June 2024.
- Copy of a Cover Letter from the Local Authority (Town Regeneration Officer) to An Bord Pleanála dated 1st July 2024 relating to the application for Consent under Section 16 (4) of the Derelict Sites Act, 1990, as amended.

4.3.2. The **Derelict Site Report** can be summarised as follows:

- The Derelict Site Report is dated 26th July 2022, Ref. DS 20-07.
- The Report relates to the subject property, at Father Hayden Road. The folio is stated to be unregistered.
- The site is stated to comprise 2 no. unfinished detached units which have been the subject of various planning permission since 1997. It is stated that the properties are not being maintained and are suffering from neglect.
- The Report refers to a Section 8 2) Notice (Section 8 2) of the Derelict Sites Act, 1990, as amended) served to the owners of the site on 10th December 2020 providing notice of the intent of the Local Authority to enter the site onto the Derelict Sites Register. It is stated that no response was received.
- The Report also refers to a Section 11 Notice (Section 11) of the Derelict Sites Act, 1990, as amended) served to the owners of the site on the same date, 10th December 2020, requiring certain works to be carried out, as follows:
 - *'Secure the windows and doors by covering with timber boards where necessary.*
 - *Install more secure fencing at entrances to the houses.*
 - *Clear rubbish and debris from around the properties.*
 - *Level the open space and keep clean.'*
- It is stated that no response was received in respect of the Section 11 Notice issued on 10th December 2020.

- The Report refers to a site inspection carried out in March 2022 and states that although certain works were carried out, they were not to the required specification. In particular, it is stated that the fencing was not secure with some fencing missing which would facilitate easy access. The windows and doors were not found to be secured although it is acknowledged that new windows had been installed.
- A second Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended) was issued on the 8th March 2022 which included the same above quoted works to be carried out. It is stated that no response was received.
- A further site inspection was carried out on 26th July 2022. In relation to this site inspection it is stated in the report that the windows and doors have been secure with timber boards, the fencing to the front and rear is still not secure, that rubbish and debris remain on the site, that the open space is overgrown, not levelled and is unkempt. It is further stated that a car was parked in front of the unfinished houses.
- The report concludes that the site continues to constitute a derelict site, as defined in Section 3 of the Derelict Sites Act, 1990, as amended, as per subsection a) and b), i.e.,
 - *a) the existence on the land in question of structures which are in ruinous, derelict or dangerous condition, or*
 - *b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question.*
- It is finally recommended that the site be added to the Derelict Sites Register and that notice of same be served on the owner of the property as per the provisions of Section 8 7) of the Derelict Sites Act, 1990, as amended, providing notice of the entry of the site onto the Derelict Sites Register.
- The Derelict Site Report dated 26th July 2022, Ref. DS 20-07, is signed by the Executive Planner and an Acting Director of Services.

4.3.3. An **Internal Memo** dated 14th May 2024 from the Town Regeneration Officer to the Chief Executive Officer recommends that the Local Authority proceed with the

compulsory acquisition of the site under Section 14 of the Derelict Sites Act, 1990, as amended. The following is stated in the Internal Memo:

‘The above site has been vacant and in a derelict condition for a number of years and has been placed on the Council’s Derelict Sites Register. It consists of a plot of ground with 2 no. partially completed dwelling houses. There are no live planning permissions on the site.’

4.4. Objector’s Submission

4.4.1. No objector’s submission was received by An Bord Pleanála.

4.5. Oral Hearing

4.5.1. No request has been received for an Oral Hearing.

5.0 Planning History

5.1. Planning History

- **14990018:** Permission for elevational changes to 2 no. existing dwellings. Permission was GRANTED on 21/10/2014 subject to 3 no. conditions.
- **13990018:** Retention and completion of boundary wall, permission for boundary railings and hard and soft landscaping to common courtyard. Retention and Permission was GRANTED on 08th December 2018 subject to 5 no. conditions.
- **05990028:** Permission to complete house under construction under planning ref. no. 74/97. Permission was GRANTED on 6th October 2010 subject to 6 no. conditions.
- **00990077:** Permission for the erection of 6 no. semidetached houses. Permission was GRANTED on 15th December 2000.
- **97990074:** Permission to erect 4 no houses, garages and associated site works. Permission was GRANTED on 15th December 1997 subject to 26 no. conditions.

6.0 Legislation and Policy Context

6.1. Derelict Sites Act 1990 (as amended)

6.1.1. The Derelict Sites Act 1990, as amended, makes provision 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.

6.1.2. 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.”

6.1.3. Other relevant provisions of the Act are summarised below:

- 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 of the Act 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 of the Act 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 its functional area.
- Section 15 sets out arrangements for giving notice if the local authority intends to acquire a derelict site compulsorily.
- Section 16 sets out arrangements if the owner/occupier wishes to object to the acquisition and it provides that if an objection is made, then the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

6.2. **Kilkenny City and County Development Plan 2021 to 2027**

6.2.1. The subject property is zoned Existing Residential in the Kilkenny City and County Development Plan 2021 to 2027. The relevant zoning objective is *‘to protect, provide and improve residential amenities.’*

6.2.2. The following section and objective of the Development Plan are of relevance to the subject proposal:

- Section 4.2.1 of the Plan relates to ‘Promoting Compact Growth. Under the heading of Active Land Management, it is stated that:

‘The Council will use its powers under the Derelict Sites and Vacant Sites legislation (see Section 6.6 Vacant Site Levy) in order to tackle the issues of dereliction and vacancy. Where possible, the Council will facilitate the regeneration and reuse of derelict buildings in appropriate locations for town centre uses.

The Council has served Compulsory Purchase Orders (CPOs) on four derelict or vacant homes within the County area and another six in the City in 2020.

The Council will continue to avail of its powers under the Derelict sites Act and the Vacant Sites levy and other statutory powers to actively manage land supply within the City and County.’

- Objective 4C reads as follows:

‘To actively promote the redevelopment and renewal of areas in need of regeneration whether urban or rural through appropriate active land management measures during the period of the Plan.’

7.0 Assessment

7.1. Site Inspection

- 7.1.1. I carried out my site inspection on 1st August 2024. Although internal access to the 2 no. partially complete dwellings was not available, I managed to view and photograph the interior of both buildings from their respective exteriors. I walked around the subject property and inspected the respective rear amenity spaces, the shared central space/ parking area between the buildings and the eastern half of the overall property/ site.

7.2. Category of Dereliction

- 7.2.1. Based on the condition of the subject property which I observed during my site inspection, I consider that the site falls within subsection (b) of Section 3 of the Derelict Sites Act, 1990, as amended, due to the land and structure being in a neglected, unsightly and objectionable condition.
- 7.2.2. With regard to subsection (a), which relates to structures which are in a ruinous, derelict or dangerous condition, having inspected the site and reviewed the material on the file, I do not consider that the structures are likely to be in a dangerous condition, or that they could be considered ruinous. Thus, it is not considered that the site falls within subsection (a) of the Derelict Sites Act 1990, as amended.
- 7.2.3. I do not consider the property to fall within subsection (c) of Section 3 of the Act as there was no rubbish evident at the time of my inspection.
- 7.2.4. In conclusion, I consider that the property detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, which in my view, renders it derelict under Section 3 of the Act, as amended.

7.3. Action of Local Authority

7.3.1. The Action of the Local Authority to date can be summarised as follows:

- Section 8 2) Notice (Section 8 2) of the Derelict Sites Act, 1990, as amended) issued on dated 10th December 2020 stating the intention of the Local authority to enter the subject property onto the Derelict Sites Register and inviting representations in writing. (Registered Letter issued on the same date to the Owners of the Property informing them of the Section 8 2) Notice.
- Section 11 Notice (Section 11 of the Derelict Sites Act, 1990, as amended), ref. DS2007, issued on 8th March 2022 to the Owners of the Property stipulating certain works to be carried out within 12 weeks of the date on which the notice takes effect. Any representations were invited within 14 days of the serving of the Notice.
- Section 8 7) Notice (Section 8 7) of the Derelict Sites Act, 1990, as amended) issued on the 27th July 2022 to the Owners of the Property confirming that an entry has been made in the Derelict sites Register in respect of the subject property/ lands.
- Letter sent to the Owners from the Local Authority marked 'Private & Confidential' dated 4th March 2024. The letter refers to the Local Authority's interest in acquiring the property, either by agreement or by compulsory purchase order and invites the Owners to make contact with the Local Authority confirming their immediate plans for the property or if they are interested in selling the property.
- Section 15 Notice (Section 15 of the Derelict sites Act, 1990, as amended) issued on 24th May 2024 to the Owners of the Property confirming the intention of the Local Authority to acquire the Derelict Site Compulsorily under the Derelict sites Act, 1990, as amended and inviting submissions on or before 25th June 2024.

7.3.2. Under Section 10 of the Derelict Sites Act 1990, as amended, it is noted that the Local Authority has a duty *'to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any land situate in their functional area does not become or continue to become a derelict site.'*

7.3.3. I accept that the Local Authority has taken steps in consultation with the owner of the subject property to bring the property out of dereliction. I note that according to the file, initial contacts were made with the Registered Owners of the Property by way of the Section 8 2) Notice issued on 8th December 2020 and then subsequently on 8th March 2022 (Section 11 Notice issued), the 27th July 2022 (Section 8 7) Notice issued), 4th March 2024 (Letter sent by Local Authority to the Owners) and 24th May 2024 (Section 15 Notice issued) and it was not until 21st June 2024 that a letter (dated 20th June 2024) from Solicitors acting on behalf of the Registered Owners was received by the Local Authority. Having regard to the foregoing I am satisfied that the Local Authority gave the property owner sufficient time and opportunity to address the dereliction. Therefore, I am satisfied that the efforts of the Local Authority have been fair and reasonable.

7.4. Compliance with Development Plan

- 7.4.1. I note the Kilkenny City and County Development Plan, 2021 to 2027, and specifically Section 4.2.1 – Promoting Compact Growth/ Active Land Management where it is stated that the Local Authority *‘will use its powers under the Derelict Sites and Vacant Sites legislation.. in order to tackle the issues of dereliction and vacancy.’* It is further stated that the Local Authority will *‘facilitate the regeneration and reuse of derelict buildings in appropriate locations for town centre uses.’*
- 7.4.2. I further note Objective 4C which seeks, inter alia, to actively promote the redevelopment of areas in need of regeneration through appropriate land management measures.
- 7.4.3. The subject property is in a derelict state, has never been occupied for human habitation and has remained vacant for a considerable length of time. I consider that the subject property detracts to a material degree from the character and appearance of the surrounding area. Therefore, I consider that the subject property and a compulsory 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.

7.5. Action of the Owner to Address Dereliction

- 7.5.1. I note the objection to the proposed compulsory acquisition lodged for and on behalf of the Owners of the property which was received by the Local Authority on 21st June

2024 (dated 20th June 2024). It is stated that the development forms part of their long-term family estate management strategy and that works are carried out in the Owners' spare time.

- 7.5.2. I note that planning permission was first Granted in 1997 (Reg. Ref. No. 97990074) and that the most recent Grant of planning permission was in 2014 (Reg. Ref. No. 14990018). It would appear the development in its current format first commenced construction prior to, at least, 2005.
- 7.5.3. I note the 14 no. photographs attached to the rear of the file which are dated May 2017 and March 2020. I note that between May 2017 (see photograph no. 10) and March 2020 (see photo no. 5), the roof of the eastern dwelling has been constructed and that the first-floor windows are shown to be omitted.
- 7.5.4. I further note the photos attached to the Derelict Site Report dated 3rd December 2020, including the attached 8 no. photos dated 30th November 2020 and that I note that additional works have been carried out since that date, which include the following:
- The installation of a window sill to the lower ground floor bay window of both properties,
 - The part construction of the front bay projection to both properties above ground floor level,
 - The installation of new windows at the front ground and first floor level (3 no. in total) to the eastern dwelling structure,
 - Plaster work above the front first floor bay window projection to the eastern dwelling structure,
 - Installation of guttering and completion of soffit and fascia to front elevation of eastern dwelling structure,
 - Installation of windows (2 no.) at rear first floor level of the eastern dwelling structure (see photograph no. 5 dated March 2020),
- 7.5.5. At the time of my site inspection the property was vacant and as noted further above was in a derelict state. Actions of the owner to address dereliction therefore include the actions outlined above. There is no evidence of any further significant action

having been taken by the Owner to Address Dereliction. The measures taken are in my opinion incremental and do not portray any sense of urgency on behalf of the Owners. I am satisfied that given the particular circumstances of this case; the proposed compulsory acquisition is proportionate.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Kilkenny County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the land to be acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.
- 8.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising the Derelict buildings at Father Hayden Road, Kilkenny, containing 0.11 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 24th May 2024 and on the deposited map. Ref. DS 20-07, 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.
- 8.3. 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 am satisfied that the acquiring authority has established that none of the alternatives are such as to render the means chosen and the compulsory acquisition by the acquiring authority unreasonable or disproportionate.
- 8.3.1. The effects of the 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 Kilkenny City and County Development Plan 2021-2025, and specifically Objective 4C, which seek, inter alia, to actively promote the redevelopment of areas in need of regeneration through appropriate land management measures. Accordingly, I am

satisfied that the grant of consent to compulsorily acquire these lands is clearly justified by the exigencies of the common good.

9.0 Recommendation

- 9.1.1. Having regard to the observed condition of the site, in particular the derelict condition, the unsightly and objectionable condition 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 b) of the Derelict Sites Act, 1990, as amended.
- 9.1.2. I consider it 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 Kilkenny County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1.1. Having regard to the derelict, unsightly and objectionable condition of the subject property, it is considered that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in Section 3 b) of the Derelict Sites Act, 1990, as amended, and that the acquisition of the site by the Local Authority is necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site. It is also considered that the objection made cannot be sustained, having regard to that said necessity 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.

Frank O'Donnell
Planning Inspector

28th August 2024