



An  
Bord  
Pleanála

## Inspector's Report ABP-321320-24

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<b>Development</b>	Derelict site at Melrose, Ballysimon Road, Limerick (DS-079-17)
<b>Location</b>	Melrose, Ballysimon Road, Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Notice Party</b>	Brain Lonergan
<b>Date of Site Inspection</b>	07 <sup>th</sup> February 2025
<b>Inspector</b>	Clare Clancy

## **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 Melrose, Ballysimon Road, Limerick (Folio Ref. LK324L) 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 application for consent for compulsory acquisition (referred to hereafter as the 'subject property') is located adjacent to the R527 Ballysimon road. It is located approx. 1.9 km to the southeast of Limerick City centre and approx. 280 m to the northwest of the Tipperary Road roundabout.
- 2.2. The area in which it is located is as a mature residential area. The subject property is located in a row of dwellings which are single storey and detached in nature. The side extension of the adjoining dwelling to the southeast abuts the side elevation of the subject property. There is an existing vehicular access from the site onto the adjoining public road and there is a public footpath adjacent to the site. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH).
- 2.3. My observations of the property on the date of site inspection included the following:
- A new dwelling has been constructed on the adjoining site immediately to the west which is dormer in scale and a new boundary wall is constructed providing the shared boundary between the subject property and the newly constructed dwelling.
  - The subject property has a new roof, the dwelling has been repainted including the roadside boundary wall of the subject property.
  - Windows and doors area in place.
  - New gravel driveway is in place.
  - The site was clean and tidy.

I was unable to achieve access to the rear of the property to inspect its condition.

### **3.0 Application for Consent for Acquisition**

3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under Section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices as follows:

- Section 8(2) on 23<sup>rd</sup> October 2017 (advising of the Local Authority's intention to entre the site on the register of derelict sites).
- Section 8(7) on 05<sup>th</sup> September 2019 (advising of the Local Authority's decision to entre the site on the register of derelict sites).
- Section 22 Notice of Valuation on 25<sup>th</sup> November 2019.
- Section 15(1)(a) on 20<sup>th</sup> September 2024 notifying of the Local Authority's intention to acquire the site compulsorily.

### **4.0 Application and Objection**

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

4.1.1. Notice of Limerick City and Council's intention to acquire the site compulsorily was served on the owners/occupiers/lessee (Brian Lonergan) on the 20<sup>th</sup> September 2024. The site was described as follows in the notice:

- A derelict site comprising a single storey dwelling and surrounding land situated at Melrose, Ballysimon Road, Limerick, containing 0.030 ha 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 a map bearing reference no. DS-079-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

4.1.2. I consider that the notice was 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. An objection to the proposed compulsory acquisition was submitted to Limerick City and County Council by Brain Lonergan in a letter dated 29<sup>th</sup> October 2024. The objection can be summarised as follows:

- Noted that the stated reason for compulsory acquisition was due to the 'neglected unsightly or objectionable condition of the land or any structures on the land in question'.
- Stated that the land and gardens have been cleared in the period since receipt of the council's letter of 20th September 2024 and a contractor was on site completing further works to the garden and exterior of property.
- A complete clear out of the site was undertaken by Frankling Waste Disposal February 2020.
- Consultation took place with Limerick City and County Council to try and avail of the Repair and Lease Scheme in 2021, but due to covid and post covid, the scope of work the costs increased resulting in the scheme unworkable.
- Correspondence and meetings were held with Limerick City and County Council in October 2022 to discuss other options and a builder was engaged to re-roof the house.
- Enquiries were made in January and March 2024 regarding the Vacant Property Refurbishment Grant with the aim to make an application.
- Monthly contributions towards the outstanding Derelict Site Levy is ongoing since November 2022 with c. €15,000 paid.
- The intention is to refurbish the property.

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

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on the 22<sup>nd</sup> November 2024 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 the 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 20<sup>th</sup> September 2024.
- Copy of the newspaper notice dated 28<sup>th</sup> September 2024.
- Copy of the objection made by the owner Brian Lonergan.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County have established a specialist '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 site detracts to a material degree from the character and appearance of the surrounding area and is deemed derelict due to missing / broken / leaking rainwater gutters or downpipes, broken, missing or boarded up windows or doors, dirty façade / paint peeling, accumulation of litter / waste or illegal dumping, site overgrown, unsightly boundaries (damaged hoarding, broken fences, rusted railings etc.
- The council first inspected the property on 22<sup>nd</sup> May 2017 and identified it as a derelict site.
- On 25<sup>th</sup> May 2017 a Section 29 Notice was affixed to the property seeking information on ownership. On 28<sup>th</sup> June 2017 the Area Inspector made contact with the owner Brian Lonergan advising him of remedial works required to address the dereliction at the site. The Inspection Report was furnished to the owner including details of schemes available to assist.

- A Section 8(2) notice was served on 23<sup>rd</sup> October 2017. No response was received to the notice.
- On 05<sup>th</sup> September 2017 a Section 8(7) notice was served on the owner. On 22<sup>nd</sup> December 2020 the owner advised Limerick City and County Council that it was his intention to renovate the property and make it available for rent and was considering the Repair and Lease Scheme with a long-term plan to lease to the council.
- On 25<sup>th</sup> November 2019 a Section 22 Notice of Valuation was issued.
- Updates in relation to the property were provided by the owner on 25<sup>th</sup> February 2021, 04<sup>th</sup> April 2021 and on 14<sup>th</sup> January 2022. The owner advised the Area Inspector that contractors were contacted to complete works but because of increased constructions costs during 2021 the Repair and Lease scheme may not be available to him.
- On 29<sup>th</sup> July 2022, site inspection carried out by Area Inspector noting the housing had fallen further into dereliction and on 24<sup>th</sup> November 2022 the owner outlined works that were to commence 25<sup>th</sup> November 2023.
- On 24<sup>th</sup> January 2023 the Area Inspector noted some remedial works commenced, and on 26<sup>th</sup> July 2023 a further site inspection indicated works had stopped, the site had become untidy and overgrown. Complaints from neighbours were received in relation to water from the roof of the dwelling due to no rain water gutters. Further site inspections carried out on 19<sup>th</sup> January 2024, 13<sup>th</sup> March 2024, 26<sup>th</sup> March 2024, 22<sup>nd</sup> May 2024 and 19<sup>th</sup> August 2024, noting that no works had recommenced, or no change to the property in terms of works to address dereliction of the site.
- It is the contention of the council that the inaction of the property owner and failures of their duties under the Derelict Sites Act that jeopardise 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.

#### **4.4. Objectors Submission**

4.4.1. A submission was made to the Board (via email) by Brian Lonergan on the 23<sup>rd</sup> December 2024 in response to the Section 15 notice. This can be summarised as follows:

- The external works reference by the owner in a letter of objection dated 29<sup>th</sup> October 2024 were completed during the first week of November 2024 (photographs of completed works attached to email).

#### **5.0 Planning History**

None.

#### **6.0 Policy and Legislation Context**

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

6.1.1. The subject property is zoned 'Existing Residential' in the Limerick Development Plan 2022-2028, the objective of which is 'to provide for residential development, protect and improve existing residential amenity'.

6.1.2. The following objectives are considered relevant;

##### Strategic Objective 4

'....Support and facilitate revitalisation and consolidation of the City, towns and villages, through public realm and placemaking initiatives. Address vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest ....'

##### 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.

## **6.2. Derelict Sites Act 1990 (as amended)**

6.2.1. 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.

6.2.2. Section 3 of the Act defines 'derelict site' as:

"Any land...which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because –

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law."

6.2.3. 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.

## **7.0 Assessment**

### **7.1. Site Inspection**

7.1.1. On the 07<sup>th</sup> January 2025, I carried out a site inspection. Internal access to the property or to the rear back garden area was not available, however I was able to view the site from the public road. The condition of the site is significantly improved when compared to photographs taken by the Local Authority dated 19<sup>th</sup> August 2024.

7.1.2. My observations of the site include the following:

- The overall dwelling and the front façade is repainted.
- The windows are no longer boarded up and windows and front door are in place.
- The dwelling has been re-roofed however it was noted that rain water goods are not yet installed.

- The garden area at the front of the dwelling has been cleared of overgrowth and replaced with decorative stone / pebbles.
- The roadside boundary wall is repainted and access to the site is gated and secured.
- A new shared boundary wall is constructed between the subject property and the adjoining new dwelling to the northwest.

7.1.3. The subject site is located in a prominent location along the Ballysimon Road. The area is characterised by similar style dwellings which are well maintained and in good condition. The works carried out since the application was submitted have significantly addressed the state of dereliction.

## **7.2. Category of Dereliction**

7.2.1. I note that the Local Authority considered that the property and lands fell under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended.

7.2.2. Based on my site inspection, it is my view that the subject property and lands do not fall within category (b) of Section 3 of the Act.

7.2.3. The subject property appears to be in reasonable structural condition externally. It no longer appears in a derelict or dangerous condition. There was no obvious evidence of significant cracking or structural damage to the external walls. No litter or rubbish or construction and demolition waste was evident within the site. I therefore consider that the site does not fall under category (a) or (c) of Section 3 of the Derelict Sites Act 1990, as amended.

7.2.4. Given the prominent location of the subject property on the Ballysimon Road which is a busy arterial route into / out of Limerick City centre, I consider that its current presentation to the area does not detract from the visual amenities or character of the area. Having regard to the foregoing, I am satisfied that the property does not fall under Category (b) of the Derelict Sites Act 1990, as amended.

## **7.3. Action of Local Authority**

7.3.1. The Compulsory Acquisition Report of the Local Authority dated 08<sup>th</sup> November 2024 in the History of the Derelict Site Case, indicates that there was active engagement

with the landowner. I note that the overall process of the Local Authority commenced on the 22<sup>nd</sup> May 2017 and arising from a Section 29 Notice seeking information on the ownership of the subject property on 25<sup>th</sup> May 2017, that there was ongoing engagement with the council by the landowner of the property up to March 2024. Notwithstanding, the report recommends that the property be Compulsorily Acquired under the Derelict Sites Act 1990, as amended.

- 7.3.2. I note the actions of the Local Authority and the statutory notices served on the owners in respect of the property as set out in Section 3.1 above.
- 7.3.3. A Notice of the Local Authority's intention to Compulsorily Acquire the property under Section 15 of the Derelict Sites Act 1990, as amended, was served on 20<sup>th</sup> September 2024 and published in the Limerick Leader newspaper on 28<sup>th</sup> September 2024.
- 7.3.4. 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 situated in their functional area does not become or continue to become a derelict site.* The policy of the Local Authority as expressed in the compulsory acquisition report, is to work proactively with property owners to seek timely actions to improve and activate sites through positive engagement, using powers under the Derelict Sites Act 1990, as amended, except where necessary.
- 7.3.5. It is over 5 years since communications between the owner and the Local Authority commenced in relation to the derelict state of the subject property. 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 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 underutilized sites and disused buildings and bring properties back into active reuse. Therefore I consider that the subject property and 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.

#### **7.5. Action of the Owner to Address Dereliction**

- 7.5.1. I note that owners/occupiers have obligations (under Section 9 of the Act) to “take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site”. From the evidence on file including the photos taken by the Local Authority appended to the Compulsory Acquisition report, it is evident that the subject property was in a derelict state and in an unsightly and neglected condition which detracted considerably from the character and visual amenities of the area at the time that the application to acquire the site was lodged.
- 7.5.2. I note that contents of the objection from the owner including photographs appended. Having inspected the site, it was evident to me that the owner has sought to address the issues of dereliction on the site, and in my opinion is likely to continue to address the indicators of dereliction of the property. I noted that the subject property has been re-roofed, repainted including the roadside boundary wall, and the front garden area cleared and now maintained with decorative gravel / pebbles. I did note that rainwater goods had not yet been installed. Also, with the construction of a new dwelling on the adjoining site to the northwest, a new shared boundary wall has been constructed. The boarding was removed from the windows and the windows and door were in place.
- 7.5.3. It is therefore my consideration that the subject property no longer appears in an neglected or unsightly state and thereby no longer negatively detracts from the character or visual amenities of the area. Therefore I would accept that the ongoing efforts by the owner to render the site non-derelict should be taken into account in this case. I further consider that the owner has invested considerable expense on the subject property and is progressing matters. In that regard, it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.
- 7.5.4. It is further noted that the local authority has powers under Section 11 of the Derelict Sites Act 1990, as amended, to require the owner to take specified measures to address any outstanding issues contributing to the dereliction of the property, should this be deemed necessary.

- 7.5.5. Having regard to all of the information available on the file and to my site inspection I conclude that the property no longer constitutes a derelict site having regard to Section 3 of the Derelict Sites Act 1990, as amended. On this basis, I consider that it is appropriate to refuse the Local Authority's application for consent to compulsory acquire the site at Melrose, Ballysimon Road, Limerick.

## **8.0 Conclusion**

- 8.1. 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 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 a single storey dwelling and surrounding land situated at Melrose, Ballysimon Road, Limerick, containing 0.030 ha, 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 20<sup>th</sup> day of September 2024 and on the deposited map (DS-079-17) 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 further satisfied that the proposed acquisition of these lands was consistent with the policies and of the Limerick Development Plan 2022-2028 specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use and to revitalise towns and villages.
- 8.4. It is further acknowledged that at the time of the lodgement of the application with the Board, the acquiring authority had adequately demonstrated that the means chosen to achieve that objective would have impaired the property rights of affected landowners as little as possible, and that the effects of the compulsory acquisition on the rights of affected landowners were proportionate to the objective being pursued at the time.
- 8.4.1. However, having regard to the works carried out to the front façade which is repainted, the boarding removed and the windows and door in place, a new roof, the repainting

of the roadside boundary and the clearing of the front garden and the enhancement works carried out to same, I am no longer 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 am satisfied that the alternatives are such as to render the means chosen and the compulsory acquisition by the acquiring authority unreasonable or disproportionate.

- 8.4.2. 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 the progress made on site, I am no longer satisfied that that the grant of consent to the compulsory acquisition is justified by the exigencies of the common good at this point in time. I am of the opinion that, given the works carried out to date on site it would be appropriate to allow time to progress matters on site.

## **9.0 Recommendation**

- 9.1.1. Taking account of the evidence of the ongoing efforts being made by the Notice Party to address the dereliction on the site and to bring the property back into use which include for enhancement works carried out that comprise of the repainting of the subject property including the roadside boundary, a new roof, clearing of vegetation at the front of the dwelling, 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.

## **10.0 Reasons and Considerations**

Having regard to the current condition of the site and 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 Limerick Development Plan 2022-2028,

it is considered that the site does not detract to a material degree from the amenity, character and appearance of land in the neighbourhood. Therefore, having regard to

the efforts made to date by the owner to address matters that gave rise to the derelict condition of the site, the compulsory acquisition of the site by the local authority is not necessary in order to render the site non-derelict. The Board is not satisfied, therefore, that the objection made cannot be sustained, having regard to that said necessity or 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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Clare Clancy  
Planning Inspector

04<sup>th</sup> March 2025