



An
Bord
Pleanála

Inspector's Report ABP-321936-25

Development

Derelict Site – semi-detached two storey dwelling house and the curtilage of the dwelling. Derelict Site Ref. KY DS 2024-2

Location

31 Desmonds Avenue, Castleisland, Co. Kerry

Planning Authority

Kerry County Council

Notice Party

Aileen McCarthy

Date of Site Inspection

24th April 2025

Inspector

Clare Clancy

1.0 Introduction

- 1.1. This case relates to a request by Kerry County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 31 Desmonds Avenue, Castleisland, Co. Kerry 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 within the settlement boundary of Castleisland town.
- 2.2. It is located approx. 240 metres to the north of Main Street. It forms part of Desmonds Avenue which is a mature residential housing development comprising of approx. 34 no. dwellings characterised by two storey semi-detached and detached dwellings. It is located to the east of the Limerick Road L-2041.
- 2.3. The subject property has a stated area of approx. 0.02 ha and comprises of an existing two storey semi-detached dwelling, with vehicular access along the eastern side which also provides access to the rear of the dwelling. This is a shared access driveway between the subject property and the adjoining dwelling immediately to the east. As a result, there is no defining boundary between the two sites. There is a public footpath adjacent to the front of the dwelling and on-street car parking is available along the estate road. The boundaries of the site consist of hedging and pedestrian access serving the front of the dwelling is available off the adjoining access/driveway to the east.

3.0 Application for Consent for Acquisition

- 3.1. Kerry County Council 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) Notice on 25th March 2024 (advising of the Local Authority's intention to enter the site on the register of derelict sites).

- Section 8(7) Notice on 10th May 2024 (advising of the Local Authority's decision to enter the site on the register of derelict sites).
- Section 15(1)(b) Notice on 25th November 2024 notifying of the Local Authority's intention to acquire the site compulsorily.
- Section 15(1)(a) Notice on 27th November 2024 published in a local newspaper 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 Kerry County Council's intention to acquire the site compulsorily was served on the owners/occupiers/lessee Aileen McCarthy on the 25th November 2024 and was published in the Kerryman newspaper dated 27th November 2024. The site was described as follows in the notice:

- A derelict site comprising a two-storey, semi-detached dwelling and the curtilage of the dwelling situate at 31 Desmonds Avenue, Castleisland, Co. Kerry containing 0.02 ha or thereabouts. The said property and surrounding lands is in a state of dereliction. The said derelict site is more particularly shown outlined in red on a map bearing reference no. DS/2024/01 in the Derelict Sites Register established and maintained by Kerry County Council under Section 8 of the Derelict Sites Act, 1990 (as amended).

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 Kerry County Council by the owner/occupier Aileen McCarthy dated 17th January 2025. The objection can be summarised as follows:

- Objects to the proposed compulsory acquisition of the subject property and advised that a prospective purchaser for the subject property was secured who

expressed a wish to live in the property and restore the property to comply with the requirements of Kerry County Council.

- Letter appended to the objection dated 16th January 2025 from an auctioneer acting on behalf of the owner/occupier confirming that a prospective purchaser was secured and intending to use the property as their primary residence.

4.2.2. The Local Authority responded to the submission on 30th January 2025 requesting further details relating to the proposed sale of the subject property, a specific timeline for the sale of the subject property and confirmation of the current status of the sale to be furnished by 07th February 2025.

- In reply, a letter was received by the Local Authority on 07th February 2025 from the auctioneer acting on behalf of the owner/occupier stating that the sale process takes between 6-8 weeks, and the legal matters would be dealt with separately by solicitors after the sale.

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 19th February 2025 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 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 Derelict Site Location Map.
- Copy of cover letter to the Notice Party Aileen McCarthy dated 25th November 2024.
- Copy of the Section 15 Notice served on the owners/ occupiers/ lessee of the site dated 25th November 2024.
- Copy of the newspaper notice The Kerryman date 27th November 2024.
- Copy of the objection made by the Notice Party Aileen McCarthy.

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

- Kerry County Council established a Vacant Homes Office to seek to address vacancy and dereliction in the county. Through working with private property owners and through the application of various assistance schemes such as the Croí Cónaithe Vacant Property Refurbishment Grant, the Repair and Lease Scheme and the Buy and Renew Scheme, the aim is to reduce dereliction and to increase restoration, renovation and refurbishment of derelict properties.
- The Kerry County Council Derelict Sites Office was reassigned to the Housing Directorate early 2024 and a compulsory acquisition scheme was identified as a key priority to address vacancy and dereliction. In this regard, properties that were identified as being in a state of dereliction for an extended period of time and where the other schemes were deemed not appropriate, or where there was no engagement from a registered owner or any parties within an estate or interest in or right in respect of the derelict site, the use of compulsory acquisitions would act to address the dereliction, but only where absolutely necessary.
- Following a Vacant Property Survey carried out in 2022/2023, the subject property was identified as vacant. The Local Authority engaged with the property owner to discuss the possibility of bringing the subject property back into use. A site inspection was carried out November 2023 whereby the owner indicated that they had no plan at that time to carry out works to the property. It was subsequently referred for inspection under the Derelict Sites Act 1990, as amended.
- The subject property was inspected on 29th February 2024 and it was observed by the Local Authority that the subject property and the open spaces within the curtilage of the dwelling had gone largely without maintenance or upkeep for several years and as a result, impacted negatively on the immediate area.
- It was determined that the existing structures on the site were not considered to be ruinous, derelict or dangerous condition and did not come within the scope of Section 3(a) of the Derelict Sites Act 1990, as amended. However it was considered that the subject property came within the scope of Section 3(b) due to lack of maintenance of the dwelling, sporadic overgrowth of the front garden, and the general appearance of the dwelling and its curtilage. It was noted that

garden waste was deposited at the side the existing dwelling which was there for an extended period.

- A Section 8(2) Notice was served on 25th March 2024 and affixed to the subject property. No response was received in regard to the Notice.
- A Section 8(7) Notice was issued on 10th May 2024 advising of the Local Authority's decision to enter the site on the register of derelict sites. No response was received in regard to the Notice.
- A site Inspection was carried out on 11th June 2024 which confirmed that no works had been undertaken, and it was considered that the subject property continued to be a derelict site.
- Following on from the site inspection, a Section 15(1)(a) Notice was issued on 27th November 2024, notifying of the Local Authorities intention to acquire the site compulsorily, and a S15(1)(b) Notice was placed in the local newspaper The Kerryman on 25th November 2024.
- It is the contention of the Local Authority that the subject property continues to materially detract from the amenity, character and appearance of land in the neighbourhood, a neighbourhood in which properties are primarily owner-occupied and well maintained. It is also contended that the owners failed to address the dereliction or engage with the Local Authority when issued the statutory notices. It is submitted that the claim of a prospective purchaser having being secured was not substantiated when requested by the Local Authority, and that no evidence was produced to indicate that the matter would be resolved without further delay.

4.4. Objectors Submission

4.4.1. A submission was made to the Board by the Notice Party Aileen McCarthy and Patsy McCarthy on 27th March 2025 in response to the Section 15 Notice. This can be summarised as follows:

- The subject property is the family home of the owner.
- The owner spoke with Kerry County Council in November 2023 regarding various options to bring that subject property back into usable condition and

informed the council that they were not planning on renovating it and placing it on the rental market.

- It is hoped to pass on the dwelling to one of their children for use as a family home.
- It was indicated that the Local Authority would send an auctioneer to value the subject property on behalf of the council however this did not materialise.
- On 25th March 2024, they were notified that the subject property would be placed on the Derelict Sites register which they thought was part of the process that the council discussed with them, and hence did not respond to the Section 8(7) Notice.
- The subject property was valued privately by an auctioneer on August 2024 with recommendations to obtain a BER assessment and certificate and to tidy the subject property for potential viewings which took time to carry out and complete. Prior to placing the subject property for sale, it was then noted that it was listed in the local paper for compulsorily acquisition.
- It is unclear why the subject property was classified as derelict as it was considered to be unoccupied and not a derelict house. A derelict property would be in a poor state of disrepair and a danger to the public. It is evident from the photos provided by the council that the classification of dereliction does not apply to their dwelling.
- It is submitted that after the meeting with Kerry County Council, it was their understanding that a valuation would be carried out on behalf of the council as outlined by the council's staff member and they would not be in this position.
- Kerry County Council have sought payment of levy placed on property amounting to €8,400.

5.0 Planning History

None.

6.0 Policy and Legislation Context

6.1. Development Plan

6.1.1. Kerry County Development Plan 2022-2028 is the operative plan:

- The subject property is located within the settlement boundary of Castleisland town and the functional area of the development plan.
- Castleisland town is part of the Castleisland/Corca Dhuibhne Municipal District / Electoral Area.
- Castleisland is designated as a 'Regional Town' in the Settlement Hierarchy.

6.1.2. Volume 1 Written Statement

The following policies and objectives are relevant:

Strategic Objectives

KCDP 4-1

Support and facilitate the objectives and actions in Housing for All (HfA) to regenerate towns and villages, to tackle dereliction, vacancy, to deliver site assembly opportunities and to promote the sustainable development of land to achieve compact growth and increased population in these centres and to engage with the Land Development Agency (LDA), where appropriate, in the identification, planning and co-ordination of strategic, publicly owned land banks to achieve compact growth, sustainable development, and urban regeneration.

Section 4.3.4 Derelict and Vacant Properties

- Sustainable development practices require vacant or derelict sites within urban areas to be developed prior to greenfield sites on the outskirts of urban areas where development of such sites is achievable.
- The development of derelict sites and underutilised sites and buildings will be encouraged in urban areas in the interest of achieving the most efficient use of urban lands and to stimulate regeneration.

- It is a policy of the Plan to identify sites in a poor state of repair or neglect under the Derelict Sites Act 1990. Derelict properties may be used as homes for wildlife such as swifts, bats and barn owls.

Section 4.3.5 Repair & Leasing Scheme

- The purpose of the Repair and Leasing Scheme is to bring vacant properties in need of repair, back into use for social housing. The scheme aims to rejuvenate properties suitable for town centre housing that would otherwise slip from vacancy and low repair costs into dereliction and prohibitive repair costs. The scheme provides a positive contribution to the socio-economic development of the county's towns.

Section 4.3.6 Buy & Renew Scheme

- As an alternative and to complement the Repair and Leasing Schemes the "The 'Buy and Renew' scheme aims to support Local Authorities and Approved Housing Bodies (AHBs) to purchase and renew housing units that require remediation and make them available for social housing use in areas of housing need.
- The focus under the scheme, is on older stock, and in particular derelict properties which when complete will improve streetscapes and provide much needed accommodation.

Active Land Management

KCDP 4-26

Implement a programme of active land management to tackle dereliction, vacancy and underutilisation of lands and fragmented patterns of land ownership up to and including compulsory acquisitions and support the implementation of policies included in Housing for all – A New Housing Plan for Ireland in relation to active land management, dereliction and vacancy, including the emerging Residential Zoned Land Tax.

KCDP 4-31

Promote the development of vacant residential and regeneration sites in all development centres in the County, as appropriate, in accordance with the provisions of Housing for All – A New Housing Plan for Ireland.

KCDP 4-32

Use the Derelict Site legislation to identify and address issues of dereliction within the towns and villages of the County and actively seek to use CPO where necessary.

KCDP 4-33

Encourage the development and renewal of areas, identified in the Town and Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent: Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land Urban blight and decay Anti-social behaviour and A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

KCDP 4-34

Encourage residential, social and employment uses in existing under-utilised or vacant building stock as a mechanism to combat vacancy in town centres.

KCDP 4-35

Encourage and support the use of town & village centre regeneration schemes, including:

- Repair & Leasing scheme
- Buy & Renew scheme
- Living over the shop scheme
- Croí Cónaithe fund.

Renovation and Restoration of Buildings

KCDP 5-30

Facilitate and support the objectives and actions of the plan “Housing for All, a New Housing Plan for Ireland” to tackle vacancy and the efficient use of existing housing stock in relation to vacant, derelict structures including heritage buildings.

Visitor Accommodation

Encourage the sensitive redevelopment and / or return to suitable use, of derelict, vacant or redundant buildings, in appropriate locations in order to provide for visitor accommodation and tourism development. As part of this, potential for impact on wildlife should be taken into account as outlined in S 4.3.4 of this plan.

6.2. Killarney Municipal District Local Area Plan 2018-2024

6.2.1. The subject property was located in the functional area of the Killarney Municipal District Local Area Plan¹. It does not appear that the plan was formally extended. However, for context, the following is noted:

- The subject property was zoned 'Existing Residential'.

Objective: Provide for residential development and protect and improve residential amenity

Purpose: For existing predominately residential areas allowing for the protection of existing residential amenity balanced with new infill development. May also include a range of other ancillary uses for residential, particularly those that have the potential to foster the development of residential communities. These are uses that benefit from a close relationship to the immediate community, such as crèches, some schools and nursing homes. A limited range of other uses that support the overall residential function of the area may also be considered

6.3. Corca Dhuibhne Electoral Area Local Area Plan 2021-2027

The following is noted:

- Corca Dhuibhne and Castleisland is identified as a Municipal District. The plan area only covers the Corca Dhuibhne Local Electoral Area as the Castleisland

¹ The Draft Killarney M.D. Local Area Plan 2023-2029 appears to be at pre-draft stage. The following is noted from the 'Issues Paper':

"The new plan will replace the existing Killarney Town Plan as contained in Volume 2 of the Kerry County Development Plan 2022-2028, and the Killarney Municipal District LAP 2018-2024 (Killarney M.D. LAP). Due to the reconfiguration of the Municipal Districts in 2019, certain settlements within the Killarney M.D. LAP will stay in effect until they are included in the Castleisland/Corca Dhuibhne M.D. LAP 2024-2030".

area is contained within the Killarney Municipal District LAP adopted in December 2018.

6.4. Derelict Sites Act 1990 (as amended)

6.4.1. 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.

6.4.2. 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."

6.4.3. 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. Internal access and rear access to the property was not possible on the date of my site inspection on 24th April 2025, however I was able to view the subject property from the public road.

7.1.2. My observations of the subject property on the day of site inspection include the following:

- The house appeared vacant.
- The front garden was overgrown however the hedgerow defining the boundaries of the site appeared to be generally well maintained.
- The front door, the windows at first floor level and ground floor level were all in place and are modern upvc.
- Paint on window surrounds and cills was noted to be in need of repainting.
- The front façade addressing the public road was dirty.

- Rain water goods were in place.
- There was some growth of ivy on the lower part of the front façade which also extended to the adjoining property to the west.
- The area to rear of the dwelling adjacent to the garage store was cleared of vegetation.
- Moss growth was evident on the roof.

7.1.3. The subject property is not a Protected Structure, is not listed on the National Inventory of Architectural Heritage (NIAH) and is not located within an Architectural Conservation Area (ACA).

7.1.4. The subject property is located in a mature residential area. The front façade of the existing dwelling requires attention to improve its appearance, however the overall condition of the existing dwelling was observed to be reasonably good. Similarly, the front garden requires on-going maintenance to manage growth. There was no evidence of rubbish, construction and demolition waste or substantial vegetation overgrowth. Overall, I am satisfied that the subject property did not unduly detract from the character of the streetscape or unduly impact on the visual amenities of the area. The adjoining dwellings in the neighbourhood overall were noted to be well maintained.

7.2. Category of Dereliction

7.2.1. I note that the Local Authority considered that the property and lands fall 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 may be considered to be in a neglected, unsightly and objectional condition, as set out under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended:

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

7.2.3. Having regard to (b) above, it is my consideration that the appearance of the subject property has not changed or improved since the Section 15 Notice was issued. Notwithstanding, I do not consider that the subject property and lands are detracting

to a material degree from the amenity, character and appearance of land in the neighbourhood in question.

- 7.2.4. The subject property was noted to not be in a ruinous / derelict / dangerous condition. In this regard, I am satisfied that the subject property does not fall under Category (a) of the Derelict Sites Act 1990, as amended. I did not notice any litter or rubbish within the curtilage of the subject property, or any evidence of waste being stored externally. Therefore I am satisfied that the site does not fall under Category (c) of the Derelict Sites Act 1990, as amended.

7.3. Action of Local Authority

- 7.3.1. I note the actions of the Local Authority and the statutory notices served on the owners in respect of the subject property. A Section 8(2) Notice was served on the owner on 25th March 2024 advising of the Local Authority's intention to enter the site on the Derelicts Site Register. A Section 8(7) Notices was subsequently served on the owner on 10th May 2024 advising of the Local Authority's decision to enter the site on the Derelicts Site Register. Section 15(1) Notices was served on the owner on 25th November 2024 and published in the Kerryman newspaper on 27th November 2024. Having regard to the foregoing, I am satisfied that the Local Authority complied with the requirements of Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended.
- 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"*. The policy of the Local Authority as expressed in the compulsory acquisition report, is to work proactively with property owners and through the application of various schemes, an increased inclination towards restoration, renovation and refurbishment of properties can be fostered to achieve the overall strategic goal of addressing vacancy and dereliction in the county.
- 7.3.3. Since the subject property was identified as a vacant property following the Local Authorities Vacant Property Survey in 2022/2023, I note the Local Authority commenced the process of engagement with the owner. Following further site

inspections on November 2023 and on 29th February 2024 by the Derelict Sites Officer and the issuing of the Section 15(1) Notices, it is c. 2 years since communication between the owner and the Local Authority commenced in relation to the derelict state of the property. Having regard to the foregoing, I am satisfied that the Local Authority gave the property owner sufficient time and opportunity to address the state of 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 Kerry County Development Plan 2022-2028 specifically Objectives KCDP 4-1, KCDP 4-26, KCDP 4-32 and KCDP 5-30, which seek to address instances of dereliction and decay in the urban and rural environment, and to reuse and revitalise derelict, vacant and underutilised 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 an objection to the proposed acquisition of the site was made to the Local Authority by the owner Aileen McCarthy on 17th January 2025. The basis of the objection was that the owner was in the process of selling the subject property. I note that a further objection was made to the Board on 27th March 2025 outlining that the owner was in communication with the Local Authority. Following these discussions, I note that initially it was indicated that it was not the intention of the landowner to renovate the property or to rent it, and subsequently it was decided to pass the subject property onto a family member as a family home. The Local Authority had indicated to the owner that a valuation of the property would be carried out by an auctioneer on behalf of the Local Authority which it appears that the owner was waiting on. Following on from that, the owner organised a valuation assessment, BER assessment (supporting details not provided) and carried out some works to prepare the property for sale. I note that the owner has also queried the status of the subject property being

classified as derelict by the Local Authority, and stating that it is an unoccupied property.

7.5.2. 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*”. I note from my site inspection on 24th April 2025 that it was not apparent that any further works had been undertaken to address the appearance of the subject property since the Local Authorities site inspection carried out on 11th June 2024, prior to the issuing of the Section 15(1) Notice on 27th November 2024.

7.5.3. Having inspected the site, it was evident to me that the appearance of the subject property is relatively the same. That being said, I note the submission of the owner to the Board and while I acknowledge that the subject property is a vacant property, I do not consider that the overall appearance of the subject property materially impacts on the character of the adjoining streetscape or on the visual amenities of the area. In this regard, I do not consider that the condition of the subject property has deteriorated further since the application was lodged. Having regard to the above assessment and to my inspection of the lands, and having regard to the Local Authorities determination of the subject property under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended, I acknowledge that the subject property has been vacant for sometime however on balance, I am satisfied that the condition of the site is not so unsightly and objectionable that it detracts to a material degree from the amenity and character of the neighbourhood and in this case, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

8.0 Conclusion

8.1.1. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising a two-storey, semi-detached dwelling and the curtilage of the dwelling situate at 31 Desmonds Avenue, Castleisland, Co. Kerry containing 0.02 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 25th day of November 2024 and on the deposited maps DS/2024/01 pursues, and is 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.

- 8.1.2. I am further satisfied that the proposed acquisition of these lands by the acquiring authority, which are currently in an unsightly and objectionable condition, was consistent with the policies and objectives of the Kerry County Development Plan 2022-2028, and specifically objectives KCDP 4-1, KCDP 4-26, KDCP 4-35, KCDP 4-32 and KDCP 5-30 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. However, I am not satisfied that the condition of the site is so unsightly and objectionable that it detracts to a material degree from the amenity and character of the neighbourhood.
- 8.1.3. I am not satisfied, therefore, that the process and procedures undertaken by Kerry County Council have been fair and reasonable, or that the local authority has demonstrated the need for the lands, or that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site. It is further acknowledged that the acquiring authority has not adequately demonstrated that the means chosen to achieve the objective in the public interest 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.
- 8.1.4. 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. Having regard to the current condition of the subject property and to the submissions made by the Notice Party in objection to the proposed acquisition of the subject property and to the Board, I am no longer satisfied that the grant of consent to compulsorily acquire the lands is justified by the exigencies of the common good at this point in time. I am of the opinion that the condition of the subject property is not so unsightly and objectionable that it detracts to a material degree from the amenity and character of the neighbourhood, and that it would be appropriate in this case to allow the Notice Party time to progress further improvements of the subject property.

9.0 Recommendation

Notwithstanding the current unsightly condition of the site, I am satisfied that the subject property does not detract to a material degree from the amenity, character and appearance of the streetscape and surrounding land in the neighbourhood. I do not, therefore, consider it reasonable that the Local Authority seeks to compulsorily acquire the land as provided for in Section 14 of the Derelict sites Act. I recommend, therefore, that the Board refuses consent to Kerry County Council to the compulsory acquisition of the site.

10.0 Reasons and Considerations

Having regard to the current unsightly and objectionable condition of the site and having considered the objection(s) 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 Kerry County 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 and, therefore, that 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.

Clare Clancy
Planning Inspector

17th June 2025