



An
Bord
Pleanála

Inspector's Report

ABP-321100-24

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

No. 49 Rathmore Park, Raheny,
Dublin 5

Local Authority

Dublin City Council

Notice Party

John Finbarr Duggan

Date of Site Inspection

6th December 2024

Inspector

Frank O'Donnell

1.0 Introduction

- 1.1. This case relates to a request by Dublin City Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site, 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 No. 49 Rathmore Park, Raheny, Dublin 5. The subject property comprises a vacant two storey dwelling structure, a single storey garage structure to the rear and associated front and rear amenity and circulation space. The subject appeal site forms part of a terrace of 3 no. dwellings and has an approximate site area of 0.03 hectares (304 sqm). Access to the rear of the site was originally available via the rear laneway but this was blocked by overgrown vegetation and the deposition of builders' rubble and general rubbish in front of the garage door entrance at the time of the site inspection.
- 2.2. The subject property is not listed as a Protected Structure and is not listed on the National Inventory of Architectural Heritage (NIAH). The site is not located within an Architectural Conservation Area (ACA).
- 2.3. On the day of my site inspection, I was unable to gain entry to the interior of the dwelling structure and the property appeared to be unoccupied. I specifically note the following:
- The front garden area and associated garden path was entirely overgrown by vegetation. The front door of the property was not readily accessible owing to the said overgrowth which extended over the access pathway leading to said front door.
 - The rear amenity space was similarly overgrown.
 - The overall property was in a poor state of repair. A significant amount of guttering was missing at roof level on the front elevation. The paintwork on the front garden wall and pillar was in poor condition. The paintwork on the window surrounds and windowsills at first floor level on the front elevation were in poor condition. The rear of the site onto the laneway was similarly

overgrown with debris/ rubbish piled in front of the rear garage door, albeit outside of the defined site area.

- No obvious works to address dereliction appear to have been carried out at the property since the receipt of the application by the Board on 18th October 2024.

3.0 Application for Consent for Acquisition

- 3.1. Dublin City 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 Dublin City 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 Dublin City Council's intention to compulsorily acquire the site was served upon the owners/ reputed owners (John Finbarr Duggan and Ms. Ellen Duggan, c/o Harry Mooney & Co Solicitors) dated the 16th August 2024 and was published in the Irish Independent dated 16th August 2024. The site was described in the notices, as follows:

- No. 49 Rathmore Park, Raheny, Dublin 5.

- 4.1.2. I consider the newspaper notice was in accordance with the requirements of Section 15 (1) (a) of the Derelict Sites Act 1990, as amended. I do not consider the newspaper notice was in accordance with the requirements of Section 15 (1) (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 owner/ reputed owner (John Finbarr Duggan) expressing objection to the proposed acquisition was submitted to Dublin City Council.

4.2.2. The objection to the proposed acquisition was submitted by letter to Dublin City Council by Harry Mooney & Co. Solicitors for and on behalf of John Finbarr Duggan and is dated 5th September 2024. The letter includes a comprehensive background as to the history of the property, the main points of which can be summarised as follows:

- 1962: Property was purchased by the late John Duggan (father of client (John Finbarr Duggan))
- 1992: John Duggan died intestate and was survived by his widow, Ellen Duggan, who continued to reside at the property until her failing health required that she move permanently to reside with her daughter, Jacqueline Duggan, in 2010;
- 2020: Ellen Duggan moved permanently into a Nursing Home. Under the Fair Deal Scheme, the HSE insisted in taking a charge over the interest of Ellen Duggan in the Property. The Client (John Finbarr Duggan) applied for letter of administration intestate to his father's estate.
 - On 8th May 2020, Ms. Jacqueline Duggan (sister of the Client), who was beneficially entitled to an interest in the property, passed away. Ms. Jacqueline Duggan is understood to have also died intestate. It was not possible, owing to her declining health and advanced age, for Ellen Duggan (mother of the Client (John Francis Duggan) and Jacqueline Duggan) (as the sole person entitled) to apply to administer the estate of Jacqueline Duggan. This above information was freely shared with the Local Authority.
 - On 20th November 2020, the Client (John Francis Duggan), assented to the vesting in Ellen Duggan of a two-thirds interest in the Property.
- 2021: The above assent was registered on 13th January 2021 over which the HSE then registered its charge of the property.
 - In early 2021, the Client (John Francis Duggan), is stated to have first become aware that the Local Authority had entered the property onto its Derelict Sites Register and has since tried to meet the requirements of the Local Authority in respect of the property, despite the

complicated title issues and his resulting limited authority in respect of the property. The Client has incurred substantial remedial and legal costs, in the course of same.

- In addition to his engagement with the Derelict Sites Section of the Local Authority, the client has also co-operated and facilitated the inspection of the property for the purpose of negotiations towards a possible voluntary sale of the property to the Local Authority.
- 2024: Ms. Ellen Duggan passed away on 9th January 2024.
 - More recently, several messages have been left earlier 2024 by the Client with the City Valuers Office with a view to discussing any further requirements or processes necessary for the removal of the Property from the Derelict Sites Register.
 - On 17th April, the Clients' Solicitor responded to correspondence from the Chief Valuers Office of the Local Authority dated 10th April 2024 but heard nothing until the service of the Section 14 Derelict Sites Notice.

4.2.3. The grounds of the objection can be summarised as follows:

- Ground 1:
 - At various times, (as has been acknowledged by the Local Authority), the Client has arranged for substantial works to be carried out to the Property with a view to addressing its alleged derelict status. These efforts have continued throughout the year (2024) with attempts made by the Client to contact the appropriate Local Authority Officials to arrange a further inspection to confirm whether the property was in a satisfactory condition for the Local Authority or if further works were required. The Compulsory purchase is unreasonable in the circumstances having regard to the efforts made by the Client. It is certainly premature to purport to serve notice in advance of inspection.
- Ground 2:
 - The explanatory information of the Local Authority in relation to the Compulsory Purchase Order (CPO) process under the Derelict Sites Act is that it should only be used as a last resort. The current situation

cannot reasonably be considered to be a last resort. A further inspection, either internal or external, should be carried out and a schedule of any outstanding works should be issued together with a reasonable timeframe for implementation having regard to the legal difficulties outlined in the objection letter.

- Ground 3:
 - The Clients' means are limited by which to address any outstanding concerns in relation to the condition of the property. The Client hopes to have access to ample funds in time from the estate of his mother (Ellen Duggan) and his sister (Jacqueline Duggan). Irish succession and probate law requires the Client to extract letters of his mother's estate before he can establish an entitlement to apply to administer the estate of his sister. The client's sister's estate is stated to unfortunately contain the valuable assets that will finance further works on the property.
- Ground 4:
 - Notice has not been given, as required by Section 15 of the DSA to the 'owners' of the property, as defined in Section 2 of the Act:
 - *'The Act contains no provision for serving notice on a solicitor acting an owner of the property in question.'*
 - *'There has been no actual or purported service on the partial beneficial owners, Jacqueline Duggan or any person on whom such notice might be validly served.'*
 - *'There has been no actual or purported service on the registered or partial owner, Ellen Duggan or any person on whom such notice might be validly served.'*
 - *'Insofar as the Council letter dated of 16th August 2024 purports to serve notice on this firm as solicitors 'for the grantee John Finbarr Duggan', such categorisation of 'grantee' has no status under the Derelict Sites Act and such service has not validly thereunder.'*

- Ground 5:
 - Service of a notice, where owners have died intestate, as in the case of Jacqueline Duggan and Ellen Duggan, cannot be validly effected on either a family member of, or a solicitor who previously acted for, the deceased owner. Our client is in the course of preparing an application for a grant of administration intestate for his mother's estate, but assets of the estate will not vest in him, nor will he enjoy any powers, as legal personal representatives of the deceased owner, until a grant of letters of administration issues to our client from the Probate Office. In the case of his sister, Jacqueline Duggan, our client's entitlement to apply to administer her estate will not arise until he has been confirmed as administrator of his mother's estate.
- Ground 6:
 - In the case of a deceased owner, notice should not be served, or deemed to have been validly served, in circumstances where no person is currently legally authorised to respond or act on behalf of the deceased owner. This is not a case where an owner cannot be traced, or the Council has no contacts for the surviving family of a deceased owner, and a property has simply been ignored and allowed to become derelict. Rather this is a situation where our client has demonstrated, despite the legal limitations or restrictions applying, a willingness to take action to address the Council's concerns and considerable work and expense evidence this. At a time when our client is endeavouring to deal with his late mother's affairs, it is premature to serve notice to compulsorily acquire a property whose fragmented ownership hampers, but will not ultimately prevent, our client from remedying any remaining issues.

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 18th October 2024 and included the following:

- Copy of a Cover Letter dated 16th October 2024 presented under the main headings Description of the Site and History. The letter is stated to include 3 no. Appendices, as follows:
 - Appendix 1: A Copy of a Notice Published in the Irish Independent dated 16th August 2024.
 - Appendix 2: A Copy of an Objection received from Harry Mooney & Co. Solicitors on behalf of their client John Finbarr Duggan.
 - Appendix 3: A Copy of the Local Authority's Response to same.
- Description of the Site:
 - The Local Authority describe the property as a mid-terrace two storey dwelling. The front and rear gardens are stated to remain overgrown, with paintwork on the front gate pillars in poor condition, window frames are stated to be in poor condition and the overall appearance is stated to be unsightly and neglected. The Local Authority state that in their opinion, the site is derelict within the meaning of Section 3 (b) of the Derelict Sites Act, 1990, as it detracts to a material degree from the amenity, character and appearance of the land in the neighbourhood due to its unsightly and neglected condition (reference is made to Appendix 4 which is assumed to be the Derelict Sites Section/ Inspection Report dated 22nd August 2017 which is accompanied by 3 no. photographs).
- History:
 - The site is stated to have a long history of dereliction. The Derelict Sites Unit is stated to have had an active file on the site since February 2015.
 - The site was first entered onto the Derelict Sites Register on 19th October 2017.
 - John Duggan, the previous owner, passed away in 1992 and his wife Ellen Duggan moved out shortly thereafter.

- The Local Authority attempted to contact their daughter, Jacqui Duggan, but were unsuccessful.
- Reference search indicated that Jacqui Duggan passed away in early 2020 and her mother, Ellen Duggan, passed away in 2024.
- Mr. John Duggan's son, Finbarr Duggan was named Grantee of his estate, Grant of Administration dated 19th July 2020.
- There was some correspondence between the Local Authority and Mr. Finbarr Duggan between 23rd May 2021 to June 2022 in relation to works required to be carried out at the property.
- In June 2022 Mr. Finbarr Duggan indicated his willingness to sell the property to the Local Authority but this did not progress. The condition of the property continued to deteriorate during 2022. The property was found to be in a derelict condition in October 2023.
- On 2nd November 2023, an informal letter of notice of intention to acquire was issued to Solicitors acting on behalf of Mr. Duggan. The letter advised as to the intention of the Local Authority to acquire the property under the Derelict Sites Act 1990. It was stated that the Local Authority would not proceed where it could be satisfactorily demonstrated to the Local Authority that immediate action would be undertaken to render the property non-derelict. Proposals in relation to same were requested. The Local Authority state that no response was received.
- In February 2024 further inspections revealed no change to the site.
- On 15th February 2024, the Local Authority (City) Valuers were instructed to commence negotiation to acquire the property by agreement.
- On 15th May 2024, the Local Authority (City) Valuers confirmed that no response had been received from Mr. Duggan or from his Solicitors. The Local Authority proceeded with the Compulsory Acquisition.
- Having considered the objections received to the Compulsory Acquisition and having regard to the circumstances of the case, the

Local Authority has determined that Compulsory Acquisition is the most appropriate course of action. The site is the subject of ongoing public complaints, has a long history of dereliction, is entered on the Derelict Sites Register and continues to deteriorate.

- A key priority of the Local Authority is the eradication of dereliction and the return of such sites to active use. Notwithstanding the powers and the legislative provisions of the Derelict Sites Act, the powers to compulsorily acquire sites are only used as a last resort, particularly where other efforts to have the owner carry out improvement works and attempts to acquire by agreement have not been successful.
- A Copy of a letter from the Local Authority to Harry Mooney & Co. solicitors dated 16th October 2024. The letter apologises for the delay in replying to the letter of 5th September 2024, acknowledges the objection to the Notice of Intention to acquire compulsorily the property and states that the file will be referred to An Bord Pleanála. It is finally stated that the complications in relation to title are noted from the objection and that the Local Authority is open to engagement during the An Bord Pleanála process.
- The Response of the Local Authority to the 6 no. Grounds of Objection presented in the Solicitors Letter dated 5th September 2024, can be summarised as follows:
 - Ground 1:
 - In 2021 previous clean up works took place. The said works were not however completed to the satisfaction of the Local Authority and Mr. Duggan was informed of this and that further works were required. Despite several requests to do so, the said further works were not completed and the site once again became overgrown and neglected. An inspection was arranged by the Derelict Sites Team for February 2024 where it was noted that no further works or action had been undertaken and the site was in a further state of deterioration since the clearance works in 2021. No request to arrange further inspections have been received from Mr. Duggan. The Solicitor acting on behalf of Mr.

Duggan was advised by correspondence in November 2023 that if proposals were submitted to address the works required, that the Local Authority would not proceed with its intention to acquire the property.

- Ground 2:
 - The Local Authority on various occasions clearly expressed an interest in acquiring the property. The first instance in 2018 was not progressed by the owner or their Solicitor. The latest attempt made by the Local Authority in February of 2024 received no response from the owner or their Solicitor. The Local Authority consider that ample time and notifications were afforded. In correspondence sent to Mr. Duggan's Solicitor in November 2023 the Local Authority advised of their intention to acquire the property, should works not be completed.
- Ground 3:
 - The Local Authority note that the owners are not exempted from their responsibility in maintaining the property by reason of the lengthy time frame for such legal issues to be resolved. There is an onus upon the owners to ensure the property does not fall further into disrepair and neglect. Following the compulsory acquisition of the property, the client is entitled to apply for compensation.
- Ground 4:
 - Serving of the Notice upon a solicitor acting as owner of the property: A letter issued to the Solicitors Office for information on behalf of their client. Previous reference search dated 11th May 2021 confirmed that contact and further queries could be made via the Clients' Solicitor.
 - No actual or purported Service of the Notice on the partial beneficial owner, Jacqueline Duggan or any person on whom such notice might be served: Previous notice of intention to

acquire the derelict site, served on Ms. Jacqueline Duggan, dated 10th September 2018 at her home address.

- No actual or purported Service of the Notice on the registered partial owner, Ellen Duggan or any person on whom such notice might be served: Notice was initially served on the property address advising of the Council's intention to enter the property onto the Derelict Sites Register. A Notice was also affixed to the property 8th September 2017. Further notices were issued to the address 18th May 2018. Updated referenced search 21/8/2018 confirmed that Ms Ellen Duggan resided with her daughter Jacqueline and that all correspondence should be addressed to her home address. Reference Search 11th May 2021 advised Ellen Duggan was in nursing home care and her son John Finbarr Duggan was looking after her affairs.
 - Insofar as the Local Authority letter dated 16th August 2024 purports to serve notice on the firm of Solicitors 'for the grantee John Finbarr Duggan', such categorisation of 'grantee' has no status under the Derelict Sites Act and such service has not validity thereunder: As previously stated, this Notice was provided to the offices of the Solicitors Firm for information on behalf of their client Mr Duggan. Reference search carried out in 2021 confirmed Mr. Duggan as grantee and executor of his father's estate and confirmed contact details for further correspondence could be made via the said Solicitors Firm at the Company address.
- Ground 5:
 - The Local Authority is satisfied that reasonable action was undertaken to determine the ownership including making contact through postal address provided, via the Solicitor acting on behalf of Mr. Duggan and by way of public advertisement and affixing notice on the property.

- Ground 6:
 - The Local Authority is satisfied that reasonable attempts to ensure the carrying out of improvement works as well as attempts to acquire the property by agreement were not successful. Issues in relation to legal title can typically take a long time to resolve, the property in the meantime has continued to be neglected and to further deteriorate.

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

- The Derelict Site Inspection Report/ Memo, dated 19th August 2024, relates to the subject property, no. 49 Rathmore Park, Raheny, Dublin 6. In relation to the condition of the site, it is stated that the site remains in a derelict condition, that front and rear gardens remain overgrown and that paintwork on the front pillars and front window frames are in poor condition.
- In relation to Action taken is stated that a Section 15 Notice (Intention to Acquire) has been affixed to the site.

4.4. **Objector's Submission**

4.4.1. 1 no. Observation submission was submitted to An Bord Pleanála on behalf of the owner/ reputed owner (John Finbarr Duggan) in response to the comments of Dublin City Council to the initial objections submitted by the same party to the compulsory acquisition of the property.

4.4.2. The 1 no. Observation submission is dated 13th November 2024 and can be summarised as follows:

- A 'communication booklet' can be provided if this would be of assistance.
- Mr. Duggan engaged with the Local Authority in a meaningful way and arranged for substantial clean up works to the property against difficult legal and family circumstances. The Local Authority should not have served the Section 15 Notice, having regard to the works already undertaken by Mr. Duggan and his outstanding request for details of further works which would address the concerns of the Local Authority.
- The service requirements of the Derelict Sites Act have not been complied with.

- Observations on the Local Authority's Response can be summarised as follows:
 - Ground 1:
 - In 2022 and not in 2021, the Local Authority acknowledged that the works carried out at the Observer's own expense had brought the property to a point where the Local Authority stated in an email dated 4th July 2022 as requiring 'more tidying up in the back garden area'.
 - In the 3-year period within which the Observer has been engaging with the Local Authority, the level of detail provided by the Local Authority as to what work would be required was in emails on 16th April 2021, 28th May 2021 and 4th July 2022 and involved clearance and tidying up of the front and rear gardens.
 - In 2022 and 2023 cleaning up works continued with the Observer paying for a gardening contractor out his own limited resources. The Observer's Mother's sole income was a non-contributory State old-age pension, 80% of which was allocated to the HSE under the Fair Deal Scheme.
 - Against the backdrop of exhaustive efforts from 2021 to clean up the property and following receipt of the letter from the Local Authority dated 10th April 2024, the Observer wrote to the Local Authority on 17th April 2024. The letter challenged the position of the Local Authority but also expressly requested a response in writing as to what further works to the property would address the remaining concerns and allow the property to be removed from the Derelict Sites Register. No response to this request was received from the Local Authority.
 - Ground 2:
 - This implies that once the Local Authority expressed an interest in acquiring the property, the only reasonable response from the property owner would be to sell the property. Steps have

been taken to address the condition of the property. The letter from the Observer to the Local Authority dated 17th April 2024 should not have been ignored by the Local Authority and cannot assert, having regard to the extensive works having been carried out to the property over the past several years, that a last resort CPO is justified.

- It was made clear to the Local Authority on several occasions that the fragmented title of the property meant that it would not be possible for the Observer to voluntarily dispose of the property to the Local Authority. This was repeated in a letter to the Local Authority dated 17th April 2024 where it was advised that further difficulties arose following the death of Ellen Duggan (the Observers Mother).
 - The Observer has had several enquiries from individuals in the past 3 years expressing an interest in acquiring the property but has been forced to advise that such interest cannot be explored until such time as the title situation is resolved.
- Ground 3:
- The Client does not contend that his family is exempt from their responsibilities in respect of the property as demonstrated by his efforts over the past 3 years, as does his request from April 2024 for details as to what would satisfy the remaining concerns of the Local Authority. The efforts of the Client have been to preserve the property in an acceptable condition until such time as the remaining ownership and financial difficulties can be resolved and the property can be sold (to the Local Authority or a third party) or possibly restored and offered for rental purposes.
- Ground 4:
- Serving of the Notice upon a Solicitor acting as owner of the property: The Section 15 Notice has not been served as required in the Act and there is nothing in the Response of the

Local Authority in this regard. This non-compliance should not be ignored as it could lead to the owners of the property being denied their constitutional rights.

- No actual or purported Service of the Notice on the partial beneficial owner, Jacqueline Duggan or any person on whom such notice might be served: The point relates to the service of the Section 15 Notice. The Local Authority's case/ response in relation to this point refers to a letter in 2018 (10th September 2018) served upon Jacqueline Duggan. This does not constitute a Section 15 Notice which is a condition of the CPO process. A Section 15 Notice has not been issued to Jacqueline Duggan or any person authorised to be her representative.
- No actual or purported Service of the Notice on the registered partial owner, Ellen Duggan or any person on whom such notice might be served: The point relates to the service of the Section 15 Notice. The Local Authority's case/ response does not constitute a Section 15 Notice. A Section 15 Notice is a condition of the CPO process. A Section 15 Notice has not been issued to Ellen Duggan or any person authorised to be her representative.
- Insofar as the Local Authority letter dated 16th August 2024 purports to serve notice on the firm of Solicitors 'for the grantee John Finbarr Duggan', such categorisation of 'grantee' has no status under the Derelict Sites Act and such service has not validity thereunder: The point relates to the service of the Section 15 Notice. The response of the Local Authority, which refers to certain communications, does not constitute a Section 15 Notice. A Section 15 Notice must be served on the owner or owners of the property and there is no provision for service of the notice on a 'grantee', a term which is not defined in the Derelict Sites Act.

- Ground 5:
 - The Objector has been clear in his communications with the Local Authority regarding the legal/ registered and beneficial ownership of the property and the difficulties caused by the death of Jacqueline Duggan in 2021 and the infirmity of Ellen Duggan in the latter years of her life and her later death in 2024. The Local Authority is not excused of its requirement to serve the Section 15 notice on all of the persons it understood to be owners of the property. The Local Authority has failed in this regard as the sole purported serving of the notice is to a firm of Solicitors referred to as the 'Grantee' of the property and for Ellen Duggan, who had died some 7 months prior to when the notice was served.
- Grounds 6:
 - The Local Authority was premature in its decision to issue a Section 15 Notice or commence the CPO process as communications were ongoing and the Local Authority failed to respond to a request for details of outstanding works required.
 - The Local Authority's position is that no work has been carried out since 2021 and its various comment are predicated on this. This is not a fair representation of the background. Further works were carried out after 2021 as acknowledged by the Local Authority in 2022. The Observer notes that as of 4th July 2022 the Local Authority considered more tidying up was required. During 2023 the Observer continued to pay for gardening services at the property. On 17th April 2024, the Observer wrote to the Local Authority and rang on the 20th May 2024. No response was received.

4.5. Oral Hearing

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

5.0 Planning History

5.1. Planning History

- There is no recent planning history on the subject site.

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. Local Planning Policy Context

Dublin City Development Plan 2022 to 2028

- 6.2.1. The subject property is zoned 'Z1' - *'Sustainable residential Neighbourhoods'* in the Dublin City Development Plan 2022-2028 (see Map C) the zoning objective of which is *'to protect, provide and improve residential amenities'*.
- 6.2.2. Chapter 4 'Shape and Structure of the City' notes – ongoing issues of dereliction, urban decay, underutilised and vacant sites, particularly in the inner city, and the need to implement effective active land management to promote balanced and sustainable economic and residential development.
- 6.2.3. Chapter 5 'Quality Housing and Sustainable Neighbourhoods' notes – that there are significant tracts of vacant and underutilised land in the city, and that measures

including the Derelict Sites Act 1990 through the compulsory purchase of land will be used to as a means to encourage brownfield development and compact growth in the city.

6.2.4. The Dublin City Development Plan 2022-2028 includes the following relevant policy:

- Objective CSO11 - To deliver development through the use of the Derelict Sites Act 1990 and through the compulsory purchase of land as part of active land management to achieve the objectives of compact growth and the proper planning and sustainable development of an area.

7.0 **Assessment**

7.1. Site Inspection

7.1.1. I carried out my site inspection on 6th December 2024. Internal access to the building was not available. The site and the subject building were for the most part overgrown with impenetrable bushes and trees. I inspected the front, side and rear of the overall subject property.

7.2. Category of Dereliction

7.2.1. Based on the condition of the subject property which I observed during my site inspection I do not consider that the site falls within subsection (a) of Section 3 of the Derelict Sites Act, 1990, as amended, 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 structure(s) are likely to be in a dangerous condition, or that they could be considered ruinous.

7.2.2. In respect of subsection (b) of Section 3 of the Act I note that no works have been undertaken to address the indicators of dereliction. I further note the general appearance of the property having a neglected, unsightly and objectionable condition and I consider that the site falls within subsection (b) of Section 3 of the Derelict sites Act, 1990, as amended. I particularly note that the subject property is located alongside buildings which are for the most part attractive and well maintained.

7.2.3. I do not consider the property falls within subsection (c) of Section 3 of the Act as there was no substantial rubbish evident, on the subject site, 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.

7.3. Action of Local Authority

7.3.1. 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.'*

7.3.2. I note, as per the Section 8 (7) Notice attached to the file (Section 8 (7) of the Derelict Sites Act 1990, as amended), that the subject property (No. 49 Rathmore Park, Raheny, Dublin 5) was first placed on the Derelict Sites Register on 19th October 2017. This follows on from an initial complaint received by the Local Authority in February 2015.

7.3.3. Since the site was entered onto the Derelict Sites Register, I note further inspections of the property were carried out on dates including 4th October 2018, 30th January 2019, 22nd March 2019, 14th June 2019 (Report dated 17th June 2019), 29th October 2019, 11th February 2020, 23rd March 2020, 28th April 2021 (Report dated 10th May 2021), 30th June 2022 (dated 1st July 2022), 30th November 2022 (Report dated 5th November 2022), 3rd April 2023 (Report dated 12th April 2023), 14th August 2023, 18th October 2023 (Report dated 20th October 2023), 12th February 2024 (Report dated 16th February 2024), 30th July 2024 (Report dated 31st July 2024), 16th August 2024 (Report dated 19th August 2024).

7.3.4. I also note various internal memorandums and email correspondence as well as external email correspondence between the various parties since the site was entered onto the Derelict Sites Register in October 2017. I further note separate written correspondence from the Local Authority to the Owner (address: subject property, No. 49 Rathmore Park) dated 18th May 2018, Ms. Jacqueline Duggan (home address) on 10th September 2019, the Estate of John Duggan (address: c/o Solicitors) on 5th January 2023, Ms. Ellen Duggan (address: c/o Solicitors) on 5th January 2023, Solicitors (acting for the Grantee John Finbarr Duggan) on 2nd November 2023, Solicitors (acting for the Grantee John Finbarr Duggan) on 16th

August 2024 and Solicitors (in respect of the subject property, ref. 49 Rathmore Park, Raheny, Dublin 5 – DS1012) on 16th October 2024.

- 7.3.5. A Notice of the Local Authority's intention to Compulsorily Acquire the property under Section 15 of the Derelict Sites Act, 1990, as amended, dated 16th August 2024, was issued by registered post to the Solicitors stated in an attached cover letter to be *'acting for the Grantee John Finbarr Duggan and Ms. Ellen Duggan, the reputed owner of the property.'* The Notice refers to the Derelict site proposed to be acquired as No. 49 Rathmore Park, Raheny, Dublin 5. The notice was affixed to the site and was also published in the Irish Independent Newspaper dated 16th August 2024.
- 7.3.6. A key element of the Observers 2 no. submissions, to the Local Authority and the Board respectively, relates to the serving of the Section 15 Notice. The Observer considers the serving of the said Section 15 Notice does not comply with the provisions of Section 15 of the Derelict Sites Act 1990, as amended. I note Section 15 1 b) requires, inter alia, that the notice is served on *'...every owner, lessee and occupier (except tenants for a month or a period less than a month) of the land a notice in the prescribed form stating their intention to acquire the derelict site to which it relates, ...'*. I further note Section 15 2) provides a definition of 'owner'¹.
- 7.3.7. I note the internal memo dated 11th May 2021 from Dublin City Law Department to the Derelict Sites Section which confirms 2/3 of the property is vested in Ellen Duggan and the remaining 1/3 is vested in the Father's Estate (John Duggan) with John Finbarr Duggan (Son) acting as Executor. Reference is made in the said memo to a Memorial of Deed of Assent dated 13th January 2021 and I note that this in turn references Ellen Duggan as Grantee and John Finbarr Duggan as Grantor. This said Memorial of Deed was incidentally lodged by the same firm of Solicitors who lodged the 2 no. Objection submissions to the Local Authority (dated 5th September 2024) and An Bord Pleanála (dated 13th November 2024). I am unaware of any further change having been made to the deeds of the property in the interim.

¹ Section 15 (2) of the Derelict Sites Act, as amended, *'In this section "owner" means in relation to land, a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person who holds or is entitled to the rents and profits of the land under a lease or agreement, the unexpired term whereof exceeds three years.'*

- 7.3.8. I have reviewed the Derelict Sites Register dated 14th January 2025 which is available from Dublin City Councils' website, and I note that the subject property (No. 49 Rathmore Park, Raheny, Dublin 5) is listed on the Register, see ref. no. DS1012.
- 7.3.9. I accept that the Local Authority has taken steps in consultation with the Owner/ Reputed Owner of the subject property to bring the property out of dereliction that the Local Authority gave the property owner sufficient time and opportunity to address the dereliction and that the efforts of the Local Authority have been fair and reasonable.
- 7.3.10. However, having regard to the wording of Section 15 1 b) of the Derelict Sites Act, 1990, as amended, I am satisfied that the Section 15 Notice has not been served upon the 'owner' of the property but has instead been served upon Solicitors acting on his behalf. I am therefore satisfied that the Local Authority has not complied with the provisions of Section 15 1 b) of the Derelict Sites Act, 1990, as amended.

7.4. Compliance with Development Plan

- 7.4.1. I note the Dublin City Development Plan, 2022 to 2028, and specifically Objective CSO11, which seeks to deliver development through the use of the Derelict Sites Act, 1990 and through the compulsory purchase of land as part of active land management to achieve the objectives of compact growth and the proper planning and sustainable development of an area. The property has been in a derelict state for over six years and is understood to have been vacant for a considerable length of time. 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 objections to the proposed compulsory acquisition lodged for and on behalf of the Owner/ Reputed Owner (John Finbarr Duggan) of the property dated 5th September 2024 and 13th November 2024. I also note the response of the Local Authority to the 6 no. Grounds of Objection dated 16th October 2024.
- 7.5.2. Works have been carried out at the property at various times. The said works appear to mainly relate to the upkeep of the garden areas to the front and rear of the property. I note the Local Authority refer to a site inspection in February 2024 where

it is noted that no further works or action had been undertaken and that the site was in a further state of deterioration since the clearance works in 2021.

- 7.5.3. Having inspected the site, I am satisfied there is no evidence of any recent significant action having been taken by the Owner/ Reputed Owner (John Finbarr Duggan) to address Dereliction and that the site has remained on the Derelict Sites Register.

8.0 Conclusion

- 8.1. I am satisfied that the process and procedures undertaken by Dublin City 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 site and premises situate at and known as no. 49 Rathmore Park, Raheny, Dublin 5, containing an approximate site area of site area of 0.03 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(a) of the Derelict sites Act 1990, (as amended) and dated 16th August 2024 and on the Derelict Sites Map relating to the subject site dated 26th July 2024 (Index no. SM-2024-0357) 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.
- 8.4. 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 Dublin City Council Development Plan 2022-2028, and specifically Objective CSO11

which seek to deliver development through the use of the Derelict Sites Act, 1990 and through the compulsory purchase of lands as part of active land management to achieve the objectives of compact growth and the proper planning and sustainable development of an area.

- 8.5. However, having regard to the wording of Section 15 1 b) of the Derelict Sites Act, 1990, as amended, I am satisfied that the Section 15 Notice has not been served upon the 'owner' of the property but has instead been served upon Solicitors acting on his behalf. I am therefore satisfied that the Local Authority has not complied with the provisions of Section 15 1 b) of the Derelict Sites Act, 1990, as amended.

9.0 Recommendation

- 9.1.1. Notwithstanding the current observed condition of the site, in particular, the unsightly and objectionable condition of the land and the structure thereon, which I consider materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended, I am satisfied that the Local Authority, in seeking to compulsorily acquire the land, as provided by Section 14 of the Act, has failed to issue the Section 15 notice in accordance with the provisions of Section 15 1 b) of the Derelict Sites Act, 1990, as amended. The Section 15 Notice has been issued to a Solicitor acting on behalf of the 'owner' as opposed to the 'owner' as stipulated in Section 15 1 b) of the Derelict Sites Act, 1990, as amended.
- 9.1.2. I recommend therefore that the Board refuse consent to Dublin City Council to compulsorily acquire the site.

10.0 Reasons and Considerations

- 10.1.1. Having regard to the current unsightly and objectionable condition of the site and dwelling structure, 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 Dublin City Development Plan, 2022 to 2028,

it is considered that the Section 15 Notice was not served upon the owner in accordance with the provisions of Section 15 1 b) of the Derelict Sites Act, 1990, as amended, and that the application for compulsory acquisition by the Local Authority has therefore not complied with the provisions of the Act.

The Board is not satisfied, therefore, 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

22nd January 2025