



An
Bord
Pleanála

Inspector's Report

ABP-321935-25

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

Roncalli, Clash, Tralee, Co. Kerry,
V92 T6Y2

Local Authority

Kerry County Council

Notice Party

Padraig Harrington

Date of Site Inspection

19th May 2025

Inspector

Jennifer McQuaid

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 Roncalli, Clash, Tralee, Co. Kerry, V92 T6Y2 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 at Roncalli, Clash, Tralee, Co. Kerry, V92 T6Y2, which is located along Clash Road appropriately 1km northeast of Tralee town centre.

2.2. The subject site consists of a detached two-storey dwelling and has a stated site area of 0.05 hectares. The site includes the dwelling itself, a front garden, a rear garden and a side entrance. The site is adjacent an existing well maintained two storey dwelling of similar design to the southwest. To the northeast, the site consists of overgrown trees and outbuildings. The subject site is in a state of disrepair with numerous roof tiles missing, a significant hole in part of the roof, missing gutters, the front porch is in immediate need of care with the roof missing tiles, no guttering, parts of the roof have collapse and significant cracks in the exterior wall and damage to the sliding doors . The garden area is overgrown, and weeds are growing in the paved or concreted areas.

2.3. Based on a comparison of photographs attached to the Local Authority's Compulsory Acquisition Report (no date on the report) and noted as site inspection on the 17th September 2024, I note that no works or improvements have been carried out at the subject property other than additional security fencing and removal of partly overgrown hedgerow.

3.0 Application for Consent for Acquisition

3.1. Kerry County Council has applied to the Board for consent to compulsorily acquire the site under Section 14 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to Kerry County Council serving a notice

on 25th November 2024 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 Kerry County Council's intention to compulsorily acquire the site was served upon the owners/ occupiers (Padraig Harrington) on the 25th November 2024 and was published in The Kerryman dated 27th November 2024. The site was described in the notices, as follows:

- A derelict site comprising a two-storey, detached dwelling house and the curtilage of the dwelling house situate at Roncalli, Clast, Tralee, Co. Kerry, V92 T6Y2 containing 0.05 hectares or thereabouts.

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

4.2. Objection to Acquisition

4.2.1. One number submission (by the property owner) expressing objection to the proposed acquisition was submitted to Kerry County Council by Padraig Harrington.

4.2.2. The objection to the proposed acquisition was submitted by registered post and received on 20th January 2025, the deadline was advised as 22nd January 2025.

4.2.3. The objection can be summarised as follows:

- The owner inherited the property and due to financial issues with the bank, he could not commence work. This has since been resolved.
- Renovation on the property will commence in coming months.
- Clearing around the site has commenced.
- Boundary issues have been resolved.

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 21st February 2025 and included the following:

- Reference in the notice to reputed owner stating the subject dwelling has been entered on the Register of Derelict Sites on 26th July 2024.
- Copy of Compulsory Acquisition Report, Derelict Site File Ref. KY DS 2023-21 completed by Kerry County Council Inspector Paul McMahon, Derelict Sites Officer.
- Photographs of the subject site.
- Copy of newspaper notice dated 27th November 2024.
- Copy of deposit map.
- Copy of Notice of Intention to Acquire Derelict Site dated 25th November 2024 stating the owner can make an objection on or before 22nd January 2025 and photographs of notice erected on site.
- Copy of letter to the reputed landowner (Padraig Harrington) stating intention to acquire compulsorily under the Derelict Sites Act, 1990 (as amended) the derelict site situate at Roncalli, Clash, Tralee, Co. Kerry.
- Copy of letter of objection to the compulsory acquisition by the owner Padraig Harrington dated 17th January 2025 (received by Housing Section on 20th January 2025 and received by Derelict Sites Unit on 21st January 2025)
- Copy of a letter from the Local Authority to An Bord Pleanála received on 21st February 2025 seeking the confirmation of a Compulsory Acquisition in respect of the subject property.

The submission from Kerry County Council confirms that the property was entered on the Derelict Sites Register with effect from 26th July 2024.

A notice of intention to enter the subject dwelling on Derelict Sites Register was issued in accordance with Section 8(2) of the Derelict Sites Act, 1990 (as amended) on 21st July 2023.

On 11th September 2023, the registered owner met with Kerry County Council Vacant Homes Officer to discuss the subject dwelling and the owners' proposals on addressing dereliction and returning the property to residential use and in which the Vacant Property Refurbishment Grant could be used. No further contact was received from the owner and the property was entered on the Derelict Sites Register on the 11th October 2023 and a Notice of the land being entered on Derelict Sites Register was issued in accordance with Section 8(7) of the Derelict Sites Act, 1990 (as amended) on the 16th October 2023.

The subject dwelling was removed from the Derelict Sites Register on the 8th May 2024 pending a review following the relocation of derelict sites function from the Planning Directorate to the Housing Directorate.

On review, it was deemed that the site was re-entered on the Derelict Sites Register. On the 22nd May 2024, a Notice of intention to enter land on Derelict Sites Register was served in accordance with Section 8(2) of the Derelict Sites Act, 1990 (as amended). This notice was served on the registered owner by way of registered and regular post and by erection of a notice on site. No acknowledgement, reply or submission was received in relation to this notice.

The subject dwelling was entered on the Derelict Sites Register on the 23rd July 2024 and a Notice of the land being entered on Derelict Sites Register was served in accordance with Section 8(7) of the Derelict Sites Act, 1990 (as amended) on the 26th July 2024. This notice was served on the registered owner by way of registered and regular post and by erection of a notice on site. No acknowledgement, reply or submission was received to this notice.

On that basis the Council seek the consent of the Board to compulsorily acquire the property.

4.4. Objector's Submission

- 4.4.1. A submission was made to the Board by Pierse McCarthy Lucey LLP (Solicitors) on behalf of the owner, Padraig Harrington in response to the application for compulsory acquisition. This can be summarised as follows:

- The property was gifted to the owner in 2016, but the owner's aunt retained Right of Residence until she passed away on 27th June 2017.
- The owner ran into financial difficulties in 2008/2009 and has been in negotiations with the bank for the past 6 years in settling those outstanding liabilities. The issues have been resolved, and the owner has arranged funds to complete the works at Roncalli.
- The owner has applied for Vacant Property Grant from Kerry County Council and application submitted to the Board for reference dated the 24th March 2025. The owner notes that no works to the dwelling house can be carried out prior to approval of the Grant.
- All works to the property will be carried out as soon as the Vacant Property Grant is approved.
- It is envisaged that works will be carried out prior to An Bord Pleanála site inspection, the works will include replacement of the roof, replacement of the windows, re-plumbing and re-wiring.
- It is intended to rent the property.

4.5. Oral Hearing

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

5.0 Planning History

ABP-320398-24: Inclusion of the land on the residential zoned land tax final map on lands at Clash West, Tralee, Co. Kerry. Confirm the determination of the local authority.

ABP- 316833-23: Inclusion of the land on the Residential Zoned Land Tax draft map. Confirm the determination of the local authority.

Adjacent site:

ABP-320357-24: Construction of 38 no. dwelling and associated works and demolition of 2no. existing outhouses. Refuse Outline permission for the following reasons:

1. In the absence of sufficient details on traffic levels and details of access proposals and sightlines, it is considered that the proposed development would endanger public safety by reason of traffic hazard on account of the additional traffic turning movements the proposed development would generate onto Clash Road (L-2016) at a location where adequate sightlines have not been provided for as required by Section 1.5, 10.5 (Entrance), Volume 6 of the Kerry County Development Plan 2022-2028. It is further considered that the site access arrangements, as currently proposed, would necessitate the removal of an extensive area of dense vegetation, ditches and mature trees and would also require the removal of a circa 70 metres stretch of hedgerow to the northeast of the proposed vehicular access which would be contrary to Objective KCDP 11-22 of the Kerry County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. In the absence of sufficient information, including technical details on surface water likely to be generated and surface water management proposals, it is considered that the proposed development would give rise to an unacceptable pluvial flood risk and would not be compliant with Section 11.5 (Land Use & Flood Risk Management) and Section 13.2.4 (Storm Water Management) or Objectives KCDP 11-66, KCDP 11-69, KCDP 13-21 and KCDP 13-24 of the Kerry County Development Plan 2022-2028 which require the preparation of a surface water management plan and the use of sustainable drainage systems to manage and reduce flood risk in accordance with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities and Technical Appendices issued by the Department of the Environment, Heritage and Local Government in November 2009 and Circular PL2/2014. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. In the absence of an Ecological Impact Assessment or Biodiversity Impact Assessment for the proposed development, the Board is not satisfied that the proposed development would not contravene Volume 1, Section 11 and Objectives KCDP 11.1, KCDP 11.4, KCDP 11.21, KCDP 11.22, KCDP 11.25, KCDP 11.42 and KCDP 11.44 of the Kerry County Development Plan 2022-

2028. The proposed development would cause significant adverse effects to, or interfere with, the ecology and biodiversity of the area, and would, therefore, be contrary to the proper planning and sustainable development of the area.

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. Kerry County Development Plan 2022 to 2028

- 6.2.1. The subject site is zoned as “Existing Residential”, the stated objective is to provide for residential development and protect and improve residential amenity.
- 6.2.2. The site is located in not a protected structure or located within an Architectural Conservation Area.
- 6.2.3. Chapter 3: Core Strategy objective KCDP 3-5 seeks to strengthen the social and economic structure of rural towns and villages by supporting the re-use of existing buildings and the regeneration of under-utilised buildings and lands.
- 6.2.4. Chapter 7: Housing for All, section 7.10 addresses Vacancy in Housing.
- 6.2.5. KCDP 7-26 objective states to continue to utilise the Rural and Urban Regeneration and Development Funds to incorporate activation of vacant, derelict and underutilised properties in towns in Kerry.

7.0 Assessment

7.1. Site Inspection

- 7.1.1. On the day of my site inspection, internal access to the dwelling was not possible or access around the property as a security fence enclosed the site boundary. I therefore carried out my inspection from the outside of the dwelling, on Clash Road.
- 7.1.2. The subject dwelling is detached and located along a local road. The property is in a considerable state of disrepair. The roof is missing a large number of tiles, a section of the roof is missing, gutters are missing and or partially broken, the front porch roof is near collapsing and causing cracks to the external walls. The outside garden area and driveway are unkept with overgrown weeds and grass. The main dwelling appears to be intact, but the dwelling is clearly in a ruinous and derelict state.

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 consider that the site falls within category (a) of Section 3 of the Act, 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 consider that the structure is likely to be in a dangerous condition, and that it is considered ruinous, given the roof is in such a poor condition with numerous slates missing and loose and part of the roof missing which suggests issues in terms of structural stability. Therefore, I do consider that the condition of this structure results in the wider property being considered to fall under category (a).
- 7.2.2. In respect of category (b) of Section 3 of the Act, I note the condition of the property and the general appearance of the property and grounds having a neglected, unsightly and objectionable condition and I consider that the site falls within category (b) of Section 3 of the Derelict sites Act, 1990.
- 7.2.3. In terms category (c) of Section 3 of the Act, there is a front and rear garden along with a driveway. I did not observe any litter, but the site is overgrown with weeds and general vegetation. I did not have access or visual

inspection of the internal of the dwelling. However, given the evidence on my site inspection, I do consider the site falls in category (c) of the section of the Derelict Sites Act, 1990.

- 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 town centre, which in my view, renders it derelict under Section 3 of the Act.

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 dwelling. Section 8(2) notices were served on the 21st July 2023 advising of the Local Authority's intention to enter the site on the register of derelict sites. A notice under section 8(7) on the 11th October 2023 was issued advising of the Local Authority's decision to enter the site on the register of derelict sites and the property was entered on the register on the 16th October 2023.
- 7.3.2. Following the relocation of derelict sites from the Planning Directorate to the Housing Directorate, the site was removed from the Derelict Sites Register. It was re-entered following a site inspection. Section 8(2) notices were served on the 22nd May 2024 advising of the Local Authority's intention to enter the site on the register of derelict sites. A notice under section 8(7) on the 23rd July 2024 was issued advising of the Local Authority's decision to enter the site on the register of derelict sites and the property was entered on the register on the 26th July 2024.
- 7.3.3. A section 15(1)(a) notice was issued on 25th November 2024 with a newspaper notice published on 27th November 2024.
- 7.3.4. I acknowledge that the owner met with Kerry County Council on the 11th September 2023 to discuss the property and discussed his intention to address the dereliction and return the property to a residential rental. The Derelict Sites Officer wrote to the owner on the 26th September 2023 and provided the relevant documentation in applying for the Vacant Property Grant.

- 7.3.5. The representation made on behalf of the owner indicates that the reasons for the delay in renovating the property is financial and that all issues with the bank have been resolved. The objection includes an application made to Kerry County Council for a Vacant Property Grant dated 21st March 2025. The property owner is a builder and wishes to renovate and rent out the property. In my opinion, the application for the Vacant Property Grant clearly demonstrates an intent by the owner to undertake improvement works and to bring the property out of dereliction. Given that the application for the Vacant Property Grant was only made in March 2025, I consider that insufficient time has passed in order for the owner to have received confirmation regarding the Grant or to carry out works to the property.
- 7.3.6. I also note that at the time of my site inspection, which was unannounced, work was undertaken to remove some of the overgrown vegetation onto the public footpath and that additional security fencing was erected around the site. In my opinion, this demonstrates efforts to proceed with building works on site to renovate this dwelling. Whilst I acknowledge that the property is undoubtedly derelict and that it has been on the derelict sites register since October 2023 (initially), it is clear that at the current time, efforts are being made to address the derelict nature of the property. In view of this, I consider that it would be appropriate to provide some further time for the site owner to receive a response regarding the Vacant Property Grant and complete works to bring the property out of dereliction and back into residential use. I therefore recommend refusal of consent to the compulsory acquisition of the site in question.

8.0 Conclusion

- 8.1.1. I am satisfied that the process and procedures undertaken by Kerry County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the site to be acquired are both necessary and suitable to ensure that the lands do not continue to be derelict.
- 8.1.2. Having regard to the Constitutional and Convention provision afforded to property rights, I consider that the proposed acquisition of the Derelict Site

comprising the site and premises situate at and known as Roncalli, Clash, Tralee, Co. Kerry V92 T6Y2, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict Sites Act 1990, (as amended) and dated 27th November 2024, 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.

- 8.1.3. I am also satisfied that the acquisition authority had demonstrated that the means chosen to achieve that objective impair the property rights of affected landowners as little as possible. However, I have considered that the alternative means of achieving the objective referred to in the submission to the Board, whereby the owner has applied for a Vacant Property Grant. I am not 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.
- 8.1.4. The effects of the compulsory acquisition on the rights of affected landowner 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 Kerry County Development Plan 2022-2028, which seeks to address dereliction, reduce vacancy and encourage and facilitate appropriate redevelopment.
- 8.1.5. However, as mentioned above, having regard to the reputed owners commitment to renovate the property and by way of his application to the Vacant Homes Grant to address the current derelict and objectionable condition of the property I consider that it would be appropriate and reasonable to provide some further time for the owner to bring the site out of dereliction and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site at this time.

9.0 Recommendation

- 9.1.1. Having regard to the observed condition of the site, in particular the derelict condition, the unsightly and objectionable condition of the structure thereon, I consider that the site materially detracts from the amenity, character and

appearance of land in the neighbourhood and there is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended. It is further considered that the acquisition of the site by the Local Authority is warranted in order to render the site non-derelict and to prevent it continuing to be a derelict site.

9.1.2. However, having regard to the application for a Vacant Homes Grant, I consider that the owner has made a reasonable effort to bring the property out of dereliction and should be afforded extra time to address the dereliction of this property.

9.1.3. I recommend that the Board refuse consent to Kerry County Council to compulsorily acquire the site.

10.0 Reasons and Considerations

10.1.1. Notwithstanding the current neglected, unsightly and objectionable condition of the site, which detracts to a material degree from the amenity, character and appearance of land in the neighbourhood, taking into account the owner's intention and application for a Vacant Homes Grant, evidenced by the submission received from the owner, the Board decided that it would be appropriate and reasonable to provide some further time for the owner to bring the site out of dereliction and that it would, therefore, be appropriate to refuse consent for the compulsory acquisition of the site.

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.

Jennifer McQuaid
Planning Inspector
10th June 2025