



An  
Bord  
Pleanála

## Inspector's Report ABP-312353-22

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**Nature of Application**

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

**Location**

12 Lower Mallow Street, Limerick City

**Local Authority**

Limerick City and County Council

**Notice Party**

Paul O'Callaghan

**Date of Site Inspection**

10<sup>th</sup> May 2023

**Inspector**

Mary Kennelly

## 1.0 Introduction

- 1.1. This case relates to a request by Limerick City and County Council for the consent of An Bord Pleanála to the compulsory acquisition of the subject site at 12 Lower Mallow Street, Limerick City, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

## 2.0 Site Location and Description

- 2.1. The site is located on Lower Mallow Street which is situated in the Georgian area of Newtown Pery in Limerick City Centre. It comprises a mid-terrace two-bay four-storey over basement property on the northern side of Lower Mallow Street. It is situated between Henry Street and O'Connell Street, at the western end of the street. It is close to Henry Street Garda Station and to the People's Park. It is a busy street linking Colbert Station with Shannon Bridge. The application site is situated within the Newtown Pery Architectural Conservation Area. No. 12 Lower Mallow Street is a Protected Structure (RPS 074) and listed on the National Inventory of Architectural Heritage (NIAH 21517056).
- 2.2. The property is described as a terraced, 2-bay, four-storey over basement redbrick house dating from 1840. It has a coach house to the rear, which has been converted to a mews dwelling and which fronts onto Theatre Lane. The redbrick walls are laid in Flemish bond with cement re-pointing and limestone coping to parapet wall. The window openings are square headed with red brick flat arches, painted rendered reveals and painted limestone cills. The ground floor windows are multi-pane timber windows in a traditional style with six-over six sliding sash windows. On the first floor, there are larger nine pane-over-six pane windows together with decorative Juliet balconies, painted black. On the second and third floors there are timber sash windows with six-over-six and six-over-three window panes, respectively.
- 2.3. There is a wide elliptical-arched door opening with a decorative doorcase with architrave and a spoke wheel fanlight. The door was boarded up at the time of my inspection and the reveals were unplastered and unpainted. The front door opens onto a limestone platform which is flanked by original wrought-iron railings with spearhead finials on a limestone plinth wall, returning to enclose the basement area.

- 2.4. The basement elevation has a brick finish which looks like it may have been previously rendered and the window was boarded up. The lightwell area was full of debris and appeared to be under construction. It is stated that the said property and surrounding land is in a state of dereliction. The mews on Theatre Lane to the rear of the property appeared to be in good condition and occupied. It has been renovated and painted.
- 2.5. On the date of my site inspection, the property was secure with the front door boarded up and the doorcase and fanlight intact. There was a hoarding and scaffolding around the front door/steps. The front windows were closed and had all been repaired and painted or replaced. The brickwork is generally intact and appears to have been cleaned and repointed. The front door is probably missing and needs to be replaced and the joinery (doorcase, architrave, fanlight) and rendering around the door are in need of repair and/or replacement and repainting. The rainwater goods have been replaced with black plastic piping and most of the wiring and piping that had been protruding from the property has been removed. The remaining wires run across the facades of the property and of the adjoining properties just above the ground floor level.
- 2.6. The railings are in a good condition and appear to have been repaired and painted. The plinth wall along the front is in good condition but underneath the platform to the front door area, it is in a poor state of repair with cracked and damaged stonework and the render needs repainting. The Juliet balconies also appear to be in good condition and have been repaired/replaced and painted. The rear elevation appears to have been repointed and the windows have been repaired or replaced. The lightwell was covered with builder's rubble and in an unkempt condition with litter and rubbish present in the basement area.
- 2.7. I was unable to gain access to the site on the day of my site inspection. However, I was able to view the front elevation and basement area from the street and the rear mews and rear main elevation from Theatre Lane.

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

- 3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as

amended. I note that this application is subsequent to the serving of notices under section 8(2), on the 19<sup>th</sup> of June 2019, (i.e. advising of the Local Authority's intention to enter the site on the register of derelict sites), and under section 8(7), on the 1<sup>st</sup> of October 2020, (i.e. advising of the Local Authority's decision to enter the site on the register of derelict sites).

## **4.0 Application and Objection**

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

4.1.1. Notice of Limerick City and County Council's intention to acquire the site compulsorily was served on the owners/occupiers (Paul O'Callaghan) in a letter dated 21<sup>st</sup> October 2021 and was published in the Limerick Post newspaper on the 23<sup>rd</sup> October 2021. The site was described as follows in the notices:

- A derelict site comprising a two-bay, four-storey over basement, terraced, red brick premises and surrounding land situate at 12 Lower Mallow Street, Limerick, containing 0.010 hectares or thereabouts. The said property and surrounding land are in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-064-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990.

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

### **4.2. Objection to Acquisition**

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by James O'Brien Solicitors on behalf of the owner Paul O'Callaghan in a letter dated 23<sup>rd</sup> November 2021. The objection can be summarised as follows:

- Objection is being made by the owner of this property who states that the site is not derelict.
- The owner has been engaged with Limerick City and County Council in relation to the refurbishment of the property.

- Limerick City and County Council has expressed willingness to lease the property from the owner. He is currently awaiting a response from the Housing Support Services Department.
- The owner has obtained a Fire Safety Certificate for the refurbishment of the property (Ref. no. 20/FSC/D/1077) and a Section 57 Declaration (Ref. no. DR20/23 issued on 26/03/21).
- The owner has commenced refurbishment of the property and has expended a considerable sum of money. Delays have occurred due to Covid restrictions and due to shortages of both labour and materials arising from Covid.
- The actions of Limerick City and County Council are unjustified. In order to proceed with the acquisition, the Council (and ultimately An Bord Pleanála) must be satisfied that –
  - (i) The legislative objective is sufficiently important to justify limiting a fundamental right;
  - (ii) The measures designed to meet the legislative objective are rationally connected to it;
  - (iii) The means used to impair the right of freedom are no more than is necessary to accomplish the objective.
- While the owner recognises that there is a need for housing in the functional area, he had sought to facilitate this by entering into negotiations with the Council on a leasing arrangement. Any decision to proceed with the compulsory acquisition would entail an unnecessary and disproportionate interference with his constitutionally protected property rights.
- It is suggested that the council proceeds with the current negotiations rather than pursuing the ‘nuclear option’ of compulsory acquisition and that it withdraws the proposed CPO.

#### **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 20<sup>th</sup> December 2021 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report which sets out the local authority's strategic approach to derelict sites in the city and county, a description of the site, the background to the case and the details of the objection.
- The report included photographs (from 2017-2021) and a map of the site area.
- Copy of the notices served on the owners/occupiers of the site, dated 20<sup>th</sup> October 2021.
- Copy of the newspaper notice, dated 23<sup>rd</sup> October 2021.
- Copy of objection made by James O'Brien Solicitors on behalf of the owner, Paul O'Callaghan dated 23<sup>rd</sup> November 2021.

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

- Limerick City and County have established a specialised 'Dereliction and Vacancy Team' to take an area-based collaborative approach to addressing vacancy and dereliction in Limerick City and in the towns and villages in the County. The team focuses on bringing derelict and vacant sites back into use, particularly in areas of high housing demand, town and village centres and the historic core of the City. They seek to work proactively with property owners, with timely actions and improvement of sites through positive engagement. It is stated that the powers under the Derelict Sites Act, 1990 are used only where necessary, where all reasonable alternatives have been exhausted.
- Matters that are taken into account include :-
  - outstanding planning permissions,
  - evidence of efforts to address vacancy and dereliction,
  - security, safety to the public and condition of the site,
  - the conservation value of the building and requirement for remedial restoration works, and
  - the feasibility of various actions to make good the site and find viable uses for the site.

- The property first came to the attention of the L.A. in March 2017 and has remained vacant and derelict since then. It had a Derelict Site Case opened in 2017, Ref. DS-064-17, when it was first inspected. On the day of the initial inspection, the property was poorly maintained and in a state of dereliction.
- The property was inspected on a number of occasions by the Local Authority. Photographs from each of the site inspections dated 2<sup>nd</sup> March 2017, 2<sup>nd</sup> November 2018, 19<sup>th</sup> June 2019, 30<sup>th</sup> June 2020 and 15<sup>th</sup> October 2021 are included with the application.
- The property is within the Newtown Pery Architectural Conservation Area, between O'Connell Street and Henry Street, the centre of Georgian Limerick. No. 12 is recorded on the National Inventory of Architectural Heritage as NIAH 21517056 and is on the Council's Record of Protected Structures RPS 074.
- The site comprises a terraced, two bay, four-storey over basement Georgian property. The appearance was described as follows :-

The land detracts to a material degree from the land in the neighbourhood of the land because of the neglected and unsightly condition of the structure on the land due to the lack of property maintenance.

The red brick façade is in poor condition and visibly stained giving a dirty appearance.

The window reveals and cills have not been painted in a long time.

The render on the upper floor window reveals has fallen off in places.

The timber windows and entrance door case have not been painted in a long time and several window-panes are missing on the upper floor windows.

The wrought iron railings have not been painted in a long time resulting in significant visible rust spots.

Unsightly plywood sheeting has been fixed to the railings enclosing the basement area.

- Following the notice and inspections in March 2017, site ownership enquiries were made, and the registered owner was established as Paul O'Callaghan of

Holycross, Bruff, Co. Limerick. A letter of enquiry was sent to the owner in November 2018 seeking information on their intentions. The owner responded by phone and by email confirming ownership. The owner was given information on the Repair & Lease Scheme, Buy & Renew Scheme and the Living City Initiative.

- Further updates were sought by the Council in March and April 2019. A response was received confirming that funding had been secured to refurbish the property, tenders had been received and a planning agent engaged to prepare a planning application for the site. However, no application was submitted.
- A Notice was issued on 19<sup>th</sup> June 2019 of the local authority's intention to enter the land onto the Derelict Sites Register. The owner responded that the property was 'sale agreed' at the time but the sale did not ultimately progress. The site was entered onto the Derelict Sites Register on 29<sup>th</sup> September 2020. A section 8(7) Notice to this effect was served on the owner on the 1<sup>st</sup> October 2020.
- On the 4<sup>th</sup> June 2021 the Housing Development Directorate confirmed that they were engaging the owner of the derelict under the Repair and Lease Scheme for 5 apartments, but no agreement was formalised.
- Taking into consideration the continued dereliction of the building, the decision was made to compulsorily acquire the site. The owner was notified of this under section 15 of the Derelict Sites Act on the 21<sup>st</sup> of October 2021 and it was publicised in the local newspaper on the 23<sup>rd</sup> of October 2021.
- An objection to the section 15 notice was submitted by the owner, Paul O'Callaghan, on the 23<sup>rd</sup> November 2021.
- The Local Authority contends that it is the inaction of owners and the failure of their duties under the Derelict Sites Act 1990 (as amended) that jeopardises the future use of the property in the area due to their continued neglected and derelict state. The Local Authority intends to pursue the compulsory acquisition of the derelict site.



#### 4.4. Objector's Submission

4.4.1. The Board received a submission from James O'Brien & Co. Solicitors on behalf of the owner, Paul O'Callaghan on the 11<sup>th</sup> February 2022. The document was accompanied by several appendices including copies of the Section 57 application, correspondence with the local authority and building contractors and photographs of the renovation works. The main points may be summarised as follows:

- **L.A. approach** – the application for a CPO is in stark contrast with the stated approach to work with property owners to bring derelict properties back into use, The owner has engaged extensively with the L.A. and it is considered that they are exceeding their powers by seeking to CPO the site.
- **Planning history** – planning permission is not required for the main building. However, a Section 57 Declaration was made to the L.A. (DR20/23) which resulted in inspections, meetings and correspondence between the Council's Conservation Officer and the owner's conservation architect. In addition, planning permission was granted for the refurbishment and extension of the coach house at the rear (3 Theatre Lane, Reg. Ref. 19/1028).
- **Various attempts to secure lease or sale of property** – Initially in May 2020 there was an approach from First Step Homes with the intention of purchasing the property for social and affordable housing, but the sale fell through. Subsequently, between May and July 2021, there was positive engagement with the Local Authority and an email (6/5/21) of support was received by the owner stating that the L.A. was supportive of a long term lease on the property in respect of all five apartments.
- **Extensive repair and refurbishment works carried out** – Since 2015, the owner has carried out extensive repair works and has engaged several contractors and professional advisers in an attempt to bring the property back into use. In 2015, the roof was repaired, internal woodwork was treated and all the debris and carpets/furniture were cleared out of the building. The following matters were also addressed -
  - Scaffolding contractor engaged.
  - Stone mason employed to repair and repoint the façade.

- Window cills refurbished.
- Lime mortar fully refurbished.
- Wrought iron railings refurbished by specialist.
- Any waste removed by waste contractor.

- **Fire Certificate** – a Fire Certificate application (Ref. 20/FSC/D/1077) was made and this gave rise to correspondence, meetings and site inspections of the property.
- **Notice of works to be carried out** – the L.A. issued a Notice of works to be carried out in August 2021. Following this, the owner sought tenders for works to be undertaken. However, in October 2021, the owner received notification that the L.A. wanted to compulsorily acquire the property.

4.4.2. The property owner accepts the long-term housing need in the area, but he has sought to facilitate this by engaging with the L.A. The owner was led to believe that the local authority was prepared to enter into a long term lease of the property and extensive repairs and refurbishment works have been carried out. It is considered, therefore, that all reasonable alternatives have not been exhausted by the local authority and that any decision to proceed with the compulsory acquisition at this stage would entail unnecessary and disproportionate interference and invasion of the owner's constitutional property rights.

4.4.3. The property owner seeks the continuation of the negotiations and withdrawal of the compulsory acquisition order, as there is no basis for such action.

## 5.0 Planning History

5.1. Reg. Ref. 19/71028 was granted to the applicant in December 2019 in respect of the mews at the rear, address 3 Theatre Lane for refurbishment and extension.

5.2. There is no other record of any planning permission in relation to the property.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The applicable Development Plan is the Limerick City and County Development Plan 2022 – 2028. This plan became effective on the 29<sup>th</sup> of July 2022, which was after the site was entered on the Derelict Sites Register and after the owner of the property was notified of the local authority’s intention to acquire it by CPO.
- 6.1.2. One of the strategic objectives for Limerick (Chapter 1) is to ensure the revitalisation and consolidation of urban areas through public realm and place-making initiatives, including addressing vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest (1.3.4). The theme of revitalisation and delivery of compact growth is central to the Core Strategy (Chapter 2) and the Spatial Strategy (Chapter 3). **Policy CGR P1** sets out how this can be achieved including development of brownfield and underutilised lands within the built footprint of urban areas. One of the measures required to create compact, dense and sustainable urban centres is ‘Active Land Management’ (3.3.2) which is envisaged as important to bring vacant and underutilised land in urban areas into beneficial use (**Policy CGR O4**). Key legislative measures to facilitate this include the powers under the Derelict Sites Act 1990.
- 6.1.3. It is noted (3.3.2.2) that derelict sites can have a negative impact on the social, visual and commercial aspects of a neighbourhood. Limerick City and County Council is proactive in identifying and seeking the improvement of such sites to address incidences of decay, prevent deterioration of the built fabric and bring buildings back into active use.

**Objective CGR O6 – Derelict sites** – seeks to utilise the provisions of the Derelict sites Act 1990, including the maintenance of the Derelict Sites Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use.

- 6.1.4. The Living Limerick City Centre Initiative (3.4.3.2) is a 7-year programme which was awarded funding in 2021 under the Urban regeneration Development Fund. It seeks to make positive, innovative and transformational change to revitalise the centre of Limerick City and is seen as a growth enabler. The LLCC Initiative seeks, inter alia,

to renew vacant, underutilised and derelict buildings in the city centre. Chapter 5 'Strong Economy' sets out the Economic Strategy. The success of economic growth is said to be intertwined with maintaining and enhancing its attractiveness. The City Centre is seen as a key driver of economic activity in the region. Policy ECON P1 seeks to support the implementation of Limerick 2030 – An Economic and Spatial Plan to guide the economic, social and physical renaissance of Limerick City Centre and the wider county/Mid-West Region.

- 6.1.5. The site is zoned **City Centre Area**, the Zoning Objective for which is to protect, consolidate and facilitate development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities.

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

- 6.2.1. The Derelict Sites Act 1990, as amended, makes provisions to prevent land being or becoming a derelict site. Amongst other things, it enables local authorities to require landowners or occupiers to take measures on derelict sites and, in certain circumstances, to acquire derelict sites compulsorily.

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

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

- 6.2.3. 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 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 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 their functional area. Section 15 sets out arrangements for giving notice, if the local authority intend to acquire a derelict site compulsorily, and section 16 sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

## **7.0 Assessment**

- 7.1. Internal access to the property was not possible on the date of my site inspection. However, I carried out my site inspection from the public road adjoining the site.
- 7.2. The property is vacant and has a neglected, unsightly and objectionable appearance from the public road and the surrounding area. This is due to the fact that there is a plywood hoarding enclosing the front steps, front door and part of the basement lightwell and that there is debris in the lightwell area and that the basement window is boarded up, which detracts from the amenity of the area.
  - 7.2.1. However, I noted from my site inspection that many of the items which had been considered to give rise to the state of dereliction, as outlined in the local authority's Derelict Sites Report (submitted to the Board on 20<sup>th</sup> December 2021), had been addressed. Furthermore, the owners have written to the Board and submitted evidence to demonstrate that works have been undertaken since in recent years 2022 with a view to taking the property out of dereliction.

Item outlined in LA Report 20/12/21	Status on 10 <sup>th</sup> May 2023
Red brick façade in poor condition and visibly stained giving dirty appearance	Brick façade has been repaired and repointed and the lime mortar replaced
Window reveals and cills have not been painted in a long time.	Window reveals and cills have been repaired and painted
Render on upper floor window reveals have fallen off in places	Render on upper floor window reveals has been repaired.  Render on basement façade and window reveals has been removed. Works appear to be ongoing/unfinished.
Timber sliding sash windows have not been painted in a long time and several windowpanes are missing.	All windows on GF, FF, SF and TF have been repaired/repainted or replaced with windows to match the originals.  Basement window still boarded up.
The entrance door has not been painted in a long time.	The front/entrance door was boarded up and appeared to have been removed.  Hoarding in place around the front door and steps/limestone platform.
Wrought iron railings have not been painted in a long time with visible rust spots.	The wrought iron railings have all been repaired/replaced and painted black. No rust spots visible.
Unsightly plywood sheeting has been fixed to the railings enclosing the basement area.	No change

7.2.2. The property is situated in the middle of a row of similar terraced properties which are generally occupied and in use as commercial and/or residential premises, which appear to be well maintained and in good condition. The lands in the general vicinity form part of the Georgian area of Limerick City, known as Newtown Pery, and contains many historic sites. This area is designated as an Architectural

Conservation Area and contains many historic and protected structures, with some of the adjoining sites being listed on the NIAH register. The area has an attractive appearance, and the public realm is well cared for, with high quality public amenities such as the People's Park and the Art Gallery in the vicinity. The site also forms part of the City Centre for which there are Development Plan policies to promote the attractiveness of the city centre. Having regard to the foregoing, I therefore consider that the application site detracts to a material degree from the character and appearance of the surrounding area.

- 7.2.3. From the evidence on file, it is clear that the property was in a derelict state, and in an unsightly and neglected condition which detracted considerably from the character and amenity of the estate at the time that the application to acquire the site was lodged. Notwithstanding this, however, it is considered that there is evidence of substantial efforts having been made in the intervening period to address vacancy and dereliction.
- 7.2.4. The brickwork on the front façade appears to have been repaired and repointed in a professional manner and is now in good condition, with no obvious evidence of significant cracking or additional damage to the external walls. There was no sign of any vegetation growing out of the wall or parapet. The windows have either been repaired to a very high standard or have been replaced with windows which match the original timber sash windows, which has significantly improved the appearance of the property.
- 7.2.5. The replacement of the windows and repair/repainting of the brickwork have made a material difference to the external appearance of the property. Although the hoardings around the lightwell and front door/steps have not yet been removed, which contributes to the sense and appearance of neglect, this work has secured the property and protects it from the elements, which would be likely to significantly reduce the risk of deterioration of the fabric of the structure. The outstanding matters mainly relate to the removal of the front door and the need for its replacement, the repair and/or re-rendering of the basement facade, the replacement of the basement window and the repair/reinstatement of the reveals around this window. In addition, it will be necessary to secure the removal of debris and any vegetation from the lightwell area in front of the basement and the removal of the security fencing.

- 7.2.6. The owners have provided photographic and documentary evidence in support of their efforts to upgrade the property including the refurbishment and repair of the facades, the windows and the railings and the refurbishment of the coach house. I also note that new gutters and downpipes appear to have been provided. The photographs and other documentary evidence indicate that the interior of the property has been refurbished and modernised to facilitate its use as habitable accommodation in the form of five apartments.
- 7.2.7. I note from the photographs provided with the Local Authority report, that the property has not deteriorated further to a significant extent since the first inspection in 2017, apart from the area around the front door and the lightwell. Overall, the property has had extensive repair works carried out which seem to be of a very high standard and which have significantly improved the appearance of the property and progressed its rehabilitation for use as residential accommodation.
- 7.2.8. With regard to category (a) therefore, which relates to structures which are in a ruinous, derelict, or dangerous condition, having inspected the site, I consider that there is evidence that the structure is no longer in a derelict condition and that it is not in a ruinous state. Thus, it is considered that the site does not fall within category (a) of the Derelict Sites Act, 1990 (as amended). I would consider, however, that by reason of the hoarding and incomplete works around the front entrance and lightwell area that the site falls within category (b) of section 3 of the Derelict Sites Act, 1990 due to the land and structure being in a neglected, unsightly and objectionable condition. There was evidence of debris and builder's waste within the lightwell being stored externally. It is considered, therefore, that the site falls within categories (b) and (c) of section 3 of the Act. In conclusion, I consider that the property demonstrably detracts from the amenity, character, and appearance of land in the vicinity of the site, which in my view, renders it derelict under section 3 of the Act.
- 7.2.9. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the building. Section 8(2) notices were served on the owners on 19<sup>th</sup> June 2019, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the 1<sup>st</sup> of October 2020, advising the owners that the site had been entered on the Derelict Sites Register. Finally, section 15(10)(a) notices were served on 20<sup>th</sup>



October 2021 and published in the Limerick Post Newspaper on the 23<sup>rd</sup> October 2021 regarding the Local Authority's intention to acquire the site compulsorily.

- 7.2.10. I note the objection made to the Local Authority on behalf of the owner, Paul O'Callaghan on the 23<sup>rd</sup> November 2021 to the proposed acquisition of the site, stating that the owners had been willing to carry out works to the property and to enter into a Repair and Lease Scheme with the local authority. However, it was stated that they had experienced delays to the process due to matters beyond their control, and that the agreement had not been finalised, and were surprised to receive the service of notice of intention to acquire the property by CPO.
- 7.2.11. Notwithstanding the notice of intention to compulsorily acquire the property, the Board will note that the owners had proceeded to retain a builder who had carried out certain remedial works and that they had continued with the renovations works summarised above at their own expense. It is noted that further submissions have been made to the Board since the application was lodged advising that the property is no longer in a derelict state. I also note that the property has been secured and made weather tight, that the appearance has been improved to a significant extent and that maintenance works have been carried out to the property.
- 7.2.12. It is noted that the policy of the Local Authority, as expressed in the County Development Plan, is to positively engage with the owners of a derelict site and to avoid using the powers under the Derelict Sites Act, except where necessary. I would accept that the L.A. had undertaken many steps in consultation with the owners over a period of five years following the first inspection in 2017, in an effort to bring the property out of dereliction and that the owners had also actively engaged with the Local Authority to this end. Both parties had indicated their willingness to enter into a Repair and Lease Scheme Agreement, and the Local Authority had expressed support for securing a long lease involving the five apartments.
- 7.2.13. Having inspected the site in May 2023, I observed that there is evidence that the owners appear to have actively engaged with the Local Authority to address the issues of dereliction. It is acknowledged, however, that the pace of progress has been slow, and the house remains in a somewhat neglected and unsightly condition at present due mainly to the unsightly hoarding, unfinished repair works around the entrance and basement and debris in the lightwell. I would accept therefore that the

owners have attempted to render the site non-derelict and that it is likely that the owners will continue with the restoration of the property in due course.

7.2.14. Thus, whilst the site remains in a neglected and unsightly condition, which detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the current owners to restore the site and to render it no longer a derelict site should be taken into account in this instance. For this reason, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time. It is further noted that the Local Authority has powers under Section 11 of the Derelict Sites Act 1990 (as amended) to require the owner to take specified measures to address any outstanding issues contributing to the dereliction of the property, should this be deemed necessary.

7.2.15. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to bring the property back into use and to render it non-derelict, and that as such, sufficient time should be afforded to the notice parties to conclude these works. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at No. 12 Lower Mallow Street, Limerick.

## 8.0 Recommendation

8.1. Having regard to the observed condition of the application site, in particular the neglected, unsightly and objectionable state of the land and the structure thereon, I consider that the site materially detracts from the amenity, character and appearance of land in the neighbourhood and is therefore a derelict site within the meaning of Section 3 of the Derelict Sites Act, 1990, as amended.

8.2. However, having regard to the ongoing efforts being made by the Notice Parties to bring the property back into use and to address the dereliction on site, I consider it unreasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board **refuses** consent to Limerick City and County Council to compulsorily acquire the site.

## 9.0 Reasons and Considerations

9.1. 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 account of the evidence of the ongoing efforts by the Notice Parties to seek to address the issues of dereliction and to bring the property back into use, the Board decided that the acquisition of the site by the local authority is not necessary in order to render the site non-derelict and to prevent it continuing to be a derelict site, 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.

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Mary Kennelly

Senior Planning Inspector

15<sup>th</sup> September 2023