



An
Bord
Pleanála

Inspector's Report

ABP-314222-22

Development

Application for the compulsory acquisition of a Derelict Site, a detached three storey former business premises, in accordance with Section 16 of the Derelict Sites Act 1990, as amended

Location

No. 2 Ranelagh, Dublin 6

Planning Authority

Dublin City Council South

Notice Party

None

Objector(s)

Paul Clinton
James Haughey
Mary Kelly and Siblings

Date of Site Inspection

30th November 2023

Inspector

Joe Bonner

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 a Derelict Site at No. 2 Ranelagh, Dublin 6, in accordance with the provisions of the Derelict Sites Act, 1990, as amended.

2.0 Site Location and Description

- 2.1. The site subject to this application consists of a three storey building fronting directly onto the public footpath on the eastern side of Ranelagh, immediately to the east of the Ranelagh Luas bridge and Luas station. The building is part of a terrace of buildings at the northern end of Ranelagh Village, with a two storey building to the immediate south and a two storey plus mansard roofed building to the north. The rear of the property backs onto Ranelagh Gardens, which is accessible via an arch underneath the Railway Bridge c23m to the north west of the site.
- 2.2. The front (east) and northern gable façades of the building are visible from the deck of the Luas station and are prominent, particularly due to graffiti on the roof and gable wall, while the southern side elevation is also visible from the public street and it is noted that part of that gable consists of exposed stone, with the balance consisting of an unmaintained mansard type slate wall. The front of the building is located close to the entrance/exit to the Ranelagh Luas stop. The rear of the building consists of small garden/yard area that is not visible from the Luas platform or the public street but is visible from Ranelagh Gardens.
- 2.3. On the day of the site inspection, the windows were boarded up and secured by timber cross braces, while the ground floor door was locked with a padlock and graffiti was sprayed on the ground floor street elevation. There were several loose and missing slates and ridge tiles with evidence of the interior of the structure being exposed to weather damage. Part of the brick chimney capping was also missing with vegetation growing from it. The property has not been occupied for many years.

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 Sections 16 of the Derelict Sites Act, 1990, as amended. This application

follows the service of site and newspaper notices on the 2nd of June 2022 in accordance with Section 14 of the Derelict Sites Act 1990 (as amended) of the intention of Dublin City Council to compulsorily acquire the derelict site at 2 Ranelagh, Dublin 6.

3.2. I note that this application is subsequent to the serving of a notice under section 8(2), on the 17th of June 2021, advising of Dublin City Council's intention to enter the site on the Derelict Sites Register, and also under section 8(7) on the 12th of November 2021, advising that Dublin City Council had entered the site on the Derelict Sites Register.

4.0 Application and Objections

4.1. Notice of Intention to Acquire

4.1.1. Dublin City Council advertised a "Notice of intention to acquire derelict site compulsory, under the Derelict Site Acts 1990 (as amended by the Planning and Development Act, 2000)" on the 2nd of June 2022. A map of the derelict site was placed on public display at www.dublincity.ie/derelict-sites and objections were invited on or before the 1st of July 2022.

4.2. Objections to Acquisition

4.2.1. Three objections to the proposed acquisition were submitted to Dublin City Council from:

- Sean McDonnell & Co Solicitors on behalf of Mary Kelly and her siblings in a letter dated 29th June 2022.
- Orpen Franks Solicitors on behalf of Mr Paul Clinton in a letter dated the 1st of July 2022.
- James Haughey on behalf of himself, by email, on the 1st of July 2022.

Objection of Mary Kelly and her siblings to Dublin City Council

4.2.2. The stated grounds of Ms Kelly and siblings objection, are:

- The property is not derelict, is subject to an application to the Land Registry to register it in the names of Ms Kelly and her siblings, having been in their family as far back as their grandparents.

- Upon registering the property, it is intended to reinstate the property to a habitable condition or in the alternative to sell it, but first registration of ownership must be concluded.
- The property is safe and is of no danger to persons or properties either adjoining or elsewhere.
- They reserve the right to set out further and more detailed reasons for the objection to the compulsory acquisition.
- Upon registration of the property, should the Council be interested in purchasing it, Ms. Kelly and her siblings will consider such offers on a favourable basis.

Objection of Paul Clinton to Dublin City Council

4.2.3. The stated grounds of Mr Clinton's objection are:

- The sites complex history has caused the property to be neglected and disused up until recently. As outlined in earlier emails and letters, Mr. Clinton has made a firm commitment to reinstate the property and bring it back to regular use. In this regard work is already underway and, in those circumstances, it is incorrect to say the property is currently derelict.
- While an email from Dublin City Council of 28th June 2022, states that extensive searches title were inconclusive, Mr. Clinton is prepared to provide details and respect of title if required, as he has entered into binding arrangements to purchase the interest of all parties claiming ownership of the property.
- Any concerns the Council had with respect to title, which caused the neglect and disuse of the property have now been allayed, by this submission.
- Ownership should not be a matter of concern as long as somebody is maintaining the building to an appropriate degree and should not be a factor in deciding whether to pursue the notice, as work is already underway.
- A firm commitment was given to conduct renovations, which have already begun.

4.2.4. The Objection included other correspondence with including emails from 27th June to 30th June 2022, which stated:

- Mr Clinton to DCC – Mr Clinton owns the properties either side of No 2 and has a deal with other persons claiming ownership to acquire the building and renovate it

- DCC to Mr Clinton – Despite extensive searched DCC could not find document evidence of ownership and other parties are also claiming an interest in the building. Proof of ownership is necessary to demonstrate ability to carry out the required refurbishment works.
- Mr Clinton to DCC – Imelda, Anthony and Bernadette Hartney are the legal owners of the property (since 1975) but have yet to register their interest. A third party claiming ownership has no rights to such a claim.
- DCC to Mr Clinton – evidence or proof of ownership is required.

4.2.5. A separate letter dated 26th June 2022 from Orpen Franks addressed to Dublin City Council stated:

- Approximately 10 years ago Mr Clinton carried out repair works and DCC withdrew a previous derelict sites notice.
- A building contractor has been appointed and a scaffolding licence will be sought.
- If the notice is not withdrawn it will be pursued through An Bord Pleanála and the court, if necessary.

Objection of James Haughey to Dublin City Council

4.2.6. Mr Haughey's objection stated that:

- He is the owner and occupier of the site.
- He has a current and future intended use for the property.

4.3. Local Authority's Application for Consent to An Bord Pleanála

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 by the Board on the 28th of July 2022, in the form of a cover letter of the same date and 10 No. Appendices.

4.3.2. The cover letter summarised the three objections and also states:

- The Council only uses the powers under the Derelict Sites Act, to acquire properties compulsorily as a last resort, when all attempts to secure the carrying out improvement works, to render the site non-derelict have been exhausted and attempts to acquire by agreement have been unsuccessful.

- It describes the nature of the dereliction including broken and exposed windows graffiti on the roof of the ground floor and the roof, rendering the appearance of the site neglected and unsightly.
- The Council is of the opinion that the site is derelict by 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.

History

- The derelict sites unit have had an active file on this site dating back to 1996 and it was entered on the Derelict Sites Register on the 12th of November 2021.
- Ownership of the site has always been unclear and there has been a long history of disputed ownership.
- The Council has a record of a number of parties claiming to have connection with the property, including Mr. Paul Clinton and Ms. Mary Kelly who are objectors, but has no record of Mr. James Haughey having an interest in the property.
- The upper part of the property was vacant in 1996 and the whole property has been vacant since 2000.
- Appendix 10 includes copies of Derelict Sites inspection reports from 1996 to 2014 recording the deterioration of the building. A January 2015 inspection was followed by the service of a Section 8(2) 'Notice of Intention to Enter the Site on the Derelict Site Register'. The former occupier of the shop carried out improvement works to the ground floor and a further inspection in April 2015 showed sufficient improvement were carried out, so no further action was taken, and the site was not entered on the Derelict Sites Register at that time.
- The site was inspected in November 2020 following receipt of a complaint and a new Section 8(2) Notice was issued. Representations were received from two parties referring to difficulty securing possession of the property and these difficulties were preventing the carrying out of works to render the property non-derelict. The parties did not provide any prospects of improvement works being carried out in the near future and the site was entered on the derelict sites register on the 10th of December 2021.

- Compulsory acquisition is a last resort, and the Law Department has advised that ownership of the site is unclear and that it is not possible to 1) secure the carrying out of improvement works by the owner so as to render the site non-derelict; 2) acquire the site by agreement.
- The Council has considered the objections received to the compulsory acquisition and has determined compulsory acquisition remains the appropriate course of action given the circumstances of the case.
- The site is a high profile location across from the Luas station in Ranelagh village has a long history of dereliction, is entered on the Derelict Sites Register, is the subject to ongoing complaint and its condition continues to deteriorate. The ownership issue continues to thwart the ability of any party to deal with the property and carry out works to render the site non-derelict. The ownership issue has remained unresolved for many years and the Council is not satisfied that this issue will be settled in the near future. Accordingly, it is in the public interest to acquire the building.

4.4. The content of the Appendices, which form part of the application to the Board is outlined below: -

- Appendix 1 – Site and newspaper notices of intent to acquire derelict site compulsorily dated the 2nd of June 2022, a map of site and the Order of Assistant Chief Executive recommending acquisition of site. (May 2022)
- Appendix 2 – Copy of submission by Sean McDonnell & Co Solicitors on behalf of Mary Kelly and her siblings (29th June 2022)
- Appendix 3 – Copy of submissions by Orpen Franks Solicitors on behalf of Mr Paul Clinton (spanning 26th of June 2022 to 1st of July 2022)
- Appendix 4 – Submission of James Haughey (1st of July 2022)
- Appendix 5 – Photos of site dated the 26th of July 2022
- Appendix 6 – Derelict Sites Inspection sheets and photos describing the condition of the building on various dates between 21st January 2015 and 30th April 2015, as well as recommended action and approval of entry of building onto the Derelict Sites Register. Due to the condition of the site/building in January 2015, it was considered

to be a derelict site within the meaning of Section 3 (b) of the Derelict Sites Act, 1990. A Section 8(2) notice was served on Ms. Imelda Hartney, Ms. Hannah Power, Ms. Mary Kelly, Mr. Eugene O'Reilly, Ms. Breda Cleary, The Estate of Mr. Noel Dowling and Mr. Paul Clinton on 20th February 2015. Following a further site inspection on the 30th of April 2015, it was noted that there was a 'big improvement in condition of site' and 'further action not required at present'.

- Appendix 7 – A complaint was received by Dublin City Council on the 9th of November 2020 regarding the condition of the site, which was described as being vacant for many years and in a rundown condition. It requested that the site be inspected as it had been vacant for at least 15 years. An inspection was carried out on the 10th of November 2020 which found graffiti on the roof, upper floor front and side window opes lacking glass and exposed, other front and side opes boarded up, and graffiti on the boarded up front door. The report proposed a reference to ownership.
- Appendix 8 – A Memo from the Law Department to the Executive Manager of the Planning Department on 23rd April 2021 noted that title to the property does not appear to be registered in the Land Registry. The Law section spoke to a number of people, and it was noted that for the purposes of the Derelict Sites Act, the ownership of the building remains unclear, as it has been on the many occasions in the past when it was investigated.
- It was also noted that restrictions on access to Land Registry meant it was not possible to identify applications for First Registration of Title affecting the property.
- Appendix 9 – includes documentation covering the period from the 12th May 2021 to the 12th of November 2021 which is the period during which the building was placed on the register of Derelict Sites Register. It also includes details of the Section 22 'Notice of Determination of Market Value' that was placed on the building on the 9th of December 2021. The key documents and timeline for this period is set out in Table 4.1 below.

Table 4.1- Documents in Appendix 9

Date	Comments
12/05/2021	A Derelict Site inspection was carried out and recommended the service (affixing) of a Section 8(2) Notice.
21/05/2021	It was the 'Opinion of authorised person', that the overall condition and appearance of the site is neglected and unsightly and in their opinion the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood due to its unsightly and neglected condition. They therefore considered the site to be derelict within the meaning of Section 3 (b) of the Derelict Sites Act 1990.
11/06/2021	Order of Executive Manager – Agrees with the opinion of the authorised person that the site is derelict and approves the service of a notice under Section 8(2) of the Derelict Sites Act 1990.
17/06/2021	Photo of Section 8(2) Derelict Site notice erected on the site indicating the intention to make an entry on the derelict site register. it was not addressed to any specific person and simply stated 'To: The Owner(s)'.
18/06/2021	Confirmation from authorised person that Section 8(2) was affixed to the building on the 17 th of June 2021 and was addressed to 'The Owner(s)'.
22/07/2021	A Derelict Site inspection was carried out on the 22 nd of July 2021 and noted that there had been no change in condition of the property since the fixing of the Section 8 (2) notice on the 17 th of June 2021. It also noted that any written representations will need to be considered before deciding whether or not to proceed with the proposed entry of the site on the Derelict Sites Register.
06/07/2021	Letter to DCC from Gibbons Associates Solicitors on behalf of Reginald Christie, Eugene O'Reilly, Bridget Cleary, Hannah Power and Mary Kelly, who it states are entitled to be registered as owners

	<p>of the property as they and their predecessors have occupied and possessed it since 1933. Ownership is subject to a Land Registry application, with the ongoing issues with Mr. Paul Clinton meaning they are unable to make the necessary repairs. It requested the name of the person in DCC with whom they can liaise in respect to the notice so that appropriate action may be taken.</p>
07/07/2021	<p>Email from DCC to Gibbons Solicitors - indicating that if they wish to prevent the entry of the site on the register they should submit and writing a proposed time scale for the refurbishment of the property and representations received in writing will be considered before a final decision is made of whether to proceed with the entry of the site on the Derelict Sites Register.</p>
09/07/2021	<p>Mary Kelly to DCC – refers to a letter sent to Dublin City Council on the 3rd of March 2015, stating they are still in the process of seeking adverse possession of the property, and they put a new roof on the property on the advice of Dublin City Council.</p>
14/07/2021	<p>Mary Kelly to DCC on behalf of herself and her siblings – they have invested over €60,000 in the building, including a new roof. It will take some time to carry out works as they have difficulties gaining access due to Mr Paul Clinton having an interest in one of the rooms in the building.</p>
23/09/2021	<p>Order of Executive Manager approving the recommendation of the Senior Executive Officer (SEO) that the site at No 2 Ranelagh, Dublin 6, be entered onto the Derelict Sites Register and notice be served under Section 8(7) of the Derelict Sites Act 1990 on the owner(s) and/or affixed to the site.</p> <p>It notes that written representations had been received which referred to difficulties in securing possession of the property and indicated that these difficulties were preventing the carrying out of the works which are necessary to render it non-derelict.</p>

	The SEO was of the view that the representations do not give any guarantee as to the likelihood of necessary improvements being carried out in the near future and that there are insufficient grounds for delaying the entry of the site on the Derelict Sites Register any longer.
08/11/2021	A Derelict Sites inspection was carried out on the 2 nd of November 2021 and reported on the 8 th of November 2021. It noted that the upper floor front and side windows opes lacked glass and are exposed, while other front and side opes are boarded up. The conclusion and action to be taken was that the site was to be entered on the Derelict Sites Register and notice under Section 8(7) to be affixed to the site.
12/11/2021	The Section 8(7) notice was erected on the site and the site was entered onto the Derelict Sites Register. The notice was addressed to 'The owner(s) and photos were taken of the notice.
15/11/2021	Declaration that the Section 8(7) notice had been erected on the site on the 12th of November 2021.
09/12/2021	A Section 22 Notice of Determination of Market Value of Property was erected on the building, addressed to 'The Owner/s' and indicates that they may appeal the valuation to the Valuation Tribunal.
10/12/2021	Confirmation by an authorised person that the Section 22 Notice had been affixed to the building.

- Appendix 10 – Contains Derelict Sites Inspections reports and photos on 24 separate dates from April 2005 to November 2014, with photos attached to one report dating back to March 1996. The 2014 reports noted that the Council had problems with establishing ownership of the property.

4.5. Notification of Bord Pleanála to parties

4.5.1. Following receipt of the application the Board notified:

- Orpen Franks Solicitors on behalf of Paul Clinton on 2nd August 2022 inviting submissions not later than the 22nd of August 2022.

- Sean McDonnell & Co Solicitors on behalf of Mary Kelly on 2nd August 2022 inviting submissions not later than the 22nd of August 2022.
- James Haughey on the 2nd (no address) and 5th of September 2022 (with address) inviting submissions not later than the 22nd of September 2022. The delay in notifying Mr Haughey was because he had not provided a postal address, which was required by the Board, in order for him to participate in the process.

4.6. **Submission of Mr. Paul Clinton to An Bord Pleanála**

- 4.6.1. A detailed submission was received on the 22nd of August from Orpen Franks solicitors on behalf of Paul Clinton. It addressed the following matters:

Ownership

- 4.6.2. While Mr. Clinton is not the owner of the property, he has a commercial agreement to purchase it from the parties entitled to be registered as the freehold owners who are Imelda Hartley and her siblings. No other party objecting to the application can claim possession or an agreement to purchase the property with the parties entitled to be registered as the freehold owners of the property. The Law department of Dublin City Council has been informed of this agreement with Ms. Hartney and Mr. Clinton should be allowed to renovate the property.

Failure to seek representations from Mr. Clinton in 2021

- 4.6.3. In 2021 Dublin City Council failed to serve Mr. Clinton with relevant notices, consult with him or seek his representations prior to entering the building onto the derelict sites register. A summary key dates, and correspondence is provided between the previous notice of intention from February 2015 through to the entering of the site on the derelict site register in November 2021 and the issuing of a notice of determination of value in December 2021. The submission notes that Notices from June, November and December 2021 relating to the entry of the building on the Derelict Sites Register were not served on Mr. Clinton.
- 4.6.4. Mr. Clinton had identified his interest in the building and the failure of DCC to notify him is extraordinary, considering the work he had previously carried to render the building non-derelict. An extract from Dublin City Council's web page is included, which refers to derelict sites and used phrases of 'your site' and 'if a site that you own'.

4.6.5. The works carried out in 2015 are evidence that Mr. Clinton would have been in a position to conduct further improvement works had he been on notice of the requirement to do so, and Dublin City Council's failure to put him on notice and failure to seek his representations renders the entire process void for unfairness and unlawfulness.

DCC did not exhaust all options to secure the carrying out of works

4.6.6. The submission disputes Dublin City Council's statement that they had exhausted all options to have the site rendered non-derelict. Several extracts from the submission of Dublin City Council to the Board are cited to support of the claim.

4.6.7. The submission also includes an invoice dated the 28th of July 2022, in respect of building support, demolition and site clearance works that were carried out at Mr. Clinton's expense from the 26th to the 28th of July 2022, in the amount of €61,790.54. Therefore, at the time of the application the property was no longer derelict.

4.6.8. A quote for further building works in included in the sum of €665,859.10.

4.6.9. Mr. Clinton was satisfied that he had reached agreement with all interested parties and had appointed a contractor who would be seeking a scaffolding licence and would be commencing works as described in a schedule of works dated 27th July 2022.

4.7. Submission of James Haughey to An Bord Pleanála

4.7.1. Mr. Haughey's submission includes e-mail correspondence from various dates and a letter dated 22nd of September 2022 on the headed paper of Tom Casey Solicitors. The following paragraphs set out the correspondence in order from earliest to latest.

4.7.2. 2nd September 2022 – Email from Bord Pleanála to Mr Haughey attaching Appendices 1-4 of the DCC submission. It also stated that the rest of the file can be viewed at the Board's offices and requested Mr. Haughey to confirm his address in writing. Mr. Haughey provided his address by return e-mail and stated that he had previously provided it to the Board.

4.7.3. 20th September 2022 – Email from Property Registration Authority to Mr Haughey, confirming that there are no pending applications on 2 Ranelagh Road, Dublin 6

4.7.4. 22nd September 2022 – Letter from Tom Casey Solicitors on behalf of Mr Haughey stating:

- Insofar as observations make reference to the ownership of the property being unclear, that there is a long history of disputed ownership, and that Dublin City Council have no record of Mr. Haughey having interest in the property, they request the following is noted:
- While it is not accepted that the property is derelict within the meaning of the Act, Mr. Haughey's ability to address issues regarding the condition and its protection have historically been impacted by ill health that he has suffered since childhood and that he was an only child with no close family.
- Until he became aware of the submissions addressing the notice, Mr. Haughey was unaware that Mr. Paul Clinton and/or Ms. Mary Kelly were making a claim of ownership or to any interest with regard to the property.
- Ms. Kelly has not made an application for ownership to the Property Registration Authority.
- Mr Clinton's claims are contradicted by Mr Haughey and Ms Kelly.
- The submissions indicate that the ability to carry out works to the building are thwarted by other people's claims to the property, is not in itself a basis to support the Councils powers to acquire the building and would significantly erode Mr Haughey's property rights.
- Mr Haughey intends to immediately address the claims of other parties to an interest in the property.

4.7.5. 22nd September 2022 – Email from Mr Haughey to DCC refers to the Equal Status Act and requests that his house is no CPO'd.

5.0 Planning History

5.1. There is no record of planning applications having been made in respect of the 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 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 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 where an objection is made, the derelict site shall not be acquired compulsorily by the local authority without the consent of the Board.

6.2. Dublin City Development Plan 2022-2028

- 6.2.1. The site is zoned Z4 'Key Urban Villages / Urban Villages' in the Dublin City Development Plan 2022-2028, which came into effect on 14th December 2022, after this application was lodged with the Board on 28th July 2022. The land use zoning objective is 'to provide for and improve mixed-use facilities'.
- 6.2.2. The property to the immediate south is also zoned Z4 as is Ranelagh village, while the property to the immediate north is zoned Z1, the objective of which is 'to protect, provide and improve residential amenities.'
- 6.2.3. The land use zonings are the same as they were in the Dublin City Development Plan 2016-2021.
- 6.2.4. The Core Strategy of the 2022-2028 Development Plan includes a section on 'Derelict Sites/CPO' which states:
- The Derelict Sites Act 1990 defines a derelict site as any land that 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. The Derelict Sites Act continues to be implemented within Dublin City Council through monitoring, inspection, site visits and engagement with relevant stakeholders.
- 6.2.5. It also includes the following Objective:
- It is an Objective of Dublin City Council:

CSO11

Derelict Sites Act and Compulsory Purchase

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.

6.2.6. 'Key Challenges' for the city are identified in Section 4.3 to included:

- 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.

7.0 **Assessment**

7.1. I have read the file and visited the site, where I inspected the exterior of the structure from the street, from the raised LUAS stop platform that is immediately adjacent to the south and west of the site. Access to the rear of the site was not possible but views were available over the wall along the rear boundary in Ranelagh Gardens.

7.2. **Background and ownership**

7.2.1. DCC has provided documentary and photographic records of site inspections from as early as 1996, with evidence of damage to the roof and windows from 2006 that indicate that the interior of the structure would have been exposed to weather with no change noted in the years 2007 and 2008.

7.2.2. By December 2010, a new roof had been installed and all window openings above ground floor level were boarded up. The site was inspected in 2011, 2012 and in 2013 where it was noted by the inspector that there are ownership problems with the site, while the site was also inspected on various dates in 2014 where the inspector recommended that a Section 8 Notice was warranted, but again noted that there were problems with establishing ownership of the building.

7.2.3. In January 2015, following a site inspection, it was recommended that Section 8(2) notices be served of the intention of Dublin City Council to enter the site on the Derelict Sites Register, as the site was considered to be derelict, within the meaning of Section 3(b) the Derelict Sites Act 1990. The notices were erected on the 20th of February 2015 and was addressed to the following persons:

- Ms. Imelda Hartney, Ms. Hannah Power, Ms., Mary Kelly, Mr. Eugene O'Neill, Ms. Breda Cleary, The Estate of Mr. Noel Dowling and Mr. Paul Clinton.

7.2.4. Following a further site inspection on the 30th of April 2015 Dublin City Council deemed that there had been a big improvement in the condition of the site and as a result, the site was not included on the Direct Sites Register at that time.

7.2.5. Following receipt of a written complaint in November 2020 regarding the condition of the building, the site was inspected and a memo from the 21st of April 2021 from the Property and Title Search Section of DCC to the Planning and Property Development Department outlined the different parties that may have a claim to ownership of the property, but that extensive searches and enquiries yielded no documentary evidence relating to ownership of the property. Reference was made in the Memo to the following individuals:

- Imelda Hartney and her two unnamed siblings who are the nieces and nephew of Eileen Liston who died intestate in 1985/86. The estate of Eileen Liston and her husband Patrick Liston, who died in the late 1950s was never subject to probate or administration.
- The O'Reilly family who were former tenants of the upper floors who are seeking to establish squatters title are named as Eugene O'Reilly, Hannah Power, Mary Kelly and Breda Cleary
- Mr Reg Christie who has no interest in the property but carried out work on behalf of the O'Reilly family.
- Paul Clinton, who advised that he does not have title to the property but holds a key to the property, sometimes uses it as a store and has carried out work on the property in the past.

7.2.6. A new Section 8(2) Notice of Intention to Enter the Site on the Derelict Site Register was issued on the 17th of June 2021. DCC's submission to the Board indicated that Representations were received from two parties referring to difficulty securing possession of the property and that these difficulties were preventing the carrying out of works to render the property non-derelict. Dublin City Council determined that neither party provides any prospects of improvement works being carried out to the

building in the near future and the site was entered on the derelict sites register on the 12th of November 2021.

7.2.7. I have also read the submissions of James Haughey, who, like the other parties has not provided any evidence that he is the owner of the property.

7.2.8. Having read all of the information on the file, I am satisfied that none of the parties that made a submission or submissions to either Dublin City Council or the Board, have provided documentary evidence that they are the owner of the property at No. 2 Ranelagh, Dublin 6 or have sufficient legal capacity to carry the works necessary to render the building non-derelict.

7.3. **Condition of Site**

7.4. On the occasion of the site visit, the front windows were boarded up and secured by cross braces at the first and second floor levels, while the ground floor was covered in graffiti and the front door was closed. Ridge tiles and slates were missing from the roof, while I have also noted that the photographs included with the submission of Mr Paul Clinton showing that the back garden/yard of the site had been cleared, with open windows and doors evident and this was confirmed by the site visit. It was not possible to gain access to the interior of the building site, but I am satisfied that sufficient information is available in order to make a recommendation on the matter being considered by the Board.

7.5. The site is located in a very prominent urban location within the village of Ranelagh, adjacent to the LUAS bridge that crosses the road immediately to the south and west of the site, meaning that the site is visible both from ground level by passing pedestrians and motorists and is also highly prominent from the elevated Ranelagh LUAS stop.

7.6. The buildings on either side are occupied and in a good state of repair, although it is noted that graffiti adorns the side wall of a building to the south-east of the site on the same terrace with access easily available across the roofs of a number of buildings directly from the Luas Platform and may continue to happen, regardless of the ownership status of the building at No. 2 Ranelagh, unless additional measures are taken to prevent access to the rooftops from the LUAS platform.

- 7.7. While it is noted that a new roof was installed on the building in approximately 2010 and that further works were carried out in 2015 that satisfied Dublin City Council at that time that the building did not constitute a derelict site, no works have been carried out to this building in the interim, that would have maintained the building in a non-derelict condition or to improved its condition such that it could be fit for habitation or occupation. There is clear evidence that the roof has been damaged and is exposed with slates and ridge tiles missing, and this exposure would likely lead to a further decline in the condition of the structure.
- 7.8. Although the external walls of the building are largely intact, it is noted that part of a brick arch above one window has collapsed at the rear of the house with evidence of other open being built up with blocks and others opened or covered with timber sheeting. There is also evidence of significant bulging in the top left corner of the ground floor façade, at the front of the building, with large cracks evident in the façade. When the condition of the external walls and opes are considered as a whole, I am satisfied that that the exterior of the building is in a poor state of repair and having regard to the above, I am also satisfied that the building falls within the category of being in a derelict condition, i.e., category (a) of section 3 of the Derelict Sites Act 1990.
- 7.8.1. With regard to category (b), I would consider that on the basis of the foregoing, the site also falls within category (b) of section 3 of the Derelict Sites Act, 1990 (as amended) due to the land and structure being in a neglected, unsightly and objectionable condition.
- 7.8.2. There is evidence on the file via the submission to the Board from Mr. Paul Clinton that the rear garden area had been cleared from the site by Mr Paul Clinton, and I have noted that the rear area of the site is generally cleared of debris. It is overgrown though with several wheelie bins evident therein. No photos were provided to show the condition of the rear yard/garden area before it was cleared. I am satisfied that the site does not fall within category (c) of Section 3 of the Derelict Sites Act, 1990 (as amended).
- 7.8.3. Although it has been stated that work has been carried out to improve the rear of the site, and an invoice for same was provided by Mr. Christie, I am satisfied that the property particularly when viewed from the public road and street and from the publicly accessible and raised LUAS platform demonstrably detracts to a material degree 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 Derelict Sites Act, 1990 (as amended). The derelict nature of the upper floors of the structure area also evident from Ranelagh Gardens at the rear of the site.

7.9. Objections

7.9.1. Three separate objections were submitted to Dublin City Council to the proposed acquisition of the Derelict Site and two of those three parties also made observations on the submission of Dublin City Council to the Board. All of these submissions have been considered and I make the following comments in respect of the submissions of each party.

Mr. Haughey

7.9.2. While Mr. Haughey claims that he is the owner of the property, he has not provided any evidence in support of his claim. He does not accept that the property is derelict, within the meaning in the Act and makes reference to the property being his house, although he provided a different nearby address as his residence, while the photographic and reported evidence of site inspections from Dublin City Council going back to 1996, is that the building has not been occupied for more than two decades, which is contrary to Mr. Haughey's unsupported submission.

7.9.3. In the absence of any evidence being submitted by Mr. Haughey to substantiate his claims, I am satisfied that Mr. Haughey has failed to demonstrate that it is not in the public interest that the building should be acquired compulsorily by Dublin City Council.

7.9.4. Mr. Clinton

7.9.5. It is noted that this application was submitted by Dublin City Council to the Board on the 28th of July 2022, and it is also noted that Paul Clinton had works carried out to the site between the 26th of June and the 28th of July 2022 that included the removal of 11 no 14 yard skips of waste from the site, the cutting down and clearing of overgrown vegetation and Ivy at the rear yard walls and roof, taking down the rear extension, brick walls and remaining chimney breasts that were in a dangerous condition. Internal building supports were added including propping up the remaining floors, joists, staircase, door-opes and chimney breast as well as the fitting of diagonal window opes wooden supports and the covering of the opes with ply to prevent weather ingress. Other works included excavation of the rear yard and

accumulated mounds of rubble, general builders waste and rubbish and removal from the site.

- 7.9.6. Section 3 of the Derelict Sites Act of 1990 (as amended) sets out three categories of dereliction, any one of which may render a site to be deemed derelict. I am satisfied with the works stated to have been carried out on behalf of Mr. Clinton in June and July 2022, and shown in a number of photographs, would have removed the potential for the site being deemed to be derelict in accordance with Section 3(c). However, the tidying up of the site did not address 3(a) or 3(b) which refer to land which is in a ruinous, derelict or dangerous condition, or the neglected, unsightly or objectionable condition of the land or any structures on the land in question. Therefore, I do not agree with Mr. Clinton's claim at paragraph 2 of page five of the letter of Orpen Franks dated 22nd August 2022 that the site was no longer derelict, following the completion of the works on behalf of Mr. Clinton in June and July 2022.
- 7.9.7. Section 8 (3) provides that a local authority may remove an entry from the register where they consider that the entry is no longer appropriate, while section 8(4) provides that a local authority shall remove an entry from the register (and record in the register the date on which this is done) in relation to a derelict site where — the land has otherwise ceased to be a derelict site. Notwithstanding works carried out at the property by Mr Clinton in 2022, as of the 15th of December 2022, which is the most recent derelict sites register available on Dublin City Council's website, the property has not been removed from the Derelict Sites Register by the local authority.
- 7.9.8. I note that there is no obligation for a local authority to serve a notice on any person who is not the owner, lessee or occupier of a derelict site or proposed derelict site and Mr. Clinton has clearly stated that he is not the owner of the site but has stated that he has an agreement to acquire the property from a number of third parties who themselves are not the registered owners of the property. One of those third parties, Imelda Hartney did not make written submissions to either the local authority or the Board but did outline their interest in the site to the Property and Title Researcher of Dublin City Council as per Appendix 8 to the application. Ms. Hartney informed the Council that her aunt who died in 1985/86, died intestate and she did not state any intention to apply for administration of the late aunt's estate. Therefore, while the information provided in respect of failure to seek representations from Paul Clinton

2021 are noted, they are in my opinion simply a statement of facts as Mr. Clinton sees it and are not relevant to the matter of being considered by the Board in this instance which is the compulsory acquisition of the property.

- 7.9.9. While Mr. Clinton has submitted documentary evidence that he has carried out works to the property in June and July 2022, that tidied the rear of the site and improved the stability of the remaining window opes, additional works that were set out in a detailed quote and were to be submitted by Mr. Clinton to the board in July 2022, which would have not just rendered the site non-derelect, but fit for habitation or occupation, have not been carried out 18 months later and the site remains derelect. There is no record of planning permission having been sought or attained to carry out any works to the building that could or would render the site non-derelect.
- 7.9.10. While Mr. Clinton has stated an intention to carry out works to render the building non-derelect, I consider that the absence of any evidential progress in respect of the resolution of the matter of ownership of the building, which if resolved may have allowed Mr. Clinton to carry out the works to the building, means that Mr. Clinton has failed to demonstrate that it is not in the public interest that the building should be acquired compulsorily by Dublin City Council.

7.10. Mary Kelly and Siblings

- 7.10.1. Ms. Kelly's was made to Dublin City Council and she did not make a further submission to the Board on the application. The ground of her objection is that the property is subject to first registration, but did not provide evidence of this application for registration. From the information on the file, Ms Kelly's family the O'Reilly's were tenants of the upper floors of the building for several generations and according to Mr Reg Christie, who identified himself as a friend of th O'Reilly Family and who carried out work for them on the property in the past, they are seeking squatters rights. Ms Kelly has not provided any documentary evidence to demonstrate that an application has been made to Land Registry to register the site in the names of Ms. Kelly and her siblings as stated in her submission of June 2022 and the online land direct website does not show any pending applications or queries raised in respect of the site.
- 7.10.2. In the absence of any documentary evidence being submitted by Mr. Kelly and her siblings to substantiate his claims, I am satisfied that they have failed to demonstrate

that it is not in the public interest that the building should be acquired compulsorily by Dublin City Council.

7.11. Conclusion

- 7.11.1. I am satisfied that the process and procedures undertaken by Dublin City Council in seeking to have this site deemed non-derelict over a period of many years have been fair and reasonable, and that they have made extensive enquiries with various parties claiming an interest in the property, with the objective of having the site deemed non-derelict. I am satisfied that none of the parties with an interest in the property and the parties that made submissions to the local authority and the board as part of this process, have been in a position to confirm that they are the legal owner or have sufficient legal interest in the property that would allow them to carrying the improvement works necessary to render the site non-derelict.
- 7.11.2. Having regard to the constitutional and Convention protection afforded to property rights, I consider that the acquisition of the derelict site at 2 Ranelagh, Dublin 6, pursues, and is rationally connected to, a legitimate objective in the public interest, namely, to render the property non-derelict.
- 7.11.3. I am also satisfied that the acquiring authority has demonstrated that the means chosen to achieve that objective impair property rights or the estate of the property owner/s as little as possible; in this respect. I have considered alternative means of achieving the objective referred to in 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 application made by the acquiring authority to be unreasonable or disproportionate.
- 7.11.4. The effects of the compulsory acquisition on property rights are proportionate to the objective being pursued. Section 4.3 of the Dublin City Development Plan 2022-2028 identifies Key Challenges' for the city to include '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. Compact Growth is defined in the Development Plan as Compact growth promotes the efficient use of land through consolidation, active land management and effective densities, in order to minimise sprawl of urban development. I am further satisfied that the proposed acquisition of

this derelict site at 2 Ranelagh, Dublin 6 would be consistent with objective CSO11 of the Dublin City Development Plan 2022-2028, referring to Derelict Sites Act and Compulsory Purchase, which provides that it is an Objective of Dublin City Council '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'. Accordingly, I am satisfied that the confirmation of the application to compulsorily acquire the derelict site at 2 Ranelagh, Dublin 6 is clearly justified by the exigencies of the common good and would facilitate compact growth through the rendering of the site as non-derelict in the first instance that would in turn facilitate the local authority to redevelop the site, thereby making it habitable or fit for occupation. I am satisfied that the confirmation of the application to compulsorily acquire would also be considered to be in the interest of the proper planning and sustainable development of an area.

- 7.11.5. I am satisfied, having reviewed all available information and visited the site, that it is in the public interest that the derelict site at 2 Ranelagh Road, Dublin 6, should be acquired compulsorily by Dublin City Council.

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, 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 Sections 3 (a) and 3(b) of the Derelict Sites Act, 1990, as amended.
- 8.2. I consider that it is reasonable that the Local Authority seeks to compulsorily acquire the land, as provided by section 14 of the Act. I recommend, therefore, that the Board grant consent to Dublin City Council to compulsorily acquire the site.

9.0 Reasons and Considerations

- 9.1. Having regard to the ruinous and derelict condition of the structure on the site and the derelict state of the site and to its neglected, unsightly and objectionable

condition, having considered the objections made to the compulsory acquisition, and also:

- (i) the constitutional and Convention protection afforded to property rights,
- (ii) the provisions of Dublin City Development Plan 2022-2028,

it is considered that the site detracts to a material degree from the amenity, character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in Sections 3 (a) and (b) of the Derelict Sites Act 1990, as amended, and that the compulsory acquisition of the site by the local authority is necessary in order to render the site non-derelict and to prevent it from continuing to be a derelict site.

It is also considered that the objection made against such acquisition cannot be sustained, having regard to that said necessity.

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.

Joe Bonner
Senior Planning Inspector

9th January 2024