



An  
Bord  
Pleanála

## Inspector's Report ABP-317500-23

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### Nature of Application

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

### Location

Ground Floor, Units 3 & 5, Harriston Student Village, Old Cratloe Road, Limerick

### Local Authority

Limerick City and County Council

### Notice Party

Marcus McNamara of Jack Keane Management Services, t/a Property Management Ireland

### Date of Site Inspection

30<sup>th</sup> May 2024

### Inspector

Gary Farrelly

## **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 Ground Floor, Units 3 and 5 at Harriston Student Village, Old Cratloe Road, Limerick, in accordance with the provisions of the Derelict Sites Act 1990, as amended.

## **2.0 Site Location and Description**

- 2.1. The subject site is located approximately 3km northwest of the city centre of Limerick. The site comprises of ground floor unit nos. 3 and 5 of a mixed residential and commercial block, known as Harriston Student Village, which is accessed off the Old Cratloe Road. The site is located in a prominent location being visible from the Old Cratloe Road. The immediate area is characterised by residential dwellings which I noted were all well maintained and in good condition, on the date of my site inspection.
- 2.2. My observations of the site on the date of the inspection included the following;
- The windows and doors on the ground floor of units 3 and 5 of the block were boarded up with MDF sheets.
  - The downpipe on unit 5 was partially missing from the first floor down to the ground.

## **3.0 Legislative Context**

### **Derelict Sites Act 1990, as amended**

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.

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.”

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.

**Planning and Development Act 2000, as amended**

**Planning and Development Regulations 2001, as amended**

## **4.0 Application for Consent for Acquisition**

- 4.1. 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 3<sup>rd</sup> November 2021 (advising of the Local Authority's intention to enter the site on the register of derelict sites), and under Section 8(7) on 5<sup>th</sup> December 2022 (advising of the Local Authority's decision to enter the site on the register of derelict sites).

## **5.0 Application and Objection**

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

Notice of Limerick City and County Council's intention to acquire the site was affixed to the site, and was published in the Limerick Post newspaper on 6<sup>th</sup> May 2023. The site was described as follows in the notices:

- A derelict site comprising two no. ground floor commercial units and surrounding land situate at Units 3 and 5 at Harriston Student Village, Old Cratloe Road, Limerick, containing 0.015 hectares or thereabouts. The said property and surrounding land is in a state of dereliction. The said derelict site is more particularly shown outlined in red on map bearing reference no. DS-107-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act, 1990.

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

### **5.2. Objection to Acquisition**

An objection to the proposed compulsorily acquisition was submitted to Limerick City and County Council by Marcus McNamara of Property Management Ireland in an email dated 15<sup>th</sup> May 2023. The objection can be summarised as follows:

- Both sites/retail units are not derelict and have been in full use as stores and caretaking areas for a number of years. PMI have been engaged as managing agents of the building for over 18 years on behalf of Harriston Management Company, who manage and secure the building.

- Unit 3 has been used as storage for goods, tools and furniture for over 15 years and Unit 5 has been used as same and as a wc for the caretaker for over 8 years.
- Both units are boarded up externally at the front of the building for safety reasons. Glass windows at the front have been replaced over the years due to the level of anti-social behaviour in the area. They were left with no other alternative but to secure the stores with MDF hoarding which are blended in with the shop front frames.
- The units are continually used daily by accessing from the rear of the units. They are a valuable part of the property management business. They are secured at the rear by a master key locking system.
- They maintain both units and the units are linked to the main building fire alarm system.
- Photographs are provided showing the front of the units and the internal condition of the units. Statement of service charges are also attached.

### **5.3. Local Authority's Application for Consent**

The Local Authority requests the consent of the Board to the compulsorily acquisition of the derelict site. The application for consent was submitted on 30<sup>th</sup> June 2023 and was accompanied by the following:

- Local Authority Compulsory Acquisition Report (i.e. Derelict Site report) which sets out the local authority's strategic approach to 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 and a map of the site area.
- Copy of the section 15 Notice served on the owners/occupiers of the site, dated 28<sup>th</sup> April 2023.
- Copy of the newspaper notice, dated 6<sup>th</sup> May 2023.
- Copy of objection made by Marcus McNamara.

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. 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.

- The two separate ground floor commercial units with surrounding land are vacant and are in a derelict condition for a considerable period. The sites detract in a great way from the well-maintained land and properties in the vicinity and will draw the attention of anyone entering Harriston Student Village. These sites have a neglected look and are in an unsightly condition which detracts from the area. The windows and doors of the properties are boarded up with sheets of timber both at the front and at the rear. These sheets are being marked with graffiti. The downpipe from the guttering at the front of the units is broken and not connected to the ground level gully.
- The council first inspected the property on 6<sup>th</sup> October 2017 and identified it as a derelict site. Site ownership enquiries were made through the land registry and planning and development searches were carried out. The registered owner is McInerney Homes Limited.
- On 23<sup>rd</sup> July 2021, the local authority affixed a notice of enquiry to the site seeking information on the ownership and occupation of the properties but no one came forward.
- On 3<sup>rd</sup> November 2021, a section 8(2) notice was affixed to the site and there was no response or representation made to this notice by the owner or occupier or any other interested parties.
- On 5<sup>th</sup> December 2022, a section 8(7) notice was affixed to the site and sent to two registered owners, McInerney Homes Limited and Quilty's Off Licence, but there was no response or representation made to the notice from any party.
- On 22<sup>nd</sup> February 2023, a Section 22 Notice of Valuation was affixed to the site and there was no response to this notice.
- The local authority carried out a GPS survey of the site on 31<sup>st</sup> March 2023 and were approached by an employee of a property management company who

informed the council why they put up timber on the doors and windows to avoid break ins, however, they had never met the owners and it has been vacant since they started working there.

- On 5<sup>th</sup> April 2023, a letter from DJ O'Malley Solicitors to the local authority claiming their client, Arra Consulting and Investments Ltd. had purchased the properties in 2011 and were registering title. On 12<sup>th</sup> April 2023, the local authority replied to the letter seeking proof of ownership documentation as well as offering a site meeting to discuss the case. However, the letter was not responded to nor was the offer of a site meeting taken up.
- As the land continued to be a derelict state, the council exercised its power of compulsory acquisition and gave its notice of intention to acquire the site to the owner and advertised same in the Limerick Post newspaper on 6<sup>th</sup> April 2023 (*This date appears to be a typographical error as the newspaper notice is dated 6<sup>th</sup> May 2023*).
- On 5<sup>th</sup> May 2023, an email objecting to the proposed acquisition was received from Marcus McNamara, on behalf of Jack Keane Management Services t/a Property Management Ltd., and further information was supplemented by the objector on 11<sup>th</sup> May 2023 and 15<sup>th</sup> May 2023. This objection was duly acknowledged.
- The objector provided only photographs of the site and there was no further documentary evidence provided such as ownership documents or lease agreements, as sought by the local authority in an email dated 12<sup>th</sup> May 2023. As such, the local authority cannot ascertain the legal grounds that Mr. McNamara and his organisation was relying on to claim what may be opportune use of the units. This appears to be supported by statements the objector claims are unpaid charges to the management company.
- Further, as the objector is claiming that the units are in regular use, it is peculiar that all statutory notices and the notice of enquiry that were prominently affixed to the site since July 2021 were not responded to. The reasoning given to the boarded-up windows and doors is surprising since it is claimed both units were being actively used on a daily basis.

- All the while these properties are boarded up, the neighbours to the derelict site and the rest of the local community live with and endure the ongoing neglected and unsightly look of this property. Not only do they detract from their own well-kept properties in the area, their current state impacts on the enjoyment of residents of their locality. The statement in the letter of objection claiming that the property is being maintained unfortunately does not reflect the reality experienced and witnessed on the ground in this vibrant residential and commercial area for quite some while.
- It is the contention of the council that the inaction of the property owners and failures of their duties under the Derelict Sites Act that jeopardises the future use of properties in the area due to their continued neglected and derelict state. In this case, the property continues to attract negative attention in a key area of Limerick City. The only option available to the council is to acquire this property compulsorily.

#### **Objector's Submission to the Board**

5.4. An objection to the proposed compulsorily acquisition, via email, was lodged to the Board by Marcus McNamara on 25<sup>th</sup> July 2023 and is summarised as follows:

- Both sites/retail units are not derelict and have been in full use for a number of years. Harriston Management Company are owners and are in full control of the units.
- Both these units are used as storage for goods, tools and furniture, wc facilities and maintenance. Staff use these units on a daily basis helping to further secure the area. The units are secured this way for safety and operational reasons and does not give anyone the right to say that they are derelict and force through a CPO.
- Photographs are provided showing the interior and exterior of both retail units.
- Both units are secured externally at the front of the building for safety reasons with sheeting keeping in kind the surrounding units. The glass windows at the front have been replaced a number of times due to the level of anti-social behaviour in the area. They were left with no other option but to secure the



stores with MDF hoarding which is painted to blend in with the shop front frames.

- The units are continually used daily by accessing from the rear of the units. They are a valuable part of the property management business. They are secured at the rear by a master key locking system.
- The local authority praise the way the area is kept, however, it is Property Management Ireland and Harriston Management Company that are responsible for most of this area and its upkeep.

## **6.0 Relevant Planning History**

There are no planning applications associated with the 2 no. units, according to the planning register or from the information submitted with the application.

## **7.0 Policy Context**

### **Limerick Development Plan 2022-2028**

#### **Objective CGR 04 Active Land Management**

It is an objective of the Council to:

- b) Support and facilitate the reuse and revitalisation of derelict, vacant and underutilised sites and disused buildings throughout Limerick for residential, economic, community and leisure purposes.

#### **Objective CGR 06 Derelict Sites**

It is an objective of the Council to utilise the provisions of the Derelict Sites Act 1990, including the maintenance of a Derelict Site Register and CPO powers to address instances of dereliction and decay in the urban and rural environment and bring properties back into active reuse.

#### **Policy CGR P4 Revitalisation of Towns and Villages**

It is the policy of the Council to:

- a) Actively address issues of vacancy and dereliction in settlements across Limerick.

## 8.0 Assessment

### Site Inspection

- 8.1. Internal access to the property was not possible on the date of my site inspection on 30<sup>th</sup> May 2024, however, I was able to view the front of the property from the public car park. I noted that the subject two units were boarded up with MDF sheeting painted in a brown colour. I noted that signage above the ground floor unit of Unit 3 showed that the unit was previously used as 'Geraldine's Off-Licence'. Part of the downpipe on Unit 5 was missing from the first-floor level down to the ground. The ground floor units were vacant.
- 8.2. The units form part of a residential block with commercial and retail uses on the ground floor. The other ground floor units are occupied by commercial users.

### Category of Dereliction

- 8.3. I note that the local authority considered that the property and lands fell under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.4. Based on my site inspection, I noted that the structure was not in a ruinous, derelict or dangerous condition, therefore, I consider that the lands do not fall under Category (a) of Section 3 of the Derelict Sites Act 1990, as amended. I also noted no litter, rubbish, debris or waste within the grounds of the site. I consider therefore that the site does not fall under Category (c) of Section 3 of the Derelict Sites Act 1990, as amended.
- 8.5. However, it is my view that the subject structure and lands fall under Category (b) of Section 3 of the Derelict Sites Act 1990, as amended:
- (b) The lands and structure are in an unsightly and objectionable condition. However, it is my view that they are not in a major neglected condition.
- 8.6. Therefore, I do not agree with the Notice Party who states that the site is not derelict and does not have a negative impact on the area. Whilst I acknowledge the Notice Party's reasoning for doing so in terms of security, it is my view that the boarding up of windows with MDF sheets does negatively impact the area and does detract to a material degree from the amenity, character and appearance of land in the neighbourhood. Therefore, the site is a derelict site under Section 3(b) of the Derelict Sites Act 1990, as amended.

### **Actions of Local Authority**

- 8.7. I note that the local authority state that they first inspected the site on 6<sup>th</sup> October 2017. They affixed a section 8(2) notice on 3<sup>rd</sup> November 2021, and a Section 8(7) notice on 5<sup>th</sup> December 2022, to the properties and received no response or representation. I also note that prior to this they affixed a notice of enquiry to the property on 23<sup>rd</sup> July 2021.
- 8.8. Furthermore, I note that there was no response to a Section 22 Notice of Valuation which was affixed to the property on 22<sup>nd</sup> February 2023. On 5<sup>th</sup> April 2023, they received a response from DJ O'Malley Solicitors, on behalf of Arra Consulting and Investments Ltd, however, they did not respond once the local authority requested proof of ownership.
- 8.9. The local authority did receive an objection email after serving the Section 15 notice, however, no ownership documents or lease agreements are provided.
- 8.10. Having regard to the above, I am satisfied that the actions of the local authority complied with the requirements of Section 6, Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended.

### **Compliance with development plan policy**

- 8.11. I note that the Limerick Development Plan 2022-2028, specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06, seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse.
- 8.12. Therefore, I consider that the subject property and proposed compulsory acquisition would be consistent with the policies and objectives of the Development Plan and will ensure that the lands do not continue to be in a derelict condition.

### **Actions of the Owner to address dereliction**

- 8.13. I note that no legal documentation is provided by the Notice Party confirming ownership of the units or any lease agreement. The objector states that Harriston Management Company are owners of the apartment block and common areas and are in full control of these units.

- 8.14. They dispute the findings of the local authority and consider that the units are not derelict and do not have a negative impact on the area. They are boarded up because of anti-social behaviour in the area and are in continual use. However, I have already determined that the boarding up of units, and the missing downpipe, are resulting in an unsightly and objectionable condition of the lands which is detracting to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question.
- 8.15. Notwithstanding this, it is my view that the proposed interventions that would be required in order to remove this property from dereliction are minimal. This involves the removal of the MDF sheets and reinstatement of the shopfront and the repair of the downpipe on Unit 5. Therefore, having regard to the scope of works required, I do not consider it reasonable to approve the compulsory acquisition of these properties at this time.

## **9.0 Conclusion**

- 9.1. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising two no. ground floor commercial units and surrounding land situate at Units 3 and 5, Harriston Student Village, Old Cratloe Road, Limerick, containing 0.015 hectares or thereabouts, as set out in the Derelict Site Notice issued under Section 15(1)(b) of the Derelict sites Act 1990, (as amended) and dated 28<sup>th</sup> April 2023 and on the deposited maps DS-107-17, 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.
- 9.2. I am further satisfied that the proposed acquisition of these lands was consistent with the policies and objectives of the Limerick Development Plan 2022-2028, and specifically Policy CGR P4 and Objectives CGR 04(b) and CGR 06, which seeks to address instances of dereliction and decay in the urban and rural environment, seeks to reuse and revitalise derelict, vacant and underutilised sites and disused buildings and bring properties back into active reuse. However, I am not satisfied that the condition of the site is so unsightly and objectionable that warrants a proposed compulsory acquisition of the properties, due to the minor interventions that are required to remove the properties from such an unsightly and objectionable condition,

such as the removal of the MDF sheeting covering the doors and windows of both units and the repair of the downpipe on unit 5.

9.2.1. I am not satisfied, therefore, that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, or that the local authority has demonstrated the need for the lands, or that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site. It is further acknowledged that the acquiring authority has not adequately demonstrated that the means chosen to achieve the objective in the public interest would have impaired the property rights of affected landowners as little as possible, and that the effects of the proposed compulsory acquisition on the rights of affected landowners were proportionate to the objective being pursued at the time.

9.3. In this respect, I have considered alternative means of achieving the objective referred to in the submissions to the Board and am satisfied that the means chosen, and the proposed compulsory acquisition made by the acquiring authority would be unreasonable or disproportionate. Having regard to the current condition of the site, I am not satisfied that the confirmation of the proposed compulsory acquisition is justified by the exigencies of the common good at this point in time.

## **10.0 Recommendation**

Notwithstanding the current unsightly and objectionable condition of the site, which detracts from the amenity, character and appearance of the streetscape and surrounding land in the neighbourhood, taking account of the minor interventions that are required to remove the properties from dereliction, I do not consider it reasonable that the local authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act. I recommend, therefore, that the Board refuses consent to Limerick City and County Council to the compulsory acquisition of the site.

## 11.0 Reasons and Considerations

Having regard to the current unsightly and objectionable condition of the site, having considered the objection made to the compulsory acquisition, and also:

- a) The constitutional and Convention protection afforded to property rights,
- b) The public interest, and
- c) The provisions of the Limerick 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 section 3 (b) of the Derelict Sites Act 1990, as amended. Notwithstanding this, taking account of the minor interventions required to take the property out of dereliction, the Board does not consider it reasonable that the local authority now seeks to compulsorily acquire the land (at this point in time), as provided by Section 14 of the Act.

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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Gary Farrelly  
Planning Inspector

4<sup>th</sup> June 2024