



An  
Bord  
Pleanála

# Inspector's Report

## ABP-317503-23

### Development

Application for consent for compulsory acquisition of a derelict site in accordance with Section 16 of the Derelict Sites Act 1990, as amended

### Location

37 Windmill Street, Limerick

### Local Authority

Limerick City and County Council

### Notice Party

Santaner Ltd. & Peter Madden

### Date of Site Inspection

8<sup>th</sup> January 2024 & 25<sup>th</sup> April 2024.

### Inspector

Niall Sheehan

## 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 37 Windmill 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 derelict site is located to the eastern side of Windmill Street in Limerick in the centre of Limerick City, c.300m from Ted Russell Docks and c.300m from O'Connell Street. The site is located between Aviary House Apartments and Courtyard Apartments (developed c.2000), (2 no. part five, part six storey apartment blocks to the northwest), a terrace of two-storey properties at No.1 - 4 Windmill Street to the southeast, and the Shannon Arms apartment block to the east. The derelict site is L-Shaped, and returns to the east to the rear of No.1 - 4 Windmill Street. The site is overlooked by all these aforementioned properties. The site is visible from Windmill Street to the front however is not visible from Mount Kennett Place to the extreme rear.
- 2.2 The derelict site is part of a wider site whereby there is a linked communal garden (set of steps to access) between the Shannon Arms Apartment Block and the Courtyard Apartment Block. The site rises steadily from the roadside at Windmill Street and plateaus towards the centre and rear of the site. There is then a steep and significant change in levels from the rear of the derelict site to the communal garden between the Shannon Arms Apartment Block and the Courtyard Apartment Block. There is a set of steps down leading down to the communal garden area.
- 2.3 There are no protected structures adjoining the site. The front of the site including the footprint of the former demolished building is located within the Newtown Perry Architectural Conservation Area (ACA), however the rear of the site is outside the ACA boundary.
- 2.4 The site has a compressed gravel surface to its interior with vegetation towards

extremities/boundaries. The ground conditions are relatively even underfoot. There is a single metal entrance gate attached to Aviary House Apartments and heras fencing is fixed to posts bolted into the ground forming the front boundary.

- 2.5 From a study of local authority photographic surveys (04/05/2023, 31/03/2023, 29/03/2023, 16/01/2023, 02/09/2022, 02/02/2022, 20/05/2021, 05/03/2019, 15/01/2019, 29/08/2018 and the 28/02/2017) and Google Maps (May 2009, September 2014, August 2019, March 2022) the site appears to have been vacant and derelict for a considerable time period. There is a cable running from the gate post to the gable wall of Aviary House Apartment Block.
- 2.6 The site previously contained a derelict two-storey building which was boarded up, contained vegetative growth to the rainwater goods and roof, and, was subsequently demolished in May 2021. LCCC photographs prior to this time show this building in a derelict state.
- 2.7 I note that the local authority made site ownership enquiries through the Land Registry system as part of their process, and, at the time of enquiry the title of the property was not registered on Land Direct System or with the Property Registration Authority. From the objection received, the derelict site appears to be owned by two related entities. The larger part of the site comprising of the area covered in hardcore is stated to be owned by Peter Madden (purchased c.2000) while the paved area to the northwest to the flank elevation of Aviary House Apartments is stated to be owned by Santaner. It is noted that Santaner's Key Executive is listed as Peter Madden. Also, from a search, Aviary Estates (Aviary House Apartments) Key Executive is also Peter Madden. I also understand that the communal garden immediately to the north east of the site is also in the control of the appellant Peter Madden.
- 2.8 The site owners have stated in their objection that Santaner has rights to overlook the communal garden immediately adjoining and accessible to the southwest of the site and this is due to be developed as a communal open space/garden in conjunction

with planning permission 21/1454 (note communal garden not part of red line boundary).

### **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 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 25<sup>th</sup> May 2017, (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 5<sup>th</sup> March 2019, (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 Sataner Limited c/o Peter Madden in a letter dated 3<sup>rd</sup> May 2023. This was published in the Limerick Post newspaper on Saturday 6<sup>th</sup> May 2023. The site was described as follows in the notices:

- 'A derelict site comprising neglected land situate at 37 Windmill Street, Limerick containing 0.057 hectares or thereabouts. The said property and surrounding land is in a state of dereliction. The said derelict site is particularly shown outlined in red on map bearing reference number DS-076-17 in the Derelict Sites Register established and maintained by Limerick City and County Council under Section 8 of the Derelict Sites Act 1990'.

I consider that the notices were in accordance with 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 on behalf of Peter Madden on the 2<sup>nd</sup> of June 2023 and can be summarised as follows:

- The owner (Peter Madden) engaged with Joe Considine LCCC on 20<sup>th</sup> November 2020 with regard to delayed demolition due to Covid and the nature of works which involved removal of asbestos and other issues;
- Joe Devine LCCC emailed owner on 26<sup>th</sup> May 2021 recording the demolition of structure and raised issue regarding boundary treatment (heras temporary fencing not considered appropriate).
- Joe Devine LCCC then advised owner by email on 3<sup>rd</sup> February 2022 that fencing erected on the property was temporary, not appropriate, requested an alternative. The property therefore remained on the derelict sites register.
- The owner contacted Mr. Devine on 9<sup>th</sup> September 2022 and explained that fencing was temporary as ground investigations were ongoing at the time. The owner has been dealing with this following on from grant of planning permission for residential development (planning permission 21/1454, granted on the 18<sup>th</sup> of August 2022). It is also stated that their offices are located next door;
- Maurice Somers LCCC (who took over from Joe Devine) replied to owner on 12<sup>th</sup> September 2022 identifying the site as being overgrown with vegetation;
- The vegetation and litter, rubbish etc. underneath has now been removed and there is a Fire Safety Certificate application pending with LCCC;
- Post issuance of Fire Safety Certificate and Disability Access Certificate, the owner intends to deal with a Housing Association, commence and subsequently complete planning permission reg. ref. 21/1454;
- The owner states that they are unable to advance these plans while threat of a proposed Compulsory Purchase Order (CPO) is pending.
- It is stated that if the CPO on the site is granted, it would frustrate the provision of much needed housing in the area.

### 4.3. Local Authority's Application for Consent

#### 4.3.1. Derelict Site Report

4.3.2. The Local Authority requests the consent of the Board to the compulsory acquisition of the site. The application for consent was submitted on the 3<sup>rd</sup> of July 2023 and was accompanied by the following:

- Compulsory Acquisition Report;
- Derelict Site Location Map;
- Section 15(1)(a) Notice of Intention to Acquire Derelict Site Compulsory 6<sup>th</sup> May 2023;
- Section 15(1)(b) Notice of Intention to Acquire Derelict Site Compulsorily 28<sup>th</sup> April 2023;
- Copy of objection received dated 2<sup>nd</sup> June 2023 and acknowledgement letter dated 7<sup>th</sup> June 2023;
- Site photographs dated 04/05/2023, 31/03/2023, 29/03/2023, 16/01/2023, 02/09/2022, 02/02/2022, 20/05/2021, 05/03/2019, 15/01/2019, 29/08/2018, 28/02/2017.

Notices served also include:

- Section 8(2) Notice of Intention to enter site into Derelict Sites Register dated 25<sup>th</sup> May 2017;
- Section 8(7) Notice of Decision to enter site into Derelict Sites Register dated 5<sup>th</sup> March 2019;
- Section 15(1)(a) Notice of Intention to Acquire Derelict Site Compulsorily dated 16<sup>th</sup> November 2019;  
(Same notice also served on 6<sup>th</sup> June 2023 as detailed above);
- Section 22 Notice of Valuation 25<sup>th</sup> November 2019;
- Section 11 Notice of Works Required to be carried out dated 10<sup>th</sup> August 2020;
- Section 23 Demand for Payment of Derelict Sites Levy dated 11<sup>th</sup> March 2022;
- Section 23 Demand for Payment of Derelict Sites Levy dated 3<sup>rd</sup> March 2023.

- 4.3.3. The Derelict Site Report can be summarised as follows:
- 4.3.4. 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;
    - Conservation value of the building and requirement for remedial restoration works;
    - Feasibility of various actions to make good the site and find viable uses for the site.
- 4.3.5. LCCC have been aware of the site and its history for a considerable time period. LCCC first inspected the site on the 28<sup>th</sup> February 2017 and identified it as a Derelict Site by definition under Section 3 of the Derelict Sites Act (as amended). LCCC have remarked on the neglected look and unsightly condition of the site and how it detracts from the relatively well maintained land and properties in the vicinity for which some properties overlook the site.
- 4.3.6. The property was inspected on a number of occasions since by the local authority. Photographs from each of the site inspections are included with the application. (04/05/2023, 31/03/2023, 29/03/2023; 16/01/2023, 02/09/2022, 02/02/2022, 20/05/2021, 05/03/2019, 15/01/2019, 29/08/2018, 28/02/2017).
- 4.3.7. LCCC have commented on the large amount of vegetation overgrowth which a significant amount of rubbish, litter, debris and waste has been left to accumulate

underneath in addition to graffiti to the boundary walls with both entrance and front boundary to the site left unsecured (heras fencing).

4.3.8. Photographs on the 04/05/2023 shows vegetation (including weeds and wild plants) completely overgrown throughout the site including towards the front roadside boundary. The same photographs show litter and rubbish strewn underneath the subject vegetation.

4.3.9. The site previously contained a derelict two-storey building for which was boarded up and contained vegetative growth to the rainwater goods and roof. This was demolished in May 2021.

4.3.10. LCCC have responded to the objection from the owner as follows:

- They have stated that the objection references the owner demolishing the structure onsite (vacant, derelict two-storey building). They have stated that LCCC facilitated demolition under Section 11 of the Derelict Sites Act 1990 rather than the owner having to apply under the normal planning application process;
- They have stated that having demolished the structure that was on site, the owner has now left the site in a worse state (with significant overgrowth);
- They refer to the owner's exchanges with LCCC in relation to the development of this property;
- They have stated that planning history of the site dates back 20 years and it would ordinarily be expected that development would be commenced by now;
- They state that the removal of vegetation from the site (which the owner references) is a 'weak offer' at a late stage;
- They reference the owner as having a poor track record given the lack of progress over time;
- They conclude that due to the inaction of the owner, and, the continued deterioration of the property in a key area of the city centre, the only option left for LCCC is to serve a compulsory purchase order on the site.



## 4.4 Objector's Submission

4.4.1 An objection on behalf of owner was submitted to An Bord Pleanála on the 20<sup>th</sup> July 2023 and noted the following additional points:

- The 2008 recession and financial crisis rendered the development of a city centre residential apartment block uneconomic with sale prices low, recovery slow, build costs still significant;
- Peter Madden met with LCCC on the 13<sup>th</sup> of March 2019 after receiving notice of site being put on the derelict sites register (notice dated 5<sup>th</sup> March 2019). Peter Madden informed LCCC that an application would be submitted in near future (at the time), however this was delayed and thrown into disarray with the Covid 19 Pandemic;
- The old derelict building previously onsite was demolished in May 2021 post an asbestos survey. The contractor's invoice and an asbestos disposal receipt were enclosed. Post demolition, the site was surfaced with compressed gravel and temporary heras fencing was installed to the boundary;
- Planning permission reg. reg. 21/1454 for a 14-no. unit apartment development was granted on 21<sup>st</sup> of September 2022;
- Trial holes were dug in February 2023 to prepare for construction. Temporary fencing remained in place due to the presence of trial holes. It is noted that there is a gated entrance towards Aviary House Apartment Block, and, the appellants offices are located at Aviary House Apartment Block next door;
- A Fire Safety Certificate Application (FSC2302788LL) was lodged and validated on the 18<sup>th</sup> of May 2023 (Acknowledgement Reference 3012754). The Fire Safety Certificate Application was pending (at time of objection);
- A Disability Access Certificate (4008186) was lodged as of 20<sup>th</sup> of July 2023 (after CPO application was lodged);
- The owner is stated to have purchased No. 4 Windmill Street (formerly PSC Accountants immediately adjacent to the south-east) which they state will further assist the planning permission to progress;

- The owner made enquiries with a housing agency and is working on preferred option to provide a turnkey solution by way of unit purchases or long term leases. The owner states that it is hoped to finalise this, once statutory Fire Safety Certificates and Disability Access Certificates have been issued;
- Santaner Limited own lands to the north in-between apartment blocks to both sides. At present, under current ownership, planning permission 21/1454 has rights to overlook communal garden area between the courtyard and the Shannon Arms Apartment block;
- The owner states that other redevelopment of the site apart from planning permission reg. ref. 21/1454 may be more difficult, and, may not achieve same level of efficient site coverage affording to their current ownership of wider site;
- The owner states that since planning permission was granted there has not been sufficient time to prepare and process construction tender package, discharge pre commencement conditions and arrange finance etc.;
- The owner states that the serving of a Compulsory Purchase Order would set the development of site back considerably;
- The owner states that Aviary Estates has put a programme in place to keep weeds sprayed and also to install CCTV to assist with illegal dumping onsite;
- The owner states that the front boundary treatment will be upgraded shortly;

## **5.0 Planning History**

5.1 Please see below history of note:

Planning Permission Reg. Ref. 04/770568 (Aviary Estates). Demolition of an existing house and construction of student accommodation consisting of 9 no. student units and caretakers apartment, ground floor commercial unit, basement, student communal spaces, all ancillary accommodation, provision of 12 no. car and vehicular

parking spaces and pedestrian access. Refused by Limerick City Council in February 2005.

Appealed to An Bord Pleanála (PL30.211169) which the refusal was upheld in September 2005.

Reasons for Refusal (as summarised):

Reason 1: It is considered that the proposed development would constitute an overdevelopment of this restricted site due to the excessive plot ratio and the seriously inadequate provision of private open space.

Reason 2: It is considered that the wraparound element of the proposed development would be visually obtrusive in the streetscape and would be overly close to and overbearing of existing residences, thus seriously injuring visual amenities and the amenities of property in the vicinity.

Planning Permission Reg. Ref. 21/1454 (Santaner Limited, Key Executive Peter Madden)

Construction of a three to five storey 14 no. unit apartment development consisting of 4 no. one-bedroom apartments, 7 no. two-bedroom apartments and 3 no. three-bedroom apartments, new courtyard area, bin store, bike store and associated site works.

Decision: Granted on the 21<sup>st</sup> of September 2022.

## 6.0 Policy Context

### 6.1 Legislation

#### Planning and Development Act 2000 (as amended and consolidated)

### 6.2 Development Plan

#### Limerick City and County Development Plan 2022-2028

- 6.2.1 The applicable Development Plan is the Limerick City and County Development Plan 2022 – 2028. This plan became effective on the 29th 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.
- 6.2.2 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)**.
- 6.2.3 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.
- 6.2.4 **Sub-Section 3.3.2.2** notes 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.

- 6.2.5 **Objective CGR O4** - Active Land Management - It is an objective of the Council to: a) Promote an active land management approach through cooperation with relevant stakeholders and infrastructure providers to deliver enabling infrastructure to achieve compact growth. 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. c) Establish a database of strategic brownfield and infill sites in the city centre to be updated on an annual basis to monitor the progress of the active land management measures.
- 6.2.6 **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.
- 6.2.7 **Policy CGR P4** - Revitalisation of Towns and Villages – sets out that it is the policy of the Council to: a) Actively address issues of vacancy and dereliction in settlements across Limerick. b) Promote projects contributing to compact growth and the physical, social and economic revitalisation of the towns and villages throughout County Limerick.
- 6.2.8 **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.
- 6.2.9 **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.
- 6.2.10 **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.
- 6.2.11 The site is zoned **City Centre Area**, which in summary the Zoning Objective is to protect, consolidate and facilitate development of the city centre commercial, retail, educational, leisure, residential, social and community uses and facilities.

6.2.12 **Section 6.5.4 Architectural Heritage** sets out that Limerick has diverse architectural heritage that is reflected in the significant number of areas of special character.

6.2.13 The site lies within the **Newtown Perry Architectural Conservation Area**. This is located within the Inner-City Core Area. The area is the commercial and cultural heart of the City, characterised by 18th and 19th Century Georgian architecture, interrupted by buildings of the 20th Century, which replaced original buildings as the City expanded. The distinct qualities of the area are well established and the need to preserve the Georgian fabric, as well as the complex elements which contribute to the character of the built environment of **Newtown Perry Architectural Conservation Area** are all understood.

6.2.14 **Section 6.5.5 Architectural Conservation Areas, Objective EH O53** sets out that it is an objective (of relevance) of the council to:

(a) Protect the character and special interest of an area, which has been designated as an Architectural Conservation Area (ACA) as set out in Volume 3;

(f) Seek to safeguard the Georgian heritage of Limerick.

### **6.3 Derelict Sites 1990 (as amended and consolidated)**

6.3.1 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.

6.3.2 **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.”

- 6.3.3 **Section 8** 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.
- 6.3.4 **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.
- 6.3.5 **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.
- 6.3.6 **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.
- 6.3.7 **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.
- 6.3.8 **Section 17** sets out arrangements for vesting order for compulsory acquisition of the site.
- 6.3.9 **Section 23** provides that derelict sites shall be charged, levied and paid for in respect of all urban land in relation to which a market value has been determined and stands entered on the register.

## 7.0 Assessment

- 7.1 Internal access to the property itself was not possible on the date of my initial site inspection on the 8<sup>th</sup> January 2024. I assessed the site from the exterior on Windmill Street on that day. I subsequently assessed the site from the interior on the 25<sup>th</sup> April 2024.
- 7.2 I noted that from a walk around the interior of the derelict site on the 25<sup>th</sup> of April, the subject site is built up to the level of Windmill Street at the front and rises towards the middle and plateaus towards the rear of the site. The site forms part of an extended site whereby it adjoins and is accessible to and from a communal garden area between the Courtyard Apartments and the Shannon Arms Apartments via a set of steps. There is a significant drop to the communal garden which is located c.2.5m-3m below the level of the derelict site.
- 7.3 I noted that from both site inspections that the site is vacant ,and, has a neglected, unsightly and objectionable appearance from the public road (Windmill Street) and surrounding area. This is due to the fact that there is a significant gap in the street frontage between No.4 Windmill Street (end of terrace of No.'s 1-4) to the southeast and the front of Aviary House Apartment Block (to the northwest). The site is also covered in gravel with the front boundary comprising of heras fencing fixed to posts bolted to the ground. There is also cabling running from the top of the gate post (hosting entrance gate) to the gable wall of Aviary House Apartments which furthers the unkempt appearance of the site. The aforementioned is in the context of an otherwise relatively orderly streetscape at Windmill Street in the city centre and Newtown Perry Architectural Conservation Area.
- 7.4 For context, from the evidence on file, the site has been vacant and in a dangerous and derelict condition for a considerable time period. Local Authority investigations have been ongoing for over 7 years. It is also noted that the site previously contained a derelict two-storey building (No.37) for which was boarded up and contained vegetative growth to the rainwater goods and roof and was subsequently demolished in May 2021. It was also noted that the site has been overgrown with vegetation, litter, rubbish and debris strewn underneath at various junctures over the past 7 years, all which detracted considerably from the character and amenity of the streetscape (including Architectural



Conservation Area) and the amenity of surrounding residential properties.

- 7.5 Following demolition of the building in 2021, the site was cleared, surfaced with gravel and heras fencing was put in place on moveable shoes to the front boundary. The site subsequently became overgrown and strewn with litter, rubbish and debris again, however, was partially cleared once again (to its interior) prior to my first site inspection on the 8<sup>th</sup> of January 2024. Permanent posts were fixed in the ground at the front boundary to Windmill Street in place of moveable shoes to affix the heras fencing at the time of the said site inspection.
- 7.6 When viewed from the exterior, the owner/appellant has made an attempt to address some of the items which had been considered to give rise to the state of dereliction, as outlined in the local authority's Derelict Sites Application (submitted to the Board on the 5<sup>th</sup> July 2023). These include the interior/centre of the site being cleared of the majority of vegetation, litter and rubbish and debris underneath, and, the removal of graffiti to the gable end wall of No.4 Windmill Street (prior to initial site inspection).
- 7.7 When viewed from the interior, the site boundaries are dense, overgrown and unkempt, particularly in the context of their surroundings which include adjacent ground floor residential apartments to The Courtyard Apartment Block, which is located immediately proximate and at a lower gradient below. The dense overgrown nature of the boundaries is as a result of vegetation not being cut down ,or, not being pruned, topped or thinned (in the event of root structure forming part of embankment). I have also noted that there are some trees/vegetation which have been cut down over time and placed to the perimeter boundary which further add to the dense and unkempt state.
- 7.8 As aforementioned there is a significant drop of 2.5-3m in ground level from the derelict site to the garden and surrounding ground floor areas of The Courtyard Apartment Block. The presence of dense unkept vegetation to the subject boundary (would exacerbate already inhibited aspects to ground floor apartments at The Courtyard in terms of loss of outlook and natural light to ground floor openings. In this case the unkempt vegetation is growing right upto the flank elevation wall of the Courtyard Apartment Block immediately outside ground floor apartments.
- 7.9 In addition, I also note that there is dense growth to the boundary with The Shannon Arms Apartment Block, with some wild beech trees in front of and significant ivy to boundary wall (derelict site side) which further reduces light to these apartments. There

is also ivy growing to the mutual boundary wall of No.'s 1-4 Windmill Street which further adds to the unkempt state of the site.

- 7.10 In addition to all the aforementioned, there is litter, debris and rubbish to the inside edge/underneath this perimeter vegetation surrounding the site (not visible from the front roadside boundary). This litter, rubbish and debris includes what appear to be rusting empty paint tins, broken plastic implements, crushed building materials (parts of blocks, tiles etc).
- 7.11 There are also numerous items strewn about the site which are not necessarily visible from the roadside. These including heras fencing placed up against the boundary wall with the rear of No.'s 1-4 Windmill Street, and, plant pots and an empty bucket to the inside of a stub wall adjacent to the gable end of the Aviary House Apartment Block.
- 7.12 It is also further noted that from walking the interior of the site, the small strip paving immediately to the southwest of Aviary House Apartments adjacent to the front boundary has weeds and vegetation growing throughout.
- 7.13 I also observed from site visits on both the 8<sup>th</sup> of January, and, the 25<sup>th</sup> of April there is some surface water runoff from the site onto the public footpath and public roadway at Windmill Street which could potentially carry very small amounts of debris which is both unsightly and could also be potentially dangerous for pedestrians transversing. I note that surface water drainage arrangements for the site have not been made clear.
- 7.14 As part of the site visit, it was also noted that the linked garden further to the northwest between Shannon Arms Apartments and The Courtyard Apartments is overgrown and unkempt with weeds and wild plants growing both throughout beds and also paving (to paths and steps) throughout the site. There is also litter, rubbish and disused building materials underneath vegetation. Although not part of the derelict site, this further detracts from the amenity of occupiers within these blocks.
- 7.15 There is some evidence of efforts having been made to address vacancy and dereliction following the serving of derelict sites notices. These efforts include the demolition of the derelict building onsite in May 2021, and more recently the clearing of the site including removal of vegetation to its interior (not it's exterior boundaries), removal of some litter, rubbish and debris which lay underneath this interior vegetation, affixment of the heras fencing to the front boundary to permanent posts bolted into the ground as opposed to moveable shoes. The demolition, levelling, clearance and other

works undertaken have made a material difference to the appearance of the property.

- 7.16 The outstanding matters are dense and tall vegetation to the periphery of the site, litter, rubbish and debris strewn underneath the aforementioned vegetation, in a number of other places onsite, pockets of litter, rubbish, debris and obsolete building material throughout the site (particularly towards boundaries) and the installation of a more secure front boundary and the build out of planning permission 21/1454.
- 7.17 As aforementioned, I observed the site on 2 no. occasions, firstly from the exterior and then from the interior. Although the photographs from the exterior showed some levels of improvement to the local authority photographs provided (particularly when notice of intention to compulsorily acquire the site was served (May 2023)), when viewed from the interior, the property was is in a very neglected, unsightly, objectionable, litter and rubbish strewn state.
- 7.18 Section 3(b) and Section 3(c) were the two reasons provided by LCCC in attempt to compulsory acquire the site (including buildings) for which I considered were reasonable and proportionate at the time (as per photographs submitted by LCCC), and, in accordance with the policy and objectives contained in the County Development Plan (including for the benefit of the streetscape, area and community living there).
- 7.19 With regard to category (b), the site is still in a neglected, unsightly and objectionable condition. Although demolition of the derelict building in 2021 and recent clearance of some vegetation and growth to the interior of the site has gone some way to addressing the neglected, unsightly and objectionable condition of the land, I would consider by way of a significant gap in the street frontage (with heras fencing to footpath), views of the gable end of No.4 Windmill Lane (which has been subject to graffiti over time, although not present on-site inspections), views onto the site which is covered in gravel and contains a significant amount of dense unkept vegetation to the perimeter, and, views to the rear of Aviary House Apartments, Courtyard House Apartments and Shannon Arms Apartments, the site still appears neglected, unsightly and in an objectionable state.
- 7.20 With regard to category (c), I would consider by way of a significant amount of litter, rubbish and debris present predominantly to the boundaries of the site (strewn underneath vegetation) in addition to pockets within its interior, the property still falls

into category (c).

7.21 LCCC did not list Section 3, category (a) as part of the reason for seeking compulsory acquisition. From local authority photographs provided on the 31<sup>st</sup> March 2023, the heras fencing to the front boundary was placed in moveable shoes. On both my site inspections (8<sup>th</sup> of January, and, 25<sup>th</sup> of April), fixed posts were secured into the ground (bolted in) for the heras fencing to affix to. Notwithstanding the installation of fixed posts, heras fencing is not considered to be an acceptable boundary treatment and should be replaced with a more durable solid material hoarding which does not offer the possibility of either views or indeed potential access into the site. From a study of LCCC documentation provided, this issue has been ongoing for a significant time period (since demolition of derelict building in May 2021), and, LCCC have contacted the owner looking for an acceptable alternative solution. If accessed illegally in the meantime, the site could prove dangerous, particularly given the drop to the linked communal garden to the rear, and, also with litter, rubbish, debris strewn around the site particularly towards the edges and also some old building materials stacked at the rear boundary of No.1-4 Windmill Street. It is further considered that there is a security risk (break in) to the rear of No.'s 1 - 4 Windmill Street and also the Courtyard Apartment Block and the Shannon Arms Apartment Block resultant of this boundary treatment. It is also noted that heras fencing can be dangerous if it becomes rusty and perforated. I therefore consider the site to be dangerous and hence the site falls into category (a) in addition to categories (b) and (c) as aforementioned.

7.22 Overall, the property demonstrably detracts from the safety, 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.

7.23 I note the range of actions the Local Authority took including the statutory notices served on the owner/occupier in respect of the building. Section 8(2) Notice of Intention to enter site into Derelict Sites Register was served on the owners on the 25<sup>th</sup> May 2017 advising of the local authority's intention to enter the site on the Derelict Sites Register. Section 8(7) Notice of Decision to enter site into Derelict Sites Register was subsequently served on the 5<sup>th</sup> March 2019, advising the owners that the site had been entered on the Derelict Sites Register. Finally, Section 15(1)(b) Notice of Intention to Acquire Derelict Site Compulsorily was served on the 28<sup>th</sup> April 2023 and published

(Section 15(1)(a)) in the Limerick Post Newspaper on the 6<sup>th</sup> May 2023.

7.24 I note the objection to the proposed acquisition of the site made to the local authority on behalf of the owner on the 2<sup>nd</sup> of June 2023. The objection is summarised in paragraph 4.2.

7.25 Following a review of the Local Authority's Application for Consent including the submission which comprised of photographs taken from site visits on eleven different occasions over a six-year period, I am of the opinion that the site was in a derelict condition for a significant time period by way of dense vegetation overgrowth to its interior for which a significant amount of rubbish, litter, debris and waste lay underneath. The temporary nature of part of the front boundary was also wholly unacceptable (heras fencing in moveable shoes). I am of the opinion that the overall condition would have satisfied the tests for Section 3(b) neglected, unsightly or objectionable condition, and, Section 3(c) presence of litter, rubbish and debris. (Section 3 of Derelict Sites Act 1990). I am also of the opinion that the heras fencing is an unsecure boundary and combined with a significant drop in levels to the rear of the site, I consider the site to be dangerous and would also satisfy Section 3(a).

7.26 From a review of the information on file including but not limited to the owner's objection in addition to site visits undertaken on the 8<sup>th</sup> January 2024 and again on the 25<sup>th</sup> of April 2024, there is evidence present that the owners have somewhat actively engaged with the local authority to address issues of dereliction with demolition of the derelict building (prior to the compulsory purchase order application), lodgement and progression of planning application (planning permission reg. ref. 21/1454) subsequent clearance of the majority of vegetation to the interior of the site including the majority of litter, rubbish and debris underneath ,and, installation of permanent posts in lieu of moveable shoes to the front boundary.

7.27 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, until such a time where considered necessary. I would accept that the Local Authority had undertaken steps in consultation with the owners over a period of around seven years from first inspection in 2017

(including grant of planning permission 21/1454 for a fourteen-unit residential development), in an effort to bring the property out of dereliction.

- 7.28 However notwithstanding, from a second visit to the site on the 25<sup>th</sup> of April, I observed that there is dense vegetation growth towards the site boundaries which has neither been removed, or, alternatively topped, thinned and pruned to both improve its appearance and lessen its effects on amenity of neighbouring occupiers, and, thus remains unwieldy and unkempt. There is also litter, rubbish and debris to the edge/underneath this vegetation which further detracts from appearance of the site interior. In addition, despite affixment, the heras fencing to the front boundary is still unacceptable from both a security and amenity perspective. The cabling running from the top of the gate post at the end of this heras fencing to the gable end of Aviary House Apartments further adds to the unacceptability of the front boundary amenity terms.
- 7.29 In addition, from a walk around the wider site including the courtyard area and also directly in front of the apartments to the Courtyard Block, the dense and upkept vegetation which is growing right upto the flank elevation wall of the Courtyard Block further inhibits both aspect and light to the ground floor apartments at the said block.
- 7.30 It is clear therefore, that there is no evidence of any significant progress in an attempt to render the site non-derelict and the property thus remains in a dangerous, neglected and unsightly condition which detracts materially from the amenity and character of the area to an unacceptable degree. As aforementioned, I also note that the site is also part of a generally well-kept street and wider area. Having regard to the condition of the site including buildings, I therefore consider that the derelict site detracts to a material degree from the amenity, character and appearance of the surrounding area.
- 7.31 Overall, the pace of progress has been very slow over the past number of years and planning permission 21/1454 which was granted some 19 months ago (granted on the 21<sup>st</sup> September 2022) has not yet commenced. Although it is acknowledged that the owners have made some attempts to render the site non-derelict, and, they may otherwise seek to progress the planning application in due course, the site remains in a dangerous, neglected and unsightly condition some 19 months on from grant of planning permission 21/1454. In addition to the aforementioned, there is no evidence provided to suggest that construction will commence in the near future. As a result, the site continues to detract materially from both the residential and visual amenity of the

area and of residents to both the Courtyard Apartment Block (particularly to the ground floor), and also the Shannon Arms Block. Furthermore, the condition of the site affects the safety and security of the residents to both the Courtyard Apartment Block, the Shannon Arms Apartment Block, Aviary House Apartment Block and No's 1-4 Windmill Street. It is also noteworthy that the derelict condition of the site has continued for at least the past 7 years or so since LCCC commenced their investigations.

7.32 Having regard, therefore, to all the information available on the file and site inspections undertaken, I conclude the property constitutes a derelict site. I consider that the owner has engaged and taken some steps to address 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 the 30<sup>th</sup> of June 2023), the objection dated 20<sup>th</sup> July 2023 and my own site visits dated 8<sup>th</sup> January 2024 and 25<sup>th</sup> of April 2024. However, given the slow progress to date and the current appearance and condition of the property particularly to the interior which as stated constitutes a derelict site, I consider it appropriate and proportionate that the local authority's application for consent to compulsorily acquire the site at No.37 Windmill Street, Limerick is granted. In this instance, the longer the site is vacant and remains in a derelict condition, the greater is the likelihood of continued dereliction to the detriment of the security, safety and amenity of surrounding residential occupiers and to the character and appearance of the streetscape.

## 8.0 Conclusion

8.1 I am satisfied that the process and procedures undertaken by Limerick City and County Council at the time of application were fair and reasonable, the local authority demonstrated the need for lands and that all the lands being acquired at the time were both necessary and suitable to ensure the lands do not continue to be a derelict site.

8.2 Having regard to the constitutional and convention protection afforded to property rights, I consider that the proposed acquisition of the derelict site comprising of a vacant gravel surfaced site to the interior, vegetation to the exterior and heras fencing affixed to metal posts to front boundary at No.37 Windmill Street, Limerick containing

0.057ha. 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), dated 28<sup>th</sup> April 2023, on deposited maps (DS-076-17), pursues, and, was rationally connected to, a legitimate objective in the public interest, namely, to ensure that the lands did not continue to be in a derelict condition (particularly in light of the location in the Architectural Conservation Area).

- 8.3 The acquiring authority, at the time of application, demonstrated the means chosen to achieve that objective, impairing the property rights of affected landowners as little as possible, and, I am satisfied that this is still the case. In this respect, I have considered alternative means of achieving the objective (allowing the notice party additional time to commence and complete planning permission 21/1454) referred to in submissions to the Board and am satisfied that none of the alternatives are such as to render the means chosen and the CPO made by the acquiring authority unreasonable or disproportionate.
- 8.4 The effects of the CPO on the rights of affected landowners are proportionate to the objective being pursued. I am further satisfied that the proposed acquisition of these lands would be consistent with the policies and objectives of the Limerick City and County Development Plan 2022-2028, specifically Objectives CGR O6 and CGR P4 which seek to actively address instances of dereliction and decay in the urban and rural environment, bring properties back into active re-use and to revitalise towns and villages. Accordingly, I am satisfied that that the application to compulsory acquire the site was clearly justified by the exigencies of the common good.



## **9.0 Recommendation**

9.1 Having regard to the observed condition of the site, particularly the dangerous, neglected, unsightly and objectionable state of the land and its boundaries, I consider that the site materially detracts from the safety, 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. It is further considered that the acquisition of the site by the local authority is warranted to render the site non-derelict preventing it continuing to be a derelict site.

## **10.0 Reasons and Considerations**

10.1 Having regard to the neglected, unsightly and objectionable condition of the site, the heras fencing to the front boundary offering clear views and potential access into the site for which there are safety hazards inside (including a significant drop to the linked communal garden site to the rear), dense vegetation towards site boundaries with litter, rubbish and debris strewn underneath, and, pockets of litter, rubbish and debris throughout 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 City and County Development Plan 2022-2028;

10.2 It is considered that the site detracts to a material degree from the safety and amenity of nearby residents, and the character and appearance of land in the neighbourhood and, therefore, comes within the definition of a derelict site as defined in sections 3(a), 3(b) and 3(c) of the Derelict Sites Act, 1990, as amended, the acquisition of the site by the local authority is necessary in order to render the site non-derelict. It is also considered that the objection made cannot be sustained having regard to that said necessity and that the compulsory acquisition and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies

of the common good.

- 10.3 Notwithstanding efforts made by the Notice Party, I consider it reasonable that the local authority now seeks to compulsorily acquire the land, as provided by Section 14 of the Act, I recommend, therefore, that the Board grants consent to Limerick City and County Council to compulsorily acquire 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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Niall Sheehan  
Planning Inspector

8<sup>th</sup> May 2024