



An  
Bord  
Pleanála

## Inspector's Report ABP-319713-24

### Nature of Application

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

### Location

39/40 Lord Edward Street, Limerick.

### Planning Authority

Limerick City and County Council

### Notice Party

Marbledene Limited c/o Sean McCann.

### Date of Site Inspection

1<sup>st</sup> August 2024

### Inspector

Ciara McGuinness

## **1.0 Introduction**

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 39/40 Lord Edward Street, 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 on Lord Edward Street to the south of Limerick City. There is a mix of commercial and residential developments in the vicinity of the subject property. The site is c.200m south of Peoples Park and c.400m southwest of Colbert Station. The subject property occupies a prominent position along Lord Edward Street and is highly visible on both northern and southern approaches.
- 2.2. The subject property is not a Protected Structure nor is it listed on the National Inventory of Architectural Heritage (NIAH). There are several Protected Structures in the vicinity, including RPS Ref 6037 (Slattery's Public House) and RPS Ref 3335 (Prospect Hill Clothing Factory). The site is not within an Architectural Conservation Area.
- 2.3. The site has an area of 0.037 hectares and is described in the notice as an end-of-terrace former commercial premises. The Local Authority's report describes the property as a partially demolished public house. I note from my site visit that the property has now been demolished in full. Fencing surrounds the site, with machinery visible inside the fencing.

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

- 3.1. Limerick City and County Council has applied to the Board for consent to compulsorily acquire the site under section 14/16 of the Derelict Sites Act, 1990, as amended. I note that this application is subsequent to the serving of notices under section 8(2), on 1<sup>st</sup> April 2022, advising of the Local Authority's intention to enter the site on the register of derelict sites, and under section 8(7), on the 14<sup>th</sup> July 2022, 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 (Marbledene Limited) on the 7<sup>th</sup> March 2024 and was published in the Limerick Post newspaper dated 9<sup>th</sup> March 2024. The site was described as follows in the notices:

- A derelict site comprising an end-of-terrace former commercial premises and surrounding land situate at 39/40 Lord Edward Street, Limerick, containing 0.037 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-083-21 in the Derelict Sites Register established and maintained by Limerick City & County Council under section 8 of the Derelict Sites Act, 1990.

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

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

4.2.1. An objection to the proposed acquisition was submitted to Limerick City and County Council by Sean McCann on behalf of Marbledene Limited. The objection can be summarised as follows;

- Work has previously been carried out to substantially demolish and make safe the derelict buildings. A considerable amount of money has already been expended on the site and it is the intention to develop it fully in due course.
- PA Reg Ref 19/841 is still valid for approximately 15 months which is adequate time to complete the building as proposed.
- A commencement notice was served in relation to the development. Some minor works were carried out in September 2023 on foot of this notice. The designated contractor was substantially delayed on another project, and he was unable to undertake the job in the agreed timescale and budget. It is

intended to complete the works in compliance with the planning permission that exists on site and a fully qualified team has been retained to achieve this.

- Negative impacts of proceeding with the compulsory acquisition are listed including a disruption of existing plans, loss of property rights and a lack of justification for the proposed compulsory acquisition.

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

4.3.1. The Local Authority requests the consent of the Board to the compulsory acquisition of the derelict site. The application for consent was submitted on 9<sup>th</sup> May 2024 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 1<sup>st</sup> March 2024.
- Copy of the newspaper notice, dated 9th March 2024.
- Copy of objection made by Sean McCann on behalf of Marbledene Limited.

4.3.2. The derelict site report can be summarised as follows:

- Limerick City and County Council (LCCC) 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 site detracts from the amenity, character and appearance of the well maintained properties in the area and is deemed derelict due to partially demolished/ruinous buildings, roofless partially demolished structure, missing

and broken rainwater gutters and downpipes, loose masonry or falling plaster, broken, missing or boarded up windows and doors, dirty façade/peeling paint, graffiti, rotten timber and unsightly boundaries (damaged hoarding etc).

- The council first inspected the property on 27th September 2021 and identified it as a derelict site.
- Site ownership enquires were made through the land registry system and planning and development searches were subsequently carried out.
- A letter of enquiry was sent by LCCC to the then site owner on 6<sup>th</sup> October 2021 seeking confirmation of ownership and intentions for the property. A response from the owner stated that he had sold the property earlier in 2021 and did not have the details of the new owner.
- A site inspection was carried out on 11<sup>th</sup> February 2022 and demolition in accordance with the planning permission had commenced.
- The demolition works continued on site until mid-march 2022 but were not fully completed and no works have since been completed at the site.
- On the 1<sup>st</sup> April 2022, LCCC affixed to the site a Section 8(2) Notice of intention to enter the land in the Derelict Sites Register. No response or representation was made to this notice.
- On 17<sup>th</sup> June 2022, a letter of enquiry was sent to the new owners Marbledene Limited (c/o Patrick F O'Reilly 9/10 South Great George's Street Dublin 2) but no reply was given.
- The Section 8(7) Notice of Entry of Land in Derelict Sites Register was affixed to the site on 14<sup>th</sup> July 2022. No response or representation was made to this notice.
- On 14<sup>th</sup> February 2023, LCCC served a Section 22 Notice of Valuation to Marbledene Ltd by registered post.
- On 20th February 2023, email correspondence from Sean McCann on behalf of Marbledene Limited was received stating that initial enabling works commenced on site in relation to PA Reg Ref 19/841. It was stated that the main elements of the derelict/dangerous building have been demolished and

BCMS had been applied for. Works will commence as soon as BCMS approvals have been issued and construction is expected to be completed by end of October 2023. Details for the project supervisor (Cusack & Associated) and the appointed builders (R&R Restoration) were provided.

- On 21<sup>st</sup> February 2023, an Area Inspector acknowledged the email received from Sean McCann and informed him that the site was currently on the derelict sites register and a meeting can be arranged to discuss the site. No response was received.
- On 24<sup>th</sup> May 2023, an email was sent by LCCC to Cusack & Associates for an update on the project. It was noted that an inspection had been carried out recently and there didn't seem to be any works commenced. There was no reply to this email.
- On 31<sup>st</sup> October 2023, a further email was sent to Seann McCann regarding an update on the site as an inspection again showed no works had started. No reply was received. There has been no further engagement.
- 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 deteriorate and attract negative attention in a key area of Limerick City. The only option available to the council is to acquire this property compulsorily.

#### **4.4. Objectors Submission**

- 4.4.1. A submission by Marbledene Limited (c/o Sean McCann) was received by the Board by post on 30<sup>th</sup> May 2024 in response to the application for compulsory acquisition. The submission is summarised as follows;

- A commencement notice has been served in relation to works on site.
- The Council have failed to advise the Board of the commencement notice served on them in relation to the site. The Council are fully aware that work has commenced on site, and this is confirmed by their correspondence in relation to the demand for payment of development levies.

- Limerick city and County Council did not send the Derelict Site notices or correspondence to the owners. Correspondence was sent to Fergal Cusack agent for the BCMS process. Development levies correspondence was sent to the correct address which is a clear indication that the Council were aware of the correct address.
- Absence of documentation and copies of previous correspondence undermines the Council's efforts to acquire the property.
- There is a valid planning permission (PA Reg Ref 19/841) attached to the site. The compulsory acquisition of the property represents a significant infringement upon the owners' rights and interests. The permission is still valid for approximately 15 months which is adequate time to complete the building as proposed.
- Compulsory acquisition should only be considered when absolutely necessary and when there is a clear public interest at stake. The process has caused severe disruption to the plans to develop the site.

## 5.0 Planning History

PA Reg Ref 17/1079 - permission granted in May 2018 for the demolition of existing rear extension and out-buildings, refurbishment and extension of existing building(s) to allow 2 number dwelling-houses.

PA Reg Ref 19/481 - permission granted in September 2020 for the demolition of the existing structure and construction of two number two bedroom apartments and two number three bedroom apartments, car parking and bin stores to the rear together with associated site works.

## 6.0 Policy Context

### 6.1. Limerick Development Plan 2022-2028

- 6.1.1. The subject property is zoned 'City Centre' in the Limerick City and County Development Plan 2022 – 2028, the objective of which is 'to protect, consolidate and

facilitate the development of the City Centre commercial, retail, educational, leisure, residential, social and community uses and facilities.'

6.1.2. The following objectives are considered relevant;

Strategic Objective 4

'...Support and facilitate revitalisation and consolidation of the City, towns and villages, through public realm and place-making initiatives. Address vacancy and dereliction to create compact attractive, vibrant and safe environments in which to live, work, visit and invest. ...'

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.

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

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

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

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

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or



(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by or under statute or by common law.”

6.2.3. Section 8 of the Act requires Local Authorities to establish a register of derelict sites in their functional area and to serve notices on occupiers/owners of their intention to do so.

6.2.4. Section 9 of the Act places a duty on every owner and occupier of land, to take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site.

6.2.5. Section 10 of the Act places a similar duty on Local Authorities to take all reasonable steps, including the exercise of any appropriate statutory powers, to ensure that any land in their functional area does not become or continue to be a derelict site.

6.2.6. 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.

6.2.7. Section 14 of the Act provides that a Local Authority may acquire by agreement or compulsorily any derelict site situated in their functional area.

6.2.8. Section 15 of the Act sets out arrangements for giving notice, if the Local Authority intend to acquire a derelict site compulsorily.

6.2.9. Section 16 of the Act sets out arrangements if the owner/occupier wish to object to the acquisition. Specifically, section 16, as amended, provides that where an objection is made, the derelict site shall not be acquired compulsorily by the Local Authority without the consent of the Board.

## **7.0 Assessment of Issues**

### **7.1. Site Inspection**

- 7.1.1. Internal access to the property was not possible on the date of my site inspection. I was able to view the site from the public road. It is evident that the property had been demolished in full. Fencing surrounded the site and machinery was present within the site.
- 7.1.2. The site is located in a prominent location in Limerick City Centre. The adjoining area is well maintained, and the public realm is well cared for, with high quality public amenities such as Peoples Park and Colbert Station in the wider vicinity. The subject property is in close proximity to a number of Protected Structures. The demolition works carried out since the application was lodged show shows that the owner has undertaken actions to address the issues of dereliction.

## **7.2. Category of Dereliction**

- 7.2.1. I note that the Local Authority considered that the property and lands fell under Categories (a) and (b) of Section 3 of the Derelict Sites Act 1990, as amended.
- 7.2.2. Based on my site inspection, it is my view that the subject structure and lands may be considered to still fall under Category (b) of Section 3 of the Derelict Site Act 1990, as amended (DSA):
- (b) The lands and structure are still neglected, unsightly and objectionable condition.
- 7.2.3. As the structure on site has been demolished, I consider therefore that the site does not fall under category (a) of Section 3 of the Derelict Sites Act 1990, as amended. I did not notice any litter or rubbish within the site, or any evidence of waste being stored. Therefore, I am satisfied that the site does not fall under Category (c) of the Derelict Sites Act 1990, as amended. Having regard to (b) above, it is my view that the structure and lands are detracting to a material degree from the amenity, character, and appearance of land in the neighbourhood of the land in question.

## **7.3. Action of Local Authority**

- 7.3.1. I note the actions of the Local Authority and the statutory notices served on the owner/occupier in respect of the site. Section 8(2) notices were served on the owner on 1<sup>st</sup> April 2022, advising of the Local Authority's intention to enter the site on the Derelict Site Register. Section 8(7) notices were subsequently served on the owner on 14<sup>th</sup> July 2022, advising the owner that the site had been entered on the Derelict

Sites Register. A Section 15(1) notice was served on the current owners on the 1 March 2024 and published in the Limerick Post newspaper dated 9th March 2024 regarding the Local Authority's intention to acquire the site compulsorily. Having regard to the above, I am satisfied that the Local Authority complied with the requirements of Section 8(2), Section 8(7) and Section 15 of the Derelict Sites Act 1990, as amended.

- 7.3.2. I note that Local Authorities have a duty (under section 10) "to take all reasonable steps (including the exercise of any appropriate statutory powers) to ensure that any such land does not become/continue to be a derelict site." The policy of the Local Authority, as expressed in the Compulsory Acquisition report, is to positively engage with the owners of a derelict site and to avoid using the powers under the Derelict Sites Act, except where necessary. It is over two years since communications between the current owner and LCCC commenced in relation to the derelict state of the property. Having regard to the forgoing I am satisfied that the Local Authority gave the property owner sufficient time and opportunity to address the dereliction. Therefore, I am satisfied that the efforts of the Local Authority have been fair and reasonable. Therefore, I am satisfied that the efforts of the Local Authority have been fair and reasonable in accordance with the legislation.

#### **7.4. Compliance with Development Plan**

- 7.4.1. I note that the Limerick Development Plan 2022-2028, specifically 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. I therefore consider that the subject property detracts to a material degree from the character and appearance of the surrounding area.
- 7.4.2. 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.

#### **7.5. Action of the Owner to address Dereliction**

- 7.5.1. I note that owner/occupiers have obligations (under section 9 of the Act) to "take all reasonable steps to ensure that the land does not become or does not continue to be a derelict site". From the evidence on file, including photographs appended to

Local Authorities Compulsory Acquisition report, it is clear that the subject property was in a derelict state, and in an unsightly and neglected condition which detracted considerably from the character and amenity of the area at the time that the application to acquire the site was lodged. However, having inspected the site in August 2024, I observed that there is evidence that the owner has attempted to actively address the issues of dereliction, and in my opinion, it is likely that the owner will continue to address the indicators of dereliction of the property. I note that the structure on site had been demolished in full and that machinery was present within the site confines. Thus, whilst the site remains in a neglected and unsightly condition and detracts materially from the amenity and character of the area to an unacceptable degree, I would accept that the ongoing efforts by the owner to render the site non-derelict should be taken into account in this instance. For this reason, it is considered that it would not be appropriate to consent to the compulsory acquisition of the site at this point in time.

- 7.5.2. It is further noted that the Local Authority has powers under Section 11 of the Derelict Sites Act 1990 (as amended) to require the owner to take specified measures to address any outstanding issues contributing to the dereliction of the property, should this be deemed necessary. Having regard, therefore, to all of the information available on the file and the continued appearance and condition of the subject property, it is concluded that the property constitutes a derelict site. Notwithstanding this, it is considered that there is evidence that adequate efforts are being made to render it non-derelict, and that as such, sufficient time should be afforded to conclude these works. It is considered, therefore, that it is appropriate to refuse the Local Authority's application for consent to compulsorily acquire the site at Lord Edward Street, Limerick.

## **8.0 Conclusion**

- 8.1.1. I am satisfied that the process and procedures undertaken by Limerick City and County Council have been fair and reasonable, that the Local Authority has demonstrated the need for the lands and that all the lands being acquired are both necessary and suitable to ensure that the lands do not continue to be a derelict site.

- 8.1.2. Having regard to the Constitutional and Convention protection afforded to property rights, I consider that the proposed acquisition of the Derelict Site comprising an end-of-terrace former commercial premises and surrounding land situate at 39/40 Lord Edward Street, Limerick, containing 0.037 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 1<sup>st</sup> March 2024 and on the deposited maps DS-083-21, 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. 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 Objective CGR 06 which seek to actively address instances of dereliction and decay in the urban and rural environment and bring properties back into active re-use and to revitalise towns and villages.
- 8.1.3. It is further acknowledged that at the time of the lodgement of the application with the Board, the acquiring authority had adequately demonstrated that the means chosen to achieve that objective would have impaired the property rights of affected landowners as little as possible, and that the effects of the compulsory acquisition on the rights of affected landowners were proportionate to the objective being pursued at the time.
- 8.1.4. However, having regard to the observed condition of the subject site, the full demolition of the structure pursuant to PA Reg Ref 19/841, and the on-going works on site, I am no longer satisfied that this is still the case. 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 alternatives are such as to render the means chosen and the compulsory acquisition by the acquiring authority unreasonable or disproportionate.
- 8.1.5. Having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site, the progress made on site, and the existence of planning permission Reg Ref 19/841, I am no longer satisfied that that the grant of consent to the compulsory acquisition is justified by the exigencies of the common good at this point in time. I am of the opinion that, given the works carried out to date on site and the existence of a valid planning permission, it would be appropriate to allow time to progress matters on site.

## 9.0 Recommendation

Notwithstanding the current unsightly and objectionable condition of the site which detracts to a material degree from the amenity, character and appearance of the streetscape and surrounding land in the neighbourhood, taking account of the evidence of the ongoing efforts being made by the Notice Party to address the dereliction on the site and to bring the property back into use, given the works carried out to date on site and the existence of a valid planning permission, 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.

## 10.0 Reasons and Considerations

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

- The constitutional and Convention protection afforded to property rights,
- The public interest, and
- The provisions of 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, however having regard to the efforts made to date by the owner to address the matters that gave rise to the derelict condition of the site, the compulsory acquisition of the site by the local authority is not necessary in order to render the site non-derelict. The Board is not satisfied, therefore, 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.

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.

---

Ciara McGuinness  
Planning Inspector

6<sup>th</sup> September 2024