



**PLANNING & ENVIRONMENTAL SERVICES**

EIRCODE V94 WV78

DC-029-17/MOB/CL

An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

t: +353 (0) 61 556 000  
f: +353 (0) 61 556 001

~~18<sup>th</sup> October 2018~~  
**AN BORD PLEANALA**

**19 OCT 2018**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- 009432.14  
ABP- \_\_\_\_\_

Time:	Fee: €	ABP-	LDG-	<b>AN BORD PLEANALA</b>
By: <u>POS</u>	Type: <u>CPD</u>			

2000 (as amended)  
**19 OCT 2018**

RE: Declaration under Section 5(4) of the Planning & Development Acts 2000 (as amended)

Dear Sir/Madam,

Whereas a question has arisen as to whether the installation of new replacement uPVC windows to the front façade of building at 27 O' Connell Street, Limerick is or is not development or is or is not exempt development.

**Site location:**

The premises is located at 27 O' Connell Street, next door to the Augustinian Church, which is a Protected Structure. The premises lies within the boundaries for "The Living City Initiative"

**Planning History:**

There is no recent planning application on the property.

Following a complaint received by the Conservation Officer, he visited the site on 08<sup>th</sup> February 2017 where it was found that the timber rise and fall sash windows had been replaced with new uPVC windows. See report attached (1)

A Warning Letter was issued on 05<sup>th</sup> March 2017 to Limofitz Irish Property Company Ltd., which stated that the new replacement windows to the front façade of the building materially affected the external appearance of the structure and were therefore unauthorised. See attached (2)

The owners of the property replied to the Warning letter by letter received on 23<sup>rd</sup> March 2017 to state that the windows were replaced to comply with fire regulations. See copy attached (3).



The Council responded by letter dated 08<sup>th</sup> August 2017 to state that the regulations referred to in their response did not apply to multi storey buildings. Only windows at ground floor and first floor (where there is no basement) have to comply with the fire regulations. See copy attached (4).

An Enforcement Notice was issued on 09<sup>th</sup> March 2018. See copy attached (5).

A response to same was received on 20<sup>th</sup> August 2018 from Southgate Associates on behalf of the owner who claims that the replacement windows come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 as amended as the changes do not materially affect the external appearance of the structure as to render the appearance inconsistent with the character of the structure or neighbouring structures. See copy attached (6).

The Planning Authority has the opposite view and are of the opinion that the works carried out do not come within the scope of Section 4(1)(h) as the works materially later the external appearance of the structure. See copy of response of Conservation Officer dated 07<sup>th</sup> September 2018 (7).

Limerick City & County Council hereby require a Declaration under Section 5(4) of the Planning and Development Acts 2000 as amended as to whether the replacement of windows to the front façade of property at 27 O' Connell Street, Limerick with new uPVC windows is or not development or is or is not exempt development.

I also enclose herewith cheques in the sum of €110 (8)

Any further queries in relation to this matter should be addressed Michael O' Brien, Development Inspector.

Yours faithfully,



For Director of Services  
Planning & Environmental Services

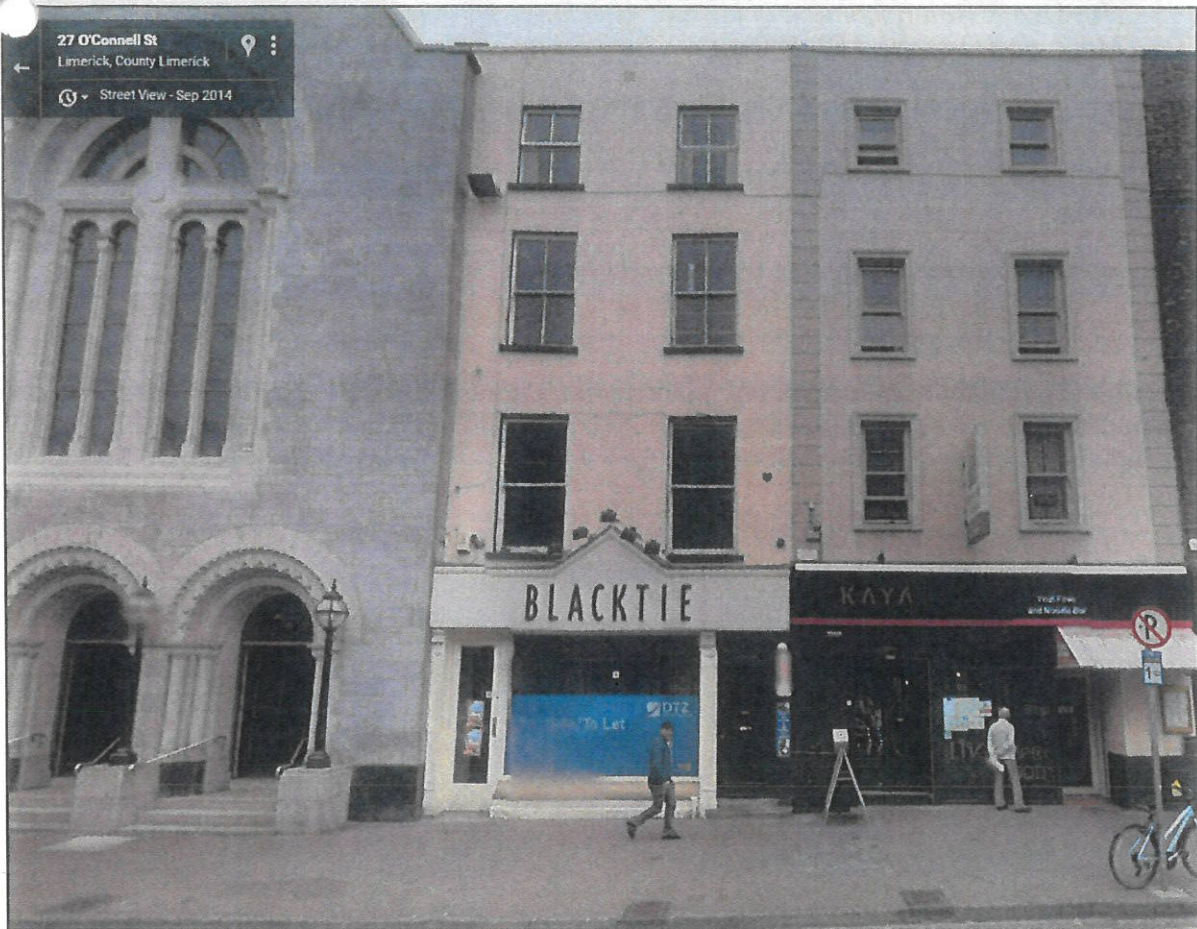
**Enclosures:**

- (1) Conservation officer's report
- (2) Warning Letter
- (3) Response to Warning Letter
- (4) Council's response
- (5) Enforcement Notice.
- (6) Response received to Enforcement Notice.
- (7) Conservation Officer report.
- (8) Cheque in the amount of €110





'Blacktie' Complaint



**Plate 1:** 27 O'Connell Street, Limerick as recorded by Google Streetview in September 2014. Timber rise and fall sash windows, of varying glazing patterns, are intact at first and second floor levels. Note also the rise and fall sash windows in No. 28 O'Connell Street on the right hand side of the picture.

I inspected the above site, which lies within the boundaries for 'The Living City Initiative', on the afternoon of Wednesday, February 8, 2017. The works complained of run contrary to basic statutory provisions set out in the Planning and Development Act 2000 and policies and objectives set out in the Limerick City Development Plan.

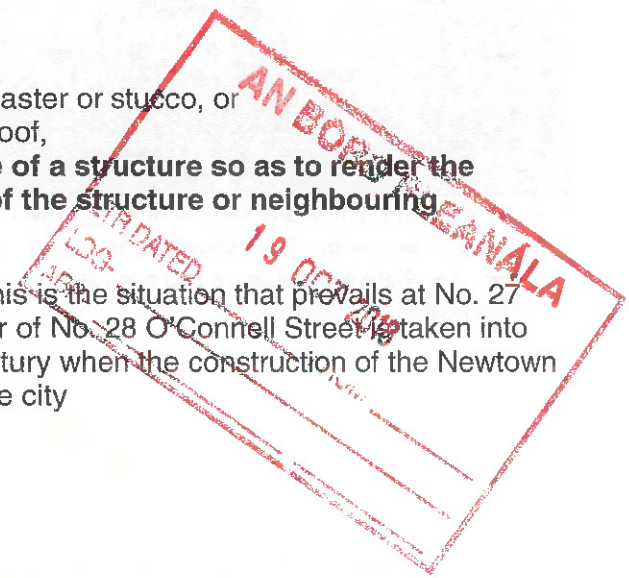
Under Section 2 of the 2000 Act the following is stated:-

“alteration” includes-

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) **the replacement of a door, window or roof,**

**that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.”**

There can be no doubt, in my opinion, but that this is the situation that prevails at No. 27 O'Connell Street- particularly when the character of No. 28 O'Connell Street is taken into account. Both buildings date to the late 18<sup>th</sup> century when the construction of the Newtown Pery expansion of Limerick began to reshape the city





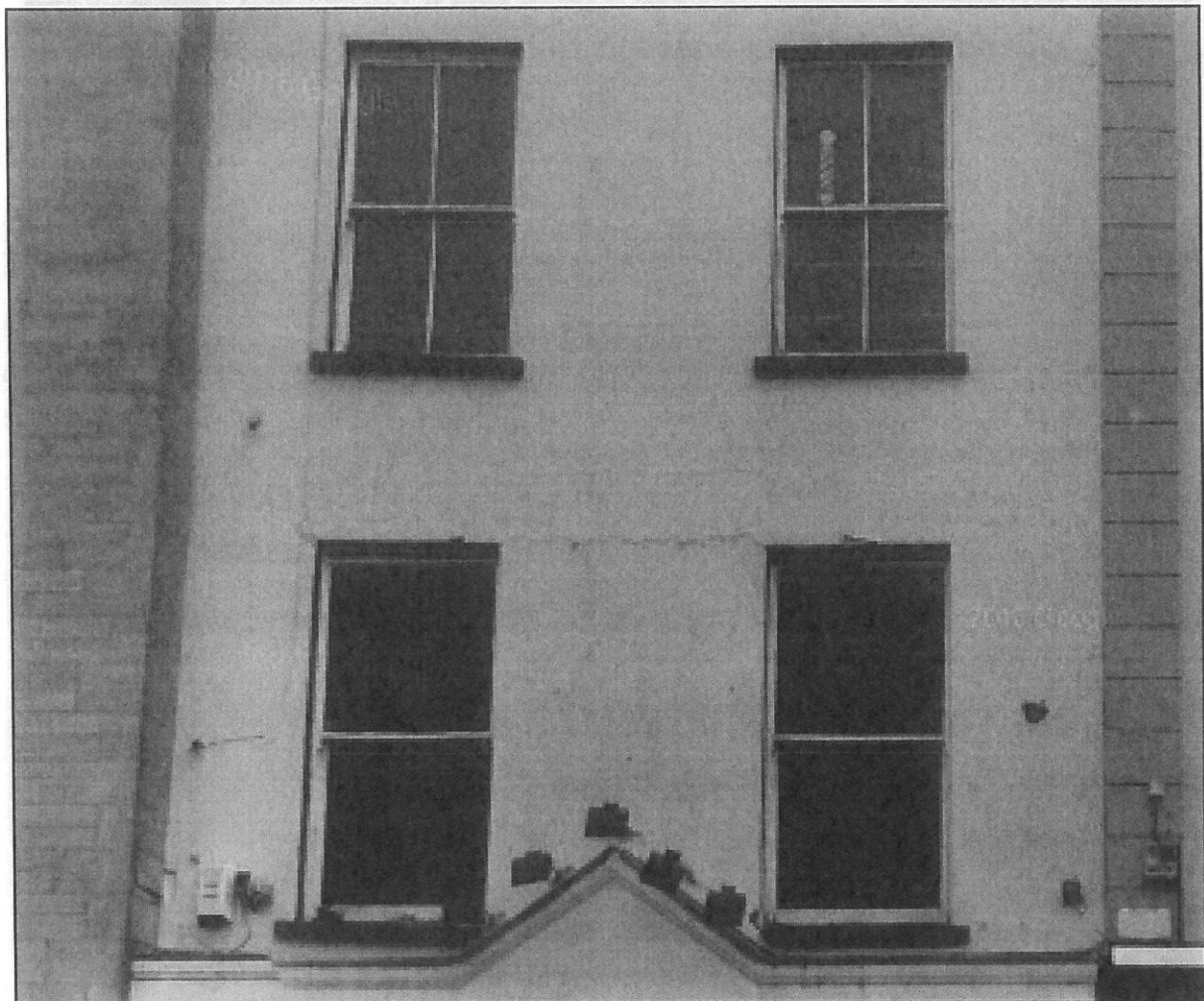
In Policy BHA. 11 in the City Development Plan (CDP) the following policy is set out:

*“Re-Use & Refurbishment of Historic Buildings, Structures of Architectural Heritage Merit, and Protected Structures.”*

It is the policy of Limerick City Council to positively encourage and facilitate the careful refurbishment of the historic built environment, Structures of Architectural Heritage merit and Protected Structures for sustainable and economically viable uses.”

It is my opinion that this policy has been breached.

Under the Development Management Guidelines chapter in the CDP it is made clear that development proposals for a building of significant heritage interest will require an assessment report and a schedule of proposed works. It is my understanding that there



**Plate 2:** View of the first and second floor windows of 27 O’Connell Street, Limerick as recorded by Google Streetview in September 2014 showing the timber rise and fall sash windows and their varying glazing patterns. See Plate 4 to compare and contrast the differences in design, glazing patterns, variations in glazing bar thicknesses, and so forth.



**Plate 3:** View of the upper floors of 27 and 28 O'Connell Street, the latter having retained rise-and-fall sash windows, as recorded on February 8, 2017.



**Plate 4:** View of the upper floors of 27 O'Connell Street, for contrast with Plate 2.



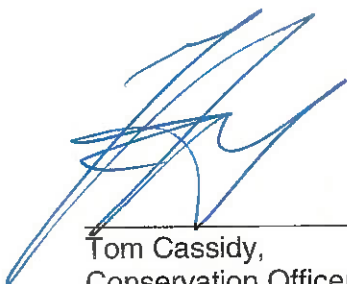
was a request for a Pre-planning Consultation involving this building a number of months ago, but that the request was withdrawn when the Area Planner made contact to arrange a meeting. See the attached e-mail.

There is no doubt in my mind but the works have impacted severely on the settings and amenities of the Augustinian Church, one of the finest architectural heritage set-pieces on O'Connell Street which contains archaeological fragments in its façade, and against which No. 27 O'Connell Street is set. A Supreme Court decision requires the protection of such elements of a site's context.

The premises could qualify for tax-breaks for appropriate works under the 'Living City Initiative'- the unauthorised works would certainly not be considered as capable of meeting the criteria for this important tax-break aimed at enhancing and regenerating the city's historic cores.

**Recommendation:**

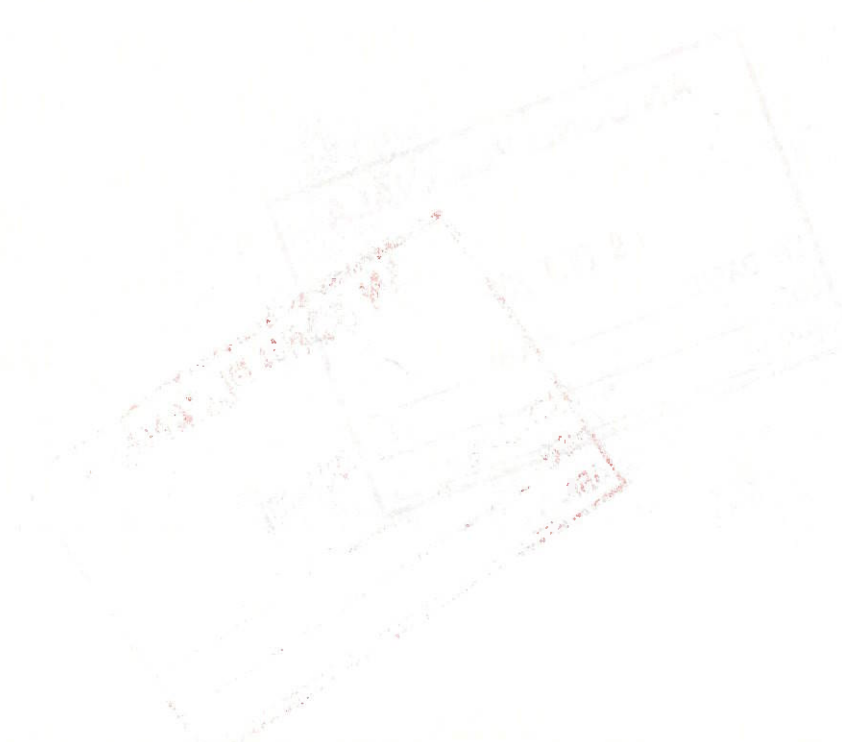
An Enforcement Notice, requiring re-instatement of the windows (or appropriately detailed replicas, to be agreed with the Conservation Office) should be served.



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Tom Cassidy,  
Conservation Officer,  
Limerick City and County Council.

February 10, 2017





ALBERTO P. BIANCHI  
19 OCT 2018  
EXPIRES 19 OCT 2018



WHELAN CAMERAS  
Canon Nikon SIGMA

NEVIL'S SHOES 29  
MEN'S FOOTWEAR LADIES FOOTWEAR & ACCESSORIES

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## PLANNING & ENVIRONMENTAL SERVICES

DC-029-17

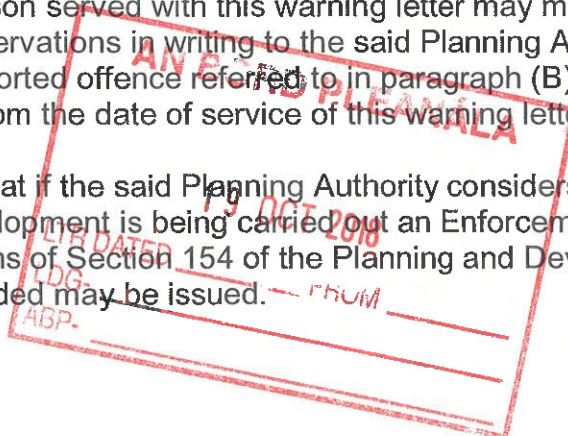
Limofitz Irish Property Company Ltd  
75 O' Brien Street  
Tipperary

### WARNING LETTER

#### UNDER SECTION 152(1) OF THE PLANNING AND DEVELOPMENT ACTS 2000 as amended

Dear Sir/Madam,

- (A) You are the owner/occupier of certain lands situate at 28 O' Connell Street, Limerick (hereinafter referred to as "the said lands") which lands are shown coloured red on the map attached hereto.
- (B) It has come to the attention of Limerick City & County Council as the Planning Authority that an unauthorised development may have been/is being/or may be carried out on the said lands, namely the installation of new replacement windows to the front façade of the building which works materially affect the external appearance of the structure. The works carried out do not come within the scope of exempt development and are therefore unauthorised.
- (C) You being the person served with this warning letter may make submission or observations in writing to the said Planning Authority regarding the purported offence referred to in paragraph (B) not later than four weeks from the date of service of this warning letter
- (D) You are advised that if the said Planning Authority considers that an unauthorised development is being carried out an Enforcement Notice under the provisions of Section 154 of the Planning and Development Act 2000 as amended may be issued.



- (E) Officials of the said Planning Authority may at all reasonable times, enter the said lands for the purposes of inspection.
- (F) We also wish to point out that in the event of the Court holding that an offence has been committed under Section 151 or Section 154 you can be liable: -
- a. On conviction on indictment, to a fine not exceeding €12,697,380.78, or to imprisonment for a term not exceeding 2 years, or to both, or
  - b. On summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both.
- (G) The costs reasonably incurred by the said Planning Authority in relation to Enforcement proceedings may be recovered from you in the event of an Enforcement Notice being served on you or where a Court action is taken.

Any queries in relation to this matter should be addressed to Michael O' Brien, Development Inspector.

Dated this 3<sup>rd</sup> day of March 2017

Signed on behalf of the said Council.

UR  
For Director of Service  
Planning & Environmental Services









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Limerick City & County Council

23 MAR 2017

Received

enforcement section,  
Limerick City & County Council,  
Dooradoyle,  
Limerick.

Re: Unauthorised development at O'Connell Street, Limerick City DC-029-17

Dear Sir/Madam,

In relation to your enforcement letter please note that we have changed the windows on the façade of our building to comply with fire regulations in order for the occupants to have a means of escape in the event of a fire.

Fire regulations are very clear with the size of windows that are allowed within apartments or maisonettes.

**Fire safety in the design, management and use of residential buildings –**

**Code of practice**

**BS 9991:2015**

**5.1 Escape by way of doors and windows**

Doors and windows that are to be used for means of escape or rescue should meet the following recommendations.

a) Escape windows should have an unobstructed openable area that is a minimum of 0.33 m<sup>2</sup>, having the minimum dimensions of 450 mm in height and 450 mm in width.

Yours sincerely

Limofitz Irish Property Company Limited







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**PLANNING & ENVIRONMENTAL SERVICES**

DC-029-17/MOB/CL

08<sup>th</sup> August 2017

Limofitz Irish Property Company Ltd  
75 O' Brien Street  
Tipperary.

**RE: Warning Letter – DC-029-17**

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Dear Sir,

I refer to your letter received on 23<sup>rd</sup> March 2017 in response to the above Warning Letter.

The regulations you refer to do not apply to multi storey buildings such as yours.

Only windows at ground floor and first floor level (where there is no basement) have to comply with these regulations.

As stated in the Warning Letter, the installation of the replacement windows to the front facade of the building are works which require planning permission.

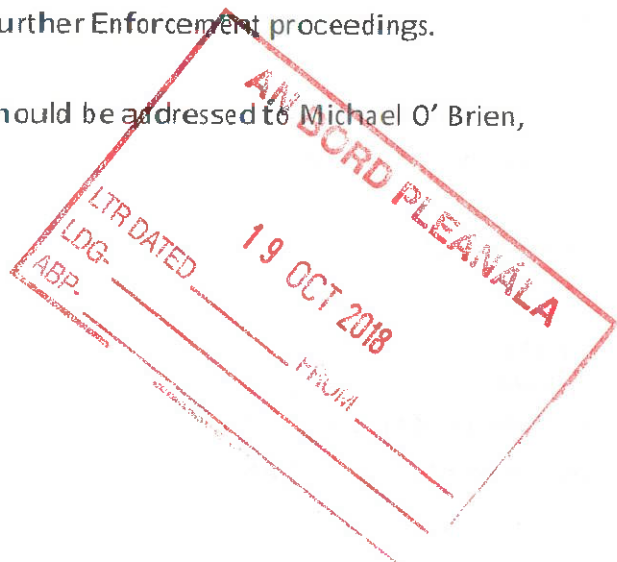
Please be advised that unless this matter is regularised without further delay, the Planning Authority will have no option but to instigate further Enforcement proceedings.

Any further queries in relation to this matter should be addressed to Michael O' Brien, Development Inspector.

Yours faithfully,



For Director of Service  
Planning & Environmental Services



**PLANNING & ENVIRONMENTAL SERVICES**

**DC-029-17/MOB/CL**

08<sup>th</sup> August 2017

Limofitz Irish Property Company Ltd  
75 O' Brien Street  
Tipperary.

**RE: Warning Letter – DC-029-17**

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Dear Sir,

I refer to your letter received on 23<sup>rd</sup> March 2017 in response to the above Warning Letter.

The regulations you refer to do not apply to multi storey buildings such as yours.

Only windows at ground floor and first floor level (where there is no basement) have to comply with these regulations.

As stated in the Warning Letter, the installation of the replacement windows to the front facade of the building are works which require planning permission.

Please be advised that unless this matter is regularised without further delay, the Planning Authority will have no option but to instigate further Enforcement proceedings.

Any further queries in relation to this matter should be addressed to Michael O' Brien, Development Inspector.

Yours faithfully,



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For Director of Service  
Planning & Environmental Services

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**PLANNING & ENVIRONMENTAL SERVICES**

**DC-029-17**

**REG POST:**

The Secretary  
Limofitz Irish Property Company Ltd  
75 O' Brien Street  
Tipperary

**ENFORCEMENT NOTICE**

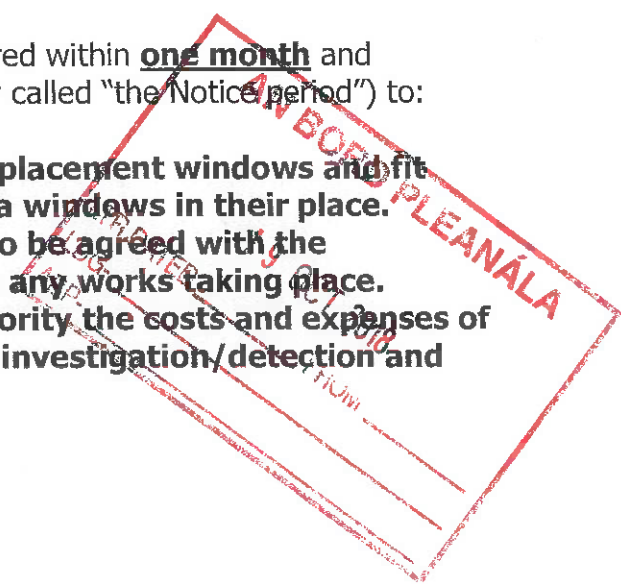
**UNDER SECTION 154 OF THE PLANNING AND DEVELOPMENT ACTS  
2000 (as amended)**

The City & County Council of Limerick, the Planning Authority for Limerick, hereby gives you notice that you have carried out development of lands namely:

The installation of new replacement windows to the front façade of the building situate at 27 O' Connell Street, Limerick, more particularly described on map annexed hereto (hereinafter referred to as "the site") works which materially affect the external appearance of the structure and do not come within the scope of exempt development and accordingly such works are therefore unauthorised.

**FURTHER TAKE NOTICE** that you are required within **one month** and thereafter of service of this notice (hereinafter called "the Notice period") to:

- (i) **Remove the unauthorised replacement windows and fit appropriately detailed replica windows in their place. Details of make and design to be agreed with the Conservation Officer prior to any works taking place.**
- (ii) **Refund to the Planning Authority the costs and expenses of €400 incurred to date in the investigation/detection and**



**the issuing of Enforcement proceedings Please note that, in event of non compliance, you may be liable to additional costs.**

You are further warned that under the provisions of Section 154(5)(c) of the Planning & Development Acts 2000 (as amended) that if you do not fulfill the above requirements within the Notice period hereinbefore referred to then the Limerick City & County Council may enter on the site and take steps in order to carry out the above works and may recover any reasonable expenses incurred.

You are further advised that under the provisions of Section 154(5)(d) of the said Planning & Development Acts 2000 (as amended) that you will be required to refund to the Planning Authority the costs and expenses reasonable incurred by the Authority in relation to the investigation, detection and issue of this Enforcement Notice (and any warning letter issued under Section 152 of the said Acts) including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisors.

Finally, the Planning Authority is obliged to warn you as the person served with this Enforcement Notice that if, within the Notice period specified the steps that you are required to carry out in compliance with this notice are not taken, that you may be guilty of an offence under the provisions of the Planning and Development Acts, 2000 (as amended).

Any further queries in relation to this matter should be addressed to Michael O' Brien, Development Inspector.

Dated this 27<sup>th</sup> day of July, 2018

Signed on behalf of the said Council:



For Director of Service  
Planning & Environmental Services



Limerick City & County Council

AN BORD PLEANALA  
19 OCT 2018  
LTD DATED  
LDG  
ADP  
FROM



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Licence number CCMA 2004/07



**INVOICE**

**PLANNING & ENVIRONMENTAL SERVICES**

**DC-029-17**

**Limofitz Irish Property Company Ltd  
75 O' Brien Street  
Limerick**

**INV NO. 029-17**

**RE: Development at 27 O' Connell Street, Limerick**

Enforcement Notice costs to date	€400
<b>Total</b>	<b>€400</b>

**Signed: V. Ronan**





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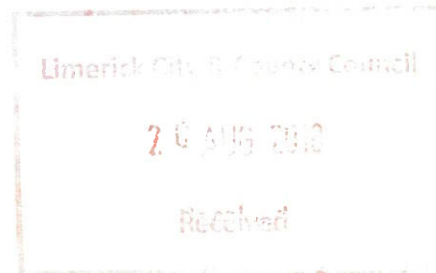
# SOUTHGATE ASSOCIATES

CONSERVATION ENGINEERING  
ARCHAEOLOGY  
PLANNING AND DEVELOPMENT STRATEGIES  
CONFLICT INTERVENTION

Farren House, Cork Road,  
Midleton, Co. Cork  
Tel: 021 4570717  
Email: info@chsa.ie

CIVIL AND COMMERCIAL MEDIATION  
RESTORATION AND CONSERVATION  
HERITAGE APPRAISAL AND ASSESSMENT  
PROJECT MANAGEMENT

Mr. Michael O' Brien,  
Development Inspector,  
Planning and Environmental Services,  
Limerick City and County Council,  
Dooradoyle Road,  
Dooradoyle,  
Co. Limerick.



Dear Mr. O' Brien,

**Re: Enforcement Letter 27 O Connell St Limerick Ref DC -029-17**

We act on behalf of Seamus Morrissey, the secretary of Limofitz Irish Property company the owner of the above property.

We acknowledge receipt of your letter of 27<sup>th</sup> July 2018 being the first valid letter relating to enforcement proceedings on this property, previous correspondence having been presented with the incorrect address (No 28 O'Connell St).

We are conservation consultants with nearly 30 years' experience in the industry. Our experience includes over €1500m of conservation planning advice for protected structures and buildings in ACA's to private developers and local authorities.

Whereas a question has arisen as to whether the replacement and/or alterations of windows at 27 O'Connell St Limerick is or is not exempted development: and whereas the letter from Limerick city Council referred to above implies that the said development was development and was not exempted development: and whereas Southgate Associates have had regard for :-

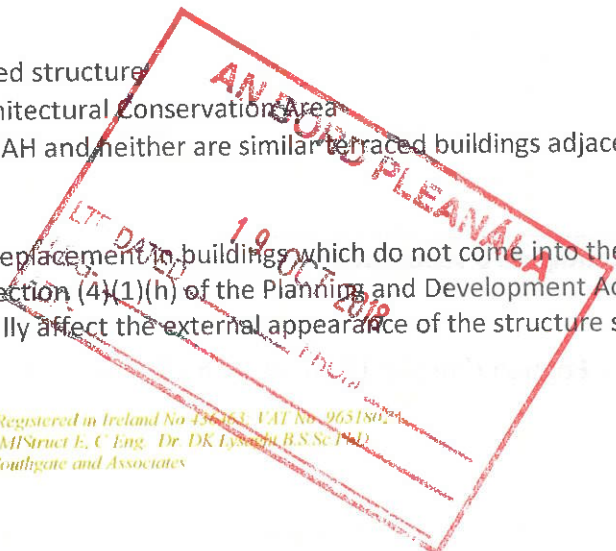
- (a) Sections 3(1) and (4)(1)(h) of the Planning and Development Act, 2000, and
- (b) Articles 6 and 9(1)(a)(viii) of the Planning and Development Regulations, 2001:

We have formed the following opinion:-

Since

- 27 O'Connell St Limerick is **not** a protected structure
- 27 O'Connell St Limerick is **not** in an Architectural Conservation Area
- 27 O'Connell St Limerick is **not** on the NIAH and neither are similar terraced buildings adjacent or opposite 27 O'Connell St

There is an established precedent that window replacement in buildings which do not come into the above categories (a) come within the scope of Section (4)(1)(h) of the Planning and Development Act, 2000 as amended as the changes do not materially affect the external appearance of the structure so



as to render the appearance inconsistent with the character of the structure or of neighbouring structures, and (b) the restrictions on exemption contained in Article 9 of the Planning and Development Regulations 2001 apply to exemptions allowed under Article 6 of the said Regulations only and do not restrict any exempted development under Section 4(1) of the Planning and Development Act 2000:

In coming to this decision, it should be noted that the building had already 4 out of 6 aluminium replacement windows and 2 No 20<sup>th</sup> century sash windows. Since the building is not protected or in an ACA no requirement exists to consider a pre-existing state. The replacement of the windows is reversible and constitutes no loss of character as defined by the scope of Section (4)(1)(h) of the Planning and Development Act, 2000 as amended, since no structural alteration has taken place.

### **Resolution**

Limerick City Council is acting outside its powers in respect of this building and we require you to immediately remove enforcement proceedings.

The requirement to liaise with the Conservation Officer implies that character for this building is to be defined as if it is a protected structure which also implies the local authority is acting outside of its powers.

In relation to the window conservation and restoration of protected structures the minister for Culture, Heritage & the Gaeltacht is knowledgeable that the cost of conservation joinery windows can be up to 4 times the cost of modern window replacements and has introduced grant schemes such as the BHIS which would not be available to our client under these circumstances. We would however consider replacing the windows if full funding was available.

Incentives are needed for development of properties of this type in Limerick. We have been involved for nearly 30 years in schemes involving Heritage based regeneration of certain areas (E.g. Temple Bar and Cork City Historic Action Plan). Such successful schemes are based on partnerships between local authorities and the private sector. Southgate and Associates and Limofitz Irish Property company would be interested in discussing some of the obstacles for property developers in taking on this type of project. This and surrounding buildings would offer an excellent opportunity for an Urban Pilot project with a coordinated vision for development, public realm and infrastructure and necessary incentives.

We do not see any future in wasting energy with enforcement proceedings for either party and if required to do so our client will have no alternative not only to defend such proceedings but also to seek legal costs.

Yours sincerely,



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**Southgate & Associates**

cc Eoghan Murphy TD Minister for Department of Housing Planning and Local Government

**From:** Cassidy, Tom  
**Sent:** 07 September 2018 17:28  
**To:** O'Brien, Minie  
**Subject:** RE: Replacement uPVC windows at 27 O'Connell St.

Minie,

Many thanks for the opportunity to comment.

Mr. Southgate's correspondence appears (despite a referral to the definition in passing, without actually crediting the source) to ignore the basic fundamental definition set out in Section 2 of the Planning and Development Act, 2000, which states that an alteration consists of

(a) plastering or painting or the removal of plaster or stucco, or  
(b) the replacement of a door, *window* or roof,  
that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

There is absolutely NO DOUBT that the external appearance of the building has been altered:

- 1/. Original / Early surviving timber windows with traditional rise and fall sashes (at two levels- first and second floor levels, not just at one level as appears to be claimed) have been replaced with plastic units that are inconsistent with the character (which includes its age) of the structure;
- 2/. Replacement units, which at least aped the design of the original / early timber windows have, like those referred to at 1 above, been replaced with units the design of which bear absolutely no relationship with those traditionally used in Ireland and are totally alien to the building, its character, the streetscape, and the settings and amenities of the protected structures in the vicinity.

As to the cost argument that appears to be advanced as a defence- as set out in my initial report, the building lies within the boundaries of the Living City Initiative and would qualify for generous tax breaks for appropriate conservation and restoration works. Clearly the Council, the Department of Finance, and the Revenue Commissioners, the Department of Arts, Culture, and the Gaeltacht, were of the view that this building, those in its vicinity, and in the nearby Georgian streetscapes (many of which are outside the boundaries of the Architectural Conservation Area) were of sufficient character and merit to warrant their inclusion within the qualifying zone for the L.C.I.

I see no reason for the planning authority to abandon its enforcement proceedings. I would urge you to seek an early hearing of this matter, as a considerable period of time has passed since the first complaints were received in respect of these unauthorised works.

I wonder what the intent is in copying the Minister for Housing, Planning and Local Government- a cack-handed effort to thwart the Council in its functions?

Regards,

Tom C.

**From:** O'Brien, Minie  
**Sent:** Monday, September 03, 2018 12:29 PM  
**To:** Cassidy, Tom <tom.cassidy@limerick.ie>  
**Subject:** Replacement uPVC windows at 27 O'Connell St.

Tom,

Please see attached correspondence in respect of the development at 27 O'Connell St. Limerick.

Can you please let me have your response to same.

Regards,

Minie.

Michael O'Brien

Development Inspector

Planning and Environmental Services

Limerick City & County Council,

County Hall, Dooradoyle.

Tel: +353 61 496348. Mob: +353 87 2769027

email: minie.obrien@limerick.ie



COMHAIRLE CATHRACH & CONTAE LUIMNIGH  
LIMERICK CITY & COUNTY COUNCIL

Limerick City & County Council

17 OCT 2018

Received

Received

17 OCT 2018

Limerick City & County Council

REMITTANCE ADVICE / FAISNEIS IOCAIOCHTA

An Bord Pleanála  
64 Marlborough Street Dublin 1  
Ireland

Cheque No. 70099  
Supp ID / Uimh. Aitheantais 34113  
Date / Dáta 11/10/2018  
Page / Leathanach 1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Iníoctha EUR
DC-029-17/MOB/CL	25/09/2018	31619390	110.00	110.00
<b>PAGE TOTAL / IOMLÁN AN LEATHANAIGH</b>			<b>EUR 110.00</b>	<b>110.00</b>
<b>GRAND TOTAL / MÓRIOMLÁN</b>			<b>EUR 110.00</b>	<b>110.00</b>

WH = Withholding Tax    CT = Subcontractors Tax    RA = Non Resident Landlord  
INT = Late Payment Interest, Rate = 8.25%    CMP = Late Payment Compensation

