



An
Bord
Pleanála

Inspector's Report

ABP-305667-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	20-22 (Annesley Motors), Ballybough Road, Dublin 3
Planning Authority	Dublin City Council
Planning Authority VSL Reg. Ref.	VS/0354
Site Owner	Lidl Ireland GmbH
Planning Authority Decision	Place on Register
Date of Site Visit	15 th December 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dublin City Council dated 16th September 2019 with the Chief Executive's Order stating that the site was placed on same on 16th September 2019. The Notice states that the site 20-22 (Annesley Motors), Ballybough Road, Dublin 3 has been entered on to the Vacant Sites Register (VSR).
- 1.2. The notice sets out that in accordance with section 5(1)(b) of the Urban Regeneration and Housing Act 2015 as amended that the site has been entered on the Vacant Sites Register which refers to the site consisting of regeneration land.

2.0 Site Location and Description

- 2.1. The site is located along Ballybough Road facing Kings Avenue. Clonliffe Avenue is located along the southern boundary and the site is the former premises of Annesley Motors. At time of inspection, the site was not in use and was boarded up. There is a forecourt area to the front which would have been the former parking area associated with the structures on site.

3.0 Statutory Context

3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(b) and 5 (2) of the Act. The Notice is dated 16th September 2019. I note that on the Register, a copy of which is included in the documentation, it states that the site was placed on the Register on 16th September 2019.
- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

the site, or the majority of the site is—

(l) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018”.

3.2. **Development Plan Policy**

Dublin City Development Plan 2016-2022 is the statutory plan for the area.

The site is zoned ‘Z3 – to provide for and improve neighbourhood facilities’.

Figure 2 of the Core Strategy identifies Strategic Development and Regeneration Areas. The lands in question are not identified as such.

Section 2.2.8.4 deals with Vacant Sites and sets out that *“it is a key pillar of the development plan to promote the development and renewal of areas, identified having regard to the core strategy, that are in need of regeneration in order to prevent, (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land; (ii) urban blight and decay (iii) anti-social behaviour or (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.”*

4.0 Planning History

File Ref. No. 2720/12 Permission granted for a mixed-use development.

File Ref. No. 3143/13 Permission refused for off licence in previously permitted development.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

A document which is titled 'Register of Vacant Sites' is enclosed and sets out the following:

- Site is regeneration land and not residential land
- Majority of the site has been vacant or idle for last 12 months
- No anti-social behaviour is evident and site not present on derelict sites register
- There are three site descriptions that would appear to relate to site inspections carried out in 20/09/2016, 15/11/2017 and 04/04/2019.
- The site is vacant and is considered to be having an adverse effect on the character of the area. It is therefore recommended that the site be placed on the Register.
- Photographs are attached. Only two of the photographs are dated and it is not clear who took the photographs.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 16th September 2019 referencing sections 5(1)(b) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice issued to Lidl Ireland GmbH.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from 'Tony Bamford' on behalf of Lidl Ireland, which is summarised as follows:

- Lidl Ireland GmbH has engaged a design team to complete a mix use development including a food-store and residential accommodation.
- Disagree that the site could be classified as a vacant site.
- Even if considered vacant or idle it does not represent a property that is in such a state of repair as to have adverse effects on existing amenities.
- Reference is made to case in Baltinglass, Co. Wexford under ABP 302251-18, a notably vacant premises on the Min Street which was maintained by the owners and in relatively good condition.
- The immediate car park and front boundary are in good order generally.
- Whilst there is evidence of a couple of broken windows and some minor graffiti these are easily remedied and a contractor has been engaged to make repairs and generally tidy the property. Repairs will commence October 2019.
- The building is not in a ruinous condition.
- Site was recently sold May 2019.
- Prior to that the building had been used as a car showroom and was then partly used for car repair.
- The character of the wider area should be considered which is in need of investment.
- The area's public realm and many of its buildings are in relatively poor condition.
- DCC wrote to Lidl Ireland seeking an update on the status of any development. Plans are progressing.

6.2. PA response to Grounds of Appeal

- The reasoning, on which the planning authority's decision on whether the site should be included on the Vacant Site register is set out in the planner's report which has been forwarded to ABP.

- While some activity was noted on part of the premises in the initial inspections the building was always considered to be in poor repair. The windows were broken since 2017.
- No repair works or graffiti removal had taken place since the initial inspections.
- The site is in a prominent location on one of the main thoroughfares into Dublin City Centre.
- The structure on site is in a state of neglect with broken windows and signage, peeling paint, graffiti and areas overgrown with vegetation.
- In its current condition, its vacancy is having an adverse effect on the character of the area.
- It is requested that the decision to include the site on the Vacant Site Register be upheld.

7.0 **Assessment**

7.1. Process

There are a number of matters of process which I propose to address. Firstly, the test in respect of regeneration land.

7.2 Test for Vacant Site in respect of regeneration land

7.2.1 In order to comply with the requirements of section 5(1)(b) in the case of a site consisting of regeneration land (my emphasis), the site must meet part (i) and (ii) of section 5 (1) (b) which provides that the site, or the majority of the site, is vacant or idle, and the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area. Section 6(6) provides that this shall be determined by reference to whether –

(a) Land or structures in the area were, or are, in a ruinous or neglected condition,

(b) Anti-social behaviour was or is taking place in the area, or

(c) There has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.

7.2.2 The notice that issued, sets out that the site is a vacant site within the meaning of the URH Act, sections 5(1)(b) and 5(2). In respect of section 5(1)(b) this refers to site consisting of regeneration land. The subject site is not zoned for regeneration but rather “Z3 – to provide for an improve neighbourhood facilities”. Pursuant to a review of the Dublin City Development Plan 2016, I am not aware of any specific policy or objective for the site that identifies it for regeneration. The Core Strategy identifies key strategic regeneration sites/areas, none of which are relevant to the site/area subject to this appeal. The planner’s report fails to identify any specific policy or objective which provides that the site consists of regeneration land and the report makes reference only to the zoning objective. On this basis, I do not consider that the subject site can be considered as consisting of regeneration land.

7.2.3 Therefore, I do not consider that the site can be categorised as a vacant site as defined by Section 5(1)(b) of the Act and should therefore be cancelled.

For completeness of my report I make reference to the 12-month period and notices hereunder in the event the Board consider such relevant in this instance.

7.3 12 Month Period

7.3.1 I would refer the Board, in the first instance, to an issue pertaining in relation to the 12 month period prior to the placing of the site on the Register as per the Section 7(3) Notice currently appealed. Section 6(2) of the Act is very clear. It states that a planning authority shall enter on the register a description including a map of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry. This is very clear. The subject site is stated to have been placed on the Register on 16th September 2019

with the Notice dated the same date meaning that the relevant 12 month period would have commenced on 17th September 2018.

- 7.3.2 There is only one planning report on file. This report under the site description section provides a description of the site for three dates including 20/09/2016, 15/11/2017 and 04/04/2019. It is somewhat unusual that there are no independent planning reports supporting/setting out why site inspections were carried out on these dates and providing recommendations and/or setting out what procedures as provided for in the Act were followed (specifically in respect of issuing notices). Rather, the only report noted on file provides two updates after the recommendation to include the site on the register including a statement on 04/04/2019 that “the site is vacant and its vacancy and current state of repair is having an adverse effect on the character of the area. The majority of the site has been vacant for in excess of 12 months. It is therefore considered appropriate to include this site on the vacant site register”.
- 7.3.3 If the site was inspected for the first time for the purposes of the Vacant Site Levy process on 20th September 2016, and 15th November 2017 the planning authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(b) of the Act, the site was vacant and idle on 17th September 2018 which would comprise the commencement of the 12-month period. While this may appear to be a tedious approach to the matter at hand, the Act is very clear that the relevant period for consideration is the 12 month period preceding the date of entry. It is incumbent on any planning authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so. I, therefore, consider that were the lands in question to consist of regeneration land under Section 5(1)(b), the Notice issued should be cancelled on the basis of this defect in the process. I would also note that the Board has included this reason in their decision to cancel such Notices in a number of other instances although I accept in this instance that the site would appear to have been inspected early in the process in 2016 and again in 2017 before final entry onto the register in 2019. However, the Act is clear that the period referred to is the ‘12 month preceding the entry onto the register’.

7.4 Notices to relevant Landowners

The documentation submitted from Dublin City Council only contains details of correspondence to the owner of the site at 20-22 (Annesley Motors) Ballybough Road in respect of the section 7(3) Notice i.e. entry onto the Vacant Site Register. The procedures for entry on the Register are set out in Section 7 of the URH Act 2015 as amended and are very clear. Section 7(1) provides that “before entering a site on the register a planning authority shall give written notice to the owner of the site setting out the reasons for the proposed entry and the owner may make submissions in respect of the proposed entry to the planning authority....”. There is no evidence on file to indicate that this procedure was followed. Again, while this may appear tedious, the procedures in respect of entry onto the register are clear and must be followed so as to ensure landowners are treated fairly affording them the appropriate opportunities to appeal any such recommendations/decisions at appropriate junctures as provided for in the Act.

8.0 **Recommendation**

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of lands at 20-22 (Annesley Motors) Ballybough Road, Dublin 3 as the site cannot be subject to the tests of Section 5 (1)(b) in that the subject site does not consist of regeneration land.

9.0 **Reasons and Considerations**

Having regard to

- (a) the information submitted to the Board by the planning authority in relation to the entry of the site on the Vacant Sites Register,
- (b) the grounds of appeal submitted by the appellant,
- (c) the report of the Senior Planning Inspector,
- (d) the zoning of the site “Z3 – to provide for an improve neighbourhood facilities”,

(e) the absence of any specific policy or objective in the Dublin City Plan 2016 which identifies the site as regeneration land,

The Board is not satisfied that in the case of the subject site that it consists of regeneration land and therefore cannot be subject to the tests of Section 5(1)(b). The entry onto the Vacant Site Register should be cancelled.

Joanna Kelly

Senior Planning Inspector

2nd January 2020