



An  
Bord  
Pleanála

## Inspector's Report ABP-300531-17

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Lands at Captain's Road (adjacent to CBS), Crumlin, Dublin 12.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0738.
<b>Site Owner</b>	Health Services Executive.
<b>Date of Site Visit</b>	28 March 2018.
<b>Inspector</b>	Stephen Rhys Thomas.

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dublin City Council, stating their intention to enter the site at Captain's Road (adjacent to CBS), Crumlin, Dublin 12 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

## 2.0 Site Location and Description

- 2.1. The site is located in Crumlin in the south western part of Dublin City. The site has a concrete wall boundary to Captain's Road to the west, topped by an anti-climb mechanism. A palisade fence separates a school building to the north. The eastern side of the site is bounded by a rendered wall and abuts the rear garden of a residential building. The southern boundary is not defined by a fence or wall, however, there are a number of mature shrubs and trees. The immediate environs of the site have an institutional layout with large educational and care buildings. The site is part of the gardens associated with these buildings.
- 2.2. The site interior is unkept with long grass in clumps and hummocks. There is a heap of earth at the centre of the site, overgrown with grass. Ornamental trees are located throughout the grounds and show signs of being overgrown and unkept. There is litter in the north western corner of the site, most likely as a result of it being discarded from Captain's Road. The boundary to Captain's Road is a rendered concrete wall, there is a small amount of indistinct graffiti evident from the street.

## 3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0738) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 28 November 2017, stated that particulars of the site have been entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.
- 3.2. **Register of Vacant Sites Report:** The site is zoned under objective Z12. 'To ensure existing environmental amenities are protected in the predominantly residential

future use of these lands'. The site is classified as residential land and has been vacant or idle for the last 12 months. The site is in an area where there is a need for housing, is suitable for housing and the majority of the site is vacant/idle. The report is supported by colour photographs.

#### 4.0 **Development Plan / Planning History**

- 4.1. The Dublin City Development Plan 2016-2022 is the operative development plan. The site is located on lands that are subject to zoning objective Z12 'To ensure existing environmental amenities are protected in the predominantly residential future use of these lands'.
- 4.2. Section 14.8.12 Institutional Land (Future Development Potential) – states that where lands zoned Z12 are to be developed, a minimum of 20% of the site, incorporating landscape features and the essential open character of the site, will be required to be retained as accessible public open space. The predominant land-use on lands to be re-developed will be residential, and this will be actively encouraged.
- 4.3. One of the key strategies of the Development Plan, as set out in section 4.4 is the creation of a consolidated city, whereby infill sites are sustainably developed and new urban environments are created, by actively promoting active land management, a key component of which is the vacant site levy.
- 4.4. **Section 2.2.8.4** of the plan states that in accordance with the Urban Regeneration and Housing Act 2015, 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
- 4.5. **Section 14.9** of the City Development Plan 2016-2022 states that the Vacant Sites Levy will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.6. **Policy CEE16** states that it is the policy of DCC to: (i) To engage in the 'active land management' of vacant sites and properties including those owned by Dublin City

Council, as set out in the Government's Planning Policy Statement 2015; to engage proactively with land-owners, potential developers and investors with the objective of encouraging the early and high quality re-development of such vacant sites. (ii) To implement the Vacant Land Levy for all vacant development sites in the city and to prepare and make publicly available a Register of Vacant Sites in the city as set out in the Urban Regeneration and Housing Act 2015. (iii) To improve access to information on vacant land in the city including details such as location, area, zoning etc. via appropriate media/online resources and the keeping of a public register as a basis of a public dialogue in the public interest. (iv) To encourage and facilitate the rehabilitation and use of vacant and under-utilised buildings including their upper floors. (v) To promote and facilitate the use, including the temporary use, of vacant commercial space and vacant sites, for a wide range of enterprise including cultural uses, and which would comply with the proper planning and sustainable development of the area and the provisions of the Development Plan.

- 4.7. **Policy QH3** states that it is policy of the Council (i) To secure the implementation of the Dublin City Council Housing Strategy` in accordance with the provision of national legislation. In this regard, 10% of the land zoned for residential uses, or for a mixture of residential and other uses, shall be reserved for the provision of social and/or affordable housing in order to promote tenure diversity and a socially inclusive city. (ii) To engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015.

#### 4.8. **Planning History**

Subject site:

PA reference **6310/07**. Permission for a new vehicular entrance off Captain's Road. February 2017. March 2008.

Wider landholding:

PA reference **2659/12**. Permission for a ramped access to the existing building along with other minor changes. August 2012.

PA reference **3162/11**. Permission for temporary health care accommodation. March 2012.

## 5.0 The Appeal

### 5.1. Grounds of Appeal

5.1.1. The landowner has submitted an appeal to the Board, against the decision of Dublin City Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The site is owned and in use by the Health Services Executive (HSE) as part of the St Columbas building complex. If residential uses were developed on the appeal site it would conflict with the medical uses (mental health) currently carried out on site. The appeal site is currently used for passive recreation purposes and provides space for future expansion.
- The appeal site is not cordoned off from the wider complex, and is an integral part of the wider facility.
- The appeal site equates to a minority portion of the overall complex and cannot be considered to represent the majority of the overall site as being vacant/idle.
- The wider site complex (mental health centre) is subject to zoning objective Z12 – Institutional Land, the security of the site would be compromised if residential uses were developed on the site. It is not viable to develop such a small site given the requirement to provide 20% public open space.

The appellant outlines the planning history on and in the vicinity of the site.

### 5.2. Planning Authority Response

5.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- The overgrown nature of the site was reiterated, and the boundary treatments were noted.
- The requirements of the land use zoning and the provision of 20% open space would not make a residential proposal unviable.
- The future expansion of the facility is not considered an adequate reason to remove the site from the register.

- If, however, the site is an integral part of the overall HSE complex then the Council would remove the site from the register as it forms part of an active ongoing use.

### 5.3. **Appellant Further Response**

The appellant specifically responds to the statement made by the Council in relation to the use of the site and confirms that the site is not separated from the wide HSE complex. A photograph details the integral nature of the open space in relation to the wider complex.

## 6.0 **Assessment**

- 6.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Dublin City Council VSR on the 28 November 2017.
- 6.2. By reference to the planning authority notice, it is stated that the subject site comprises residential land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Z12 'To ensure existing environmental amenities are protected in the predominantly residential future use of these lands' in the current City Development Plan. Policy QH3 states that it is policy of the Council to engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.
- 6.3. The appellant states that the site forms part of the wider HSE mental health complex, the site is not separated by a fence or wall and provides an integral passive open space for the users of the facility. In addition, the appellant states that the development of the site for residential purposes would conflict with the security of the site and be unviable given the requirement to provide 20% public open space.

- 6.4. In response, I note that the Council refute the claim that the site is unviable for residential development. However, the Council do concede that the specific interior site conditions were not confirmed by an internal examination of the site. In addition, the Council state that if the site is in use by the HSE for the purposes of the health centre, then it should be removed from the register.
- 6.5. In the first instance, the appeal site has the form and character of a formal garden attached to an institution, in this case a HSE mental health centre. In my view, the site is laid out as a garden associated with the health centre, St Columbas. There is no partition, wall or fence between the formal garden and the large institutional building to the south, in fact paths connect both the building and the garden. It would appear to me that the form and function of the garden is to provide passive open space and recreational opportunities for the wider institutional complex.
- 6.6. However, the condition of the overall site or garden falls in to two distinct characters. The northern portion of the site is unkept, the grass is mounded, clumped and hummocky, there is also an amount of litter inside the Captain's Road boundary. The southern portion shows slightly more evidence of maintenance, grass is relatively short, however, shrubs and trees are overgrown. Outside the appeal site and closer to the institutional buildings, the gardens improve and show signs of regular maintenance and use. During the period of my site visit over lunchtime, I did not observe any person using the gardens.
- 6.7. I note that the appellant does not dispute that there is a need for housing in the area. However, the appellant makes the point that the site has no residential viability given the particular site circumstances and integrated institutional uses on site. This may be the case; however, I note the Council's view that specific institutional residential use could be possible on the site. I note that no planning applications have been advanced to explore the possibility to develop the site. I consider that the site is in an area in need of housing and that the site is suitable for housing, in accordance with section 5(1)(a)(i) and (ii) of the Act. However, I am not convinced that the site could be considered vacant or idle. The site forms an integral part of the overall HSE complex and shows signs of use. The level of maintenance would appear to be sporadic at best, however, those areas closest to the main building and outside the appeal site are well maintained and appear in use. On balance, I find that it would be difficult to discount the occasional passive use of the appeal site based on my

observations over a relatively short time frame. The arguments made by the appellant regarding the integrated nature of the site and its use as passive open space are compelling and logical. In my view, the site is neither vacant or idle for the purposes of the Act.

## **7.0 Recommendation**

7.1. I recommend that, in accordance with section 9(3) of the Urban Regeneration and Housing Act 2015, the Board determine that the site Captain's Road (adjacent to CBS), Crumlin, Dublin 12 was not vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. Therefore, the entry on the Vacant Sites Register on the 28 November 2017 shall be cancelled.

## **8.0 Reasons and Considerations**

Having regard to

- a) The information placed before 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 Inspector,
- d) The lack of boundary walls or fences separating the site from the wider HSE landholding; the site forms an integral part of the overall facility and provides users and staff with open space and recreational opportunities,

the Board is satisfied that the site was not vacant or idle for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

16 April 2018