



An
Bord
Pleanála

Inspector's Report ABP-301781-18

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| Type of Appeal | Section 9 Appeal against section 7(3) Notice. |
| Location | 40-48 Back Lane (former Mother Redcaps Market), Dublin 8. |
| Planning Authority | Dublin City Council. |
| Planning Authority VSL Reg. Ref. | VS/1077. |
| Site Owner | Redcaps Developments Ltd. |
| Date of Site Visit | 5 September 2018. |
| Inspector | 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 40-48 Back Lane (former Mother Redcaps Market), Dublin 8 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 at 40-48 Back Lane (former Mother Redcaps Market), Dublin 8, in the south inner city. The rectangular shaped site fronts on to Back Lane and backs onto Lamb Alley. The north western portion of the site abuts La Rochelle Apartments and the south eastern side of the site backs onto the rear yards of houses along John Dillon Street.
- 2.2. The elevation to Lamb Alley comprises a high wall composed of coursed stone, brick and elements of render. The elevation to Back Lane is the active frontage of the site and comprises a three storey former factory building and a two storey public house, both of brick. The Back Lane elevation has a number of windows, mostly in good condition however, some have broken panes. Roller shutters are present at street level and some of these have graffiti. Vegetation is growing from the rainwater goods and from elements on the roof. The elevation to Lamb Alley is for the most part blank, however, there is graffiti here too and vegetation occupies the space behind the parapet walls.

3.0 Statutory Context

- 3.1. Urban Regeneration and Housing Act 2015 (as amended).
 - 3.1.1. The Notice issued in relation to regeneration lands and the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(b) of the Act.
- 3.2. Development Plan Policy
 - 3.2.1. The Dublin City Development Plan 2016-2022 is the operative development plan. The site is located on lands that are subject to zoning objective Z5 – City Centre – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’.

- 3.2.2. 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.
- 3.2.3. 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
- 3.2.4. 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.
- 3.2.5. 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.
- 3.2.6. 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.

4.0 Planning History

- 4.1. PA reference number **1238/07** and An Bord Pleanála reference **PL29S.222915**. Permission for the redevelopment of the Iveagh Market and Mother Redcaps site, a 83 unit Aparthotel and other uses for the subject site, reference 1238/07x2 extended the permission to August 2017.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report - The site is zoned under objective Z5 – City Centre – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The site is subject to antisocial behaviour. A planning history is outlined for the site. The site is in a derelict state, having once been in a variety of uses the site is vacant at present and has been for some time. Graffiti is present and windows are broken. The majority of the site is vacant/idle and the condition of the site has adverse effects on existing public infrastructure and facilities and has adverse effects on the character of the area. Site should be included on the VSR. The report is supported by colour photographs.

5.2. Planning Authority Notice

- 5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-1077) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 17 May 2018, 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. 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 not suitable for housing because structures on the site are listed on the National Inventory of Architectural Heritage and the demolition of the buildings for redevelopment is unlikely to be permitted. The buildings are not protected structures and so this renders them unsuitable for redevelopment as building adaptation dispensations will not be forthcoming. Conversion of the buildings on the site for residential purposes would be very challenging in terms of fire regulations, ceiling height amongst other things.
- With reference to section 6(5)(c) of the Act, the existence of historic commercial buildings on the site, affects the likelihood of the provision of housing and so the site fails the test for this part of the Act.

6.2. Planning Authority Response

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

- Notwithstanding any conservation issues on the site, sensitive and carefully designed redevelopment can take place. The subject site is considered to be a regeneration site and was assessed under section 5(b) of the Act, the site is having an adverse impact on the character of the area (a further site visit was undertaken on 18 June 2018).
- The reasoning for placement of the site on the register has already been outlined in the vacant sites register report.
- The planning authority request that the decision to place the site on the register is upheld.

7.0 Assessment

7.1. 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 17 May 2018.

- 7.2. By reference to the planning authority notice, it is stated that the subject site comprises regeneration land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Z5 – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’. 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)(b) regeneration land.
- 7.3. The appellant states that the collection of buildings on the site are of a historic nature and listed on the National Inventory of Architectural Heritage. The redevelopment of the site for housing would be problematic and present challenges with regard to the adaptation of the existing buildings. The appellant concludes that the given the historic nature of the buildings on the site the provision of housing is affected and therefore section 6(5)(c) of the Act is not met.
- 7.4. In response, I note that the Council state that with careful design the buildings can be rehabilitated and that the site was assessed in the context of regeneration lands, not housing and therefore section 6(5)(c) of the Act does not apply.
- 7.5. The appellant has relied on section 6(5)(c) of the 2015 Act and states that the historical nature of the buildings affects the provision of housing. This may be the case if the assessment of a vacant or idle site were carried out in relation to residential lands (section 5(1)(a) and sections 6(4) and (5) of the 2015 Act). However, the lands have been assessed in the context of regeneration lands (section 5(1)(b) and sections 6(6) of the 2015 Act), as advertised by the notices issued. Therefore, I do not intend to address these grounds as they are not relevant to the Notice issued which relates to regeneration given the site is zoned for regeneration purposes.

7.6. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. The site, as viewed from the public road, has all the characteristics of a vacant and idle site. Superficially, the buildings appear sound, however, on closer inspection, some window panes are broken or missing, rainwater goods are cracked and vegetation has colonised various structural joins and gutters. The buildings are all in a poor condition. Without exception, all the buildings on site show signs of neglect and lack of maintenance and there are no obvious signs of recent use. A large amount of graffiti is to be found on roller shutters and doors; vegetation is growing from rainwater goods and has colonised roofed areas. Broken window panes appear to have resulted from wilful damage, most likely as a result of casual vandalism. I note the interior photographs of the site, submitted by the appellant and I acknowledge the building condition that the photographs illustrate.

7.7. In accordance with section 6(6) of the 2015 Act, that states:

(6) A planning authority, or the Board on appeal, shall determine whether or not 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 for the purposes of this Part 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.

7.8. The site being vacant or idle has adverse effects on the character of the area by reference to the condition of the buildings on the overall site and the neglected state of these buildings. In addition, the presence of graffiti and vandalism indicates that anti-social behaviour was or is taking place. The character of the area is affected by the existence of such vacant or idle land.

7.9. The site is zoned Z5 – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’ and is identified in the City Plan as land suitable for regeneration. The site meets the criteria for ‘regeneration land’ as stated in section 5(1)(b) and further elaborated upon by section 6(6) of the Urban and Regeneration and Housing Act 2015 (as amended). Given the foregoing, I conclude that the majority of the site is vacant or idle in accordance with the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Dublin City Council should be confirmed.

8.0 Recommendation

8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm that the site at 40-48 Back Lane (former Mother Redcaps Market), Dublin 8, was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 17 May 2018 shall be deemed to take effect from that date.

9.0 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 Planning Inspector and
- (d) The neglected condition of the buildings, the prevalence of graffiti and vandalism that provides evidence of anti-social behaviour was or is taking place that results in adverse effects on the existing amenities of the area

the Board is satisfied that the site was vacant or idle for the relevant period.

Stephen Rhys Thomas
Planning Inspector

05 September 2018