



An  
Bord  
Pleanála

## Inspector's Report ABP-301832-18

---

<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	87-90 Middle Abbey Street, (Independent House), Dublin 1.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/1005.
<b>Site Owner</b>	Primark Limited.
<b>Date of Site Visit</b>	12 September 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 87-90 Middle Abbey Street, (Independent House), Dublin 1 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 87-90 Middle Abbey Street, (Independent House), Dublin 1, in the centre of Dublin city. It is a notable building on the streetscape of Middle Abbey Street, formerly the home of the Irish Independent, Sunday Independent and Evening Herald newspapers. The southern elevation of the building rises to 5/6 storeys and 3 storeys to Princes Street North. A small laneway bounds the western elevation, Williams Lane.
- 2.2. The building known as Independent House, is a protected structure and is an imposing and well executed late Edwardian office headquarters building. The Middle Abbey Street elevation is in very good repair, with the exception of the addition of timber hoarding to some ground floor windows. The rear elevation to Prince's Street North has a more restrained industrial character, but with good detailing such as dentilated eaves and large window opes, ground floor service doorways are hidden behind roller shutters. The interior of the building is however, in very bad condition. Offices and corridors are in extremely poor decorative order, with stripped walls and fallen masonry. The main printing hall, has been stripped of the former printing presses and is gradually succumbing to the elements. The internal loading bay area to Prince's Street North now serves to store all manner of materials either from the building itself or redundant shop display paraphernalia.

## **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 – ‘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. The building is a Protected Structure.

3.2.3. 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.

3.2.4. 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

3.2.5. 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.

3.2.6. 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.

- 3.2.7. 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.

## 4.0 Planning History

- 4.1. PA reference number **5170/06** and An Bord Pleanála reference **PL29N.224640**. Permission for a mixed-use development comprising retail unit, 189 residential units and hotel. July 2008.

## 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 '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 in a highly visible location in the city centre and its vacant condition is having serious adverse impacts on the character of the area. A planning history is outlined for the site. Site should be included on the VSR. The report is supported by colour photographs.
- 5.1.2. An accompanying correspondence (dated 16 May 2018) outlines the planning authority's response to the appellants submission in relation to the Notice of Proposed Entry onto the register.

## 5.2. **Planning Authority Notice**

- 5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-1005) 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 appellant provides a rebuttal of all aspects of the development and renewal of area in need of regeneration under section 2.2.8.4 of the current City Development Plan and as transposed from section 6(6). The appellant has set out grounds of appeal under the following headings:

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

Independent House may be temporarily idle but it is neither ruinous or in a neglected condition. The building is not noticeably different from other buildings in the area, in addition there are no roller shutters to doors and not all windows are boarded up.

- (ii) urban blight and decay,

No evidence has been presented by the Council with regard to urban blight.

- (iii) anti-social behaviour, or

The site is secured from entry and there is no evidence of antisocial behaviour taking place.

- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

This is not applicable as the building is not located in residentially zoned lands.

The appellant has set out a lengthy analysis of the City Council's assessment of the site. The relevant aspects of this analysis are as follows:

- The planning authority have placed considerable weight on the vacancy of the building in the context of the building's location along a Luas Line. The planning authority's assessment is subjective, the overall conclusion is that the building presents a blank inactive frontage and this must impact on the amenity of the area. The building, when in use always had a low frequency of pedestrian access, so there is little change as a vacant building.
- There is concern that the inclusion of the Prince's Street North elevation is only intermittently alluded to, raises an issue as to the extent to which active frontage is assessed. This street is a cul-de-sac and with very little pedestrian movement.
- It is difficult to conclude that the resumption of an office use at this location would significantly contribute to public safety, surveillance and amenity. Whether the building is occupied or not, this city centre location is already heavily trafficked leading to passive surveillance and control of anti-social behaviour.

The appellant also queries the validity of the Notice, the imposition of the Levy, access to the register and market value.

The appeal is supported by the applicant's initial submission to the planning authority, the Notice, photographs of the exterior of the site and adjacent buildings along Middle Abbey Street and Prince's Street North.

## 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:

- The site is located on two public streets. The vacant and boarded up nature of the site portrays inactivity and a neglected frontage to these two streets. The neglected condition is having an adverse affect on the character of the area.
- 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 a vacant site 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 building is in good condition and does not impact upon the character of the area. No antisocial behaviour is taking place and the building is secure and well maintained. The Council maintain that the condition of the building and especially the presence of timber hoarding is impacting on the character of the area and antisocial behaviour is taking place as a result of the buildings inactive use.
- 7.4. Firstly, I should point out that the appellant has referred to sections of the 2015 Act that relate to the content of Development Plans, section 28 *Amendment of section 10(2) of Act of 2000 - content of development plans*. This section sets out the content of Development Plans in relation to renewal areas as follows:
- “(h) 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,”*

7.5. These criteria go somewhat beyond the requirements of the Board with respect to a section 9 appeal regarding regeneration land as set out by section 6(6) of the Act and are really only meant for the content of Development Plans. However, for the most part, the points raised by the appellant are relevant to the appeal and it would be reasonable to take into account the grounds of appeal where relevant. Therefore, I have found it necessary to assess the site in the context of section 5(1)(b) and section 6(6) of the 2015 Act (as amended).

7.6. The building, as viewed from the public demesne, appears to be vacant. Overall, the buildings are in good condition, however, some ground floor windows on the Middle Abbey Street elevation are boarded up with timber panels. The interior of the building is in very poor condition and is clearly neglected. However, the interior is not visible from the public demesne and is unlikely to influence the character of the area. I am however, satisfied that the site is vacant in accordance with section 5(1)(b)(i) of the Act.

7.7. Section 6(6) of the 2015 Act, 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 first matter is that of the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The appellant states that their site is well maintained and secured. I would agree, the exterior condition of the buildings can be described as good, certainly not ruinous or neglected. However, the site interior, not visible from the public realm, is very poorly maintained and shows signs of neglect and lack of maintenance. I did not observe examples of serious ruin or neglect in the wider area that would have an adverse effect on the area's character. The appellant's premises presents an important frontage to Middle Abbey Street, an extremely busy city centre thoroughfare. The street is well trafficked (motorised vehicles, tram, cyclists and pedestrians), whether this building is vacant or not would not in my mind impact on the character of the area in terms of passing traffic. The frontages along Williams Lane and Prince's Street North are far less trafficked and have a particular backwater character of their own. As the building exterior is neither ruinous or neglected, I am satisfied that the site fails to meet section 6(6)(a) of the 2015 Act.
- 7.9. In relation to section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was no obvious or extensive evidence of graffiti on the structures of the appeal site and there was no evidence of litter in the vicinity. I must stress that the site is in the heart of the city and Middle Abbey Street is well trafficked by pedestrians. To a much lesser extent so too is Prince's Street North between Penneys and the GPO Arcade. However, Williams Lane is a foreboding place and it is highly likely that anti-social behaviour is taking place there. However, I must conclude that even though anti-social behaviour is probably taking place in the vicinity, it cannot be attributed to the vacant nature of the subject building. Whilst the building interior is neglected I do not consider it would meet with part (b) above.
- 7.10. In terms of the final consideration section 6(6)(c), I note the response of the applicant to the effect that there has been no reduction in the number of habitable dwellings in the area because the land use zoning precludes residential use. The council provide no information as to any reduction in housing or number of people living in the area. There is no evidence to address part (c) that there has been a reduction in the number of habitable houses, or the number of people living, in the area. Given the city centre location and the number and scale of regeneration developments undertaken elsewhere in the vicinity I do not consider that it would be reasonable to consider that such a reduction is the case. Therefore, while the test in Section

6(6)(a) may be met I do not consider that Section 6(6)(b) is met and therefore I do not consider that the site can be categorised as a vacant site as defined by Section 5(1)(b) of the 2015 Act.

## 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 cancel that the site adjacent to the 87-90 Middle Abbey Street, (Independent House), Dublin 1, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 17 May 2018 shall be removed.

## 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 condition of the site, while comprising a neglected interior not visible from the street, does not display any evidence of anti-social behaviour and therefore it is considered that it does not have adverse effects on the existing amenities or character of the area

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

---

Stephen Rhys Thomas  
Planning Inspector

25 September 2018