



An
Bord
Pleanála

Inspector's Report ABP-301846-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site adjacent to the Tunnel Control Building, East Wall Road, Dublin 3.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0979.
Site Owner	Dublin Port Company.
Date of Site Visit	12 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 adjacent to the Tunnel Control Building, East Wall Road, Dublin 3 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015 (as amended).

2.0 Site Location and Description

- 2.1. The site is located in the East Wall area, east of Dublin City centre, close to the north docks and adjacent to the Port Tunnel Control Building. It is a large, level and rectangular shaped site. The boundaries of the site comprise high concrete walls with a palisade fence and gate forming the partition of the site from car park lands to the north west. The interior of the site has an amount of hardstanding, but the overall site is mostly colonised by scrub vegetation. A small electricity substation building is located in the south-eastern corner of the site.

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 Z6 – ‘To provide for the creation and protection or enterprise and facilitate opportunities for employment creation.’. 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.
- 3.2.2. 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

- 3.2.3. 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.
- 3.2.4. 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.
- 3.2.5. 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. Subject site

PA reference 2552/15 and ABP reference PL29N.245738. Permission for Aviation fuel pipeline crosses to the front of the site. April 2016.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report - The site is zoned under objective Z6 - 'To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.'. 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. The site is overgrown with no buildings except for an electricity building. 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-0979) 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 part of the wider Dublin Port Masterplan Area, that includes significant planning applications, the Redevelopment of Alexander Basin (ABP reference PA0034) and a current MP2 Project currently on public consultation

(ABP refence PC0252). With reference to the subject site, it is envisaged that a community City Farm would be located here, discussions are ongoing with Dublin City Council. This would align with Circular Letter PL7/2016 that highlights community initiatives that support regeneration should be taken into account. Preliminary ground investigations have determined that there are contaminants on site. The site is therefore not suitable for development for vulnerable uses, however, if the MP2 project is approved, remediation works would start.

- The site is located between two strategically important sites that will deliver key infrastructure; the Southern Port Access Route and a future location of a 220kV substation. The appeal site is secure and managed to ensure it does not impact on the area, the site is not ruinous or in a neglected condition, antisocial behaviour is not taking place. There has not been a reduction in housing in the area, bearing in mind the site is zoned Z6 Enterprise and Employment. A significant quantum of residential development has been permitted in the wider area to the west.
- The condition of the site is characterised by its peripheral location in an industrial dockland area, adjacent to transport interchanges and interface with inner city residential areas.

The appeal is supported by the Dublin Port Company MP2 Project Community Gain Proposal May 2018 and Causeway Geotech Ltd Preliminary Ground Investigation Report May 2018.

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:

- At this time, no plans or agreements are in place to progress a community gain initiative. No development has taken place and the site remains in the same condition as before.
- Because the site provides a blank façade to the East Wall Road, the subject is detracting from the existing character of the area and therefore satisfies section 5(1)(b) of the 2015 Act.

- The planning authority request that the decision to place the site on the register is upheld.

7.0 Assessment

- 7.1. An appeal under the amended section 9 of the Act, requires that the burden of showing that the site was not a vacant site 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 Z6 - 'To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.'. 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 site is part of a much large masterplan area for the docklands and that there have been recent proposals for large infrastructural developments in the area. In addition, it is envisaged that the subject site will become a city farm. The site is secure and monitored by site security, it is neither ruinous or neglected and is not affecting the delivery of housing in the area given the commercial zoning.
- 7.4. In response, I note that the Council state that no proposals have been agreed with respect to any community gain initiatives and that the blank frontage of the site facing East Wall Road is impacting on the delivery houses in the area.
- 7.5. Firstly, the appellant makes the point that the site is located within a wider masterplan area and that large infrastructural developments are either permitted or at an advanced planning stage. It is envisaged that the site will become a city farm,

though formal proposals have not been progressed. Irrespective of any planning intention for the area and the site in question, the Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied”. In this instance, to my knowledge no new planning application has been lodged with the planning authority. In my opinion, the site meets the criteria for inclusion on the VSR and the intention to lodge a planning application in the future has no weight in this assessment. I would remind the Board that the intent and application of the 2015 Act is indicated by Part 2 section 4, that states:

This Part applies to residential land or regeneration land.

- 7.6. In my mind, it is the intention of the Act to apply to all residential or regeneration land irrespective of planning permission or an intent to apply for planning permission.
- 7.7. 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, presents a blank façade articulated by a high roughcast concrete block wall. The wall is in good repair and successfully screens the interior of the site from view. The site interior is quite overgrown, with no apparent use at present. In my mind, the site is a vacant site in terms of section 5(1)(b)(i) of the 2015 Act. The appellant has raised issues with regard to 5(1)(b)(ii) of the Act, in terms of effects of the site on the amenities of the area for which there are three parameters detailed in section 6(6). The appellant believes the site does not meet any of these requirements and therefore the site is not a vacant site.
- 7.8. 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.

7.9. The first matter to assess is that 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 in part, the condition of the boundary walls can be best be described as satisfactory, certainly not ruinous or neglected. However, the site interior, not visible from the public realm, is overgrown and shows no signs of recent use or 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 a long blank and inactive frontage to East Wall Road, providing a secure boundary to a storage compound within the docklands area. The Act simply references ruin and neglect as triggers that might affect the amenities or character of the area, an inactive and blank frontage is not mentioned and the site interior is not visible from the public realm. It would not be reasonable in this instance to infer that a suitably maintained boundary wall can impact the character of the area as the wall itself defines the character of the area. However, the site interior shows signs of neglect and for that reason, the test for section 6(6)(a) is met in part.

7.10. In relation to section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was no evidence of graffiti on the structures of the appeal site and there was no evidence of litter. Whilst the site interior is unkempt I do not consider it would meet with part (b) above.

7.11. 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. Though this may be true for the appeal site, I note that there is residentially zoned land in the vicinity. The council provide no information as to any reduction in housing or number of people living in the area. The appellant has indicated that housing has been recently

completed and further housing is under construction in the area. I agree, that recent housing, including apartments have been completed to the south of the appeal site on lands zoned for residential uses. 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 development 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).

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 Tunnel Control Building, East Wall Road, Dublin 3, 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 overgrown and neglected, does not display any visible 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 considered that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

20 September 2018