



An  
Bord  
Pleanála

## Inspector's Report ABP-302081-18

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<b>Type of Appeal</b>	Section 11(3) Appeal against a notice under section 11(1) (PL29E.VV0018).
<b>Location</b>	Site to the rear of 29-35 Erne Street Upper, Dublin 2 (accessed from Boyne Street).
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/0131.
<b>Site Owner</b>	Rails Investment Limited.
<b>Date of Site Visit</b>	03 October 2018.
<b>Inspector</b>	Stephen Rhys Thomas.

## **1.0 Introduction**

- 1.1. This appeal refers to a section 11(1) notice issued by Dublin City Council, stating that the site stands entered on the Vacant Sites Register and Levy to be charged on the site to the rear of 29-35 Erne Street Upper, Dublin 2 (accessed from Boyne Street) in accordance with the provisions of section 11(1)(a) of the Urban Regeneration and Housing Act 2015 (as amended).

## **2.0 Site Location and Description**

- 2.1. The subject site is located on the northern side of Boyne Street and south of the Dublin to Wexford Railway line. The rear gardens of terraced houses along Erne Street Upper back onto the site and the western side of the site adjoins a garage/warehouse building.
- 2.2. The site comprises level ground overgrown with low vegetation, mainly grass. The site interior has the appearance of little recent use and is generally unmaintained. The site boundary along Boyne Street comprises a high masonry wall with steel sheeted gates and corrugated steel screen to a doorway and timber screen to a window. The sheeted steel gates and corrugated steel screen are marked with graffiti and the timber window screening is partially burnt. All other boundaries of the site adjoin existing private property and do not front onto the public domain.

## **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. 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. Subject site

PA reference **4177/16** and ABP reference **PL29S.300446**. Refuse permission for the demolition of former post office garage & construction of a 4-7 storey over basement, office building and associated site works. May 2018.

PA reference **VS0131** and ABP reference **PL29E.VV0018**. Notice Confirmed. December 2017.

ABP reference **PL29S.NA0005**. Construct, operate, improve and maintain DART Underground railway line between Inchicore and East Wall, Dublin. Make Railway Order with conditions. December 2011.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report - The site is zoned under objective Z4 - 'To provide for and improve mixed-services facilities'. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The site is in flood zone B and consists of regeneration land. The site is subject to antisocial behaviour. The site is vacant due to its appearance and is having an adverse impact upon the character of the area. No enforcement or planning history. The report is supported by colour photographs.
- 5.1.2. Response to Submission Report – No planning permission exists for the site. If permission is obtained and enacted, the site could be removed from the register. There is no basis for concluding that the site cannot be developed due to nearby

residences. The site is vacant due to its appearance and is having an adverse impact upon the character of the area.

## 5.2. **Planning Authority Notice**

- 5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0131) stands on the Vacant Sites Register. The notice, issued pursuant to section 11 of the Act and dated 31 May 2018, stated that particulars of the site remain entered on the Vacant Sites Register and that a Levy is to be charged. In accordance with section 11(3) of the 2015 Act, the Council advised the site owner that the site will not be cancelled, dated 22 June 2018.

## 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 retain the subject site on the Register. The grounds of the appeal can be summarised as follows:

- Attempts have been made to obtain planning permission for the site, but have failed.
- The site is part of and ancillary to the built up part of the site, it also backs onto to the rear of residences along Erne Street Upper. Development of the site would overshadow these houses and therefore the site is not suitable for development and should be kept ancillary to the adjoining lands.
- The appellant is being thwarted in the development of the lands by one state agency (CIE) and penalised by another.

### 6.2. **Planning Authority Response**

None.

## 7.0 **Assessment**

### 7.1. Introduction

- 7.1.1. An appeal under section 11 of the Act, requires that the burden of showing that the site is no longer a vacant site is on the owner of the site. Section 11(5) of the Act

states that the Board shall determine whether the site was no longer a vacant site. The subject site stands entered on the Dublin City Council VSR dated 28 July 2017.

- 7.1.2. In my mind, it is the purpose of a section 11 appeal to determine if a site is no longer a vacant site. It therefore follows, that the original reasons and considerations for the placement of the on the register are not subject to the appeal. Consequently, my assessment is limited to the tests for a vacant site outlined by the 2015 Act, for the time period between the date of entry on the register and the date of the relevant notice.
- 7.1.3. By reference to the planning authority notice, it is stated that the subject site is entered on the Vacant Sites Register and a Levy is to be charged. 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. As the land use zoning has not changed since the placement of the site on the register, this assessment takes into account the characteristics of the site in the context of section 5(1)(b) of the Act, regeneration land.
- 7.1.4. The appellant states that they have attempted to secure permission for the site, unsuccessfully. In addition, the site cannot be developed because it would overshadow nearby homes and cannot be developed separately from the adjacent built-on portion of the overall site. In the response to the submission made by the appellant to the Notice, the Council stated that planning permission has not been granted for the site but if it is and implemented, then the site could be removed from the register. However, the site continues to impact negatively on the area.
- 7.1.5. In the interests of clarity, section 11(1) of the 2015 Act, instructs the planning authority to give written notice to the owner of any site that stands entered on the register, outlining the following:
- (a) stating that the site stands entered on the register,*
  - (b) setting out such matters as are entered in the register in respect of the site,*
  - (c) stating that there shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been*

*determined and that stands entered on the register a levy in accordance with section 15, and*

*(d) informing the owner that he or she may make submissions in respect of the entry to the planning authority in writing within 28 days after the date of such notice.*

The Notice shall be issued no later than the 1 November 2018, Circular letter PL 06/2018 refers, notice was issued on the 31 May 2018. The land owner can appeal the decision of the planning authority, sections 11(4) and (5), state the following:

*(4) On an appeal under this section the burden of showing that the site, or a majority of the site, is no longer a vacant site shall be on the owner of the site.*

*(5) Where the Board determines that a site is no longer a vacant site it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.*

Thus, the purpose of a section 11 appeal is to determine if the status of the site in question, is still a vacant site or is no longer a vacant site.

## 7.2. Site suitability for development

- 7.2.1. The appellant has stated that the site cannot be developed because of the impact upon local residences and that the site should remain as an ancillary and undeveloped portion of the overall site. The Board should note the recent planning history of the site in respect of the requirements of the Dart Underground project. I note that the single reason for refusal issued by the Board related to prematurity pending the agreed requirements of the Dart expansion programme, reference number ABP-300446-17 refers. In addition, I note that the amended proposal before the Board at the time, sought to address residential amenity issues in relation to adjacent homes, a matter addressed and approved of by the reporting Inspector. In contrast to the appellant's viewpoint, I am satisfied that the site is suitable for development and if appropriately designed would not impact on the residential amenity of neighbouring property.
- 7.2.2. The relationship between the appeal site and the overall site including the built-on portion (former post office storage facility) and the appellant's contention that the subject lands should remain as ancillary, is worth exploring. The previous section 9

appeal on this site demonstrated that the former post office building was in use for car parking. I found this to be the case at the time of my site visit, ABP reference PL29E.VV0018 refers. However, neither at the time of my original site visit (2 November 2017) or the date of this site visit (3 October 2018), did the subject site show any perceptible use. This leads me to conclude that the appeal site performs no use at present or in the recent past and is therefore still a vacant site as determined by Board Order dated 14 December 2017, confirming that the site stands on the Vacant Site Register from the 28 July 2017.

### 7.3. Penalised

- 7.3.1. The appellant feels that their attempts to obtain permission for the site have been thwarted and the inability to develop the site is being penalised. This may appear to be the case, however, the fact remains that the site is undeveloped and serves no purpose at present. The site is still a vacant site, a condition that has not changed in the intervening time period. The purpose of the Urban Regeneration and Housing Act 2015 (as amended) with respect to land in areas that are in need of renewal is to prevent them lying idle or remaining vacant and make provision for the imposition of a levy. This is just the case in this instance, and in practice the land owner is being persuaded by means of a levy, in order to ensure that urban land, is used in the most efficient and effective manner possible and is put into the most productive and appropriate use in the interests of the common good.

### 7.4. Vacant Site

- 7.4.1. A section 11 appeal requires the Board to determine if a site is no longer a vacant site. I can confirm that the condition of the site has not changed since I last visited on the 2 November 2017. The site remains overgrown and unkempt, a view not readily available from the street but easily seen from the carriages of commuter trains to the north. The site boundary to Boyne Street still bears signs of graffiti, evidence that anti-social behaviour is or has taken place. In my mind, the site is a vacant site in terms of section 5(1)(b)(i) and (ii) of the 2015 Act.
- 7.4.2. It is however, useful to briefly assess the present condition of the site in the context of the criteria set out by section 5(1)(b)(ii) of the 2015 Act, and clarified by section 6(6) as follows:



*(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.*

- 7.4.3. The first matter to confirm is that the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The site interior is neglected and the site boundary to Boyne Street is not well maintained and subject to graffiti. In relation to section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was evidence of graffiti on the structures of the appeal site and therefore the site would meet with part (b) above. In terms of the final consideration section 6(6)(c), 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. The tests in Section 6(6)(a) and (b) are met and I consider that the site can remain on the register as a vacant site as defined by the entirety of section 5(1)(b) of the 2015 Act.

## **8.0 Recommendation**

- 8.1. I recommend that in accordance with section 11(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should give written notice to the planning authority that states the site stands on the register in respect of the lands to the rear

of 29-35 Erne Street Upper, Dublin 2 (accessed from Boyne Street) as the site remains a vacant. Therefore, the entry on the Vacant Sites Register on the 28 July 2017 shall remain.

## 9.0 Reasons and Considerations

Having regard to

- (a) The information placed before the Board by the Planning Authority in relation to the site that stands entered 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, both overgrown and neglected, that displays evidence of anti-social behaviour and therefore it is considered that it continues to 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 confirm that the site shall remain entered on the Vacant Sites Register.

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Stephen Rhys Thomas  
Planning Inspector

17 October 2018