



An
Bord
Pleanála

Inspector's Report ABP-302128-18

Type of Appeal	Section 11(3) Appeal against a notice under section 11(1).
Location	294 Merrion Road (former Swiftcall Centre), Dublin 4.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0772.
Site Owner	Lamtos.
Date of Site Visit	11 October 2018.
Inspector	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 at 294 Merrion Road (former Swiftcall Centre), Dublin 4 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 site is located on the Merrion Road opposite Elm Park, close to the administrative boundary with Dun Laoghaire Rathdown County Council. The Dublin to Wexford train line runs to the east of the site. A large office building is located to the north of the site and a car park is located to the south.
- 2.2. The site comprises a single and part two storey office building, no longer in use and boarded up. The building is in poor repair and exhibits a large quantity of graffiti. The building has a degree of car parking associated with it, however, there is a large quantity of car parking within the wider site area. Most car parking spaces were in use. The site can be accessed directly from the Merrion Road by both vehicles and pedestrians. The site boundaries to the wider car parking areas are as follows: the eastern boundary comprises a low concrete wall, the southern boundary comprises a hedge and tree line. The boundary to the Merrion Road comprises a low boundary wall with integrated seating and hedging.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The Notice issued under section 11(1) of the Act in relation to sites that stand on the register as regeneration lands and the accompanying report from the planning authority 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 Z10 – ‘To consolidate and facilitate the development of inner city and inner suburban sites for

mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas.’. 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 1514/01. Permission for extension to Merrion House.

PA reference 2552/99. Permission for advertising signs.

PA reference 1940/99. Permission for signage.

PA reference 1860/99. Permission for new traffic control barriers at both entrances.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. **Initial 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 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.
- 5.1.2. **Response to Submission Report** – the response report is to be read in conjunction with the initial vacant sites report (VS-0772). No planning permission for the use of the Swiftcall Car Park for a use unrelated to that building. The site provides an inactive frontage and contains graffiti. The development of the Swiftcall building has

no barriers to development save for legal issues. The site is having an adverse impact on the area and should be retained on 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-0772) 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 26 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:

- The site is within a wider landholding that comprises Merrion House, the former Swiftcall building and surrounding authorised 201 car parking spaces (planning permissions 1088/74 and 568/76 refer). The site extends to 1.2 Hectares and was acquired in its entirety in 2005. The Swiftcall building is an integral part of the overall lands and cannot be developed separately. The overall site has been the subject to separate leasehold agreements.
- Planning permission was granted for an extension to Merrion House (not implemented) and new barrier controlled structures at both vehicular entrances, reference numbers 1514/01 and 1860/99 refer. This illustrates the interdependence of both buildings and car parking areas.
- The Swiftcall building forms a minor part of the overall lands and fails to meet the requirement of section 5(1)(a)(iii) of the Act. Though the former Swiftcall building lies vacant, it forms less than 10% of the overall lands.
- The site has been rezoned from Z6 to Z10 mixed use and any engagement with the planning authority has shown that the entire lands should be considered as a single entity.

- The site should be considered as Residential lands rather Regeneration lands, this is because the site is zoned Z10, where lands are clarified for primarily residential uses.
- The former Swiftcall building attracts graffiti, however, it is regularly repainted and there is no evidence that antisocial behaviour is taken place by reference to an impact to the number habitable houses or people living in the area.

The appellant references their initial submission to the planning authority with reference to the section 11 Notice. That submission reiterates the issues above and outlines in detail the current process of preparing a design proposal for a planning application that includes the entire site.

6.2. **Planning Authority Response**

None.

7.0 **Assessment**

- 7.1. An appeal under the 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 1 January 2018.
- 7.2. 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 subject to zoning objective Z10 – ‘To consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas’. 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. I note that the planning authority report with an inspection date of 20 September 2016, stated that the site was located on lands subject to zoning objective Z6 - ‘To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.’.

- 7.3. The 2016-2022 City Development Plan came into effect on the 21 October 2016. The land use zoning has changed since the preparation of the planning authority VSR report and the site's placement on the register was assessed in the context of Section 5(1)(b) regeneration land. With the coming into effect of the Development Plan, the site has been zoned Z10 and according to section 14.9 of the plan, Z10 lands are to be considered for residential purposes.
- 7.4. The site was not subject to a section 9 appeal and so the site stands on the register. I note that the planning authority's response to the appellant's submission regarding the section 11(1)(d) Notice, again refers to the assessment of the site in the context of section 5(1)(b) of the 2015 Act, regeneration land and not section 5(1)(a) residential land.
- 7.5. The appellant has eluded to the argument that the site should be assessed as residential rather than regeneration. However, the planning authority have not passed any comment on the matter. The section 11 Notice was served on the basis of regeneration land and thus tie in with the rationale for the original placement of the site on the register under the section 7 notice.
- 7.6. I have serious concerns that the appeal site has been incorrectly assessed by the planning authority insofar as they have applied the tests for regeneration land as outlined by section 5(1)(b). In addition, the response to the section 11 Notice report prepared by the planning authority also refers to the criteria for regeneration lands and not residential lands. Consequently, the section 11 Notice was issued based upon section 5(1)(b) of the Act and the error has only now been drawn to attention by the current appeal. With this in mind, I would advise the Board that it would be unsafe to determine if the site should remain on the register if the procedures behind serving the Notice could be called into question.
- 7.7. The simple remedy is for the planning authority to recommence the registration of this site in accordance with section 7 of the 2015 Act. However, at this stage I cannot advise the Board to confirm that the site should stand on the register when the means of assessment and the validity of the Notifications may be questioned.
- 7.8. I would also highlight to the Board that the appellant's grounds of appeal have for the most part, revolved around the criteria and tests for regeneration land. It is therefore apparent that the appellant has been hampered in the preparation of their appeal. As

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, I am concerned that an undue burden has placed upon the appellant in this instance.

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 should not stand on the register in respect of the lands at 294 Merrion Road (former Swiftcall Centre), Dublin 4 as the site was not assessed under section 5(1)(a) of the 2015 Act. Therefore, the entry on the Vacant Sites Register on the 1 January 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,
- (d) The procedural errors in relation to the preparation and issuing of the Section 11 Notice and

the Board considered that it is appropriate that a notice be issued to the planning authority to remove the site from the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

20 November 2018