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Bord
Pleanála

Inspector's Report ABP-302168-18

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| Type of Appeal | Section 9 Appeal against section 7(3) Notice |
| Location | Ellen Street, Limerick |
| Planning Authority | Limerick City and County Council |
| Planning Authority VSL Reg. Ref. | VS-028-17 |
| Site Owner | IM Properties Ltd |
| Planning Authority Decision | Place on Register |
| Date of Site Visit | 4 October 2018 |
| Inspector | Una Crosse |

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Limerick City and County Council, stating their intention to enter the site at Ellen Street and Carr Street, Limerick on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice, dated 19 June 2018, is issued under Section 5(1)(b) and 5(2) of the Act.

2.0 Site Location and Description

The subject comprises a site area of approximately 0.159 hectares in area which is occupied by a partly complete structure of 4/5 storeys. The structure adjoins Ellen Street to the south, Carr Street to the east, Punched Row (Mungret Street) to the north and a narrow laneway to the west which is addressed on the other side by an existing structure which appears to be in multiple occupancy. This area of Limerick is known as the Milk Market area and is east of the main thoroughfare of O'Connell Street.

3.0 Statutory Context

3.1. URH Act

- 3.1.1. Section 5(1)(b) of the Urban Regeneration and Housing Act 2015 states that in the case of a site consisting of regeneration land -
- (i) the site, or the majority of the site, is vacant or idle, and
 - (ii) 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.

4.0 Planning Authority Decision

4.1. Planning Authority Notice

Limerick City and County Council advised the site owner that the subject site (Planning Authority site ref. **VS-028-17**) had been identified as a vacant site. The notice, issued pursuant to section 6(2) of the Act and dated 19th June 2018, stated that the particulars of the site have been entered on the Vacant Sites Register under Sections 5(1)(b) and 5(2) of the Act. The notice was accompanied by a map outlining the site boundary.

4.2. Authorised Offices Inspection Report

A report prepared by the Planning Authority, entitled 'Authorised Officers Inspection Report', dated 18 June 2018, in relation to the site which is presented in tabular format is summarised as follows:

- Site is described as an incomplete multi-storey residential with ground floor commercial and basement car parking on a site of 0.159ha;
- Reference is made to the submission received which references the current planning application with the site progressing towards occupation;
- The recommendation states that in accordance with the aims and objectives of the Limerick 2030 Economic and Spatial Strategy (Variation No. 4 of the City Development Plan 2010-2016 extended) a key element of the strategy is the revitalisation of the Ellen Street and Carr Street area;
- It is stated that this is a high visibility location beside the Limerick Milk Market a key visitor destination as well as a heritage landmark in Limerick with the strategy setting out the importance of development in the area to support the growth of the Milk Market Area;
- It is stated that a mixed use development in the area is highlighted by the strategy which encourages active ground floor uses as well as increased residential density and footfall in the area;

- Stated that the site has been vacant and idle for a year and detracts from the character of the area with the site in the current vacant and idle state not contributing to the regeneration of Limerick City.

5.0 Development Plan Policy

5.1. Limerick City Development Plan 2010 - 2016 (extended)

- 5.1.1. In September 2014, in accordance with Section 28 of the Electoral, Local Government and Planning and Development Act 2013, the Planning Authority proposed not to commence the review of the Limerick County Development Plan 2010 - 2016 and the Limerick City Development Plan 2010 - 2016. Therefore the City and County Development Plans will continue to have effect until a new Development Plan for Limerick City and County is prepared. Variation 6(a) relates to the incorporation of the objectives of the Limerick Regeneration Implementation Framework Plan. Variation 6(b) relates to the incorporation the vacant site levy, as provided for in the Urban Regeneration and Housing Act 2015.
- 5.1.2. The site is zoned city centre in the current plan.
- 5.1.3. The Plan states at page 2.12 that Limerick City & County Council will examine lands within the City and County, as appropriate, for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the vacant site levy. To promote the appropriate development and renewal of urban sites and areas, identified having regard to the core strategy, that are in need of regeneration, in order to ensure there is no -
- (i) adverse effects on existing amenities and facilities 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) shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.
- 5.1.4. It is stated that this Policy shall relate to all zoned lands set out in the City Development Plan area.

6.0 Planning History

Ref. 18/168 - completion of the works comprising of a mixed development as follows:

(a) language school and seven retail shop units on ground floor; (b) five duplex 4 bedroom apartments and three duplex 6 bedroom apartment on first and second floors; (c) basement with 24 private car spaces and (d) new connections to the mains public water and sewer. Permission was granted on 15 June 2018.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. An appeal was received from the owner and the grounds are summarised as follows:

- Planning permission has been granted for the building (Ref.18/168) for 8 large apartment over 7 retail units and a language school and a basement car park;
- Currently in process of completing fire and disability access cert applications and once granted will commence completing the unfinished building;
- Making every effort possible to commence works as quickly as possible so unfinished building is fully occupied as soon as possible;
- If planning granted and fire and disability certs applied for then the site is progressing towards occupation very soon and therefore cannot be classified as a vacant site;
- For more than a year the site area is covered and used by a basement private car park with a site by definition an area of ground on which a building is constructed therefore the site is not vacant for this reason;
- Site is occupied by a private car park and has been for more than a year;

7.2. Planning Authority Response

No response on file.

8.0 Assessment

8.1. Introduction

8.1.1. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

- (i) the site, or the majority of the site, is vacant or idle, and
- (ii) 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.

8.1.2. The site must meet both tests and I will address each in turn.

8.2. **Vacant or Idle**

In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, I note the grounds of appeal on behalf of the site owner which refer to their intention to develop, the existing permission, the certs which have been sought and the use of the site as a private car park. Firstly, in relation to intention to develop, I refer to Circular Letter PL7/2016, Appendix 3 where it is stated that 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. It continues that 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. I would note that the spirit of the legislation provides for the activation of sites with permission/certification only facilitating same.

8.2.1. I would note that the appellant states that the building is being used as a private car park however it was locked up on the day of my visit. Furthermore, the car park permitted as part of the proposed development is associated with the development permitted and it is not permitted as a car park to serve any other development or purpose and therefore I would contend that that purported use of the car park cannot be considered for the purposes of dissuading vacancy. I consider that the site can be considered vacant or idle for the purposes of Section 5(1)(b)(i).

8.3. **Adverse Effects**

8.3.1. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii) that being that 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. This test is considered by reference to Section 6(6) of the Act which states that ‘a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects 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.

8.3.2. Therefore these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity etc. The applicant does not reference the condition of the site or the tests included in Section 6(6). In addition, the Authorised Officers Report which is outlined in Section 4.2 of this report (above) does not address the tests. It is stated that the site has been vacant and idle for a year and detracts from the character of the area with the site in the current vacant and idle state not contributing to the regeneration of Limerick City. The PA consider that the site is located on a key street and at a prominent and highly visible location in the Milk Market area which is a key visitor destination as well as a heritage landmark in Limerick. They also state that in accordance with the aims and objectives of the Limerick 2030 Economic and Spatial Strategy (Variation No. 4 of the City Development Plan 2010-2016 extended) a key element of the strategy is the revitalisation of the Ellen Street and Carr Street area. It is stated that a mixed use development in the area is highlighted by the strategy which encourages active ground floor uses as well as increased residential density and footfall in the area.

8.3.3. While all of the Planning Authority’s considerations in respect of the regeneration of the area and the local policy objectives set out in the Strategy to support same are worthy and in the interest of proper planning and sustainable development, the consideration of vacancy in respect of regeneration sites for the purposes of the levy

is by reference to the tests outlined in Section 6(6) of the Act, outlined above, which have not been addressed in respect of this site. I would therefore propose to address the tests outlined in Section 6(6) in turn. For the benefit of the Board I would note that Section 6(6) is written such that the tests comprise a consideration of subsections (a), (b) or (c). I would note that there is no 'and' between subsections (a) and (b) and therefore if either part is met it should arguably suffice.

- 8.3.4. The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. I would suggest that it is quite evident from the photographic evidence which I have attached that the subject structure can be immediately regarded as being in a neglected condition. I do not consider that there is any dispute on this matter given the state of the structure currently on site. In this regard I consider that this first test is met.
- 8.3.5. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. As is evident from the site photographs, there is evidence of fire on the elevation and a lot of graffiti but no evidence has been provided by the Planning Authority or the appellant on this matter in respect of information from local Gardai. However given the evidence on the building itself I consider that it is evident that anti-social behaviour has taken place and therefore it could be considered to meet this test.
- 8.3.6. There is no evidence to address part (c) however I would note there was building activity ongoing on residential sites in the vicinity of the appeal site. However given that the site is not required to meet each of the three tests, the necessary parameters of Section 6(6) (a) and (b) have been met and in this regard the site is a vacant site as defined by Section 5(1)(b).

9.0 Recommendation

- 9.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the site at Ellen Street and Carr Street, Limerick was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19th June 2018 shall be deemed to take effect from that date.

10.0 Reasons and Considerations

10.1. Having regard to

(a) the information submitted to 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 Inspector, and

(d) the neglected condition of the site and structure thereon, which it is considered has adverse effects on existing amenities and on the character of the area and the anti-social behaviour which has taken place,

the Board considered that it is appropriate that a notice be issued to the planning authority to confirm the entry on the Vacant Sites Register.

Una Crosse
Senior Planning Inspector

October 2018